The Right to Family Unification for Refugees

Eilidh Beaton

This is a pre-publication draft. Please cite the published version, available here: https://doi.org/10.5840/soctheorpract202332178

Abstract: A handful of scholars have offered explanations for why states with otherwise restrictive immigration laws should relax their demands for people applying to immigrate for family reasons, but much less has been said about the family unification rights of refugees. This paper extends this existing discussion on family-based immigration to refugees, arguing that: (1) states have stronger duties to reunite refugee families; (2) some refugees should be entitled to reunite with "extended" family; (3) refugee family reunion should not be subject to financial conditions; and (4) the right to family reunion is especially strong for refugee children.

Keywords: refugee, migration, family, reunification, human rights, children.

§1 Introduction

The value of family life is recognized in a number of international human rights instruments. The Universal Declaration for Human Rights affirms that the family, as "the natural and fundamental group unit of society," has a right to state protection and assistance (UDHR 1948: article 16).[1] In line with this, the signatories of the 1951 Refugee Convention unanimously recommended that governments protect refugee families and maintain refugee family unity (UNHCR 1951). This right extends to children as well as adults: the Convention on the Rights of the Child declares that child-sponsored applications for family reunification should be dealt with by State Parties "in a positive,

[1] This principle is re-affirmed in article 23(1) of the binding ICCPR and article 10(1) of the ICESCR (UNGA 1966a and 1966b).

humane and expeditious manner" and requires that State Parties assist unaccompanied child refugees to reunite with their families (UNGA 1989: articles 10, 22).

In line with these recommendations, even states with otherwise exclusionary immigration laws generally create exceptions for the family members of citizens and permanent residents. Similarly, many refugee-hosting countries grant adult refugees the right to apply for their spouse and minor children to join them. In recent years, scholars have turned their attention to the normative justification for the right to family reunion in the former case.[2] Perhaps most significantly, Matthew Lister, Luara Ferracioli, Caleb Yong, and Sarah Song have each offered accounts explaining why it is appropriate for states to grant special immigration rights to people who have strong relationships with existing members. Their analyses shed significant light on the reasons why states ought to make immigration exceptions for the family members of adult citizens and permanent residents. However, they say much less about the rights of refugees, and particularly the rights of refugee children, to reunite with their families in their country of asylum. A discussion of the normative grounds for these rights is therefore urgently needed, not least because the family reunion rights of refugees—people who have not moved voluntarily, but have been forcibly displaced from their homes—are currently more perilous than family reunion rights of non-refugee citizens and immigrants. In order to properly understand these rights, effectively defend them, and theorize on related issues, it is imperative that we first be clear about the grounds and scope of the rights to family reunion for refugees, and the ways in which refugee rights to family reunion might be different from those of non-refugee residents and citizens.

[2] The terms "reunion," "unification," and "reunification" will be used interchangeably throughout this paper to refer to the process by which separated family members are reunited (or, in the case of separated family members and infants born after separation, united for the first time). When I defend the "right" to family reunion/unification/reunification, I mean to defend a moral right to family reunion which (for the reasons outlined in this paper) should also be recognized in law. When I talk of "granting", "denying", "extending" etc. family reunion rights, I am referring to the extent to which the relevant moral rights are reflected in law.

In this paper, I will address this gap in the literature by extending the existing discussion on family unification to identify the grounds and scope of family reunion rights for refugee adults and children.[3] Ultimately, I will argue that states have stronger duties to reunite refugees with their families, especially when those refugees are children; that refugee family reunion rights are sometimes broader than the rights of "ordinary" citizens and permanent residents; and that fulfillment of refugee family reunion rights should not be subject to financial conditions. Of course, this argument for a duty to reunite families separated through no fault of the host state will entail that it is clearly unjust for a state to actively separate refugee families, as immigration personnel have been doing in recent years at the US-Mexico border.

The paper will proceed as follows. In §2, I will outline Lister, Ferracioli, Yong, and Song's accounts of what grounds the right to family-based immigration in non-refugee cases. In §3, I will argue that these considerations also apply for refugees, and that additional features of the refugee experience suggest that states' duties to reunite refugee families are stronger and more demanding. In §4, I will extend the discussion again to refugee children, arguing that the family reunification rights of refugee children should receive even higher priority due to the crucial role a continuous family unit plays in a child's development. §5 concludes the paper and offers some specific recommendations for policy reform.

As a preliminary matter, I should make clear that the term "family reunification" refers specifically to the right of non-nationals to enter another state in order to reside with their family members (IOM 2019: 72). The term does not encompass all issues of family unity in migration and displacement. Additionally, I should also be clear that the following argument will take two

[3] To further clarify: the aim of this paper is to identify the nature of the family reunion rights refugees should be granted as a matter of justice. The primary targets of critique in this paper are affluent, self-proclaimed liberal states, since these states tend to have strict immigration laws which create barriers to entry for the family members of refugees, and they have the resources and institutional power to implement exceptions to these laws for purposes of refugee family reunion, but currently fail to do so. Of course, since the majority of the world's refugees are hosted in developing countries, this leaves questions about family unity for refugees in these states open for future work.

controversial assumptions for granted. First, I will assume that we live in a world in which states have the right to control their borders and exercise discretion over immigration policy. I make this assumption not necessarily because I agree that states have such a right, but rather because we live in a world where states are assumed to have this right, and this seems unlikely to change any time soon. In this context, it is practically worthwhile to work within the bounds of this assumption to identify cases where there are particularly strong reasons to grant immigration exceptions.[4] Second, for the purposes of this paper I will assume that there is a clear, morally-salient distinction between refugees and non-refugee immigrants. In particular, I will assume that non-refugee immigrants can live safely in their country of nationality and have simply chosen to move elsewhere, whereas refugees must move elsewhere in order to be safe. I make this assumption for the sake of ease of evaluation, not because I agree that the existing definition of a refugee in international law currently captures this moral distinction.[5]

§2 Three Arguments for Family Immigration Rights

There are two circumstances in which a non-refugee citizen or permanent resident might need to apply for family reunion. First, an individual who married a citizen of another state might apply for family unification because they would like their spouse to join them in their country of residence. Second, an immigrant who initially moved alone might apply for their family members to join them in their new country of residence. In this section, I will outline three different accounts of the justification for the right to family reunion in these cases—that is, the reasons why family ties

[4] Additionally, a framework structured around a demand for open borders would render a justification for family reunion rights (and, indeed, the right to refuge) superfluous. For an influential defense of open borders, see Carens, 1987.
[5] Under the 1951 Refugee Convention, to be eligible for refugee status an individual must be outside of their country of nationality or habitual residence and have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. (UNHCR 1951 & 1967: 14). For brevity, I will use the term "persecution" throughout this paper as a placeholder to refer to the harms refugees flee, but my use of this term should not be taken as evidence that I endorse the existing definition of refugeehood. For my own view of the proper scope of the right to refuge in international law, see Beaton 2020a and 2020b.

generate a moral entitlement to bypass the standard, more demanding immigration requirements. Each of these three accounts contain insights that will be valuable for developing an account of the family reunification rights of refugee adults and children in §3 and §4.

2.1 Matthew Lister: Family and Freedom of Association

Matthew Lister has argued that family-based immigration exceptions are justified by the right to freedom of association (Lister 2010: 721). The right to form and maintain a family, he argues, is a particularly important sub-branch of this right because the family is a very intimate association, and the more intimate the association, the fewer the restrictions a liberal state can justifiably impose upon it (Lister 2010: 723). For this reason, even those who believe that states can exclude outsiders because they have association rights of their own must accept that the association rights of the more intimate family unit should generally take priority (Lister 2010: 728–729).[6] This also enables Lister to explain why states must prioritize family immigration above immigration for employment purposes, even when this policy is not the most economically beneficial for the state (Lister 2010: 726). This is because freedom of association is a fundamental liberty, so denials of family-based immigration are only justified when necessary to preserve other basic liberties—not merely for financial gain.

