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Being Undocumented in a Pandemic: Vulnerability, Residency Rights and Public Health

Abstract: This paper examines the ethical and political implications of the COVID-19 pandemic for undocumented migrants, focusing on how legal exclusion intensifies vulnerability and undermines public health. Drawing on philosophical accounts of vulnerability, poverty, and migration ethics, we argue that undocumented migrants are among the most exposed groups in times of crisis. Excluded from welfare provisions, secure employment, and often from affordable healthcare, they face a significant risk of harm while lacking the institutional means to protect themselves. Fear of detection and deportation further discourages access to medical assistance, exacerbating both individual and collective health risks. The paper situates this analysis within debates on justice, emergency norms, and state responsibility, and evaluates two policy responses advanced during the pandemic: the firewall approach, which separates access to fundamental rights from immigration enforcement, and emergency regularisation through temporary or large-scale amnesties. While firewalls are necessary to protect basic human rights, we argue that they are insufficient to address the economic and social dimensions of undocumented migrants' vulnerability. Emergency regularisation may be justified as a short-term response to public health emergencies, but it faces both mainstream objections and more critical concerns about surveillance, exclusion, and the reproduction of structural injustice. We conclude that the pandemic exposes deeper moral failures in contemporary migration regimes and calls for a rethinking of residency rights as a matter of enduring social justice rather than exceptional humanitarian response.

Preliminary note

Dara and I first discussed the ideas contained in this paper on a sunny October afternoon in 2020, scribbling notes over a late lunch at a French restaurant in St John's Wood, London, her dog, Comrade, quietly sitting at our feet. We had both just been awarded our PhDs and were eager to embark on new projects. As our futures seemed uncertain in the aftermath of the COVID-19 pandemic, we thought we would face whatever came next together and were really excited about the prospect of co-authoring.

We presented a first draft of this paper at a virtual conference on 'Bioethics and Law' hosted by the IRLaB (Interdisciplinary Research Lab for Bioethics, part of the Department of Applied Philosophy and Ethics of the Institute of Philosophy of the Czech Academy of Sciences) in December 2020. We were meant to present the paper again at the 'Ethical Perspectives on the Social and Economic Consequences of the COVID-19 Pandemic' workshop at the Centre

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for Ethics and Poverty Research, University of Salzburg, in March 2021, and then publish it in its final form in an edited volume with Springer.

Sadly, however, we never got past that first presentation. Dara passed away a few days before the Salzburg workshop, and I decided I was not going to present, publish – or indeed, finish – the paper without her. Ever.

Things changed when Koshka organised the symposium 'Unifying Against Oppression: The Radical Republicanism of Dara Bascara (1983–2021)' and suggested bringing together an edited collection of papers engaging with Dara's work. The symposium and the edited collection seemed the perfect outlets for this piece and the most appropriate way to honour Dara's legacy as a philosopher, activist and – why not? – friend and co-author.

Admittedly, rewriting this paper has been more difficult than I had imagined. In fact, it took me *years* to finish it. I did not want to change anything that Dara had written, and the argument we had agreed upon together, and yet much work needed to be done. So, I have tried to remain as faithful as I could to the spirit of the original draft, even where I had to modify the form of Dara's contribution significantly, taking care not to alter its substance while expanding upon mine. I cannot help thinking that this piece would have been much better had she been around to chastise me for not being radical enough, or for producing a paper so compelling that any reasonable person – left or right – would have to agree with it, just as she hoped to do with 'Towards a Unified Theory of Oppression'. At the same time, I am sure she would look kindly on my attempts to do justice to some of the last philosophical material she produced. And she would be glad to see our names printed – finally! – as co-authors.

This is for you, Dara.

Introduction

In this paper, we engage with the moral and political implications of the COVID-19 pandemic on undocumented migrants. The starting point of our reflections is the observation that the COVID-19 pandemic has already had – and will continue to have – severe social and economic consequences, especially for poor and vulnerable people. Drawing on the existing literature on vulnerability, we argue that among the most vulnerable are undocumented migrants, especially in times of crisis. Excluded from nearly all forms of state assistance, they often lack access to free or affordable healthcare and may refrain from seeking medical help for fear of detection and deportation.

