

ARTICLES

Who Owns Public Property? Libertarian Property Theory and the Problem of Immigration.

Christos Armoutidis^a

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The status of so-called public property remains a particularly contentious issue within libertarian literature. While some theorists contend that such property is unowned, others argue that it constitutes privately owned property under state control. This debate has direct and significant implications for the issue of open versus controlled borders. This article argues that, given the existence of the state, a consistent application of libertarian property theory renders the open-borders position untenable. It further contends that certain immigration restrictions represent a “second-best” solution to the problem of managing public property. Ultimately, the article defends the view that treating public property as privately owned by the taxpayers is the only coherent and justifiable libertarian position.

In a private law society, where conceivably almost all land is privately owned, the very concept of immigration would lose its conventional meaning.¹ Under this framework, the only resources individuals could access and use would be either their own private property or that of others by invitation (Hoppe 2002, 2001, 1998; Rockwell 2015). But since we do not live in such a society, we must grapple with the concept of public property. Before proceeding, it is essential to clarify what is meant by this term. Public property refers to resources over which the state asserts legal control—resources it owns and manages in the legal positivist sense. For libertarians—particularly those of the anarcho-capitalist persuasion—the state is viewed as an inherently unjust institution. Accordingly, its control and legal title over public property is also considered illegitimate.² The central question, then, is, Who, if anyone, are



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^a Christos Armoutidis (xristosarmoutidis@gmail.com) is an independent scholar. The author would like to thank Stephan Kinsella and two anonymous referees for helpful suggestions on drafts of this article.

¹ It is possible that certain land—such as frozen wilderness—has a marginal cost of homesteading and maintenance that exceeds its marginal benefit. In such cases, the land may remain unowned.

² The distinction between legal and rightful ownership is noteworthy. See Kinsella (2009, 2010b).

the rightful owners of public property? Answering this question is essential for achieving a coherent, rigorous, and principled understanding of the issue at hand.

This article argues that the consistent libertarian position regarding the ownership of public property—such as roads, highways, ports, and other state-controlled resources—is that these resources are rightfully owned by the taxpayers. It further contends that certain restrictions on immigration are preferable to an open-borders policy because they result in less overall aggression and more overall restitution (Kinsella 2005a, 2005b). Within the context of the libertarian immigration debate, Hans-Hermann Hoppe (1998, 2001, 2002) and Stephan Kinsella (2005a, 2005b) best represent this position. In contrast, Simon Guenzl (2016) best represents the opposing position—namely, that public property is unowned and open borders constitute the correct libertarian stance. This article will explore Guenzl’s objections as well as other criticism implied by Guenzl’s position and will even grant certain false assumptions at times to show that the open-borders position is untenable even under these assumptions.

Public Property as Private Property

There are three legitimate ways by which individuals can come to own external—that is, outside the body—rivalrous resources: original appropriation (homesteading), voluntary contract, or rectification for acts of aggression (Kinsella 2023, 15). The justification for the position that public property is, in fact, privately owned is as follows. Because taxpayers are the victims of aggression, they can justly respond to their aggressors in a proportional manner by punishing them through physical force or by seeking restitution. From a libertarian perspective, public property such as roads and ports should be justly considered the rightful property of taxpayers as a means of partially redressing the aggression they have suffered at the hands of the state.³ Even if only a single individual can obtain some restitution in this way, it is better than the alternative, in which no one receives any (Kinsella 2005a, 2005b).⁴ As Kinsella (2005b) aptly explains,

My basic idea is that the citizens are the true owners of public property, and should have some say-so over how the state uses that property. Their interests and preferences should be taken into account. This will result in a greater degree of restitution,

3 Some members of the general population who are not taxpayers can nevertheless be considered partial owners of public property. Chief among them are the children of taxpayers, who “piggyback” on their parents’ ownership stake. It is reasonable to infer that a taxpayer’s limited share in public property includes the right to extend usage privileges to a limited number of others—such as dependent children or even a small number of immigrants. Moreover, foreigners harmed by the state—such as innocent people in a country that the state bombs—would also have a justifiable claim of restitution that partial ownership of public property could satisfy.