Importantly, for Lister, families are the *only* type of association sufficiently intimate to generate a right to immigrate. Of course, individuals have a right to associate in other close relationships like friendships, and Lister accepts that these intimate associations might generate weaker rights—for instance, to temporary visitation—where this is necessary for the association to flourish. However, Lister argues that family associations uniquely generate immigration exceptions because, unlike other intimate associations, families almost always need to live in close physical proximity for their members' lives to be lived "in a satisfactory way" (Lister 2010: 729).

[6] For freedom of association arguments for states' right to exclude, see Walzer 1983, and Wellman 2008.

On Lister's view, states must create family-based immigration exceptions only because they must respect the rights of *existing* members to associate in the family (Lister 2010: 720). This feature of his argument is also important for establishing the priority of family-based immigration: because it is not the interests of the outsiders who wish to enter that grounds the exception, prioritizing family-based immigration is justified even though some individuals applying to enter for other reasons may have stronger claims to entry. Additionally, Lister claims that the fact that family reunion rights are grounded in the association rights of existing members has significance for determining which family relationships should generate an immigration exception. Individuals, Lister argues, must be allowed to reunite with those family members deemed part of the core family unit according to the "common conception" of the family in the *receiving* state (Lister 2010: 742). In practice, this means that all states should allow residents to reunite with at least their spouse and minor children, and states with broader cultural conceptions of the family may be required to allow citizens to reunite with extended family members too—like grandparents, siblings, or cousins.

Although Lister argues that families should be allowed to reunite across borders, he leaves space for family reunion rights to come with financial conditions. In particular, he argues that because the right to family unification is owed to existing members of the state, it must be implemented in a way that all other members could reasonably accept (Lister 2010: 740). So, if we accept that reciprocity among citizens is needed for domestic justice, then family-based immigration can be conditional on income if an unconditional immigration exception would make others in the state materially worse-off. For this reason, Lister argues that existing policies which make reunification eligibility conditional on the citizen's ability to prove that the incoming family member(s) would not be financially dependent on the state are permissible.

Overall, Lister's insight that the right to family reunification can be understood in terms of the right to freedom of association is helpful. However, his reasons for limiting immigration

exceptions to only family associations are less clear. Recall that, for Lister, families uniquely have this right because they are especially intimate associations, and because "close physical proximity is an important, even essential aspect" of association in the family (Lister 2010: 723, 737). While this latter condition offers a clear standard for assessment, the former is a little more vague—what, exactly, makes an association "intimate," and could a non-family relationship could also be intimate in this way? To gain some insight here, it will be instructive to consider the work of other scholars who endorse alternative accounts of relationship-based exceptions to immigration rules.

2.2 Which Relationships Count?: Luara Ferracioli on Value and Irreplaceability

Luara Ferracioli has also discussed the justification for family-based immigration exceptions. Unlike Lister, her goal is not to defend these rights from the bottom up—she agrees with Lister's assessment that relationship-based reunification schemes are justified at least partly by freedom of association (Ferracioli 2016: 555). Rather, her goal is to identify what makes *family* relationships distinctively important, such that liberal partialists can consistently claim that states have duties to create immigration exceptions for family but not for other close relations. Ferracoli is not convinced by Lister's claim that widespread agreement about the value of the family in liberal societies is enough to do this work. Even if it is descriptively true that most ordinary citizens value family relationships, she argues, normative justification is still needed to show that it would be appropriate for a *liberal* state—which must remain neutral among reasonable comprehensive conceptions of the good—to create immigration exceptions for family relationships alone (Ferracioli 2016: 558).

Ferracioli begins by identifying the features of family relationships that are sufficiently morally neutral to justify a relationship-based reunification claim against a liberal state. She settles on three conditions:

1. The relationship, R, must be taken to be valuable by the citizen who participates in it
2. Relationships of type R must be taken to be valuable by the society at large
3. R must be irreplaceable (Ferracioli 2016: 567).

The first of these conditions appeals to the intuitive idea that exceptions to immigration rules should only be made for relationships that are actually deeply valued. After all, we are working under the assumption that states have a general right to exclude outsiders—shallow relationships would have insufficient value to override this right. On Ferracioli's view, a relationship is "deeply valued" by an individual if it gives meaning to their life—if it forms "a significant part of their overall conception of the good"—and is such that being deprived of close physical proximity to the valued individual would force the valuer to compromise on a significant part of their conception of the good (Ferracioli 2016: 562–3).

The second condition is included to explain why the liberal state should acknowledge the value of this type of relationship when creating immigration policy, even if doing so would not be economically optimal. The explanation, she argues, is that relationship-types are politically valuable if citizens who affirm different conceptions of the good could have objective reasons to recognize their value, even if they do not pursue this sort of relationship themselves (Ferracioli 2016: 565).[7]

The third condition is included to ensure that it would be appropriate for the valued relationship in question to override the state's right to exclude. After all, many relationships that satisfy Ferracioli's first two conditions should not, intuitively, be grounds for immigration exceptions. Consider, for instance, a child's relationship to their teacher—the child may value the relationship very much, and other members of the society may be able to recognize the value of a teacher-child relationship—but intuitively, states should not be required to allow teachers to immigrate to reunite with their students. According to Ferracioli, we have this intuition because teacher-student relationships are usually fungible, and immigration exceptions should only be

[7] Caleb Yong objects that this condition is "objectionably illiberal": either it makes the impractical demand that all citizens recognize the value of the relationship-type, or, if only majority recognition is required, families will be held hostage to the "tyranny of the majority" (Yong 2016: 67). However, it seems to me that Ferracioli's account survives this criticism—her point is not that citizens must *actually* recognize the relationship-type as objectively valuable, but that they must have objective *reasons* to recognize the relationship-type as valuable.

available for irreplaceable relationships. In particular, Ferracioli argues that when a relationship is "irreplaceable," it will be grounded in the "historical-relational properties" of the parties involved. That is, a relationship between X and Y is irreplaceable to X if X cares about their relationship with Y at least partly because of their past experiences with Y, and would continue to care about Y even if Y were to change significantly as a person (Ferracioli 2016: 566).

Ultimately, Ferracioli argues that the current practice of creating immigration exceptions for family relationships alone is not justifiable. All of the three conditions above, she claims, could be satisfied by other close relationships like friendships or creative partnerships. For this reason, liberal states—which cannot endorse particular comprehensive conceptions of the good—must either create immigration exceptions for these relationships too, or have no relationship-based immigration exceptions whatsoever. Contra Lister, she argues that this latter option is permissible because "permanent residency in the same country is not necessary for the enjoyment of any special relationship" (Ferracioli 2016: 573). She remains neutral about which option the liberal partialist should choose.

Ferracioli's account of the criteria for relationship-based immigration exceptions is helpful because it opens up the possibility that there could be reunification rights for relationships beyond the nuclear family. However, her claim that special relationships can persist across borders, and that liberal states could permissibly remain neutral by granting no relationship-based immigration exceptions at all, is less compelling. At least in practice, many deeply valuable intimate relationships can only be sustained when all parties live in close physical proximity. This seems especially true of parent-child relationships, but also of romantic partnerships between adults—for although such relationships will often temporarily persist across borders, long-distance relationships rarely last without an end to the separation in sight. For this reason, I agree with Lister's claim that states must create immigration exceptions for at least family relationships. Moreover, I also broadly agree with

Lister's recent response to Ferracioli's objection that it would be illiberal for a state to create immigration exceptions for family relationships alone. Policies, Lister argues, are general by nature, and will inevitably be both over- and under-inclusive. For this reason, policies must be informed by typical cases, not unusual ones (Lister 2018: 160–161). This is important, because while some particular friendships or creative partnerships will be valued very deeply by the participants—so much so that they feel that the relationship is irreplaceable and would be compromised by physical separation—most individuals do not have relationships of this sort outside of the family. So although it is possible for, say, a friendship to satisfy these criteria, because such friendships are very uncommon, it would not be illiberal for a state to create immigration exceptions for families and not friends.[8] Thus, although Ferracioli's account of what makes special relationships sufficiently valuable to ground an immigration exception is enlightening, her argument for expanding relationship-based immigration exceptions is not compelling.

