Undocumented Migration, Health Care and Public Policy in Germany

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Undocumented migration increasingly provides a low-cost, flexible and legally vulnerable source of reserve labor for many nations. Although these workers satisfy the demands of capital, governments are simultaneously interested in denying them access to resources, including health care. In much of Western Europe, undocumented migration has provoked tensions between universal health care models for those entitled to well-established social welfare systems and humanitarian concerns of providing basic medical services for all residents, “legal” or not.

Illegalized Migration and Informal Labor Markets

Germany currently ranks as the third most frequent migrant destination in the world. Until recently, as 2001, however, the government maintained that it was “not a country of immigration.” This official denial of steady in-migration was reinforced by a renewed focus on integration for foreigners already living in Germany. In reality, of course, migration has had a long history in all of Europe, with particularly visible effects on German society since the guest worker programs of the 1960s and 1970s. Immigration—especially labor migration—remains unpopular today, a sentiment exacerbated in recent years by record unemployment.

Political pressures following reunification resulted in increasingly restrictive migration policies. Particularly noteworthy was the almost complete elimination of the right to asylum in 1993, prompting a dramatic increase in unauthorized migration and “illegalizing” those seeking refugee status. As a result, the ranks of the “illegal” have grown since the mid-1990s. The European Union’s harmonization of migration policies and militarization of outer borders have merely channeled flows elsewhere. This is evidenced by the tens of thousands who attempt to cross into Europe via the Straits of Gibraltar, many of whom perish in the process. While many nations face policy challenges resulting from increased undocumented migration, Germany is situated in historically particular ways and remains torn between the legacy of the past and the realities of the present.

As legislation has forced outer borders to close, Europe’s informal economies have grown. Conditions are changing to favor temporary, insecure forms of employment. Despite increased sanctions and fines, Germany’s shadow economy flourishes today due to the demand for more “flexible” labor in certain sectors. Labor market reforms over the past decade coupled with a rapidly aging population have resulted in high demand for undocumented workers in particular sectors of the economy. For instance, in Berlin it has been estimated that roughly every other construction worker is working illegally and many of these workers are undocumented migrants. In addition, an increasing feminization of labor migration is evident in domestic settings, especially in elder care, cleaning and childcare. Many migrants arrive from Poland, Russia, Romania and the Ukraine, along with increasing numbers from Vietnam, the Philippines and regions of South America.

Access to Basic Rights and Services

While certain minimal rights are technically available to such migrants, they are in fact not assured access to these rights. Undocumented legal status results in limitations in the housing market, de facto exclusion from schooling for children and lack of access to medical care. Because of Germany’s commitment to universal health coverage, there are very few uninsured individuals, with undocumented migrants representing the most conspicuous group. Thus, they cannot seek help at an emergency room without attracting unwanted attention. While hospitals are entitled to state reimbursement for treating the uninsured, a patient’s status is revealed when such a request is submitted. Because the law requires that those residing illegally be reported to the authorities, contact with the health care system can spell deportation.

Unique to Germany is legislation that criminalizes the provision of medical aid for undocumented persons. Section 87 of the recently overhauled Residence Act (Aufenthaltsgesetz) is often referred to as the “Denunciation Law” and mandates that persons residing illegally be reported to authorities if they seek services at public facilities. Section 96, often called the “Trafficking Law,” states that assisting undocumented persons is a crime punishable with a fine or imprisonment up to five years. This law has been applied not only to physicians who “assist” undocumented migrants, but also landlords, clergy and even taxi drivers operating in border towns. However, there have been very few cases in which charges were pursued, generally without success. Perhaps not surprisingly, many physicians have condemned these laws, citing conflict with their Hippocratic Oath.

Local Experiences of Policy

Since 2004, I have been conducting research, primarily in Berlin, on the effects of laws criminalizing
medical aid. The experiences of migrants, physicians and NGOs can illuminate how particular national policies are experienced locally. As in other federalist systems, public policy in Germany is played out in constituent states. In fact, local municipalities address the needs of undocumented migrants in ways that appear to run counter to national-level policy. Berlin, for instance, has a particularly rich history of debating and implementing integration measures, and compared to other cities has taken a relatively liberal position towards providing services to undocumented migrants.

