

On Immigration, Freedom and Other Things

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“What’s your position on immigration?” an acquaintance asked.

“Why? Are you considering emigrating to another country?”

“No, of course not,” he said with an undertone of vexation in his voice, “I want to know what you think we should do about the problem of immigration.”

Who’s ‘we’, I thought. Just which immigrants are involved in this so-called problem of immigration? Whose problem is it anyway? Of course, what my acquaintance wanted to know was what I thought the government should do with all those immigrants and asylum seekers that politicians and the media had declared to be A Big Issue. Why did he want to know that? Not likely because he thought my opinion really mattered in deciding the issue. He probably just wanted to know whether I was with him or against him, an ally or a threat.

I do not have a political mind. A question like “What would I do if I ruled the nation, let alone the world?” does not come naturally to me. I suppose you could call me a complete anarchist, if you really insisted on political labelling: I don’t like being ruled and I don’t like to rule. I do like the company of other complete anarchists; it’s the half-an-anarchists that give me the creeps, those who like to be ruled no less than those who like to rule.

Most people, fortunately, reserve at least a small corner of their lives for complete anarchy or, as it commonly is known, friendship. Among friends it goes without saying that “You know I do not want to rule you and I know that you do not want to rule me; I have nothing to fear from you and you have nothing to fear from me; neither of us is a threat to the other’s freedom.”

Unfortunately, it appears that most people have a rather exclusive, sentimental notion of friendship: a friend is an intimate friend or he’s not a friend at all—beyond the circle of one’s intimate friends there is only a mass of more or less active threats. Thus, friendship is confused with amity, and in-amity (enmity) with the hostile, warlike disposition of one who is a fiend or a foe, not a friend.

The simple truth, that the natural economy of the affections precludes that one is intimate with everybody, becomes a great falsehood, if it is taken to mean that nature rules out that one lives on friendly terms with everybody. Then only war can be universal and peace can exist, if at all, only within the walls of one’s garden or one’s ruler’s fortress. As the Great Sophist of Modern Times put it: “War consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is Peace.” Peace, if not assured, is war. Friendship, if not assured, is hostility. Freedom, if not assured, is “continuall feare, and danger of violent death.” That is the soil of sophistry in which politicians thrive: Why rest content with faith when we can give you assurance! Do not trust anybody but us!

“Well,” he insisted, “what about immigration?”

“And what about emigration? It’s hard to separate the two. Every immigrant is an emigrant. Yet, in the individual’s mind the decision to emigrate from his country probably precedes the decision to immigrate into another. Moreover, it seems to me, the reasons for the first decision likely are far weightier than those for the second.”

My reply obviously annoyed him. “You’re being evasive,” he said.

“I don’t think so. Your problem of immigration would not exist if there were no place on Earth from where people wanted to emigrate.”

He said that wasn’t the case.

“Let me ask you this,” I continued, “Would you like to live in a country where emigration was prohibited by law, or if not prohibited then strictly regulated by law?”

“No, of course not,” he said indignantly.

“Yet, if every country on the planet had such laws and could enforce them effectively, there would not be a problem of immigration anywhere.”

“True, but beside the point.”

“Is it? If every country had laws against immigration and could enforce them effectively then there would be no problem of immigration either. Then an inhabitant of one country would be forbidden to migrate to any other country just as much as if his own country had outlawed emigration. Now, since you said that you would not want to live in a country that forbids emigration, I take it that you also do not want to live in a world where all countries prohibit immigration.”

“I admit that,” he said, “but I still think you’re being evasive.”

Suddenly his face lighted up.

“But you can’t admit that, can you?” he exclaimed triumphantly.

“Why not?” I asked.

“You’re supposed to be libertarian, aren’t you? Well then! If you had your way then we would be living in a world where immigration was universally prohibited, wouldn’t we? Every household would be as it were a country on its own and your defence of private property would amount to a universal prohibition of immigration, except where a household consented to permit strangers on its territory.”

“I see what you’re driving at,” I said. “It reminds me of the claim that freedom is an inconsistent idea. The classic example goes something like this:

You own a house on a piece of land, and I buy or homestead a strip of land, let’s say a yard wide, all along the perimeter of your property; then, while you are asleep, I built a wall around your land, maybe even a cupola over it, so that you cannot leave it—not without my permission anyway. The alleged moral of the story is that it would be within my rights to keep you as a prisoner, although you have done me no wrong.”

