

José Jorge Mendoza. *The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality*. Lexington Books 2016. 156 pp. \$85.00 USD (Hardcover ISBN 9781498508513).

The widespread media coverage of the global refugee crisis and the prevalence of anti-immigrant rhetoric throughout the West has brought the incendiary topic of immigration to the fore, and this fact has not been lost upon philosophers. Indeed, a cursory review of papers submitted to the last two American Philosophical Association Western Division meetings reveals that the subject of immigration has commanded increased attention from contemporary philosophers. Out of this political maelstrom emerges an important contribution to the scholarly discourse on immigration—Jose Jorge Mendoza’s *The Moral and Political Philosophy of Immigration: Liberty, Security, and Equality*.

The fact that the current debate over immigration is so emotional is an indication that something more is at stake besides mere policy. Mendoza skillfully illuminates that what truly lies at the heart of our immigration debates are some of our most deeply held values around what constitutes a just and legitimate government, while providing us with the tools to think critically about the adverse impact many immigration policies have had upon our own citizens.

According to Mendoza, immigration is merely one face of what is primarily a conflict over competing principles that represent the central debate within modern Western political philosophy: namely, the conflict between the desire for security and the desire for liberty. Beginning with Hobbes, Mendoza traces the current anti-immigration rhetoric to an overriding concern with the ability of governments to keep their citizens safe and to provide them with a stable, well-ordered society in the face of increased economic migration and the global refugee crisis, which are typically characterized in the public media as ‘existential threats’ that augur our descent into a Hobbesian state of nature.

As an example of how this affects public policy, Mendoza traces the evolution of the U.S. Supreme Court’s Plenary Power Doctrine, which holds that the power to ‘admit, exclude, and remove noncitizens is a chief attribute of sovereignty’ and, thus, ‘lies outside the scope of judicial review’ (2). On this view, governments are seen as having complete discretionary power to refuse entry to outsiders. The problem is that, when security becomes paramount, the policies that emerge under such constraints are fundamentally at odds with other values that are indispensable to liberal constitutional democracies.

Using Agamben’s concept of abandonment as a springboard whereby the individual becomes exposed to the violence of an overly legalistic, all-powerful sovereign, Mendoza develops his concept of the *security dilemma*. The overriding concern with security enables the sovereign ‘with a free hand to both identify a threat to the political regime and [to] do what is necessary to address it as quickly as possible’ (9). Ideally, such powers are to be limited to times of national emergency ‘where the sovereign’s ability to maintain law and order is in peril,’ since other values crucial to constitutional democracy, such as individual freedom and self-determination, tend to be curbed during such exceptional times (9). The danger is that such state actions tend to be self-perpetuating and thus run the risk of solidifying into a permanent state of affairs.

The same all-encompassing powers used by states to define and fend off threats to sovereignty are typically used to enact laws that increase their police power, which then leads to the creation of categories of persons to whom the law should not apply, which are then used to justify further expansion of state power. This tendency toward institutional bootstrapping is endemic because states are inherently ambiguous: the sovereign is both the creator and the enforcer of the law and thus lies both inside and outside the juridical order (9).

According to Mendoza, the *state of exception* thus renders both parts of the security concern, i.e., a stable, well-ordered society and personal safety, as mutually exclusive (10). This leads to a

security dilemma in which we are forced to choose between the constant threat of a *state of nature*, or the equally distasteful *state of exception*, whereby the individual is unprotected against the sheer power of the sovereign (10) and thus sacrificed. Of course, some people are perfectly fine with trading their liberty for security (2). However, if personal safety is no longer a primary concern of the sovereign, security, by extension, is paradoxically undermined and such a government would provide the individual with no greater and, quite possibly, markedly less safety than he or she would find in a state of nature, which undermines the entire point of having a legitimate government in the first place (9).

