

Family reunification policies and diverse family life: a fraught relationship

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WORK IN PROGRESS, USUAL CAVEATS APPLY

Political scientists who write about immigration often focus on the politics of immigration control, and many write about it from a normative perspective (Hollifield, 2007). It is generally taken for granted that states have a right to exercise border control, and the questions political scientists explore often revolve around those persons who can make claims upon the state to gain entry in spite of this. There are three ways in which migrants can "slip through" such controls, for which Norwegian immigration authorities use the slogan "war, love and work" (2009a). These denote labour migration (which is considered discretionary), asylum seeking (which is not, as it is governed by international refugee law) and family reunification, which falls in between the two. Indeed, as we examine family reunification we enter into a legal grey area which also seems to be treated as more of an afterthought by political scientists who study immigration. It is true that family reunification generally follows other types of migration, as settled migrants seek to have their family members join them. But we should assume that family migration is an uncomplicated matter. Who is family? Who can sponsor family members? Who can come? To what extent is family immigration discretionary?

If we see family reunification as a necessary means to ensure the human right to family unity for migrants, as I argue we should, then family reunification should be an inclusionary project. After all, the purpose of the human right to family unity is arguably to ensure that ties between persons who care for each other are upheld. In reality, however, family reunification policies look more like a tool of exclusion, permitted by unclear international legal standards. In this paper, through the examination of family reunification policies in Canada and Norway, I will identify six dimensions of exclusion inherent in family reunification policies. I find exclusion based on immigration status, gender, race, income, as well as exclusion of extended and "alternative" families. Family reunification policies, in the end, emerge as a mechanism for upholding and promoting "traditional" Western families, and they only truly protect the unity of nuclear, heterosexual, male-headed families with minor children and adequate incomes, preferably involving persons of the same national origin who met pre-migration. This discussion will play off the tensions between the legal and the normative, as well as between the way rules are written and the effects they have. While immigration rules may not be overtly exclusionary or discriminatory, this does not mean that their effects are uniform across groups and individuals.

Family reunification in international law

Unlike state obligations to admit refugees, which are obligations toward unknown strangers, potential state obligations to facilitate or allow family reunification are generally conceived of philosophically as obligations to members of the polity (see Gibney 2004: 14, Honohan 2009, Carens 2003: 96)¹. All these authors consider that individuals have strong interests in living with family members, and that the state should take these interests into consideration when developing admissions policies. I will first explore how such a moral obligation is mirrored and perhaps codified in international legal norms.

There is an internationally recognized right to family unity, as expressed most importantly in the Universal Declaration on Human Rights art. 16 (3)² and the Covenant on Civil and Political Rights articles 17³ and 23⁴. This right to family unity has been interpreted as indicating a state obligation to adopt a "fairly active approach [...] over and above 'protection'" toward family rights (van Krieken 1994:20). However, the move from family unity to family reunification is not entirely straight-forward. While the two are arguably intimately related, and family reunification is necessary means in order to execute the right to family unity for migrants (Anderführen-Wayne 1996: 351), states are reluctant to make this logical leap. International law is further deferential to state sovereignty over immigration decisions because of the generally accepted right to control borders.

States can respect the right to family unity by simply refraining from interfering in families and breaking up family life. This explains why many states have been reluctant to break up families by deporting family members (see Staver 2008, John 2003: 2). Reunification, however, requires positive action through the admittance of a foreigner and the issuance of a permit to immigrate. You could say that while the right to family life or family unity is a "negative" right, a right to family reunification is "positive". It must first be established where reunification should take place – why in one country and not another? Migrants will of course want reunification to happen in the "host" country, but states could theoretically argue that if migrants wanted to live with family they could just return "home" (see Staver, 2008: 14). I have no definitive answers to this question, but I will assume here for the sake of argument that the migrant can freely choose where reunification should take place. (This assumption, however, should certainly not be taken for granted. For a very interesting discussion on this in relation to jurisprudence at the European Court of Human Rights, see de Hart, 2009).

An explicit right to be reunified with family members across borders is, at any rate, relatively difficult to locate in international law. In fact, it is spelled out in only two

1 See de Hart (2009) for a discussion of how the European Court of Human Rights recognizes this in principle, but not in practice.