An examination of the current situation highlights how the contradictions between requiring undocumented labor on the one hand and restricting access to resources on the other are apparently balanced. In contemporary Germany, this is primarily achieved by reliance on the NGO sector. Despite the essentially “illegal” nature of their medical aid activities, organizations are frequently recognized for their volunteer efforts through awards and commendations. At the same time, NGO staff and physicians described to me their frustration with serving as *Lückenbissers* (stop-gaps) for the failing social welfare system. As noted earlier, laws that criminalize aid to this population are only selectively enforced, producing and fostering an ambiguous environment. Physicians, hospitals and NGOs are often unsure whether or not they are required to report patients, and some are afraid of breaking the law. At the same time, migrants are highly aware of their deportability and many shy away from seeking medical treatment except in the most extreme circumstances. This lack of access coupled with other major constraints on everyday life provide the basis for analysis of this otherwise heterogeneous population, pointing to the effects of legal status and migrants’ relationship to the state.

Critical Perspectives on Law and Policy

Migration policies are dynamic and often contradictory instruments reflecting particular sociopolitical tensions. Similar laws criminalizing humanitarian aid have been proposed or passed in many states of the US, where policies regarding health care access for undocumented migrants have also ranged from total exclusion to fragmentary availability depending on the economic climate and emphasis on border control. Anthropologists can contribute to an understanding of public policy on migration by examining its effects at state and municipal levels and by highlighting the paradoxical conditions that ambivalent policies create. Such policies often create the illusion that steps have been taken to discourage further undocumented migration and punish offenders. At the same time, they absolve governments from responsibility towards marginal populations residing within their borders through the provision of adequate resources, and ultimately detract from the reprehensible conditions that these policies produce.

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**The Moral Judgment of Asylum Seekers in French Reception Centers**

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Over the last three decades, asylum has emerged as a key policy and political issue in Europe as a result of the increasing number of asylum claims. The boundaries between refugees and immigrants have blurred in both political discourse and policies developed to manage these populations. In France, refugee status has become almost exceptional: less than 20% of requests receive a positive response. People fleeing from different threats—death, violence or hunger—are all labeled as “clandestines.”

**COMMENTARY**

This commentary does not consider legal-administrative evaluations of asylum seekers, but rather moral evaluations. French reception centers, supported by the state and managed by NGOs, constitute spaces where qualifications and disqualifications of asylum seekers are constructed. Asylum seekers—identified by the institution as “residents”—are taken in charge by reception centers for the duration of the claims procedure. Living in these shelters constitutes a period of precarious stability as basic living needs are guaranteed. However, this is not without consequences, as the center is also a space of ambiguity and confinement where practices swing between control and compassion.

The institutional treatment of asylum seekers differs according to judgments institutional professionals make about them as individuals. This moral evaluation is twofold. Residents are judged on their everyday attitudes towards the institution and its members, but there is also frequently doubt that asylum claims are truthful and founded in genuine experiences. Based on fieldwork in reception centers in the Parisian suburbs, my research explores the representations of asylum seekers and evoke the image of a tragic hero as a suffering being with extraordinary courage, deserving public esteem. Talking about a Cuban asylum seeker, an educator described: “You need a strong conviction and courage … you have to be someone special.”

These moral attributions have a powerful emotional component for some professionals and they shape these professionals’ behavior (Pitt-Rivers 1971). Although there is a formalized procedure to provide residents with money and transportation tickets, some professionals offer discretionary “little helps” to residents whose stories are particularly touching. A social worker may manage to help a family stay longer in the shelter; another may give extra tickets to a woman whose suffering provokes compassion.

The Imposter

Suspicion is deployed towards residents who do not behave as “suffering people.” In these cases, the identity of “the asylum seeker” is not equated with that of “the refugee.” In one case, a social worker suspected that a couple frequently traveled back and forth from their country of origin to France: “Sometimes I don’t see him, now I don’t see her, I ask myself if they are really refugees.” To unveil impostors is to contribute to their elimination. Doubt becomes an attitude of surveillance where the institutional professional asks: Is this resident telling the truth?

The Coper

This image goes beyond the moral economy of suspicion. The coper appears generally in the discourse of young professionals who have been in their jobs for no longer than two years and are committed to the defense of equality in the access to rights. They generally (though not exclusively) have a degree in social sciences and are very critical towards the NGO for whom they work. The admiration they feel for the “courage” of exiles who manage to overcome difficulties does not entail a heroic vision of asylum seekers. They consider official refugee status to be a bureaucratic production that has nothing to do with being a refugee. These professionals are highly committed to the defense of asylum law but they have a distant attitude towards the reception center residents. This detachment seems to protect them emotionally while helping them maximize their technical know-how to produce “good claims” that are successful in obtaining refugee status and granting asylum seekers increased access to rights.

Although this typology is flexible and how it is employed continu-