

Chapter Five

Caring Relationships and Family Migration Schemes

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Liberal democracies currently do not recognize a general right among all would-be immigrants to be granted entry; indeed, many maintain highly restrictive immigration policies. Against this background, it is notable that all these states nonetheless confer special eligibility to immigrate on would-be migrants who are related by family ties to current citizens, and sometimes, to permanent residents.¹ Despite this broad consensus among constitutional democracies in enacting *family migration schemes*, there is great divergence among different states in the specific family relationships that attract preference in immigration.

The United States and Australia offer the most expansive family migration schemes, extending preferential eligibility to spouses, dependent and adult children, parents, siblings, and even—in the Australian case—to nieces and nephews of current citizens and lawful permanent residents. Canada offers preferential immigration eligibility to spouses, dependent children, and parents, while the United Kingdom preferentially admits spouses, children, and elderly dependent relatives. France and Germany offer more limited family migration schemes, extending special immigration eligibility only to spouses and dependent children of citizens and certain long-term residents (Lynch and Simon 2003).

Especially when family migration schemes encompass a relatively wide range of relationships, they effectively reduce the ability of receiving states to use immigration policy to advance various public policy goals and even to achieve compliance with certain requirements of justice. For example, to the extent that a receiving state gives preferential eligibility for family migration, its ability to control the skill composition of admitted immigrants is thereby limited. Assuming that there are numerical limits—due to political feasibility or due to pressure on public services and finances—to

the number of immigrants a state can admit within a given time frame, family migration might also crowd out the admission of other categories of immigrants, such as refugees. Given that family migrants are the largest category of immigrants admitted for settlement in many democratic countries, the constraints that granting special immigration eligibility to family members imposes on receiving states' ability to use skill selection or to admit immigrants on other bases is likely to be substantial (Castles and Miller 2009, 110).

Paul Collier further worries that with expansive family migration schemes, '[d]ependent relatives of [naturalized citizens] will *increasingly* crowd out other would-be migrants as diaspora-fueled migration accelerates' (Collier 2013, 260); this worry is motivated by the theory that the presence of a diaspora from a given sending state in a particular receiving state tends to increase the rate of migration from that sending state to that receiving state. This theory is lent support by findings that networks based on family ties or common national origin help lower the costs of migration for would-be migrants, so that '[m]igratory movements, once started, become self-sustaining social processes' (Castles and Miller 2009, 29).

Due to this potential of family immigration to crowd out other categories of immigration, family migration schemes have attracted criticism. Two lines of criticism are particularly worth noting. Firstly, some scholars have criticized (expansive) family migration schemes and called for their curtailment on the grounds that such schemes favour the admission of family migrants—who are more likely to be dependents or have a lower skill level—at the expense of high-skilled labour migrants who could make a greater contribution to the receiving state's economy and who pose a lower risk of harming the economic prospects of low-skilled native workers (Borjas 2001; Macedo 2007).

Stephen Macedo, for example, proposes that US immigration policy should be reformed by 'limiting immigration based on family reunification (perhaps limiting that preference to spouses and minor children)' and giving preference instead to better-educated and higher-skilled immigrants. Shifting from an immigration regime that prioritizes family migrants to one that prioritizes high-skilled labour migrants is not simply desirable as a matter of public policy, Macedo argues, but may be required to discharge special obligations towards the least economically advantaged US citizens (Macedo 2007, 76–80). Collier goes further, proposing group-based quotas on special eligibility for immigration among even immediate family members: in order to '[open] up room for the immigration of workers', he suggests that naturalized citizens as a group 'receive the same proportion of immigration slots for their relatives' as native citizens as a group. This proposal would enforce the same

rate of family immigration among native citizens and naturalized citizens (Collier 2013, 260–61).

Secondly, expansive family migration schemes have been criticized for crowding out the admission of refugees. Under the current international regime for the protection of refugees, there are two mechanisms by which refugees might access a safe territory: the asylum mechanism, which imposes legal obligations of *non-refoulement* on those states whose territory refugees manage to reach; and the resettlement mechanism, which leaves potential host states legally free to determine how many refugees they choose to accept for resettlement. Assuming that the total number of migrants—including family migrants, economic migrants, and refugees—each receiving state accepts is relatively fixed, the more expansive family migration schemes are, the fewer refugees will be resettled, other things being equal. With the aim of increasing the number of refugees accepted for resettlement, Matthew Gibney has therefore proposed that special immigration eligibility should be restricted to the nuclear family—thereby excluding siblings and adult children—and that refugees should receive the same level of immigration priority currently given to family migrants (Gibney 2004, 243).

On the other hand, the right to non-interference in and support for family life is recognized in a number of key international human rights documents, and this has been interpreted to imply a right to family migration. Article 16 of the Universal Declaration of Human Rights recognizes a right to ‘found a family’ and declares that the family unit is ‘entitled to protection by society and the State’. Article 8 of the European Convention on Human Rights enshrines a right to ‘respect for ... family life’, which the European Court of Human Rights has held to include a right to family migration: according to the Court’s reasoning, because family members must live together if family relationships are to ‘develop normally’ and family members are to ‘enjoy each other’s company’, Convention states have a duty to grant their citizens a right to sponsor non-citizen family members to immigrate (Harris et al. 2009, 375–36).

A liberal theory of family migration can help us to navigate this disagreement by shedding light on what kinds of arrangements for regulating family migration are consistent with liberal justice. Assuming that there is no general human right to free migration and hence no duty on receiving states to maintain open borders, such a theory would explain why certain family relationships—but not other relationships and associations—are entitled to special public accommodation and support in the form of immigration preference for the non-citizen parties to those relationships.² A normative theory of this kind would help us to identify which specific family relationships receiving states are required as a matter of justice to

respect and protect in their immigration laws and policies, and to specify the stringency of these requirements relative to other policy goals receiving states may seek to achieve, such as promoting economic growth or providing protection to a larger number of refugees. Finally, a normative theory of family migration might lead us beyond the family: we may discover that certain, relevantly similar, non-family relationships are also entitled to receive special accommodation in immigration policy.