“Why alleged? It’s true, isn’t it? Libertarians object to putting innocent people in prison but they cannot object to building prisons around an innocent man, if the builder does not invade the other’s property.”

“Not in my book,” I retorted. “I say that you have the right to the use of your property without anybody else’s consent. I think every libertarian agrees with that. However, it does not follow that you have the right to do anything whatsoever with your property without anybody’s consent. That is because some of the things you do with your property may affect others in unlawful ways, even without physically touching them or their property. There is a difference between one who says ‘This my property and I can do with it anything that I want’, and one who says ‘This is my property and I am under no obligation to do with it only what you want or permit me to do with it.’ It’s not a small difference. It’s absolutely essential if you think, as I do, that one’s freedom never includes the freedom to do injustice to another.”

“Maybe it is,” he said, “and maybe it isn’t. Consider private roads. Wouldn’t the owner of a road have the right to determine who may use it? If he has that right then doesn’t he have the right to determine who may visit or make deliveries to any house to which his road gives access?”

“Presumably he would be in business to maximise the value of his road and therefore have a liberal policy of access to it. Moreover, there might be contractual arrangements with the homeowners and others that explicitly would have withheld that right from him. But you have a valid theoretical point of course. He might be in business for other reasons and there might not be a watertight contractual arrangement. Nevertheless, I suppose that if he started to impose conditions that effectively would make it his decision who’d be permitted to visit or make deliveries to your house, you could argue that the use he was making of his property constituted an unconscionable infringement of your and other people’s freedom—that he was using his property to commit an injustice.”

“How would it be an injustice, if he were acting within his property rights and were not constrained by previously concluded contracts?”

“There’s little chance,” I replied, “that he’d be able to argue convincingly that if the positions were reversed then he would not qualify your impositions as infringements of his freedom. Unless he can make such an argument there is no reason why libertarian opinion should condone his action as one that he was free to undertake. After all, libertarianism principally is about the defence of personal freedom and only consequentially about an owner’s right to do what he wants on, with, or to his property. The consequence is of paramount importance in arguments about the state and its addiction to taking lives and property unilaterally but it is only a consequence, not the freedom principle itself. Most of the time the logic of property will lead to libertarian conclusions all right but in the few hard cases where it doesn’t the appeal must be made directly to the principles of freedom, to settle the cases by rational argument rather than violence or the stringent application of some rule that simply disregards why they are hard cases.

The appeal to reason or rational argument presupposes a commitment to justice. There is no point in arguing if one does not accept that one’s position ultimately must be proven justifiable, is there? I suppose you will not object when I use “no man justifiably can be deprived of his freedom—I mean the freedom that is his natural right—by another’s unilateral acts” as a rationally or argumentatively justifiable principle, a principle of justice?”

“No, I do not object.”

“Let’s return then to the example of one man building unsurpassable walls around another, without trespassing in any way on the other’s property. The logic of property rights, if applied as it were mechanically, would lead to the conclusion that the building of those walls involves no rights violation and therefore should be considered legitimate. If you think that is the libertarian conclusion then you reduce libertarianism to the logic of property rights and thereby make property the arbiter in questions concerning freedom and justice. That, I should say, is putting the cart before the horse, valuing a means towards an end more than the end it is supposed to serve.”

“Hmm,” he said, “I guess you’re right. The word ‘libertarian’ derives from liberty and presumably those interminable libertarian arguments about private property should be understood in the context of a philosophy of freedom. Still, regarding the example, how much of an opening in the wall should there be to respect the man’s freedom?”

“Is that a legislator’s question or a judge’s question?”

“What do you mean?”

“A legislator would try to come up with a rule that fits all cases in which such a conflict might arise. A judge would try to resolve the actual conflict by inviting the people directly involved in it to present their arguments and suggesting the range within which a just solution can be negotiated, taking into account all the relevant circumstances and peculiarities of the case.”

“What if one of them refuses to accept the invitation?”

“You mean, what if one of them refused to resolve the conflict in a friendly manner? What if he refused to justify his actions in the matter?”

“I see,” he said. “If the judge would find at least some prima facie justification in the other party’s claims then he probably would consider the refusal an admission that there is no justification for the actions in question. I take it that your libertarianism does not imply that one’s freedom includes the absolute freedom to refuse to justify oneself when one is asked to do so?”

