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Coercion, Immigration and the Grounds  
of Distributive Justice

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### **Coercion, Immigration and the Grounds of Distributive Justice**

A recent argument for restricting the scope of distributive justice to arrangements within national boundaries suggests that coercive enforcement of entitlements through the private law is what gives rise to duties of distributive justice. This argument has been advanced in the most detail by Michael Blake and has also been endorsed by Mathias Risse. I will argue that this argument is mistaken. Duties of distributive justice are grounded in something else: perhaps in the imposition of a basic structure that fixes the terms of cooperation or perhaps in norms of reciprocity arising from cooperation. In either case, I believe that the grounds of distributive justice strongly suggest that considerations of distributive justice apply at both the national and international level. I conclude by suggesting a different way to explain why certain redistributive schemes are required on the national but not international level without denying that increased transnational cooperation makes global distributive justice an increasingly salient issue.

#### **Immigration and the Problem of Coercion of Outsiders**

A fairly obvious difficulty with Michael Blake's position is that states appear to restrict the autonomy of would-be immigrants coercively by preventing them from entering their preferred country of residence and forcibly removing them if they do so. According to Blake's account of autonomy, coercive restriction of a person's options is a violation of their autonomy if they would not hypothetically consent to the laws under which they are coerced. This explains why people are treated unjustly if they are punished under laws to which they would not have had reason to consent *ex ante*. It also is what makes it the case that coercive enforcement of unjust

private law is a violation of autonomy. The basic structure of entitlements and obligations that results from the private law must be such that it could be hypothetically consented to by those against whom it is enforced. However, if a similar standard is applied to the use of coercion against would be immigrants, it would seem that the institutional arrangements according to which states may coercively restrict the movements of would be immigrants (or even people who simply have the misfortune of being unable to prove to consular officials that they have no intention to immigrate) must be justified in terms of the hypothetical consent of the would be immigrants. And given the resulting diminishment of the life prospects of would be immigrants, there is good reason to suspect that such an account must make reference to the distributive fairness of the international system. At the very least, one might think that Blake owes us either an account of the justification of coercive restrictions on immigration or a straight-forward concession that just distributive schemes of wealthy countries would involve a sort of backdoor global distributive justice by shifting resources on a large scale toward less affluent immigrants from the third world.

Both Risse and Blake are surprisingly casual in their dismissal of the objection from coercive immigration restrictions. When Blake addresses the objection from immigration in a footnote, he suggests that the reason that coercive exclusion of immigrants does not require the same sort of justification that coercion of co-nationals does is that “each distinct form of coercion requires a distinct form of justification. The refusal of entry to a would-be member may or may not be justifiable; the form such justification would take, however, would be significantly different from that offered to a present member for the web of legal coercion within which she currently lives. The mere fact that exclusion is coercive does not erase the distinction between

prospective and current membership.”<sup>1</sup> These comments fail to make it clear why Blake does not find this objection more worrisome. There are several possibilities.

Blake’s comment about prospective as opposed to current membership suggests that he views the relation of the state to citizens or residents as different from its relation to outsiders in a way that makes coercion of the former but not the latter demand a special type of justification. The idea here might be that states coerce citizens in the name of enforcement of the private law whereas would-be immigrants are coerced in the name of the right of citizens to control membership in the national community. As we have seen, Blake does not seem to think that coercing would-be immigrants to prevent them from entering the country requires any sort of justification in terms of the interests of the would-be immigrants. But coercive enforcement of private law within state boundaries is said to demand not only justification in terms of the interests of those coerced, but also that the coercively imposed system be optimal from the perspective of the least advantaged. This is a rather large discrepancy and it is tempting to think that membership and not a theory of justification of coercion is what is really doing the work in Blake’s argument against the objection from immigration.

Blake’s comments elsewhere in the paper indicate that he thinks that justification of the basic structure is only owed to members and that membership is determined at a prior stage.<sup>2</sup> Coercive imposition of property relations and other aspects of the basic structure are what ground the requirement of justification to members whose identities have already been fixed at this first stage. But in contrast to his detailed discussion of the normative significance of coercion, Blake fails to offer any account of the normative significance of membership. Without some account of the normative significance of membership Blake’s position is in danger of

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<sup>1</sup> Blake, Michael. “Distributive Justice, State Coercion and Autonomy” 30 *Philosophy & Public Affairs* 257, 280, 2001

<sup>2</sup> Blake distinguishes criteria of membership and criteria of justification at 288, 289

collapsing into something tautological like “we owe duties of distributive justice to us and not to them because we are us and they are them.” Since his original argument for coercion requiring the hypothetical consent of the coerced makes no reference to citizenship, he also is without any response to the argument that the test of hypothetical consent should be applied to coercive restrictions on immigration.