2.3 Which Relationships Count? Part 2: Sarah Song and Caleb Yong on Care

More recently, Caleb Yong and Sarah Song have offered another account of the justification for family immigration rights. Both Yong and Song each individually argue that intimate family relationships are valuable because of their important caregiving nature.[9]

To identify more precisely the sense in which family relationships might be considered "intimate," both Yong and Song appeal to Stuart White's analysis of intimate associations, according to which an association is intimate if it: (1) involves "strong and mutual familiarity" which is typically the result of regular and intensive in-person contact; and (2) has "the pursuit and enjoyment of intimacy-related goods" like friendship or love as a primary purpose (White 1997: 390; Yong 2016:

[8] Even those who argue that liberal states must not privilege romantic partnerships above caring relationships outside the family acknowledge that there are important differences between these relationship-types—e.g. amorous partnerships are typically more intense than friendships (Brake 2012: 95). This is significant because lower-intensity relationships are more likely to be capable of persisting across borders.

[9] Although Yong and Song's arguments are made independently, their accounts of the value of caregiving share many similarities. so it will be productive to reconstruct them together here.

70; Song 2019: 134). Ultimately, both Yong and Song hold that intimate associations of this sort are valuable because they serve a caregiving function. Following Elizabeth Brake, they each emphasize that valuable intimate family relationships involve not only material care—provision of food, clothing, housing, etc.; but also attitudinal care—an affective attitude which includes the aim of promoting the cared-for person's wellbeing for non-instrumental reasons, generated by a sense of personal attachment to the cared-for person (Brake 2012: 82; Yong 2016: 73; Song 2019: 133–134). Brake argues that although material care can be provided by a neutral hired caregiver, attitudinally invested individuals are usually better suited to this role due to their detailed knowledge of the cared-for person and investment in their wellbeing (Brake 2012: 174). Moreover, even in a non-dependent relationship, attitudinal care is socially valuable because it provides a basis for future material care if a need arises.

Because this caregiving function is what makes family relationships valuable, but family relationships are only a subset of all intimate caring relationships, both Yong and Song argue that existing policies granting immigration exceptions to nuclear families alone are unjustifiably limited. Song, for instance, argues that policies extending immigration exceptions to other intimate caregiving relationships would be more compatible with the liberal value of individual equality, since they would treat minorities with different cultural conceptions of the family equally (Song 2019: 145–146).

Yong and Song's care-based analyses of the value of family life are helpful because they offer another explanation for why immigration exceptions should exist for some relationships and not others. Like Ferracioli's account, their approach opens up the possibility that relationship-based reunification rights could extend beyond the nuclear family—especially for sponsors with broader cultural conceptions of the family. However, some of Lister's responses to Ferracioli could also apply to the most radical application of their view, which suggests that immigration exceptions

should be granted to *every* functionally caring relationship. As Lister points out, there are good practical reasons to resist efforts to turn fundamental normative values directly into policy—for instance, because the inherent difficulty in assessing whether a particular relationship is functionally caring is administratively burdensome for states, and, most importantly, tends to lead to restrictive and unpredictable enforcement, which is bad for rights-holders (Lister, unpublished draft). Moreover, the requirements of justice do not demand perfect outcomes—they only require that institutions be neutrally designed to enforce politically required principles reasonably accurately. Altogether, this suggests that an immigration policy which treated relationship-types (such as "parent" or "spouse") as heuristics for identifying when an intimate caring relationship is likely to be present would satisfy the demands of justice. On this approach, all individuals from cultures where, say, aunt-niece relationships are typically "caring" in Yong and Song's sense should have a right to reunite with their aunts or nieces, even though some particular aunt-niece relationships would not satisfy Yong and Song's criteria for a caring relationship.

It might be objected that Yong and Song's care-based approach to immigration policy would be objectionably illiberal. Lister, for instance, suggests that it is not the place of the liberal state to provide benefits exclusively to individuals who endorse the particular value of care (Lister, unpublished draft). However, while Lister is right to point out that liberal states should not be in the business of promoting particular comprehensive conceptions of the good, as Samuel Freeman has pointedly emphasized, liberal states are not required to be *completely* neutral with respect to the good—for they must promote citizens' fundamental civil and political interests (Freeman 2020: 39–40, 43). This is important because Song and Yong endorse a relatively thin conception of care. As such, it is both empirically questionable whether valuable and irreplaceable non-caring relationships exist, and also deeply unclear that care (in their sense) is a comprehensive value as opposed to a political one. Indeed, Elizabeth Brake has compellingly argued that the crucial role caregiving

relationships play in the provision of material care and moral development means that it is not just consistent with liberal neutrality for a state to support caring relationships, but is actually *required* by justice (Brake 2012: 171-185). Thus, Lister's concern that a care-based approach to immigration policy would be illiberal seems unfounded.

§3 Family Unification Rights for Refugees

In the previous section, I outlined three arguments defending immigration exceptions for the relations of ordinary citizens and residents. I agree that all three of the factors mentioned—freedom of association, the value of family relationships, and the importance of care—are partial normative grounds for family reunion rights, though I don't intend to take a stance here on whether every aspect of each position is appropriate in non-refugee cases. Instead, in this section, I will consider what these arguments can tell us about the family reunification rights of refugees. The practical implications of this discussion will be outlined in §5.

There are two main paths by which refugees might arrive in their host state: by travelling to the host state and directly applying for asylum there, or by being resettled from a third country or refugee camp in which refugee status was granted. In both cases, a refugee could need to apply for family reunion if they arrived in the host state alone or with only part of their family. Since this paper focuses specifically on refugee rights to family reunification—that is, rights of individuals to sponsor separated family members to join them in a country in which they are residing—the following discussion focuses specifically on these kinds of cases. This leaves open other questions about refugee family unity—most notably, questions of family unity in resettlement—for future work.[10]

[10] Questions of family unity in resettlement include: how to prioritize family unity against other considerations (e.g. need) when allocating scarce resettlement places; and which family members should "count" for purposes of resettling families as a unit. These questions are distinct from questions of family reunification because in resettlement cases the family are

It is briefly worth noting that refugees' family members often have their own experiences of persecution, and would be entitled to refugee status in their own right if they were able to travel to a safe state and file an asylum application. Because of this, a positive side-effect of fulfilling refugee family reunion rights is that it would create a regular pathway to safety for family members who have their own independent asylum claims—meaning that fewer refugees would be forced to take dangerous, irregular journeys to reach safety. Clearly, this is a strong reason to favor respecting and expanding refugee family reunion rights. Still, I will set it aside for the purposes of the following discussion, and show that even when refugees' family members do not have independent asylum claims, there are still very good reasons to respect and expand refugee family reunion rights.

3.1 Stronger Duties

It is not strictly true that the literature on family reunification has focused solely on the rights of non-refugees. In a more recent paper, Lister suggests that his account of family reunification for citizens and permanent residents also applies to refugees. Refugees, he argues, are situated sufficiently similarly to permanent residents for the purposes of this evaluation—after all, refugees are owed non-refoulement at the very least, and should also receive some form of durable solution (Lister 2018: 168 n.57). So, since refugees cannot live safely in their country of nationality, and since family ties are very important, it would be unreasonable to impose a system of protection that forced refugees to choose between living without their family and living in danger (Lister 2018: 169).

