

BOOK REVIEW

Health Rights for All: The Imperative of Including All Migrants

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Irregular Migrants and the Right to Health, by Stefano Angeleri (Cambridge University Press, 2022)

At the start of the 2022–2023 academic year, a group of Harvard T.H. Chan School of Public Health students approached me to ask whether I would agree to be their academic adviser for a new proposed student group on immigrant health. Apparently, no such group existed; the students told me that no teaching on immigrant health-related issues was offered at Harvard, and no training or internship opportunities for students interested in this specialist area of health work were systematically made available by their departments. I was reminded of how, decades ago, as a young human rights lawyer, I started working on child migration and refugee legal issues because no one I knew was. Lawyers knowledgeable on child law issues (e.g., adoption, abuse, and custody) worked within the domestic child welfare system and understood nothing about the immigration consequences of particular custody or care decisions; meanwhile, advocates engaged in migration and refugee issues subsumed children’s protection claims under those of the parents or guardians, ignoring child-specific risks or rights claims. The migration specialists had no experience of taking instructions from children and no understanding of how adult-centric legal procedures might impact a child’s ability to raise protection fears or claims. *Mutatis mutandis*, it seemed to me that we were in the same situation again—experts on health were not versed in the complexities of immigration law, while migration lawyers were not really paying attention to questions of health access. Falling between the cracks were millions of migrants whose urgent health claims were going unmet.

The challenge of bridging disciplinary silos has become a mainstay of public health conversations, a truism nearly. But despite the fact that we all seek to develop interdisciplinary approaches that are holistic and inclusive, blind spots persist. The field of immigrant health, and most especially the health of migrants who are considered irregular in terms of their legal status, is one such massive blind spot. The publication of Stefano Angeleri’s scholarly treatise *Irregular Migrants and the Right to Health*, a book based on his PhD thesis, is therefore cause for celebration. Perhaps a text to anchor future law and public health courses on immigrant health rights finally exists.

The book’s blurb advertises one of the book’s central claims: in an increasingly global universe, where human mobility across state borders is pervasive and often life-saving (rather than just a matter of tourism or business expansion), the persistence of a medical paradigm that casts the right to health of migrants without a legal status as “exceptional” is unacceptable. Three-quarters of a century after the United Nations declared nondiscrimination in the application of human rights a universal goal, how is it, Angeleri

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asks, that one of the most cardinal human rights, the right to health, is still so elusive for millions, not just because of failures of state practice and implementation but, more fundamentally, because of the law—that is, because some populations lack an enforceable legal entitlement to this right? More specifically, how is it that, in jurisdictions such as the European Union, where human rights norms and procedures are vigorous and well established, a chasm exists between the human rights notion that everyone is entitled to the highest attainable standard of health and the legal fact that lack of a regular migration status can render people ineligible for non-life-saving or emergency medical or other health-related services? Other jurisdictions, such as that of the Inter-American Court of Human Rights, operating with the same international legal norms as its European counterpart, exhibit more generous pro-migrant protections. Why, then, do migrants in Europe still have to struggle to assert their basic health rights?

Five detailed chapters that draw on a wealth of normative provisions (including both binding and nonbinding instruments) and extensive case law set out to answer these broad and important questions. The first chapter is focused on an analysis of the constraining impact of doctrines of state sovereignty on the construal of human rights obligations. Because, Angeleri shows, states leverage their sovereign prerogative to control the entry and rights of noncitizens and to assure the security of their populations for populist political ends, they manage to circumscribe the protective force of human rights obligations. Human rights obligations are designed to reign in the power of individual states and to generate mechanisms (including litigation avenues for individuals within a state's jurisdiction) for scrutinizing and, where appropriate, attempting to alter state behavior. Though some migrant groups (such as unaccompanied migrant children or migrants facing life-threatening harm) have on occasion benefited from human rights protections, in general states have again and again managed to nullify that interventionist possibility for irregular migrants through domestic legal mechanisms. More specifically, a pervasive anti-immigrant political rhetoric,

Angeleri rightly argues, has strengthened the hand of members of the state executive and judiciary in implementing discriminatory policies with respect to migrants' rights to key protections, including by exploiting the scope for the exercise of state discretion. Because these migrants are in legally and economically vulnerable situations, they lack the social and political heft to assert what should be their just due. To quote Angeleri, "Even if international human rights law regards universality and personhood as principles governing its scope of application, in practice, other statuses, such as nationality, citizenship or residence, continue to play key roles in empowering human beings vis-à-vis the state where they live" (pp. 32–33).

