Unauthorized Immigrants and Health Care Coverage

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Our Question

- Should unauthorized immigrants have access to health care insurance (as in ACA)?
  - not political feasibility question--moral issue
- They are already covered for emergency care by EMTALA
- Thesis:
  - Presumption for coverage--not from global justice (open borders) or human rights, but from reciprocity and from social justice for all members of a society--key claim: membership
  - No overriding reason to exclude
More on thesis

- Intuitions (judgments) to be defended:
  - most unauthorized immigrants in US are members of US society
    - but: then some members are not citizens with full political participation rights (--> need for immigration reform)
  - we should develop and implement reasonable immigration policy but apply that separately from claims about welfare benefits owed to all
Background (1)

- Long-standing flow of migrant Latin workers
  - Braceros
  - Absence of quotas
  - Mostly temporary migration
- Militarization of US border--1993
  - trapped millions of would-be temporary immigrants--3 became 12 million in following decade
  - NAFTA increased flow of displaced Mexican farmers
  - Ready job access in US
- Flow stopped by 2012-- lack of jobs plus militarization
Personal Responsibility Work Opportunity Reconciliation Act (PRWORA)--1996
- ended parity of immigrants-- “legal” immigrants had to wait five years for benefits, but unauthorized ones had no access to federal benefits

ACA-- entrenched non-parity (may have relaxed 5 year wait for legal immigrants to insurance exchanges)
Some views of global justice require open borders

- Open borders allow migration to protect equality of opportunity globally (inequalities seem ethically problematic to many and justification of coercive exclusion to those excluded unlikely—supports cosmopolitan view)

- If open borders, then contrast between unauthorized and authorized immigrants is problematic and state authority to regulate immigration becomes problematic
Justice and feasibility

- Sometimes infeasibility overrides requirements of justice, sometimes basis for holding some accountable for injustice
- “ought implies can” -- what notion of feasibility might support this implication?
- feasibility as achievability vs sustainability -- sustainable feasibility as candidate account
- open borders lacks sustainable feasibility (various scenarios where regulating flow of immigrants is arguably reasonable policy), and so cannot be requirement of justice
Human rights claims?

- Right claims are not to open borders-- right to migrate is not right to immigrate

- CESCR comments impose duties on states, but they have discretion to progressively realize right to health care

- No explicit claim in CESCR comments that human right to health care implies access to insurance as in ACA (many states provide emergency care)

- Inconclusive claim despite idea that human rights attach to individuals
Summary so far

- Global justice view of open borders is not plausible requirement of justice
  - justice requires sustainable feasibility
  - various scenarios imply reasonable support for regulating immigration flow and thus closing borders
- Human right to health care-- does not address this issue explicitly
State authority to regulate immigration

- Argument so far grants states authority, but it is not open-ended authority
- State authority constrained by certain conditions (we offer no general account here), e.g., to preserve reasonable welfare benefit that might be overwhelmed by unregulated immigration, to prevent negative impact on some vulnerable group, to encourage some needed workers but not unneeded ones, to avoid criminal or terrorist agents -- all of which can be abused
Presumption to include (1)

- Reciprocity requires contributors to a shared product to share in benefits produced.
- Most unauthorized immigrants work, pay taxes (receive fewer benefits, e.g., from SSI and Medicare).
- Most unauthorized immigrants should receive benefits according to reciprocity principle.
Presumption to include (2)

- Most unauthorized immigrants are members of the community.
  - work, pay taxes, participate in institutions (schools, churches), buy houses or rent residences

- Members of the community should be governed by fair terms of cooperation in it
  - Rawls’s claim: JAF applies to free and equal citizens--literal vs charitable interpretation
    - If non-literal, then unauthorized immigrants should have health care (opportunity) protected by social justice
    - Problem: voice missing (political participation), strengthens argument for reform that gives route to voice
FEO account of importance of health

- health is normal functioning
- departures from normal functioning diminish individual share of normal opportunity range
- keeping people functioning normally makes limited but significant contribution to protecting individual opportunity
- If we have social obligations to assure fair equality of opportunity, then we have social obligations to keep people functioning normally (borrow justification from general theory of justice)
Inadequate reasons for exclusion

- no legal claim
- criminal behavior
- bad incentives
- undue cost
- emergency care sufficient
- bad impact on vulnerable groups
Conclusion

- Presumption to include (in ACA)
  - reciprocity
  - membership and social justice (feo)
  - not global justice or human rights

- No overriding reason to exclude

- Argument limited
  - applies only to “most” unauthorized immigrants
  - need to distinguish immigration policy from welfare benefits--but have strengthened reason to give long-standing unauthorized immigrants a path to citizenship (voice) since they are members