I agree with Lister's evaluation here—it would be unjust for host states to deny refugees access to something as basic as continuation of family life. However, beyond Lister, I hold that there are important ways in which refugees are differently situated from citizens and residents, and that

not (yet) separated—there is no "reunification" to occur—and because they are shaped by the realities of existing resettlement practice, most notably states' unwillingness to host their fair share of resettled refugees. The discussion in this paper will clearly be of relevance to these matters, but a thorough independent examination of family unity in resettlement is also needed, where this account would pay close attention to general issues with resettlement that are beyond the scope of this paper, and examine the implications of these issues for family unity. For an overview of some of the relevant factors, see Lister & Beaton forthcoming.

these differences suggest that states' duties to reunite refugee families are stronger and more urgent. Perhaps most obviously, refugees are unlike others applying for family reunification in that they have typically been forced by persecution into a situation of family separation. By contrast, in non-refugee cases families have either chosen to separate temporarily, because one individual voluntarily moved to another country alone before applying for their family to join them, or the family was knowingly formed across borders, because two individuals with different nationalities entered into a relationship in full knowledge of the fact that they may face hurdles to family unity in the future. Of course, I do not mean to suggest here that the fact that non-refugee families have not been forced apart should undermine their right to family reunion. As the arguments from §2 demonstrate, the deep value of intimate family relationships is sufficient to ground a strong right to family unity. Rather, my point is that it is *especially* important that refugee families are allowed to reunite, because refugees are seeking to re-establish family unity after involuntary separation caused by being exposed to persecution. Host states have duties to protect refugees from the harm of persecution. For similar reasons, they should take reasonable measures to alleviate ongoing serious harms, like family separation, that result from persecution.

Other, more practical, factors should also incentivize states to allow refugees to reunite with their family. It is generally in the interests of both refugees and host states that refugees integrate into their new society, because integration enables refugees to move on with their lives and tends to shorten the period of financial dependence on the state. This is important, because current research suggests that family separation impedes refugees' ability to integrate—for instance, because they struggle to see a future for themselves in their host state without their family, or because family separation might exacerbate pre-existing mental health problems related to past persecution (Oxfam

& Refugee Council 2018). This suggests that guaranteeing family reunification rights for refugees in law is likely to be in the interests of both host states and refugees themselves.[11]

More importantly, though, there is a robust principled reason for thinking that states have stronger duties to reunite refugee families than the families of non-refugees. Recall that, on Lister's view, the right to family reunion is primarily grounded in the right of the *existing member* of the state to associate with their family, not the rights of the family members who wish to enter. After all, in a world divided into sovereign states, states do not generally have obligations to fulfill the association rights of non-members. In the case of refugees, however, there is reason to think that states should also take the rights of the refugee's family members who wish to enter into account. To see why this is, recall from the opening of the paper that although only citizens have membership-based claims to freedom of association, everyone has a human right to form and maintain a family.[12] Once we recognize this, we only need to appeal to the widely-accepted idea that although states bear primary responsibility for fulfilling the human rights of their members, the international community has a residual obligation to step in when a state fails in its human-rights-protecting function.[13] Indeed, it is precisely this logic that underpins the system of protection for refugees—states have duties to host refugees because refugees are people whose home states have failed to protect their human rights.

---

[11] Non-refugee migrants are less likely to experience these kinds of integration challenges, as many states impose language tests and require proof of financial stability in order to permit immigration in the first instance.

[12] There is good reason to think that the current practice of accepting a human right to family life is justified. E.g. for Rawls, human rights are "necessary conditions in any system of social cooperation"; and basic needs are needs "that must be met if citizens are to be in a position to take advantage of the rights, liberties, and opportunities of their society" (Rawls 1999: 38 n.47, 68, 78-81). Together, these definitions suggest that basic needs should be protected by human rights, and that family unity is such a need—since those undergoing family separation, particularly children, will be severely limited in their ability to take advantage of the rights, liberties and opportunities they are afforded in society.

[13] See e.g. the Responsibility to Protect principle adopted at the 2005 UN World Summit, which recognizes that the international community has a residual responsibility to protect basic rights when "national authorities are manifestly failing to protect their populations" (UNGA 2005: paragraph 139). While extreme applications of this principle (e.g. military intervention) are controversial, modest applications like the one required here are broadly accepted. In this case, the duty to act as a guarantor of human rights does not call for *any* interference in other states' internal affairs, but merely requires that refugee-hosting states amend their own immigration rules. For a philosophical defense of the claim that the international community should act as a guarantor of human rights, see most notably Beitz 2009: 106–117. I take it to be a virtue of the approach that the residual responsibility to protect human rights (where this does not involve substantial interference with state sovereignty) is already widely accepted and need not depend on any particular moral view.

For the same reason, the rights of refugees' family members also have normative weight for receiving states. When a refugee's home state creates conditions that make it impossible for the refugee to continue to live with their family in their country of nationality, the state also indirectly violates the family members' human rights to family life—and when this happens, the international community's residual duty to fulfill this right is activated. Although this duty is imperfect—that is, it is not assigned to any particular entity—there is reason to think it should be assigned to the refugee's host state, because the refugee's status within the state and presence on its territory makes the host state uniquely well-positioned to facilitate family reunification for their family members, as well as for the refugee themself.

Thus, states have especially strong duties to reunite refugee families because they have obligations not only to fulfill the membership-based association rights of the refugee themself, but also to protect the human rights of both the refugee *and* their family members. Note that these sorts of considerations do not apply for non-refugee families whose human rights have not been violated, because unlike refugees, immigrants and citizens are not forced into family separation by the persecutory behavior of their home state.

As a final note, it is important to acknowledge that not all refugee families are formed prior to displacement. Displacement has become increasingly protracted in recent years, so it is only to be expected that family bonds will be formed during the journey to safety—yet a number of refugee-hosting states only allow refugees to reunite with family members who were part of the family unit before the refugee was forced to leave their country.[14] I take it that these policies are arbitrary and unjustified, as they also constitute a failure to respect the human right to family life. Families formed during displacement are no less families—they fulfil the criteria in the accounts outlined in §2, and constitute deeply valued, caring, intimate associations. In these cases, too, family unity in the

[14] E.g. this is currently the case in the UK (Gov.uk).

refugee's home state is not possible due to the threat of persecution, and the refugee's host state is the most natural entity to be assigned the duty to fulfil the human right to family life. As a result, failure to extend reunion rights to families formed during displacement also constitutes a failure to respect the human right to family life.

3.2 Broader Rights

Having established that refugees have particularly strong rights to family reunion, I now turn to the question of which family members refugees should be entitled to reunite with. Because refugees' membership-based claim to family reunification stems from the fact that they are situated like ordinary citizens on Lister's view, his account might suggest that refugees are only entitled to reunite with family members who belong to the "common conception" of the family in the *host* state. On this approach, refugees who come from cultures where extended families are closely involved in one another's lives, and then receive refuge in a state with a more limited conception of the family, would not have a right to reunite with all those they had previously been close to. Later in this section I will argue that these refugees should be entitled to reunite with extended family members. First, though, it will be helpful to see why Ferracioli, Song and Yong's accounts—which are more conducive to extending the right to family-based immigration—suggest that these extended family relationships should count.