In this chapter, I will examine the theories of family migration recently developed by Matthew Lister and Luara Ferracioli; these theories are, in my view, the most compelling available in the literature. Nevertheless, I argue that while Lister and Ferracioli take their theories to offer *liberal* justifications for a right to family migration, both of their theories contain elements that are objectionably illiberal. I will offer an alternative, two-part theory of family migration that is not vulnerable to these objections. The first part focuses on *dependent-carer* relationships. I argue that certain non-citizen dependents who rely on the care of citizens and residents should be given special immigration eligibility as a matter of human rights. The second part focuses on *intimate caring relationships* shared by *independent adults*. I argue that states should support their members' caring relationships, including certain family relationships; this support extends to granting immigration preferences to allow the parties to these relationships to live together or in close proximity.

FERRACIOLI'S THEORY: PROTECTING IRREPLACEABLE RELATIONSHIPS VALUED BY CITIZEN AND SOCIETY

A normative account of family migration schemes must identify the morally relevant feature of family relationships that justifies granting preferential eligibility for family members of citizens and residents. It must also explain why participants in a wide range of other relationships and associations should not receive preferential eligibility to immigrate. To be sure, we should not assume in advance that existing state practice, which distinctively accommodates *family* relationships, is justified; perhaps some non-familial relationships and associations are relevantly similar to family relationships and should also be accommodated. Nevertheless, I will suppose that a normative account of family migration schemes should be able to resist excessive proliferation of an entitlement to preferential immigration eligibility: what such an account seeks to explain is why certain family and perhaps some other relationships should receive *special* consideration in immigration policy.

One strategy might be to appeal to the greater non-instrumental value of family relationships over other forms of human association. Such an argument would claim that a liberal state has a duty to enact immigration policies that honour the justice claims of its current citizens. Citizens who form family bonds with non-citizens have a right that their state grant preferential immigration eligibility to their non-citizen family members because this is necessary for them to secure the great human good of family life. States, however, do not have similar duties to grant special accommodations in their immigration laws to non-citizens joined in other kinds of relationships with current citizens, because relationships of these other kinds are less valuable and therefore less worthy of institutional support and protection.

Even while granting what she calls the ‘partialist’ view that the justification for family migration schemes should appeal to the moral claims of current citizens rather than those of prospective immigrants (Ferracioli 2014, 5), Ferracioli rejects arguments of the type outlined above, on the grounds that they fail the test of liberal neutrality in public policy, according to which ‘no particular perfectionist conception of the good ought to be privileged in the public domain’ (Ferracioli 2014, 2). If a state gives preference to family relationships of certain types in the design of their immigration policies, but does not accord the same accommodation to other relationships and associations, on the grounds that the protected family relationships are more (non-instrumentally) valuable than other relationships and associations, then clearly it violates the requirements of liberal neutrality. As Ferracioli puts it, under this type of justification for family migration schemes, ‘the liberal state takes a stand on the value of particular human bonds: it communicates to the citizenry that some special relationships are more valuable than others, and in so doing, it profoundly disrespects those whose special relationships are not deemed valuable enough to impose limits on the development and implementation of immigration arrangements’ (Ferracioli 2014, 2).

Instead of appealing to the superior value of family relationships, therefore, Ferracioli’s account invokes the simple fact that certain relationships—including, but not limited to, family relationships—are *actually valued* by citizens of a receiving state. On Ferracioli’s view, family migration schemes should not be conceived as devices to promote objectively superior conceptions of the good, but as institutional supports for the particular conceptions of the good that citizens of the receiving state in fact choose. When a relationship is ‘taken to be valuable by the citizen who partakes in it’ (Ferracioli 2014, 11), and when the relationship is ‘non-fungible’ or ‘irreplaceable’ in the sense that the participants in the relationship cannot be substituted without destroying what participants

value in the relationship (Ferracioli 2014, 13–14), a liberal state has strong reasons to arrange institutions so as not to prevent the particular participants in the relationship from living in close proximity and continuing the relationship they have with each other. Preferential immigration eligibility for non-citizen participants is one such institutional accommodation.

Notice that while relationships plausibly trigger an entitlement to institutional support, including accommodation in immigration policy, only if they are irreplaceable and actually valued by citizens and residents, it is doubtful that these two conditions are jointly sufficient for a relationship to attract a right to be protected by preferential immigration eligibility. The fact that a citizen actually values a non-fungible relationship may establish that she has a strong interest in being able to continue that relationship by maintaining frequent interactions and continuing to share a history with the specific other persons who participate in that relationship. It may also be enough to show that she has an interest in receiving whatever institutional support and accommodation is necessary to that end. However, the interest in maintaining irreplaceable relationships that are actually valued does not seem to be of the proper kind to establish a *right* to receive institutional support. States are not required by justice to implement some institutional scheme simply because that scheme would satisfy some citizens' preferences or facilitate the pursuit of their conceptions of the good.³

Indeed, Ferracioli herself appreciates this point: she allows that the mere subjective preferences and attachments of some citizens cannot, on their own, ground a duty on the part of other citizens to support those preferences and attachments through public policy. Emphasizing that 'the inclusion of immigrants gives rise to social costs that cannot be fully internalized by the immigrant herself' (Ferracioli 2014, 12), she resists the idea that the costs of institutionally supporting some citizens' conceptions of the good should be borne by other citizens who may have quite different ideas about the human good or who have simply chosen to pursue other projects and attachments.⁴ Hence, her theory proposes a further necessary condition that relationships must meet in order to be protected by a right to institutional support in immigration policy: only those relationships 'that are taken to be valuable by society at large' attract an entitlement to institutional support through preferential migration schemes for non-citizen participants (Ferracioli 2014, 13). The thought here is that if other citizens also value the relationships in question, then they would have no complaint to an institutional scheme to protect those relationships, even when these schemes involve costs that they must shoulder.