4 It should be noted that while taxpayers might be able to receive some restitution, perfect restitution is impossible. Moreover, the inherently destructive nature of the state ensures that it will never possess the resources necessary to adequately compensate its victims—even under imperfect restitution standards (Kinsella 2023, 95–96; 2024c; 2025c).

and thus an overall smaller degree of net harm to them. Now obviously all their preferences cannot be simultaneously satisfied, but it seems reasonable, other things being equal, for the state to try to use the property in reasonable ways (like a private owner would) so as to result in partial restitution being made the citizens, or as many of them as possible. Obviously a greater degree of restitution (a better use of the property) made to a larger number of citizens is “better” (even from a libertarian standpoint) than a smaller degree of restitution (a more wasteful use of the property) made to fewer citizens.

Implications for the Immigration Debate

In a libertarian society, public property would be abolished and its rightful owners—the taxpayers—would gain full control, enabling them to freely negotiate and coordinate its use according to their preferences. Unfortunately, we do not live in such a society but must instead contend with the state, which can only make crude decisions concerning the control and management of public property. Any such decision by the state inevitably violates the rights of some rightful owners since it cannot possibly align with all of their preferences. Given this reality, the task is to identify the second-best solution, which, in a libertarian framework, is for the state to manage public property in a way that best reflects the preferences of the majority of its legitimate owners—namely, the taxpayers.⁵ This approach results in less overall aggression and more overall restitution for those wronged by state aggression. Empirically, most taxpayers support some degree of immigration or border control; therefore, if the state enacts such control, it minimizes rights violations and maximizes restitution relative to any alternative—short of the state’s complete dissolution. By contrast, an open-borders policy reflects the preferences of a minority of true owners and conflicts with the preferences of the majority, thereby increasing the number of individuals whose rights are violated and providing less overall restitution (Kinsella 2005a, 2005b; Hoppe 1998, 2001, 2002).

It should be noted that there is an exception to the claim that public property is privately owned: public lands that have never been meaningfully homesteaded or for which no act of homesteading can be demonstrated. National parks, forests, and similar tracts of land arguably fall into this category and should thus be regarded as genuinely unowned.⁶ In such cases, if

⁵ While this majoritarian approach is invariably inefficient and results in less-than-ideal outcomes (Hoppe 2001), this article is concerned with whether such an approach is preferable to the alternative in this context.

⁶ What is meant by “unowned” in this context is that the land in question has not been genuinely homesteaded by anyone. While the state may be its legal owner in the positivist sense—enforcing laws and imposing policies as if it were the rightful owner—it has never actually homesteaded the land in a way that satisfies libertarian principles of original appropriation. As such, despite acting like an owner, the state cannot be considered the legitimate or rightful owner of this land.

immigrants or anyone else can access these areas without traversing privately owned property, their use of the unowned land does not, and cannot, constitute a rights violation (Kinsella 2023, 633; Hoppe 2021, 94).⁷

Possible Criticisms: The State Does Not Legitimately Own Anything

This is the crux of Guenzl's (2016) argument for why public property is unowned and why open borders constitute the correct libertarian position when considered in light of the claims made by Hoppe (1998, 2001, 2002) and Kinsella (2005a, 2005b). Guenzl's position is that taxpayers cannot acquire title to public property by restitution since restitution can only come from one's legitimately owned property and the state does not legitimately own anything. Guenzl (2016, 160–61, 165) argues,

If we focus on the case of state-claimed land, by definition, when the state claims control of previously unowned land using taxes coercively extracted from its citizens, what has been stolen from taxpayers is not that land but the taxpayers' income. Just because the state has stolen the taxpayers' income and used the funds to purchase labor services and materials to lay a road, build a fence, and so on does not in and of itself convert the taxpayers' right to take action against the individuals responsible for the theft into a right to previously unowned land. . . .

Each taxpayer's right to seek redress as a victim of theft is a right against the rogue individuals of the state and their legitimately-owned property (if any). Such property would not include state-claimed land. . . .

A victim may exercise remedial claims, by force if necessary, to an aggressor's legitimately-owned property. Here, the aggressors (individuals within the state) do not legitimately own the state-claimed land, and thus the victims' (the taxpayers') rights cannot extend to such property (nor can the aggressors offer the victims such property or any benefits arising from it in lieu of other enforcement action).