This way of responding to the objection from immigration is taken up by Mathias Risse in a paper in which he endorses Blake’s argument.<sup>3</sup> Risse’s argument against the objection from immigration is more explicit but seems, if anything, even more opaque than Blake’s. Risse appeals to the principle that “all the justification states need to prohibit arbitrary and uncontrolled immigration . . . is that they are doing something morally defensible, even morally praiseworthy that in general cannot be maintained if there is no access regulation. What states do that deserves such protection is to provide for their members by maintaining a morally defensible legal framework and social system.”<sup>4</sup> If taken as a justification of all coercive restrictions of immigration by wealthy countries with significant social welfare states, this seems far too strong a principle. For it takes that fact the states could not maintain their social welfare systems in the face of open borders to justify much stronger restrictions on immigration than those necessary to preserve the welfare state.

Risse might be understood, more charitably, as claiming merely that states have the right to restrict immigration insofar as they must do so to carry out their moral obligations to their citizens including the maintenance of a large and expensive social welfare state to support disadvantaged citizens.<sup>5</sup> However, if this principle is supposed to justify restrictions on

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<sup>3</sup> Risse, Matthias. “What We Owe to the Global Poor.” 9 *Ethics* 81, 2005

<sup>4</sup> Risse 107

<sup>5</sup> Risse’s principle might generate the conclusion that coercive restrictions on immigration is justified to prevent a destabilizing flood of immigrants, especially those likely to end up on the dole in short order. This is not especially controversial. However, it seems clear that wealthy

immigration on the part of affluent nations, then Risse's argument seems to assume its conclusion. One might devise a contrary principle that takes the same form as Risse's: "all the justification that a state needs to reduce expenditures on social welfare at home . . . is that they are doing something morally defensible, even morally praiseworthy that in general cannot be maintained if there are huge social welfare expenditures on economically unproductive citizens. What states do that deserves such protection is to provide for the global poor by maintaining free access to labor markets in a highly efficient legal and institutional framework." As the inverted principle should make clear, what is really doing the work in Risse's argument is the claim that the state is maintaining "a morally defensible legal framework and social system." But this is exactly what the objection from immigration is calling into question: perhaps it is not really morally defensible to exclude poor foreigners who would be willing to work simply because this might reduce the state's ability to redistribute wealth to the currently most disadvantaged citizens.<sup>6</sup> It seems that both alleviating global poverty and maximizing the standard of living of one's least fortunate co-nationals have moral merit. But that is not much help in deciding which of these goals to pursue if the two conflict.

A second possible interpretation of Blake's position is the following: it is not that coercive restriction of someone's autonomy creates a special relation between that person and the state such that the state owes that person a system of property entitlements acceptable (in the Rawlsian

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societies could do far more to better the lot of the global poor by admitting far more able-bodied economically productive workers on the condition that they work for some period of time before using certain classes of government services. What justifies the coercion of those willing and able to make economic contributions is not clear from Risse's principle. Risse might appeal to the downward pressure that the new immigrants might exert on the wages of native born workers, but the principle that the state has an absolute obligation to protect the wages of citizens against any sort of competition even at the expense of both aggregate welfare and the welfare of relatively poor foreigners seems in need of defense.

<sup>6</sup> Note that if one takes a Rawlsian line on distributive justice, increased immigration would be unjustified if it increased inequality without improving the position of the least well off in society. This is fairly non-intuitive as a moral principle since it would seem to grant no weight to the improved situation of the immigrants themselves.