“Indeed, that is why we say that freedom and responsibility are two sides of the same coin.”

“You don’t think that freedom means never having to say ‘I am sorry?’”

“No, but you sure have a good line there. Seriously, freedom of speech is essential but again there is a distinction between what you say, on the one hand, and how and when and to whom you say it, on the other hand. It’s the same distinction we were discussing before: You have no right to make me say the things you want to hear me say, but that doesn’t mean that

I'd never owe you an apology for saying what I want in, say, a deliberately abusive or offensive manner."

"Isn't that confusing a question of rights with questions of morality or even common decency? Are you now saying that we have a right not be offended?"

"I'm not saying that. The question is not whether we have a right not to be offended but whether we have a right to substitute giving offence for argument and thereby turn what should be a rational discussion into a contest in vilification. If you believe that respecting other people's freedom is a rationally defensible requirement of justice then you logically cannot adopt a conception of freedom that allows you to destroy the conditions that are essential for having rational arguments in the first place."

"What should be the punishment for deliberately being offensive? Or for being offensive unintentionally and then refusing to explain one's remarks and perhaps to apologise when asked to do so."

"Being locked out of the discussion and ignored until one is ready to apologise and produce one's arguments in a civilized manner. That seems to be the usual sanction and it usually works in most circumstances, including most court proceedings."

"But it does not seem to work in the public sphere. The Dutch columnist and filmmaker Theo van Gogh made a living offending other people, Christians in the first place and later Muslims, until a Muslim shot and stabbed him to death."

"Many people have made the same arguments that Van Gogh made, and more cogently than he did, but they did so in a non-offensive way. There were plenty of ways in which he could have spoken out without signalling to the world that he held those with whom he disagreed beneath contempt. He wasn't a martyr for freedom of speech. I'd say he was a victim of his lust for publicity, for rousing political passions under the guise of starting a 'public debate'."

"Surely, his behaviour was no justification for killing him?"

"No, of course not, but you couldn't say that it was not a provocation either. Freedom of speech is important because speech is important because most of the time it is intended to have, and often enough does have, an effect on those who listen to or hear it. It doesn't sound right to invoke one's freedom of speech on the ground that one has nothing of importance to say. It certainly isn't right to invoke one's freedom of speech in an effort to disavow all responsibility for the effects of one's speeches."

To sum up and to return to the point at issue, you cannot have freedom without responsibility and responsibility requires the willingness to allow one's actions to be judged in the light of rational argument. How could one take responsibility for one's actions if one refused to take responsibility for one's words?"

"But we were talking about immigration..."

"Indeed, I was just reacting to your claim that I had no ground for objecting to a world in which every country would prohibit immigration."

"From what you said about building a prison wall around another person, I gather that you mean that as long as there is a country that does not prohibit immigration one's freedom is not necessarily curtailed by the existence of other countries that do prohibit it?"

"No, that's not what I mean to say. A country—and of course you are referring to a state—is not the same thing as a household controlling access to its private property. It would be somewhat like the owner of the road who takes his ownership to include the right to determine who may visit the homes of the people to whose properties his road gives access. Or like a man who buys a strip of land along the perimeter of a city and encloses the whole city with an impenetrable wall. A national prohibition of immigration is not just a limitation of the freedom of the would-be immigrant; it also is a limitation of the freedom of the inhabitants."

"That's true," he admitted, "but, just for the sake of the argument, we can suppose that the prohibition is supported by each and every inhabitant of the country."

“That’s a strong supposition,” I said, “but I doubt that it is strong enough for a libertarian justification of prohibiting immigration in historically relevant cases. It suffices for the case where the country is, say, a relatively small private development, either a sort of hotel owned by a single owner who rents out space to others or an area constituted by the private property of many owners. In such a case, all the land is privately owned and there presumably is a fairly elaborate system of statutes and contractual arrangements to which all the inhabitants have agreed before moving in. But that is not the paradigm of a country or a state’s territory, as it commonly is understood.”

“Can you explain that?” he asked.