Here, Guenzl asserts that the state does not justly acquire ownership in public property and, therefore, taxpayers cannot justly claim this land through restitution. Guenzl does not offer much of an argument for why exactly the state cannot acquire ownership in such resources—he merely asserts that this is the case. One possible line of argument is that when the state contracts with

⁷ It should be noted that simply returning developed public property to its rightful owners—the taxpayers—is insufficient to fully compensate them for past injustices. Because of this, taxpayers should be granted the first right to homestead any such land that is deemed unowned. This way they can receive a greater degree of restitution (Kinsella 2025a; Hoppe 2021, 564).

private firms—such as construction companies—to build public resources (e.g., roads) and pays for this service and resources with fiat money, the contract itself is illegitimate since the money is stolen and one cannot justly acquire title to a resource with stolen funds. The fundamental error in this critique lies in two faulty assumptions: (1) fiat money is an ownable resource, and (2) the rightful transfer of title to the money and the libertarian conception of ownership are relevant here. First, it is essential to clarify what fiat money is and why it cannot be an ownable resource. Fiat currency consists of informational entries in ledgers maintained by central and commercial banks.⁸ As Kinsella and others have demonstrated, information is not an ownable resource; therefore, fiat money is also not ownable (Kinsella 2021, 2023, 355–98; 2024b, 2025b; Graf 2015, 59–62). Recognizing this, it is also important to understand that the use of terms such as “title transfer” or “ownership” by state agents and the public for transactions involving fiat money does not make those transactions invalid.

Consider that, like fiat money, bitcoin (BTC) is also arguably not an ownable resource (Kinsella 2021). Does this mean all BTC contracts that use terms like “ownership” are invalid? If people erroneously believe in the ownability of BTC, is any transaction they make with BTC null and void? Obviously not. All that is relevant is what the actors involved in the transaction believe and what they care about. All the person that receives BTC as payment cares about is control and possession or legal (in the positivist sense) ownership over the BTC they are presumably acquiring. Most people are not familiar with and do not care about the libertarian conception of ownership, nor do they have to in order to legitimately contract with each other. Just because we can say that, strictly speaking, they don’t rightfully own the BTC does not mean that transactions made with BTC are illegitimate. From this it follows that transactions involving BTC as well as fiat money are—*ceteris paribus*—perfectly valid. These fundamental errors undermine the argument that contracts between the state and private actors are inherently invalid.

Fiat money, strictly speaking, cannot be stolen since it’s not an ownable resource in the first place.⁹ Assuming, for argument’s sake, that fiat money is ownable does not entail that any transaction made with fiat tax money is invalid. There are three relevant contractual scenarios when the state pays private firms with fiat tax revenue: (1) the construction firms know or should know they are being paid with stolen taxpayer money but do not care and expect to gain practical and legal (in the positive sense) control over the money without concerning themselves with whether they are gaining or can gain genuine just legal ownership; (2) the construction firms do

⁸ Given that physical cash constitutes a negligible portion of the overall money supply—and is not the medium through which the state funds public works—it falls outside the scope of relevance for this analysis.

⁹ This is not to deny that taxation constitutes aggression, but it is more accurately characterized as extortion or trespass than theft per se.

not know—or have no obligation to know but do care—if they are being paid with stolen taxpayer money and are genuinely expecting, and desire to become, its just owners; and (3) the construction firms do not know—or have no obligation to know but do not care—if they are being paid with stolen taxpayer money and are expecting to gain practical and legal (in the positive sense) control over the money without concerning themselves with whether they are gaining or can gain genuine just legal ownership.

In scenario (1), the title transfer is successful because the condition of legal (in the positivist sense) control or possession is fulfilled. In scenario (2), title does not transfer, because the condition for the title transfer—which is the firm’s acquiring genuine and just ownership over the money—is not fulfilled. In scenario (3), the title transfer is successful because the condition of legal (in the positivist sense) control or possession is fulfilled. Scenario (2) is the only case in which title does not transfer; however, its conception of the contract is flawed. This conception of the contract falsely assumes that firms, and nonlibertarians in general, are familiar with and care about libertarian property theory. This is an unreasonable assumption. What most people are aware of and care about is possession of a resource or legal (in the positivist sense) control over it. They are not concerned with whether ownership is just according to libertarian theory. In fact, most people consider their ownership of a resource to be just if it is merely deemed legitimate by the legal system. Moreover, the assumption that firms are unaware of—or can be excused for not recognizing—the nature of the money they receive is highly questionable, as will be discussed further below. Since, according to the other two conceptions of contract, title does transfer—even under the mistaken assumption that fiat money is ownable—the argument against the private ownership of public property fails to reach its intended conclusion.

