

Illegal Immigrants, Health Care, and Social Responsibility

by JAMES DWYER

"Nationalists" argue that illegal immigrants have no claim to health benefits because people who have no right to be in a country have no right to benefits in that country. "Humanists" say access to care is a basic human right and should be provided to everyone, recognized citizens and illegal immigrants alike.

Neither view is adequate.

Illegal immigrants form a large and disputed group in many countries. Indeed, even the name is in dispute. People in this group are referred to as illegal immigrants, illegal aliens, irregular migrants, undocumented workers, or, in French, as *sans papiers*. Whatever they are called, their existence raises an important ethical question: Do societies have an ethical responsibility to provide health care for them and to promote their health?

This question often elicits two different answers. Some people—call them nationalists—say that the answer is obviously no. They argue that people who have no right to be in a country should not have rights to benefits in that country. Other people—call them humanists—say that the answer is obviously yes. They argue that all people should have access to health care. It's a basic human right.

I think both these answers are off the mark. The first focuses too narrowly on what we owe people based on legal rules and formal citizenship. The other answer focuses too broadly, on what we owe people qua human beings. We need a perspective that is in between, that adequately responds to the

phenomenon of illegal immigration and adequately reflects the complexity of moral thought. There may be important ethical distinctions, for example, among the following groups: U.S. citizens who lack health insurance, undocumented workers who lack health insurance in spite of working full time, medical visitors who fly to the United States as tourists in order to obtain care at public hospitals, foreign citizens who work abroad for subcontractors of American firms, and foreign citizens who live in impoverished countries. I believe that we—U.S. citizens—have ethical duties in all of these situations, but I see important differences in what these duties demand and how they are to be explained.

In this paper, I want to focus on the situation of illegal immigrants. I will discuss several different answers to the question about what ethical responsibility we have to provide health care to illegal immigrants. (I shall simply assume that societies have an ethical obligation to provide their own citizens with a reasonably comprehensive package of health benefits.) The answers that I shall discuss tend to conceptualize the ethical issues in terms of individual desert, professional ethics, or human rights. I want to discuss the limitations of each of these approaches and to offer an alternative. I shall approach the issues

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in terms of social responsibility and discuss the moral relevance of work. In doing so, I tend to pull bioethics in the direction of social ethics and political philosophy. That's the direction I think it should be heading. But before I begin the ethical discussion, I need to say more about the phenomenon of illegal immigration.

Human Migration

People have always moved around. They have moved for political, environmental, economic, and familial reasons. They have tried to escape war, persecution, discrimination, famine, environmental degradation, poverty, and a variety of other problems. They have tried to find places to build better lives, earn more money, and provide better support for their families. A strong sense of family responsibility has always been an important factor behind migration.¹

But while human migration is not new, *illegal* immigration is, since only recently have nation-states tried to control and regulate the flow of immigration. Societies have always tried to exclude people they viewed as undesirable: criminals, people unable to support themselves, people with contagious diseases, and certain ethnic or racial groups. But only in the last hundred years or so have states tried in a systematic way to control the number and kinds of immigrants.

In contrast, what the Athenian polis tried to control was not immigration, but citizenship. Workers, merchants, and scholars came to Athens from all over the Mediterranean world. They were free to work, trade, and study in Athens, although they were excluded from the rich political life that citizens enjoyed. Today, political states try to control both citizenship and residency.

Modern attempts to control residency are not remarkably effective. There are illegal immigrants residing and working all over the globe. When people think about illegal immigrants, they tend to focus on Mexicans in the United States or North

Africans in France. But the phenomenon is really much more diverse and complex. Illegal immigrants come from hundreds of countries and go wherever they can get work. There are undocumented workers from Indonesia in Malaysia, undocumented workers from Haiti in the Dominican Republic, and undocumented workers from Myanmar in Thailand. Thailand is an interesting example because it is both a source of and a destination for undocumented workers: while many people from poorer countries have gone to work in Thailand, many Thais have gone to work in richer countries.

