

Michael Blake: *Justice, Migration, and Mercy*

Oxford University Press, Oxford, 2020, 266 pp, ISBN: 9780190879556.

The literature on migration in political philosophy is by now mature, and well-trodden argumentative paths map the contours of its central questions. This makes it all the more impressive that Michael Blake's *Justice, Migration and Mercy* manages to navigate those questions in a novel and genuinely distinctive way, as well as to chart out new routes for exploration in the terrain of debate. It will prove valuable to both students of migration in political philosophy, for the lucidity with which it approaches its central questions and relates them to contemporary migration politics (especially in the USA), and to partisans in the debates in which Blake engages, for the original perspective that it articulates and for Blake's thoughtful engagement with his interlocuters.

Justice, Migration and Mercy has two central aims. The first aim is to lay out the best case for the liberal state's right to exclude would-be immigrants. Blake's best case for the state's right to exclude, his 'jurisdictional' view, is fairly uncompromising. Aside from those whose human rights are under threat in their states of origin, few would-be immigrants have claims to admission at the bar of justice. It is tempered, however, by Blake's claim that the bar of justice is not the only standard that matters. Blake's second aim is to create space for concepts beyond justice, and in particular the concept of mercy, to illuminate moral discussions about migration. Though states which exercise their broad discretionary powers with respect to migrants in strict and self-interested ways may not be acting *unjustly*, they are certainly acting *unmercifully*. For Blake, the virtue of mercy is about what kind of people we want to be, rather than about the claims that other can make against us as a matter of right. These two concepts—jurisdiction and mercy—are at the centre of Blake's project, and it is worth examining each a little more closely.

Blake introduces his jurisdictional view after having surveyed and rejected a range of arguments in favour open borders (Chapter 2) and alternative defences of the state's right to exclude (Chapter 3). The common complaint that he raises against both defences of open borders and previous defences of the right to exclude is that that they pay insufficient attention to 'the fact of *jurisdiction*': the idea that those within a state's jurisdiction stand in a '*political* relationship, which involves the use of coercive legal rules imposed only within a particular territorial space' (33). The world is divided up into states, and each state is charged with the protection and fulfilment of the rights of those within its jurisdiction. Beyond their borders, states are only required not to interfere with the rights of others, or at most to step in and protect the basic human rights of those whose states have failed them. In Chapter 4, Blake leverages this claim about the structure of rights protection to argue for a right to exclude. By entering into another state, the immigrant puts themselves under the jurisdiction of that state. In doing so, they 'act to impose a set of obligations upon that jurisdiction's residents' (79). Regardless of whether or not they are costly, these obligations curtail the freedom of current residents by obliging them to use the institutions of the state to protect and fulfil the rights of immigrants. According to Blake, 'we have

a presumptive right to be free from others imposing obligations on us without our consent' (74). This provides the conceptual core of his defence of the right to exclude: the right to exclude protects existing residents' rights against having obligations imposed upon them by others without their consent.

It is a virtue of Blake's account that it depends on relatively thin and politically liberal ideas about autonomy, the justification of coercive force, and the state's role in guaranteeing the civil and human rights of its members. It makes no appeal to controversial commitments about the value of nationality, nor to empirically thorny claims about the effects of immigration on the domestic labour market or support for redistribution. Its closest relative is perhaps Christopher H. Wellman's 'freedom of association' defence of the state's right to exclude, as Blake recognises (64–66), but it avoids the pitfalls of implausibly analogising immigration to personal forms of association like marriages and clubs. All of this makes it a worthy opponent with which those who are sceptical of the state's right to exclude will need to contend.

One claim against which Blake's opponents may want to push back against is the claim that the presumptive right to be free from having obligations imposed on us is sufficient to ground a *unilateral* right to exclude on the part of the state. As Blake himself notes, the right to be free from having obligations imposed upon oneself is only presumptive, and there may be 'many circumstances' in which we are 'duty-bound to acquire a new obligation' (74). This makes his claim that our freedom not to have obligation imposed upon us can ground a unilateral right to exclude appear too strong. When new houses are built on the other side of the park next to which I live, I acquire obligations to share the common space fairly with the newcomers. But we do not ordinarily think that this gives me and my existing neighbours the right to exclude would-be newcomers to the neighbourhood. My would-be neighbours also have important interests which may be served by moving to the neighbourhood, which should at least be taken into consideration (even if they do not ultimately provide sufficient justification to impose new obligations upon me and my neighbours). At most, me and my neighbours appear to have a claim to have our interests fairly represented in more general decisions about where, when, and how new housing is built. We do not tend to think that ours are the only interests that should count or that we should have the power to unilaterally decide over new admissions. It is not obvious why we should not say something similar about immigration policy. If this is right, then then it is not clear why the state should have the power to make decisions unilaterally on matters of admission, rather than, say, such decisions being made through a multilateral system of rules which fairly represents the different interests at stake in the context of immigration.

Blake's jurisdictional view, though, is an elegant approach to the state's right to exclude. He spends several chapters unpacking its implications for a range of more specific debates about refugeehood, selecting amongst immigrants for discretionary admission, and the claims of family reunification and the undocumented. Chapter 5 presents a 'two-tiered' account of refugeehood (115), according to which those whose human rights are unfulfilled in their state of origin are immune from exclusion at the border, whilst a smaller subset of this group – victims of state persecution – have a

positive right to protection, including through the use of coercive force in their defence. Perhaps the most interesting part of this chapter is Blake's discussion of carrier sanctions (100–103, 115–116). Against those who view carrier sanctions as an extension and privatisation of the state's coercive enforcement of its border abroad, Blake argues that carrier sanctions are not themselves coercive. In some cases, though, we can explain their wrongfulness by reference to the fact that those who are fleeing are entitled to positive assistance, which can include a duty on the part of states '*to start providing carriers*' (115).