2 "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state"

3 17(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family [...]

4 23(1) "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state"

(2) "The right of men and women of marriageable age to marry and found a family shall be recognized"

international treaties. If children are involved, the Convention on the Rights of the Child (CRC) contains several relevant stipulations. Art. 9(1) states that "state parties *shall* ensure that a child *shall* not be separated from his or her parent against their will" (my emphasis). This is unusually strong wording, and according to Abram it requires a state to "take all positive measures necessary to assure the realization of the right to be with both [one's parents]" (1995:418). Further, art. 10(1) specifies that "applications by a child or his or her parents to *enter or leave* a State Party for the purpose of family reunification shall be dealt with by States Parties in a *positive, humane and expeditious manner*" (my emphasis), which theoretically places unusually strong restrictions on border control as compared to other international conventions. It should be noted that some State Parties have made reservations against certain articles in the Convention, specifying that they do not see themselves bound by them in matters of immigration, but neither Canada nor Norway have made such reservations (OHCHR, n.d.). If these strong rights and obligations are codified in the CRC, then why are they not applied? Noll, in a dense and lucid recent article, argues that state signatories to the CRC do not object to human rights for migrants as a concept, they simply expect migrants to be able to enjoy them "in another country after [their] leaving" and do not consider the CRC to apply in the present (2010: 246). He argues that migrants as a rule, and especially illegal migrants, simply cannot access rights even though they exist on paper because of this "interpretive position" (ibid). I am not aware of any country which acts as if they were bound by the above stipulations with regard to immigration, although they might nominally consider the "best interests of the child", and it is evident that Abram's assessment was too optimistic.

The only other international treaty to feature an explicit right to family reunification, albeit with restrictions, is the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (CMW), to which neither Norway nor Canada is a party. The treaty, which was signed in 1990, came into force in July 2003, but so far no net country of immigration has acceded to it (Cholewinski 2007: 259, Dauvergne 2009: 23). This reluctance comes in spite of the fact that the Convention is explicitly deferential in regard to states' rights to control their borders, almost to the point of making the supposed right to family reunification it enshrines moot.⁵

What are we left with? International law obligates states to respect family unity in general terms. Logically, this should entail facilitating family reunification when this is the only way for family unity actually to be respected. However, international law is, as always, deferential to sovereignty and the right of states to control their borders, so the logical and moral argument does not quite translate into a legal right. Additionally, international law does not offer any definitive definition of the family (Steiner, 2009), so this rather toothless protection does not really extend beyond the nuclear family – the lowest-common-denominator definition of the family.

⁵ See CMW art. 79: "Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families" (see Cholewinski 2007: 259).

Family reunification in immigration law and policy

In this section I shall explore the family reunification rules and policies of two Western countries; Norway and Canada. These countries are comparably progressive as regards the rights of women and minorities, especially sexual minorities, and they both have relatively extensive welfare states. They differ, of course, in their migration histories. Canada is a country of immigration, which takes in a high number of new immigrants every year. Norway was only expressly open to immigration in a short period in the 1960s and early 1970s, although immigration has of course continued, particularly through family reunification. As such, Norway is quite representative of other European countries, especially those that do not have a history of colonialism. As we shall see, it seems that differing migration histories account for many of the variations in their approaches to family reunification. Taking a gender perspective, both countries turn out to have less progressive policies that one might expect.

Canada

Canada, as a multicultural country of immigration, has relatively strong and extensive family reunification policies. There are so many citizens and residents for whom the entry of family members is a vital concern that it also makes political sense to promote relatively liberal family reunification policies. It can be argued, however, that more could be done, in particular in terms of expeditiousness. The system is indeed exceptionally slow, with a very significant backlog of applications and processing times of several years. The Canadian system also has gendered and exclusionary effects, as we shall see.

