

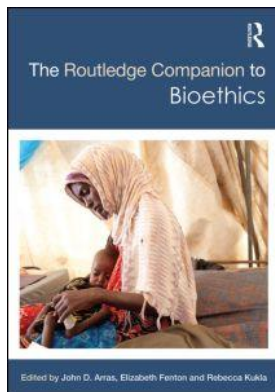
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IMMIGRATION AND ACCESS TO HEALTH CARE

Norman Daniels and Keren Ladin

Overview

Health insurance is important because it improves access to health care, which protects health, and provides needed financial protection, both of which are objectives of a just system (Saloner and Daniels 2011). In a system that ensures universal coverage—whether it includes private insurance or not—the term “universal” suggests that *all* people have insurance coverage. Despite this, in most such systems, unauthorized immigrants are excluded from coverage. In the United States, unauthorized immigrants number in the millions and form a significant part of the uninsured population, even under the 2010 *Patient Protection and Affordable Care Act* (PPACA). Is such exclusion justified? To be sure, unauthorized immigrants have access to some medical care and are guaranteed access to emergency medical care (*Emergency Medical Treatment and Active Labor Act* (EMTALA) 1996). Still, exclusion of unauthorized immigrants from PPACA begs the question: Is it ethically justifiable to exclude unauthorized immigrants from the comprehensive non-acute care provided by most insurance policies?

Our main conclusion is that there is a strong presumption in favor of including unauthorized immigrants, and that this presumption is not defeated by arguments against including them. In this chapter, we first consider claims of global justice and human rights, which insist on inclusion either because they claim that open borders are a requirement of global justice or because they claim that human rights to health care preclude such exclusion. We shall argue that these claims fail to mark out supportable claims of justice regarding unauthorized immigrants. Specifically, the global justice claims fail a relevant requirement of feasibility on all principles of justice, and the human rights claims are inconclusive. We also reject the opposing stance that grants states the unconstrained authority (right) to regulate the flow of immigrants into them, making the exclusion of unauthorized immigrants a clear state prerogative.

Instead, we take a middle course. Specifically, we believe that any state authority to regulate borders is constrained by conditions on the justification of such regulations (although space prevents the development of a comprehensive account of here). We consider the specific arguments offered in the U.S. context for inclusion, as well as the counter arguments for exclusion. We propose two main arguments for inclusion: First, that health care is a benefit owed as a matter of reciprocity for contributions made by unauthorized immigrants; and second, that unauthorized immigrants are entrenched and

contributing members of the community and all members of the community must have the opportunity to have their health protected. These arguments succeed in establishing a presumption in favor of inclusion that is not defeated by the arguments for exclusion. We conclude that unauthorized immigrants should be included in efforts to establish universal coverage, such as the PPACA. The general theory of justice that we appeal to in our claim that members of a community have entitlements to social benefits also claims they should also have a political voice about their fair share of those benefits. One route to providing political voice, namely a route citizenship, is a task for immigration reform that is beyond the scope of this chapter.

Before taking up the arguments in favor of exclusion or inclusion, we begin with some background to the coverage issue and to American immigration policy.

Background

We contend that the very large unauthorized immigrant issue in the United States is the result of an immigration policy that ignores longstanding patterns of demand for low-skilled workers in certain American industries. For many decades, lower-skilled immigrant workers coming to the United States, especially from Latin America, have responded both to push factors, such as low wages and poor job opportunities in their home countries, and pull factors, such as economic opportunities and policy changes (Rosenblum and Brick 2011). The Braceros program, instituted during WWII (but later criticized for the exploitation of migrant farm workers), authorized hundreds of thousands of low-skilled Mexican workers for temporary employment until 1964. Even after quotas were imposed in 1965, employment opportunities still provided significant incentives for workers from Latin America, leading to both authorized and unauthorized immigration. Unauthorized immigration increased with the economic expansion in the U.S. in the 1990s, particularly following the North American Free Trade Agreement (NAFTA) of 1993. NAFTA displaced many Mexican farmers who then sought work in the United States. At the same time, the militarization of the U.S. border effectively trapped millions of these immigrant workers by raising the costs and risks of border crossings (Massey 2007). Such immigrant workers in previous decades had often returned to their home countries but now they could not easily do so, increasing the numbers of unauthorized immigrants from fewer than 4 million to nearly 12 million in the decade after the militarization of the border. The flow of these immigrants stopped by 2012 because of poor job opportunities in the U.S. and intensified enforcement of borders, including increased deportation (Passel et al. 2012)

