
Review

The moral and political philosophy of immigration: Liberty, security, and equality

José Jorge Mendoza
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While the current US president demands the strict persecution and deportation of people whose presence in the country he deems ‘unwanted’ and illegal, the drowning of thousands of people trying to cross the Mediterranean Sea in order to reach EU territory every year has become normalised. In this context, the publication of José Jorge Mendoza’s *The Moral and Political Philosophy of Immigration* offers a timely and important contribution to politico-philosophical debates concerning the issue of immigration. Far from being simply a case for ‘applied ethics’, Mendoza argues, immigration is ‘the most pressing issue that moral and political philosophers have to grapple with today’ (p. xii), as it is around immigration that the modern conflict over the competing moral and political commitments of security, liberty, and equality is currently fought out. Trying to resolve this conflict, the author traces this conflict from early modern Western political philosophy to contemporary debates around immigration to arrive at a position he terms the ‘minimalist defence of immigrant rights’ (p. xiii).

In a first step, Mendoza reconstructs how modern Western political philosophy has primarily been concerned with security on the one hand and liberty on the other. Taking the US and its plenary power doctrine as a case in point, he argues that today’s immigration politics are largely stuck in a ‘security dilemma’ (chapter 1). Such a Hobbesian perspective regards security as the primary purpose of sovereignty and therefore gives the sovereign complete discretion. Ironically, giving the sovereign such power can endanger the individual’s safety through the emergence of a state of exception. The solution, Mendoza argues, can be found in constitutional democracy as a model of sovereignty which is primarily concerned with liberty instead of security. However, this brings us to a second problem – the liberty dilemma – as constitutional democracy is based on three commitments that often stand in tension with one another: democratic self-determination, universal



equality, and individual freedom (chapter 2). Classical liberalism tends to prioritise individual freedom, whereas civic republicanism prioritises democratic self-determination and universal equality. Even though Mendoza sees the gap between them bridged in John Rawls' two principles of justice, Rawls' theory rests upon the assumption of a closed society and is hence unable to be instructive for questions of immigration. Immigration therefore throws us back into the liberty dilemma in globalised form (chapter 3). Reading debates on immigration by moral and political philosophers in this manner, recasts the frontlines by putting those who value democratic self-determination on one side and those who put more emphasis on individual freedom and universal equality on the other. Whereas the former make a point to favour states' presumptive rights to exclude immigrants, the latter tend towards open borders. Mendoza sees the most successful attempt to bring these various values together and to solve the liberty dilemma in C. H. Wellman's work. Wellman argues that legitimate states enjoy freedom of association which also includes the freedom not to associate, i.e. to exclude foreigners (chapter 4). According to this account, a regime's commitment to universal equality does not necessarily imply the admission of any foreigners, but can be served by other measures (e.g. international aid). This perspective has been subjected to extensive criticism from various directions. Wellman's misleading analogy that equates taking in immigrants to a (forced) marriage has drawn particular critical attention. However, Mendoza argues, Wellman remains largely able to justify his view. Against this background, he therefore presents his own criticism of Wellman in a third step, formulating his 'minimalist defence of immigrant rights' (chapter 5). At the centre of this approach lies the critique that philosophers have predominantly focused on questions of admission and exclusion of foreigners without considering the question of enforcement. If we do so, Mendoza argues, the values of democratic self-determination, individual freedom, and universal equality can only be reconciled if states do not have discretionary power over immigration. Even though this does not imply that states have no power over questions of immigration, it does mean that a 'legitimate state will be in a bizarre position of having to actively restrict itself' (p. 113). The limitation to state discretion over immigration concerns both border enforcement and the internal enforcement of immigration policies. Mendoza opts for the reduction of border enforcement to 'morally acceptable levels' (p. 104) paired with immigration policies that take the reasons why people (want to) come to a specific country – such as family ties or economic circumstances – into account in order to reduce irregular immigration to a bare minimum. Moreover, this approach pairs an 'equality of burdens' standard that distributes the costs of internal border enforcement policies equally among the citizenry with a universal protection standard that guards all people living in a country from excessive enforcement, thereby guaranteeing at least minimal access to healthcare and the legal system.



Mendoza's book offers an insightful and important contribution, reminding us that the foundational values of modern democracies are central to discussions about immigration. His 'minimalist defence of immigrant rights' is an important intervention and corrective to contemporary moral–philosophical debates regarding immigration. However, I want to point out three reasons why his argument is problematic. First, the three parts into which the book falls are disproportionately organised as more space is given to the first two parts than to the last. This is unfortunate because it is the latter which contains the bulk of the contribution Mendoza makes to philosophical discussions on immigration. In particular, the chapter on the liberty dilemma is a rather superficial reconstruction of classic political philosophy that neither does justice to the numerous philosophers the author discusses, nor clarifies the problem. On the one hand, the liberty dilemma is described as the conflict between the political commitments of liberty, democratic self-determination, and equality; on the other, it is framed as the tension between positive and negative freedom. Mendoza never clearly establishes the relation between these two ways of capturing the dilemma. Adding to this confusion, the outlined frontlines between liberals and republicans regarding the evaluation of liberty, democratic self-determination, and equality, remain without consequence as they are displaced in any case – and thus not applicable – when it comes to immigration.

A second – related but more substantial – problem lies in the minimalist defence itself. Due to the relative brevity of the chapter, some important aspects remain vague. While the author gives several examples of why internal enforcement of immigration policies should be justifiably limited, the standard he describes for border enforcement omits several important questions. While he argues that a state's immigration policy must reflect the internal 'pull' factors and the burden of proof should lie with the state to justify restrictions (instead of the immigrant's having to justify her entrance), he reproduces a conception of unauthorised (attempts of) entry. Even though ideally reduced to a bare minimum, this standard thus still allows for the movement of some people to be categorised as illegal. Concerning these people, Mendoza points out that border enforcement needs to be reduced to morally acceptable levels. However, he does not elaborate on what a minimum moral standard includes: he only draws on the extreme example of the US policy of 'prevention through deterrence', which led to thousands of migrant deaths, to illustrate this point. Between admitting entry and letting people die lies a vast grey zone, in which illegalised migrants might still find themselves in a state of exception. This is even more true in a world in which border controls are often externalised, thereby making legal oversight highly unlikely.

Third, Mendoza seems to develop – and defend – his own approach mainly against Wellman's, which he introduces as the best solution to the liberty dilemma regarding the issue of immigration. However, this choice of foil forecloses many options: Mendoza outlines his position in dialogue with a perspective that grants



states more discretion than most contemporary states actually grant themselves regarding immigration. For example, by claiming that ‘pull factors’ need to dictate immigration policies, Mendoza might offer a clear criticism of (theorists such as) Wellman, but not necessarily of contemporary state policies, as these already include factors such as family (re)unification alongside economic factors. It would have been interesting to see how Mendoza could go beyond such policies. Moreover, there are both international conventions and national constitutional frameworks and laws that frame how states can and cannot legitimately enforce immigration policies. Hence, by predominantly organising his argument around Wellman, contemporary, less extreme cases of border enforcement politics appear relatively unproblematic. Consequently, a variety of more pressing questions regarding the legitimacy and practicality of immigration regulation and border control remain unanswered. These include the questions of who decides what counts as a legitimate ‘pull factor’ in the first place, as well as what counts as ‘morally acceptable’ in border enforcement.

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