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Security, Liberty and Enforcement in the Philosophy of Immigration

José Jorge Mendoza, *The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality* (Lanham, MD: Lexington Press, 2017).

This is the first book by a Latino philosopher in the U.S. that works to reframe the debate on immigration in a way that takes into consideration matters often neglected in the field of the ethics of immigration: enforcement. Along the way, he proceeds to flesh out two dilemmas that he takes to be at the heart of the immigration debate in the ethics of immigration literature: the security dilemma and the liberty dilemma.¹

The security dilemma is a worry over how open border policies might threaten the host country's citizens through infectious diseases or crime, its form of government or its social safety nets. In order to avoid entering into this Hobbesian state of nature, one response has been to think a state such as the U.S. federal government should have absolute authority to regulate its national borders. The problem with giving a regime this kind of discretion in immigration matters is that it leaves citizens and non-citizens vulnerable to state sanctioned violence, an Agamben-type state of exception. To bypass these two horns of the security dilemma Mendoza argues for a middle ground between the open borders and absolute sovereignty positions. Through historical-legal analysis and critical evaluation of the social contract tradition Mendoza argues for a state's limited authority to regulate its borders through constitutional protections and judicial review. For Mendoza, anarchy or absolute authoritarianism are not plausible solutions to the security dilemma. A constitutional democracy based on a Philadelphia model of sovereignty with checks and balances that is committed to liberal principles of national self-determination, individual liberty and universal equality is a more viable solution to the security dilemma.²

While the book shows how a constitutional democracy with limited authority in immigration matters avoids entering into a Hobbesian state of nature and

¹ Jose Jorge Mendoza, *The Moral and Political Philosophy of Immigration: Liberty, Security and Equality* (Lanham, MD: Lexington Press, 2017), p. 1.

² *Ibid.*, p. 20.

an Agamben-type state of exception this does not imply the author's position has bypassed other challenges. As the reader plunges deeper into the book, Mendoza raises challenges against his initial thesis. He confronts and wrestles with the complicated issue of the liberty dilemma, which involves the tensions between three liberal commitments undergirding a constitutional democracy: individual freedom, democratic self-determination and universal equality. The classic liberal position embodied by John Locke promotes individual freedom through its notion of negative liberty but only at the expense of universal equality and democratic self-determination. This is the first horn of the liberty dilemma. The second horn involves the civic republicanism position embodied by Rousseau's social contract theory. It argues for the values of democratic self-determination and universal equality but at the expense of individual freedom. Mendoza draws on Kant's concepts of autonomy, immaturity and the kingdom of ends and supplements this with the theory of justice put forth by Rawls as a way of getting around the liberty dilemma. The book is a useful tool for readers to cultivate a more nuanced understanding of immigration issues because of the way it connects a hotly contested issue with an introduction to a variety of classic and contemporary Western European philosophers.

As the book shifts to more contemporary approaches to immigration Mendoza does a solid job of clearly laying out the issue of open borders versus restrictionist views by tracing the debate back to Michael Walzer and Joseph Carens. This third chapter sharply lays out how the discussion has developed through the works of David Miller, Phillip Cole, Michael Blake, Thomas Pogge and Viet Bader. In the fourth chapter, Mendoza situates the influential restrictionist perspective of Christopher Heath Wellman vis-à-vis other contemporary political philosophers. This chapter clearly makes visible four main objections to Wellman's view: the harm objection, the bad analogy objection, the equivocation objection and the deontic ordering objection. This chapter shows how Wellman seems to have responses that diminish the force of these objections. But, according to Mendoza, there are still some lingering worries about Wellman's view. These complexities are fleshed out in chapter five, where Mendoza shows that Wellman's view runs afoul when matters of border enforcement are taken into consideration. Here is where Mendoza presents different options for approaching border enforcement in a way that could be consistent with Wellman's claim about legitimate states having the right to exclude but in the end turn out to be problematic. As a way of curtailing these matters of excessive and non-excessive border enforcement matters, Mendoza argues that in order for states to have a limited authority to regulate its borders, the legitimacy of these political powers depend on the state respecting the rights of citizens and non-citizens. This is not merely an abstract

prescription for Mendoza; it has some empirical basis. Earlier on in the book Mendoza lays out how there are Supreme Court cases that provide empirical support for the claim that the state in some cases actually protects the rights of non-citizens.³ Non-citizens have been protected by the Supreme Court making various appeals which include but are not limited to the following: the *jus solis* clause – birthright citizenship, the 14th amendment equal protection clause, the 8th amendment against cruel and unusual punishment, and the 6th amendment right to effective counsel. These legal realities provide support for thinking of border enforcement in a way that can curtail it from being either ineffective or excessive. How? Through Mendoza's minimalist defense that gives priority to recognizing the rights of non-citizens, he shows how border enforcement matters need this moral constraint, if the state is going to have legitimacy in regulating its borders. By introducing matters of border enforcement into the ethics of immigration literature Mendoza takes steps toward reframing the debate in a way that attends to how states should enforce their borders. This book is a useful way of introducing students to a variety of thinkers in relation to a real-world issue and it is an aide for specialists to get a sense of the intellectual landscape around immigration matters.⁴

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³ *Ibid.*, p. 14.

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