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# **Institutional Boundaries on the Scope of Justice**

**Does state coercion implies a global scope of justice?**

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## Chapter 1: Introduction

“Justice is the first virtue of institutions,” with these famous words John Rawls started his seminal work *A Theory of Justice* (1999). For Rawls the justice of a society is the consequence of the justice of its institutions. Without these institutions there would simply not be any justice, they are an existence condition of justice. This made the primary subject of justice the coherent set of institutions which together form a society’s basic structure (Rawls, 1999; 3). However, putting the primacy of justice within the basic structure also limited the scope of justice to that basic structure and made justice dependent upon its existence (Miller, 2011: 467). This was a soundly anticosmopolitan conclusion, and following the publishing of *A Theory of Justice* (1999), a vast and lasting debate ensued between cosmopolitan and anticosmopolitan philosophers regarding the domestic limitation on the scope of justice, also known as the basic structure debate. This thesis will inquire into the arguments put forward by both sides of the debate to establish their theoretical plausibility and establish which side has put forward the most convincing arguments. As the debate is too expansive to be encapsulated in a single thesis, the focus will be upon a particular branch which focused on the coerciveness of basic structures and their implications on the scope of justice. This subset of the debate came into existence following the critique posited by philosopher Arash Abizadeh, who in contrast with the Rawlsian anticosmopolitan conclusion, claimed that Rawls’s argument actually leads to the cosmopolitan conclusion that the scope of justice is global (2007: 358). This was a critique internal to Rawlsian logic and has posited a formidable obstacle for Rawlsian philosophers arguing for a domestic scope of justice, as will be shown in the thesis. In its essence, the Rawlsian argument on the scope of justice was deceptively simple. It is constructed as follows:

### **A1: Institutional anticosmopolitan basic structure argument (Abizadeh, 2007: 322):**

P1 - The primary subject of justice is society's basic structure.

P2 - A basic structure global in scope does not exist.

Therefore:

C1 - The scope of justice is not global.

As time progressed, Rawls’s reasoning became under heavy criticism from institutionalist cosmopolitans. One such criticism deserves particular attention for this thesis, Arash Abizadeh argued that Rawls mistakenly presupposes that the subject and scope of justice coincide, while this is not necessarily the case (2007: 323). He argued that premise P1 limits

the subject (institutions) of justice but not its scope (the range of persons whose behavior is governed as a consequence of considerations of justice) (Abizadeh, 2007: 323). Thus, although the subject of justice is a society's basic structure, P1 sets no limits on the range of persons governed by a basic structure and consequently fails to limit the scope of justice. It is only when the basic structure is perceived as a set of coercive institutions that the site and scope of justice coincide (Abizadeh, 2007: 321). But then it would need an additional claim telling us how coercion defines the scope of justice, a coercion claim if you will. And secondly, Abizadeh questioned in what way justice requires a basic structure, this can be in an existence, constitutive, or in an instrumental manner (2007: 324). It is only when a basic structure is seen as an existence condition of justice that a coercive understanding of the basic structure limits both the site and scope to that basic structure. When a basic structure is perceived as a constitutive or an instrumental condition of justice, the lack of a basic structure might burden us with the duty to assist in the establishment of a basic structure. Perceived as such, "justice demands the realization of those conditions" (2007, 324), it would require us to establish a basic structure where none exist and would lead to a cosmopolitan conclusion.

However, even when a basic structure is seen as an existence condition of justice and understood coercively, Abizadeh still argued that it failed to limit the scope of justice (2007: 320). For him a coercive global basic structure does exist because the interstate system of border control policies coerces individuals to refrain from entering a particular territory (Abizadeh, 2007: 358). This interlocking system potentially subjects a person to coercion, and as the scope of justice is defined by those subject to coercion, they should be included within its scope. Abizadeh's claim can be summarized as follows:

**A2: Institutional cosmopolitan basic structure argument:**

P1 - The primary subject of justice is society's basic structure.

P4 - A basic structure global in scope does exist.

Therefore:

C2 - The scope of justice is global.

Abizadeh appeared to have given good reasons why the scope of justice is global when following Rawlsian logic. However, like others before him, his argument was carefully scrutinized by philosophers from the opposing side. On the antic cosmopolitan side the contributions of Michael Blake (2002), Thomas Nagel (2005), David Miller (2009, 2010, & 2011), and Mathias Risse (2006) deserve special attention. Their claims can be summarized

by Blake's argument that "There is no ongoing coercion of the sort observed in the domestic arena in the international legal arena" (Blake, 2002: 280). Thus, although international institutions and other states might coerce foreigners, this is different from the sort exercised by the domestic basic structure and does not give rise to the demand for justification as domestic coercion does.

This leaves us with a philosophical problem centered on premises P2 and P4 and the subsequent conclusions regarding the scope of justice C1 and C2. A central theme in the debate is the demand for justification arising from coercion and whether all coercion requires justification in equal measure. Inquiring into the theoretical plausibility of either basic structure argument (A1 & A2) understood coercively requires a deeper understanding of what coercion entails. As such, ample attention will be paid to the way in which both sides of the debate define coercion. Solving the philosophical puzzle implies answering the main question; what is the scope of justice from an institutionalist cosmopolitan or anticosmopolitan position while perceiving the basic structure as being coercive in nature? As well as answering the sub-questions; (1) what arguments were put forward by both cosmopolitans and anticosmopolitans to constitute their arguments. And (2) which of the arguments formulated by either party in the debate is most convincing. The first part of the thesis will provide a summary introduction of Rawls's arguments regarding the primacy of the basic structure and how coercion can be limit the scope of justice. The second part will focus on the debate following Abizadeh's 2007 claim that a coercive global basic structure exists. Abizadeh, as will be shown, has put forward a sophisticated argument. Yet, although the debate might have subsided, this does not mean it has ended. By answering the above mentioned questions I will attempt to contribute to a further development of the global basic structure debate (understood coercively), as well as providing a philosophical argument against the existence of a global basic structure.