At the same time that the numbers of unauthorized immigrants swelled, they were made ineligible for many welfare benefits. In 1996, the passage of the *Personal Responsibility Work Opportunity Reconciliation Act* (PRWORA) disrupted the existing federal equality in access between authorized and unauthorized immigrants to public benefits, which had been the norm in the U.S. (Fix and Tumlin 1997; Viladrich 2012). PRWORA banned federal funding of health care for unauthorized immigrants, eliminated a cash-assistance program for unauthorized immigrants, and reduced funding for the uncompensated care pool, shifting the financing burden and oversight of immigrant health care in particular, to states. The law also barred “legal” (authorized) immigrants from means-tested benefits and public programs during a five-year waiting period.

PRWORA reflected an increase in anti-immigrant sentiment and legislation; such sentiment heightened in 2001 after the 9/11 terrorist attacks and increased further

during the Great Recession that began in 2008. At the federal level, the Department of Homeland Security instituted the Secure Communities program (2008), a new deportation program aimed at identifying and deporting criminal aliens. At the state level, Arizona's SB 1070 (*Support Our Law Enforcement and Safe Neighborhoods Act* 2010), and Alabama's HB 56 (*Hammon-Beason Alabama Taxpayer and Citizen Protection Act* 2011) require public officials (police officers and public school personal) to verify and detain persons suspected of being unauthorized.

The PPACA reinforces the difference established by PRWORA between authorized and unauthorized immigrants. Authorized immigrants can participate in the high-risk pools, health benefit exchanges, and cost-sharing subsidies that the PPACA establishes without a five-year waiting period, although it does not overturn the waiting period for eligibility for public programs. Unauthorized immigrants are not eligible for any of these benefits.

Cosmopolitan Claims of Global Justice

One way to argue that unauthorized immigrants should not be singled out for exclusion from benefits available to other residents is to claim that global justice denies states the authority or general right to exclude immigrants (Cole 2000). States would then lack the authority to distinguish those who obey immigration rules from those who do not. Individuals would then have a right to immigrate and not just to emigrate. This claim goes beyond the standard interpretation of the human right to migrate, affirmed in international covenants, which restricts state authority to prevent residents from departing their homeland but does not challenge the rights of states to regulate immigrant flows into their borders. Another line of argument from global justice is that the exclusion of immigrants is coercive, and this coercion requires a justification that would be agreed to, at least *ex ante*, by those who may turn out to be immigrants (Blake 2002; Carens 1987; Risse 2002).

A different global justice perspective that supports significant restrictions on state authority to regulate immigrant flow argues that a principle assuring equality of opportunity has global scope and is not just a principle governing cooperative terms within a state (Butt 2012). Some strong ethical intuitions support such a view: If we believe that certain social contingencies should not shape what counts as just, then the contingency of birth in a poor, developing country as opposed to a developed country, like the United States, should not determine the opportunities open to people. Such views suggest that globally individuals are the subjects of justice and that we can know what justice requires for people regardless of their situation in the institutions that states construct or maintain. (A variant on this version of cosmopolitan justice suggests that there exists a global basic structure of institutions that function in the ways state-specific institutions do. Therefore, "fair terms of cooperation" of the sort that John Rawls articulated in justice as fairness should be understood globally and not just within states (Beitz 1979, 2000)).

Pursuit of greater opportunities across state boundaries in a world of unequal opportunities no doubt underlies the decision to migrate made by millions of people globally. One philosopher proposes operationalizing this concern for equality of opportunity globally through a measure of the "immigration pressure" opportunity-rich countries face from people in opportunity-poor ones (Cavallero 2006). Specifically, either countries should admit immigrants until there is equilibrium between immigrants and emigrants, or they should offset the immigration pressure through appropriate development aid to opportunity-poor countries. (We shall not discuss weaker versions of such claims, which

may be referred to as “more open borders” since they still allow for the distinction between unauthorized and authorized immigrants.)

