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Abstract

When law overlaps with the family, a dilemma emerges: how to do justice, through law, to individual freedoms without jeopardizing family life, and vice versa? This thesis presents a critical frame analysis of the ways in which this dilemma is negotiated within Dutch refugee law. The study focuses on two family-related asylum claims within which the dilemma is at play: (i) family reunion for foster children of refugees; and (ii) refugee claims based on forced marriage. While family relations figure in the first case as a source of protection, they constitute a form of oppression in the second. The study adopts a theoretical model developed on the basis of a variety of concepts within critical framing theory as well as through an inductive reading of selected policy documents and case law.

The overall conclusion of this thesis is that the dilemma of doing justice, through law, to individual freedoms without jeopardizing family life, and vice versa, is negotiated in two divergent ways but in both cases three similar frames dominate the debate. The 'boy at the dike' frame portrays asylum seekers as potential intruders by questioning the legitimacy of their family bonds; the vulnerability frame victimizes them; and the culture frame is nurtured by orientalist understandings of their family lives. The first is a unilateral default state frame, while the other two frames are double-edged as they are constructed both by the state and lawyers. While the state constructs the vulnerability and the culture frame to reinforce its default frame, lawyers mobilize both as counter-frames. Within state frames, the relation between the individual, the family and the state is unstable. The state endorses the individualistic approach when it devalues and questions family bonds based on foster care and when it represents those family ties as a potential source of oppression. In contrast, the state embraces the family-unit approach when it privatizes forced marriage; when it widens the scope of state protection to include protection by male family members; and when it represents forced marriage as a negotiable cultural affair. In the first scenario the state claims control over the family, while within the second it refrains from claiming any control over the family.

In this vein, the study also showed that there is a disjuncture between the state approaches to family ties in refugee law, on the one hand, and within regular migration law, on the other. This disjuncture articulates a '*deux poids, deux mesures*' policy and suggests that the individualistic approach, on the one hand, and the family-unit approach, on the other, seem to function as strategic tools to be used to (not) interfere with the family lives of asylum seekers whenever the state sees fit. The frame serves to mask and justify the state strategic choice. The effectiveness of counter-frames constructed by lawyers depends on the strategies through which those frames are mobilized. While children lawyers stimulated

social change by embracing a de-centred approach to law, refugee lawyers dealing with forced marriage failed to challenge the pre-existing power relation, as they went with the flow and adopted a centred approach to law.

Finally, in terms of methodology, this study showed that critical frame analysis has an added value for examining case law in comparison with a legal-dogmatic approach. Law and rights would in principle frame legal-dogmatic analysis, while frame analysis helped to look at aspects beyond those two master frames. This is important because legal reasoning is not exclusively about rights and law. In addition, critical frame analysis as adopted in this study enabled the analysis of whose narratives are silenced, whose are given prominence, and the processes by which this is achieved. A legal-dogmatic analysis would in principle focus on 'what is said' rather than 'what is not said'.