

# Justifying Refugee Rights to Family Reunification

## Handout for IVR 2019: Dignity, Democracy, Diversity University of Lucerne, Switzerland.

*Please do not cite or circulate without permission.*

### §1 Introduction

- Currently, states exercise discretion over immigration – but most states look more favorably on applications from family members of existing citizens
  - There is a growing literature on what (if anything) might justify family-based immigration exceptions for citizens and permanent residents
  - But little has been said about the family reunion rights of refugees and children
  - In this paper, I aim to fill this gap in the literature
- 

### §2 The Existing Literature

#### **2.1 Matthew Lister: Freedom of Association**

- States have duties to create family-based immigration exceptions because they have duties to respect the rights of *existing* citizens to freedom of association
- The immigration exceptions are for families only because families are a particularly *intimate* kind of association, and families need to live in close proximity to function normally
- Eligibility depends on the ‘common conception’ of family in the receiving state
- Financial conditions on family immigration are acceptable, because they protect reciprocity among citizens

#### **2.2 Luara Ferracioli: Valuable and Irreplaceable Relationships**

- 3 conditions a relationship must satisfy in order to generate a claim to an immigration exception:
  - The relationship must be valued by the citizen who partakes in it
  - This type of relationship must be taken to be valuable by society at large
  - The relationship must be irreplaceable
- Her claim: relationships other than family also satisfy these conditions, so liberal states must either extend immigration exceptions or remove them completely
- I disagree – following Lister, policies only need to be responsive to ‘typical’ cases

#### **2.3 Caleb Yong and Sarah Song: Caring Relationships**

- Families are valuable because they serve a caregiving function
- Following White: intimate associations involve regular face-to-face contact and have companionship, mutual love and care as a goal
- Following Brake: families provide both material and attitudinal care
- Upshot: immigration-exceptions should be created for other functionally caring relationships, not just families

---

### §3 Extending to Refugees

#### 3.1 Stronger Duties

- In the ‘normal’ immigration case, the rights of the citizen generate the immigration exception
- But for refugees, states should also take the family members’ interests into account, because their *human right* to family life was violated when their home state made it impossible for the refugee family member to continue to live with them – and the international community has obligations to pick up after human rights violations
- Other considerations: refugees, unlike migrants are forced apart; family reunion may facilitate integration

#### 3.2 Broader Rights

- Some refugees come from cultures with more expansive conceptions of the family
- Problem: Lister argues that the ‘common conception’ of the family in the *receiving* state should determine who is eligible for family reunion
- But policies should accommodate minorities – at least when they are sufficiently large and/or have a particularly strong moral claim to being accommodated
- Refugees have a strong moral claim to being accommodated because they have been forced into family separation
- Other relevant considerations: extended family of refugees satisfy both Ferracioli, and Song & Yong’s, conditions

#### 3.3 Financial Conditions

- Many refugees have few financial resources
  - Problem: Lister says financial conditions on family reunion may be justified
  - Reason to doubt this even in the “normal” immigration case: freedom of association is a basic liberty, and can only be limited by other basic liberties, but it’s unclear that family reunion without financial conditions will threaten other basic liberties
  - Even stronger reasons for refugees: they are granted humanitarian protection, so are differently situated than ‘ordinary’ migrants, and family reunion would be practically inaccessible for many if conditions were put in place
- 

### §4 Extending to Refugee Children

#### 4.1 Distinctive Value of the Family for Children

- Following Brighouse & Swift, and Liao: children have urgent developmental needs, and continuous, intimate relationships with a small number of caregiver(s) are essential for ensuring these developmental needs are fulfilled
- E.g. because caregivers protect children’s welfare, enable them to become fully autonomous, to cultivate the moral powers, etc.

#### 4.2 Freedom of Association

- Might be objected that the argument from 4.1 doesn't show that children have *stronger* claims to family reunion – only different claims – because for these claims to be stronger, children would need to also have the freedom of association rights that adults have
- But there are reasons to think children have freedom of association rights – e.g. because freedom of association (particularly in the family) assists with the cultivation of moral powers

#### 4.3 Intrinsic Value of a Happy Childhood

- Finally, there is intrinsic value in having a happy childhood – and there are some goods only children may be able to experience (e.g. spontaneous joy)
- Refugee children may already face barriers to enjoying their childhood
- Host states have duties to remedy harms caused by persecution – so again, duties to reunite refugee children with their families are stronger

---

#### **§5 Conclusion: Policy Recommendations**

- Family immigration from 'ordinary' citizens and residents should not crowd out refugee family reunification – if anything, refugees (and especially refugee children) should have priority
- States should remove any financial conditions on refugee family reunion
- Refugee-hosting countries with narrow conceptions of the family should allow refugees from cultures with more expansive conceptions to reunite with their extended family (where appropriate)
- Most importantly: refugee children must have the right to reunite with their families