We situate our argument within broader debates on vulnerability, justice, and migration ethics. The pandemic has revealed the extent to which social and legal

exclusion not only produces inequality but also undermines public health itself. The case of the undocumented thus raises pressing ethical questions about the responsibilities of states toward those residing within their borders, regardless of legal status.

To address these issues, we examine two possible policy responses: the firewall approach and emergency regularisation through large-scale amnesties. The firewall approach seeks to separate the enforcement of immigration control from the protection of fundamental rights, such as access to healthcare. Emergency regularisation, by contrast, temporarily extends residency rights to the undocumented during public health crises. While the latter has been defended both by activists and within the academic literature, we argue that it faces two strands of objections, which we label mainstream (or conservative) and critical.

We conclude by suggesting that while emergency regularisation may be justified as a short-term humanitarian response, it exposes deeper structural injustices in contemporary migration regimes. Ultimately, we contend that the pandemic should prompt a broader rethinking of how residency rights are conceptualised – not merely in exceptional times, but as a matter of enduring social justice.

The vulnerability of undocumented migrants

As noted in the introduction, in this paper we use the term 'undocumented' rather than 'illegal (im)migrants'. The main reasons for preferring the former are that the latter is not only inaccurate but also bears negative social and political connotations (Paspalanova, 2008). Calling someone 'illegal' implies that migrating is a moral, as well as political, crime – rather than a human right. It also implies that persons, as well as objects, actions and the like, could be 'illegal'. More importantly, the term 'illegal (im)migrant' is discriminatory and further promotes discrimination. Language matters and has an impact on policy and public perception (Kwan, 2021). Calling a person 'illegal' suggests that their very existence is a crime that should be prosecuted and punished by law.

As Leah Cowan points out, '[m]igration has always been, and will continue to be a key feature of our society,' and 'border-crossing is a joyfully inherent detail of our reality' (2021: 141). However, borders themselves 'are not real' (Cowan ,2021: 1). They are a fiction, a political construct used by the powerful to maintain the status quo, to protect wealth and territory. Immigration restrictions have been shaped by colonialism, racism, and ethnic discrimination, so much so that many forms of 'unauthorised' migration are in fact the result of,

and a response to, structurally unjust systems that exclude certain groups (Fine 2016). Calling someone 'illegal' obscures the institutional processes that create migrant 'illegality' as a socially constructed category that is not just a matter of legal status, but also racialisation and economic exploitation (De Genova, 2002; Mendoza, 2010). 'Undocumented' is better suited to highlight that the status of migrants is created by the state, rather than inherent to the individual.

As Melanie Griffiths (2017) notes, the figure of the foreign criminal has become a modern British folk-devil, embodying a symbolic threat to national identity and order. This logic underlies the framing of undocumented migrants not only as 'illegal' or 'irregular' but also as morally suspect. This association, in turns, reinforces their exclusion from institutional care and protection.

As the COVID-19 pandemic unfolded, evidence was gathered suggesting that the impact of coronavirus is greater on poor and vulnerable people than on the better-off sections of the population (WHO 2020). Poor people may be defined as those who lack the financial resources to meet a set of basic needs, which include not only 'physiological animal needs,' but also 'those that help secure a reasonable social and family life' and 'meet local social norms of respectable existence' (Wolff, 2019: 3). In following this definition, we focus on individuals who, for instance, lead a hand-to-mouth existence, as if often the case for those who work in the informal economy or are in low-paid zero-hour contracts – as it is often the case for undocumented migrants. Poverty prevents those suffering from it from reaching a living standard that is considered to be ordinary or customary relative to the society they belong to (Townsend, 1979) and restricts their effective opportunities – or capabilities – to do certain basic things as equal members of society (Sen, 1980; 1983). Importantly, poverty is not merely a matter of lacking material resources and opportunities, but the outcome of interlocking of economic, legal, and social structures that both generate deprivation and define what counts as deprivation in the first place. For instance, immigration law excludes the undocumented from welfare and secure employment, forcing them into precarious, informal labour. This exclusion is then compounded by discrimination, making them more isolated and vulnerable, and social stigma, casting their poverty as a moral failing. In this sense, poverty is a socially and politically constructed category, as well as a material condition of comparative or absolute deprivation. Poverty is produced and reproduced by state policies and cultural norms that determine who is entitled to protection, and who is not.

