

WORKSHOP REPORT

Ethical arguments for the work with Undocumented immigrants

31 August 2001 – Cologne, Germany

Introduction

- The fall of the Iron Curtain - 'fears' concerning hordes of people migrating from East to West - increasing migration pressure
- Restrictive immigration policies : reinforcement of state borders, redefinition of refugee categories, increasing internal surveillance, deportations
- The '**securitisation**' of immigration in Europe: conceptual, instrumental & institutional fusion of immigration, illegality & criminality (Schengen/Dublin/Third Pillar):
- Gate-keeping mechanisms at different levels: external en internal (barriers on access to basic necessities, rights and work), official and non-official control mechanisms/surveillance
- Criminalisation of the 'Assistance' of Undocumented Migrants: illegal border crossing and illegal (over)staying
- The developments of migration as a business activity - involvement of organized crime – severe risks for immigrants
- External controls fails -> internal controls are increased: denial of care and penalisation of (humanitarian) assistance: final step in the process?

Migrant assistance, smuggling & trafficking

- Different definitions of smuggling and trafficking: no clear distinction, both concepts apply to illegal entry and illegal stay
- Growing consensus that '**TRAFFICKING**' involves elements of coercion, deception, violence, intimidation, physical or psychological abuse or exploitation -> ILLEGAL + UNETHICAL
- If the 'free consent' of the person is maintained to the end of the process -> **SMUGGLING**: ILLEGAL + UNETHICAL?
- Cf. Europol Convention of 1995: "**illegal migrant smuggling** comprises activities intended deliberately to facilitate, **for financial gain**, the entry into, residence or employment of an alien in the territory of the State, contrary to the rules and conditions applicable in such a State" / **trafficking** relates to "subjection of a person to the real and illegal sway of other persons by using violence or menace or by abuse of authority or by deception, particularly in order to engage in the exploitation of prostitution of that person..."
- No straight divide between **HUMANITARIAN** and **COMMERCIAL**: cfr. Taxi drivers, lawyers, physicians: 'profit' and/or 'humanitarian' reasons
- Ethically problematic assistance: '**EXPLOITATION**' (= abuse of vulnerability)
- **Increased vulnerability** of undocumented, smuggled migrants -> severe risks of abuse & violence, etc.

The denial of (basic) care to undocumented immigrants

Legalistic point of view (dominant position in public debate)

- A. States have the right to control their borders and to decide who will be admitted
 - => Illegal aliens should be expelled because their presence is against the law (?)
 - => All illegal persons should be treated equally (?)
 - => Illegal persons do not have a right to certain facilities at the expense of the taxpayer => denial of public (funded) care (?)
 - => Private, voluntary assistance should be penalised because it encourages illegal immigration (?)
 - => Public institutions should report undocumented children/clients/patients to the official authorities (?)

Moral considerations in defence of certain rights & care for undocumented persons

- A. As human beings, undocumented persons have certain basic **rights** (health care, education, housing, ...)
- B. The principle of **mutual aid** (Good Samaritanism):

“When two strangers met at the sea, in the desert or by the side of the road, it is by no means clear what they precisely owe one another, but we commonly say that:

 - a) Positive assistance is required if it **is needed or urgently needed** by one the parties
 - b) If the **risks and costs** of giving it are **relatively low** for the other party”
 1. I ought to stop and help the injured stranger, whenever I met him, whatever his status,...
 2. Collective level: groups of people ought to help necessitous strangers if the risks and costs are relatively low ... (cf. Walzer)
- C. Countries have special responsibilities & duties towards persons who have been living on their territories (legalisation)
- D. Ethic of care:
 - a) Humans are interdependent social beings
 - b) Care, empathy and personal and social relations based on mutual respect should be recognized as morally valuable and good
 - c) caring for and taking concrete responsibility for vulnerable and needy human beings should be developed and encouraged: through education, restructuring of social and political institutions,

- d) illegalising and penalising 'care' is immoral – it contributes to a culture of hostility, indifference and neglect of the needs of all kinds of 'strangers'

E. Special responsibilities of professionals: professional ethics

- a) the values of social work/caring professions fit under the rubric of humanitarianism: the primary mission is to enhance human well-being and to help people meet basic human needs, with particular attention to the needs of people who are vulnerable, oppressed and living in poverty.
- b) Central among these is the worth and the dignity of the INDIVIDUAL,
- c) Patient/client's needs should be attended to without regard to their social, political or citizenship status – (cf. humanitarian role, serving people charged with crimes, ... – even in wartime physicians are expected to care for any soldier in medical need, regardless of his or her nationality)
- d) Health care professionals follow standards of practice and ethical codes and are supposed to promote the best interests of their clients/patients, not their own self-interest or the interests of third parties
- e) Social workers simultaneously focus on individual well-being in a social context and the well-being of the broader society -> Primary goal? Instrumentalisation of welfare work: from individual/social well-being/welfare priorities to political/security priorities ('veiligheids/samenlevingscontracten', the struggle against the 'Vlaams Blok', ...)

Ethical principles of medical/psychological/... professional care

Basic moral principle:

- respect for individual human beings

Four prima facie principles

1. respect for autonomy (self-rule) of the client

- a) consult people and obtain their agreement (informed consent)
- b) confidentiality
- c) non deception, ...

2. beneficence and non-maleficence: do not harm, do good

3. justice

- non preferential treatment: treat equals equally, and treat unequals unequally in proportion to the morally relevant inequalities

- a) distributive justice: fair distribution of scarce resources
- b) rights based justice: respect for people's rights
- c) legal justice: respect for (morally acceptable) laws

Compliance with regulations and laws: general remarks

- if I believe that the law is morally unjustified I am morally entitled to break the law, but this gives me no legal entitlement to break the law and I should be prepared to face the legal consequences of disobeying it
- the decision not to obey a law must be morally justifiable: that means it must refer to general ethical principles
- conflicting principles/rules: for example, social workers who are required by law to report cases of suspected or abuse of a person may be tempted to violate the statute if they believe that reporting an incident to public officials would be counterproductive and would lead to an intrusive and disruptive investigation. (contextual/consequentialist considerations)

Unjust, inhuman or unreasonable law, regulation or policy: **conscientious objection?**

Civil disobedience

- “a deliberate violation of the law, committed in order to draw attention to or rectify perceived injustices in the law or policies of a state”
- **illegal** but **not illegitimate** or unjustified
- acceptance of the legitimacy of the societal and legal order
- a legitimate way to protest against rules who conflict with fundamental values and principles
- appealing to objective, public justifiable arguments

General characteristics

- illegal (legal dimension)
- conscientious (moral dimension)
- deliberated (rational dimension)
- public action
- only after other legal possibilities have failed (political dimension)
- non-violent
- the rights of others are taken into account as much as possible (dimension of co-citizenship)
- a symbolic relation between the object of criticism and the undertaken action
- voluntary cooperation with legal arrestment and prosecution

‘civil’ refers to

- expression of a general civic sense/spirit,
- non-violent and non-military ways of protesting
- political action
- civilised and well-organised
- public
- directed to others citizens/ public opinion