## Chapter 2: Why the basic structure of society?

The impact which *A Theory of Justice* (1999a) had cannot be underestimated, yet the critique that was leveled against the domestic limitation of the scope of justice appears cogent in hindsight. This section explores the argument that was initially developed by Rawls for limiting the scope of justice in *A Theory of Justice* (1999a), as well as his remarks on the nature of institutions in *Political Liberalism* (1993), as well as his later remarks on the scope of justice in *The Law of Peoples* (1999b). Rawls starts the development of his theory of justice by two stark delineations on the scope of justice; it is to be limited to the domestic basic structure of society, and the theory applies mainly to well-ordered societies (Rawls, 1999a: 7). It is thus to be applied to the specific form of institutions which constitute the basic structure of a society.

The reasons that motivated Rawls to choose for the basic structure as a means to define the scope of justice are unclear, but they can be distilled by looking at his remarks regarding the subject. Firstly, in *Political Liberalism* he states that the focus on society as closed is an abstraction, but this limitation helps to focus on "certain main questions free from distracting details" (1993: 12). Secondly the basic structure is unique due to "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation" (Rawls, 1999a: 6). Institutions are thus a fundamental factor that helps shape the lives of individuals living under them. He did acknowledge that the law of nations, a law governing justice between peoples, might have to be considered (1993: 12). However in *Law of Peoples* (1999b) his focus remained on peoples as the relevant institution rather than individuals. As such, "the ideal of a just world for Rawls would have to be the ideal of a world of internally just states" rather than a single world state (Nagel, 2005: 155).

Rawls provides inspiration to philosophers arguing for a coercive understanding of basic structures by claiming that "political power is always coercive power backed by the government's use of sanctions, for government alone has the authority to use force in upholding its laws" (1993: 136). The notion of coercion as component of law is of crucial importance, it is also known as the *Coercion Claim* (Abizadeh, 2010: 121). A state regularly subjects its inhabitants to coercion by virtue of its laws, but this begs the question whether this coercion can be justified to the coerced. The answer to this question can be short; it is found in the following principle:

*The Principle of Liberal Legitimacy* (Rawls, 1993: 137): “Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason”.

Thus, a citizen can be said to be legitimately coerced when the exercise of political power is done according to principles which the coerced would've chosen himself, and which are mandated by law. Rawls's principle is a good example of a hypothetical consent theory. Combined with the *Coercion Claim* this leads to *the Coercion Principle of Liberal Legitimacy*:

*The Coercion Principle of Liberal Legitimacy* (Abizadeh, 2010: 121): “Those subject to the state's laws have a right of democratic participation because such laws subject them to coercion.”

It should have become clear from the above that the Rawlsian limitation on the scope of justice stems from the particular moral relation between a citizen and its state, a shared institutional structure. It is due to the inescapability of a state's coercive directives why the primacy of justice lies within the domestic basic structure. It is a particular basic structure which coerces you, but it is justified because you are given the right of democratic participation in return. The argument amounts to the claim that those subject to coercion ought to be included within the scope of justice. Rawls has established an institutional antic cosmopolitan account of justice based on the coercive nature of institutions. His argument failed to convince cosmopolitan philosophers, as will be shown in the next chapter.

### **Chapter 3: The institutionalist antic cosmopolitan position and coercive institutions**

As was shown in the introduction, Abizadeh convincingly argued that Rawls's argument fails to limit the scope of justice without an additional claim (Abizadeh, 2007: 323). The *coercion principle of liberal legitimacy* constitutes such a claim, yet it requires further explanation. Why, for example, does coercion need to be justified? And how does state coercion differ from other sources of coercion? Secondly, Rawls appeared to perceive all political power as being coercive (1993: 136), yet this understanding is too vague, as laws are not coercive without enforcing institutions. How political power can be coercive requires an analysis of the articles written by Blake (2002) and Nagel (2005). This chapter focuses on the arguments developed by institutionalist antic cosmopolitans against a global scope of justice; it focuses on the differences between the domestic and the global basic structure, and on different forms of coercion.

One notable antic cosmopolitan was Michael Blake, who in the article "Distributive Justice, State Coercion, and Autonomy" (2002) explains us how state coercion differs from other forms of coercion. He does so by tying the notion of respect for autonomy to state coercion (Blake, 2002: 251 & 270 & 288). Like other philosophers writing from a liberal perspective, he emphasizes the human capacity for autonomous agency and prefers that all coercion is eliminated (2002: 267- 268). However, state coercion is a necessary form of coercion (Blake, 2002: 273), and if it cannot be eliminated then it ought to be justified. The root of his thinking stems from the *Autonomy Principle* (Blake, 2002: 267):

*Autonomy Principle:* All human beings have the moral entitlement to exist as autonomous agents, and therefore have entitlements to those circumstances and conditions under which this is possible.

Blake's formulation appears to perceive the autonomy principle as a right to autonomy, since the entitlement to autonomy is accompanied by a duty to enable those conditions, yet he refrains from calling it as such. To argue how coercion infringes upon individual autonomy Blake uses of the autonomy definition formulated by Joseph Raz, who claims that three conditions are required for autonomous action (Blake, 2002: 268-270 & Raz, 1986: 373). These are that (1) the particular individual must have the appropriate mental capabilities, that (2) there must be an adequate number of options to choose from, that (3) a choice must be independent, it must be free from manipulation and coercion by others. To this definition

Blake adds the notion that (4) autonomy can be infringed upon by altering the choices open to an individual regardless of the number of options (2002: 270). It should be intuitively clear how conditions 2 and 3 are infringed upon by a state's laws. They force an individual to behave in a particular way or remove some of the options that an individual might choose and thereby deny an individual some of his freedom as an autonomous agent. All states infringe upon the autonomy of their inhabitants on a regular basis, by exacting punishment on criminal offenders, or by taxing their inhabitants for a portion of their property. Yet, even while coercion infringes upon autonomy state coercion can be justified (Blake, 2002: 274). Blake's argument on the justification of coercive power can be formally represented as follows;

