

## Migration in health care



**by Tamara Hervey**

Migration. That's the biggest challenge from my point of view. So let me pull out some thoughts on some of the different legal perspectives on the interface between health and human migration.

First up, start with the very local (national). What will the implications be for the movement of junior doctors from England and Wales, given the significant concerns raised by that community about the new junior doctors contracts? I'm not an expert on this area of law, but it strikes me that this is no ordinary employment contract. The ramifications include whether indeed those young people who have signed up for a strenuous programme of medical education on the basis of an implied deal at the end of that education have any kind of legal claim – as opposed to the moral claim that they are asserting. If their 'voice' is not heard, will they 'exit' to another place, taking their qualifications and skills with them?

Moving to the regional, my own field, European Union law, is a site for law to engage with multiple aspects of human migration concerned with health. We think of the mobility of patients relying on their entitlements to access health services in EU law. These have been constructed in the literature and policy communities as market-based law, and the migration that follows as posing significant threats to national health (insurance) systems. The solidarity bases of these systems are profoundly challenged by the movement of patients in unplanned ways. The political settlements reached, to secure equitable access to care, to protect those who are most vulnerable, are replaced by an autonomy-based, consumer-led model. While Jean McHale and I have found that the strong version of this claim of the effects of EU patient mobility law on national health systems is not supported by the legal and empirical detail, there is no doubt that a weak version is.

Turning to the global, there are existing and emerging interesting patterns of health migration – and not only in the expected directions. Increased global mobility generally brings challenges from communicable diseases as we saw with Ebola most recently. Potential infringements of human rights are said to be justified by the panic associated with narratives of containment. Access to new medical technologies, access to treatments that are restricted on moral or ethical grounds, access to cheaper or higher quality treatment all provide incentives for health migration. Legal issues that arise include complex conflict of law questions about who is liable, under what jurisdiction's rules, if things go wrong. They also include ways in which governments seek to construct their legal environments so as to attract inward investment, and the consumers that will follow those services. Global legal agreements such as transnational law on intellectual property, or trade in services, provide important framing contexts within which governments will be obliged to develop their own legal position.

And finally, the heart-breaking, global dimension of migration which international law frames as a human rights issue – refugees. There are thousands of refugees – legally defined according to UN law as people fleeing in danger – whose general health rights need to be protected and who have specific health needs. Mental ill-health often follows the trauma that refugees have undergone. Health systems in the receiving states have legal duties to give refugees the same rights as citizens. And of course many refugees are children – including unaccompanied children – whose health rights are also protected by UN law on children's rights. These are migrants whose health we have a moral – and also legal – duty to protect. Perhaps even more importantly, what happens to the health systems in countries whose populations are depleted by migration of refugees – by definition those people most able to flee, including many health professionals?



How we meet those challenges – the local/national, the regional, and the global – that migration poses for health is to my mind one of the biggest challenges for health policy in the next 10 years. And it is a challenge that is made doubly difficult by the received wisdom of austerity economics and how that has been constructed as health as a 'luxury' that only some can afford, rather than a legal right to which everyone is entitled by virtue of their humanity.

### About the author

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