“Even in densely populated countries there often still is quite a lot of land that is not privately owned. More pertinently, most roads never were private property. They were paths made by regular use, usually not on but in between private lots. To deny someone access to such a path most likely would have been seen as an unjustifiable restriction of his freedom. Even when such paths eventually were improved, those who made the improvements would not have acquired thereby the right to exclude access to anybody they disliked. It is one thing to homestead a piece of land, claim it as one’s property, and built a road on it; it is altogether another thing to take an existing road, even if it is no more than a well-trodden path, turn it into private property, and then use its status as private property to deny right of way, without providing an adequate alternative passage.”

“I agree that the two situations are different,” he said, “but I still do not see where your argument is supposed to lead us. Public roads are managed by the state.”

“Exactly. That’s the point of the argument. If a private persons, acting individually or in an organised way, do not act within their rights in restricting access to roads that never were private property, then how can the state claim the right to do just that? How could even the unanimous consent of its citizens justify that claim, given that it concerns something to which they have no property right at all?”

“But cannot the state claim that it has to control access to the roads, say, to stop criminals?”

“I see no objection against stopping criminals; but there are plenty of objections against the notion that crime prevention justifies unilateral limitation of freedom of movement, or any other freedom for that matter.”

“I see. Well, I have to admit that your argument is plausible, at least in the light of the historical development of modern states. There never was a freedom to trespass on private property but most of the time, until quite recently, there was freedom to move into, out of and around the country if one stuck to unowned land or public places or roads.”

“Most of the time and for most people, yes, but Jews would tell you that it wasn’t like that everywhere.”

“Still, your position is that, excepting countries where literally all the land was privately owned to begin with, it would be an unjustifiable restriction of a person’s freedom if the state denied him access to its public spaces and roads and—to relax the unrealistic supposition of unanimous consent to its anti-immigration policies—to the private property of those among its inhabitants who were willing to receive him, is that right?”

“That’s what I think, yes.”

“So you oppose an anti-immigration policy on principle? Now, I know there are libertarians who disagree. Are they inconsistent?”

“I’m not sure that there are many libertarians who support an anti-immigration policy on principle. However, it is certainly true that many in practice support such a policy.”

“Isn’t that the ultimate evasion? On the one hand principle and on the other practice?”

“Not necessarily, if you consider the fact that the problem here is not immigration per se but immigration into a welfare state committed to so-called universal, non-discriminatory welfare provisions, and ultimately voting rights, for all. It’s an empirical question, I mean a question of historical appreciation, whether the influx of immigrants will wreck the welfare state or save it. Immigration is likely to increase the burden of welfare payments, but it also is

likely to reduce labour costs and raise productivity in many sectors. There is no a priori way of knowing which way the balance will tilt.”

“They all oppose the welfare state on principle, isn’t that right?”

“I’d say it is.”

“So, libertarians logically should support anti-immigration laws, if they believe immigration would strengthen the welfare state; and they should oppose such laws, if they believe immigration will wreck the welfare state.”

“Again, that is not necessarily the case. On the one hand, the wrecking of the welfare state, as you call it, is not likely to be a painless event. It may lead to widespread unrest, even violence and civil war. Few libertarians believe that freedom will rise from the ashes of war. And not many more believe that social unrest and occasional violence are the best soil for the seeds of liberty—unless, of course, dominant public opinion in the mean time has come to accept that liberty is the only solution. On the other hand, the belief that immigration will strengthen the economic foundations of the welfare state does not imply the belief that immigrants are less likely to accept arguments in favour of freedom than long-time residents. It would be a dubious sort of economic determinism that asserts that support for the welfare state must grow if the economy on which it rests becomes more productive.”

“So where does that leave the libertarian policy prescription on immigration?”

“There is none! I certainly do not regard immigration as a problem that should be solved by political means. Of course, when policy wonks and assorted pundits appear to have the most popular game in town then some libertarians may find the urge to join in irresistible, but it is a distraction really. Taking a stand on immigration because of one’s beliefs about what it will do to the welfare state is burdening the argument for freedom with an uncertain assessment of particular circumstances and how they might develop over time. Of course, only time will tell which, if any, of those assessments, is close to being correct.

It’s too sad, if two people who are both equally committed to freedom and justice have a fall-out merely because their different assessments of the current situation leads each one of them to urge the government to impose a different policy on everybody. There’s a real danger that in trying to sell a one-size-fits-all policy, which is what most people expect a policy wonk to deliver, one loses sight of the fact that there is no such thing. It is much more profitable for a libertarian to educate the public in the principles of freedom and justice than to make a spectacle of himself by joining the policy wonks and pundits on the stage.

