

# Liberty

January–February 2009

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Is the  
Constitution  
Dead?

## Election 2008: Beyond the Pundits' Palaver

*by the Editors & Contributors*

## The Greatest Place Where No One Goes

*by Doug Casey*

## Confessions of a Government Planner

*by Warren Gibson*

**Also:** *Barbara Branden* exposes political hypocrisy, *Gary Jason* cracks down on unions, *Jim Walsh* explores the best and the worst of the internet, *Ross Levatter* examines the failures of government-run schools . . . plus other articles, reviews & humor.

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# Beyond Open or Closed Borders

*by Laurence M. Vance*

The United States should encourage more immigration — as soon as it eliminates noncitizens' entitlements to education, health care, and social welfare benefits.

Human migration is an ancient, inevitable, and unstoppable global phenomenon. Yet immigration is an issue that divides liberals, conservatives, and libertarians unpredictably. Some advocate a completely unhindered immigration policy ("open borders"), while others favor a total moratorium on immigration for a period of time. Most people are somewhere between these two extremes. Although there are many differences among people of all parties about the economic, political, social, and cultural advantages of immigration, there is one thing that all sides should agree on: there is no "right" to immigrate if it means trespassing on someone else's property.

Some advocates of "open borders" just don't seem to get it. It is bad enough that they insist that the free market requires free immigration and that free trade and free migration go hand in hand. It is worse, however, when they imply that those who support some restrictions on immigration are racists, xenophobes, and bigots. I wish they would refrain from insinuating that any restriction on immigration is incompatible with laissez-faire capitalism.

I also want them to quit misrepresenting the views of their opponents. The opposite of "open borders" is not "closed borders." Libertarians who reject "open borders" are not "anti-immigrant" or "anti-immigration." No proponent of

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restrictions on immigration wants to close the borders and completely end immigration — no matter how much he is concerned about immigrant lack of assimilation and immigrant use of taxpayer-paid health, education, and social services (on these issues, see also Stephen Cox, "The Fallacy of Open Immigration," October 2006).

"Open borders" libertarians in particular can be quite vocal about what they consider to be the fundamental human right to move, associate, and contract. Many of them will acknowledge that the right of individuals to move freely about the surface of the earth may be limited by the property rights of others. But this, they say, is not true when it comes to public property, because public property is government property. They reason that one cannot trespass on government property because governments are illegitimate and have no right to own property.

But are all governments illegitimate? Suppose a group of property owners voluntarily sets up a “government” in a geographical area and cedes it some property in the form of streets, parks, and office buildings, along with an annual appropriation for their upkeep. Are residents of other geographical areas permitted to drive on the first group’s streets and relax in their parks *without permission* because, after all, it is just public property?

Even if it were true, as libertarian anarchists believe, that a governmental entity has no right to own property, all government-controlled property would actually be owned by the taxpayers, and uninvited immigrants would therefore be trespassers.

But whether a government that controls property is viewed as the legal owner or merely as the caretaker is irrelevant. Surely citizens still prefer that all public property be

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*Taxpayer-funded education should be limited to legal residents. They are, after all, the ones who pay for it.*

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managed as if it were privately owned, and this management must include basic rules regarding usage. The ultimate goal should be to reduce the property of the state as much as possible. But is it wise to allow people to drive on the wrong side of the public highways until they are all made private?

The property along the northern, southern, eastern, and western borders of the United States is owned by individuals, associations of individuals, small businesses, corporations, local governments, state governments, and the federal government. The same goes for the ownership of airports, ports, and any other points of entry. Whether a governmental entity should or shouldn’t own an airport, a port, or property along the U.S. border is immaterial. No one has a right to step foot on any piece of U.S. property (public or private) because no one in any country has the right to trespass on someone else’s property — in his own country or in any other country.

The most diehard proponent of “open borders” and opponent of government as a legitimate property owner must at least agree that no matter who owns or claims to own the property in the United States, it certainly isn’t owned by anyone seeking to immigrate here. The right to immigrate doesn’t necessarily follow from the right to emigrate. The freedom to move does not include or imply the freedom to trespass.

Under what circumstances, however, would advocates of some kind of a restricted immigration policy — and I’m one — give three cheers for more immigrants? Most of us would simply prefer that, as An Act to Regulate Immigration (1882) required, “any person unable to take care of himself or herself without becoming a public charge” be denied entry to the country. If this truly were the case, then the cheers would be immediately forthcoming.