sense) to that person, but rather that the relation of the state to the private law that is coercively enforced generates an obligation to arrange the system of entitlements arising from this law in a way that is just (in a Rawlsian sense). And since the scope of private law is domestic, the scope of distributive principles that justify it should be as well. This interpretation of Blake's position would make his rapid dismissal of the immigration objection more understandable. However, I do not think that it really avoids the force of the objection. Once the state is not seen as being in a special relationship with those whom it coerces, would-be immigrants might seem not to have a special claim to have the coercive institutions organized for their benefit. But this leaves open the question of for whose benefit systems of property entitlements are to be organized. It is perfectly consistent with thinking that coercive enforcement of private laws carries a special burden of justification to believe that this justification must involve fulfilling certain transnational duties of distributive justice involving, for example, foreigners with whom citizens and residents have economic relations. The idea that coercing someone into following the private law demands justification in terms of her interests is what provides the link between the position that coercive enforcement of law grounds duties of distributive justice and the position that the scope of distributive justice is domestic. If this is set aside, Blake's preferred conclusion simply does not follow from his argument from coercion.

A general problem with this second line of argument is that property rights are coercively enforced against all comers: citizens, residents, foreign workers and investors, travelers, etc. Rights in rem such as property rights are not special claims against fellow citizens, rather they are claims against the world. Would-be immigrants are a special case in the sense that they would actually like to be in the position of being subject to the coercively imposed private law. And if they are not subject to it, the only reason is that they are coercively prevented for getting

physically close enough.<sup>7</sup> It is not clear that restrictions on immigration are truly distinct from the “web of coercion” that supports the private law. And even if they were, the scope of the claims of private law is defined (roughly) by territory, not by citizenship.

Risse seems to endorse something like this second option when he appeals to the institution of property rights and their coercive enforcement as the sort of coercion that leads directly to justified demands for distributive justice.<sup>8</sup> He claims that property rights lead naturally to distributive concerns since what is at issue where property rights are determined is exactly who will get what in the society. This, he claims, is not the case in various international institutional arrangements (WTO etc.) that take property entitlements as more or less fixed and sets terms of cooperation given these fixed property entitlements. The picture on offer here seems to be that states create entitlements to property and the international order merely influences the value of these entitlements by determining the terms under which states and their citizens may cooperate.<sup>9</sup> This is, I am afraid, a gross oversimplification.<sup>10</sup> Convincing foreign governments to respect one’s intellectual property is as sure a boon to the owners of such property as an extension of the term of domestic copyrights is. More to the point, the economic value of citizenship for a young person in a first world country is huge. The ability to enter first

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<sup>7</sup> Though even this is an oversimplification since in some cases, one can presumably commit torts or violate property rights without being physically present in the country, for example, if one’s employees commit torts in the course of their job duties.

<sup>8</sup> Risse 105

<sup>9</sup> Risse 105

<sup>10</sup> The value of entitlements is so profoundly influenced by the international order, that one might wonder whether Risse’s position makes any sense even setting aside issues such as immigration, intellectual property, fishing rights and so on. If international economic agreements on trade and investment didn’t have such huge distributive consequences, there would surely be much less lobbying by private interests to influence their contents. Indeed, the extent and terms of international trade affect virtually everyone by influencing the returns to labor and capital in an economy. While large countries might have a greater degree of control over distributive consequences of the international economy, in economies heavily dependent on international trade, it is surely naïve to think that the value of entitlements is mostly fixed on the domestic level.

world labor markets may have much more impact on their life prospects than the details of the property law of their home country. Given these facts of contemporary life, it seems hard to maintain that coercive exclusion from labor markets demands much less justification than the legal structure of that labor market for those who do have access.

### Coercion and Cooperation Reconsidered

The structure of Blake's argument requires him to show that coercive restriction of autonomy is a necessary condition for duties of distributive justice. Blake tries to argue that coercive enforcement of the private law including property rights regimes gives rise to a need to justify the resulting system of entitlements in terms of distributive justice. He invokes a principle of hypothetical consent in analyzing whether criminal or civil laws are justified by asking whether the person against whom the law is enforced would have had reason to consent to the law *ex ante*. I am doubtful that coercion is a necessary condition for considerations of distributive justice to be in play.