Since illegal activities are difficult to measure, and people are difficult to count, we do not know exactly how many people are illegal immigrants. The following estimates provide a rough idea. The total number of illegal immigrants in the U.S. is probably between five and eight million. About 30-40 percent of these people entered the country legally, but overstayed their visas. Of all the immigrants in Europe, about one third are probably illegal immigrants. A small country like Israel has about 125,000 foreign workers (not counting Palestinians). About 50,000 of these are in the country illegally.²

I believe that a sound ethical response to the question of illegal immigration requires some understanding of the work that illegal immigrants do. Most undocumented workers do the jobs that citizens often eschew. They do difficult and disagreeable work at low wages for small firms in the informal sector of the

economy. In general, they have the worst jobs and work in the worst conditions in such sectors of the economy as agriculture, construction, manufacturing, and the food industry. They pick fruit, wash dishes, move dirt, sew clothes, clean toilets.

Japan is a good example of this. In the 1980s many foreign workers came to Japan from the Philippines, Thailand, China, and other countries. Yoshio Sugimoto summarizes the situation:

The unprecedented flow of foreign workers into Japan stemmed from the situations in both the domestic and foreign labor markets.

"Pull" factors within Japan included the ageing of the Japanese workforce and the accompanying shortage of labor in unskilled, manual, and physically demanding areas. In addition, the changing work ethic of Japanese youth has made it difficult for employers to recruit them for this type of work, which is described in terms of the three undesirable Ks (or Ds in English): *kitanai* (dirty), *kitsui* (difficult), and *kiken* (dangerous). Under these circumstances, a number of employers found illegal migrants, in particular from Asia, a remedy for their labor shortage.³ The pattern is much the same in other countries.

In the global economy, in which a company can shift its manufacturing base with relative ease to a country with cheaper labor, illegal immigrants often perform work that cannot be shifted overseas. Toilets have to be cleaned, dishes have to be washed, and children have to be watched *locally*. This local demand may help to ex-

Illegal immigrants are sometimes pictured as free riders taking advantage of public services without contributing to public funding. But this business model is not adequate for thinking about many social benefits.

plain a relatively new trend: the feminization of migration. Migrants used to be predominantly young men, seeking work in areas such as agriculture and construction. But that pattern is changing. More and more women migrants are employed in the service sector as, for example, maids, nannies, and health care aides.

Women migrants are also employed as sex workers. The connection between commercial sex and illegal immigration is quite striking. As women in some societies have more money, choices, schooling, and power, they are unwilling to work as prostitutes. These societies seem to be supplying their demands for commercial sex by using undocumented workers from poorer countries. Before brothels were legalized in the Netherlands, about 40 to 75 percent of the prostitutes who worked in Amsterdam were undocumented workers. About 3,000 of the 7,000 prostitutes in Berlin are from Thailand. Japan has over 150,00 foreign prostitutes, most of them from Thailand, China, and the Philippines. Thailand has about 25,000 prostitutes from Myanmar.⁴

Even when prostitution is voluntary, it is difficult and dangerous. Leah Platt notes that prostitution is

“a job without overtime pay, health insurance, or sick leave—and usually without recourse against the abuses of one’s employer, which can include being required to have sex without a condom and being forced to turn tricks in order to work off crushing debts.”⁵

And for some illegal immigrants, prostitution is not a voluntary choice. Some are deceived and delivered into prostitution. Others are coerced, their lives controlled by pimps, criminal gangs, and human traffickers.

Some of the worst moral offenses occur in the trafficking of human beings, but even here it is important to see a continuum of activities. Sometimes traffickers simply provide transportation in exchange for payment. Sometimes, they recruit people with

deceptive promises and false accounts of jobs, then transport them under horrible and dangerous conditions. If and when the immigrants arrive in the destination country, they are controlled by debt, threat, and force. Some become indentured servants, working without pay for a period of time. Others are controlled by physical threats or threats to expose their illegal status. A few are enslaved and held as property.

Not all illegal immigrants are victims, however, and an accurate account of illegal immigration, even if only sketched, must capture some of its complexity. My task is to consider how well different ethical frameworks deal with that complexity.

