

Humanitarianism and the Justification of Deportation from Canada

Abstract

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It is a remarkable fact that seven provisions of the *Immigration and Refugee Protection Act*, and nine more in the related regulations, expressly allow humanitarian dispensations from the strict letter of the law. Officials also apply humanitarian considerations even when there is no specific legislative mandate. The number and range of humanitarian dispensations available suggests that "humanity" is a core value in Canadian immigration law.

Recent amendments and case law have restricted or provided guidance on the use of these powers. However, since the rationales and defensibility of humanitarian dispensations are little understood, we also have little understanding of how to evaluate the availability, limits, and exercise of humanitarian dispensations.

The project is a case study that aims to establish an interdisciplinary methodology for a broader appraisal of humanitarian dispensation powers in immigration law. More specifically, the project examines the practices of moral justification that we see in decisions of the federal courts and of the Immigration Appeal Division (IAD) of the Immigration and Refugee Board regarding humanitarian dispensation from deportation. I will analyze these decisions using two methods: 1) informed grounded theory research, a qualitative research method, which will be used to study IAD decisions; and 2) legal-doctrinal research on federal court case law. I will compare these analyses to one another, as well as to philosophical theories regarding immigration.

My goal is to use these three disciplinary methods to illuminate one another: a bottom-up study of the way immigration regimes construct their legal authority by drawing on moral norms (here norms of humanity). Practically, the project will lead to policy recommendations to rationalize the place of humanitarianism in Canadian immigration law, as well as to improve training for front-line decision-makers. Theoretically and methodologically, the proposed project is a case study that tests a methodological approach as a foundation for a book-length theoretical project on the role humanitarianism plays, and the role it should play, in Canadian immigration law.

If selected, the paper will set out my methodology and whatever results I have at the time of presentation. It will situate these using a mapping of the various humanitarian powers in Canadian law, as well as the way these powers have evolved historically. Finally, it will explore the implications of the results for immigration law and philosophical debates about immigration.

Bio: Colin Grey holds a B.A. (anthropology) from Dartmouth College, an LL.B. from the University of Toronto Faculty of Law, and an LL.M. and J.S.D. from the New York University School of Law. His research focuses on immigration law and legal philosophy. He joined Queen's University Faculty of Law in 2019 after four years at the Département des sciences juridiques at the Université du Québec à Montréal. Prior to that, he served as legal advisor at the Immigration and Refugee Board of Canada. He is author of *Justice and Authority in Immigration Law* (Hart Publishing, 2015) and co-author and co-editor of the leading Canadian casebook on immigration law. His articles have appeared in *Legal Theory, Philosophy & Social Criticism*, *Canadian Journal of Law & Jurisprudence*, and the *Supreme Court Law Review*.