In the next section, we argue that these claims of global justice fail an important criterion that claims of justice must meet, namely that it is feasible for people to sustain a regime in which compliance with them generally obtains. If we are right, this argument implies that states, under some conditions, may regulate immigration in a way that excludes some people and distinguishes between authorized and unauthorized immigrants (although we do not go as far as Weiner (1996) in affirming complete state authority to regulate immigrant flows).

Justice and Feasibility

Is such a view of open borders feasible? We argue that if open borders are infeasible in an appropriate sense, then this policy is not a requirement of justice. This insistence on feasibility is a way of making sense of the ethical maxim that “ought implies can.” For something to be an obligation of justice it must be feasible for people (or for states) to meet that obligation.

Sometimes lack of feasibility can block a requirement of justice by leading us to abandon or modify a view about what justice requires (Estland 2011). When is a lack of feasibility requirement-blocking? We propose that if a requirement of justice is not feasible because we cannot *sustain* an institution or practice conforming to it (feasibility as sustainability), then the infeasibility blocks the requirement of justice, but the mere fact that we do not know how to *achieve* it (feasibility as achievability) is not sufficient to block it as a requirement of justice. Of course, something might never be achievable because it is beyond human ability—and then it is requirement-blocking (and also clearly unsustainable). Consider, for example, a racist or gender-biased practice. We may not know how to eliminate the racism or the gender bias in this context, perhaps because the group imposing the practice is too powerful to overcome. That lack of achievability should not stop us from denouncing the racism or gender bias, since we know that societies can sustain (at least in important ways) non-racist and non-gender-biased institutions and practices. We know the requirement of justice is feasible in the relevant sense even if we do not know how to achieve justice in this context. Sustainable feasibility is arguably what Rawls (1971) thought relevant when he claimed that a principle of justice that imposes less strain of commitment than an alternative on people raised to conform to it is a more acceptable principle.

Is the open borders claim part of a sustainable order? Is it sustainably feasible? To be sure, we may not know just what some of those stable features of persons or institutions are, and so some of our arguments about sustainability may be speculative. Still, if we have reason to believe that a practice is not sustainable and thus not feasible, we have reason to question whether there is a clear requirement of justice to do what we have reason to believe we cannot do.

To test for the sustainable feasibility of the open borders view, we would have to consider these scenarios: (1) a welfare benefit in a particular country is jeopardized by an inflow of immigrants seeking it, so that longer-term residents (citizens, for example) face the prospect of losing some benefits; (2) the influx of immigrants into a nation results in constrained economic opportunities and lower wages for many vulnerable citizens due to increased competition; (3) a local economy needs additions to its labor force to promote economic growth, but only in some areas that require specialized

training; (4) among a significant immigrant flow are those that seek radical, perhaps even violent, change to local institutions, and these immigrants are identifiable and could be excluded. All of these scenarios involve economic or political threats to the wellbeing of existing residents and social institutions, and therefore they may provide sufficient grounds for regulating immigration. Though it would take us beyond the scope of this discussion to debate the more controversial sorts of threats to the ethnic or religious composition of the existing state—“they are culturally different from us”—and thus develop a comprehensive account, we view attempts to exclude people who would form an ethnic or religious minority as unjust. In the absence of such a comprehensive account, we must consider matters case by case. The cases listed in 1–4 are all ones to which there might be legitimate opposition from the non-immigrant population; such opposition will render open borders infeasible.

Perhaps a world government could enforce open borders, on the model of the federal system such as the U.S. (or perhaps the weaker system of the EU). Then the discussion of what is needed to convert our global order based on sovereign states into such a federal system with a global government becomes central. We cannot address here the desirability or feasibility of such a global government; we note only that we lack any examples of even regional federal systems that have proven sustainability.

If open borders lack feasibility as sustainability, then the same problem faces a global version of fair equality of opportunity. Arguably, long-term residents of states facing large-scale immigration of people seeking greater opportunity will organize to oppose that immigration and make reasonable complaints about the threat to their interests, and this opposition will undercut the redistribution of opportunity globally through open borders. Even if we can sustain a fair distribution of opportunity and power within a state through checks and balances against undue power concentration, globally we lack the means to prevent such accumulation within states that will undermine global equalization efforts. In the absence of institutions that operate globally or even regionally to assure fair equality of opportunity, including the protection it affords through the provision of health care, we have good reason to believe that global equality of opportunity is not feasible in the way that we may believe it is feasible within a state. If we are right, and the appeal to open borders is blocked, then a global appeal to access health care through a claim that opportunity must be protected as a matter of global justice is blocked as well.