In no scenario do the resources in question become unowned. Even in scenario (2), the firms would simply maintain their ownership of the resources in question. When the state attempts to pay them for these resources—since the money the state will use is not a resource the state justly owns—the title transfer never happens, and so the state does not gain ownership of the resources in question. The rightful owners of these resources would still be the firms themselves, so the scenario is within the confines of private property. The logical implication of this view is that “public property” may not be justly used without the consent of its owners. Nor could one argue that since these firms have not explicitly disallowed use of their property, one can therefore use it. If A wants to use B’s property, B must explicitly or implicitly consent to it—neither of which has occurred in this case. The mere absence of disallowance is irrelevant. Even more pertinently, the essence of ownership is exclusion, or the right to exclude (Kinsella 2023, 32), and so nonconsent or exclusion is implicit in the very fact of owning a resource. If A owns a pencil, A does not have to explicitly state, “I do not consent to anyone using this pencil.” A’s nonconsent is

implicit in the very fact of being the owner, and the only way to overcome this presumption is for A to explicitly give consent or for there to be some valid reason to think that A has implicitly consented, in which cases the presumption of nonconsent does not apply.

Finally, this argument offers an incomplete analysis of the situation. If the companies were paid with stolen money, then these companies are in possession of stolen goods and are arguably themselves aggressors.¹⁰ Some may object that the firms are not knowingly in possession of stolen goods. This criticism is weak because nothing about the nature of the money these companies are paid with is hidden, so they do or should know that it is stolen property. At the very least, if such a firm is made aware of the fact that it is in possession of stolen goods and does not return them, then at that point there would no longer be any excuse—they would be aggressors. Following these considerations, taxpayers would have a justifiable legal claim against the companies in possession of their stolen property. Accordingly, they would be entitled to seek restitution, which could include other assets owned by the companies—such as roads, bridges, ports, and similar resources. Thus, the original analysis regarding the legitimacy of taxpayer ownership of public property would still apply. Ultimately, the argument that denies private ownership of public property fails to demonstrate any logical flaw in the thesis of taxpayer ownership.

Granting False Assumptions

In this section, certain false assumptions will be provisionally accepted in order to demonstrate that, even if one were to grant them, they do not support the conclusion that public property is unowned.

The Taxpayers Do Not Acquire Ownership of Public Property by Restitution

Even if we grant the assumption that taxpayers do not acquire ownership of public property through restitution, this criticism still fails to establish that such property is unowned. One of the foundational ways individuals may acquire property rights is through homesteading. In this context, the general population, by consistently using public resources—such as roads, ports, bridges, and similar assets—effectively homesteads these resources and thus acquires legitimate ownership over them. This is not fundamentally different from any other act of homesteading. As Roderick Long (2011) and Hans-Hermann Hoppe (2011) have argued, private property can arise through

¹⁰ It is not particularly unreasonable to even consider these companies as part of the state or state agents, since they mostly get paid in taxpayer money, collaborate with the state, and are shielded from competition by the state.

genuine community efforts.¹¹ For example, under this framework, a public school would be owned by the parents via their children’s consistent use of the facility. Similarly, a road or a port would be owned by its consistent users. To deny this would be to reject homesteading as a valid method of property acquisition—an untenable position within libertarian property theory. This line of criticism, therefore, also fails to undermine the claim that public property is privately owned.

Public Property as Unowned Property

In this section, the central thesis advanced by Guenzl and others—that public property is unowned—will be granted in order to demonstrate that even this assumption does not logically entail an endorsement of open borders. To properly analyze this scenario, we must examine an important concept within libertarian theory developed by Walter Block: the Blockean proviso.