Nevertheless, the idea of a relationship that is valued or taken to be valuable 'by society at large' is ambiguous: must a relationship be

recognized by *all* members of the relevant society as valuable, or is it enough for a majority to hold that the relationship is valuable? This interpretation seems to cohere best with the motivation of pre-empting valid complaints by other members of the citizenry who are called on to bear the social costs incurred by family migration schemes. But if it is unanimous agreement among the whole citizenry—or even agreement among all citizens who might be liable to bear the costs of family migration schemes—concerning the value of a relationship that is required, then it is doubtful that Ferracioli’s theory justifies *any* relationship-protecting migration schemes. Under liberal institutions that respect freedom of conscience, speech, and association, citizens will inevitably form divergent opinions about the objective value of various relationships. There will be no widespread agreement on which relationships are valuable.

If by ‘society at large’ Ferracioli is referring to the *majority* of citizens, then her theory of family migration is vulnerable to the objection that it makes public support for individual citizens’ family (and other) relationships dependent on the approval of the majority—even if the approval in question only requires recognition of the relationship’s objective value rather than any motivation to personally pursue relationships of a similar type. For example, the theory would licence a majority that denies the value of same-sex partnerships to enact immigration laws that grant opposite-sex unions immigration preference but deny that same preference to same-sex unions.

Hence, on either interpretation of the condition that only those relationships that are valued by ‘society at large’ should be accommodated in immigration policy, the condition is objectionably illiberal. On one interpretation, the condition implicitly assumes a convergence in evaluative judgements that cannot be expected in a free society; on the other interpretation, the condition holds individual citizens and residents hostage to the tyranny of the majority when they seek preferential immigration eligibility to facilitate their relationships with non-citizens.

LISTER’S THEORY: RESPECTING THE RIGHT TO FREEDOM OF INTIMATE ASSOCIATION

Having considered the problems with Ferracioli’s theory of family migration, I turn now to Lister’s account. Like Ferracioli, Lister assumes that there is no general individual right to free international migration, and hence seeks to ground the right to family-based immigration in the claims of the existing citizens of a receiving state (Lister 2010b, 720). He argues

that as a matter of liberal justice, citizens have a right to accommodation in their state's immigration policies for their non-citizen spouses and minor children, deriving this right from these citizens' fundamental right to *freedom of association*, and in particular to freedom of *intimate association*—that is, the right to freely 'form and maintain intimate relationships' (Lister 2010b, 722). The family, Lister claims, is at the core of the protections afforded by the right to freedom of (intimate) association. When citizens form family bonds with non-citizens, special accommodation in immigration policy is required to protect citizens' family life. Hence the right to immigration preference for non-citizen family members is derivative from the fundamental right to freedom of intimate association.

The moral significance of intimate associations stems, on Lister's view, from their role as essential preconditions for the development and exercise of a citizen's moral powers. Firstly, intimate associations, such as the family, are crucial sites for the development of individuals' sense of justice: through their close and constant interactions with their parents, children learn to consider the good of others and experience moral development. In addition, intimate associations are also essential preconditions for citizens' personal autonomy, simply because their formation and maintenance features in a wide range of life plans (Lister 2010b, 722–23). Because all citizens in a liberal society have an interest in developing and exercising their capacities for justice and for personal autonomy, a liberal state is required by justice to serve this interest by maintaining the essential preconditions for its satisfaction—including by respecting and protecting citizens' freedom of intimate association. Hence, the right to freedom of intimate association is 'among the most fundamental and important held by free people' (Lister 2010b, 722). Accordingly, it can only be properly limited when this is necessary to protect other fundamental rights (Lister 2010b, 728).

Because the more intimate a relationship is, the fewer limitations on that relationship are consistent with respect for the right to freedom of intimate association, and because the family is 'the most intimate of all associations', Lister urges that family life should receive the strongest protection against state interference (Lister 2010b, 726, 728–29). Because family life will normally be seriously damaged unless family members, or at least spouses and minor children, are able to live in close proximity, receiving states must enact special accommodations in their immigration policies—family migration schemes—so that these policies do not, by interfering with the family life of citizens who have formed familial ties with non-citizens, violate their citizens' rights to freedom of intimate association.

A significant lacuna in Lister's account is that he gives no clear criteria to determine when an association counts as (more or less) intimate. At one point in his argument, he seems to suggest that friendships, small firms, and sports teams might all count as intimate associations (Lister 2010b, 735). It is unclear whether he believes an association's degree of intimacy is a function of its small size, its purpose of allowing associates to enjoy companionship and mutual care rather than to promote commercial goals or to express and amplify some viewpoint, the extent to which associates know each other personally and have regular interactions, or some combination of these factors. In the absence of clear criteria for assessing an association or relationship's intimacy, Lister's account lacks a standard by which to determine the specific familial—or other—ties that are covered by the right to freedom of intimate association and that therefore might qualify for special accommodation in immigration policy.