### **B1: Anticosmopolitan claim on justifiable coercion**

P5 - Individual autonomy is a value that is inconsistent with coercion

P6 - The state coerces and thereby infringes on individual autonomy

P7- An infringement on autonomy can be justified if based upon a principle of justice

Therefore:

C4 - State coercion can be justified if based on some principle of justice

The contradiction is that the state is both a hindrance and a constitutive condition for autonomous action (Blake, 2002: 265). This is because the state protects individuals from the invasion of their autonomy as well, it protects them against arbitrary coercion by others. When the previously mentioned *coercion principle of liberal legitimacy* (p. 6) is perceived in light of the impossibility of eliminating state coercion, the argument regarding justifiable coercion is complete. The principle referred to in P7 and C4 is the *coercion principle of liberal legitimacy*, which commonly entails the right of democratic participation. The argument allows liberal to argue that individuals coerce themselves, as they are given the right of participation and have chance to create the laws to which they are themselves subject.

But what about coercion executed by other agents, such as other basic structures or a global basic structure? Blake acknowledges the existence of a global basic structure which might be coercive in 'some' instances, but because "in the international arena, by contrast, no institution comparable to the state exists" this does not give rise to the same concerns of justice (Blake, 2002: 265). For Blake it is the coercive national legal system which requires justification because it is both necessary and imbued with great power (2002: 263), this does not apply to outsiders because they are not members of that state and thus are not subject to its laws. The global basic structure lacks the coercive capacity of the state, since there is no

world state which coerces individuals like the territorial state does (by virtue of its laws) and that as a consequence the scope of justice remains domestic. Blake does not dispute the existence of a global basic structure, but rather its capacity to coerce individuals directly. In his view global institutions coerce states rather than individuals. An individual is thus shielded from direct coercion by other basic structures by the domestic structure of his own society. This is not to say that coercion of individuals never happens by another basic structure or by a global basic structure. But if it occurs we ought to eliminate it rather than seek a justification (Blake, 2002: 280). This is the general approach taken by Blake, eliminate coercion if possible and justify if it cannot be removed because it is necessary. Since we cannot eliminate the state, because it enables autonomous living, we need to justify it (Blake, 2002: 265 & 282). To summarize the development of the antic cosmopolitan institutionalist position, Blake spelled his position very clearly:

“To insiders, the state says: Yes, we coerce you, but we do so in accordance with principles you could not reasonably reject. To outsiders, it says: We do not coerce you, and therefore do not apply our principles of liberal justice to you” (2002, 287).

In response to different criticisms that were leveled against Blake’s argument for a domestic scope of justice he has written a second article, titled; ‘Coercion and Egalitarian Justice’ (2011). Two assumptions in this article are fundamentally different from his earlier article (2002). Firstly, where in his previous article he spoke about the principle of respect for autonomy, autonomy is now ascribed the status of a right (2011: 569). This is an important departure from Raz, who argued against given autonomy the status of a right (1986: 247). And secondly, Blake now assumes that the institutions constituting the global basic structure are in fact coercive on a ‘regular’ basis (2011: 566). This raises the question how Blake would avoid the conclusion that the scope of justice is global. Blake’s answer to this question requires us to distinguish between different forms of coercive associations, between vertical and horizontal forms of coercion. With vertical coercion is meant that “The parties to be coerced set up an agent” and that “all those who participate in the process of deciding what that agent will do are, themselves, subject to the coercive power of that agent” (Blake, 2011: 566). The agent in this sense is to be understood as a domestic basic structure, and the parties as the inhabitants of the basic structure. The second form of coercion, horizontal coercion, entails that the parties to be coerced act as both “coercers and coerced” (Blake, 2011: 566). The parties involved set up a new organization and are free to join and leave. The signatory parties have to coerce each other to comply with the rules that were set up, without any

overarching structure. They are, so to say, coercing themselves in a manner equal to that of individuals who are members of a basic structure. This is the form of coercion that can be seen in the international arena (2011: 567). It can be seen in international treaty organizations such as the IMF, the World Bank, the UNHCR or several trade agreements. Thus defined, horizontal coercion does not directly touch the lives of individuals living in a particular basic structure. The coercion is shielded by their basic structure, which might be coerced but they themselves are not.

Blake is correct that most global institutions, like the International Monetary Fund (IMF), the United Nations, the Paris Climate Treaty, and all sort of trade agreements, do not directly affect individuals. There are however some global institutions that are mandated by their signatory members to coerce individuals. For example, the International Criminal Court (ICC) exacts criminal punishments on inhabitants of its members without mediation. And secondly, although indirectly, coercion still takes place. An individual is still affected by decisions taken by international organizations, because he is coerced by his national institutions to help repay IMF loans to his country for example, or because a trade agreement can put further demands on the quality of the products he manufactures. Should we justify, or eliminate, these organizations?

A second author can help distinguish state mandated coercion by international organization from domestic coercion and shed light on the way in which individuals are affected by horizontal coercion. According to Thomas Nagel (2005) global institutions are created for three types of purpose: “that of the protection of human rights, the provision of humanitarian aid, and the provision of global public goods that benefit everyone” (Nagel, 2005: 136). The proliferation of international organizations puts pressure on domestic basic structures because international organizations need to have some coercive power for their policies to be effective. As a consequence there appears to be an erosion of state sovereignty to the point where one might be tempted to think that the Rawlsian basic structure is already global in scope. Yet this is not the case, because contrary to the domestic basic structure, global institutions lack the coercive power of nation states (Nagel, 2005: 138). They may still coerce individuals, but this is indirectly done through the institution which “represent and bear primary responsibility for those individuals” (Nagel, 2005: 138). Coercion is thus filtered, and shielded, by the domestic basic structure of which an individual is a member. The essence of the argument formulated by Nagel lies in the claim on political legitimacy, and with that to legitimate coercive power, which states do make and international organization do not make.