Lacking the means to live a comfortable or decent life, by the standards of the society in which one lives, makes one vulnerable as well as poor; in other

words, poor people are more 'exposed to the possibility of being attacked or harmed, either physically or emotionally' (New Oxford Dictionary of English, quoted in Schroeder and Gefenas, 2009: 114). In the literature on vulnerability, a distinction is made between what philosophers call 'ontological vulnerability' and what they call 'situational' or 'relational' vulnerability (Mackenzie et al., 2013). On the one hand, vulnerability can be defined as the capacity to suffer harm shared by all human beings (Tronto, 1993; 2010; 2015, MacIntyre, 1999; Butler, 2004; 2009; Cavarero, 2011; Fineman, 2008), that is, an 'ontological condition of our humanity' (Mackenzie et al., 2013: 4). On the other hand, vulnerability is relational in character: while everyone can be harmed, some individuals and groups are more susceptible to certain harms than others, in virtue of their relative powerlessness in defending their own interests (Goodin, 1985). In other words, vulnerability is both inherent to the human condition and context-dependent: different situations can make individuals vulnerable, depending on those individuals' relationships, social locations and capacity to stand up for themselves and protect their well-being.

It has been argued, however, that a definition of vulnerability as both ontological and situational is too broad and too vague to be useful, especially in bioethics. To remedy this, Doris Schroeder and Eugenijus Gefenas (2009: 117) have proposed the following definition: 'to be vulnerable means to face a significant probability of incurring an identifiable harm while substantially lacking ability and/or means to protect oneself'. This definition can be understood to include not only individual incapacity, but also the absence of the institutional protection (medical, legal, social) that is normally expected to work on behalf of those who cannot protect themselves. In other words, they argue for a definition of vulnerability that only considers the situational or relational aspects of vulnerability, and only when they are due to an 'identifiable harm'. The probability of incurring the harm must be 'significant', and the individual facing such probability must 'substantially' lack the capacity and means for self-protection. While we think that the concept of ontological vulnerability is of philosophical value, we find that Schroeder and Gefenas' definition better applies to undocumented migrants in times of crisis. Undocumented migrants face a significant probability of incurring the harms related to being infected with coronavirus, while substantially lacking the ability and means to protect themselves from it.

Now a question may be asked: why should we worry about the vulnerability of undocumented migrants, of all people? After all, they are not the only ones who have faced a significant probability of incurring COVID-related harms or substantially lacked the means to protect themselves from such harms.

Besides, it might be argued, undocumented migrants are a relatively small minority. However, while it may be difficult to determine the exact number of undocumented migrants currently living in Europe, Eurostat reported that in 2017, more than six hundred thousand non-EU citizens were found to be illegally present in the European Union. But what about those who were not found? In 2019, the Pew Research Center in Washington estimated that at least 3.9 million – and possibly as many as 4.8 million – undocumented migrants lived in Europe before the pandemic (Connor and Passel, 2019). In March 2025, a note was added to the original report revising this estimate to between 2.8 and 3.2 million. Whatever the precise figure, the scale of undocumented presence in Europe is clearly far from negligible.