Avoiding a philosophical specification of a metric of associational intimacy, Lister appeals instead to humanity's 'common understanding of what is important about and to the family'. He claims that there is a universal 'overlapping consensus' or 'common core' among otherwise divergent conceptions of the family that recognizes two adult partners and their dependent children as constituting a family unit. Given universal agreement that a union of two adult partners and their minor children constitute a family, and that family relationships so conceived are especially intimate, it would be 'unjust' to deny special immigration eligibility to non-citizens' adult partners or minor children of current citizens (Lister 2010b, 741–42). Beyond this minimal core that all conceptions of the family in the world share, Lister holds that each state will have an internally common conception of the family unit proper, which when appropriately interpreted through democratic deliberation, controls the shape of the right to family migration for that state. Protecting the integrity of the family unit as that unit is understood according to each society-specific conception of the family is not, to be clear, recommended as good public policy, but is taken to be a matter of justice: Lister is appealing to the presence of a common conception of the family within each society to specify the content of the right to family migration for that society.⁵

The problem is that there is no reason to expect an overlapping consensus within each (liberal) society—let alone across societies—about the nature and significance of the particular human relationships that may be supposed to constitute a family unit. In a society whose institutions guarantee the deliberative freedoms, different conceptions of the family are likely to gain acceptance. Consider how some religious and philosophical views exclude same-sex relationships and polygamous relationships from the family unit, while other views embrace such relationships. Similarly,

some conceptions of the family restrict the family unit to two adult partners and their minor children, while others include grandparents, uncles and aunts, cousins, and so on within even the core family unit. It is worth noting that when, in an earlier article, Lister himself seeks to defend family migration rights for same-sex couples, he appeals to the objective importance of same-sex unions for the full development and exercise of same-sex partners' moral powers, and not to a putatively shared social understanding of the family within democratic societies (Lister 2007, 767, 773–75). Indeed, he insists that within a 'free and open society', 'we cannot hope to achieve consensus' on the nature of the family (Lister 2007, 778).

In crafting its arrangements regulating those human relationships some might label as 'family' relationships, whether in enacting family migration schemes or in recognizing a civil marital status more generally, a liberal state should not be guided by an assumed pre-existing unanimity among its citizens about the nature of the family. That way of proceeding would be illiberal, since it would fail to respect the diversity of viewpoints about family life that should be expected to persist in a free society. Lister cannot, therefore, evade the theoretical task of explaining when a particular human relationship or association counts as 'intimate' and hence as eligible for protection through special accommodations in immigration policy.

This challenge can be put another way. I suspect that if we think of human associations as ranked along a single spectrum of intimacy, such that the more intimate an association is according to this scale, the closer it is located to the core of the protections that the right to freedom of association affords, then we will find it difficult to formulate an appropriate general criterion of associational intimacy. A more promising approach, I suggest, would be to think of freedom of association as a complex right that places different requirements on state policies and institutions depending on the type of association that is in question, whether intimate, expressive, social, philanthropic, or commercial.

On this approach, we can speak of 'intimate associations' as a distinctive type of association that are characterized by what I call, following Stuart White, intimacy of *form* and intimacy of *intent*. Intimacy of form is satisfied when the association features 'strong and mutual familiarity, ordinarily grounded in regular, intensive, "face to face" interaction' among all associates. Intimacy of intent is satisfied when the association's 'primary associative purpose' is 'the pursuit and enjoyment of intimacy-related goods', such as companionship, love, and mutual care (White 1997, 390). An association is of the intimate type if it is intimate both in form and intent. If a particular family relationship is intimate in form and intent, then, it is an 'intimate association' and should attract whatever institutional protections justice attaches to this type of association. The

relevant protections will plausibly include a requirement to refrain from imposing policies—such as immigration restrictions—that will unduly burden associates' ability to continue regular and intensive personal interactions. In this way, a requirement of justice to grant special immigration eligibility to certain non-citizen family members of current citizens might be justified by appeal to freedom of (intimate) association.

While I believe that the account sketched earlier is basically sound, I will formulate my defence of family migration schemes without recourse to the idea that there is an individual right to freedom of (intimate) association. I prefer to speak instead of *caring relationships*, since it is the provision of material caregiving and of attitudinal care that, as I will later suggest, picks out what is morally significant about relationships and associations characterized by intimacy of form and intent. Over the next two sections, I will argue for the view that justice requires states to respect and support certain caring relationships, including relationships such as the parent–child relationship and spousal relationships, and explain the implications of these requirements of justice for immigration policy. In Section Immigration Policy and Dependent - Carer Relationships, I will argue that receiving states must, to honour the human rights of certain non-citizen dependents, refrain from undermining the relationships between dependents and carers; in Section Immigration Policy and Intimate Caring Relationships between Independent Adults, I will argue that receiving states are required by (domestic) social justice to respect and support the intimate caring relationships of their citizens and residents. In both cases, if states are to comply with their duties, they must grant preferential immigration eligibility to non-citizen participants in these caring relationships in order to allow participants to live in close proximity.

IMMIGRATION POLICY AND DEPENDENT-CARER RELATIONSHIPS

According to the accounts offered by Lister and Ferracioli, a receiving state's duty to grant special immigration eligibility for non-citizen family members of current citizens has its source in the claims of the *citizen* participants in the relevant family relationships and not the claims of the non-citizen participants who are seeking entry. The right to family migration is understood to be 'the right of a current citizen to bring in an outsider, and not the right of an outsider to enter' (Lister 2010b, 729). These theorists locate their account of family migration schemes within social justice—what current co-citizens owe each other—because they seek to explain why states are required by justice to grant non-citizens

bound by family ties to citizens (and permanent residents) *special* eligibility to immigrate, against the background assumption that would-be migrants do not enjoy a general moral right to free international migration (Ferracioli 2014, 3–5; Lister 2010b, 726, 729).

While in the following section I will suggest that this way of thinking about family migration is the appropriate perspective in the case of relationships between independent adults, in this section I argue that this focus is too narrow in the case of caring relationships between dependent individuals—such as minor children—and their carers. The right of non-citizen dependents to immigrate in order to join their citizen or resident carers can be grounded in the claims of the dependents: it is a matter of global rather than social justice. Specifically, granting preferential immigration eligibility to non-citizens who are dependent on citizen or resident carers serves the *human rights* of non-citizen dependents.⁶ To make my case, I will focus first on one paradigm example—the relationship between parents and dependent children—before discussing extensions of the theory to other relationships between citizen or resident carers and non-citizen dependents. Finally, I will briefly consider the converse case of non-citizen carers joining citizen or resident dependents.