Since international organizations make no claim to legitimacy, they do not pretend to act in the name of the people, and as such considerations of justice do not apply to them (Nagel, 2005: 140). It can be said that they are an additional force by assisting domestic basic structures in providing for justice. Coercion of individuals by a global basic structure can thus be justified in some cases because it helps domestic basic structures in providing for justice. While the domestic structures filter the coercion in order to ensure that is compliant with the *coercion principle of liberal legitimacy*. The domestic structure thus perceived would act as the coercing agent towards an individual; this would make the coercion justifiable as it entails an additional judgment regarding the legitimacy of the coercion. If the basic structure finds the demands of the international organizations to be inconsistent with its own principles of justice, it would not execute the demand. Nagel's contribution emphasizes the role of domestic basic structures as a safeguard against unlawful coercion, they filter and shield their own inhabitants from potential coercion, thereby ensuring the primacy of the domestic basic structure.

As should have become clear from this chapter the antic cosmopolitan argument for a domestic limitation on the scope of justice stems from the impact and necessity of the territorial state. The state requires coercive measures in order to shield individuals from coercion by others. This argument echoes earlier liberal philosophers, who argued for the necessity of the state based upon the perils of the state of nature. Coercion is inconsistent with autonomy and as such we should seek to eliminate it as much as possible. Blake argued that international coercion ought to be eliminated, but domestically coercion is a necessary aspect of law which can be justified (2011: 567). The scope of justifiable coercion limits the scope of justice, which firmly puts the scope and site of justice within the domestic basic structure. While antic cosmopolitans acknowledge that the global basic structure might act coercive towards individuals, this is either justifiable because it is filtered by the domestic basic structure or it needs to be eliminated. The arguments of Blake and Nagel make it plausible that the scope of justice is domestic. Yet Blake's claim (2002, 287) that domestic basic structures do not directly coerce outsiders has been disputed by Arash Abizadeh (2007 & 2010). The next chapter focuses on his rebuttal of the arguments formulated by Blake, Nagel, and Miller. It focuses on the issue of whether states really do not coerce outsiders.

#### **Chapter 4: The cosmopolitan response to the coercive basic structure argument**

Thomas Nagel and Michael Blake developed a coercion based argument for a limitation on the scope of justice. Yet their arguments were exposed to withering scrutiny by Arash Abizadeh (2007). This chapter focuses on his rebuttal and the later debate that ensued between Abizadeh (2009) and Miller (2010) regarding the coerciveness of immigration policies (2010). It focuses on Abizadeh's thesis that the regime of interstate border controls is coercive towards outsiders.

The antic cosmopolitan argument hinges on coercion as an instrument to limit the scope of justice. This is what made the coercion of outsiders an interesting case for Abizadeh. Because, if states do coerce foreigners by means of their immigration policy, this would have to be either justified or eliminated according to logic employed by Blake. A justification entails an enlargement of the scope of justice to the global level, and elimination of the coercive elements of border control policy would remove the sanction entailed within this aspect of law. Illegal migrants could no longer be expelled. The laws that were considered by Blake were criminal and private law in general, but what about the particular set of laws which constitute a nation's immigration policy? Could they possibly require a reconsideration of the antic cosmopolitan claims regarding the scope of justice?

This is a relevant question because states "use coercion against foreigners on a massive and ongoing basis to prevent them from entering their territory at will" (Abizadeh, 2007: 348-349). And a state, by coercing an individual to stay out of its territory, does "profoundly and pervasively affect a person's life chances" (Abizadeh, 2007: 350). Abizadeh states that Blake recognizes this contingency, that states coerce foreigners to refrain from entering their territory, but claims that this form of coercion is different from the sort exercised towards inhabitants and does not give rise to the same demand for justification (Blake in Abizadeh, 2007: 349). To be fair, Blake does not address immigration policies specifically, but rather argues that the set of laws which give rise to demand for redistributive justice only hold between individuals who are part of the same basic structure due to the inescapability of state coercion (2002: 280). The quote Abizadeh uses in this instance is where Blake addresses the coercive actions of international institutions, rather than coercion employed by other domestic basic structures by virtue of immigration policies.

Two possible answers could be given by antic cosmopolitans to rebut Abizadeh's thesis on border controls; firstly, that state coercion of inhabitants is different from that of foreigners

because only the former group is profoundly and pervasively affected by this basic structure (Abizadeh, 2007: 349). And secondly, like Blake has claimed, one can answer that a state does not coerce foreigners. Abizadeh finds both answers unconvincing, because the former answer can be disproven and the latter is empirically false (Abizadeh, 2007: 350). Regarding the first possible answer Abizadeh claims the following; if a state denies a would-be immigrant entry, it thereby affects a person's life and chances to prosper in a profound way (Abizadeh, 2007: 349). And indeed, one only has to skim a European newspaper to be burdened by tragic stories about persons and families who look for a better life in Europe; at the very least these individuals regard their life's prospects to be vastly better in Europe than they would be in Syria, Somalia, Eritrea or Pakistan. As such, it cannot be merely the pervasive impact which differentiates state coercion of inhabitants from foreigners, because an immigrant's life-prospects are pervasively impacted by border controls. The antic cosmopolitan argument requires would need an additional argument to differentiate state coercion of inhabitants to the coercion of foreigners.

Abizadeh suggests that the difference might stem from the distinction between *law-governed state coercion* and *lawless state coercion* (2007: 350). The former encapsulates justified coercion and is perfectly consistent with institutionalist reasoning, but the latter is more akin to a state's prerogative or rule by decree. When a state does coerce foreigners without subjecting the coercion to *the coercion principle of liberal legitimacy* it is *lawless state coercion* (Abizadeh, 2007: 350). When considering the justify-or-eliminate approach towards coercion employed by Blake, with the added notion that immigration policies are coercive to foreigners in the sense which normal laws are towards inhabitants, the policy ought to be justified to those whom are affected. If it is not justified then, according to Abizadeh, the antic cosmopolitan argument would boil down to the following claim:

"We not only coerce you, but we coerce you without subjecting our ongoing coercion to the constraints of a legal system and the rule of law, and therefore we have no responsibilities of comparative distributive justice to you." (2007: 351).