Human Rights Claims

Human rights focus on individual claims to certain kinds of protections or goods that all states should respect or provide. In this regard, the human rights framework shares elements with many prominent cosmopolitan views of global justice according to which individuals are the subjects of these claims regardless of who or where they are, and some duties or obligations are imposed on states to assure the provision of these protections or goods (Miller 2008; United Nations 2000). We might then think that if all individual humans have a human right to health care, then it does not matter morally if they are authorized or not, but this conclusion about human rights is drawn too quickly.

Though the cosmopolitan views we have considered challenge state powers to regulate immigration, human rights views do not, at least not so extensively. We can see this difference in the way the right to migrate is understood. The human right to migrate is only a right to leave a home country. There is no correlative duty on any state to accept the émigré as an immigrant. Indeed, a human right to immigrate to any country one wished

to enter would abridge existing powers (rights) of states to regulate the flow of immigrants, contrary to human rights covenants and treaties. Only with regard to some kinds of refugees are states under an obligation to consider whether their claims for refuge meet international standards and whether they should be admitted under international agreements on asylum. Most immigrants are not asylum seekers, and the rights of asylum seekers are not to be confused with what a human right to immigration would entail.

Is the human right to health care that implies that all residents of a country, whether unauthorized or not, have a right to the more comprehensive kinds of health care included in the PPACA? No such entitlement is explicit in the judgments of the Committee on Economic, Social, and Cultural Rights. Human rights covenants and the international law based on them give states considerable leeway to determine policy with regard to welfare rights, such as a right to health care. Other states are obliged to contribute toward improvements in the ability of developing countries to progressively realize a right to health or health care, which means developing countries are not the sole states responsible for improving health care in their jurisdictions. But developing country governments, and other states, remain the primary bearers of duties to deliver health care that progressively satisfies this right, and this leaves the duty primarily to them, including what policy to follow regarding undocumented immigrants. In the U.S., as in almost all European universal coverage systems, emergency medical care is provided to all individuals, authorized or not. It is not clear from the human rights doctrine that unauthorized immigrants are entitled to more than that.

Conditional State Authority to Regulate Borders

“Open borders” cannot be a requirement of global justice because it violates the “feasibility as sustainability” constraint on what counts as just. A human rights framework does not support an open borders view either, and if it were modified to do so it would become merely aspirational, while violating the same feasibility condition. Our conclusion is that states may regulate the flow of immigrants—at least under some conditions—and this means that the distinction between unauthorized and authorized immigrants will sometimes be defensible in that it is not itself unjust.

These conclusions, however, do not mean that states have a general authority or right to regulate immigrant flow for any reason it sees appropriate. Whether such regulation is justifiable depends on the reasons for it. Similarly, the reasons for allowing or prohibiting unauthorized immigrants to have access to insurance for comprehensive health care must justify those policies regarding them.

We cannot offer a comprehensive account of which reasons for regulating immigrant flow are sufficient and which are not. We instead rely on examining the arguments on a case-by-case basis. Earlier, for example, we rejected arguably discriminatory exclusions, but we noted that some reasons for constraining open borders, such as those involved in scenarios 1–4 on pp. 59–60, might prove compelling. Pursuing the same strategy, we turn to the reasons that have played a role in the debate about coverage for unauthorized immigrants in the U.S.

Arguments for Providing Comprehensive Health Insurance to Immigrants

Two distinct lines of argument about distributive justice support the view that unauthorized immigrants should have access to the kinds of health insurance that are provided by the

PPACA. One argument is that, since unauthorized immigrants contribute to a collective product that benefits the community, reciprocity requires that they should share in the benefits they help produce. The second argument is that longstanding unauthorized immigrants should be viewed as rooted, contributing members of a society, unlike residents of other countries or temporary visitors (e.g., visiting students, businessmen, and tourists), which means they should be included under universal health insurance coverage, at least if there are no reasons strong enough to exclude them.