For refugees from cultures in which extended family are close, extended family relationships clearly satisfy all three of Ferracioli's criteria for a right to a relationship-based immigration exception. Such relationships are deeply valued by the participants; reasonable citizens in the host society have objective reasons to recognize the value of the relationship for the refugee—for even those who do not deeply value their own relationships with extended family could recognize that they would deeply value these relationships if they had been born in the refugee's home country; and such relationships are typically irreplaceable, because they are based on historical-relational

properties of the parties involved. Similarly, these sorts of family relationships would also satisfy Song and Yong's conditions for an intimate caregiving relationship. In many cultures, extended families are bound up in one another's day-to-day lives, and companionship, love, and support are among the goals of these close relationships. As such, these families are "intimate associations" in White's sense. Moreover, provision of material care will often be an important function of these extended family units, at least for children and dependent adults—and there will, of course, also be attitudinal care among all parties. When these conditions are satisfied, extended families are just as much intimate caregiving relationships as nuclear families tend to be in cultures with more conservative conceptions of the family. Altogether, then, the fact that extended family relationships often satisfy all three of Ferracioli's criteria for a politically valuable relationship, as well as Song and Yong's criteria for an intimate caregiving association, is at least *prima facie* reason to think host states ought to allow refugees who previously were very close to their extended family to reunite with these family members too.

It might be objected here that at the end of both §2.2 and §2.3 I resisted suggestions that immigration exceptions should be created for every relationship that could possibly fulfill Ferracioli or Yong and Song's criteria for a valuable or intimate caregiving relationship. Following Lister, I argued that policies need only accommodate relationship-types for which an exception is typically required. But, the objector might insist, within the culture of the host states in question, it *would* be atypical for a resident to value their extended family so deeply. Why, then, should immigration exceptions be made for a refugee's extended family, but not for, say, a citizen's best friend?

My response here is that although policies should be based on typical cases, this does not mean that policies should be based solely on the interests of the majority culture. Liberal justice requires that reasonable cultural differences be accommodated, and so will demand that immigration exceptions be sensitive to variations in cultural conceptions of the family—at least for sufficiently

large or well-established minorities, and for minorities with a strong moral claim to an exception.[15] There is good reason to think that refugees from cultures with a more expansive conception of the family are a minority group with a strong moral claim to a policy exception in this case. This is because—as mentioned in the previous section—refugees are unlike other migrants in that they have been forced by persecution to move to another country which may not share their own conception of the family. Failing to respect the reasonable cultural differences of refugees when shaping a policy about something as important as their right to family reunion would be unjustifiably inflexible. Indeed, Lister emphasizes that it is not reasonable to force refugees to choose between living in danger and abandoning their closest family relations (Lister 2018: 169). When a refugee cares as deeply about her cousins or siblings as she cares about her spouse and children, it seems equally unreasonable to expect her to abandon them in order to reach safety.[16]

Moreover, unlike extending reunification rights to particular intimate friendships, policies granting reunification rights to refugees' extended families need not be excessively administratively burdensome. In many host states, "country conditions reports" outlining, among other things, human rights conditions in other countries play an important role in the adjudication of asylum applications. Information about cultural conceptions of the family could be collected in a similar way, such that host states would have accurate information about common conceptions of the family—including conceptions held by minority cultural groups—in refugee-producing states. Family reunification rights could then be provided to extended families in an entirely formal way: if,

[15] For these reasons, I am also inclined to endorse similar exceptions for citizens and permanent residents from certain minority cultures.

[16] These arguments could also apply in the case of family unity in resettlement. Currently, the UNHCR resettles refugees with their immediate family—their spouse, minor children, and any other dependent family members—but the arguments of this section suggest that a more just resettlement system should also be sensitive to different cultural conceptions of the family (though, as outlined in fn. 10, matters of family unity in resettlement are complex and worthy of independent examination).

for example, relationships with grandparents were deemed culturally important in particular state, then all refugees from that state would have a right to reunite with their grandparents.

Questions may arise here about how far this cultural accommodation should extend—for instance, whether "illiberal" family relationships not recognized in some host states, such as certain forms of polygamy, should also be accommodated.[17] There are no easy answers here. On the one hand, states may have good reasons for not granting legal recognition to certain relationships on grounds of the harms they can involve (Brooks 2009: 102–122). On the other hand, in cases where a family relationship has already been formed, it is likely that the parties involved in the relationship will undergo significant hardship if denied the right to reunite. In difficult cases such as this, it is appropriate to respond in whichever way will do the least harm. Identifying the least-harmful option is partly an empirical matter, but at least on face value it seems likely that a more permissive approach will generally be preferable—for the harms experienced by families forced to undergo separation are typically very severe.[18] Additionally, there are various nuanced ways in which a permissive approach could be implemented in a manner that sensitive to the wellbeing of all parties involved.[19] However, it is important not to be too sidetracked by these cases. In the majority of circumstances, appropriately accommodating different cultural conceptions of the family will simply mean granting refugees rights to reunite with parents, grandparents, siblings, or other extended

[17] I agree that forms of multiple-spouse marriage can be justified according to liberal principles, but also acknowledge that in practice many instances of polygamy are not. Though not necessarily an endorsement, see e.g. Strauss 2012: 516–544 for an interesting defense of this point. I thank an anonymous reviewer for highlighting this point and recommending this paper.

[18] This approach is consistent with some other existing practices in host states. E.g. although polygamous marriages cannot be legally formed in the UK, polygamous marriages formed outside the UK in a state in which the practice is permitted are recognized as valid because: "The Government have no desire forcibly to sever relationships that have been lawfully contracted in other jurisdictions. This should not, however, be construed as government approval of polygamous marriage" (Fairburn et al. 2018). Admittedly such relationships are not currently recognized as grounds for general immigration exceptions, but as the arguments of §3.1 have demonstrated, refugees are differently situated and have stronger claims to family reunion.

[19] E.g. additional support could be made available to partners vulnerable to domination and coercion within their family structure. I am also open to the possibility that the least-harmful option might involve host states accepting polygamous marriage as grounds for family reunion, but refusing to recognize multiple marriages as legally valid within the host state once reunion has occurred—though of course, these suggestions are merely tentative.

family members, based on the recognition that these are deeply valued caring relationships, akin to those within "nuclear" families in the host state, which have been forcibly and involuntarily separated.

Additionally, as a final note, this argument for granting more expansive family reunion rights to refugees is also supported by the practical considerations mentioned in the previous section. Research suggests that separation from extended family may also impede refugee integration (Oxfam & Refugee Council 2018: 19). Thus, again, it may be in the interests of both the host state and the refugee to permit refugees to unite with their extended family.

3.3 No Financial Conditions

Recall from §2.1 that Lister argues that states can permissibly make family unification for non-refugee applicants conditional on the sponsor's ability to prove that the incoming family member would not be financially dependent on the state. Here, I will consider whether states could permissibly impose similar conditions on refugee family reunion.

Firstly, it should be emphasized that there are reasons to question Lister's claim that financial conditions on family reunion are permissible even in the "normal" immigration case. Recall that on Lister's view, family-based immigration exceptions are justified by freedom of association, which is a basic liberty, and basic liberties can only be limited by other basic liberties—not by, for instance, economic considerations (Lister 2018: 728). Lister argues that financial conditions on family reunion are acceptable because reciprocity is necessary for domestic justice, and so family reunion policies must be such that all citizens could "reasonably accept" them (Lister 2018: 738). However, while it is *possible* that a condition-free family reunion policy could be so extremely financially burdensome as to undermine reciprocity among citizens and threaten distributive justice, it is not obvious that this would be the case in all contexts. After all, since immigrants provide more in taxes and social contributions than they receive in benefits in most states (OECD, 2014), a condition-free right to

family reunification may be economically neutral or even beneficial for the state. Theoretically too, it is unclear that the argument for financial conditions on family reunion follows. After all, it seems plausible that reasonable individuals behind a veil of ignorance would endorse family reunion policies even if they imposed modest economic burdens on the state, out of recognition of the psychological distress they would experience if they were separated from their family and lacked the funds needed to reunite. Altogether, this suggests that financial conditions on family reunification may not be permissible even in the "normal" immigration case.