When formulated this way the antic cosmopolitan argument indeed appears illogical, however Abizadeh goes even further by stating that it is perverse, since it removes any pretense of accountability regarding the coercion of foreigners (Abizadeh, 2007: 352). For Abizadeh the coercive understanding of the basic structure implies that the scope of justice is global because of "the interstate system of border coercion and the economic regime it imposes"

(2007, 358). His argument poses a thorough indictment of the antic cosmopolitan position. If it is indeed coercion which defines the scope of justice, it seems arbitrary to limit the application of *the coercion principle of liberal legitimacy* to those organizations which make a claim to legitimacy like Nagel has done (2005: 140), or by denying that foreigners are coerced (Blake: 2002, 287). When following Blake's earlier treatment of coercion we would have to either justify it, entailing an enlargement of the scope of justice. Or it would have to be eliminated, implying the abolition of immigration policies. Both conclusions would not be very appealing to antic cosmopolitans. By introducing the particular instance of law which is immigration policy Abizadeh skillfully introduces another issue into the global basic structure debate, the democratic boundary problem. However, Abizadeh only distinguished between *law-governed* and *lawless* state coercion, between justified and unjustified coercion. This distinction appears to be too blunt a judgment tool to cover all instances of state coercion.

In a quest to tackle the democratic boundary problem, David Miller introduced a further refinement on the coerciveness of law, in this case between preventive laws and actual action-inducing coercion (2009: 220). Like others before him, Miller equates the scope of justice with the scope of coercion (2009: 218). However, he disputes Abizadeh's thesis on the coerciveness of border policy, because a border policy is not an action inducing coercive policy, but rather a preventive policy (Miller, 2009: 220). The key to understanding the difference is captured in the following quote:

“Coercion means that there is some course of action that the agent is forced to take; prevention means that some course of action that might otherwise have been available is now blocked” (Miller, 2009: 220).

Miller's definition perceives coercion as the sort which Grant Lamond dubbed action-inducing coercion, which means that an individual, by virtue of the coercive act, is forced into performing a certain action (Lamond, 2000: 47). At first glance, one could argue that as prevention entails the removal of one of the options open to an individual, it would still entail an infringement on the range of options to be chosen and thus infringe on an individual's autonomy. But this is not the case in Miller's conception of coercion. To properly explain the difference between prevention and coercion we have to return to the conditions for autonomous action. One of the conditions is that of independence in choice, one has to be able to choose freely from 'a range of options', Raz's third condition for autonomous action (Miller, 2010: 112). However for Miller removing one of the options does not compromise an

individual's independence to choose between the remaining options. It does affect the number of options but if enough are left open this does not pose an issue (Miller, 2010: 113). The crucial difference is that Miller defines coercion as an act of action-inducing coercion, intended make someone to do something, it makes the 'person coerced into an instrument of the coercers will', whereas prevention not necessarily do any such thing (Miller, 2009: 219; & 2010: 114). Preventive laws are thus not coercive in the sense that they force someone to do something. The result in the case of non-compliance is the same, actual coercion, but there's a difference between a law allowing one option and a law removing one option. The law forcing persons to drive on one side of the road allows one option, but an immigration policy merely removes one option. Miller's argument to differentiate prevention from coercion can be found in the following quote (2010: 117):

"Coercion requires intention and the preventing state intends only that he should not enter its own territory unauthorized, not that he should remain in his country of origin"

It is important to note that the above does not imply that preventive laws do not require justification, they still interfere in the set of options open to an individual, but since this it does not hamper autonomy like coercion does it, does not have to be democratic justification (Miller, 2010: 115). This assuming an immigrant still has a reasonable range of alternatives.

In the eyes of Miller, Abizadeh conflates actual coercion with hypothetical coercion (Miller, 2010: 115). A border policy does not coerce 'all' would-be immigrants, but only those who persist in their choice to enter a specific territory for others the threat of coercion remains hypothetical (2010: 116). The autonomy of foreigners who want to enter but who still have an adequate range of options open to them is not infringed upon, as such the preventive policy would not need to be justified to them. Prevention interferes with their freedom to choose, and that requires a justification. But Miller denies that their autonomy is compromised and that they have been coerced (2010: 117). This is because prevention does not subject a person to the will of another as coercion does, for Miller that is the crucial aspect of coercion which gives rise to the justificatory demand (2010: 117 - 118).

Abizadeh disagreed with these claims, and responded that if Miller remains committed to his argument that immigration policies are not coercive towards outsiders, then "instead of repelling my thesis about what democracy requires for borders, he has simply evacuated the terrain of democratic theory" (Abizadeh, 2010: 127 - 128). This a very strong claim, but based on Abizadeh's thesis that all whom are subject to coercion ought to be given the right of

democratic participation (*the coercion principle of liberal legitimacy*), it would indeed appear odd that this right should be withheld from a portion of those whom are coerced (2010: 122). Obviously he was not convinced by Miller's argument, and this stemmed from the way Miller construed his argument regarding preventive policies. In order to explain, this Abizadeh argues that laws coercive capacity stems not from forcing a single option upon an individual, but rather that law can be coercive in three ways:

“Its agents sometimes subject individuals to (1) non-communicative direct coercion (coercive acts); its laws subject individuals to (2) non-communicative legal coercion (in authorizing coercive acts); and (3) its laws subject individuals to communicative legal coercion (in threatening punitive harms)” (Abizadeh, 2010: 123).

In his earlier response Miller distinguished preventive policies from coercive policies. This distinction is irrelevant for Abizadeh, as both are instances of law and thus coercive in one of the above three ways. The root of laws coerciveness stems from its adoption (non-communicative legal coercion), which entails the legitimization of coercive action regardless of whether it's executed. It thereby induces pressure upon one's free will and thus infringes upon one's freedom to choose. In fact, construed this way it is not relevant how many alternatives are left, as all laws contain the above-mentioned forms of coercion (Abizadeh, 210: 123). For Abizadeh, laws are not coercive because they are carried out but because they authorize the conditional use of force (2010: 123). This claim regarding the justificatory burden arising as a consequence of a law's adoption will henceforth be known as the *adoption claim*.