Following what has been called the ‘orthodox’ conception of (the nature of) human rights, I take human rights to be moral entitlements that all human persons have simply in virtue of their humanity, and not in virtue of their specific state membership or involvement in any particular institutional order.⁷ Human rights, on my view, demand social protection for individuals’ fundamental interests as humans—they demand, in other words, that individuals be secured access to the essential social and political conditions for a life that counts as minimally good for a human person. In addition, I take human rights to be ‘doubly universal’: they are not only held by all human persons, but their correlative duties are also ultimately borne by all other human persons.⁸ For this reason, when the social protections that human rights demand fail to be provided, *any* agent able to extend appropriate protection may potentially be required to do so (Miller 2007, 164). In this sense, human rights are requirements of global, rather than social, justice.

Among the fundamental interests that human rights protect are interests that an individual has when she is *dependent*. Now in fact human beings constantly depend on others’ cooperation in order to lead minimally good lives; to speak of a dependent individual is therefore to indicate an individual who is living through a period of *exceptional* dependency when, due to the incapacitation or underdevelopment of her faculties, she requires more comprehensive social assistance—that is,

care—than she would during periods of her life when her human faculties are functioning at a normal level.

One important period of dependency is childhood: this is the stage of life during which an individual has ‘yet to develop the capacities that characterize normal adulthood’, including the capacity for the degree of independent thought, judgement, and planning needed to exercise proper care for one’s own well-being (Brighthouse and Swift 2014, 58). Because children—understood in the above chronological and developmental sense—lack fully developed adult capacities, they require the care of adults to meet both their day-to-day needs and to fulfil their developmental interests. Children do not only need *material caregiving*, but also *attitudinal care*.⁹ Material caregiving includes activities such as feeding, clothing, housing, and providing mental and emotional stimulation. This type of care may lack any significant affective element. Attitudinal care, by contrast, necessarily involves an affective stance on the part of the carer, who seeks to promote the well-being of the cared-for person out of a sense of personal attachment to her and non-instrumental concern for her good (Brake 2012, 82).

Obviously, (especially younger) children require ongoing material care from adult caregivers in order to meet their day-to-day material and psychological needs. But perhaps more importantly, children are comprehensively dependent on adults to foster their development. Since their prospects for living a minimally good life are massively affected by whether they develop appropriately during the early part of their lives, children have fundamental interests in developing appropriately—what I call their *developmental interests*. Of course, the developmental interests include the interest in healthy physical development, but equally important is cognitive, emotional, and moral development. In particular, I suggest that for a person to live a minimally good life for a human being, she must be able to direct her own life and to relate to individual others and to her wider society as a moral agent, at least to some morally salient threshold. Hence, children have a fundamental interest in adequately developing their capacities for personal autonomy and for a sense of justice.

If children are to reliably meet these developmental interests, they must experience a specific kind of upbringing provided by adult caregivers. Of course, children’s developmental interests will not be met if their adult caregivers are uninvolved or make little attempt to foster their intellectual and moral development (Maccoby and Martin 1983). But in addition, children must share an intense and continuous relationship with a small number of adults who not only are primarily tasked with meeting their material needs and controlling their behaviour but who also show them attitudinal care. I shall say that children need to maintain an *intimate caring relationship*

with their *parents*. I stress here that I am defining ‘parents’ in a relational sense captured in the idea of ‘parenting’; a child’s biological grandparents or legal guardians could be her parents on this definition.

Such intimate caring relationships are ‘intimate’ because they are intimate in *form*, and involve *intimate knowledge* of the cared-for person by the carer. Recall that a human relationship or association is intimate in form when it features regular and intensive personal interactions that build over time into a shared history (Brake 2012, 160; White 1997, 390). The regular personal interactions as well as physical and psychological proximity that relationships intimate in form afford lead to what Elizabeth Brake calls ‘intimate knowledge’. To have intimate knowledge of another is to recognize her ‘as a particular self with her own interests’ and to be familiar with her ‘hidden desires and needs and the complex bases of [her] well-being’ (Brake 2012, 86).

Only when an adult shares an intimate caring relationship with a child is she able to foster the child’s development in a way that is fully responsive to the particularities of that child’s history and her physical and psychological profile. As Harry Brighouse and Adam Swift argue, for a child to reliably develop the capacities for personal autonomy and for a sense of justice, she needs to have a sustained relationship with those adults tasked with controlling her behaviour. The development of a child’s moral powers requires her to learn empathy, emotional self-regulation, and other forms of self-control, which she cannot do unless the adults tasked with controlling her behaviour have intimate knowledge of her so as to appropriately and responsibly exercise their authority (Brighouse and Swift 2014, 72–73).

Regular interaction, emotional proximity, and intimate knowledge between parent and child also make possible deep attitudinal care: the parent values the child for her own sake, as a particular individual with a particular personality and specific set of needs, interests, and desires. Matthew Liao aptly calls this form of attitudinal care ‘parental love’ (Liao 2006, 422; 2015, 76–77). Liao points to evidence, for example from studies of institutionalized children, which suggests that parental love is essential for a child’s successful physical and cognitive development. Children who receive adequate material care but not parental love typically fail to thrive physically, experience cognitive deficits, and display emotional and behavioural problems (Liao 2006, 423; 2015, 87–89).