The Blockean proviso, a term coined by Kinsella (2007a), refers to Walter Block’s argument that one may not homestead in such a way that precludes or forestalls others from accessing otherwise unowned resources. Block (2004, 278) illustrates his point with the example of an individual homesteading land in the shape of a bagel, thereby enclosing a center area that remains unowned but inaccessible to others. The fundamental flaw in this position is that it simply does not constitute aggression to homestead in this manner. Let us first remember what aggression is according to libertarian theory. Aggression is a kind of action whereby an actor violates another person’s rights. A violates B’s rights if A threatens to or does physically invade or use a resource that belongs to B. If A homesteads land in a circular formation, leaving the center unclaimed, then to call this a rights violation requires showing that A is threatening to or is physically invading some resource owned by another person. But the circle or bagel itself is not owned by another; it is a resource that belongs to A. A, therefore, is not invading and cannot invade another person’s resources by using the circle itself in any way—including by not allowing entry to those who want to cross the circle for whatever reason. Block justifies his proviso by asserting that “this, alone, is anathema to the libertarian ideal that all of the earth’s surface should come under private ownership” (Block and Butt 2016). Elsewhere, Block (2004, 278) argues that “just as physical reality abhors a vacuum, so too does libertarian homesteading theory abhor land which cannot be claimed nor owned because of the land ownership pattern of the forestaller.” But this analogy—aptly described by Kinsella (2024a) as a bromide—does not logically entail that homesteading patterns which indirectly limit access to unowned resources are

¹¹ Roderick Long (2011) still calls such property “public property,” but he does maintain that a group of people can have property rights over a resource—he simply does not call it private property. But this is a distinction without a difference and is therefore irrelevant to the purposes of this article.

therefore impermissible. The mere fact that a pattern of ownership makes access difficult or impossible does not render the act of homesteading coercive or illegitimate under libertarian theory.

Lukasz Dominiak (2017) offers an alternative defense of the Blockean proviso, contending that certain forms of homesteading—such as enclosing unowned land in a bagel-shaped pattern—are logically incompatible with libertarian principles. He argues that such configurations generate contradictions within the correlative structure of rights and duties. Dominiak illustrates his point as follows:

Imagine a bagel-shaped plot of appropriated land. Red owns this bagel-shaped plot, called A, B is an unappropriated hole-in-the-bagel plot of land, and Blue is the owner of a plot of land C outside the bagel.

. . . Allow me to restate what it means to have a right. Red has a right toward Blue that Blue not do X if and only if Blue has a duty toward Red not to do X. In the bagel case, the following conclusions must therefore be true:

- 1) because Red is not the owner of B and therefore does not have any rights to B, Blue by definition cannot have any correlative duties toward Red in connection with B;
- 2) because Blue has no correlative duties toward Red in connection with B, Blue also has no duty toward Red not to enter B.

But

- 3) because Red is the owner of A, Blue has all correlative duties toward Red in connection with A;
- 4) because Blue has all correlative duties toward Red in connection with A, Blue also has a duty toward Red not to enter A;
- 5) because Blue has a duty toward Red not to enter A, he therefore has a duty toward Red not to cross A;
- 6) because of the bagel-shape of the land, to cross A is to enter B;
- 7) because Blue has a duty toward Red not to cross A and to cross A is to enter B, Blue has a duty toward Red not to enter B, which contradicts (2).

Before evaluating Dominiak's argument, it is important to recall what ownership and property rights entail within libertarian theory. As Kinsella (2023, 32) explains, to own a resource is to possess the right to exclude others from using it. This right, in practice, generally entails the ability to use and control the resource without committing aggression. It is also critical to understand that property rights can impose limits on actions. Under libertarian theory, individuals are free to act as they wish—except insofar as their actions constitute use of another's property without consent (Kinsella 2010c, 2010a). Crucially, for the purposes of this article, it must be recognized that the use or access of a resource—whether owned or unowned—can constitute a rights violation if using or accessing it involves or requires the use of other resources not owned by the actor.

The fundamental flaw in Dominiak's argument is that it treats plot *B* as an independent entity, which is inappropriate in this context. The contradiction Dominiak identifies only arises under the assumption that any duty not to interfere with someone's access to a resource (plot *B* in this case) is owed independently of how that access is attempted. It is true that Blue has no duties toward Red in connection with *B* itself. Red does not have the right to exclude Blue from *B itself*—that is, independently of any other property rights over resources that Red owns. To illustrate, imagine Blue flew over *A* and parachuted into *B*. In this scenario, Red would not have the right to exclude Blue from using *B* since Blue would only be using *B* itself without using or having had to use *A* in order to use *B*. This hypothetical demonstrates that Red does not actually have the right to exclude Blue from *B* itself. But in the scenario where Blue must use *A* in order to enter *B*, Red does have the right to stop such actions. This is because Red is not excluding Blue from using *B* itself; rather, Red is excluding Blue from attempting to enter *B*, which is accessible only via *A*—that is, accessing *B* is functionally dependent on or a function of using *A* ($B = f(A)$). However, accessing *B* itself independently of *A* is different from accessing *B* as a function of using *A*—that is, $B \neq f(A)$. Red is not making an ownership claim over *B* itself and Blue does not have any obligation with respect to *B* itself. In this context, Blue's obligation, ultimately stemming from the obligation in connection with *A*, is in connection with $B = f(A)$.

