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## **No one is illegal in one's own bare body: Political exclusion and active citizenship Ninguém é ilegal no seu corpo nu: Exclusão política e cidadania activa**

Trine Myhrvold\*

**Abstract** According to the Norwegian Refugee Council nearly 44 million people were displaced from war and conflict in 2010, the highest number recorded in this millennium. However, only 1,6 million are currently in Europe, while the European Union (EU) estimate of undocumented migrants living in the EU in 2008 is ranging from 1,9 to 3,8 million people. On the occasion of the 60th anniversary of the United Nation Refugee Convention, it is important to discuss the Convention's relevance today, as well as today's major challenges associated with the refugee question. In this maze of problems undocumented migrants have a precarious status of inclusive exclusion. They may even be regarded as illegal in one's own bare body finding themselves to be particular vulnerable to human rights violation. Thus we should be better and faster at finding long-term solutions on the refugee question. Active citizenship presupposes socially and politically participation. However, the ordinary system of help does not work to include all. Therefore voluntary organizations have a valuable complementary role to play and are in need of protection as well as of sufficient funding. We are collectively responsible for how the society is organized. In addition professionals have a particular responsibility for human rights violation within areas related to his or her profession. In this essay some responses called for to eliminate both formal and informal hindrances to ensure to all healthcare and social welfare will be discussed from a health professional approach.

**Keywords** Refugees, undocumented migrants, inclusion, exclusion, justice

**Resumo** Segundo o Conselho Norueguês para os Refugiados, quase 44 milhões de pessoas foram deslocadas de guerra e de conflitos em 2010, o número mais alto registado neste milénio. No entanto, apenas 1,6 milhões estão na Europa, enquanto a estimativa da

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União Europeia (UE) dos imigrantes sem documentos que vivem na UE em 2008 é de 1,9 a 3,8 milhões de pessoas. Por ocasião do 60º aniversário da Convenção das Nações Unidas sobre o Estatuto dos Refugiados, é importante discutir a relevância da Convenção hoje, assim como os grandes desafios de hoje associados à questão dos refugiados. Neste labirinto de problemas, os migrantes em situação irregular têm um estatuto precário de exclusão inclusiva. Podem até mesmo ser considerados como ilegais no seu próprio corpo nu, encontrando-se especialmente vulneráveis à violação dos direitos humanos. Assim, devemos ser melhores e mais rápidos a encontrar soluções de longo prazo sobre a questão dos refugiados. Cidadania activa pressupõe participação social e política. No entanto, o sistema comum de ajuda não funciona para incluir todos. Portanto, as organizações voluntárias têm um importante papel complementar a desempenhar e estão a precisar de protecção, bem como de financiamento suficiente. Somos colectivamente responsáveis pela forma como a sociedade está organizada. Além disso, os profissionais têm uma responsabilidade especial pela violação dos direitos humanos nas áreas relacionadas com a sua profissão. Neste ensaio, algumas respostas, para eliminar os obstáculos formais e informais que garantam a todos bem-estar de saúde e social, serão discutidas a partir de uma abordagem profissional de saúde.

**Palavras-chave** Refugiados, migrantes em situação irregular, inclusão, exclusão, justiça

## ■ No one is illegal in one's own bare body: Political exclusion and active citizenship

Trine Myhrvold

### Introduction<sup>1</sup>

The starting-point of this essay is the amazing world; there are rivers and sunshine, wealth and peace, safe homes and knowledge. There is justice. However, there are also floods and drought, poverty and wars, homelessness and illiteracy. There are arbitrary arrests and detentions. There is torture. This is also a starting-point of this essay.

The departure point of this essay is that those who are in positions of authority today do not care enough about those who are suffering from poverty and human rights violation to act. These are the main reasons to why people flee their country of origin.

The society has a positive obligation to help. We have to respond through highlighting, mobilizing, lobbying, voicing, voting, capacity building, and developing knowledge that works. We have to respond through sharing the benefits of global economic growth to a greater extent than we are doing today. Is it possible? It is possible. *This is the starting-point of this essay.*

### The refugee question

When I was a teenager, one of my favorite authors was Erich Maria Remarque. His novel *Flotsam*, which was published in 1939 with the title *Liebe deinen Nächsten*, describes the refugees wandering from country to country in the 1930s Europe. They were, in fact, stateless and as the main character, Steiner, says after months of struggling with lack of legal identity, papers and work permission: *I am a shadow, a ghost, a dead man in the eyes of society* ("Ich bin ein Schatten, ein Gespenst, ein bürgerlich Toter", Remarque, 1939: 283).