One might wonder about the importance of coercion for this hypothetical consent principle. It seems to me that coercive enforcement of private law is perfectly justified even in systems in which the underlying system of entitlements is to some degree unjust. In any complex prosperous economy, the institution of property rights benefits nearly all citizens when compared with the absence of any such institution. Support for it therefore seems morally important even if the underlying distribution of property rights is somewhat unjust.<sup>11</sup> The position of someone trying to decide whether to respect property rights in her society is not that of a party in the original position trying to decide what the optimal set of property entitlements should be. Instead, this person can only decide whether to cooperate by obeying the existing set

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<sup>11</sup> Perhaps in a country such as Nigeria in the 1980s and 1990s when a small clique of rulers exploited the country's considerable national resources for their personal enrichment while leaving the vast majority of the population with a standard of living among the lowest in the world citizens have no *prima facie* reason to respect the existing system of property rights.

of rules or defect by violating them.<sup>12</sup> The upshot of this is that the mere act of coercive restriction of autonomy seems justifiable in the narrow sense of being morally permissible even if the structure of property entitlements is to some degree unjust. So it seems that it is not really the use of coercion that must be justified, but rather the system that is being coercively enforced.

What seems to be doing most of the normative work here is the principle that in order for the legal system to be justified, it must provide what Rawls calls “fair terms of cooperation.” Once one establishes the principle that in order to be justifiable, the legal system must be fair in the Rawlsian sense, it is not clear what significant role coercion has to play in the argument. Presumably, the fact of coercion is supposed to be what puts the legal system as a whole in need of justification. But it is not really clear that coercion is playing an especially vital role in the argument.

One implication of Blake’s position is that if the basic structure is not coercively enforced, then it need not be justified in terms of distributive justice. Obviously, in advanced modern economies, coercive enforcement will be present whenever there is a basic structure. However, this has not always been the case: not so long ago in Europe many of the functions of the welfare state were carried out by rural communities sometimes through creation of commons and other collective forms of property but sometimes through more informal means. When non-legal norms of social interaction are used to enforce the basic structure, it would seem odd to claim, as Blake seems to, that it would be inapt to evaluate them in terms of distributive justice. Consider the following hypothetical:

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<sup>12</sup> This also applies to systems of property rights not based on private property. Of course, enforcement is a greater problem in such contexts - stealing from the state soon became a national sport in the Soviet Union. However, even in this context where cheating is pervasive, taking more than one’s share (i.e. stealing more than the median worker) would also seem to count as blameworthy insofar as this harms economic efficiency and thereby reduces the resources available for one’s fellow citizens.

*Theoton*: Theoton is a small community with a primitive economy cut off from all other societies. Its inhabitants hunt and engage in subsistence farming. Any surplus over and above what is needed to maintain life is given over to support a small nearby settlement of “priests.” The priests do not themselves farm or hunt, but instead lead lives of leisure and luxury on the goods provided by the villagers. The villagers regard support of the priests as a religious obligation, though they do not actually participate in or observe any religious rituals conducted by the priests. The residents of Theoton do not believe in coercion: their customary way of dealing with people who try to hoard goods rather than given them over to the priestly class is to shun them. If a non-priest tries to invade the priests’ settlement and enjoy the priestly lifestyle, they simply cease to provide for the priests and burn surplus goods until the interloper has left. Dissatisfied villagers have the option of ceasing to participate in the village’s economic life in which case they are free to keep the goods that they accumulate from their farming and hunting, but run the risk of starving if their crops fail or sickness prevents them from working.

On Blake’s theory it seems like there are simply no grounds for complaint in terms of distributive justice here since there is no coercion exercised in *Theoton*. It is not that Theoton is just, rather evaluation of *Theoton* in terms of distributive justice is inapt. Blake might respond to this purported counter-example in various ways. One possible response would be to claim that the problem here is not distributive justice per se, but the non-autonomously formed normative commitments of the villagers who are presumably brought up in a religious culture that causes them to renounce their material interests. However, this response seems inadequate in that it would not explain why the distribution of material goods in *Theoton* is objectionable in the first place. Another response would be to claim that there is nothing unjust about villagers pursuing their conception of the good in this case no matter how bizarre this might appear to outsiders.<sup>13</sup> If dissenters in society are too few to be able to pursue alternative conceptions of the good, this is bad luck rather than distributive injustice.