Since a child’s developmental interests would be severely undermined if the intimate caring relationships she has formed with her parents are disrupted, each child has a human right not to have these relationships disrupted by social institutions and public policies, including immigration restrictions. Receiving states must therefore, as a matter of human rights, grant non-citizen dependent children special immigration eligibility which

enables them to continue their ongoing intimate caring relationships with citizen and resident parents.¹⁰ To clarify, I emphasize again that by ‘parents’ here I am not referring to a child’s immediate biological progenitors but to those adults—including biological non-relatives—who are her primary caregivers and share with her an intimate caring relationship.¹¹

While children are a paradigm example of dependents who require care, there are important cases of dependent adults. In the course of a human life, an adult individual will predictably fall into periods of dependency, when the normal adult capacities are impaired or lost due to illness, injury, or advanced age. Unlike in the case of dependent children, with dependent adults the relevant fundamental interests in receiving care are not primarily developmental. Rather, dependent adults need care in order to secure their immediate well-being and, where possible, to be restored to normal functioning. In particular, dependent adults will typically need to receive extensive material care.

Although material caregiving could be performed outside of an intimate caring relationship, for example by a social worker or medical worker, even material caregiving is much better done within the context of an intimate caring relationship: the intimate knowledge which caregivers have when they share an intimate caring relationship with dependents furnishes them with the level of understanding of the dependent’s specific needs, interests, and preferences that will allow them to provide a higher quality of material care (Brake 2012, 174). Moreover, dependent adults have fundamental interests in their psychological well-being which would be undermined absent the attitudinal care found in intimate caring relationships.

For these reasons, in some cases dependent adults will fall below the level of human flourishing consistent with a minimally good life if they are not cared for during their period of dependency within the context of an intimate caring relationship. In such cases, there is a human rights-based requirement for relevant agents not to undermine any ongoing intimate caring relationships within which the dependent adults in question receive care. Specifically, when non-citizen dependent adults are cared for in an intimate caring relationship by citizens or residents, and disruption to this relationship would depress the dependent adults below the threshold for a minimally good life, receiving states are required to grant special immigration eligibility to the non-citizen dependents.

Notice that this proposed principle is in one way restrictive and in two ways expansive. The principle is restrictive because the requirement to grant special immigration eligibility is only triggered when failure to admit would set back the non-citizen dependent’s well-being so severely that her human rights are violated. The principle therefore does not apply in two types of cases: firstly, where the non-citizen dependent would be

deprived of the quality of care she would otherwise receive if she were allowed to join her citizen or resident carer, but would nevertheless receive good enough (material) care to meet her fundamental interests; secondly, where the non-citizen dependent could form an intimate caring relationship with someone in her home state.

The principle is expansive, however, because the non-citizen dependent need not be biologically related to her citizen or resident carer in any way; biological ties play no role in my account. It is also expansive because, as a human rights-based requirement, it is extremely stringent: in particular, it cannot properly be overridden by worries about the fiscal impact of admitting dependents. Many states make family migration—particularly in the case of dependent adults—conditional on demonstrating that the financial costs of the dependent's care will be met by family members and will not draw on the public purse. Lister has defended modest financial conditions on family migration by appeal to the importance of domestic distributive justice, arguing that considerations of what he calls 'reciprocity' among current citizens justify policies to minimize the risk of a negative fiscal impact from family migration (Lister 2010b, 738–41). If the imperative to grant special immigration eligibility to certain dependent adults stems from a requirement to protect their human rights, however, then it should take priority over the much weaker requirements of domestic distributive justice.

Before turning our attention to intimate caring relationships between independent adults, I will briefly consider the possibility that a citizen or permanent resident who is either a dependent child or adult may be joined in an intimate caring relationship with a non-citizen carer, and that the citizen or resident dependent's fundamental interests will be seriously threatened if this relationship is disrupted by immigration restrictions.¹² We could imagine, for example, a case where a citizen child is primarily cared for by a labour migrant employed as a live-in caregiver. If the child has formed an intimate caring relationship with the migrant caregiver—but not with her parents who have little interaction with her due to their busy careers—the child's fundamental interests may be undermined if she is separated from the migrant caregiver; under these circumstances, there may be a human rights-based requirement to extend immigration eligibility to the migrant caregiver. It seems likely, however, that this phenomenon will be marginal in practice.

IMMIGRATION POLICY AND INTIMATE CARING RELATIONSHIPS BETWEEN INDEPENDENT ADULTS

Having examined how a receiving state's immigration policies should accommodate dependent-carer relationships, I turn now to consider

intimate caring relationships between independent adults. Since humans are necessarily socially interdependent beings, the independence of independent adults—like the dependence of dependents considered in the previous section—is relative: independent individuals are persons whose capacities enable them to exercise the normal adult level of care for their own well-being. Independent adults are not wholly self-reliant, since no human being can satisfy her fundamental interests without some level of social assistance.

The form of social dependence relevant to the present discussion is the need to participate in intimate caring relationships with other individuals, and the need for institutional support from the wider society for these relationships. Drawing on influential arguments by Brake, I will suggest that to meet her interests as a free and equal citizen of a democratic society—interests her co-citizens are bound by social justice to promote—an independent adult must be able to freely form and maintain intimate caring relationships, because such relationships are essential preconditions for individuals to fully develop and exercise their moral powers for personal autonomy and a sense of justice.

Consider first the capacity for personal autonomy. Intimate caring relationships are, for most individuals, a key site for the formulation and revision of life projects and conceptions of the good. Typically, we ‘form our conceptions of the good in colloquy with significant others’, rather than through individualized cogitation (Brake 2012, 177). Moreover, human persons typically need intimate caring relationships for their self-respect and sense of their own worth, which in turn is necessary for their confidence in the value of their projects and their motivation to pursue them. Recall that a necessary component of attitudinal care is valuing the cared-for person for her own sake, as a particular individual. An awareness that another person with whom she has a shared history of personal engagement values her in this way provides a vital support for an individual’s perception that she is indeed valuable and that the success of her life matters (Brake 2012, 180).