Many years later, I read Hannah Arendt's (2004): "*The Decline of the Nation State and the End of the Rights of Man*". Arendt's discussion on the refugees and statelessness problem was based on the institutionalization of anti-Semitism within the Nazism. The totalitarian space, understood as a space devoid of public dialogue, human conscience, and just laws, led to the unwanted minorities, first of all the Jews, and then the stateless became the "*the scum of the earth*" through loss of nationality, work, passport and money. Thus, those whom persecution had called undesirable became the *indésirables of Europe*" (2004: 343). They were considered to be

non-indigenous, which, as we shall see, is a somewhat precarious concept. This part of our common history was the backdrop of The United Nations Refugee Convention of 1951 and the protocol of 1967.

According to the Norwegian Refugee Council Report 2011, 43.7 million people were displaced from war and conflict in 2010. This is the highest number recorded in this millennium. Of this number, 27,5 million are people internally displaced and 16,2 million people are refugees. Approximately half of the world's internally displaced persons live in Colombia, Sudan, Iraq, DR Congo, and Somalia. Iraq, Somalia and DR Congo are also among the five countries most people flee from, the other two being the Occupied Palestinian Territory (OPT)/Israel, and Afghanistan.

Right now, the aftermath of the Western world's financial crisis, and a simultaneous unstable and violent situation in the Middle East and North Africa, is reflected in an increasing number of people who fall outside of the labour market in Europe and, at the same time, in an increasing number of people trying to cross the European borders. The situation gives rise to concern not least due to Europe working hard on tightening its borders, which brings more and more people into the hands of smugglers and is making refugees vulnerable to traumatic experiences during their flight and at the border. The most severe outcomes are deaths at the borders and children being separated from their parents. According to NRC (2011), sixteen hundred people have lost their lives in trying to reach the European continent from Libya by boat thus far. However, only 1.6 million of the world's nearly 44 million displaced persons are currently in Europe. Thus we should be better and faster at finding long-term solutions on the refugee question. On the occasion of the 60th anniversary of the UN Refugee Convention, it is important to discuss the Convention's relevance today, as well as today's major challenges associated with the refugee question.

In the first place, the definition of the term refugee, according to The U.N.'s Refugee Convention is: *"Any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*. (Office of the High Commissioner for Human Rights).

A refugee's right is based on each individual refugee proving the claim of asylum. The refugee has to prove that he or she is in particular danger. It is not enough to live in a war zone. Even when the authorities in the host country admit that an individual's fear is well founded, the person risks being deported as long as other areas in the country of origin than the person's home area are deemed relatively safe. It seems that the political discussion of the refugee problems revolves around the question

of legitimising the deportation of refugees. And, as we should not forget, future impacts of climate change are likely to bring about another class of refugees without protection of the U.N.'s Refugee Convention — the climate refugees.

A second challenge to refugee status is due to the differences between European countries about access to essential support in the asylum process as well as in differences, through national regulation, in the prospects of attaining asylum. Though it was the intention of the Dublin Regulation to reduce the asylum seekers' burden in the asylum process, it may in practice reduce refugees' ability to prove their asylum claims. Also the countries on the external border regions of the European Union are often the least able to offer asylum seekers support and protection (Myhrvold and Eick, 2010). The situation is worsened since these countries tend to be among those hardest hit by the financial crisis. The United Nations does not have a system that works in situations of mass flight and Europe does not have a system that really supports refugees at the borders. As Giorgio Agamben notes (1998:133): *"Every time refugees represent not individual cases but – as happens more and more often today – a mass phenomenon, both these organizations (United Nations and the High Commissioner for Refugees) and individual states prove themselves, despite their solemn invocations of the "sacred and inalienable" rights of man, to be incapable of resolving the problem and even of confronting it adequately"*.

Thirdly, there is a well-founded fear of a further polarization between the need for safety and the well-being of the majority/host population, and the need for safety and the well-being of migrants, refugees, and undocumented migrants. There is a need to protect the institution of asylum. Nevertheless, it is also important to acknowledge that it can be difficult to differentiate between different groups of migrants. Whether undocumented migrants are associated with the black-labour market (economic migrants) or with the refugee question seems to affect the amount of assistance a nation is willing to grant. Many nations and companies profit from the work of undocumented migrants who perform their services for low wages and with little or no work security.