Reciprocity

People who contribute to society, in the form of paid and unpaid labor, taxes, and other aspects of community membership, ought to be eligible for the benefits their contributions make possible. That is what reciprocity requires. Contrary to exclusionary rhetoric, unauthorized immigrants should be credited with such contributions. The majority of unauthorized immigrants work for employers who withhold taxes (Passel and Cohn 2011). At the federal level, unauthorized immigrants contribute through their taxes to Social Security and Medicaid and Medicare, services they are unable to consume (Porter 2005; Ortega 2009). At the local level, unauthorized immigrants pay sales tax and property tax on rent.

Beyond their economic contributions, unauthorized immigrants contribute to the social fabric of their communities. Many immigrants pursue home ownership, a hallmark of assimilation, and strong community ties; their affiliation with religious and civic groups also strengthens communities. Younger, working immigrant families reduce demographic challenges to society from an aging population with low birth rates. Because a concern for reciprocity undergirds public programs, all of these contributions to society should earn all immigrants the right to participate in public benefits (assuming they meet other eligibility requirements, e.g., means testing).

Fair Equality of Opportunity, Health, and Fair Terms of Cooperation

John Rawls' contractarian view of social justice seeks fair terms of cooperation for all "free and equal citizens" of a society (Rawls 1971). Specifically, Rawls argues that such fair terms require protecting the fair equality of opportunity of all citizens, meaning that we need institutions that correct for inequalities in the development of talents and skills, so that equally capable individuals have equal chances of occupying jobs and offices they seek. Protecting health, including through coverage for health care, contributes to protecting opportunity (Daniels 1981; Rawls 1995).

Should we take Rawls' reference to "citizens" literally? Do we have justification only for protecting citizens' opportunities through protection of their health?

Since unauthorized immigrants are not citizens, taking Rawls literally would imply they are not included in the argument. But the spirit of his account includes them as members of the society in a relevant sense because they cooperate with others in it. Unlike residents of other nations, unauthorized immigrants, especially those who live and work for considerable periods among other members of society, are present as cooperating members of that society and they should be treated fairly according to fair terms of cooperation for all of its members. This difference from members of other societies should count heavily in favor of Rawls including them. In addition, interpreted generously,

Rawls' contractarian view requires that we consider, inclusively, all moral agents who are contributing members of society and who should cooperate on fair terms acceptable to them. Visitors, such as temporary students, business people, and tourists, for example, should not count as members, but most longstanding unauthorized immigrants should be considered members of society by virtue of their working, paying taxes, and being active members of local communities. The distinction between citizenship and informal membership is undeniably important since it demarcates some important special rights, such as voting and political participation generally, but many aspects of social justice require the same treatment for all members, whether people are citizens or not. As James Dwyer argues, "although they are not citizens or legal residents, they may be diligent workers, good neighbors, concerned parents, and active participants in community life. They are workers, involved in complex schemes of social cooperation" (Dwyer 2004: 40).

Rawls' theory also provides for protection of basic liberties, including political participation rights. So the "fair terms of cooperation" include having a voice in the implementation of those terms. We believe that the link between having health protection and having political voice is important, but we cannot here consider the ways in which immigration reform should provide a route to obtaining that voice.

The protection of health, we also note, should be viewed from a lifespan perspective. This implies that denial of health care services beyond emergency medical care to unauthorized immigrants should be assessed for its impact over a lifespan, not simply as a temporary denial of benefits. Depriving immigrants of access to more comprehensive health care presents a significant harm to their ability to live a functional life and pursue and revise their plans of life. The obligation of society is to keep all cooperating members as close to normal functioning as possible over their lifespan, so denials of needed health care to some cooperating members requires strong reasons for exclusion.

We argue next that the reasons for exclusion do not justify ignoring this presumption in favor of inclusion.

Arguments Against Including Unauthorized Immigrants in PPACA

Are there adequate reasons for excluding unauthorized immigrants from the kinds of health protections they presumably ought to have? We think not. We consider six arguments for exclusion.

No Legal Obligation to Provide Health Care

Some argue that unauthorized immigrants do not have legitimate claims to public benefits because the law does not provide them with such benefits. For them, because there is no legal duty to provide benefits, denying benefits is justified. Furthermore, formal exceptions to the law are "an affront to the democratic process of representative government" and to fairness in procedural justice (Sen. Charles Grassley quoted in Welsh 2012).