Abizadeh blames Miller for making a conceptual error; the avoidable coercion contained in preventive policies still contains the threat of coercive interference. By not entering a territory an immigrant is still subjected to coercion, just not coerced in the physical sense. The difference between coercion and being subject to coercion is a relevant analytical distinction, because it significantly increases the range of actions which classify as coercive. As such, regardless of the degree in which laws infringe upon autonomy, they subject others to coercion and thus require justification. The key lies in the authorization of force, rather than measure of infringement on the option-scheme open to an individual.

Miller bases his argument regarding preventive policies largely upon an analogy to property laws, he argues that it is unclear how a law against unlawful entry in houses can be said to be coercive. It removes the legitimate entry to one house, but there are many options left to

choose. It is only when a burglar persists in his plan to enter a house that he will be coerced to refrain from executing that plan (Miller, 2010: 115). This analogy fits the way a migrant can attempt to unlawfully enter a territory (Miller, 2010: 117). The problem with using property laws as an example is that a lot of laws are equal in design to property laws; they burden individuals with a negative obligation to refrain from an action. Abizadeh questions whether this implies that all property laws containing negative obligations are exempted from the justificatory burden, or indeed all laws containing negative obligations (Abizadeh, 2010: 127). For Abizadeh the distinction between laws containing positive or negative obligations is irrelevant, as it is not the application of law but its formulation that needs to be justified (2010: 126 -127). And in the case of the burglar, this would mean that it is not the application of law that gives rise to the justificatory burden, but rather the formulation of the law against illegitimate entry.

This brings us back to Abizadeh's conclusion that if Miller commits to his thesis that preventive policies do not require democratic justification, he exempts a whole range of laws imposing negative obligations from *the coercion principle of liberal legitimacy* and thereby abandons democratic theory (2010: 128). Both agree that the threat of coercion contained in preventive policies reduces the freedom to choose if they fail to leave open an adequate range of options (Abizadeh, 2010: 125; & Miller, 2010: 115). But they disagree on the magnitude of the justificatory demand put upon preventive laws and the point at which the justificatory burden comes into play. To conclude this chapter I would like to state that Abizadeh has provided a compelling argument against the antic cosmopolitan claims. Against Blake, Abizadeh argued that the interlocking system of border controls forms a global basic structure akin to that of the domestic basic structure in its coerciveness. Secondly, against Nagel, he argues that since coercion defines the scope of justice, the additional claim to legitimacy removes some coercive measures from democratic oversight. And finally, against Miller's claim that preventive policies are not coercive, he pits the argument that it is not the *application* of a law that gives rise to the justificatory demand, but it is a the point of the *formulation* of a law where coercive actions are legitimized and thus needs to be justified. Although Abizadeh's argument is internally consistent with the argument used by institutionalist antic cosmopolitans, his conclusion appears overly demanding. *The coercion principle of liberal legitimacy* with the added notion of *the adoption claim* would imply that I am to be included in the scope of all basic structures around the world. It would mean that as all inhabitants of the globe are potentially coerced, and thus hypothetically subject to

coercion, all are owed a justification and should be included within the scope of justice (Risse, 2006: 680). However, I believe that the version of the institutionalist anticosmopolitan argument deserves more credit than Abizadeh is willing to give, and this will be shown in the next chapter.

## Chapter 5: Coercion and Autonomy

The relation between coercion and autonomy appears to be of fundamental importance in the debate, but it has been assumed without scrutiny thus far. The authors whose arguments were treated have all used the definition of autonomy as was developed by Joseph Raz. Yet they departed from his work in one important aspect, the importance which choice has in relation to autonomy. In this chapter I will argue that the importance of the *autonomy principle* is overstated. The focus on autonomy as ‘freedom from coercion’ has overstated the importance of autonomy in relation to another concept, that of self-authorship. This fixation on the *autonomy principle* allowed Abizadeh to reach his conclusion that being subject to coercion equals an autonomy infringement. I will return to Raz’s original argument regarding why it should not be given the status of a right in order to substitute the view of autonomy as ‘freedom from coercion,’ to autonomy as ‘self-authorship.’ Secondly, I will show that when Raz’s definition of autonomy is used instead of the *autonomy principle*, we can dispute Abizadeh’s conclusion that being subject to coercion by virtue of immigration policies equals an autonomy infringement. This will allow antic cosmopolitans to deny that the scope of justice is global.

I will start the chapter with some preliminary boundaries on the range of arguments to be considered. First, both Abizadeh and Blake are committed to the thesis that coercion always invades autonomy (Blake, 2002: 272) & (Abizadeh, 2008: 40), however Miller attempted to differentiate law in general from preventive law by claiming that the latter does not necessarily invade autonomy (2009: 113). The main disagreement was about whether immigration policies infringe upon condition 2 for autonomous action (p.7). Secondly, the version of the basic structure debate that is considered thus far rest upon the claim that coercion is wrong because it infringes upon autonomy. The claim that coercion is wrong because it is inconsistent with a certain moral value indicates that the debate centers around a moralized baseline account of coercion. The relevant moral baseline to decide whether an action counts as coercive can be found in *the autonomy principle* on p.7 (Blake, 2002: 267). The baseline is thus a situation where an individual is free from autonomy infringements by others. Thirdly, the focus is not on the coerciveness of laws in general but rather on the specific set of laws which form an immigration policy. Abizadeh’s sketches immigration policies as a set of unilaterally imposed policies of entry, movement, immigration, and naturalization which are designed to have coercive parts (Abizadeh, 2008: 37).

