

José Jorge Mendoza

*The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality*

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**Quote:** "The book's liberal commitments may seem like a shortcoming, but Mendoza's approach paves the way to better strategies for dealing with the rights--and not just the needs--of individuals who for different reasons (have to) move across borders."

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In the wake of the most recent US immigration policy enforcement, which resulted in the separation of more than two thousand children from their families, the debate concerning the morality of such measures--whether legal or not--has been reignited. The question of the role the state plays in ensuring liberty, equality, and security is not a new one: The framework of modern Western philosophy has been widely shaped by the assumption that the establishment of the state is pivotal in protecting rights and establishing the corresponding duties of citizens who belong to these polities. As it has become increasingly apparent that these rights and obligations are implicated in states' immigration policies, the question of how states can permissibly govern their borders has inevitably come to the fore.

José Jorge Mendoza's *The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality* offers an eloquent politico-philosophical analysis of the question of immigration, as well as providing practical insights concerning the enforcement of current immigration policies of liberal democratic states, exemplified, in this case, by the United States. In a time of massive upheavals around the predicament of immigrants and refugees, Mendoza's work puts forth a cogent argument in response to the question of immigration grounded in normative moral and political philosophy.

In formulating the question of immigration as one of the most pressing philosophical issues, Mendoza convincingly shows that, as regards the underlying assumptions of immigration policies, giving complete discretionary control to states over decisions about inclusion and exclusion relies on differing understandings of the norms of liberty, security, and equality. Ultimately, Mendoza outlines the contours of a legitimate form of sovereignty resting on the premises of constitutional democracy--giving special import to judicial review--to overcome

what he calls the liberty and security dilemmas in the immigration debate. Mendoza's solution lies in what he articulates as a "minimalist defense of immigrant rights" that aims to square the commitment to a principle of universal equality, on the one hand, with the state's right to self-determination, on the other.

As Mendoza adumbrates in the first two chapters of the book, the first concern that relates to the question of immigration is the "security concern," which points to a state's ability "to keep its subjects safe and provide them with a stable and well-ordered society," and the second is the "liberty concern," which stresses both "individual freedom and universal equality" (1). Chapter 1 takes up what Mendoza calls the "security dilemma," following from giving priority to the security concern over the liberty concern, which results in a state having "complete discretionary control over a particular area of governance" (1), including movement across its borders. It is in this sense that the security dilemma is intimately linked with a conception of sovereignty that has the danger of either dissolving or else becoming absolutist, hence leading to two possible outcomes: (1) a Hobbesian "state of nature" or (2) an Agambenian "state of exception" (xii-xiii). In suggesting that "we must favor a form of sovereignty that gives priority to liberty and equality (for example, a constitutional democracy) instead of one that leads to authoritarianism" (xiii), Mendoza aims to emphasize the claims of liberty that even undocumented immigrants ought to enjoy. In principle, this perspective aims to pose a challenge to the US Supreme Court's Plenary Power Doctrine that gives "the federal government complete discretionary control over the admission, exclusion, and removal of non-citizens" (3).

The second chapter offers a detailed analysis of the "liberty dilemma," which Mendoza understands as erupting from the tension between the classical liberal (exemplified by Locke) and the civic-republican (exemplified by Rousseau) traditions; that is, from the incompatibility between a commitment to individual freedom, on the one hand, and to democratic self-determination and universal equality, on the other (32). By way of a detour through the conservative alternative offered in David Hume's account, Mendoza identifies Immanuel Kant's account of autonomy to be the "correct blueprint" (26, 47) to overcome the liberty dilemma. As Mendoza further makes clear, the utilitarian and Marxist objections leveled against the Kantian account can be best overcome by a commitment to fairness that John Rawls's two principles of justice espouse in order to complement the most viable response to the liberty dilemma. However, as Rawls's account operates within a closed system of domestic justice, it cannot adequately account for global or international "cases that involve the liberty, security, and equality of foreigners" (47).

Chapter 3 returns to the immigration debate within philosophy by identifying the "two opposing poles" of this debate. Whereas the proponents of the first approach hold that "a political community has a presumptive right to exclude foreigners," the other side "makes a case for open-borders" (52). Mendoza presents the complicated nature of the arguments underlying both sides by explicating them through the communitarian commitment to cultural identity based on a political community's right to self-determination, on the one hand, and the liberal commitment to principles of universal equality and autonomy (self-determination of states, as well as individual freedom), on the other. The communitarian side cannot escape the charge of arbitrarily excluding foreigners, but the cosmopolitan side cannot sufficiently ground international freedom of

movement as a basic interest that warrants justification to be protected as a basic human right. The liberty dilemma remains unresolved.