We disagree. This line of argument presents a legal, not a moral, justification and rests upon the belief that the law as it stands is just and reflects the will of the people. Accepting this appeal to what is law at the time implies that no one should have objected to Jim Crow laws in the U.S. or apartheid laws in South Africa, for they too were the laws of the land in their time and place. Obviously, laws may be unjust, and unjust ones should be opposed.

Criminality of Illegal Immigration

Since the rule of law is vital to maintaining civil society and promoting trust in its institutions, some argue that persons residing unlawfully in the U.S. do so knowingly and voluntarily, thereby forfeiting rights to coverage. Some also argue that immigrants pose a public health threat by increasing crime rates in their communities.

But, illegal activity by itself does not justify the denial of health care benefits. Many Americans commit crimes, ranging from misdemeanors to aggravated felonies, without losing access to health care. Even in the most egregious cases of those convicted and incarcerated for criminal offenses, offenders maintain their entitlement to health care, both emergent and continuous. Undocumented presence is generally not a criminal offense but a misdemeanor. Misdemeanors generally result in the loss of privileges not civil rights. Ruth Faden argues that, “People who are in this country illegally have broken our laws, but the magnitude of their crime does not justify depriving them of the basic right to health care coverage while they are in our midst” (Faden 2009). Our point is not to presuppose that unauthorized immigrants have a right to health care, but to note that we do not deprive real criminals of entitlements to health care, so claiming the lesser offense warrants denial of health care through the ACA is unjustified.

Further, there is no conclusive evidence that immigrants increase crime rates or that they are more likely to commit crimes than those who are native born (Sampson 2008). Finally, punitive measures aimed at punishing illegal immigration should be addressed by immigration policy, not health policy. Immigrants convicted of criminal acts are subject to deportation, regardless of their legal status. This is an appropriate punishment that serves to both punish the offender and protect the community.

Avoiding Incentives

Does providing unauthorized immigrants with health care benefits act as an incentive for illegal immigration? Both sides of the vitriolic debate about immigration agree that policies incentivizing illegal border crossing should be avoided.

The facts suggest there is no incentive. As we noted earlier, the reduction in benefits following PRWORA was not associated with a corresponding decline in immigration, contrary to expectations if incentives were present (Fix et al. 2011). Immigration trends show that, after a decline in legal immigration from 1996 to 1999, immigration increased through 2006, confirming that reductions in welfare benefits do not have a dramatic effect on immigration. Even in states that provide benefits to immigrants, enrollment among immigrants is low relative to enrollment among native born, likely due to the “chilling effect” and fear of being deported (Kaushal and Kaestner 2005). There is little evidence that welfare benefits resulted in moral hazard, neither in greater dependence on welfare nor in swaying immigrants towards states with more generous benefits.

One reason for the lack of incentives is that immigrants are generally healthier and demand fewer services than the domestic-born population (Abraido-Lanza et al. 1999). Indeed, even when in need, eligible immigrants are less likely to enroll in Medicaid and less likely to seek treatment. A study examining foreign-born adults in Los Angeles County demonstrated that while immigrants constituted 45 percent of the population aged 18–64, they accounted for only 33 percent of health spending (Goldman et al. 2006). Even relative to other Latinos, unauthorized immigrants underutilize health care and contribute less to costs relative to their population share (Capps et al. 2004).

Depriving immigrants of health care coverage is not effective in regulating illegal immigration, but is likely to harm the health of immigrant households (Berk et al. 2000).

Cost of Providing Health Care to Immigrants

Since feasibility is a condition of justice, would it be infeasible, in the sense of unsustainable, to include unauthorized immigrants in the PPACA, or would that place an undue burden on taxpayers? No doubt, there may be an increased cost in covering more people, but covering immigrants may not be prohibitive as some suggest. In fact, recent evidence suggests that immigrants contribute more to health care than they use (Zallman et al. 2013). As we remarked above, immigrants are generally healthier than non-immigrants and utilize fewer health services. Even for those enrolled in public programs such as Medicaid and the State Children's Health Insurance Program (SCHIP), a state–federal entitlement program that expands access to services for families with modest incomes who do not qualify for Medicaid, expenditures are much less for immigrants than non-immigrants. In these programs, 21 percent of total medical costs were paid through public sources for native-born citizens, compared with only 16 percent for documented and undocumented immigrants (Capps et al. 2004). The cost of providing care to immigrants is similar to or lower than providing care to citizens.