Citizens and permanent residents can apply to Canadian authorities to establish their eligibility to "sponsor" family members. Because of this immigration status requirement, persons with pending asylum claims or those who have some form of temporary status, such as live-in caregivers in their first two to three years in Canada, are excluded from sponsoring family members for immigration. Secondly, the "sponsor" must "promise to provide financial support for the relative and any other eligible relatives accompanying them for a period of three to ten years, depending on their age and relationship to [the sponsor]" (Citizenship and Immigration, 2009a)⁶. Further, potential sponsors are deemed ineligible if they have "received government assistance for reasons other than disability" or if they "defaulted on an immigration loan" (ibid). This latter stipulation likely has adverse effects on resettled refugees, as they often pay for travel to Canada through such loans from the federal government. Many struggle to make the payments which can be a significant burden for recently arrived refugees who struggle to enter the workplace in a new country (see CCR 2009a).

⁶ This provision appears to be strictly applied, with the government going after former sponsors to claim money for social services used by estranged spouses, for example. After a legal challenge in 2009, however, the Ontario Court of Appeals has ruled that former sponsors are not automatically responsible for such debts (Makin, 2009).

The Family Class, which outlines who can be sponsored, first and foremost includes the sponsor's "spouse, common-law or conjugal partner, or dependent children" (Citizenship and Immigration, 2010). Dependent children must be single and under 22, or, if older, they must be dependent on their parents because they are students or because they have disabilities (ibid). Same-sex partners are also eligible for immigration under these rules. To establish a common-law relationship the applicants must establish that they lived together for 12 months uninterrupted (ibid). Couples "in exceptional circumstances beyond their control that prevent them from qualifying as common-law partners or spouses by living together" can apply as conjugal partners, but the level of scrutiny of the relationship gets progressively higher (ibid).

Canada allows sponsorship of extended family members to a significantly greater extent than many countries in Europe. Eligible extended family members include parents, grandparents, "brothers or sisters, nephews or nieces, granddaughters or grandsons who are orphaned, under 18 years of age and not married or in a common-law relationship" (Citizenship and Immigration, 2009b). Additionally, in the exceptional situation that willing sponsors do not have any eligible family members, they "can sponsor one relative regardless of age or relationship only if [they] do not have a living spouse or common-law partner, conjugal partner, a son or daughter, parent, grandparent, sibling, uncle, aunt, nephew or niece who could be sponsored as a member of the family class, and [they] do not have any relative who is a Canadian citizen or a permanent resident or registered as an Indian under the *Indian Act*" (ibid). As we shall see in the following section, Canadian family reunification rules are considerably more open than Norwegian ones.

Norway

While Canada is a country of immigration, Norway is ostensibly not one, and family reunification rules reflect this, particularly as regards sponsorship of extended family members.⁷ Persons who have, or who are eligible to get, permanent residence in Norway can sponsor their family members to join them. This includes Norwegian and Nordic citizens, foreign citizens with permanent residence, and foreign citizens with "a residence permit that forms the basis for a permanent residence permit" (UDI, 2009b). This latter category exists in Norway, but not in Canada, because like most European countries Norway does not grant permanent residence to new immigrants upon arrival (see Boyd, 1995). Most immigrants have a conditional permit for three years before they can apply for a permanent residence permit.⁸

⁷The criteria outlined in this paper do not apply to European Economic Area (EEA)/ European Union (EU) citizens who move between EEA countries. Such migrants are covered by the significantly less restrictive EU mobility rules, which seek to encourage movement rather than restrict it. Paradoxically, this means that some foreign residents have easier access to family reunification than Norwegian citizens.

⁸ Some persons with temporary permits, such as students, researchers and journalists, can bring family with them for the duration of their own permits.

Sponsors must, like in Canada, prove that they have adequate housing and finances to take care of incoming family members (UDI, 2009b).⁹ As of October 2009, the minimum income level has been raised to the equivalent of public pay scale level 8 (217,600 NOK, equivalent to about C\$39,000) (UDI, 2009c). Previously the rules were more lenient, and it was possible to use the income of immigrating family members towards proving sufficient funds, while the minimum income was also set lower.¹⁰ Now, however, it is entirely up to sponsors to prove their ability to care for their "dependents". A requirement that the sponsor must not have received financial support from social services in the year preceding the application was also introduced (ibid). We have thus seen a significant tightening of family reunification rules in the past year.