When it comes to discretionary admissions, Blake's view is that *if* the state chooses to admit other would-be immigrants, then it must select them in ways which are consistent with the ideal of moral equality. This means that the principles on the basis of which it makes decisions must be ones that the would-be immigrant could accept without also accepting their own moral inferiority (121). Practically, this amounts to permitting selection by skill, but not according to race or religion. When it comes to the undocumented, Blake takes a fairly hard line. As long as they have left circumstances in which they were able to make a fully voluntary choice to migrate (though, as Blake recognises, in many cases they will not have done so), the undocumented can be rightfully deported – no matter how deep the roots that they have put down in their new environment have grown. In making the choice to migrate without permission or to overstay a visa, they have simply made a risky bet, and if that bet does not pay off then they should not be shielded from the consequences (152). Blake's view also makes little space for claims of family reunification, except where they are a matter of dependency (159). Where family members' claims to admission are made on the basis of affection, they are no stronger than those made by friends, and the liberal state should not treat them as special from the standpoint of justice (161).

These aspects of Blake's view will strike many readers as rather cold. Indeed, Blake recognises that many readers will see aspects of his view as 'heartless' (163). His response is that justice is not about avoiding heartlessness – this, instead, is the job of *mercy*. Mercy, for Blake, is a matter of 'not giving someone the harsh treatment we are permitted in justice to provide them, out of moral concern for the effects of that treatment upon the recipient of that harsh treatment' (189). Mercy demands of us that we recognise the humanity of those who are vulnerable to our power, and provides us with moral reasons to 'work for the success of the lives of other people – even when those other people could not claim injustice, were we to refrain from helping' (189–190). The concept of mercy provides us with a second basis upon which to morally evaluate immigration policy, and Blake sees contemporary US immigration politics as exhibiting a profound failure of mercy (220–223).

Blake spends some time in Chapter 9 unpacking the concept of mercy and defending its place in liberal political theory against the accusation that it is inappropriately sectarian. He aims to defend mercy's compatibility with liberal politics by showing that it can be endorsed from the standpoint of a number of comprehensive views, including Christian ethics, the ethics of care, and Kantian ethics (197–204). Of course, each of these comprehensive views is likely to contain within it a somewhat different conception of mercy, but Blake only seeks to appeal to a relatively thin conception of mercy which he

takes to be widely shareable (though his later discussions of mercy do sometimes have a distinctively Kantian flavour). The state, Blake argues, should act mercifully both because it is kind of agent that is the legitimate object of moral demands and because in doing so it models the virtue of mercy for its citizens (204–209). The state has a duty to act mercifully, but the duties that issue from mercy are imperfect and, unlike the demands of justice, they do not provide possible beneficiaries with grounds for complaint when they go unfulfilled (215).

Mercy moderates many of the conclusions that Blake draws on the basis of justice earlier in the book. ‘Positive mercy’ can provide the state with good reasons to use its discretion to admit those whose plans would be furthered by admission into its territory (212–214). ‘Negative mercy’ gives us good reasons to provide amnesty for the undocumented who have constructed lives in the state (215–217). And it is legitimate for the reunification of spouses, rather than friends, to be a ‘site in which we might choose to be merciful’ (218). The conclusions Blake draws on the basis of mercy are likely to be more palatable to those who are critical of his jurisdictional view of the requirements of justice in migration. But the foundations upon which those conclusions rest are likely to prove more controversial. Two concerns about mercy as a basis for a moral theory of migration warrant mentioning.

The first concern is that the concept of mercy appears to instantiate objectionable relationships between existing residents and migrants. Blake gets at this problem through a discussion of expecting gratitude from immigrants, in which he seeks to assuage concerns that this expectation is perverse by pointing out that gratitude must be at most temporary and that all it may require is adherence to the norms and laws of the political community (193–195). But the fact that gratitude need not be onerous appears to miss a deeper concern. The expectation of gratitude is only a symptom of a broader social relationship between existing residents and immigrants, in which existing residents holding power over immigrants that they can wield at their discretion. When we treat others as recipients of our beneficence, we do not treat them as equal moral agents with the standing to demand that which we grant to them. Instead, we accept our right to hold power over them, and expect displays of gratitude when we restrain ourselves in exercising that power. Might it not be better for us not to hold that power at all?

The second concern is about the role of mercy in combatting injustice. Blake’s appeal to mercy often appears to stem from his observation of the cruelty and inhumanity of the Trump Administration’s approach to migration. But as Blake recognises, much of what he objects to can be straightforwardly condemned as unjust (221). He takes mercy to have the power to ‘motivate rightful policy in an increasingly nativist and hostile political community’ (9). It is not clear, however, why we should expect exhortations to be merciful to be more motivating than the claims made in the language of justice by the oppressed. In an earlier discussion of what Blake calls the ‘Bigot’s Veto’ (136–142), he admits that publics in Western liberal democracies are unlikely to swallow his proposals based on justice, and raises the spectre of acceding to injustice in migration in the short term in order to preserve the stability of justice-promoting political institutions in the long term. Given that mercy requires *more* of us than

justice, on his view, it is unclear why we should expect mercy to be able to combat the tendency towards nativism that we are witnessing in migration politics.

The concept of mercy raises concerns, but it also creates fruitful avenues for exploration in debates about the morality of migration. Blake should be commended for expanding the moral vocabulary that we can bring to bear on the topic and for opening up new lines of inquiry with which other theorists must now wrestle. *Justice, Migration and Mercy* is a valuable and original contribution to the literature on migration in political theory, which will undoubtedly invigorate both old and new debates in the political philosophy of migration.