Undocumented migrants are not a homogeneous group. Within this group are those who never register themselves in the host country, those who have no documents when they access a host country, those who are denied asylum and have gone underground, tourist visa and education visa overstayers, as well as people who have been trafficked (Myhrvold and Eick, 2010). According to the Platform for International Cooperation on Undocumented Migrants (PICUM), undocumented migrants are *"migrants without a residence permit authorizing them to regularly stay in the country of destination"* (PICUM, 2007a). We cannot be sure of how many undocumented migrants there are today either internationally or nationally. The European Union (EU) estimate ranges from 1,9 to 3,8 million people living in the EU in 2008 (Karl-Trummer and Novak-Zezula, 2010).

It is therefore important to note the right of refugees, according to the UN Refugee Convention, to cross borders without legal documents as long as this is admitted to and reported to the relevant authority as soon as possible after one has reached the country of destination. It is equally important to note when the state (of the refugee) is not in a position or is unable to protect its citizens (NRC, 2011). This last point is especially relevant for indigenous peoples.

Economic migration is based on a hope for a better fortune for one's own and one's own family when circumstances in the country of origin offer too limited opportunity for the future. According to Doctors of the World, this is the main reason to why undocumented migrants come to Europe (Chauvin, Parizot and Simonnot, 2009). Suffering from poverty is not a basis for claiming asylum. On the other side, those of us who happen to be born in a wealthy family in a peaceful nation have no reason to claim that we have morally deserved our good fortune. Thus, it is not a defensible ethical position to contribute to the polarisation of the public debate by using stigmatizing terms when speaking about those who, after all, did not do anything else than what human beings have been doing since time immemorial. The use, for example, of the term fortune hunter, which implies someone who cannot be trusted, is a derogatory term applied to economic migrants while at the same time we assume a position of having no responsibility as if there is, after all, no need to care for fortune hunters.

There is today a constant conflict of interests between the security and sovereignty of the nation state and human rights for those who nearly have nothing but a fragile hope of a better fortune or own to a well-founded fear of being persecuted. The global number of refugees indicates that the international community still has a long way to go in solving the world's refugee question.

### **Inclusive exclusion**

As we have seen, the term undocumented migrant encapsulates different ways of dealing with the life situation in the country of destination. They have literally become "*not autochthonous, uprooted, without a country*" and thus in particular need of moral response according to Emanuel Levinas understanding of the Other (1998b). However, autochthony is an ambiguous phenomenon/term. Autochthon means an indigenous inhabitant of a place, from the Greek *auto* meaning "self" and *khthōn* meaning "earth", literally "sprung from the earth" (Oxford English Dictionary, 2002). Autochthonous thus is very close to the conceptual aboriginal which is rooted in Latin *ab origine* meaning "from the beginning" which is understood as inhabiting or existing in a land before the arrival of the colonialists. Both concepts means indigenous and are also understood as concerning peoples that have been living in their country since time immemorial. But being born in a specific place is not the same

as belonging to a group that has been living there since time immemorial. This is reflected for instance in discussions regarding second and third generation non-Western migrants in Europe, and their loyalty, or lack thereof, to Western values. How long it takes to be(come) an autochthonous thus seems to be a relevant question in our part of the world.

"*Sons of which soil*", asks Jackson (2006), drawing a line from how autochthony was used as a key concept in the organizing and administration of the colonies to how the duality of autochthony and allochthony is used in a powerful way to sustain identity polarities on different levels in the society in Eastern D. R. Congo today. Allochthonus implies "different to", from Greek *allos* meaning "other" (Oxford English Dictionary, 2002). Both ethnicity and geography is thus in question on different scales of the conflict. Autochthony is understood literally (i.e. as "sons of the soil") by those who have settled down to make a living of the soil at the expense of those who could be considered as the "real" autochthonous people, the indigenous. Conflicts related to the rights and use of land can also be understood as conflicts between nomadic herders and those who have possession of the soil by farming it. "*The discourse of autochthony as opposed to allochthony, thus is a discourse of exclusion*", Jackson says (2006).