I would give the first cheer for unrestricted immigration if public schools were not forced to educate people who are

not American citizens. In the case of *Plyler v. Doe* (1982), the Supreme Court required the states to provide all children — American citizens or foreigners, legal immigrants or illegal immigrants — with a free public education. The case began as a class action lawsuit on behalf of Mexican children in Texas who were in the United States illegally. The state of Texas had passed a law in 1975 that denied state funds for the education of children not “legally admitted” to the United States. Although the Court acknowledged that “unsanctioned entry into the United States is a crime,” and that “those who have entered unlawfully are subject to deportation,” the Court ruled that the Texas statute violated the “equal protection” clause of the 14th Amendment.

Now, public schools are not allowed to question the immigration status of families seeking to enroll their children. Some states even allow long-term unauthorized immigrants to receive in-state tuition at state colleges and universities if they meet certain requirements. This is a direct consequence of unrestricted immigration. Yes, the federal government should not have any control over local schools. And yes, state-supported education should be eliminated. But as long as we have it, it should be limited to legal residents. They are, after all, the ones who can be billed for it.

I would give a second cheer for unrestricted immigration if hospitals were not forced to provide health care to those with no ability to pay. As part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (PL 99-272), Congress included the Emergency Medical Treatment and Active Labor Act, which states that hospitals that receive federal assistance, participate in the Medicare program, or are nonprofits cannot deny emergency treatment to anyone — including noncitizens and illegal aliens — because of an inability to pay. This includes pregnant women in labor.

The result of this law is that hospitals in border states like California, Arizona, New Mexico, and Texas are forced to spend millions of dollars treating the “emergencies” of illegals lest they are charged with “patient dumping.” Some of this money is reimbursed by — you guessed it — the American taxpayers. The children of both legal and illegal immigrants born in the United States are granted instant citizenship by the current interpretation of the Constitution, and “anchor babies” account for about 50% of all immigrant births in the southwestern border states.

Again: the federal government should not require any business to serve any customer. The federal government should not have any control over health care. But as long as we have laws like this, free health care, like free public education, should be limited to Americans who can be billed for it.

I would give the third cheer for unrestricted immigration if welfare benefits were not available to immigrants. Opponents of “open borders” have unfortunately discredited that position with erroneous statements about immigrants — legal or otherwise — coming here so they can receive generous welfare benefits. That may have been true to some extent before 1996, but cannot be said to be the case now. Up until 1996, some federal programs prohibited illegal immigrants from receiving benefits, others mandated benefits regardless of immigration status, and still others did not address the issue. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193), better known as the Welfare Reform Act,

excluded undocumented immigrants from most federal welfare programs and gave states the option to restrict immigrant access to other public benefits.

Nevertheless, some welfare programs are still open to illegal immigrants, while others are only available to “qualified aliens.” The U.S. welfare system has a complex maze of rules and regulations, especially as it relates to immigrants. I will try to summarize benefit eligibility for both classes of immigrants, legal and illegal.

Undocumented (illegal) immigrants are not eligible for Supplemental Security Income (SSI), the Earned Income Tax Credit (EITC), food stamps, Temporary Assistance to Needy Families (TANF), or Medicaid. They are eligible for Women, Infants, and Children (WIC), the National School Lunch Program, Head Start, emergency disaster relief, and non-Medicaid funded public health services such as immunizations and testing for communicable diseases.

The availability of welfare benefits for aliens depends on how long they have been in the country and whether they were here before Aug. 22, 1996 (the enactment date of the Welfare Reform Act). Legal immigrants are, of course, eligible for the same assistance as illegal immigrants: WIC, Head Start, etc. The difference between the two classes of immigrants concerns their eligibility for SSI, the EITC, food stamps, TANF, and Medicaid.

SSI benefits are available to legal immigrants if they were receiving SSI before Aug. 22, 1996, or were disabled subsequently. The benefits are available to other legal immigrants only if they have both been here for five years and have (or have in combination with parent or spouse) 40 “quarters of coverage” from working. The EITC is available to anyone with earned income who files a tax return. Since the EITC is a refundable tax credit, it is possible not to pay any income taxes and still receive a tax refund.