As argued by Bambra et al. (2020), COVID-19 disproportionately affects the most disadvantaged, acting as a 'syndemic pandemic,' by simultaneously occurring with and intensifying their pre-existing chronic health and social issues. In medical anthropology, the term 'syndemic' is used to label 'the synergistic interaction of two or more coexistent diseases and resultant excess burden of disease' (Singer and Clair, 2003: 423). A syndemic describes a cluster of interacting health conditions that are biologically entangled and mutually reinforcing, shaped and sustained by harmful social structures and the damaging relationships they produce within a community. Examples of social factors that may contribute to syndemics include poverty, racism, and structural violence (Singer and Clair, 2003: 428).

Undocumented migrants have no residency or citizenship rights, and thus receive no government assistance, even in times of crisis. Without access to free or affordable healthcare, they have nowhere to turn if they become ill or need assistance. They may also be worried that if they do ask for help, they will be deported. While the extent of these issues varies across European countries, undocumented migrants universally face inadequate healthcare, both physical and mental, due to barriers such as legal restrictions, language difficulties, and discrimination (Lebano et al., 2020). Their precarious livelihoods, lack of safety nets, and the necessity to work during pandemics increase their exposure to infection. Job loss often forces them into overcrowded living conditions, heightening the risk of contracting and spreading the virus. Their potentially limited language proficiency and reduced exposure to public health messaging further exacerbate their vulnerability, making it difficult for them to adhere to necessary health guidelines (Kluge et al., 2020; European Centre for Disease Prevention and Control 2021; El Arab et al., 2023).

The very exhortation to protect people within a state's territory by following

health guidelines usually excludes those who are undocumented. Even at the height of the first wave, while protections and aid were extended to non-citizen legal residents, the undocumented were left without access to support or a place to turn for help. In fact, according to the Home Office immigration statistics for the year ending in June 2020, undocumented migrants were still being detained and deported during the lockdowns (Home Office National Statistics 2020).

Many of the undocumented migrants in the UK work in the informal sector – usually in cash-in-hand jobs – precisely because they are unemployable in more formal jobs due to their lack of papers or documents that prove their eligibility to work. Many of them work as cleaners, domestic workers, carers, and other low-paid jobs, where payment can be done 'under the table.' While legal residents who were lawfully employed were able to claim for furlough pay and other services that could provide some financial assistance to cover living expenses due to loss of earnings, the lockdown restrictions essentially created an underclass of individuals who cannot work (under lockdown rules), and therefore plummet into greater poverty without any recourse to help from the government or access to financial aid services that legal residents have access to. The undocumented are excluded from the social contract, and their interests remain unprotected.

States can make it purposefully more difficult for migrants to lawfully enter and remain within their borders, especially when such migrants are vulnerable individuals coming from poorer parts of the world. In the United Kingdom, for instance, changes to the Overseas Domestic Worker visa were introduced by the British Home Office in 2012, which tie domestic workers' visa to that of their employers for a duration of maximum six months, effectively condoning domestic slavery and the trafficking of domestic workers – criminalising them if they try to escape their situation.

One of the authors of this paper, Rachelle Bascara, used to work for the London-based charity Kanlungan Filipino Consortium, which has received numerous requests for help from undocumented Filipinos. Despite their efforts to comply with the law, many struggle due to the high cost of visa fees, constantly changing immigration laws, and the need for a solicitor to navigate the complex process. Some have become undocumented after overstaying their visas and entering the informal economy, while others sought asylum only to have their applications rejected. Potential language barriers and limited education may further complicate their situation. Additionally, the high cost of legal assistance is prohibitive, and many undocumented migrants are already financially strained, supporting families and relatives in their home country, leaving

little room to afford visa applications or legal representation. Because of these difficulties, the undocumented are vulnerable to exploitation or pushed toward survival strategies that may themselves be criminalised, such as sex work, and shoplifting. In this way, poverty and undocumented status become mutually reinforcing, and the criminalisation of survival itself reflects the institutional failures we analyse in this paper.