In the case of refugees, however, it is even clearer still that financial conditions on family reunion rights would be inappropriate. Once again, it is important to recognize that in some ways refugees are very differently situated than non-refugee migrants. Most obviously, refugees, unlike migrants, are recipients of protection. Host states have duties to accept refugees even though refugees will usually be financially dependent on the state for at least an initial period of time. By contrast, migrants often have to prove that they will be financially self-sufficient in order to obtain residency rights. This is significant, because the status afforded to refugees' incoming family members derives from the status of the sponsor. Since it would not be appropriate to place financial conditions on entry for refugees, and since the incoming family members of a refugee would be entering with derivative refugee status, it would be equally inappropriate to place financially demanding conditions on entry for a refugee's family.

Once again, there are practical considerations relevant to this argument. Although it is not true of all refugees, many refugees do not have substantial financial resources and face initial hurdles to obtaining employment in their host state—for instance, due to language barriers. Because of this, if states were to impose financial conditions on refugees' right to family reunion, this would significantly delay or even bar access to family reunion for the vast majority of refugees. Given refugees' human right to family life, rights to freedom of association, the deep intrinsic value of

family life, and the value of family unity for facilitating refugee integration, there are several reasons to think that host states should create not just a formal right to refugee family reunification, but one that will be effectively accessible for the majority of refugees.

Financial conditions are just one example of the kind of practical barriers to accessing family reunion refugees can and do face. There are a number of rules and administrative requirements states currently implement that make family reunion less accessible for refugees. Some states require refugees to file their family reunion application within a few years or even just months after arriving in the host state, others require refugees or recipients of refugee-like protection to wait in the host state for several years before they are eligible to apply.[20] Additionally, the family reunion forms themselves can be very complex, refugees may have little to no access to affordable legal assistance or language interpreters, and even once the application is filed, long processing times may keep families apart for longer than necessary. Many of the arguments outlined above against financial conditions for refugee family reunion generalize to these other practical issues. States have strong obligations to remove unreasonable barriers to family reunion for refugees, and instead make the process as accessible and efficient as possible.

*

Thus far, I have argued that refugees, like citizens and migrants, have rights to family reunification. In fact, I have argued that refugees do not merely have the same claim to family reunion as other residents, but that states have stronger duties to reunite refugee families, including extended families in some cases, without imposing financial conditions on this right to reunite. In the next section, I will extend the analysis one stage further, and discuss the nature of the right to family reunion for refugee children.

[20] For instance, Denmark, Austria, and Switzerland have enforced waiting periods of around three years for family reunion for recipients of refugee-like protection, whereas Germany, Canada, and the US respectively require that refugees file for family reunion within three months, one year, or two years after arrival or receipt of asylum.

§4 Family Unification Rights for Refugee Children

Intuitively, children have stronger interests than adults in being physically close to their family. Despite this, several states that grant family reunion rights to refugee adults do not extend these rights to refugee children.[21] Such states sometimes attempt to justify this decision by claiming that granting family reunion rights to unaccompanied minors would create incentives for families to send their children ahead alone to secure protection for the rest of the family. This worry is typically framed in terms of humanitarian concern: states do not want to implement reforms that could cause more unaccompanied children to take dangerous journeys to reach safety. This claim might make sense if children's asylum applications were more likely to be granted than adults' applications, but there is no reason to think that this is currently the case. In all states, children must undergo the same rigorous adjudication of status as adults in order to be granted refuge—and in at least some ways it may be more challenging for a child to file a successful asylum application. Children are more likely to struggle to engage with the legal system than adults; they may find it harder to accurately express necessary details about the persecution they fear in their home country; and even the most eloquent child who fears persecution for reasons of, say, political opinion, may have difficulty convincing officials that they have a genuine fear of persecution on these grounds (Lister & Beaton, forthcoming). In line with this assessment, governments have consistently failed to provide evidence that granting children family reunion rights leads to more children taking dangerous journeys.[22] As a result, official attempts to defend existing policies have been criticized by refugees and their allies, and it is not unreasonable to suspect that states' real motivation for denying family reunion rights to

[21] At the time of writing, this policy is held in the UK, the USA, and Canada.
[22] E.g. in the UK, a House of Lords Select Inquiry on unaccompanied minors in the EU found that there was no evidence that granting family reunion rights to minors in other EU states encouraged families to send their children ahead to Europe (Oxfam & Refugee Council 2018: 7; Amnesty International, Refugee Council, and Save the Children 2019: 27–30).

refugee children is a desire not to create new pathways to entry in contexts of increasing pressure to reduce immigration among host populations.

All this suggests that humanitarian concerns about incentivizing dangerous journeys are unsubstantiated, leaving governments with no way to justify the harms these policies do to refugee children denied the right to reunite with their family members. In order to fully understand this wrong, it is important to be clear about the nature, strength, and grounds of the entitlements refugee children have. In what follows, I will argue that there are good reasons to think that refugee children have particularly strong rights to family reunion. In fact, I will argue that the family reunion rights of refugee children are even stronger than the family reunion rights of refugee adults—which, I argued in the previous section, are themselves more urgent than the family reunion rights of non-refugees.

4.1 The Distinctive Value of Family for Children

As outlined in §2.1, Ferracioli holds the view (which, I argued, is mistaken) that family relationships can persist across borders, and as such, a liberal state could permissibly eliminate family-based immigration exceptions if it did not wish to extend immigration exceptions to other valuable relationships. Interestingly, however, Ferracioli concedes that even if family reunion options were ruled out for adults, the liberal partialist need not be so "radical" as to call for the removal of family-based immigration rights for children (Ferracioli 2016: 573). Children, Ferracioli argues, have a strong interest in being cared for by someone they are already attached to, and liberal states already acknowledge this—for instance, by providing eligible parents with additional welfare for childcare support (Ferracioli, 2016: 573). She argues that similar considerations justify family reunification rights for unaccompanied children.

To see why Ferracioli allows for this exception, it will be helpful be clearer about why children have particularly strong interests in being with their families. To support her own argument here, Ferracioli cites some recent work on the value of family life for children from Harry Brighouse

and Adam Swift, who argue that children have a right to a parent due to a combination of their wellbeing interests and their interests in becoming autonomous adults (Brighouse & Swift 2014: 57-85).[23] Brighouse and Swift explain that children must develop deeply intimate relationships with their caregiver(s) in order for their needs to be met reliably. For instance, if a child is to develop effective emotional regulation during infancy, their caregiver(s) must be highly receptive to their nonverbal signals and emotional responses. Otherwise, the infant may receive inconsistent responses from their caregiver, limiting their ability to develop a regulatory strategy and increasing the likelihood of mental disorders later in life (Brighouse & Swift 2014: 72). Intimate relationships are important for older children too—for instance, because it is conducive to a child's development for them to identify with their authority figure(s), and this is most likely to occur when an intimate caring relationship is present (Brighouse & Swift 2014: 73). Brighouse and Swift's analysis of the importance of an intimate relationship between a caregiver and a child suggests that caregivers are not replaceable—or at the very least, not easily replaceable—and provides strong reason to think that continuity of parental ties is very important for development in childhood.[24]

In a similar vein, S. Matthew Liao has recently argued that children have a human right to be loved (Liao 2006; Liao 2015). Liao supports his argument with both theory and scientific studies which show that failing to receive love as a child is seriously harmful and can have repercussions well into adulthood. Various theoretical accounts, for instance, have suggested that being loved as a

[23] Children require a parent to fulfill their wellbeing interests because they lack the information and emotional/rational capacities necessary to be good judges of their own wellbeing, and require a parent to develop autonomy because intimate loving attachment is necessary for the development of capacities partially constitutive of autonomy, like emotional regulation and empathy (Brighouse & Swift 2014: 62, 71–73).

