

Readers' Forum

To the Editors:

Professor Russell Shannon's essay, "Tear Down this Wall" in the January 1988 "Freeman" was idealistic and naive. His essay advocates open borders so that illegal aliens can freely enter the United States.

I shouldn't have to write the next paragraph, but I will anyway because I want your readers to know I am not a person who is afraid to see nonwhite immigrants enter this country.

My wife and I sponsored two Vietnamese families 12 years ago. This included bringing them into our home, food, money, clothing, buying them an auto and training them to drive it and finding jobs for them. Most of six months was spent getting these families on their feet. We're glad we did it and today "our" families are doing well and an asset to America.

But "open borders" won't work because of the social welfare system in place in the United States. Not all illegal aliens come to America for liberty and a job.

The United States provides such stunning incentives as free school, free lunch, food stamps, free health care, subsidized housing, unemployment compensation, Aid to Families with Dependent Children and many other freebies. The total package, even for an alien without a job, could well be many times what he could earn at home. And don't believe for a minute that the "invisible hand" of the free market would cause them to move on or go home if they didn't find a job here. Being rational they would recognize that the cost of departing would be too great. It's just too good a deal. That's why 88% of recently arrived refugees (first 31 months) in California are cur-

rently on some kind of county, state or federal welfare.

Cancel the welfare and then we can open the borders. Immigrants will then come to America for liberty and opportunity as they did a hundred years ago.

—William F. Kerschner
Elm Grove, Wisconsin

Professor Shannon replies:

I have no problem at all with Mr. Kerschner's argument that it is *not* desirable for us to have aliens flock here in order to become free loaders on our welfare and social service systems. By all means, let's make such people ineligible for these programs!

In practice, however, this may be difficult or impossible to accomplish. So, as an economist, I must ask: do the *overall* benefits of open immigration outweigh these (and other) costs. Several studies indicate that, indeed, the benefits do predominate. For more details, I recommend again reading the article entitled "What about Immigration?" written by Julian L. Simon which appeared in *The Freeman* for January 1986.

Finally, let me point out that the new immigration law, which now penalizes employers for hiring improperly documented aliens, has the regrettable feature of excluding immigrants who truly want to work. At the very least, we should hasten to tear down this portion of our wall.

—Russell Shannon
Clemson, South Carolina

Property Rights and Eminent Domain

by John Hospers

Ellen Frankel Paul's *Property Rights and Eminent Domain* is an exemplary work of both historical scholarship and creative thought. It is a valuable historical and critical survey of dozens of U.S. court decisions involving property rights, and at the same time a philosophical defense of a theory of natural rights in property.

A long historical chapter, which occupies more than 100 pages, considers two legal concepts—eminent domain and police power—which between them have produced a devastating erosion of property rights in America. Eminent domain—the confiscation of private property for public use—seems to many people a necessary qualification of a person's right to own and retain property in land (especially with “due compensation”) to enable roads and air terminals to be built and scenic land to be preserved. But the author shows, in a detailed and sobering array of court decisions, how this bit of “the camel's nose under the tent” has led the courts to decide that the power of eminent domain extends to an enormous array of cases never originally intended by the granting of that power, each decision extending that power in ways that would not have been tolerated in prior decisions.

In 1945, for example, when the Supreme Court ruled in *United States v. Willow River Power Co.*, where dam construction dimin-



ished the generating capacity of a power plant, Associate Justice Robert H. Jackson wrote, “not all economic interests are ‘property rights’; only those economic advantages are ‘rights’ which have the law back of them”—the law being presumably whatever the legislature decided to enact. But even in 1945 the court would not have gone as far as it did in *Hawaii Housing Authority v. Midkiff* (1984) when it mandated the sale of property from one private party to another with not even a pretense of “public use.”

The author points out that the federal government does not possess police power except where it holds original sovereignty (U.S. territories, public lands, the nation's capital). But the concepts of “due process” and “the general welfare” were gradually extended out of all recognition, issuing in a series of decisions which in time gave the government police power over virtually anything it wanted, including the fixing of prices of consumer products. For example, the court used the “po-

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