The rights and livelihoods of indigenous peoples are under pressure regardless of how the local resources are being used in different part of the world. The indigenous populations are particularly vulnerable when living in areas with unexploited natural resources, poor state presence, and limited rights or access to education, health-care, and work. The lives and health of indigenous peoples are, for instance, under threat in Colombia by armed groups and landmines placed which diminish their freedom of movement (NRC, 2011). Indigenous peoples relation to the soil goes, however, beyond the role it plays in livelihood. The natural resources construct the basis for existence itself, with all of life's dimensions incorporated. The right to land and the right to live in harmony with their culture can therefore be viewed as inseparable (Henriksen, 2011).

Several philosophers are associated with the discussion on moral responsibility for individuals and groups facing exclusion, including Hannah Arendt, Giorgio Agamben, and Michel Foucault. In an effort to understand the phenomenon of inclusive exclusion, with a particular emphasis on the refugee question, Agamben (1998) has picked up on the Arendt heritage. Agamben draws a line from Aristotle's understanding of man born to life (*zen*) but achieving the good life (*eu zen*) through politics, to our contemporary times in which the question of human rights, a humanitarianism separated from politics, is bound to the nation state. Agamben makes Arendt's words his own when he says, "*the decline and the crisis of the one necessarily implies the end of the other*" (Arendt, 2004, Agamben, 2004:134). Agamben uses the ancient Greek terms "*zoe*", meaning bare life common to all living beings, and

“bios”, meaning qualified life as opposed to “zoe”, in his discussion on bio-power. He underscores that, ever since ancient times, the law has had the power to define what “bare life” is, and gains power over it by making it the subject of political control.

Life as such is a principal object of State power, the body is directly involved in a political field, according to Michel Foucault (1991) in his discussion on changes in the punish procedure in Europe during the seventeenth and the eighteenth century. To control the bare body, the “zoe”, is to have political power over him or her. Foucault’s study on the punishment procedure therefore is a study on a view of human nature that reflects a (clear) distinction between body and mind. Where the body is the object of punishment reparation “*power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs*” (1991: 25). An eventually understanding of man as something different and more than the body, however, replaced “*the expiation that once rained down upon the body....by a punishment that acts in depth on the heart, the thoughts, the will, the inclinations*” (1991: 16).

We may ask if torture to death (e.g. to be broken on the wheel) would not the same in-depth effect upon the victim. However, the consequences of torture to the heart, the thoughts, and the will, of the victim were not considered at that time, which may explain the almost inevitable death of torture victims who were not, after all, believed to be anything other than bodies. This has been the position of most people during the course of history. Another important point is the outrageous lack of coherence between crime and punishment, a trait typical of totalitarian states of today as well as throughout history. A corresponding democratic deficit and persecution give cause and reason for refugee flight.

Thus we have to create room for interaction between the majority/host population and those who are in a position of exclusion in our society. Humanitarian organizations play an important complementary role in this interaction through individual relationships, in institutions, and in society as a whole. As we should not forget, humanitarian mission, e.g. healthcare, is recognition and affirmation of the very existence of bare life and psychological and psychiatric service provision may be a contribution to an affirmation of the person as a whole.

This is in keeping with some of my experiences at the health care centre for undocumented migrants. The card received at the centre seems to be valuable to our patients because of its affirmation of belonging, however marginally, to some institution in the host society. Without such recognition and affirmation, undocumented migrants acquire and assume the status of illegal in the eyes of the society. That makes Agamben’s statement of a secret solidarity between humanitarian organizations and the very power of political exclusion they ought to fight through their humanitarian and social mission (Agamben, 1998), a statement in need of being

further discussed or completed. After all, we have today gradually gained an understanding of the consequences of the broken body to the mind, which becomes clear when we turn our attention to the nature of torture and its consequences. Mind and body cannot be divided. Mental and physical properties though still categorically distinct, are not reducible to each other. The epitome of torture is silencing, as says Sveaass (2000), underlining the impossibility of reducing man to either bare life or any expression of mind. According to Arendt (1994) the ultimate goal in the concentration camps and in totalitarian states in the modern time has been the same, i.e. the destruction of individuality through the permanence and institutionalization of torture. The end result, she says, is the reduction of human beings to the lowest possible denominator of “identical reactions” which is to be not any more a human, but bare life.

Today we may say that undocumented migrants have a precarious status of inclusive exclusion. Their not having citizenship makes them non-citizens. The position of being a non-citizen reflects the breach with norms and law(s) important for constructing both differentness and crime. It is therefore worth noting that one main finding in Khosravi’s study of undocumented migrants in Sweden (Khosravi, 2006) was their law abidingness in order to remain unnoticed.