A Matter of Desert

The abstract ethical question of whether societies have a responsibility to provide health care for illegal immigrants sometimes becomes a concrete political issue. Rising health care costs, budget reduction programs, and feelings of resentment sometimes transform the ethical question into a political debate. This has happened several times in the United States. In 1996, the Congress debated and passed the “Illegal Immigration Reform and Immigrant Responsibility Act.” This law made all immigrants ineligible for Medicaid, although it did allow the federal government to reimburse states for emergency treatment of illegal immigrants.

In 1994, the citizens of California debated Proposition 187, an even more restrictive measure. This ballot initiative proposed to deny publicly funded health care, social services, and education to illegal immigrants. This law would have required publicly funded health care facilities to deny care, except in medical emergencies, to people who could not prove that they were U.S. citizens or legal residents.

This proposition was approved by 59 percent of the voters. It was never implemented because courts found that parts of it conflicted with other

laws, but the deepest arguments for and against it remain very much alive. Because they will probably surface again, at a different time or in different place, it is worthwhile evaluating the ethical frameworks that they assume.

The first argument put forward is that illegal aliens should be denied public benefits because they are in the country illegally. Although it is true that illegal aliens have violated a law by entering or remaining in the country, it is not clear what the moral implication of this point is. Nothing about access to health care follows from the mere fact that illegal aliens have violated a law. Many people break many different laws. Whether a violation of a law should disqualify people from public services probably depends on the nature and purpose of the services, the nature and the gravity of the violation, and many other matters.

Consider one example of a violation of the law. People sometimes break tax laws by working off the books. They do certain jobs for cash in order to avoid paying taxes or losing benefits. Moreover, this practice is probably well quite common. I recently asked students in two of my classes if they or anyone in their extended family had earned money that was not reported as taxable income. In one class, all but two students raised their hands. In the other class, every hand went up.

No one has suggested that health care facilities deny care to people suspected of working off the books. But undocumented work is also a violation of the law. Furthermore, it involves an issue of fairness because it shifts burdens onto others and diminishes funding for important purposes. Of course, working off the books and working without a visa are not alike in all respects. But without further argument, nothing much follows about whether it is right to deny benefits to people who have violated a law.

Proponents of restrictive measures also appeal to an argument that combines a particular conception of desert

with the need to make trade-offs. Proponents of California's Proposition 187 stated that, "while our own citizens and legal residents go wanting, those who chose to enter our country ILLEGALLY get royal treatment at the expense of the California taxpayer."⁶ Proponents noted that the legislature maintained programs that included free prenatal care for illegal aliens but increased the amount that senior citizens must pay for prescription drugs. They then asked, "Why should we give more comfort and consideration to illegal aliens than to *our* own needy American citizens?"

The rhetorical question is part of the argument. I would restate the argument in the following way: Given the limited public budget for health care, U.S. citizens and legal residents are more deserving of benefits than are illegal aliens. This argument frames the issue as a choice between competing goods in a situation of limited resources.

There is something right and something wrong about this way of framing the issue. What is right is the idea that in all of life, individual and political, we have to choose between competing goods. A society cannot have everything: comprehensive and universal health care, good public schools, extensive public parks and beaches, public services, and very low taxes. What is false is the idea that we have to choose between basic health care for illegal aliens and basic health care for citizens. Many other trade-offs are possible, including an increase in public funding.

The narrow framework of the debate pits poor citizens against illegal aliens in a battle for health care resources. Within this framework, the issue is posed as one of desert. Avoiding the idea of desert is impossible. After all, justice is a matter of giving people their due—giving them what they deserve. But a narrow conception of desert seems most at home in allocating particular goods that go beyond basic needs, in situations where the criteria of achievement and effort are very clear. For example, if we are

A simple appeal to a comprehensive human right avoids hard questions about duties and priorities.

asked to give an award for the best student in chemistry, a narrow notion of desert is appropriate and useful. But publicly funded health care is different and requires a broader view of desert.

