

Anti-Woke Isn't Necessarily Pro-Liberty

I had a reminder this week that those who oppose fashionable postmodernist-style attacks on reason and objectivity, such as “critical” race and gender theories, are not necessarily consistent friends of liberty and the free society.

That reminder came in a recent video commentary by Dave Rubin on a year-old speech by Homeland Security Secretary Alejandro N. Mayorkas before the U.S. Conference of Mayors. What upset Rubin so much that he had to play the video clip several times was this statement from Mayorkas: “Unlawful presence in the United States will alone not be a basis for an immigration enforcement action....” Mayorkas said more (hence my ellipsis), but that’s all that Rubin drew attention to. (I’ll cover the rest in a bit.)

Here’s what Rubin had to say in reaction:

How insane is that?.... We are literally saying, “If you are here illegally, but you don’t do anything bad, we just ain’t gonna do anything about it.” That’s not how a country is run. Dare I quote that orange guy, who said, “Without borders you don’t have a country”? Well, that’s pretty much where we’re at at this point.

So what’s wrong here. Quite a bit, actually, so it’s tough to know where to start. It tells me a lot that Rubin’s cognitive system — the part that chooses words and phrases — isn’t set up to avoid suggesting that anyone could or should *run our country*. Think about that phrase. To quote Rubin, “How insane is that?” We shouldn’t want anyone or any group to even *try* to run the country (no matter how that is defined) because even though the effort would fail, the attempt would inflict a lot of pain.

Why doesn’t Rubin know that a free society (which he says he wants) runs itself — it’s a bottom-up, emergent, undesigned order — when the politicians and bureaucrats leave it alone, and it does so better than anything the politicians and bureaucrats have come up with. Dave, read your Thomas Paine, whom I quoted recently and will do so again:

Great part of that order which reigns among mankind is not the effect of government. It has its origin in the principles of society and the natural constitution of man. It existed prior to government, and would exist if the formality of government was abolished. The mutual dependence and reciprocal interest which man has upon man, and all the parts of civilised community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each receives from the other, and from the whole. Common interest regulates their concerns, and forms their law; and the laws which common usage ordains, have a

greater influence than the laws of government. In fine, society performs for itself almost everything which is ascribed to government.

As to Trump's dictum that you can't have a country without borders, Rubin might want to give that another thought because maybe that definition of *country* is unnecessarily narrow. On the other hand, if we accept that notion of *country*, maybe we'd opt for something else after closer consideration.

Rubin and the orange guy beg this question: What kind of society do or should we want? They assume that virtually everyone (or everyone who matters) already agrees on the answer even though that is what needs to be discussed explicitly before we decide. (That's how I still understand the phrase *beg the question*.)

As the political philosopher Chandran Kukathas points out, "border control" is not really about controlling borders. It's not even mainly about controlling immigrants. Rather it's about controlling citizens. You can't restrict immigration without restricting the *peaceful* activities of those identified as citizens. That identification process is based on contingent political decisions made by fallible, vain, and even corrupt rulers; it is not a metaphysical process conducted by high priests. (See Kukathas's book *Immigration and Freedom*.)

Kukathas writes:

[T]he threat to freedom comes not from immigration but from immigration control.... Immigration control is not merely about restricting border-crossing but as much, if not more, about constraining what outsiders might do once they have crossed the border in a society. But it is difficult to control outsiders without also controlling insiders, since insiders are all too ready and willing to hire, teach, rent to, trade with, marry, and generally associate with outsiders. Moreover, insiders and outsiders are not readily distinguishable unless there are *instruments of control in place to identify one or the other*. [Emphasis added.]

Yikes!

Some citizens may say they are willing to accept those restrictions because the imagined benefits of immigrant control outweigh the costs. Kukathas suggests two responses. First, are those who express such willingness really aware of the costs in terms of lost liberty, prosperity, social opportunities, and cultural vitality?

And second, what about the citizens who think the costs swamp any benefits? Why should their welfare preferences be overridden by people who are more change-averse? Someone who doesn't want to associate with immigrants is free not to do so. Why, then, isn't the freedom to associate extended to those who would welcome immigrants?

Kukathas writes that if we're serious about freedom, we shouldn't think that society "is some kind of unit comprised largely of people who *belong* together in some way, and whose belonging entitles them to determine who may or may not become a part of that unit, or indeed even enter the geographic space or territory it occupies." In other words, freedom is incompatible with the ancient notion of society that we still labor under in many ways. (See Benjamin Constant's classic 1819 essay, "The Liberty of the Ancients Compared with that of the Moderns.")

Needless to say, if someone (immigrant or not) commits aggression against another person or his property, the system of governance (whether a monopoly state or a stateless competitive arrangement) ought to respond appropriately, observing the long-accepted safeguards, such as the presumption of innocence and burden of proof.

Now let's turn to Mayorkas's remarks. As noted, Rubin only quotes a fragment, and in isolation it's not bad. Rubin's rewording highlights its virtue: "If you are here illegally, *but you don't do anything bad*, we just ain't gonna do anything about it." What's wrong with that?

Mayorkas did not go nearly far enough, however. As I explain here, since U.S. laws do not apply outside of U.S. territory, a person standing on Mexican soil cannot violate a U.S. prohibition against unauthorized border crossings. By the time he is on U.S. soil and subject to U.S. law, the crossing has already occurred. This means that people like Rubin who can't stand the thought of living among people whose first act with respect to the United States was to break the law can rest easy.

If they are concerned about those who overstay their visas, we might ask on what grounds bureaucrats (as opposed to property owners) have the authority to set the terms of visits to America. That implies that the government or the people as a whole own the country, but that's a question that we haven't debated yet. It's more question-begging.

Unfortunately, Mayorkas didn't leave the matter there. He watered down the statement with conditions that are too vague to make a freedom-lover comfortable. That should be unsurprising since the Biden administration has not kept its promise to undo the outrageous Trump approach to immigration.

Mayorkas completed his sentence this way: "we will allocate our efforts, we will allocate our resources on those individuals who present a current public safety threat, a threat to national security, or a threat to our border security, and that is a very important principle."

He's pretty much taken away with the right-hand everything he had given with the left.

At any rate, as Rubin and others make clear, the anti-woke left and right have a long way to go.