Following in the footsteps of Denmark, Norway has also considered placing a minimum age limit for family sponsorship (Razack, 2008: 129). In Denmark, sponsors must be 24 years or older, "based on the logic that anyone under twenty-four is less able to resist family coercion to enter into marriage" (ibid). This move was considered in Norway in the early 2000s as part of a strategy to combat forced marriages of young Muslim girls, which I will further discuss below, but was met with resistance from community groups (Razack, 2008: 134). While avoiding the Danish blanket approach, Norwegian authorities have recently introduced de facto age limit on immigrants, but not citizens. Persons who obtained their own Norwegian residency permit through asylum, protection or family immigration must now prove that they have worked or studied in Norway for four years before they can sponsor family that was set up after they came to Norway (UDI, 2010b).¹¹ This so-called "four-year rule" is clearly introduced to make it more difficult for immigrants to marry persons from their own home countries.

I will now turn to the Norwegian equivalent of the Family Class. As in Canada, one can sponsor one's spouse (UDI, 2009d). It is not specified whether same-sex spouses qualify, but as Norway allows gay marriage one would assume that they do. Norway does not have common-law marriages, but it is possible to sponsor a "cohabitant" if it can be demonstrated that the couple has lived together for more than two years (ibid). This requirement is thus stricter than in Canada, and there is no equivalent of the "conjugal partner" category for persons who are unable to get married or live together. It is, however, possible to sponsor a fiancé(e), who gets a six-month permit. If the couple weds within the six months, they can then apply for regular spousal sponsorship. As for minor children (under 18 – the requirement is thus stricter than in Canada), they can join one or both parents in Norway (ibid). Finally, in some instances, parents can join their minor children in Norway (ibid).

The above provisions thus apply to nuclear family members only. Provisions for extended family members are, unsurprisingly, much more restrictive than in Canada. A

⁹ It should be noted that persons accepted as refugees are able to sponsor family without fulfilling the financial requirements.

¹⁰ At pay scale level 1 (200,800 NOK, equivalent to C\$34,000).

¹¹ This requirement is so complicated to understand that the Directorate of Immigration website has included a total of seven illustrative stories about "Muhammed", "Svetlana" and "Ali" to try to explain how it works in practice, see UDI, 2010b.

person over 18 years old can sponsor his single mother or father (meaning, only if the parent is divorced or a widow/er), but *only* if the said parent has no spouse, parents, children, grandchildren or great grandchildren in the home country (UDI, 2009d). Further, one can sponsor unmarried children between the ages of 18 and 21, but only if they have previously spent long periods of time in Norway (ibid). Children over 18 can also be sponsored if they are the only remaining family members in the home country, or if they are entirely dependent on parental care for medical reasons (ibid). Foster children under 18 can be sponsored if the sponsor is the legal guardian. Finally, "full" siblings (meaning, not half- or step-siblings) under 18 years of age can be sponsored if the parents are deceased and they have no other remaining caregivers in the home country (ibid). Persons who do not fit any of the categories may apply and claim strong humanitarian and compassionate grounds (ibid).

What do migrating families look like?

We have established that nuclear families are the primary targets of family reunification policies, although Canada has more flexible rules regarding other family members. It is, evidently, impossible within the scope of such a short paper to present the full variety of family life. In the words of Michael Walzer, "the rules of kinship are an anthropological feast, wonderfully varied and highly seasoned" (1983: 228). It is at least indisputable that the nuclear family is not the norm in many immigrants' country of origin, and that in many parts of the world there is much more importance placed on the clan or the extended family. Indeed Fourlanos has, somewhat flippantly, argued that "what one region may regard as an acceptable number of individuals seeking admission on the basis of family unity, might constitute a case of mass-influx of aliens in other parts of the world" (1986: 91). Suffice to say, with Martha Nussbaum, that

"even the most cursory excursion into comparative anthropology and social history makes plain that the 'nuclear' family unit headed by a heterosexual couple, dwelling in its own private little house, and committed to intimate concern for one another and for the well-being of children is so far from being 'natural' that it has hardly ever existed outside of Western Europe and North America after the Protestant Reformation. Children are cared for by many different social arrangements: extended kinship structures, same-gender groupings, village cooperation" (1997:31).