Legal immigrants are eligible for food stamps once they have been in the country for five years, but those who were receiving food stamps before Aug. 22, 1996, and were 65 or older at the time, or disabled, or disabled subsequently, as well as those who are under 18, are also eligible for food stamps. TANF assistance is available at the option of each individual state. This aid is a state option (using federal money) for legal immigrants who have lived in the country for five years; it is a state option (using state money) for those who do not meet the federal residence requirement. According the Department of Health and Human Services, about 100,000 “qualified” immigrants(!) are receiving TANF assistance. Medicaid is generally only available to legal immigrants after they have lived in the country for five years, and only at the discretion of the individual states.

Yes, the plethora of federal welfare programs should be eliminated. Likewise, every federal income transfer program ought to be eliminated. No American should have a portion of his income confiscated and redistributed to another American. In the meantime, however, citizens are clearly giving welfare benefits of many kinds to noncitizens, usually without their knowledge.

The astute reader will notice that I gave some reasons why, under certain conditions, I would be willing to give three cheers for unrestricted immigration, but that I did not say “open borders.”

“Open borders” means, in essence, that there is no border and hence no immigration. Any number of people from any country for any reason can come and go across any U.S. border just as if it weren’t there. Criminal on the run — we welcome you to our country. Disease carrier — please don’t breathe on us. Islamic terrorist — we hope you will live peacefully among us. Advocate of *Reconquista* — come on down.

Does “open borders” really mean “open borders”? What else are we to make of this statement on immigration from the 2004 Libertarian Party Platform?

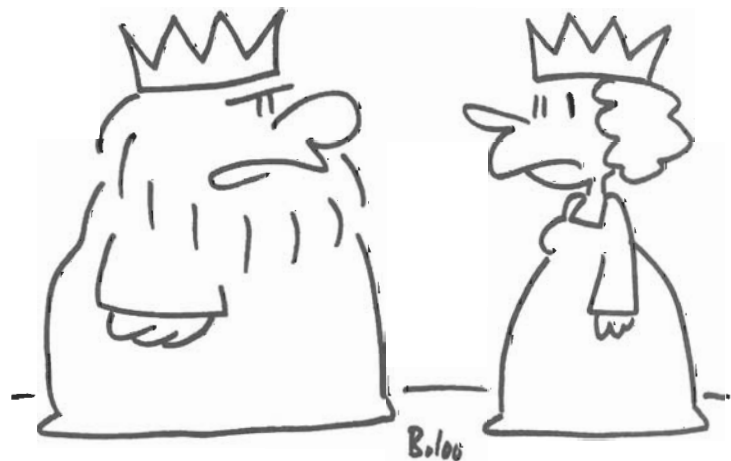
We call for the elimination of all restrictions on immigration, the abolition of the Immigration and Naturalization Service and the Border Patrol, and a declaration of full amnesty for all people who have entered the country illegally.

If there are no restrictions, no INS, and no Border Patrol, then there is nothing to prevent anyone who can make it across the nonexistent border from coming to the United States. (Fortunately, the Libertarian Party has significantly changed its statements on immigration in its latest platform.)

With “open borders” it would be permissible for the whole population of Mexico to walk across the border and permanently turn the entire Southwest into a Newer Mexico. It would be aggression against them if anyone tried to stop them. Being indifferent to a massive influx of immigrants — still more massive, surely, than anything we see today — is ludicrous; claiming that it would never happen is evading the issue.

Unrestricted immigration is still immigration, and as such recognizes that the United States has borders that should be respected. Even the National Council of La Raza (NCLR), the largest national Hispanic civil rights organization, is opposed to illegal immigration, open borders, and amnesty programs.

It is hard to take some conservative advocates of “open borders” very seriously because they are so inconsistent. They reject the idea of the state limiting immigration as incompatible with the free market, then turn around and support government-managed trade agreements instead of real free trade, and taxpayer-funded vouchers for education instead of a free market in education.



“If your mother’s such a great Queen, how come we keep getting her refugees?”



“Open borders” libertarians can go even farther astray. The right of a nation to control noncitizens who *enter* its borders in no way implies a **right** to control the movement of citizens who *exit* them. Likewise, there is no comparison between a border fence, which is designed to keep people *out*, and the Berlin Wall or the Warsaw Ghetto, which were designed to keep people *in*. It is also wrong for “open borders” libertarians to imply that libertarian opponents of “open borders” are a small minority who have adopted a bizarre theory, especially when this group is anything but small and includes such libertarian icons as Ludwig von Mises, Murray Rothbard, and Ron Paul.