I’ve had several friends who got into politics with the idea that they could advance the cause of freedom by making government more efficient. You have to change the system from within, they said. However, the system is that you get along with it or you get out of it. And of course, if you’re too slow in realising that then getting out may not be a viable option, given that we all have to make living somehow. You’re lucky if you can survive in it as single-issue libertarian, all the way compromising every other liberty for the remote chance of mustering enough support to get your pet liberty adopted.”

“Freedom cannot be imposed?”

“No, it can be defended but not imposed. There always is a choice of enemies. It may be possible to defeat one enemy with appropriate legislation and this may give one the illusion that one can think up another piece of legislation that will defeat the next enemy, and so on, until they all are routed from the field. It cannot work, for at each move one is merely illustrating the importance of defeating others, while one should be trying to live with them on friendly terms. Making a political issue of everything that gets mentioned in the papers is not likely to be helpful in that respect.”

“Then, do you have nothing to say on the problem of immigration?”

“Oh, plenty, but it depends on whom I am talking to and what he has to say. I’m not likely to initiate a discussion on the subject. However, when someone makes a case for or against a pro- or an anti-immigration policy I am not reluctant to get into an argument of the merits and the demerits of the particular case he makes.”

“What about a case against immigration that is based on the idea of a clash of incompatible cultures?”

“That again presupposes the State and its totalitarian aspirations. In daily life and in the market place the clash of cultures is avoidable. If a secular humanist or a devout Christian wishes to live in peace with his Muslim neighbours he can do so easily: talk about the weather, how the children are doing in school, sports, health problems, and the details of whatever business they’re conducting with one another. There’s no need for them to get into a discussion of irreconcilable differences until they have established a common ground that is strong enough to absorb the impact of those differences. I remember an old lady asking in despair whether the walls between the churches really reached up to heaven. Frankly, I wouldn’t care if they did, as long as they did not reach down to ground level.

Of course, in the realm of politics, any difference, whether cultural, social, religious, or ideological, whether real or imagined, can and at some point will be exploited to mobilise a movement or a party in an effort to defeat or eliminate other movements and parties. There’s nothing neighbourly or friendly about politics, certainly if the prize of politics is the ability to impose one’s own preferences over a wide range of issues. Where there is politics there will be clashes. To allow the State to police the culture is to give it the means to define which aspects of the culture should be enforced—to make every aspect of the culture a ground for political mobilisation.

Some two centuries ago, in the Western world, there was hope that politics could be neutralised and used to maintain friendly relations among human beings, but that hope was dashed by a homegrown clash of cultures, the result of the politicisation of class, race, religion, and nationality. Europe did not have to wait for the arrival of the first wave of Muslim immigrants to experience a devastating *Kulturkampf*.”

“You mean the demise of the Liberal State of the nineteenth century?”

“Yes. The Liberal State was based on the illusion that politics could be confined to the so-called public sector and kept under control by public laws so that it would do nothing except maintain the rule of law, the natural convivial order of the private sector. The state, so the theory went, would be limited in two respects, internally by the sanctity of private property, which it was called upon to safeguard, and externally by the borders of neighbouring states whose sovereignty it should respect. Individuals were not supposed to be bound by the national borders, only by the boundaries of one another’s person and property, but state officials and public servants were supposed not to exercise public power outside the national borders.”

“I see what you mean,” he said. “Private persons were free to emigrate and immigrate, and once across the borders of their home state they no longer had to suffer and fear its public power.”

“Yes, the national borders were to international society what the boundaries of private properties were to the convivial order of human persons. It was a pipedream, as the history of the nineteenth and even more the history of the twentieth century showed. The states disregarded private property and national borders, not only in occasional practice but increasingly in theory as well. Then, armed with the theory, they could claim to be acting on principle in aggressing against individuals and other states. By means of war and international, even supranational intergovernmental cooperation they sought to extend their powers of taxation and regulation far beyond their national borders, so that emigration no longer provides the safety from local oppression and misrule it once did. At the same time they intensified the process of politicisation of every local issue, including of course immigration.”

“In short, an inversion of the nineteenth century liberal order: state borders that constrain individuals far more than they constrain governments. Well,” he said, “I have to go now. You didn’t answer my initial question but I think I’m beginning to see why you didn’t. Goodbye.”

“Goodbye. Take care of yourself.”