She goes on to note that in 1993, for the "International Year of the Family", the UN simply gave up trying to define the family as such and contented itself with affirming its importance, whatever it may look like (ibid). This is arguably the ethical, albeit not the most politically practical, approach. I wish to establish – by way of this shortcut – that families both in the West and elsewhere come in all shapes and sizes. Family reunification policies, on the other hand, generally come in "one-size" only. What effects does this have on migrants? Who is affected by this restrictionism?

Many forms of exclusion

Immigration selection is arguably, at its most basic, a form of exclusion. Carens (1987) has argued that it is not consistent with the political liberalism espoused by Western countries to use force to keep out migrants at all. For the purposes of this paper, the open borders argument will be left aside, as it would render the entire eligibility and selection discussion moot. It is, after all, generally held that the practice of border control is a legitimate use of state coercive power, and border control entails the exclusion of many persons who wish to enter Western polities. What is not generally considered legitimate in countries such as Canada and Norway, however, are more specific forms of exclusion based on, for example, gender discrimination. Both countries pride themselves on being among the most egalitarian countries in the world. Canada was the first country in the world to introduce specific guidelines on gender-based persecution of refugees, and Norway was ranked first in the world on the World Economic Forum gender gap index in 2008 (World Economic Forum, 2009). Norway, with its strong social-democratic ethos, also seeks to reduce poverty, and none of these countries would willingly accept a racist label. As we shall see, this otherwise pervasive concern for equality appears to be imperfectly reflected in immigration rules. These rules also seem to present family immigrants as weak and dependent; unable to care for themselves.

Status-based exclusion

It must first be noted that in both countries, only those who possess (or are about to obtain) a permanent residency permit can sponsor family members¹². This is sensible from a public policy perspective as it would arguably be a waste of resources to process applications from family members of persons who may not stay. Deportations are also much more difficult once children and families have settled. It does entail, however, that for some persons the human right to family life cannot be operationalized. Catherine Dauvergne argues that "the power of the law is implicated in the failure of human rights norms to reach those who are most marginalized because of the "tyranny of jurisdiction [...] Despite the 'human' in human rights, being merely human is not enough to ensure legal standing in many instances" (2009:21). In addition to so-called illegal or undocumented migrants, asylum seekers in particular fall into this trap, and have no rights to family reunification until they are potentially recognized as refugees. It can take years to obtain refugee status in unwieldy Western immigration bureaucracies. While, as noted, this type of exclusion is logical and probably defensible from a pragmatic point of view, it is not entirely clear that it is consistent with obligations under the Convention on the Rights of the Child. The rights enshrined in this convention should apply to all children, regardless of immigration status, but they are rarely – if ever – applied in this manner (see above and Noll, 2010).

¹² Excepted students and others who can bring family for the duration of their own stay, but who are expected to leave afterwards.

At some point, however, this type of exclusion becomes indefensible, even to the pragmatic mind. This is when the temporary status which precludes persons from sponsoring family members will be "temporary" indefinitely. While this sounds like a contradiction in terms, it is a situation which arises more often than one would think. Canada has moratorium on returns, even of rejected asylum seekers, to certain countries. At present, this includes Afghanistan, Democratic Republic of Congo, Haiti, Iraq and Zimbabwe (CCR, 2009b). Many failed asylum seekers from these countries are allowed to remain in Canada with temporary work permits, but they remain without secure access to permanent residency and thus rights to family reunification. As the moratoria are unlikely to be raised in the near future, these persons' severance from family members is thus indefinite unless they are willing to return to precarious situations in war-torn and disaster-struck countries where they have claimed to face persecution.

Similarly, there are so-called "unreturnable" asylum seekers in Norway, some of whom have lived in the country without proper status for a decade (SOS Rasisme, 2008). Some of these were refused asylum because the authorities suspected that they had lied about their identity. If the identity of a person is not established, it can in the next instance be unclear to which country they should be returned; making deportation difficult or impossible. Others may come from countries that will not take them back, or from countries to which Norway does not enforce returns (a similar situation to the Canadian moratoria). This is, in fact, the case of most "unreturnables", who are from Ethiopia and Eritrea. Persons from Eritrea have broken Eritrean law simply by leaving, and according to Amnesty International returned asylum seekers are at "grave risk of torture" (Amnesty International, 2009). Still, some are refused asylum in Norway and end up in limbo. It seems quite problematic to "tolerate" such persons' presence over time without affording them a status that will give them a dignified life and which keeps indefinitely them from realizing their rights to family life.