In chapter 4, Mendoza takes up Christopher Heath Wellman's well-known argument for a legitimate state's right to freedom of association, which Wellman suggests cannot be overcome by an appeal to the right to self-determination of any prospective immigrant. For Mendoza, Wellman offers the best possible response to the liberty dilemma: Wellman's argumentative strategy relies on the right to self-determination of legitimate states depending upon freedom of association, which logically entails the right not to associate. In likening the case of immigration to marriage, Wellman suggests that a legitimate state--that is, a state that protects and respects human rights--has the right to accept or refuse any and all potential immigrants (including refugees) inasmuch as one can refuse to marry any individual with whom one does not want to associate (70).

As Mendoza rightly notes, Wellman's position needs to account for both the egalitarian and libertarian challenges. In delineating the difference between moral and political equality in relational terms, Wellman attempts to overcome the egalitarian challenge by suggesting that there is no positive duty of any legitimate state to equalize the conditions of anyone suffering from bad luck in the distribution of goods. Central to this idea is that a legitimate state has no duty to admit foreigners, but that they should, from a "Samaritan" perspective, "export justice" to remedy global injustices (73). Wellman's position has been criticized from a plethora of perspectives, and in the rest of the chapter, Mendoza discusses four general ones under the headings of the "harm objection," the "bad analogy objection," the "equivocation objection," and the "deontic ordering objection" (77-90), and yet he maintains that Wellman's position adequately responds to these challenges.

In the fifth and last chapter, Mendoza offers his own novel criticism of Wellman's view to address the one "real problem" with Wellman's account: namely, the issue of immigration enforcement. Mendoza's criticism challenges Wellman's conclusion by advocating for the presumptive rights of immigrants--against the presumptive rights of the states to self-determination--that serve as moral and political limits in determining the enforcement practices of immigration policies.

In turning to the implementation of the "prevention through deterrence" strategy adopted by the US in 1994 along the US-Mexico border, Mendoza underlines the striking number of deaths in immigrant crossings, approximately 6000 between 2000 and 2014 (97), as well as the increase in the undocumented immigration population in the US, from roughly 3.5 million (from before 1994) to 12 million in 2007 (98), to point to the strategy's "ineffectiveness and morally questionable consequences." Subsequently, Mendoza allocates the rest of his chapter to offering a twofold response to the question of the limit of immigration policy enforcement.

First, Mendoza argues that a "legitimate state's immigration policy cannot be discretionary," but that it "must instead be circumvented by such factors as economic realities, family relationships, and socio-historical circumstances" (96). In identifying the "moral wrong" of strategies such as prevention through deterrence to be the lack of "adequate moral consideration" (100), Mendoza proposes the most viable option to address this to be limiting a state's border enforcement to

"morally acceptable levels" (101) as well as "changing their immigration policy to better reflect internal 'pull' factors" (104) to properly ensure the moral equality of all individuals moving across borders. Putting into effect such justified limits to border enforcement would in turn ensure that the rights (and the lives and interests) of would-be immigrants would, to say the least, be respected.

Second, Mendoza defends justifications of internal enforcement practices grounded on what he calls the standards of "equality of burdens" and "universal protections" to address the issue of political equality of all citizens. The standard of equality of burdens suggests that all *citizens* should share the burdens of immigration policy enforcement--that "any collateral effects . . . be allocated as equally as possible among the citizenry" (108): for instance, being subjected to arbitrary checks so as to reveal the "true cost of enforcement" and to lead to the prohibition of selective enforcement (109). The universal protections standard requires that "all persons be reasonably protected from excessive internal immigration enforcement" (110) to suggest that all individuals have the right to have their "basic liberties" (that is, human rights) protected whether they are lawful residents of a territory or not.