Writing during World War II, after he had immigrated to America, Mises advocated restricting the access of whole peoples to America’s frontiers:

These considerations are not a plea for opening America and the British Dominions to German, Italian, and Japanese immigrants. Under present conditions America and Australia would simply commit suicide by admitting Nazis, Fascists, and Japanese. They could as well surrender directly to the Führer and to the Mikado. Immigrants from the totalitarian countries are today the vanguard of their armies, a fifth column whose invasion would render all measures of defense useless. America and Australia can preserve their freedom, their civilization, and their economic institutions only by rigidly barring access to the subjects of the dictators.

Writing after the end of the Cold War, Murray Rothbard rejected “open borders”:

On rethinking immigration on the basis of the anarcho-capitalist model, it became clear to me that a totally privatized country would not have “open borders” at all. If every piece of land in a country were owned by some person, group, or corporation, this would mean that no immigrant could enter there unless invited to enter and allowed to rent, or purchase, property. A totally privatized country would be as “closed” as the particular inhabitants and property owners desire. It seems clear, then, that the regime of open borders that exists *de facto* in the U.S. really amounts to a compulsory opening by the central state, the state in charge of all streets and public land areas, and does not genuinely reflect the wishes of the proprietors.

Were Mises and Rothbard merely pseudo-libertarians?

Certainly, there are fallacies on both sides of this debate. Contrary to what many opponents of open borders appear to believe, the fact that Mexico has very stringent immigration laws is irrelevant.

Our immigration policy should be based on what is just, humane, and beneficial for the United States, not a policy formulated or influenced by Mexican immigration policies, however illogical they may be. I am also not impressed by arguments that we should disparage illegal immigrants merely because they came here illegally. I am more concerned about illegals taking advantage of the laws that aid them than about their violating the law by entering illegally.

About 800,000 legal immigrants enter the United States every year. About 150,000 of them have refugee or asylum-seeker status. Over half come from Latin America. There are about 3 million children in the United States who are citizens but whose parents are here illegally. About 12% of American residents were not born in this country.

I am not saying that these things are good or bad. I have

expressed my opposition to “open borders,” and have mentioned the circumstances under which I might give three cheers for unrestricted immigration. I have also said nothing about passports, visas, deportation rules, guest worker programs, quotas, amnesty, or profiling. (But can it really be argued that it would make no difference from which country a massive influx of immigrants arrived on our shores?)

Because we have a state, because we have a border, because we have public property, because we have a welfare system, because we have birthright citizenship, because we have an interventionist foreign policy that incites hatred of the United States, because we have the War on Drugs, because we have a corrupt government, and because we have a huge and inefficient immigration bureaucracy — the issue of immigration (legal or otherwise) is not an open and shut case. There are many “solutions” to the immigration problem, but throwing open the borders is no solution at all.

I have concentrated on citizenship as a solution to the immigration problem. There should be a distinction between citizens, whether native-born or naturalized, and immigrants, legal or illegal, when it comes to the benefits of citizenship. Birthright citizenship should be ended — immediately.

But even with a focus on citizenship, one still cannot ignore the border. It is not true, as some advocates of “open borders” insinuate, that calls for restrictions on immigration have to lead to employer sanctions, making criminals out of landlords, domestic spying programs, a national registry of workers, national ID cards, the destruction of civil liberties, or a police state — not if the focus is on the border.

If an immigrant still manages to enter the country illegally, then he should be on his own. In addition to no free public schooling, no free medical care, and no welfare benefits, there should be no affirmative action privileges, no community reinvestment acts, no mandatory bilingual education, no minimum wage laws, no hate-crime laws, no antidiscrimination laws, no fair housing laws, and no subsidies of any kind. All official government business should be conducted in English.

As mentioned above, the statements on immigration in the 2006 Libertarian Party Platform have significantly changed. Now we see a healthy emphasis on securing the borders:

Ensure immigration requirements include only appropriate documentation, screening for criminal background and threats to public health and national security. Simplifying the immigration process and redeployment of surveillance technology to focus on the borders will encourage the use of regular . . . entry points, thus preventing trespass and saving lives. End federal requirements that benefits and services be provided to those in the country illegally. Repeal all measures that punish employers for hiring undocumented workers. Repeal all immigration quotas.

Regardless of how many immigrants show up at the border, regardless of where they come from, regardless of why they are here, and regardless of how restricted or unrestricted U.S. immigration policy is, immigrants should be required to enter lawfully. I don’t mind visitors to my home, but instead of hopping my fence, climbing through a window, and then announcing that they are here, I want them to knock, ask permission to enter, and then come through the front door. □