The discussion of restrictive measures often focuses on desert, taxation, and benefits. Proponents tend to picture illegal immigrants as free riders who are taking advantage of public services without contributing to public funding. Opponents are quick to note that illegal immigrants do pay taxes. They pay sales tax, gas tax, and value-added tax. They often pay income tax and property tax. But do they pay enough tax to cover the cost of the services they use? Or more generally, are illegal immigrants a net economic gain or a net economic loss for society?

Instead of trying to answer the economic question, I want to point out a problem with the question itself. The question about taxation and benefits tends to portray society as a private business venture. On the business model, investors should benefit in proportion to the funds they put into the venture. This may be an appropriate model for some business ventures, but it is not an adequate model for all social institutions and benefits. The business model is not an adequate model for thinking about voting, legal defense, library services, minimum wages, occupational safety, and many other social benefits.

Consider my favorite social institution: the public library. The important question here is not whether some people use more library services than they pay for through taxation, which is obviously true. Some people pay relatively high taxes but never use the library, while others pay relatively

low taxes but use the library quite often. In thinking about the public library, we should consider questions such as the following. What purposes does the library serve? Does it promote education, provide opportunity, and foster public life? Does it tend to ameliorate or exacerbate social injustice? Given the library's purposes, who should count as its constituents or members? And what are the rights and responsibilities of the library users? In the following sections, I shall consider analogous questions about illegal immigrants and the social institutions that promote health.

A Matter of Professional Ethics

Some of the most vigorous responses to restrictive measures have come from those who consider the issue within the framework of professional ethics. Tal Ann Ziv and Bernard Lo, for example, argue that "cooperating with Proposition 187 would undermine professional ethics."⁷ In particular, they argue that cooperating with this kind of restrictive measure is inconsistent with physicians' "ethical responsibilities to protect the public health, care for persons in medical need, and respect patient confidentiality."⁸

Restrictive measures may indeed have adverse effects on the public health. For example, measures that deny care to illegal aliens, or make them afraid to seek care, could lead to an increase in tuberculosis. And physicians do have a professional obligation to oppose measures that would significantly harm the public health. But the public health argument has a serious failing, if taken by itself. It avoids the big issue of whether illegal immigrants should be

considered part of the public and whether public institutions should serve their health needs. Instead of appealing to an inclusive notion of social justice, the argument suggests how the health of illegal immigrants may influence citizens' health, and then appeals to citizens' sense of prudence. The appeal to prudence is not wrong, but it avoids the larger ethical issues.

The second argument against Proposition 187 is that it restricts confidentiality in ways that are not justified. It requires health care facilities to report people suspected of being in the country illegally and to disclose additional information to authorities. Ziv and Lo argue that "Proposition 187 fails to provide the usual ethical justifications for overriding patient confidentiality."⁹ Reporting a patient's "immigration status serves no medical or public health purpose, involves no medical expertise, and is not a routine part of medical care."¹⁰ Thus this restriction on confidentiality is a serious violation of professional ethics.

But if restrictive measures work as designed, issues of confidentiality may not even arise. Illegal aliens will be deterred from seeking medical care or will be screened out before they see a doctor. Thus the issue of screening may be more important than the issue of confidentiality. First, if the screening is carried out, it should not be by physicians, because it is not their role to act as agents for the police or the immigration service. Professional ethics requires some separation of social roles, and terrible things have happened when physicians have become agents of political regimes. The bigger issue, though, is not who should do the screening, but whether it should be done at all.

Ziv and Lo note that "clerks will probably screen patients for their immigration status, just as they currently screen them for their insurance status."¹¹ They object to this arrangement, and they argue that physicians bear some responsibility for arrangements that conflict with professional

ethics. In their view, screening out illegal aliens conflicts with physicians' ethical responsibility to "care for persons in medical need."¹²

This claim is important, but ambiguous. It could mean simply that physicians have an obligation to attend to anyone who presents to them in need of emergency care. That seems right. It would be wrong not to stabilize and save someone in a medical emergency. It would be inhumane, even morally absurd, to let someone die because her visa had expired. But a claim that physicians have an enduring obligation to provide emergency care is consistent with measures like Proposition 187 and the 1996 federal law.