Here I would like to offer three points for further discussion. First, Mendoza's account does not spell out what an "adequate moral consideration" amounts to in the case of border enforcement practices. However, it may be that applying something like the "equality of burdens" standard for border control may widen the scope of moral equality afforded to would-be immigrants without detracting anything from its purpose of addressing the political equality of citizens. In this sense, "equality of burdens" comes to be very similar to the principle of equal treatment adopted by a cosmopolitan view, which requires that we treat each individual equally when there is no morally significant difference among them. At the level of internal enforcement, this would also imply a duty to prevent harm to citizens and noncitizens alike, capturing the moral force of the standard better than what an articulation of "burdens" as "costs" can do. To be sure, warrantless raids on homes not only infringe upon individuals' basic rights (in this case, their right to privacy) and thereby undermine the political equality among them, but they also constitute a harm for those intruded upon. Although Mendoza brings home the argument that despite a state's right to self-determination, a state's ability to keep its subjects (and citizens) safe and provide them with a stable community cannot be sufficient grounds to justify *harmful* intrusive practices of a state within its borders, his account does not adequately address the nature of harm that results from immigration policies that are not circumscribed by considerations of what constitutes global harm.

Mendoza briefly outlines Wilcox's "Global Harm Principle" argument (78), in conjunction with Sarah Fine's "harm objection" underlining the inability to remedy the potential harms resulting from immigration policy enforcement by exporting justice (78). However, despite his focus on a rights-based approach to immigration policy enforcement, it is curious that Mendoza's account does not give more weight to the aforementioned criticisms. As feminist accounts of philosophy of immigration rightly emphasize, exporting justice is not equivalent to the recognition of the rights of prospective immigrants; but is, rather, based on an assumption on the alleviation of human rights violations through aid. Mendoza's account leaves out this important discussion of the global relations of oppression that stem from such exclusionary policies of states which

would have complemented his account by addressing the gendered aspect of such practices at both local and global levels.

Second, an articulation of a presumptive duty that rests on the autonomy of a legitimate state is not sufficiently distinguished from mere self-interest. If, as Mendoza suggests, our immigration policies must respect principles of universal equality and individual freedom at the same time, we need to rethink democratic self-determination without recourse to mere self-interest; that is, legitimate immigration policy can take into account the entitlements of the state in question only insofar as those entitlements form part of a larger scheme of entitlements that ensures universal equality. Mendoza's account does not adequately address why this *concern* for universal equality should be articulated independently of the liberty and security concerns of legitimate states when they seem to fall back on self-interest. Universal equality, understood as a moral ideal, is fully achieved not only when the rights of citizens are legally enforced within a territory, but also by acknowledging the potential political agency of all parties affected by and subjected to current immigration policies. In the first instance, admitting immigrants into one's territory implies the acknowledgment of their civic and social rights as well as equal legal protections, even without automatically extending them the right to political membership, that is, citizenship. Whereas the first side of this coin suggests a respect for the moral equality of individuals to be able to claim their autonomy, their right to self-determination, and freedom of movement; the other side consists in the presumption that fully-fledged political equality (not just equality before the law) can be left to the discretion of the individual who may in time choose to apply for citizenship (or not). Such agential capacity cannot be an imposition on any individual, just as marriage cannot be imposed upon any one individual (à la Wellman).

Finally, in recounting *Trop v. Dulles*, Mendoza refers to Chief Justice Warren's statement that "the expatriate has lost the right to have rights" (13) without, however, explaining the force of the notion implicitly borrowed from Hannah Arendt's articulation of a "right to have rights" in her 1951 work *The Origins of Totalitarianism*. Arendt's formulation, "a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community" (Arendt 2009, 297), could have been useful for Mendoza's purpose of emphasizing the rights of immigrants over their needs where the latter can (in most ideal cases) be met by outsourcing or exporting justice.

*The Moral and Political Philosophy of Immigration* offers a succinct yet powerful overview of the philosophical debate on immigration, while making an original contribution to the literature by addressing the standards by which both border and internal enforcement should operate. Overall, Mendoza's work is a valuable intervention in this debate, provoking further reflection on how best to articulate and decide on relevant immigration policies of liberal democratic states, especially in terms of how such policies should be enforced. The book's liberal commitments may seem like a shortcoming, but Mendoza's approach paves the way to better strategies for dealing with the rights--and not just the needs--of individuals who for different reasons (have to) move across borders.

### **Reference**

Arendt, Hannah. 2009. *The origins of totalitarianism*. [United States]: Benediction Classics.