For Mendoza, the *state of exception* is dangerous precisely because it is self-defeating to liberal constitutional democracies. Hence, when the concern with abstract notions of security, law, and order overrides other objections to unfettered state power, other equally important political values fall by the wayside, namely individual freedom and self-determination. Because the Plenary Power Doctrine leads us to a *state of exception* in which individuals fare no better than in the state of nature, it should be rejected and replaced with a system in which government has the burden of proof to exclude outsiders, rather than immigrants and refugees.

This does not, however, mean that there is no contradiction in the defense of liberty above security. To the contrary, Mendoza argues that the concern for liberty generates its own dilemma due to the inherent tension that exists between democratic self-determination and individual freedom and universal equality, each of which are indispensable to a Philadelphia model of sovereignty (25). According to Mendoza, the full import of the liberty dilemma has not, up to this point, been fully realized in large part because most philosophers working in the area of immigration have primarily focused on questions of admission and exclusion (95). Mendoza, however, challenges this tendency by emphasizing the ethics of ‘the entire coercive apparatus the state has at its disposal’ to enforce its immigration laws (95). The question of enforcement is key because it reveals that ‘a commitment to universal moral or political equality cannot be reconciled with a legitimate state’s right to control immigration’ (96).

According to Mendoza, any commitment to universal moral or political equality would lead one to condemn the post-1994 U.S. policy of *prevention through deterrence*, in which ‘a strong show of force at more easily accessible points of entry would deter unauthorized crossing’ at more remote, inhospitable border crossing points (97). On its face, this policy seemed to be a practical, relatively un-militarized approach to border control. In reality, it has been a dismal failure, resulting in the deaths of thousands of would-be migrants, a 1300% increase between the pre- and post-enforcement budget, and a fourfold increase in the number of undocumented immigrants living in the U.S. largely because it failed to recognize that, prior to its inception, economic migration had been seasonal (98). In sealing the border, the U.S. government effectively sealed in undocumented workers too afraid to cross the newly fortified border seasonally, as they had for generations past. The sovereign effectively created the problem and then justified its expanded powers (and budget) by appealing to our collective fears about security.

However, if the collateral effects on ‘outsiders’ who are not a part of our political community are unmoving, Mendoza ratchets things up by pointing out that, while many might be ‘willing to accept stricter internal enforcement’ mechanisms, they might not be willing to ‘endure such measures if they had to share in the costs’ (109). Those costs consist of early morning raids by armed police who enter homes and interrogate inhabitants in the absence of search warrants, permission, and probable cause. According to a recent report, hundreds of U.S. citizens are detained each year by Immigration and Customs Enforcement (ICE) even though ICE has no jurisdiction over U.S. citizens (‘You Say You’re An American, But What if You Had to Prove it or Be Deported?’ by Eyder Peralta, Dec. 22, 2016, at <https://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>). According to Meredith Hoffman

(2016), upwards of 20,000 American citizens have been detained or wrongly deported since 2003 ('U.S. Keeps Mistakenly Deporting its Own Citizens, at <https://news.vice.com/article/the-us-keeps-mistakenly-deporting-its-own-citizens>). These social costs are primarily born by minorities of Latin American, Middle Eastern, and Asian descent. Indeed, on its own website ICE news releases state that, of its recent sweeps, 75 percent of arrestees have had criminal convictions, which means that 25 percent of those arrested did not ('ICE Arrests over 50 in Central Californian Operation Targeting Criminal Aliens, Illegal Re-Entrants, and Immigration Fugitives,' at <https://www.ice.gov/news/releases/ice-arrests-over-50-central-california-operation-targeting-criminal-aliens-illegal-re>). The fact that some members of our society are forced to endure the collateral effects of unfettered government power that violates universal protections standards and equality of burdens and results in the political and social marginalization of the affected populations should give us pause.

Although his arguments are concise, Mendoza provides a nice overview of relevant thinkers such as Christopher Heath Wellman, David Miller, Michael Blake, John Rawls, and Joseph Carens in addition to numerous modern political thinkers such as Bodin, Hobbes, and Marx. Those interested in distributive justice, sovereignty, and applied ethics will find it to be thought-provoking and well-argued. All in all, Mendoza's book offers a lively and carefully-considered argument that is both compelling and highly relevant.

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