Emergency Care Is Sufficient

Some may argue that the need for universal coverage for the uninsured is met through emergency care. EMTALA requires that hospitals treat all patients, including unauthorized immigrants, in an emergency. Emergency care alone, however, is not enough to preserve health and normal functioning. Lack of insurance is associated with severe health deficits. Uninsured persons are more likely to delay care and present with more severe symptoms (Mohanty et al. 2005). Despite lower utilization, expenditures associated with emergency room use by immigrant children were more than three times higher than those for native-born children using emergency services, suggesting worse health upon admission. Among unauthorized immigrants, an estimated one-fifth of day laborers suffer work-related injury, but less than half received medical care for their injuries (Valenzuela et al. 2006). Purchasing private health insurance is not feasible for many migrants because the cost of premiums exceeds their annual earnings. Continued access to primary and preventive care could mitigate these harms and likely reduce costs to the health system overall.

In addition, the boundary between emergent and non-emergency care is often vague, placing a burden on clinicians who cannot provide adequate quality of care and are forced, in the absence of coverage, to pursue discharge plans that go against their conscience and duty to provide care (Hacker et al. 2012). Because hospitals are often not reimbursed for care provided to unauthorized immigrants, medical deportations and discharge plans that harm patients have become commonplace. The tradeoff between the hospitals' financial burden and providing poor quality of care for immigrants could be avoided if immigrants were covered by insurance.

Avoiding Harms to the Most Vulnerable

Some argue that admitting too many immigrants, and not eliminating the flow of unauthorized immigrants, increases competition for jobs and hurts the most vulnerable parts of the American population—low-skilled workers with limited education—and so we

should do everything possible to discourage the competition such immigrants bring with them, including denying access to the benefits of the PPACA.

This argument for exclusion combines a claim about immigration effects with a conclusion about health care benefits, thus combining two issues we believe should be kept distinct for reasons of social justice. Any increase in competition for jobs that lowers wages in general (no evidence shows this) or that lowers wages for the most vulnerable parts of the U.S. workforce (there is limited evidence that shows this) should be dealt with through immigration policy generally, not by restricting health care for people who are members of the society.

We conclude that none of these arguments for exclusion is sufficient to constitute adequate grounds for excluding unauthorized immigrants from the kinds of health insurance provided by the PPACA.

Should Unauthorized Immigrants Be Included in Comprehensive Coverage?

We have argued that there is a presumption in favor of including unauthorized immigrants in health care coverage because there are no compelling arguments justifying exclusion. This presumption does not derive from either cosmopolitan global justice or human rights arguments. Specifically, the global justice claims for open borders fail as a requirement of justice because they demand something that is not sustainably feasible. We do not support the claim that states should regulate their borders as they see fit. We believe that such regulation is justifiable only for certain kinds of reasons, for example, avoiding certain kinds of security threats, or economic and social harms, though we have not tried to offer a comprehensive account of those reasons. The human rights arguments do not yield a clear claim for inclusion because states still retain the discretion to determine who is a member entitled to the health benefits the PPACA provides.

The presumption in favor of inclusion rests on strong reasons to view most longstanding unauthorized immigrants as members of a society. As contributing members of society, reciprocity requires that they share in its benefits. As members of society, as a matter of justice, their opportunities should be protected, including those affected by access to health care. This presumption in favor of inclusion is not overridden by the arguments that have been made for their exclusion. Our view allows states to regulate the flow of immigrants under certain conditions, though we have not given a comprehensive account of these conditions. It also permits higher standards for citizenship and the rights and privileges that accompany it, but addressing that issue also takes us beyond the scope of this paper (though we note that the entitlement to a fair share of benefits should carry with it a route to acquiring political voice, and this should be incorporated in immigration policy).

Our conclusion is that the PPACA should have included all immigrants, unauthorized or not. There may well be some conditions where inclusion would not be justified—say because there is evidence that doing so brings some kind of harm to the rest of the population—but there is currently no evidence for these conditions.

Related Topics

Chapter 1, “The Right to Health Care,” John D. Arras

Chapter 6, “Bioethics and Human Rights,” Elizabeth Fenton

Chapter 34, “Family Caregivers, Long-Term Care, and Global Justice,” Lisa Eckenwiler

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