Gender-based exclusion

Through various mechanisms of control, immigration law implicitly upholds certain traditional and "ideal" family structures and forms, and while Canadian law is more open than what is the case in Norway and most other Western countries, the emphasis on nuclear family and biological family ties is ever present. Through the "sponsorship" mechanism, there is an implicit emphasis on the "family breadwinner", as the person sponsoring family members for entry must demonstrate ability to care for them. As Boyd emphasizes, "immigration regulations need not be overtly discriminatory to produce sex specific outcomes" (1995: 84). She argues that

"systematic discrimination can result when migration regulations reinforce gender inequality by accepting stereotypical images of men and women and traditional sex roles in the countries of origin and destination. Practices tending to designate men automatically as heads of household confirm and perpetuate a traditional sexual division of labour, both within the immigrant family and in society at large" (ibid).

To illustrate Boyd's argument with some of the immigration rules we have examined, we can note that it is somewhat surprising that in 2009 the Norwegian government changed the rules so that only the income of the sponsor would count when the family is trying to prove they have sufficient income for sponsorship. This implies that the incoming family members will be truly "dependent" on the sponsor and unable to care for themselves, clearly perpetuating the idea of a family breadwinner. Most sponsors in Norway are indeed men who sponsor wives and children for entry¹³, and it is apparently assumed that their wives will not contribute any income in Norway to prevent the family from having to rely on social services. This observation evidently holds for Canada as well, where the sponsorship in fact entails a signed agreement to care for dependents. Unlike in Norway, refugees are not exempted from these rules.

Women are also disadvantaged when they are the sponsors. As Boyd remarks, "In countries where women are typically paid less than men, migrant women may have more difficulty than migrant men in meeting the financial criteria necessary for continued residence in the host country or in sponsoring the migration of close relatives" (1995: 84). She could arguably have stated this in stronger terms, because despite being among the world's most egalitarian countries, not even Norway has closed the gendered wage gap. Many immigrant women work in low-wage jobs in sectors such as health care. This is also related to the gendered construction of skilled and unskilled labour. Women sponsors are thus more likely to have difficulties fulfilling earning requirements, which they must, as of 2009, fulfil alone. Indeed, if we look at spousal sponsorship cases in Norway from 2009, they were much more likely to be refused where the woman was the sponsor.¹⁴ This does not appear to be a concern to Norwegian immigration authorities or to the gender equality commissioner, but one could argue that it should be.¹⁵ With the further tightening of the rules that happened in 2009, it will be interesting to see if this discrepancy in acceptance rates will grow.

Exclusion of low-income workers

By placing an income requirement as a prerequisite for family reunification, the state also excludes low-income citizens and residents from sponsoring their families. Should family life be a privilege for those who can afford it? Particularly since the income requirements in Norway have been recently raised and made stricter, this policy could be construed as a form of exclusion making it ever more difficult to sponsor family. This kind of rule is not analogous to the screening of potential adoptive parents, where authorities check couples for "suitability" as parents, because in family reunification cases the family in question is generally pre-existing. Such a requirement is also likely to disproportionately affect new immigrants and minorities if they are in lower income brackets and have more difficulty entering the labour market. It should also be noted that there is little expectation in

¹³ In 2009, the Norwegian Directorate for Immigration processed the cases of 8969 men who applied to sponsor incoming family versus 2850 women who did the same (UDI, 2010a).

¹⁴ 26.2% rejections, as compared to 12.5% were men were sponsors (UDI, 2010a).

¹⁵ After all, the said commissioner has even criticized hairdressers for charging men and women differently – no form of discrimination seemingly goes under the radar (Forbrukerrådet, 2005).

society at large that families be entirely self-contained and that they not rely on social services should the need arise. Canada and Norway are countries which have relatively extensive benefits to families that need them, precisely to encourage the kind of equality and social participation that does not appear to be expected in immigrant families.