[24] Of course, I am not claiming that caregiver relationships should never be changed. When guardians are abusive or neglectful it is appropriate that children are brought into care, and new relationships formed in foster and adoptive families can be deeply valued and effectively support development. Still, it is broadly agreed that children should only be separated from their caregivers as a last resort when they are at risk of serious harm. E.g. in England, "unless the level of risk requires the courts to get involved immediately, care proceedings will only start after extensive efforts to keep the child with their family" (NSPCC 2020). This is based on a body of evidence which suggests that it is usually in children's interests to remain in the original family unit (e.g. Doyle Jr 2007: 1583–1610).

child is important for the development of trust, a positive self-conception, the ability to pursue deep personal relationships with others, and motivation to accept discipline—all of which are critical to becoming a well-adjusted adult. Consider, for instance, a positive self-conception. This is important, because children need a positive self-conception to have confidence in their future actions, which in turn motivates them to try new activities and learn basic skills (Liao 2015: 80). Scientific studies, too, suggest that being loved as a child is developmentally important. One classic study of institutionalized children deprived of a regular adult caregiver found that these children were more likely to become ill, struggle with learning, fail to gain weight, experience depression, and even die in infancy (Spitz & Wolf 1946; Liao 2015: 88). More recent research supports these findings. For instance, laboratory studies have found that infant monkeys raised without a parent are more likely to have hampered cognitive, social, and emotional development, and that the harms done doing childhood may not be reversible later in life (Liao 2015: 93–94). Clearly, then, being loved as a child is deeply important, and since human rights are tools that protect interests which are of primary importance to a good life, Liao argues that children have a right to be loved. This love, he argues, can most naturally be fulfilled by some sort of parent figure, because continuity of caretaker is a necessary condition for being loved (Liao 2006: 436).

These accounts from Liao and Brighouse and Swift lend significant weight to the idea that child refugees have very strong interests in the preservation of family unity.[25] Importantly, these are interests that children *uniquely* have. Liao, for instance, argues that adults most likely do not have a right to be loved, because love is good for adults when obtained through their autonomous efforts––whereas children, on the other hand, require unconditional love (Liao 2015: 99–100). Moreover,

[25] Yong cites similar material to defend his claim that children (unlike independent adults) have a human right not to have their intimate caregiving relationships disrupted (Yong 2016: 73–74). Contra Yong, I agree with Song that adults and children alike have a human right to maintain their intimate caregiving family relationships—I only mean to suggest that it is *especially* urgent that children's human right to family life is respected.

Brighouse and Swift's account highlights the essential role intimate parent-child relationships play in enabling children to develop the capacities and skills needed for a successful and autonomous adulthood. Of course, adults, unlike children, do not have urgent interests in developing autonomy.

If all this is right, then refugee children have strong development-based interests in family unity that do not apply to refugee adults, and this grounds their right to family reunification. What's more, though, if the reasons justifying family unity for refugee adults also apply to minors, then unaccompanied refugee children have even stronger family reunion rights than refugee adults. In the next section, I will argue that this is the case.

4.2 Freedom of Association Rights for Children

Recall that, according to Lister, the basic right that justifies family-based immigration exceptions for non-refugee adults is the right to freedom of association. Problematically, it is not immediately obvious that children have this right.

Some scholars deny that children are capable of having moral rights at all. This view is particularly common among those who hold that rights are conceptually linked to the exercise of agential capacities, who claim that the purpose of rights—understood as moral entitlements that individuals can *choose* to claim or waive—is to preserve autonomous agency (MacLeod 2018: 200). However, Colin MacLeod has pointed out that these sorts of views have deeply counterintuitive implications. They suggest, for instance, that children do not have moral rights against torture (MacLeod 2018: 201). MacLeod acknowledges that defenders of these views try to minimize the force of this problem by conceding that although children's interests do not amount to rights, they do amount to something like an "enforceable moral entitlement." However, MacLeod compellingly argues that this concession takes much of the sting out of the objection that children do not have rights—for an "enforceable moral entitlement" is sufficiently right-like for practical purposes (MacLeod 2018: 201).

A more plausible objection, then, would claim that although children have some moral rights (or right-like entitlements), they do not have the particular right to freedom of association. After all, freedom of association is often portrayed as a deeply political right to exercise agency by acting on one's conscience. So even if it is relatively uncontroversial that children have rights against harms like torture—that is, rights that protect their welfare—it is much less clear that children have political rights precisely because they have yet to develop full autonomy. It is generally deemed permissible to deny children full autonomy in many areas of life—in fact, Brighouse and Swift argue that paternalistic treatment is sometimes *necessary* to fully respect a child's interests, because adult supervision can play an important role in protecting children's welfare and cultivation of autonomy (Brighouse & Swift 2014: 70). Why, then, should we think that children have a right to freedom of association?

For one thing, the view that children have no political rights whatsoever is increasingly old fashioned. The right to freedom of association for children is already recognized under the CRC, the most widely ratified human rights treaty in history (UNGA 1989: article 15). Similarly, the Child Rights International Network explain that free association is important for children's development because it is a precondition to being able to build friendships, form views about the world, and be an active participant in society (CRIN 2011). This idea that freedom of association is valuable for development is also endorsed in the philosophical literature. Lister, for instance, argues that association in the family helps individuals develop a sense of justice, because interactions within the family—perhaps more so than within any other association—help us "learn to temper our wants and desires, to consider the good of others, and to interact in mutually beneficial ways" (Lister, 2010: 722–723). Here, Lister appeals to Rawls's claim that the family is politically important because it plays a crucial role in producing new generations of citizens needed to sustain a society. Because of this, Rawls argues, an important role of the family is to ensure children's "moral education and

development into the wider culture" (Rawls 2001: 596). Clearly, then, freedom of association is not just valuable in itself, but also valuable for moral development. As such, it seems especially important to ensure that young people are able to associate freely.

In sum, it seems likely that unaccompanied child refugees, like adults, have a claim to family reunification grounded in their right to freedom of association. There are at least strong instrumental reasons to recognize that children have rights to associate freely, because this practice is valuable for developing the moral powers. Thus, because children have association-based rights to family reunion, *and* have urgent development- and welfare-based interests in the preservation of family unity, refugee children's family reunion rights are stronger than the family reunification rights of adults.

4.3 The Intrinsic Value of a Happy Childhood

One final consideration is relevant here. Thus far, I have argued that family reunion rights are especially valuable for children because children not only have freedom of association rights like adults, but also have developmental interests in the preservation of the loving family unit. What neither of these arguments capture, however, is that there is also intrinsic value in having a happy childhood.[26] Brighouse and Swift explicitly acknowledge this, arguing that children have an interest in the "freedom, support, and environmental conditions" conducive to enjoying their childhood, because childhood is valuable in its own right (Brighouse & Swift 2014: 64). They also suggest that there are certain goods that are valuable only in childhood, like being carefree and having reduced responsibilities; and other goods that are more accessible in childhood, like being able to experience "spontaneous joy" (Brighouse & Swift 2014: 65, 69).

[26] Note that this claim is consistent with a wide range of cultural conceptions of what a happy childhood consists of, and does not deny that bearing age-appropriate responsibilities may be part of a happy childhood.

This is important, because refugee children have often already had experiences which impede their ability to enjoy the special goods associated with childhood. In this way, their persecutors have done them a double wrong: not only have they threatened their basic human rights, but they have also limited the child's ability to enjoy their childhood, depriving them of experiences they may never be able to replicate as adults. If, after undergoing these harms, the child's host state then refuses to allow them to reunite with their family members—who, for the reasons outlined in the previous two sections, are very important for children's wellbeing—they effectively perpetuate this harm of depriving the child of the joys of childhood. This is contrary to the function of the host state, which should be to, as far as possible, remedy the harms inflicted by a refugee's state of nationality and ensure that these harms do not persist. Thus, host states fail to adequately fulfill their purpose when they deny family reunion rights to unaccompanied minors.