Emergency norms, firewalls and large-scale amnesties

Emergencies often compel a shift in what had been regarded, up to that point, as conventional moral norms (Waldron, 2000; Kamm, 2007; Temkin, 2012). In such contexts, one may argue that when there is an immediate and serious threat to human life, it becomes permissible – or even a duty – to bypass established institutional processes to protect the most vulnerable. This concept of emergency norms can be illustrated by a familiar scenario often depicted in movies: someone commandeering a vehicle to pursue dangerous criminals. In any other context, such an act would be considered theft. However, in an emergency, violating conventional moral norms may be deemed permissible if it is essential to ensuring safety.

An alternative line of argument, which has been defended in the literature, amongst others, by Peter Singer (1972) and Peter Unger (1996) suggests that emergencies only make more salient, and visible, moral norms that should always apply – not only in emergency situations.[1] Consider Singer's well-known example of witnessing child drowning in a shallow pond. In its original context, the example is meant to show that special proximity has no bearing on the kind of obligations we have towards other human beings: just as we are morally required to help someone close to us when in need, we are morally required to help far-away others if we can do so at no great cost to us. In the context of the present discussion, we could say that the duty to rescue a drowning child may look like an emergency-generated obligation but is in fact just a dramatic instance of our general moral duty to rescue, which always applies when we are in a position to prevent serious harm to others – be these others local children drowning in shallow ponds or migrants whose boats have capsized at sea.

As Aksel Braanen Sterri and Ole Martin Moen (2020) point out, however, duties arising in emergencies can be extremely demanding, and thus should not be taken as 'the norm' in non-emergency situations. There is a difference, they argue, between the (individual) duty to assist in emergencies and the duty

1 We thank the participants at the 2020 IRLaB 'Bioethics and Law' conference for raising this point.

of beneficence. To bring this closer to the present discussion, it may be argued that there is a duty (of beneficence) to help the vulnerable undocumented which applies in 'normal' situations, and a stronger duty to assist them in emergency situations. The two may overlap but are not necessarily the same. Situations where emergency norms apply ought to be 'relatively serious, rare, and unexpected,' requiring immediate help (Sterri and Moen, 2020: 2628). A global pandemic may be such a situation.

This perspective may explain why, in early April 2020, the Portuguese Council of Ministers made the unprecedented decision to grant residency rights to migrants and asylum seekers who were in the country at that time. This measure allowed them to access essential health services just like any other citizen. The decision followed the Portuguese Government's declaration of a State of Emergency on 18th March 2020, underscoring the urgency of the situation.

However, only those who had already started the regularisation procedure by the time the State of Emergency where regularised,[2] and only temporarily (Raposo and Violante 2021). Moreover, this did not eliminate certain practical barriers to fully accessing healthcare services, including bureaucratic ones (Raposo and Violante, 2021). While generous and inspired by humanitarian concerns, even this initiative ended up excluding the most vulnerable – namely, the genuinely undocumented.

Even in non-emergency situations, the undocumented are entitled to at least some legal rights, which, following Joseph Carens (2013), we may label 'general human rights.' These include the right to personal security, fair trial, and emergency medical care. Thus, it may be argued that the existence of general human rights is – or should be – enough to guarantee that everyone, regardless of their immigration status, receives the healthcare they need to protect themselves and others. What this requires is the institution of a firewall between the protection of general human rights, such as emergency healthcare, and the enforcement of immigration law (Carens 2013; Raposo and Violante 2021). Undocumented migrants requiring medical assistance should be able to seek medical care without worrying that their identity and immigration status would be disclosed to the relevant authorities. A firewall approach may be all that is needed to ensure everyone's safety, without the need for special emergency measures.

2 This was then extended to regularisation applications submitted by 15th October 2021. See Raposo and Violante (2021) for a comprehensive discussion of how migration law works in Portugal, and how it operated during the first two years of the Covid-19 pandemic.