For asylum seekers, restricting actions taken in Norway: for example, loss of money grants from the state for those choosing to live outside the asylum centres, and loss of the work permits if one does not have national passports, makes the situation more difficult. Regular employment reduces the risk of being exploited in the labour black-market; it increases the states tax income base and reduces the risk of recruitment to criminality. Besides, unemployment is a waste of human resources.

As noted by Agamben (1998), political life is constituted via a simultaneous inclusion and exclusion of “bare life”. Sovereignty, then, has been conceived since ancient times as a state of exception, the exception of inclusion we could say, as opposed to any group who conceived a state of the exception of exclusion, as have different groups over the course of history.

The position of being both citizens and non-citizens place undocumented migrants into a place of non-existence, losing the right to have rights, while at the same time citizens are placed in a position of no longer acknowledging a political or moral responsibility for them, Khosravi says (2006). That is one of Agamben’s main points: “*What characterizes modern politics is not so much the inclusion of “zoe” in the polis, but that exclusion and inclusion, “bios” and “zoe”, enter into a zone of irreducible indistinction*” (Agamben, 1998: 9). “*The separation between humanitarianism and politics....is the extreme phase of separation of the rights of man from the rights of the citizens*” (1998: 133). This is a matter of importance to the host country as well and a main point given by the Doctors without Borders because of the political and

criminal danger those who are not included represent in any society. Though Arendt underlines that migrants without any rights had “*constantly to transgress the law... liable to jail sentences without ever committing a crime*” (Arendt, 2004: 363), she was aware of this danger. With respect to the refugee question, she says: “*So long as these people are not resettled, they will constitute a grave political danger, precisely because they have been driven into a political vacuum*” (Arendt, 1994: 263). We may ask if the more we ignore them, the closer they get.

Undocumented migrants precarious status is reflected in the different interpretations of them. Undocumented migrants are named illegal, irregulars, underground and as hard to reach, as pariah, and as we have seen as anti-citizens and non-citizens (Myhrvold and Eick, 2010). The representation is a question with professional, ethical, and political implications.

According to a comparative analysis of 71 practices from 12 member states of the European Union the most common health care needs of undocumented migrants are mental health care, (treatment of) infectious diseases, and sexual health (Karl-Trummer and Novak-Zezula, 2010). This is in accordance with our experiences thus far in Norway as well as with the body of knowledge regarding this matter (Myhrvold and Eick, 2010, Myhrvold, 2010).

Circumstances of importance to undocumented migrants mental healthcare needs are limited psychological and social support, multiple losses and discrimination, their risk of exposure to exploitation and violence, loss of freedom and control, and fear of police and migration authorities. Language barriers and cultural constraints also represent severe problems to them. All these factors increase the person’s vulnerability with respect to one’s own health. Greater attention should therefore be paid to undocumented migrants mental health (Myhrvold and Eick, 2010, Myhrvold, 2010). Where this is not the case the limited resources allocated to mental health care in general can partly explain it.

These factors affect every person’s knowledge about the community and how to apply for assistance, and include the ability to make oneself understood, as well as the health professionals ability to assess the need for health care (Myhrvold and Eick, 2010, Myhrvold, 2010). Thus, there is a reason to argue for highlighting justice to a greater extent than we are doing today. The importance of justice to human rights also makes justice a core concept in our time.

### **Human rights and justice**

As a nurse and an ethicist, my approach to justice is that of a health professionals moral and professional obligation. I understand justice as a multidimensional and

dynamic phenomenon and as reflecting our efforts to intervene within a wider patient context. To do so we have to take into account underlying conditions of health. From a public health approach, these can be summed up in general socio-economic, cultural, and environmental conditions, living and working conditions, social and community networks and individual lifestyle factors (Dahlgren and Whitehead, 2007). This implies a need to deal with the antecedents as well as the consequences of injustice.

Justice is a core concept in ethics of care as well as in nursing science. Justice is also one of four prima facie principles in medical ethics. The other prima facie principles are respect for autonomy, beneficence, and non-maleficence. A prima facie principle is a duty that is obligatory unless it conflicts with another (prima facie) moral principle. If two principles conflicts and we have to choose between them, there is by definition an ethical dilemma. A thorough assessment of the different alternatives is therefore necessary when such a situation occurs. This implies that what is lost by choosing one alternative at the expense of the other is as important to emphasise as what is gained, not least because we have to handle the consequences of our choice.