For Blake, coercion was necessarily inconsistent with autonomy (as was seen in P5). This was a departure from Joseph Raz's seminal work on autonomy (1986), who argued that one can exist in the presence of another (Raz, 1986: 408). Blake, in contrast with Raz, also promoted individual autonomy to the status of a right (Blake, 2011: 569). Raz was opposed this right because it would be too burdensome on others. He start with the assumption that claims that rights generate duties for others (Raz, 1986: 170 & 247), the right of one individual burdens another with the duty to provide for that right. I think it will be safe to assume that Blake shares this assumption. Raz specifies the conditions of entitlement to a right as follows (1986, 166).

X has a right: "if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty."

Joseph Raz refrained from attributing autonomy the status of right because it would be overly demanding if it were so. For him "the interest of one person cannot justify holding so many to be subject to potentially burdensome duties" (Raz, 1986: 247). The right to autonomy would burden others with duties which go beyond mere non-interference, beyond refraining for coercion. Instead they would have a duty to arrange the conditions required for autonomous living (Raz, 1986: 408). If we accept Abizadeh's argument on the coerciveness of immigration policies, and the *autonomy principle*, then all domestic basic structures in the world have a duty towards a particular individual to provide for him the conditions necessary for autonomous living (2007, 324). This would severely burden all domestic basic structures and appears overly demanding in Raz's terms.

Secondly, more importantly, and in direct contrast to Blake's *autonomy principle* (p.9), Raz warned against identifying autonomy as a right against coercion (1986, 207). Rather it should be seen as a derivate right to the right of freedom (seen as positive freedom) (1986, 408-409). Infringements on autonomy matter only inasmuch as they hamper others in their positive freedom to live a good life. Blake's continued emphasis on the *autonomy principle* obscures why autonomy matters. It matters because it is a constitutive condition for pursuing one's pervasive life goals. It is intrinsically valuable because it allows people to shape their lives to their own desires (Raz, 1986: 409). The notion of self-authorship of one's life is of fundamental importance in understanding why autonomy matters. It perceives the autonomous person as part author of his own life, a person who is able to make plans and to

realize them if he so desires. Put bluntly, “a person’s life is autonomous if it is too a considerable extent his own creation” (Raz, 1986: 408). It does not follow from this that an autonomous life is necessarily inconsistent with coercion. If one is coerced to drive on one side of the road this takes away one option, but his autonomy is not infringed upon because he is still able and capable to be the author of his own life. Likewise, my autonomy is not infringed upon if I happen to grow a strong desire into wrong-way driving, because I still have relevant options left. The *autonomy principle* fails to capture this essential importance of autonomy and thereby overstates the importance of coercion on autonomy. The differences between Raz and Blake have implications for what counts as a coercive act, because Raz perceives the moral baseline of an autonomous person differently. For Blake the expected moral baseline is a life free from autonomy infringements (Blake, 2002: 288). But for Raz the moral baseline would be a life where one can be the author of his own life, and one can still possess and realize that capacity in the presence of state coercion.

For Blake coercion necessarily infringes upon autonomy (P5), even though some forms are justifiable because they enable autonomy (2002: 263). In contrast with this position, perceived in Raz’s terms an autonomous person requires choices to be able to realize his life goals, these choices need to be both varied and adequate, they need to contain both short and long term option, and both pervasive and trivial choices (1986: 373-377). But this does not require the presence of any particular one (1986, 410). The number of options or their magnitude is not the overarching measure of autonomy infringements, these infringements are measured by how much the removal of an option hampers the capacity of an individual to be the author of his own life. The problem with Blake’s *autonomy principle* is summarized by Mattias Risse (2006: 680):

“If it is because of the autonomy principle that coercion requires justification, anything requires justification that constrains whether, or to what extent, people have a reasonable range of options to choose from”

Blake’s construal of the autonomy principle overstates the importance of choice in the capacity of an individual to live an autonomous life. If instead we perceive autonomy, as Raz does, as the capacity to be the author of one’s own life, the removal of certain options becomes less of an issue. As an individual is still able to live autonomously even if certain options are removed. Is this individual’s autonomy, all other things equal, infringed upon by being subject to coercion from other basic structures? Abizadeh would answer this question

positively, because a state removes an option which pervasively impacts an individual's life chances (p.13) & (Abizadeh, 2007: 348). But does a state really affect a person's life chances by denying him a resident permit as strongly as Abizadeh suggests? Consider the following three examples which will be used to show that only a person's life chances are pervasively impacted by immigration policies only in certain situations.

Example 1 - The just dad: Consider my father who required crutches to walk, he would sometimes jokingly threaten to hit me with those crutches if I did something wrong. My dad was just, as he only coerced me whenever I try to do something stupid like theft, vandalism, or bullying my sister. I also required my coercive dad as he prevented arbitrary bullying by my sister. And to make things easier for us he has written down all the rules that apply, voiced them to us, and allows us to vote on new rules every couple years. Beyond me developing an interest in bullying my sister or destroying our house I was free to develop my own desires, make plans, and be the author of my own life. This situation equals the normal circumstances of a person living his life in within a particular basic structure. There is coercion, but I am free to be the author of my own life. There are other dads, but I am free to move there as their houses are all open to whoever wants to enter. Yet that option is of trivial importance to me. If I were to stay in my basic structures some options would be removed, but these are justified because I am allowed to vote about them.

Example 2 – A world of just dads: Now consider a second example, the same as the above. But at one point I've decided that another dad, who unfortunately also walks on crutches but has a recently renovated house, would be a nicer father. I really want to move there but unfortunately the rooms are taken by the children of that particular father. He has told me to me that I cannot move there because his house is full. He thereby removed the option for me to migrate there legally, his threats are credible, and he has subjected me to coercion. I am less free than I was before I developed an interest in moving to another house, because one option grew enormously important. I cannot migrate, but am still able to create and execute plans in my own house.

Example 3 – A world with some just and some unjust dads: Now consider the same situation, but my dad is vehemently unjust. He denies me the ability to play soccer, forces me to work in the yard after school, and denies me my pocket money which he gives to my sister instead. On top of that he allows my sister to bully me, but hits me with his crutches every time I try to take revenge. After enduring my situation for a couple years I hear of another dad who acts

like the one in the first example. Convinced that my life's prospects are better there I decide to migrate. Would the receiving dad be justified to deny me entry into his house using the same argument as in the second example? I think not, because by denying me entry he pervasively impacts my life's prospects. He denies me the chance to be the author of my own life by denying me entry.