However, while there are many benefits to the firewall approach, it is worth noticing that even with a firewall in place the undocumented would be at a serious disadvantage compared to legal residents. First, because the general human right to emergency medical care extends only insofar as emergency healthcare is concerned, the undocumented may be left without support for conditions not considered to be immediately life-threatening, such as chronic conditions and mental health ones – unless primary care, such as the one offered by GP services, is included in the principles. Second, a firewall to protect migrants' rights to get emergency medical care would also be insufficient in other respects – economically, for instance. In the United Kingdom, during the first years of the COVID-19 pandemic, the government implemented several measures to support individuals who lost their jobs or were temporarily unable to work, such as the Coronavirus Job Retention Scheme (CJRS) or 'Furlough Scheme' and the Self-Employment Income Support Scheme (SEISS). Measures were also taken to make it easier to apply for Universal Credit during the pandemic, and the weekly standard allowance for those eligible for it temporarily increased. Adjustments were also made to the terms of Statutory Sick Pay (SSP), to further reduce the impact of COVID-related absences on businesses and individuals. While not perfect, these measures offered a degree of relief and security to legal residents, which was denied to the undocumented.

Status Now and emergency regularisation

In response to these challenges, the grassroots organization Status Now, which comprises various migrant advocacy groups, has been campaigning for the right to remain for undocumented, destitute, and legally marginalised individuals. In their Open Letter to the Prime Minister of the UK and the Taoiseach of Ireland, dated March 2020, Status Now argued that:

> everyone has the right to be in an environment where they can follow Public Health directives necessary to limit COVID-19 viral transmission to the absolute minimum and to care for themselves, their loved ones, and their living and working communities. It is imperative – being in everyone's interests – that the basic needs of all are met (Status Now 4 All, 2020).

However, many individuals in the UK and Ireland live in extreme poverty, lack legal status, and consequently, cannot access the NHS or the Irish Health System. These circumstances prevented them from socially isolating in the height of the COVID-19 pandemic, confidently accessing healthcare and social support, and contributing openly to public safety. Since the beginning of the pandemic, Status Now has campaigned for the granting of indefinite leave to remain to undocumented migrants, among others. Their activism serves as tangible proof

that the proposals discussed in this paper are not merely of theoretical interest but carry significant political and social implications.

While the move away from large-scale amnesties can be perceived as desirable by some (as highlighted by the objections considered below), emergencies may nonetheless create situations where they become necessary. As Vera Lúcia Raposo and Teresa Violante (2021) argue, the firewall approach and temporary regularisation are not mutually exclusive. Ideally, they should function together, particularly in crisis situations, ensuring both humanitarian protection and public health security.

This proposal faces several objections. Some are commonly raised in mainstream policy debates and reflect a more conservative approach to immigration, emphasising the preservation of order, legality, and fairness to rule-followers. None of these objections proves fatal to the firewall approach together with temporary regularisation proposed by Raposo and Violante.

A frequent objection of this kind is the fear that it would grant status to individuals with criminal records. However, as Carens (2013: 131–132) points out, irregular migration itself is not a crime. The actual number of undocumented migrants involved in serious criminal activity is likely to be very small and could be addressed through existing legal frameworks over time. Besides, as Cowan (2021: 143) points out, '[w]e should ask ourselves: who is seen to be breaking the law, and why?'. It is a known fact that migrant groups experience higher levels of criminalisation, and that these are often linked to broader social and economic inequalities. This indicates that systemic inequality, along with the marginalisation and racialisation of certain groups, plays a key role in producing what society labels as crime. Individuals are more likely to engage in law-breaking when their employment prospects are restricted – for instance, when the law itself prohibits them from finding lawful employment.

It could be argued that granting status to undocumented migrants is unjust to those who have followed legal migration procedures. The objection could be countered by emphasising that fairness should not be viewed in a zero-sum way; rather, justice demands acknowledging the precarious conditions of undocumented individuals while still respecting legal pathways. It is also worth noting that amongst the undocumented there are individuals who have lived and worked for years, if not decades, in a country. It can be argued that, emergency or not, states should provide a pathway for migrants to regularise their status after a fixed period of time of residence since, as Carens (2013:152) puts it, 'the passage of time creates a moral claim to stay'. This is not because there is something special about the passage of time *per se*, but because individuals

who have lived in a place for a while will have formed ties with that place and the community that inhabits it. They will have acquired a moral right to stay, because they 'belong' there.