However, if justice is to serve as a guide in healthcare practices to a greater extent than it does today, there is a need to conceptualize justice more clearly than we have done within ethics of care thus far (Boutain, 2008). One approach to justice is to subdivide between its different categories: distributive justice, social justice, market justice, legal justice, and rights based justice. According to Boutain (2008) distributive justice is referring to equal distribution of goods and services in society, while social justice is referring to the balance between societal benefits and burdens. Thus, distributive justice involves equality more than equity while social justice focuses on equity. Equal, however, does not mean just.

A market driven approach to healthcare services is (the) one reason why individuals and groups facing marginalization do not have access to healthcare. Lack of ability to pay is also one reason as to why undocumented migrants have limited access to healthcare all over the world as far as we know. Undocumented migrants are obliged to pay the full cost of treatment in most cases and therefore healthcare is out of reach for them (Myhrvold and Eick, 2010). This is one reason to why market justice is a controversial form for justice and to why the market can be considered antithetical to justice.

In Western democracies, legal justice is referring to how we administer the laws. The juridical system is regarded as fair as long as all individuals are treated equally, but with the exception of special considerations taken to ensure that relevant differences are paid heed to.

Rights based justice is referring to international conventions. Most important of the international conventions in this context in addition to the UN Refugee Convention mentioned above are the United Nations Universal Declaration of Human Rights and the United Nations Covenant on Economic, Social, and Cultural Rights. In the preamble of the first, a recognition of *“the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”*. No one is illegal in one’s own bare body. Among other things, the latter guarantees the *“right of everyone to the enjoyment of the highest attainable standard of health”* and calls for more specific action to provide, among other things, the reduction of *“the creation of conditions which could assure access to all medical service and medical attention in the event of sickness”*. The conventions have been ratified by nearly all countries in the world and by all European countries. Norway did include the UN’s Covenant on Economic, Social, and Cultural Rights in § 2 of the 1999 Human Rights Act, which took precedence over other Norwegian legislation.

*“The frustration of human rights may be due to that human rights conventions shares the fate of never becoming a law”*, Arents says (2004). Legislative attention seems to be needed because of human rights violation. However, the discussion on relevant judicial and ethical circumstances should not be left to legislation alone. This is a point made by Amartya Sen (2010). *“At the one side,”* he says, *“an institutionalization of human rights makes recognizing them a first step to realizing them. At the other, a legislation of rights does not mean they will not be frustrated.”* It might be useful to make a distinction between human rights as legislation and human rights as ethics because the latter can be made more effective because it allows for *“a variety of interrelated instruments and a versatility of ways and means”* (2010: 366).

Important also is that human rights include, both civil and political rights as well as economic, social, and cultural rights. Thus human rights have to allow room for ambiguity and interpretation and must by necessity be entrusted to different rationales of understanding. *“Plural grounding”* allows for different grounds to different individuals sense of injustice, as Sen says (2010). Plural grounding presupposes participation, which allows for diversity and differences to introduce something else than we already know or understand. How different countries manage to fulfill their human rights obligations is dependent on each country’s economy, overall standard of healthcare and social welfare, amongst other factors, and presupposes diversity.

As I see it, one point in need of being further discussed is whether we risk a secret approval of what is left outside (the law, the conventions, and the rules) if we make the claims too detailed. This is the scourge of bureaucratization. Thus both legislations and conventions will have meaning only if applied to the realities in a changing society. And, as with legislation, similar constraints may be reflected in professional and ethical guidelines or codes. A part of my own work may serve as an illustration to this. Together with Frode Eick, the Health Care Responsible at the

Health Centre for undocumented migrants in Norway, I wrote an appeal to International Council of Nurses (ICN) regarding ICN’s Code of Ethics for Nurses, previous referred to (Myhrvold and Eick, 2010). As the Code says, a respect for human rights lays inherent in nursing. The preamble of the Code further states: *“Nursing is respectful of and unrestricted by considerations of age, colour, creed, culture, disability or illness, gender, sexual orientation, nationality, politics, race or social status”* (ICN, 2006). The point here is that at the very moment factors like, for example, age or sexual orientation are specified, factors unspecified are missing. To us, the state of undocumentedness is important because of the huge protection gap between undocumented migrants status of health and access to healthcare. To us, the only other alternative to including undocumentedness as yet another factor nursing care should be unrestricted by, is not to give any further specifications (at all) as long as human rights are secured.