While this latter response seems internally consistent, I suspect that most people would regard *Theoton* as a society with highly unfair terms of social cooperation. While these terms are not coercively enforced, they offered on a “take it or leave it” basis. Dissenters, at least while

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<sup>13</sup> It is worth noting that the Rawls of *Political Liberalism* allows ideologies with various odd commitments regarding deities, the afterlife, etc. to count as reasonable comprehensive doctrines.

they are too small in number to break away and form their own village,<sup>14</sup> have little choice but to cooperate under unfair terms. This suggests it is the imposition of terms of cooperation upon a person that yields a requirement to justify these terms of cooperation in terms of distributive justice. Blake might describe this as a form of coercion. However, in this case, it would seem that the global poor are coerced by providing them with an unacceptable range of options and Blake's theory would seem to entail that restrictive immigration policies trigger duties of distributive justice on the part of wealthier nations.

As suggested by *Theoton*, the reason that special duties are in play when private law is coercively enforced seems to have something to do with the fact that the basic structure is a non-voluntary imposition on citizens. Coercion is one manifestation of this, but the non-voluntary character of the basic structure goes beyond this.<sup>15</sup> Even if one has no inclination to steal or avoid taxes, one's basic options are shaped by the basic structure. This framework is not optional if one wants to be a participant in one's society or its economy. Other choices, such as becoming a hermit or emigrating, are likely to be unduly burdensome if not impossible for most people. This analysis of distributive justice as grounded in the imposition of terms of cooperation arguably captures the intuitions that drive the coercion based account while avoiding counter-examples that trade on the aptness of considerations of distributive justice in situations without coercion. Such an account of the grounds of distributive justice might be more limited than one based solely on economic cooperation,<sup>16</sup> but given the fact of the international division

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<sup>14</sup> Note that in many environments the risk pooling benefits of living in a community with others can be very considerable because if an individual's expected returns to labor each year is sufficiently variable there is a very real danger of starving in lean years.

<sup>15</sup> For a more fully developed version of this argument see Sangiovanni 13.

<sup>16</sup> Impositions of terms of cooperation exist in the international arena in various ways might create obligations of distributive justice. These might include: (1) coercive restriction of immigration, (2) trade institutions such as the WTO that impose "take it or leave it" terms for membership, (3) the unequal division of natural resources between states, (4) international intellectual property regimes, (5) environmental externalities such as global warming. Some of

of labor, it seems very likely that the resulting theory of distributive justice will still be international in scope.<sup>17</sup>

#### Distributive Justice as Terms of Reciprocity in Provision of Collective Goods

Before giving up on attempts to limit the scope of distributive justice to the national level without invoking some form of morally justified partiality toward co-nationals, it would be worth examining one more argument. The failure of the argument from coercion may give rise to the temptation to try to reach the same conclusion from a conception of distributive justice grounded in a certain form of cooperation rather than in a certain form of coercion. This line of argument has been advanced recently by Andrea Sangiovanni. According to Sangiovanni's theory of the grounds of distributive justice, which he terms (somewhat misleadingly) reciprocity-based internationalism (RBI), distributive justice requires Rawlsian equality on the national, but not international level, because distributive justice applies between those who "share in the provision of the basic collective goods required to develop and act on a plan of life."<sup>18</sup> As a matter of reciprocity, those who benefit from the scheme of collective goods such as national security, the legal system, public health care, education, and social insurance owe their fellow citizens who support the provision of these goods special duties. Sangiovanni argues that international institutions including the EU lack "distributive, extractive, and regulative" capacities.<sup>19</sup> Sangiovanni contends that mere economic cooperation is insufficient to trigger duties of egalitarian distributive justice; the relevant sort of cooperation is cooperation in providing certain

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these seem like stronger candidates than others. In any case, if imposition of conditions that shape one's life prospects is the key factor, then it would seem that certain international institutions and policies of the economically advanced nations would be fit objects for norms of distributive justice.

<sup>17</sup> See A. J. Julius. "Nagel's Atlas." 34 *Philosophy & Public Affairs* 167, 2006 for a strong development of this line of argument. Julius' account of the importance of the basic structure can be found in A. J. Julius. "Basic Structure and the Value of Equality." 31 *Philosophy & Public Affairs* 321, 2003

<sup>18</sup> Sangiovanni, 38

<sup>19</sup> Sangiovanni, 22

collective goods that allow for “the basic conditions and guarantees necessary to develop and act on a plan of life.”