The general principle expressed here is that one may only legitimately perform or attempt to perform actions that involve or require the use of resources that one owns. In order for *A* to use or attempt to use *B*'s resources *A* must have *B*'s consent. Actions or attempted actions that require or involve the use of another person's resources may be legitimately stopped by the relevant owners. In the context of Dominiak's hypothetical, if Red has the right to exclude Blue from *B* itself directly and independently and not as a consequence of having the right to exclude Blue from *A*, Red would be making an ownership claim over *B*. But in this case, Red only has the right to directly exclude Blue from *A* itself; therefore, Blue may enter neither *A*

nor B since it is necessary to enter A to enter B . Blue's obligation is not to enter or attempt to enter A , and as a consequence, $B = f(A)$. Since $B \neq f(A)$, Dominiak's argument that homesteading in the shape of a bagel leads to contradictory property arrangements is flawed.¹²

To clarify this point, consider a related analogy. Imagine John wants to use a knife to stab Sam.¹³ If Sam is recognized as having the right to stop this action, is Sam making an ownership claim over John's knife? Clearly not. Let us denote the knife as A and Sam's body as B . John's intended action involves both resources— $A + B$ —but John may only justly peacefully control A itself, not $A + B$. In a more directly analogous scenario, John can access or use the knife only by first slapping Sam. In this case, Sam's right to stop John remains intact: John's attempt to retrieve A (the knife) requires the use of B (Sam's body), which he does not own, and John may not perform or attempt to perform an action that requires the use of another person's resources without that person's consent. If Sam could deny access to A —not because of any property rights he has over other resources—then Sam would be making an ownership claim over A . But in this case, Sam's right to stop John is not a claim over A (the knife) independently of any other property rights Sam has; rather, it is a defense of B (his own body), which John must use to access A .

Applying this analysis to border control—assuming that the border region is unowned—if a group of individuals were to stand in a line to prevent entry, or construct a barrier that achieves the same effect, such actions would not constitute aggression per se. Since the border is assumed to be unowned, the immigrant does not have a rightful claim to any specific location A along that border. Consequently, if another person, B , occupies that space, that person is not violating the property rights of the immigrant, C , because C owns no part of the border. Moreover, as Hoppe (2006, 381–87) has argued, people would be entitled to their standing space even in the Garden of Eden. In this case, B is peacefully using an unowned resource and is the prior user relative to C , who is a latecomer. According to the libertarian distinction between *prior* and *later* (Kinsella 2007b; Hoppe 2010, 169–71), B has a superior claim to A compared to C . If C were to push B aside, this would constitute an act of aggression since it would initiate a conflict over A , which B is already peacefully using.

Having established that excluding individuals from accessing unowned (or even owned) resources does not per se constitute aggression or lead to a logical contradiction, we are now positioned to examine the implications of this reasoning for immigration policy—specifically under the assumption

¹² This analysis does not necessarily change even if the center of the bagel is legitimately owned by Blue or someone else. It could be reasonably argued that if the center of the bagel is owned by Blue and Red surrounds it in this way, then Red is in essence threatening to steal or invade Blue's land. This, however, is not a logical necessity. In any case, this line of argument is not directly relevant to the topic at hand.

¹³ In this hypothetical, whether the knife is unowned or owned by John or someone else is not relevant.

that public property is unowned. What is paramount to understand is that in a statist world, *any* immigration policy—whether of open or controlled borders—involves acts of aggression. The key question, then, is, Who are the victims of this aggression? The answer, in both cases, is the same: the taxpayers compelled to fund these policies. A controlled-borders policy entails a variety of enforcement mechanisms—personnel, checkpoints, surveillance infrastructure, and more—all of which require taxation. Funding is also required to prohibit competition with the state for this policy. If private individuals attempt to enforce border control independently of the state, the state typically acts to suppress such efforts—an intervention that itself requires funding via taxation. Likewise, an open-borders policy also requires taxation. At a minimum, under an open-borders policy, the state will almost certainly intervene to prevent individuals from policing or obstructing immigration since such interference would contradict the state-sanctioned policy, and this enforcement activity, like all others undertaken by the state, necessarily relies on taxation. Any policy the state pursues will invariably result in the violation of some people’s rights; therefore, the proper libertarian inquiry is, Which policy results in the least overall aggression?—that is, Which policy minimizes the coercive burden imposed on taxpayers?