The objection that emergency regularisation might incentivise future irregular migration is largely unfounded. There is no empirical evidence to suggest that migrants make life-altering decisions based on the possibility of an unforeseeable future crisis. Additionally, the very nature of the pandemic – global in scope and disruptive to mobility – raises doubts about the plausibility of migration strategies being based on the anticipation of another such event.

A further objection arises from the fear that regularising undocumented migrants would increase pressure on healthcare services, leading, for instance, to an 'overburdening of the NHS.' However, under existing regulations, all individuals – regardless of status – should be entitled to emergency medical care. More importantly, ensuring that undocumented migrants can safely access healthcare during a pandemic is in everyone's interest, as it means reducing the risks of disease spread and mitigating long-term healthcare costs.

While the mainstream, conservative objections considered above do not prove fatal to the firewall approach with temporary regularisation, there are other, more critical objections that raise serious concerns from the point of view of justice. These focus less on legality, order, or fairness to rule-followers, and more on the structural effects of amnesties themselves. From this perspective, large-scale regularisation can be criticised for functioning as a temporary fix that leaves the deeper injustices of restrictive immigration regimes intact. Amnesties often come with eligibility criteria, as illustrated by the Portuguese example above; for instance, migrants may be required to prove they have been living in a country for a certain amount of time, or that they have a clean criminal record, or a stable employment. These criteria would exclude, again, the most vulnerable and marginalised, and reinforce a hierarchy between 'deserving' and 'undeserving' migrants, or 'desirable' and 'undesirable' ones (see Anderson, 2013). At the very least, they would require migrants to make themselves known to authorities, often by providing biometric data and personal histories. From a critical perspective, this expansion of state surveillance is problematic because it further increases the vulnerability of the (formerly) undocumented to deportation, should their residency status later be revoked. In fact, there is no assurance that emergency regularisation would translate into full and permanent citizenship rights. In all these ways, amnesties may provide immediate relief while simultaneously reproducing the very conditions of exclusion and precariousness they are meant to overcome.

All this goes to show that emergency regularisation, while possibly justified in crises, does raise a more serious question about the sustainability and ethics of restrictive migration policies. If regularisation during emergencies yields social, economic and health benefits, why should residency rights be contingent solely on crises? Addressing this question requires rethinking the structural factors that keep individuals undocumented in the first place and exploring more inclusive and durable solutions beyond temporary measures.

Emergency regularisation may be perceived, from time to time, as a matter of urgent political action. However, it also underscores the need for a long-term shift in how societies treat undocumented migrants – not just in times of crisis, but as a fundamental issue of justice.

Conclusion

The COVID-19 pandemic has revealed the fragility of the systems that determine whose lives are protected and whose are rendered expendable. For undocumented migrants, the crisis exposed pre-existing vulnerabilities produced by restrictive immigration policies, structural inequality, and the moral boundaries of citizenship itself. Emergency measures, such as firewalls or temporary regularisation, can mitigate immediate harm, but they do not address the deeper injustices that make certain populations permanently precarious. If anything, the pandemic underscores how the right to health and safety cannot depend on legal status. What is needed is a shift from viewing protection as an act of exception to recognising it as a matter of justice.

Emergency norms – including emergency regularisation – may be appropriate in the case of serious and unforeseeable events that require urgent action. While perhaps not entirely unpredictable, the outbreak of the COVID-19 pandemic created a situation of unexpected and unprecedented health crisis, which did result in the implementation of many emergency regulations across the globe.

However, 'irregular' migration and the existence of undocumented individuals is a predictable, constant phenomenon. As such, it is not suited to be addressed through emergency norms, but rather through a radical rethinking of the institutional and structural barriers to making residency more accessible and just, as well as the role that current border regulations play in maintaining the exclusion of 'underserving others' from the benefits and protections afforded to lawful citizens.

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