The claim might also mean that the selection of patients should be based only on medical need, never on such factors as nationality, residency, immigration status, or ability to pay. This is a very strong claim. It means that all private practice is morally wrong. It means that most national health care systems are too restrictive. It means that transplant lists for organs donated in a particular country should be open to everyone in the world. It might even mean that physicians have an ethical responsibility to relocate to places where the medical need is the greatest. I shall say more about the strong claim in the next section. Here I just want to note one point. This claim goes well beyond professional ethics. It is an ethical claim that seems to be based on a belief about the nature of human needs and human rights.

Finally, Ziv and Lo's claim about physicians' responsibility to care for people in medical need might be stronger than the claim about emergency care but weaker than the universal claim. Perhaps we should interpret it to mean that it is wrong to turn patients away when society has no other provisions and institutions to provide them with basic care. The idea then is that society should provide all members with basic health care and that physicians have some

responsibility to work to realize this idea.

There is something appealing and plausible about this interpretation, but it too goes beyond professional ethics. It has more to do with the nature of social justice and social institutions than with the nature of medical practice. It makes an ethical claim based on a belief about social responsibility and an assumption that illegal aliens are to be counted as members of society. I shall try to elaborate this belief and assumption later.

Let me sum up my main points so far. Political measures that restrict medical care for illegal immigrants often involve violations of professional ethics, and health care professionals should oppose such measures. But the framework of professional ethics is not adequate for thinking about the larger ethical issues. It fails to illuminate the obligation to provide medical care. Furthermore, it fails to consider factors such as work and housing that may have a profound impact on health. In the next two sections I shall consider broader frameworks and discourses.

A Matter of Human Rights

To deal with the issue of health care and illegal immigrants, some adopt a humanistic framework and employ a discourse of human rights. They tend to emphasize the right of all human beings to medical treatment, as well as the common humanity of aliens and citizens, pointing to the arbitrary nature of national borders.

National borders can seem arbitrary. Distinctions based on national borders seem even more arbitrary when one studies how borders were established and the disparities in wealth and health that exist between countries. Since it doesn't seem just that some people should be disadvantaged by arbitrary boundaries, it may also seem that people should have the right to emigrate from wherever they are and to immigrate to wherever they wish. But does this fol-

low from the fact that national borders can be seen as arbitrary?

John Rawls thinks not. He writes:

It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances.¹³

Even if boundaries depend on historical circumstances, a defined territory may allow a people to form a government that acts as their agent in a fair and effective way. A defined territory may allow a people to form a government that enables them to take responsibility for the natural environment, promote the well-being of the human population, deal with social problems, and cultivate just political institutions.¹⁴

From functions like these, governments derive a qualified right to regulate immigration. This right is not an unlimited right of communal self-determination. Societies do not have a right to protect institutions and ways of life that are deeply unjust. Furthermore, even when a society has a right to regulate immigration, there are ethical questions about whether and how the society should exercise that right. And there are ethical questions about how immigrants should be treated in that society.

The committed humanist, who begins with reflections on the arbitrary nature of national boundaries, sometimes reaches the same conclusion as the global capitalist: that all restrictions on labor mobility are unjustified. In their different ways, both the humanist and the capitalist devalue distinctions based on political community. To be sure, there is much to criticize about existing political communities, but we need to be cautious about some of the alternatives. Michael Walzer warns us about two

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possibilities. He says that to “tear down the walls of the state is not . . . to create a world without walls, but rather to create a thousand petty fortresses.”¹⁵ Without state regulation of immigration, local communities may become more exclusionary, parochial, and xenophobic. Walzer also notes another possibility: “The fortresses, too, could be torn down: all that is necessary is a global state sufficiently powerful to overwhelm the local communities. Then the result would be . . . a world of radically deracinated men and women.”¹⁶

Of course, the humanist need not be committed to an abstract position about open borders. The humanist might accept that states have a qualified right to regulate immigration, but insist that all states must respect the human rights of all immigrants—legal and illegal. That idea makes a lot of sense, although much depends on how we specify the content of human rights.