Sangiovanni’s argument does not seem to support conclusions as strong as those he would like. His position seems to be that egalitarian distributive justice is applicable on the national level and only on the national level because this is where the basic collective goods that allow for human flourishing are produced. The factual claim that he is making here seems dubious. In the United States, for example, much of the civil and criminal law is determined and enforced on the state and not the federal level. Other legal arrangements crucial for determining entitlements to resources: international agreements on trade and foreign investment, intellectual property conventions and so on, are determined on the international level.<sup>20</sup> Public education is organized and mostly funded on the local and state level. Public welfare and social insurance schemes are likewise divided between the state and federal level. National security on the other hand is organized on the national and international level. The United States is rather self-sufficient in terms of national security; until recently, however, Western Europe’s defense depended in large part on NATO, rather than on individual European countries most of which would have been unable to resist an invasion from the East.

It remains mysterious why reciprocity only leads to demands of distributive justice in the context of provision of certain collective goods. Sangiovanni’s basic normative principle seems to be that we owe certain duties to those who make possible our economic affluence.<sup>21</sup> But if this is the case, then it seems odd to draw the boundaries of the scope of distributive justice along national lines. After all, it seems that the standard of living of an upper-middle class person in

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<sup>20</sup> To reemphasize the point, whether Sangiovanni argues that the crucial question is where the collective good of private law is maintained or where basic entitlements to resources are created and defended his argument faces the objection that exclusive focus on the national level is not justified by the basic facts of economic and political life.

<sup>21</sup> See e.g. Sangiovanni 25-26

Connecticut owes rather much to collective goods produced in Connecticut as well as the ability to import goods inexpensively produced in East Asia and Latin America and purchase food grown in the Midwest, but not terribly much to, for example, the Mississippi Delta region without whose contributions, Connecticut and national institutions would still presumably be perfectly functional.<sup>22</sup> The basic difficulty seems to be that once distributive justice is based on reciprocity between people in certain cooperative schemes, it seems that the extent of duties should depend on the extent of the reciprocal relationships. If instead we draw the boundaries more narrowly such that only that reciprocity which guarantees the minimum conditions for developing and acting on a plan of life counts, then there is a good case that for many people the scope of distributive justice is bounded by their city or region. Or if we make national defense the key collective good, then it will seem that for countries that rely on the international order (i.e. friendly states with large militaries) to physically defend them the scope of distributive justice may seem international. Sangiovanni offers us a picture in which there is no continuum of duties reflecting the degrees of reciprocity: instead there is either a full relationship of egalitarian distributive justice between two persons or there is no such relationship at all. In light of the complexity of the world, this seems far too simple a conclusion.

### Distributive Justice and Economic Injustice

Coercion based accounts of distributive justice represent a departure from a long tradition of thinking about duties of distributive justice as implicated by economic relations between people.<sup>23</sup> A simple minded but intuitively appealing story goes like this: violations of

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<sup>22</sup> At least this was our experience the last time this was tried from 1861 to 1865. Considering the relative contributions to the national budget and roles in the national economy of Connecticut and Mississippi, there is no particular reason to think that things have changed.

<sup>23</sup> It may seem a bit unfair to place Rawlsians developing the coercion based account of distributive justice in the context of the leftist tradition in the west – after all Rawls explicitly claims to be developing a liberal political philosophy with few obvious debts to Marx or other socialist thinkers. However, my point here is not that Blake or others are betraying their

distributive justice occur when people cooperate to produce various goods and some party takes a far greater share of what is produced than they deserve based on their contribution to the collective effort. The feudal lord, capitalist, or manager is able to gain a great bounty that would not be possible without the efforts of ordinary workers or peasants who themselves receive rather little. A basic sense that this situation is unfair (the exact details might be spelled out in various different ways) seems at the root of much if not most concern for distributive justice. The unfairness here is relational – that is it arises from the relations that the workers, capitalists, managers, and consumers stand in to one another, not from the mere fact of inequality. And the relevant relation is at its root economic, not political. Obviously, on the Marxist story (and any other plausible account) the apparatus of the state is deployed to defend the exploitative economic system. But the economic relations are not unjust because they are coercively enforced – rather coercion is merely the means to perpetuate a system of economic relations that is unjust. The system of economic relations would not cease to become unjust if the coercive elements were to disappear and to be replaced with, for example, a complex system of ideological indoctrination so that the exploited classes, as in *Theoton*, carried on with their work as before without any threat of force to ensure their compliance with the unjust order.<sup>24</sup>

Whether or not the economic exploitation view of distributive justice is correct, I suspect that it lines up well with the intuitions of a broad range of people concerned about distributive justice throughout at least the past several centuries. The intuitive idea here is that certain terms of cooperation are fair and others may be unfair even if people with few other options might agree to them. For example, a system in which one party always receives almost all of the

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intellectual roots but rather that the moral intuitions that seem to make both intellectuals and less theoretical folk concerned with distributive justice in the first place seem to cut against Blake's position.