Consider next the capacity for a sense of justice. I have already argued that children’s basic moral development requires them to form and maintain intimate caring relationships with their adult carers. However, an individual’s moral development does not cease at the age of majority, but continues through her life. The full development of an individual’s sense of justice cannot be reliably achieved through solitary moral reflection or through interactions with strangers and with participants in more impersonal and instrumental relationships and associations. Intimate caring relationships constitute a major site for the development of our sense of justice. These relationships tend to be emotionally central and present a special moral challenge given the difficulty of gaining intimate knowledge

of another person's complex particularity and using this knowledge to be appropriately responsive to her distinctive needs, interests, and preferences (Brake 2012, 176–77).

Following a familiar liberal view, I take it that those who share membership in a state—its citizens and permanent residents—are collectively tasked by justice to help each other secure the various social and political conditions for the development and exercise of their moral powers (Rawls 1993, 187–90). Indeed, the *essential* institutional conditions for individuals to develop and exercise their moral powers must be established and maintained as basic rights of social justice.¹³ If, as I have suggested, intimate caring relationships are necessary for individuals to form, revise, and pursue their personal projects and conceptions of the good, and to develop their sense of justice, then citizens and residents have a basic right of social justice to institutional support for their intimate caring relationships. Laws and policies, including immigration restrictions, which disrupt or unduly undermine the intimate caring relationships of adult citizens and residents are seriously unjust.

As we have seen, an intimate caring relationship is partly constituted by a continuous history of regular and intensive personal interaction between participants in the relationship. Physical proximity between the participants is in turn normally necessary to maintain sustained and regular personal interaction. Hence, immigration laws that have the effect of preventing participants from living in close proximity count as disrupting their caring relationship, and to that extent they are unjust. As a matter of the basic rights of social justice, then, states are required to grant immigration preferences to non-citizens joined in intimate caring relationships with their citizens and residents.

A critic might observe, however, that state *P*'s laws restricting immigration do not necessarily prevent a citizen of *P* from living in close proximity to a citizen of state *Q* with whom she shares an intimate caring relationship. The participants in this relationship might be able to live together in the territory of *Q*, or even in the territory of a third state; at most, immigration restrictions prevent the citizen of *P* from living in close proximity to the citizen of *Q* on the territory of *P*. It does not seem, then, that immigration restrictions strictly disrupt citizens and residents' intimate caring relationships.

I agree that a compelling argument in favour of immigration preferences for non-citizens who are joined in intimate caring relationships with current citizens and residents cannot simply claim that, absent such preferences, a state's immigration regime would disrupt those intimate caring relationships. However, we must consider not only a state's duty

not to disrupt its members' intimate caring relationships in its institutions and policies, but also its duty to respect its members' rights to live within its territory if they so choose. I take it that, in line with common practice in liberal states and the arguments of Joseph Carens, citizens and permanent residents have a right to security of residence—that is, 'to remain in a country if one does not want to leave and ... to return to a country after one has left' (Carens 2013, 100–06). It is because a state must honour *both* of these duties that it is required to grant special immigration eligibility to non-citizens who share an intimate caring relationship with current citizens and residents.

While my argument in this section justifies existing family migration schemes aimed at the reunion of spouses, its implications go beyond the case of marital relationships as these are conventionally understood. As Brake has stressed, the prevalent understanding of marriage includes two elements that are unnecessary for an intimate caring relationship. First, spouses or marital partners are often conceived to be romantic and sexual partners; second, legally recognized marriage tends to be dyadic, limited to two and only two spouses. Aside from the relationship between marriage partners, other relationships that could be intimate caring relationships include: close friendships, relationships between siblings or other relatives, and various adult care networks.¹⁴ The principle of justice I have defended in this section requires that *all* non-citizen independent adults joined in intimate caring relationships with a receiving state's citizens and residents be granted preferential immigration eligibility. While this principle covers the case of marital relationships, the idea of marriage or of family ties plays no essential role in my account.

It may be objected that, while confining special immigration eligibility to marital relationships or family relationships more broadly may be theoretically under-inclusive, there is a sound practical justification for denying other intimate caring relationships immigration preference: the administrative procedures that would need to be implemented to identify which particular relationships qualify for immigration preference would either be excessively intrusive or unacceptably prone to abuse. In addition, critics may worry that, because there is no sharp dividing line between the level of regular interaction, intimate knowledge, intensity of attitudinal care, and other factors that make a relationship count as an intimate caring relationship as opposed to simply a friendship or other affiliation, expanding immigration preference beyond family relationships would lead to an excessive proliferation of claims to immigration preference.¹⁵

I agree that there is no sharp dividing line that separates intimate caring relationships from less significant forms of companionship—although, of course, this does not show that the idea of intimate caring relationships is conceptually incoherent. I also agree that it is undesirable to grant excessive discretion to immigration officials to decide whether any particular relationship should be eligible for immigration preference. My suggestion is therefore that each state enacts, through appropriate democratic procedures, laws, or regulations that clearly establish the conditions that a relationship must meet to qualify for immigration preference, leaving to administrative discretion the task only of assessing whether a given would-be immigrant has provided sufficient evidence of meeting the specified conditions. I doubt, however, that evidence of an intimate caring relationship other than official documentation such as a marriage licence would be either too intrusive or too prone to abuse. Note that the criteria for an intimate caring relationship are in large part objective. Immigration officials can therefore ask for evidence showing a history of regular interaction and assess the extent of participants' intimate knowledge of each other through interviews or questionnaires (Ferracioli 2014, 19–20).

CONCLUSION

I have formulated a normative account that justifies some familiar practices regulating family migration to the extent that it recognizes a requirement of justice on the part of receiving states to grant preferential immigration eligibility to the following categories of non-citizens: dependent children of current citizens and residents, other dependent relatives of current citizens and residents when the former's admission serves to provide them with the care needed to protect their human rights, and the marital partners of current citizens and residents. However, my account also insists that there is no special moral significance to *family* relationships, where familial ties are taken to be ties of blood or marriage. A liberal state has a general requirement to preferentially admit all persons who are dependent on its citizens or residents to get the level of care they are entitled to as a matter of human rights, and all independent adult non-citizens joined in intimate caring relationships with its citizens and residents.