§5 Conclusion

In this paper I have argued that refugees and refugee children should have a right to family reunion. What's more, I argued that states have stronger duties to reunite refugee families, especially families with children, compared to non-refugee families, and that states may sometimes have duties to grant refugees broader and less-conditional rights to family reunion than ordinary residents and citizens. These findings suggest that many wealthy refugee-hosting states must make significant changes to their immigration policies. For one thing, these states often have caps on the number of immigrants and refugees they are willing to admit in a given year, and in many states the family members of citizens receive priority for these places. As a result, the family members of citizens and permanent residents can "crowd out" individuals applying to enter for other reasons. However, the arguments of this paper suggest that family reunion applications from refugees—especially unaccompanied

refugee minors—should be prioritized above family reunification applications from residents and citizens, because only refugee families have a human rights claim to family reunification.

Other policy changes that are urgently needed fall directly out of the arguments made in this paper. States that grant refugees only conditional rights to family reunification must remove financial requirements and other unreasonable practical barriers that prevent refugees from accessing this right. Refugee-hosting states with conservative cultural conceptions of the family should allow refugees from cultures with more expansive conceptions of the family to reunite with their extended family members. And finally, and perhaps most importantly, all states must extend the right to family reunion to unaccompanied minor refugees. Family unity is an especially fundamental and urgent need for young people, and early family separation can seriously impede an individual's ability to flourish later in life. As such, host states that do not allow child refugees to reunite with their families do these children a serious wrong.

Acknowledgements: Early versions of this paper were presented at "Children on the Move: Philosophical Issues in Child Migration" at the University of Salzburg; "Cosmopolitanism and Global Justice in Practical Contexts" at LMU Munich; at the "Migration, Immigration, and Refugeehood" working group at the IVR World Congress 2019; and in the Penn Normative Philosophy Group at the University of Pennsylvania. Many thanks to the organizers and participants at these conferences and workshops for their helpful comments. I would also particularly like to thank Kok-Chor Tan, Brian Berkey, and Samuel Freeman for their exceptionally helpful feedback on several early drafts of this paper; and two anonymous reviewers at *Social Theory and Practice* for their thorough and constructive comments.

References

Amnesty International, Refugee Council, and Save the Children. 2019. *Without My Family: The impact of family separation on child refugees in the UK*. Available from <https://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Without-my-family-report-AW-Jan2020-LoRes.pdf>.

Beaton, Eilidh. 2020. "Against the Alienage Condition for Refugeehood," *Law and Philosophy* 32(9): 285–300.

———. 2020. "Replacing the Persecution Condition for Refugeehood," *ARSP (Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy)* 106(1): 4–18.

Beitz, Charles. 2009. *The Idea of Human Rights*. Oxford: Oxford University Press.

Brake, Elizabeth. 2012. *Minimizing Marriage: Marriage, Morality, and the Law*. Oxford: Oxford University Press.

Brighouse, Harry and Adam Swift. 2014. *Family Values: The Ethics of Parent-Child Relationships*. Princeton: Princeton University Press.

Brooks, Thom. 2009. "The Problem With Polygamy," *Philosophical Topics* 37(2): 109–122.

Carens, Joseph H. 1987. "Aliens and Citizens: The Case for Open Borders," *The Review of Politics* 49(2): 51–273.

Child Rights International Network (CRIN). 2011. *Civil Rights: Freedom of Association and Childrens Rights*. Available from <https://archive.crin.org/en/library/publications/civil-rights-freedom-association-and-childrens-rights>.

Doyle Jr, Joseph J. 2007. "Child Protection and Child Outcomes: Measuring the Effects of Foster Care," *The American Economic Review* 97(5): 1583–1610.

Fairburn, Catherine, Hannah Wilkins, Steven Kennedy, and Djuna Thurley. 2018. "Polygamy," *House of Commons Library Briefing Paper 05051*.

Ferracioli, Luara. 2016. "Family Migration Schemes and Liberal Neutrality," *Journal of Moral Philosophy* 13(5): 553–575.

Freeman, Samuel. 2020. "Democracy, Religion, and Public Reason," *Daedalus* 149(3): 37–58.

Gov.uk. *Settlement: Refugee or Humanitarian Protection?* Available from <https://www.gov.uk/settlement-refugee-or-humanitarian-protection/family-reunion>.

IOM. 2019. *Glossary on Migration*. Available from <https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf>.

Liao, S. Matthew. 2006. "The Right of Children to be Loved," *The Journal of Political Philosophy* 14(4): 420–440.

———. 2015. *The Right to Be Loved*. Oxford: Oxford University Press.

Lister, Matthew. 2010. "Immigration, Association, and the Family," *Law and Philosophy* 29(6): 717–745.

———. 2018. "The Rights of Families and Children at the Border," in *Philosophical Foundations of Children's and Family Law,* ed. Elizabeth Brake and Lucinda Ferguson. Oxford: Oxford University Press.

———. Unpublished draft. "Functionalism, Formalism, and the Family: A comment on Sarah Song's Immigration and Democracy."

Lister, Matthew and Eilidh Beaton. Forthcoming. "Refugees and Family Unification," in *Handbook of Migration Ethics*, ed. Johanna Gördemann, Andreas Niederberger, and Uchenna Okeja. Dordrecht: Springer.

MacLeod, Colin M. 2018. "Are Children's Rights Important?," in *Philosophical Foundations of Children's and Family Law*, ed. Elizabeth Brake and Lucinda Ferguson. Oxford: Oxford University Press.

NSPCC. 2020. *Child Protection System in England*. Available from <https://learning.nspcc.org.uk/child-protection-system/england>.

OECD. 2014. "Is Migration Good for the Economy?" in *Migration Policy Debates*. Available from <https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>.

Oxfam & Refugee Council. 2018. *Safe But Not Settled: The Impact of Family Separation on Refugees in the UK*. Available from <https://www.oxfam.org/en/research/safe-not-settled-impact-family-separation-refugees-uk>.

Rawls, John. 1999. *The Law of Peoples*. Cambridge MA: Harvard University Press.

———. 2001. "The Idea of Public Reason Revisited," in *Collected Papers*, ed. Samuel Freeman. Cambridge, MA: Harvard University Press.

Song, Sarah. 2019. *Immigration and Democracy*. Oxford: Oxford University Press.

Spitz, Réne & K. M. Wolf. "Anaclitic depression: an inquiry into the genesis of psychiatric conditions in early childhood," *The Psychoanalytic Study of the Child* 2: 313–42.

Strauss, Gregg. 2012. "Is Polygamy Inherently Unequal?" *Ethics* 122(3): 516–544.

Walzer, Michael. 1983. *Spheres of Justice*. New York: Basic Books.

Wellman, Christopher. 2008. "Immigration and Freedom of Association," *Ethics* 119(1): 109–141.

White, Stuart. 1997. "Freedom of Association and the Right to Exclude," *Journal of Political Philosophy* 5(4): 373-391.

UN General Assembly (UNGA). 1948. *Universal Declaration of Human Rights*.

———. 1966. *International Covenant on Civil and Political Rights*.

———. 1966. *International Covenant on Economic, Social and Cultural Rights*.

———. 1989. *Convention on the Rights of the Child*.

———.2005. 2005 World Summit Outcome, A/RES/60/1.

UNHCR. 1951 & 1967. *Convention and Protocol Relating to the Status of Refugees*.

Yong, Caleb. 2016. "Caring Relationships and Family Migration Schemes," in *The Ethics and Politics of Immigration*, ed. Alex Sager. London: Rowman & Littlefield.

Eilidh Beaton, Department of Political Economy, King's College London, eilidh.beaton@kcl.ac.uk.