<sup>24</sup> As discussed above, on the Blake view of distributive justice, it is not at all apparent why this should be so. Once there is no coercion, the conditions for distributive justice or injustice simply do not appear to be present.

cooperative surplus would probably be judged to be unfair by most people. Conversely systems in which there is a roughly equal division of gains from trade are more likely to be judged to be fair. Also relevant here is the norm of reciprocity which suggests that it is just to help those who have helped you in the past. Therefore individual interactions in which only one party benefits may be fine as long as they are part of a pattern of interaction in which there is a balance of reciprocal favors. Given sufficiently dense ties of cooperation across national boundaries, it would be reasonable to evaluate these interactions and the institutions that structure them in terms of distributive fairness.

The coercion based view of distributive justice, I would like to suggest, reflects the perspective of Rawlsians who feel a need to reconcile their belief in duties of distributive justice which apply at the national level but not the international level with basically cosmopolitan moral intuitions.<sup>25</sup> This can be done most easily by jettisoning the position that duties of distributive justice are generated by merely economic cooperation. But doing so gives up the notion that one has moral obligations to structure one's cooperative interactions with others fairly rather than merely adopting an arm's length attitude toward one's cooperative relationships. And this is surely one of the original motives for caring about distributive justice in the first place.

#### Distributive Justice and Democratic Equality

As the tone of this paper has mainly been negative, I would like to conclude with a constructive suggestion. A turn to what Elizabeth Anderson terms "democratic equality" might mitigate the tension between commitment to distributive justice on the national level and moral

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<sup>25</sup> Cosmopolitan moral views put pressure on the Rawlsian approach to distributive justice because they raise the question of whether we have duties of distributive justice to citizens of the third world that swamp our duties to fellow citizens. This might seem to have the implication that Rawlsian projects at the domestic level are only slightly better than an insignificant distraction from the great moral questions of the day.

cosmopolitanism.<sup>26</sup> Though Rawls adopts the slogan that justice is “political not metaphysical,” his emphasis on fair terms of cooperation suggests a conception of distributive justice that could be applied at the sub-national or international levels as well as the national level. The difference principle with its concern for relative shares of goods produced through social cooperation seems fitting for a theory of distributive justice concerned with fair terms of economic and political cooperation. This creates some intuitive pressure to extend Rawlsian method if not Rawlsian principles to the institutional background of transnational economic cooperation. Anderson’s democratic equality, by contrast, is more explicitly political and relational in both approach and substantive principles. Democratic equality is concerned with the social and political relations between citizens. Distribution of goods is designed to provide the material conditions for political and material equality, not to provide the least advantaged with the greatest possible package of primary goods.

In the context of debates over global justice, democratic equality might have several advantages over the Rawlsian approach to distributive justice. Firstly, the Rawlsian formula of maximizing the life prospects of the most disadvantaged in a society is put under pressure when faced with proposals for international redistribution. Applying the Rawlsian formula internationally would destroy any Rawlsian social welfare state in all but the poorest nations. A compromise between redistribution at home and abroad would fail to justify inequalities by maximizing the prospects of the most disadvantaged at home or abroad.<sup>27</sup> By contrast, democratic equality suggests that domestic and international duties are not really in tension.

Democratic equality does not mandate that inequalities necessarily be justified by advantages to

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<sup>26</sup> See Anderson, Elizabeth S. “What is the Point of Equality?” 109 *Ethics* 287, 1999

<sup>27</sup> Not that this is necessarily a problem. However, Rawlsians committed to bright line rules for assessing justice might feel uncomfortable with balancing competing considerations in the way suggested by the compromise proposal. I suspect that this is a significant part of what is behind the search for some way to restrict the scope of distributive justice to the nation-state even in the face of increasingly important transnational economic ties.

the least well-off in the distributive scheme. Rather the least advantaged must merely have enough to participate as equal citizens. Obviously, what counts as enough will depend on a variety of factors including a society's aggregate level of wealth. Therefore it would seem to be the case that wealthy countries can arrange international institutions to benefit the global poor without defaulting on their obligations to less advantaged citizens at home. The least advantaged in more affluent societies may be entitled to receive more than the least advantaged in poorer societies because what is required for equal citizenship is far higher in the former. Yet it still might be the case that organizing international institutions to aim at providing the global poor with the resources required for equal citizenship in less affluent countries might be considerably greater than the humanitarian relief seen as morally obligatory by Blake and Risse.