A controlled-borders policy violates the rights of the following groups of people:

- A. People who do not consent to taxation in general.
- B1. Individuals who do not consent to taxation used specifically to fund the prohibition of private competition with the state in policing and preventing border crossings.
- C. People who do not consent to taxation for the funding of any immigration restrictions.

Similarly, an open-borders policy violates the rights of the following groups of people:

- A. People who do not consent to taxation in general (this group is constant for both policies).
- B2. Individuals who do not consent to taxation used to fund state efforts to prevent others from policing or stopping immigrants from crossing the border. This group includes B1 in its entirety. As will be argued, however, B2 encompasses a larger subset of people under an open-borders policy.

Which of these two policies results in less overall aggression? One might argue that an open-borders policy is, in general, less costly and therefore requires less taxation. But it also leads to a greater number of individuals having their rights violated since most people do not support completely open borders.

Group A—those who object to taxation in general—is constant across both policies. However, group B2, which includes all the victims in B1, is significantly larger under an open-borders regime. The reason is straightforward: most individuals favor some form of immigration restriction. Under an open-borders policy, the state withdraws entirely from providing immigration control services, thereby reducing the supply of that service to zero—excepting cases where it is provided illegally—leaving a widespread demand unmet. It stands to reason, then, that group B2 expands under an open-borders policy because significantly more individuals are likely to object to taxation being used to *prevent* others from supplying the immigration control services that most people support. Group B2 is larger than group C since most people do not support open borders; therefore, under an open-borders policy, more people overall become victims of aggression. In conclusion, although an open-borders policy may be less costly in absolute fiscal terms, it also generates a broader scope of rights violations. Given the impossibility of rationally comparing *less overall taxation and more individuals harmed* versus *greater overall taxation and fewer individuals harmed*, it is impossible to definitively determine which policy results in less aggression—assuming, again, that public property is unowned. Therefore, the only logically consistent position for a libertarian who adopts this assumption is agnosticism and ambivalence toward state-imposed immigration policy.

No State Borders Policy and No State Restriction of Private Exclusion

The closest the open-borders position comes to being justifiable is under the assumption that the state refrains from using taxation to suppress private immigration control—that is, it does not fund agents tasked with preventing private individuals from policing public property (including the border) or barring immigrants from entry. Under this framework, the advocate of open borders could plausibly argue that such a position minimizes overall aggression because it avoids the levying of taxes.¹⁴ But this position faces a conceptual flaw: it is incoherent to describe such a framework as one of “open borders.” If the state neither restricts immigration nor prevents private individuals from doing so, the term “open borders” becomes a speculative empirical prediction—and an unlikely one at that. This paradigm is fully compatible with the position of restricted immigration since private individuals would be free to police public property and bar immigrants if they so choose.¹⁵ Whether access to public property for immigrants remains open, closed, or something in between would thus depend entirely on the

¹⁴ Realistically, in order for this to happen, the state would have to dissolve completely or at the very least lose a large part of its control as it gives up control over this area of law and its enforcement.

¹⁵ These private individuals would be taxpayers, under the view of public property as owned by taxpayers by way of restitution, or homesteaders, under the view that public property is unowned.

actions and preferences of those private actors. Given that a majority of people do not support fully open borders, it is reasonable to expect that some degree of immigration control would persist—even in the absence of state enforcement. Therefore, calling this arrangement an “open borders” policy is misleading because it misrepresents the structure and merely speculates about the outcome of such a regime.

Conclusion

This article has examined the ownership status of public property and argued that the consistent libertarian position is that public property is justly owned by the taxpayers. Criticisms of this position by advocates of open borders have been addressed in detail and found to rest on fundamental misunderstandings regarding the nature of fiat money, contracts, aggression, and property rights. Moreover, the analysis went further by granting several key assumptions commonly made by open-borders proponents—including the claim that public property is unowned—and demonstrating that even under these assumptions, the open-borders position remains untenable. In light of both theoretical consistency and practical implications, the position most aligned with libertarian principles is not open borders but one that recognizes the legitimate claims of taxpayers over public property.

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