The idea that all human beings should have equal access to all beneficial health care is often used to critique both national and international arrangements. In an editorial in the *New England Journal of Medicine*, Paul Farmer reflects on the number of people who go untreated for diseases such as tuberculosis and HIV. He writes:

Prevention is, of course, always preferable to treatment. But epidemics of treatable infectious diseases should remind us that although science has revolutionized

medicine, we still need a plan for ensuring equal access to care. As study after study shows the power of effective therapies to alter the course of infectious disease, we should be increasingly reluctant to reserve these therapies for the affluent, low-incidence regions of the world where most medical resources are concentrated. Excellence without equity looms as the chief human-rights dilemma of health care in the 21st century.¹⁷

I too am critical of the gross inequalities in health within countries and between countries, but here I only want to make explicit the framework and discourse of Farmer’s critique. His critique appeals to two ideas: that there is a lack of proportion between the medical resources and the burden of disease and that there is a human right to equal access.

What is wrong with the claim that equal access to health care is a human right? First, to claim something as a right is more of a conclusion than an argument. Such claims function more to summarize a position than to further moral discussion. A quick and simple appeal to a comprehensive right avoids all the hard questions about duties and priorities. When faced with grave injustices and huge inequalities, claiming that all human beings have a right to health care is easy. Specifying the kind of care to which people are entitled is harder. Specifying duties is harder yet. And getting those duties institutionalized is hardest of all.

In addition to the general problems with claims about rights, a problem more specific to the issue of illegal immigration exists. Since a claim based on a human right is a claim based on people's common humanity, it tends to collapse distinctions between people. Yet for certain purposes, it may be important to make distinctions and emphasize different responsibilities. We may owe different things to, for example, the poor undocumented worker in our country, the middle-class visitor who needs dialysis, the prince who wants a transplant, people enmeshed in the global economy, and the most marginalized people in poor countries.

Rather than claiming an essentially limitless right, it makes more sense to recognize a modest core of human rights and to supplement those rights with a robust account of social responsibility, social justice, and international justice. I do not know if there is a principled way to delineate exactly what should be included in the core of human rights.¹⁸ But even a short list of circumscribed rights would have important consequences if societies took responsibility for trying to protect everyone from violations of these rights. Illegal immigrants are sometimes killed in transport, physically or sexually abused, held as slaves, kept in indentured servitude, forced to work in occupations, and denied personal property. These are clear violations of what should be recognized as human rights. But this core of recognized rights should be supplemented with an account of social justice and responsibility.

A Matter of Social Responsibility

Framing the issue in terms of social responsibility helps to highlight one of the most striking features of illegal immigration: the employment pattern within society. As I noted before, illegal immigrants often perform the worst work for the lowest wages. Illegal immigrants are part of a pat-

tern that is older and deeper than the recent globalization of the economy. Societies have often used the most powerless and marginalized people to do the most disagreeable and difficult work. Societies have used slaves, indentured servants, castes, minorities, orphans, poor children, internal migrants, and foreign migrants. Of course, the pattern is not exactly the same in every society, nor even in every industry within a society, but the similarities are striking.

I see the use of illegal immigrants as the contemporary form of the old pattern. But it is not a natural phenomenon beyond human control. It is the result of laws, norms, institutions, habits, and conditions in society, and of the conditions in the world at large. It is a social construction that we could try to reconstruct.

Some might object that no one forces illegal immigrants to take unsavory jobs and that they can return home if they wish. This objection is too simple. Although most undocumented workers made a voluntary choice to go to another country, they often had inadequate information and dismal alternatives, and voluntary return is not an attractive option when they have substantial debts and poor earning potential at home. More importantly, even a fully informed and voluntary choice does not settle the question of social justice and responsibility. We have gone through this debate before. As the industrial revolution developed, many people agreed to work under horrible conditions in shops, factories, and mines. Yet most societies eventually saw that freedom of contract was a limited part of a larger social ethic. They accepted a responsibility to address conditions of work and to empower workers, at least in basic ways. Decent societies now try to regulate child labor, workplace safety, minimum rates of pay, workers' rights to unionize, background conditions, and much more. But because of their illegal status, undocumented workers are often unable to challenge or report

employers who violate even the basic standards of a decent society.