Existing family migration schemes are therefore both under-inclusive and, in some cases, over-inclusive. On my view, they are under-inclusive when they deny preferential admission to relevant non-citizen dependents or participants in intimate caring relationships who are not family

members of current citizens and residents; they are over-inclusive when they grant preferential admission to, for example, siblings and non-dependent children on grounds of biological family ties rather than any evidence of an ongoing intimate caring relationship. In this sense, my account is only contingently a defence of *family* migration schemes.

By way of a conclusion, I will briefly consider my account's implications for the crowding out worries expressed by Macedo, Collier, and Gibney. I have argued in support of the contention that receiving states' duties to grant special immigration eligibility to relevant non-citizen family members (as well as others joined in intimate caring relationships with current citizens and residents) are stringent requirements of either human rights or basic rights of social justice. My account therefore provides the resources to resist Macedo and Collier's recommendations, to the extent that they can be understood to favour the retrenchment of special immigration eligibility for non-citizen family members covered by my proposed principles. Granting preferential admission in these cases is required by weighty duties of global or social justice, whether the universal human rights of non-citizen dependents or the basic rights of citizens and residents. Given their stringency, these duties should take priority over considerations of distributive fairness or of promoting economic growth.

At the same time, my account provides support for Gibney's proposals. Certainly, siblings and non-dependent children should not receive preferential admission simply due to their biological family ties to current citizens and residents. In addition, since both refugee resettlement and the admission of non-citizen dependents who would otherwise be deprived of a minimally good life are policies that aim to protect human rights, refugees and relevant dependent family migrants (and relevant non-family dependents) should receive the same level of preference in immigration policy. Indeed, if the duties imposed by human rights are more stringent even than our duties to honour the basic rights of those with whom we share a state, then refugees should receive higher priority in immigration than independent adults joined to current citizens and residents in intimate caring relationships.¹⁶

NOTES

1. Besides special eligibility for the non-citizen family members of citizens and long-term residents, some states also have provisions in their immigration laws that allow short-term resident migrants on student visas and work permits to be joined by their family members for the duration of their stay. These cases fall outside of the scope of this chapter, which is concerned with the case of non-citizen family members

of citizens and long-term residents having preferential eligibility to enter and reside indefinitely.

2. Of course, if Joseph Carens and Kieran Oberman are right that there is a human right to free international migration, then there is properly no distinctive theory of family migration, since non-citizen family members of citizens and residents would have no special entitlement to immigrate. See Carens (2013) and Oberman (2016). I thank Alex Sager for pressing me on this point.

3. Compare Elizabeth Brake's objection to Ralph Wedgwood's arguments in Brake (2012, 172–73).

4. Note that there is a lively debate among economists and social scientists about the economic and fiscal impact of immigration on receiving states, and hence about whether immigration in fact imposes costs on the receiving society. I cannot resolve that debate here; my point is simply that the potential cost of family immigration on citizens and residents of the receiving state at large undermines mere preference satisfaction as a ground for a right to receive special immigration eligibility. I am grateful to Alex Sager for pressing me to address this concern.

5. For example, Lister suggests that the right to family migration for the United States covers only spouses and minor children, since that is the US-specific conception of the family unit proper; the broader benefits recognized in US immigration law express a public policy preference rather than a matter of justice. See Lister (2010b, 742–43).

6. Iseult Honohan has suggested that there is a 'right to care', that is, a right against political restraints on the ability of individuals to discharge their justified obligations to care for those with whom they share caring relationships. If this suggestion is correct, it might support an additional duty on receiving states—owed to current citizens and residents—to grant special immigration eligibility to non-citizen dependents. My argument is compatible with accepting this further duty. See Honohan (2009, 774–75, 782).

7. For examples of 'orthodox' accounts of human rights, see Miller (2007), Griffin (2008), and Tasioulas (2012) and (2015). What I term 'orthodox' conceptions have also been called the 'traditional doctrine', the 'Enlightenment notion', and 'naturalistic theories'.

8. The universality of human rights' correlative duties also explains why they have often been thought to be 'matters of urgent global concern', that is, the correlative duties for their protection may fall on 'entities in the global order other than a person's own state'. See Risse (2012, 141).

9. For the distinction between material caregiving and attitudinal care, see Brake (2012, 174).

10. This argument would not cover cases where the dependent child has not yet formed an intimate caring relationship with her citizen or resident parents, for example when the child is a newborn or perhaps in very early infancy. Such cases would plausibly be covered by something like Carens's arguments in favour of granting birthright citizenship to emigrant citizens. See Carens (2013, 26–30). I thank Matt Lister for urging me to address these cases.

11. I accept that my theory has the implication that a non-citizen child has no right to immigration preference just in virtue of having biological parents who are citizens or residents.

12. I thank Laurie Shrage for pointing this possibility out to me.

13. We might say that the basic rights of social justice ‘guarantee equally for all citizens the social conditions essential for the adequate development and the full and informed exercise’ of their moral powers (Rawls 1993, 332).

14. Brake (2012, chapter 4, 6–7). Note that my argument does not rely on Brake’s controversial views about reforming marriage law in the direction of what she calls ‘minimal marriage’. I simply point out that the amorous dyadic relationships currently recognized as marriage are only one form of intimate caring relationship; whether the legal institution of civil marriage should be reformed to cover all intimate caring relationships is a further question on which I can remain agnostic here.

15. I thank Matt Lister and Laurie Shrage for encouraging me to address these worries.

16. I am indebted to Matt Lister, José Mendoza, Alex Sager, Laurie Shrage, and Stephanie Silverman for helpful comments.