Exclusion based on race or ethnicity

Just as Canada and Norway do not have explicitly gendered immigration rules, neither do they have rules appear to immediately exclude certain racial or ethnic groups (although both countries have had such explicitly discriminatory immigration rules in the past)¹⁶. This does not mean that the nominally neutral rules affect persons of all kinds of backgrounds in the same way. I noted above that the nuclear family form which is privileged for immigration is historically specific to the West, which entails that non-Western persons are immediately less likely to have their relationships of caring recognized within this framework.

In her book *Casting Out*, Sherene Razack (2008) perceptively unpacks Norwegian attitudes and policies toward Muslims and Muslim women by way of Norwegian policies toward "forced marriages"; an analysis which Eileen M. Myrdahl has recently elaborated on (2010). Razack argues that Norwegian policies towards minorities, which intersect with immigration policy in important ways, "have been nonetheless racist, 'culturalizing' violence against women as an attribute of Muslim peoples and using the opportunity to justify a number of initiatives that have more to do with teaching 'them' how to behave than having any meaningful anti-violence objective" (2008: 108). She argues that there is a frequent "slippage" in the rhetoric between arranged marriages, which are legal, and forced marriages, which are not. She shows how some powerful voices in the debate on forced marriage simply assume that "marriages contracted with partners of the same ethnic background who live outside Norway *necessarily* entail coercion" (2008:13). This, in turn, legitimizes restrictions on immigrants' family life and family reunification in the name of protection and education, with rules imposed on immigrants but not citizens, such as the Norwegian "four-year rule" mentioned above, which requires immigrants to study or work for four years before sponsoring new family members.

This debate on age limits for family sponsorship is part of this general emphasis on developing and educating immigrant youth as autonomous individuals. Myrdahl (2010) argues that immigrants are discouraged from marrying persons from their home countries, and encouraged to marry for love in the Western, romantic sense, in order to become true, national subjects. Norwegian immigration authorities are constantly trying to identify fairytale-like enactments of romantic love that allow them to recognize relationships as "genuine" (Myrdahl, 2010). Persons who have grown up in Norway are expected to "emerge as autonomous individuals committed to sets of liberal values", and "alternative commitments

¹⁶ The Norwegian Constitution of 1814 originally prohibited Jews and Jesuits from entering the realm, see Puntervold Bø, 2004: 22.

evidence incomplete development as a national" (Myrdahl, 2010:110). This kind of targeted policy which seeks to manage the family relations of young immigrants is arguably a form of exclusion based on Orientalism and perceptions of "unassimilable" Muslims.

While age limits have not been contemplated in Canada, new regulations on so-called "bad faith marriages" proposed in April 2010 (Canada Gazette, 2010) could also render suspect arranged marriages. Previously, a marriage was deemed in bad faith and thus invalid if it was not "genuine" *and* it was contracted mainly for the purpose of immigration, but under the new rules this test would be disjunctive (*or*, not *and*). It would then be possible to ignore the genuineness of the marriage if it was deemed to be contracted for immigration purposes, which the Canadian Bar Association argues could easily render suspect arranged marriages among South Asians (2008: 3-4). Their concerns, which were voiced already in 2008, have not been heeded in the proposed regulations (Canada Gazette, 2010).

Exclusion of extended family members and "alternative" families

The stance that we can make out in these two countries' immigration laws and regulations toward the role of the extended family is also quite interesting. As Boyd argues, "the different positions of the overseas countries of immigration and the former labour-importing countries of Europe regarding the objectives of migration are evident in regulations governing family reunification", and "in Europe, the definition of family is more restricted" (1995: 85). Indeed, Canada as a country of immigration operates with the assumption that immigration is not, in itself, negative. The orthodoxy is that Canada needs immigrants, and as long as they do not become a "public charge", then there is little problem with admitting some extended family members. The scope of the Canadian Family Class is quite wide, and immigrants are able to sponsor their parents and various other family members to come and live with them as long as they can demonstrate ability to provide for these family members.