Secondly, democratic equality provides a potentially more convincing explanation of why increased transnational economic and institutional ties do not create the same sort of duties of distributive justice that one owes to fellow citizens. If the purpose of democratic equality is not just to give everyone a fair product of a cooperative scheme but rather to secure a certain sort of egalitarian political and social relationship between citizens, then this latter rationale for redistribution will have different implications for foreigners who live in a different social and political context no matter how many economic and institutional ties one has to them.<sup>28</sup> Blake's rhetoric regarding membership in a coercive scheme on fair terms seems better suited to this conception of distributive justice, yet the substantive principles that he endorses are Rawlsian. As I have tried to suggest above, this disconnect creates difficulties for his argument. Unlike fair division of goods produced by a cooperative scheme, concern with the material conditions

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<sup>28</sup> Anderson explicitly states that the basic scheme of economic cooperation must be justified to workers who participate regardless of their citizenship or place of residence. See Anderson 321. However, what counts as an acceptable arrangement for a worker under democratic equality may depend on what level of resources is necessary for equal citizenship in their country.

necessary for political and social equality would explain why different distributive principles might be appropriate for people in different societies.

### Conclusion

I have tried to show that the objection from immigration is very damaging for the position that the grounds of distributive justice are coercive enforcement of private law and the scope is the nation-state. Coercive imposition of private law is a less plausible grounding for duties of distributive justice than cooperation or non-voluntary imposition of terms of cooperation. The picture of distributive justice that emerges from both Blake's and Sangiovanni's accounts is in tension with the traditional view of distributive justice as concerned at root with the terms of economic cooperation. The understandings of distributive justice that I have found most plausible all suggest that duties of distributive justice extend across national boundaries. The position I have argued for is consistent with any of the following:

- 1) The moral cosmopolitanism assumed by Blake, Risse, and Sangiovanni is mistaken. Partiality toward one's co-nationals is morally permissible if not morally obligatory and this extends to the sphere of distributive justice.
- 2) Rawlsian egalitarianism is mistaken in very significant ways and the difficulties Rawlsians have with questions of global justice are merely one symptom of this.
- 3) Though Blake, Risse and Sangiovanni are wrong to draw a bright line between national and global distributive justice, insofar as economic cooperation tends to be concentrated within rather than across national boundaries, some degree of preference for redistribution toward one's co-nationals is justified even within a cosmopolitan moral framework.
- 4) Though there is no deep moral reason for discharging the demands of distributive justice within rather than across national boundaries, the practical difficulties of improving the

lot of the global poor entails that wealthy states are justified in maintaining their large domestic social welfare expenditures rather than directing these resources to improve the lot of the global poor.<sup>29</sup>

I do not accept 1, but am sympathetic to 2, 3, and 4. That, however, is a subject for several other papers. Here I have tried merely to cast serious doubt on the approach taken by Blake and developed by Risse. Recognizing that the stark division between duties to citizens and non-citizens embodied in this approach is a dead-end will, I hope, clear the way for more nuanced theorizing about global distributive justice.

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<sup>29</sup> The difficulties with deploying the wealth of wealthy countries to improve the lot of the global poor are two-fold. The first problem is that we do not know terribly much about what actually works to increase long run wealth in poor countries. To the extent that we have some idea about how to do this, most of the solutions involve political and institutional problems that cannot easily be solved by simply throwing money at them. The second problem is that it is not a trivial matter to design an international aid bureaucracy that directs expenditures in a morally appropriate, rational manner. In practice, foreign aid tends to serve the political needs of powerful countries or the economic interests of domestic interests groups (i.e. various forms of “corporate welfare”). Making aid accountable to the needs of the global poor rather than to donor countries and the political influential is not an easy task. On both points, the history of development aid in the 20<sup>th</sup> century does not inspire confidence.