Nevertheless, there is today a discrepancy between human rights and national laws in many Western countries. In some countries, for example, health professionals are obliged to report undocumented migrants to the police and/or immigration control policies. That is not the case in Norway, but it is the case in Denmark and Germany (Myhrvold and Eick, 2010). Also any assistance to undocumented migrants, including healthcare, is criminalized in Germany (2010). Even where the country of destination has ratified conventions important to undocumented migrants or asylum seekers rights, that ratification does not seem to guarantee adequate healthcare and social welfare to all.

A somewhat difficult categorization of undocumented migrants access to healthcare has been done among European Union Member countries (Karl-Trummer and Novak-Zezula, 2010). The countries have been grouped in countries that provide full access, partial access, and no access. However, it is important to note the fact that countries that grant emergency care alone is included in the no access group by their method of categorizing the topic. Spain, France, the Netherlands, and Portugal allow full access, while Belgium, Italy and United Kingdom allow partial access. 20 countries allow no access to health care (2010). Whether this will change as a consequence of the deep economic problems in Europe remains to be seen. In this context Portugal and Spain are the most important cases to follow.

According to John Rawls (2001) set of principles of justice, justice includes political and civil rights insofar that every person has the same claim to equal basic liberties. Justice also includes social and economic rights insofar that social and economic inequalities are to satisfy a condition of fair equality of opportunity and a condition of being *“to the greatest benefit of the least-advantaged members of society”* without oppressing the freedom of others (2001). Sen’s broad based idea of justice is expanding on Rawls theory in his cosmopolitan extension of the phenomenon (Sen, 2010). One of Sen’s important objections against Rawls theory is that a theory of justice

must include ways of how to advance it as well as how to reduce injustice, not merely be a perfect description on just societies.

According to Rawls, the principles of justice have implications at both the domestic and local level (Rawls, 2001). The domestic level of justice addresses how “*the main political and social institutions of society fit together into one system of social cooperation*” (2001:10). The idea of such a basic structure is fundamental to Rawls theory of justice. The local level of justice has principles that apply directly to institutions and associations. Rawls set of principles of justice thus are concerned with just institutions more than on how individuals navigate justice in the society of which we have a joint responsibility as fellow citizens. This individual responsibility in democracies is under-communicated in Rawls theory. The presence of injustice may as well be connected with behavioural transgressions as with institutional shortcomings, as Sen articulates one of his critical remarks on Rawls theory.

We may say that the very institutions are created by us, impact our lives and are therefore important to each individual and his or her expectations in life. As health professionals, researchers, and educators, we cannot avoid the institutions impact on our socialization to values. What we can do is to raise the question of which values the institution in which we work should foster (Føllesdal, 2003). This situation requires an acknowledgement of professional and moral responsibility that extends beyond established relationships. Moral sensibility is needed and thus justice includes ethical relationship formation.

We are collectively responsible for how the society is organized. This requires recognition of local, national, and global inequalities. Actually it is as simple as if one is in a position to do good one should, including the prevention of human rights violation (Sen, 2010). In addition, professionals have a particular responsibility for human rights violation within areas related to his or her profession. Whether we do care for different groups in society who are excluded from adequate healthcare and social welfare or not is thus dependent on how we consider such a particular professional and moral responsibility. It is therefore important to underscore that the very legitimizing of ethics of care is based on benefits to different population groups with respect to health as well as to underlying conditions of health. Health professionals do not work in a vacuum. In addition to how we prioritize between, for instance different patients in our daily work, we have a common responsibility for individuals and groups facing marginalization in the society. Those beyond established relationships are most likely not given proper priority in the distribution of resources.

## Conclusion remarks

The dilemmas that arise because of the discrepancy between the UN Human Rights and national laws, as well as between migration control polices and health professionals, is a challenge not only at the national level but also at an individual level. In this maze of problems health professionals and social workers thus have a moral obligation to respond to injustice both as “groups” and as “individuals.” We cannot remain indifferent and we cannot only pity those who are not equally included in society. Sentimentality is of no help.

