

Rights Depending on Ethics: Sharing the Responsibility for the Undocumented Migrants' Right to Health

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Encountering the New Fragility of Health Rights

The conflicts in Syria and its surroundings as well as the subsequent mass migration to Europe have brought about an escalated challenge to the right to health. In 2015, the worst year in this respect in the Syrian war to date, 122 attacks on hospitals were documented by Physicians for Human Rights (2016). Yet the right to health is notoriously fragile also among the millions of displaced persons on their way towards Europe.

Securing the asylum seekers' and the undocumented migrants' right to the access to basic health care has a firm grounding in the human rights thought and law. The magnitude of the present migration phenomenon, however, indicates a need for a profound reassessment of also the corresponding responsibilities. How far is each European state responsible for the displaced persons' right to health within its territory, within the European Union, and also beyond? And given that the European states have so far been unable to shoulder all their proper responsibilities, how then should we understand the role of voluntary organizations in this field?

This article provides, first, an analytical review of certain relevant European level guidelines about health care for the undocumented migrants, particularly those delineated by Picum (2007; 2009). Second, it takes a look at some voluntary organization endeavoring to fill in the deficit in the emerged public sector health care provision, especially The Global Clinic operating in Finland. And third, it will argue that the law has become in this context unreasonably dependent on ethics stemming from the civil society. For one thing, without a sufficiently viable transnational ethics, the politicians of each European country are unable to make balanced decisions on the undocumented migrants' rights. For another, until such balanced decisions have been reached, the rights of these migrants depend on the ethical virtues of individual third sector actors to a worrying degree.

The Idea of a Fair Nation-Wide Cooperation and beyond

Struggling under public sector austerity, the most European countries have found it challenging to finance a sufficient range of health services to the undocumented migrants. But there are issues of

principle involved as well. In particular, given that these migrants do not belong to the societal collaboration scheme of the nation in question, usually neither *de jure* nor *de facto*, should they nevertheless be entitled to similar health services as the natives?

A possible negative reply to this question gains support by the idea of a liberal democratic society as a fair nation-wide collaboration scheme, an idea most famously developed by American Philosopher John Rawls (1993). Subsequently, Thomas Pogge (2002) and many others have argued for justice with a global scope. Neither Rawls nor Pogge has addresses the case of undocumented migrants explicitly, but their approaches can be helpful in the elaboration of a balanced stance on the issue.

The present paper supports, on the one hand, the idea of the persistent political relevance of the Rawlsian idea of a fair nation-wide collaboration. Even the above-mentioned Picum documents, although they are specifically devoted to promote the rights of the undocumented migrants, distinguish rather clearly between the relevant human rights standards and national standards. On the other hand, it will be reminded that already the human rights conventions, perhaps most importantly the *The International Covenant on Economic, Social and Cultural Rights* (ICESCR, Art. 12), affirm “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” It will thereby be argued that a proper human rights approach implies no cynical health rights minimalism but a rather strong sense of transnational ethics among the citizenry of each European nation.

Dependency on the Virtues in the Third Sector

What then is actually attainable in practice depends not only on state policies. Indeed, the provision of commonsensical or reasonable standards of the right to health in the case of undocumented migrants has so far heavily depended on the responsibilities that voluntary organizations have been able to shoulder.

The Red Cross and Red Crescent Movement, Time to Help, and many other humanitarian organizations have assumed big roles in the field. In the present paper, the case to be analyzed in more detail is The Global Clinic operating in Finland. Supported by certain Finnish Evangelical Lutheran deaconess institutions in addition to some non-confessional associations, it has crucially complemented the health services provided by the public sector institutions to the undocumented migrants. This case thereby warrants further the main argument of the paper: presently the undocumented migrants’ right to health depend on voluntary ethical virtues rather heavily—in many cases arguably to an unreasonable degree.

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