We need to take responsibility for preventing the old pattern from continuing, and the key idea is that of "taking responsibility." It is not the same as legal accountability, which leads one to think about determining causation, proving intention or negligence, examining excuses, apportioning blame, and assigning costs. Taking responsibility is more about seeing patterns and problems, examining background conditions, not passing the buck, and responding in appropriate ways. A society need not bear full causal responsibility in order to assume social responsibility.

Why should society take responsibility for people it tried to keep out of its territory, for people who are not social members? Because in many respects illegal immigrants are social members. 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 co-operation. Many of the most exploited workers in the industrial revolution—children, women, men without property—were also not full citizens, but they were vulnerable people, doing often undesirable work, for whom society needed to take some responsibility. Undocumented workers' similar role in society is one reason that the social responsibility to care for them is different from the responsibility to care for medical visitors.

If a given society had the ethical conviction and political will, it could develop practical measures to transform the worst aspects of some work, empower the most disadvantaged workers, and shape the background conditions in which the labor market operates. The interests of the worst-off citizens and the interests of illegal immigrants need not be opposed. Practical measures may raise labor costs and increase the price of goods and services, as they should. We should not rely on undocumented

workers to keep down prices on everything from strawberries to sex.

I can already hear the objection. "What you propose is a perfect recipe for increasing illegal immigration. All the practical measures that you suggest would encourage more illegal immigration." Whether improving the situation of the worst-off workers will increase illegal immigration is a complex empirical question. The answer probably depends on many factors. But even if transforming the worst work and empowering the worst-off workers leads to an increase in illegal immigration, countries should take those steps. Although we have a right to regulate immigration, considerations of justice constrain the ways we can pursue that aim. A society might also decrease illegal immigration by decriminalizing the killing of illegal immigrants, but no one thinks that would be a reasonable and ethical social policy. Nor do I think that the old pattern of using marginalized people is a reasonable and ethical way to regulate immigration.

I have left out of my account the very point with which I began, namely, health and health care, and I ended up talking about work and social responsibility. Surely work and social responsibility are at the heart of the matter. Where then does health care fit in?

Good health care can, among other things, prevent death and suffering, promote health and well-being, respond to basic needs and vulnerabilities, express care and solidarity, contribute to equality of opportunity, monitor social problems (such as child abuse or pesticide exposure), and accomplish other important aims. But health care is just one means, and not always the most effective means, to these ends. To focus on access to and payment of health care is to focus our ethical concern too narrowly.

I believe that societies that attract illegal immigrants should pursue policies and practices that (1) improve the pay for and conditions of the worst forms of work; (2) structure and orga-

nize work so as to give workers more voice, power, and opportunity to develop their capacities; and (3) connect labor to unions, associations, and communities in ways that increase social respect for all workers. I cannot justify these claims in this paper, but I want to note how they are connected to health care. Providing health care for all workers and their families is a very good way to improve the benefit that workers receive for the worst forms of work, to render workers less vulnerable, and to express social and communal respect for them. These are good reasons for providing health care for all workers, documented and undocumented alike. And they express ethical concerns that are not captured by talking about human rights, public health, or the rights of citizens.

The Right Discussion

I have examined the frameworks that are employed in discussions about illegal immigrants and health care. I argued against conceptualizing the issues in terms of desert, professional ethics, or even human rights. Although all of these concepts highlight something important, they tend to be too narrow or too broad. And because they provide the wrong perspective, they fail to focus attention on the crux of the matter.

I have suggested that the issues should be framed in terms of social justice and social responsibility. I realize that I did not fully justify my view, and that other people may give a different account of what social justice requires. But I had a different aim. I did not want to convince everyone of the rectitude of my account, but to shift the discussion into the realm of social justice and responsibility.

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15. M. Walzer, *Spheres of Justice* (New York: Basic Books, 1983), 39.
16. *Ibid.*
17. P. Farmer, "The Major Infectious Diseases in the World—To Treat or Not to Treat?" *NEJM* 345 (2001): 208-210.
18. Compare Rawls, *The Law of Peoples*, 79-80.

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