Thus there is a need to strengthen the efforts to make the ordinary system of, for example, healthcare, and social welfare work, for all in need of it. This is of particular importance with respect to undocumented migrants with limited access to diagnosis, treatment, and nursing care as well as their poor living, working and housing conditions. However, we should be aware of their fear of being reported is a main obstacle to accessing healthcare. Professionals’ obligation of confidentiality is therefore utterly important and should be communicated more effectively. These matters cannot be left to each health professional and social worker alone and are important to health - and other authorities as well.

As long as the ordinary system of help does not work, the voluntary sector has a valuable complementary role and is in need of protection as well as of sufficient funding. In some cases there might even be a need to protect those who work voluntary in charity - based centres. Voluntary organizations like the Red Cross Society and Doctors without Borders are also important because these organizations are in a position of trust whereas the state is not. Access to healthcare is of limited value if there still is a threat of deportation.

According to Karl-Trummer and Novak-Zezula (2010), healthcare to undocumented migrants in Europe is provided by both governmental organisations (GO’s) and non-governmental organisations (NGO’s). However, to me, the division of labour between GO’s and NGO’s today seems somewhat arbitrary. To create a room for an interaction between the voluntary sector and the state is thus important. These sectors should not work parallel to each other but cooperate in making the society more sharing and more just.

As long as the most vulnerable individuals and groups in society are left, to a great extent, to humanitarian and social practices run by NGO’s, it looks like the state does not acknowledge a humanitarian responsibility. This is not only the case with refugees and undocumented migrants but also with homeless people, people having no insurance, having drug problems, and so forth.



As we have seen, there might be a secret solidarity between humanitarian organizations and the very power of political exclusion they aim to fight through their humanitarian and social mission, according to Agamben (1998). This hypothesis seems to create a need to open a passage for communication between the professions and politics. We have to ask for a political and social ethic that includes every person's ability to participate politically and socially. This is important to develop in addition to a "solely humanitarian and social mission" (1998). As I see it, Rawls adds valuable input to the understanding of this aspect when he states: "----the members of any civilized society need a conception that enables them to understand themselves as members having a certain political status" and moreover: "- in a democracy, that of equal citizenship - and how this status affects their relation to their social world" (Rawls, 2001: 2-3).

If we are to help to bring about justice we cannot only continue solely to compensate for what is not taken care of within the ordinary system of help. This approach is to render a service by substitution. From this follows that we should critically examine whether professionals engaged in humanitarian service might be contributing to the maintenance of a system of exclusion in the long term. The rendering of service re-creates a system in which those who give the services remain in a position of power over those who receive the help. Therefore we should contribute to restructure the system simultaneously to the here and now caring for vulnerable groups so that certain services only are needed infrequently (Iris Young, 1990, here from Boutain, 2008).

The system as such has no intrinsic value. What counts is each and every one of us. Active citizenship presupposes participation. In Western countries today this is not an option for undocumented migrants.

## Notes

<sup>1</sup> Texto revisado por William Harris.

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## **Persuading Politicians: Researching the Value of Social Capital in South Australia** **Persuadindo Políticos: Pesquisa sobre o Valor do Capital Social no Sul da Austrália**

Peter Mayer\* e Lou Wilson\*\*

**Abstract** Politicians of both the Left and the Right perceive enhanced levels of social capital as consistent with their core philosophical beliefs. But applied research findings about social capital are received into bureaucratic and political contexts and their fate depends more on those contexts than on scholarly merit. In South Australia two government departments commissioned research on aspects of social capital. The Office for Volunteers sought to quantify the economic value of aspects of volunteering. This chapter spells out the assumptions and methods used to produce the reported values. When the report reached the politicians, its modest findings were increased tenfold to enhance their media impact. The Department of Human Services commissioned an assessment tool that might measure the impact of social capital on social inclusion in northern Adelaide. The study found high levels of bonding social capital in working class areas of northern Adelaide. Subsequent reorganisation of departments and changes in government priorities meant that when the report was presented, the original sponsors had been transferred elsewhere and the report was quietly buried.

**Keywords** Social capital, social inclusion, volunteering, public policy

**Resumo** Os políticos, tanto de esquerda como de direita, vêem o aumento dos níveis do capital social como consistentes com as suas principais crenças filosóficas. Mas os resultados da investigação aplicada sobre o capital social serão recebidos nos contextos burocráticos e políticos e o seu destino depende mais destes contextos do que do mérito académico. No sul da Austrália, dois departamentos do governo encomendaram uma pesquisa sobre

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