A second chapter takes this theme further by surveying the philosophical literature relevant to a right to health and probing the well-known fact that through the decades of development of international human rights theory and practice, social and economic rights, including the right to health, received less attention, less political and fiscal investment, and less legal development than did civil and political rights. Health rights remain rights of "progressive realization"—rights that depend on the availability of state resources rather than rights that generate immediately binding state performance obligations, as do civil and political rights. As a result, the vulnerabilities of populations subject to discrimination in their access to social and economic rights have continued to be less central to the development of human rights doctrine than the vulnerabilities of populations discriminated against in terms of civil and political rights denials. It follows, Angeleri shows, that because irregular migrants lack a "legal" immigration status that offers them civil and political rights protections, their exposure to discrimination has received inadequate legal and advocacy attention. This includes situations where they are excluded from access to state health services. This chapter details how despite the growth of public health as a social and international concern, the governance of health—its administration, its funding, and its availability—remains a largely sovereign, national competence, dispensed in accordance with domestic priorities and regulations

with wide margins for the exercise of discretion. The chapter's doctrinal discussion of the history of a right to health describes the evolution of performance- and outcome-related framing principles to concretize states' social and economic rights obligations. The chapter also includes a useful discussion of the gradual identification of a minimum core of essential services, and the eventual adoption of a conception of "vulnerability" for particular groups. These developments strengthen the toolkit available to advocates seeking to advance health rights claims by lowering the threshold for claiming a violation of rights. Even though foundational doctrines, including the centrality of "progressive realization" and widespread state discretion in the implementation of social and economic rights, circumscribe the scope for enforcing broad health rights, the development of principles that lower the threshold for claiming a violation of these rights affords generative possibilities for future advocacy.

Later chapters take up these questions more specifically, applying the issues that arise for the implementation of social and economic rights to the question of irregular migrants and their health needs. They do so by scrutinizing particular lacunae in the protection of irregular migrants' health, including in non-emergency services and mental health and disability care, areas of health provision often excluded from the scope of what are considered "essential services." On the basis of a thorough analysis of European and international human rights case law, Chapter 3 makes a persuasive case that international human rights law can be used to justify affording preventive and primary care, in addition to the emergency care that is already provided, to irregular migrants. In particular, acceptance of the applicability of children's rights and gender equality principles could be better used to underpin the defense of broader health rights, including the right to sexual and reproductive care, for all migrants, irrespective of their legal status.

Chapter 4 expands the discussion beyond migrants' health rights *strictu sensu* to consider the broader public health issues relevant to the social determinants of health, including the opportunities and protections that underpin the possibility of

human flourishing and well-being. Angeleri shows how the dominance of civil and political rights within the European human rights system, combined with the acceptance of a wide margin of state discretion, continues to be reflected in the restriction of social rights that support irregular migrants' well-being and broader thriving. As a result, the chapter concludes, human rights law affords only a "basic" or survival level of protection for the social and economic conditions beyond medical care that underpin irregular migrants' well-being, a sharply discriminatory outcome when compared to the protections afforded to citizens or documented migrants.

Chapter 5 concludes the analysis of specific irregular migrant health-related legal and interpretative trends in human rights law by considering the topics of mental health and psychosocial disabilities. The author notes that human rights courts have, in the mental health context, tended to limit findings of the violation of irregular migrants' rights to situations where rights deprivations related to detention or deportation expose people to a substantial risk of severe mental health consequences, a highly restrictive approach. On the other hand, he notes progress in European jurisprudence regarding the rights of migrant children to mental health and well-being, with more emphasis being given to the enforcement of these rights than to state migration-control priorities. Similarly with the issue of disabilities, the approach of courts continues to be generally restrictive despite the radically transformative possibilities generated by the adoption of the United Nations Convention on the Rights of Persons with Disabilities. The overall message is depressingly familiar: the gap between human rights theory and its expansive possibilities and operational practice on the ground is still considerable, to the ongoing detriment of the rights of irregular migrants with particular mental or other disability-related health care needs.

Again and again, the author argues, concerns about limiting irregular migration, deterring future unwanted arrivals, and projecting an image of state determination to conserve domestic resources for "worthy" recipients drive discriminatory and

rights-violative state practices and circumscribe courts' willingness to challenge them. But though the book's narrative is indeed anchored in instances where access to needed health care is denied to irregular migrants, the overall message is more positive, forward looking, and constructive. It is that there are available tools—in public health doctrines; in the international institutional heft embedded in the World Health Organization, International Organization for Migration, and other such entities; and in creative legal advocacy (advanced by talented and determined activist groups)—for enlarging access to needed health care for irregular migrants.

Unfortunately, some of the writing in the book (particularly the introduction and conclusion) is convoluted and lacking in clarity. Some of the sentences are overly long and dense, key ideas are often hidden under a thicket of qualifying clauses, and there is unnecessary repetition. Despite these stylistic detractors, this remains a valuable and impressive piece of work, which I hope will make its mark. Most critically, a clear takeaway from this book is that concerned stakeholders within human rights, medical and public health, and, above all, migrant communities, together with all their supporter constituencies, can and should use creative arguments to push boundaries forward. They should draw on the resources assembled in the text, including what the book refers to as the “meta-legal” contributions provided by global public health precepts, and the critique of a sometimes glib acceptance of state sovereignty in the immigration context, to roll back the appropriation of national narratives by xenophobic publics, and the exclusion of people within the state's jurisdiction from its health services. Nondiscriminatory access to the best attainable standard of health is a core democratic value whose mobilizing power has yet to be fully leveraged. Trailblazers, such as the many experts cited in the text and civil society groups such as the impressive European nonprofit PICUM, who have for years promoted the imperative of ensuring access to social and economic (including health) rights for irregular migrants (and whose work is cited in the book), now have a

rigorous academic study to add heft to the essential work they do. Perhaps in the not-too-distant future, immigrant health, including full health rights for undocumented populations, will be a reality and not a chimera.