Looking to Norway, on the other hand, the conditions for sponsoring extended family members are extremely restrictive. This reflects Norwegian immigration history and the fact that since 1975 Norway is explicitly *not* a country of immigration, at least officially (Puntervold Bø, 2004:27-28). Few extended family members are eligible to join persons in Norway. It is particularly interesting to note the conditions for sponsoring parents: in essence, they must be single and have no remaining family members in the home country. This reveals somewhat of a double standard. Norway does not value extended family members in its immigration regulations, but the elderly are expected to rely on *their* extended family members, including great grandchildren, for their livelihoods in the home country, regardless of whether their Norwegian immigrant relatives are better placed to provide care. We can find some explanation in the fact that Norway perceives immigration very differently from Canada. It is much more seen as a "problem" in need of management, and there is an ever present fear that immigrants will not "integrate" properly. Myrdahl argues that the immigration of spouses from the home country, in particular, will hinder or delay the integration of immigrants in Norway (2010). The same argument is likely true for other family members, particularly the elderly who are less likely to learn the language.

While Norway, and to a lesser extent Canada, has an extensive social safety net where the state takes some responsibility for the care of the elderly, many immigrants' countries of origin do not, and people are expected to take care of their parents as they age. Thus, this type of exclusion arguably entails a failure to recognize immigrants' family obligations. The political theorist Iseult Honohan suggests that the basis for family reunification rights should be so-called "agent-specific obligations of care" (2009). She suggests that the importance of family relationships lie not only in the "personal intimacy as much as physical support, of giving and receiving 'care' in the broadest sense" (Honohan 2009: 772). We thus have duties to care for family members, and Honohan argues that the state's "prima facie obligation to admit family members lie in the importance of such relationships, in which members have agent-specific obligations of care to one another" (ibid). While Honohan does not explore this facet, such obligations become arguably more forceful as immigrants' parents age.

The letter, and the spirit, of the law

As I explored in the beginning of this paper, family reunification is insufficiently codified in international law, largely due to the deference of the law towards states' sovereign right to control their borders. Looking at this from the perspective of human rights states often violate the spirit, if not the letter, of human rights law as they devise ever more restrictive family reunification rules. I have argued that this permissive policy space opens for various kinds of discriminatory practices which disadvantage women, minorities and lower-income persons. Each of these dimensions of exclusion could evidently be studied in more depth, and their intersections could be further elaborated on, but my purpose here was mainly to show the many ways in which family reunification rules are fraught and far from neutral. These rules are not explicitly discriminatory, but they have discriminatory effects.

If we were to make a value judgment, it seems evident that Canada's more open rules are "better" from the perspective of immigrants, but this is due to different migration histories rather than due to goodwill or progressiveness. In both countries' rules, however, the emphasis is on the sponsor-as-breadwinner. It is this structuring feature which is so effective at perpetuating gender stereotypes. It is in fact quite paradoxical that it the "breadwinner" is so important. Both of these countries have been at the forefront in promoting gender equality, and they have both legalized same-sex marriage. Still, they make all couples, whether same- or opposite-sex, conform to the mould of a breadwinner and dependent in order to gain entry to the polity, whether or not such a pattern corresponds to couples' private lives.¹⁷ Further, if there is concern that immigrants are not sufficiently socialized into progressive, Western autonomous gender roles, why should equality not be promoted from the point of entry?

There is further evidence that sponsorship rules are being tightened, as we have seen in particular in the case of Norway, but also in new Canadian rules on "bad faith marriages".

¹⁷ Research suggests that same-sex couples in particular eschew any kind of gendered division of labour within the family, not surprisingly. See Okin, 1997: 55.

The restriction of family reunification can be interpreted as part of a general move to restrict immigration and prevent "immigration fraud". There seems to be an increased interest in ascertaining whether family ties are "real" or genuine, which could easily become very intrusive. It would be interesting to trace how this new restrictionism has differential effect on different groups. This could further be tied to a general backsliding of gender equality in recent years.

After this thorough criticism of very way in which family reunification rules work, one may wonder what I would propose in their place. Should anything go? I do not in this paper espouse an open borders position where anyone who can claim to care about a resident should be allowed to enter, but I believe migrants should be entitled to claim protection for pre-existing relationships of care which they can demonstrate in one way or another. A search for a principled alternative approach to the way states should create ethical family reunification policies, which take into account the diversity of family life while permitting some form of border control, would be a fruitful and policy-relevant avenue for further research.

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