If we perceive autonomy in Blake's terms, as the freedom from external constraints, my autonomy is infringed upon in all three examples. Yet only in the first and second examples is this justified to me by the coercing agent, because I am given a right to vote in return. However, if we view autonomy as Raz does, then only the third example would count as coercive. In the second example I am autonomous and free, even in the presence of coercion by other basic structures. And if I want to migrate and denied entry, I would still be able to live freely and autonomously in my own basic structure. In the third example I would be denied that capacity by both my resident domestic structure and the structure I intend to migrate to, as such it would be viewed as coercive by both all authors.

If we accept Abizadeh's argument my autonomy is infringed in the second and third examples because I am subject to coercion, yet only in the third example are my life's chances pervasively impacted by this denial. My argument against Abizadeh is that his empirical premise against Blake is misconstrued (p.13) & (Abizadeh, 2007: 349 - 350), a person's life chances are not pervasively impacted by a strong desire to move somewhere under normal conditions (as in example 2). It is only in example 3, where the resident basic structure denies me my capacity to be the author of my own life, that a country would pervasively impact that my life's prospects by denying me a resident permit. But in example 3 I would be classified as a refugee rather than a migrant. Secondly, if Blake's *autonomy principle* is substituted by Raz's autonomy as self-authorship my autonomy is not infringed by the coercion from other basic structures (as in example 2), because I still possess the capacity and faculties for self-authorship. And thirdly, example 2 deliberately did not contain a world full of closed houses. We should not take the extreme examples of the immigration policy of Australia & (Baker & Nixon, 2017), or the United States proposed entry denial plan (Cave, 2017), and claim that the whole world consists of states harboring similar policies. It suffices to state that Abizadeh's sketch of immigration policies exaggerates the stringency of these policies and the number of states which have stringent immigration policies. But the exact nature of immigration policies and their stringency is beyond the scope of this thesis.

The option of migration might, as in example 2, someday be very important. But this is true of all things where I am motivated by a strong desire to be or do something. However, the removal of that option pervasively impacts my life only in the sense that I had a strong desire to migrate, but it not impact my life because I am denied the capacity to be the author of my own life in my resident basic structure. Of course any option might become of pervasive impact for a particular individual at some point. But to me this appears to be sheer choice fetishism, and to quote Onora O’Neil; “when decision becomes king there is little left to admire in its majesty” (2009, 39). The choice and quality of options, Raz’s second condition, is of importance only in relation to the value of self-authorship, and an individual is not hampered in that capacity by being subject to coercion from other basic structures. He is thus still subject to coercion, but it does not infringe upon his autonomy.

This brings us to the discussion between Miller and Abizadeh regarding the measure of autonomy infringement of preventive policies. To recall, Abizadeh claimed if a state denies a would-be immigrant entry, it thereby affects a person’s life and chances to prosper in a profound way (Abizadeh, 2007: 349). The three examples serve to dispute this claim, because an individual’s life chances are only profoundly impacted by entry-denial if he is also denied these chances in the country where he is migrating from. Example 2 shows that when autonomy is understood in Raz’s terms, under normal circumstances a person’s capacity and ability to be the author of his own life are not impacted severely enough by immigration policies to classify as an autonomy infringement. Yes an option is removed, but so to say, if you cannot be an actor in Hollywood you might still become one in Bollywood.

## Conclusion

The basic structure debate is wide and expansive, it covers several other debates. The first analogy that springs to mind is that of a philosophical jungle of arguments and viewpoints spanning forty years. Some of the topics which were touched by the debate are the democratic boundary problem, the justificatory demands of coercion, liberal and democratic thought, the moral arbitrariness of borders and foremost the issue of defining the scope of justice. This thesis attempted to contribute to the debate by identifying the key disputed issue in the coercive branch of the basic structure debate and focusing on a particular contested issue, the relation between coercion and autonomy, and between choice and autonomy in particular.

Blake's emphasis on the *autonomy principle* as a right, and on autonomy as 'freedom from coercion,' obscured why it matters. Autonomy matters because it enables a life worth living, but that can be so even in the presence of coercion. Raz's perception of autonomy as self-authorship has shown that one can be free to pursue certain life courses, even if others are excluded. If his argument is adopted then coercion does not necessarily infringe upon autonomy, and severing the link has allowed me to dispute that immigration policies infringe upon autonomy, even though they might be coercive. The measure of infringement is dependent upon the situation of the individual.

Disputing Abizadeh's conclusion does come at the price of lowering the *autonomy principle* from a right to a constitutive condition to freedom. And it alters the baseline of the expected course of events from a life free from coercion, to a life where one can be the author and executor of his own plan's and desires. That an individual might not be free to move somewhere does not mean that he is incapable to live a life worth living somewhere else, unless he is denied this capacity in his resident basic structure. However, I do not want to open my argument to a similar critique as the one which Abizadeh employed against Miller, that I am exempting a host of laws from the justificatory burden (p15) & (Abizadeh, 2010: 127 - 128). What I aimed to show was that under normal circumstances the autonomy infringement from foreign immigration policies is insignificant, because it does not hamper someone's capacity to be the author of his own life in his own basic structure.

I concede that the answer posed in this thesis is incomplete, as there are many more arguments to consider. The rebuttal of P5 and a different perception of autonomy have allowed me to dispute Abizadeh's conclusion, but it leaves room for other arguments regarding, for example, the coerciveness of the international property regime (Cavallero,

2009), the arbitrariness of boundaries (Beitz, 1975), or the problems with Raz's argument against a right to autonomy (Hassoun, 2011). As such I concede that the increased emphasis on autonomy as self-authorship will not end the debate, but it will not be due to an argument that immigration policies necessarily infringe upon autonomy and thus require justification.

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