



LUND
UNIVERSITY

Department of Political Science

STV102
Tutor: Björn Badersten

Immigrants and Healthcare

A rights-based utilitarian approach

Anders Djurfeldt & Erik Huldt

Abstract

Thousands of immigrants are currently residing in Sweden on illegal grounds. These people, along with asylum seekers, have very restricted access to state subsidized healthcare. The Swedish government has presented no clear motivation for this policy. The purpose of our study is to argue that *all* immigrants should get access to complete state subsidized healthcare. We will, as a basis for our argumentation, and as an independent purpose, present a theory that reconciles utilitarianism with a rights-based perspective, and argue for a postulation of a right to healthcare. Our method is normative analysis which we apply in such a way that no extensive empirical material is needed. The result of this study indicates that it is possible, from utilitarian premises, to postulate a right to healthcare and to argue that it in fact would maximize aggregate utility to grant all immigrants residing in Sweden equal access to healthcare.

Key words: Immigrants, healthcare, utilitarianism, rights, normative

Table of contents

| | | |
|----------|---|-----------|
| 1 | Introduction | 1 |
| 1.1 | Research question and statement of purpose | 2 |
| 1.2 | Literary survey | 3 |
| 2 | Methodological discussion | 4 |
| 2.1 | Method | 4 |
| 2.2 | Material | 4 |
| 2.3 | Definition of concepts | 5 |
| 3 | Health, rights and utilitarianism | 6 |
| 3.1 | The value of health | 6 |
| 3.2 | Rights theory | 7 |
| 3.3 | Utilitarianism | 9 |
| 3.4 | A rights-based utilitarianism | 10 |
| 3.4.1 | Reconciling utilitarianism with rights | 11 |
| 3.4.1.1 | <i>Why utilitarian rights?</i> | 11 |
| 3.4.1.2 | <i>Violating a utilitarian right</i> | 12 |
| 3.4.1.3 | <i>Conflicting utilitarian rights</i> | 14 |
| 3.4.2 | A rights-based utilitarian view on health | 15 |
| 4 | Immigrants and healthcare | 18 |
| 4.1 | Arguments against including all immigrants | 18 |
| 4.2 | Arguments in favour of including all immigrants | 21 |
| 5 | Conclusion | 23 |
| 6 | References | 26 |
| 6.1 | Primary sources | 26 |
| 6.2 | Secondary sources | 27 |

1 Introduction

An official at the National Police Board (Rikspolisstyrelsen) estimates that about 8 000 immigrants that have been rejected asylum may possibly still reside in Sweden (SR P1, 2007). Regardless of their exact number, we know that thousands of human beings are leading a clandestine life here cut off from most social services, such as healthcare for instance. The access to healthcare for asylum seekers and undocumented immigrants is regulated in an agreement made between The Swedish Association of Local Authorities and Regional Governments (SALAR, Landstingsförbundet), and the Swedish government. In this agreement it is stated that the regional governments are responsible for providing minors who are seeking asylum or who have been denied asylum with complete subsidized healthcare (Migrationsverket, 2007). However, adult asylum seekers, or adults who have been denied asylum, or adults who have never applied for asylum but still live Sweden, are not granted full access to subsidized medical assistance. Disregarding adult asylum seekers, who get subsidized emergency treatment, they are only granted non-subsidized emergency care to a price often ten times higher than that for regular Swedish citizens, a price that very few of them can afford (Hunt, 2007:19). None of them have legal access to any primary care. According to Swedish healthcare law (hälso- och sjukvårdslagen) the regional governments are obligated to provide all persons within Swedish territory with “immediate care”. There seems to be no clear definition of what “immediate care” entails and the (Socialstyrelsen) gives no directions in this matter (Médecins Sans Frontières, 2007).

Excluding undocumented immigrants from healthcare is not a norm in the European community. Spain, for instance, offers free antenatal and postnatal medical assistance to undocumented immigrant women. This policy is due to a court ruling in 1999 that reminded the Spanish National Health Service that the United Nations' Convention of Children's Rights extends to mothers (The Lancet, Oct 16, 1999). Another example is Italy where undocumented immigrants have access to “urgent and essential primary hospital care” (Romero-Ortuño, 2004:259-260).

Although Sweden has taken into consideration the Convention of Children's Rights insofar that we grant all children, disregarding their legal status, full access to subsidized healthcare, we do not seem so eager to honour the other commitments made. According to article 25 in the Universal Declaration of Human Rights “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” (United Nations, 2007). Another declaration that Sweden has signed, The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live

adopted by the General Assembly states in 1985, a country may “promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens”. Nevertheless, it also declares that “such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights” (UNHCR, 2007). A further acknowledgement of this is that, according to the World Health Organization, human rights law states that governments have legal obligations in relation to the health of every person within their jurisdiction (WHO, 2003:19). Still, some countries choose to ignore these obligations while others honour them at least partly. On what grounds has Sweden chosen to exclude these people? Can such an exclusion be morally justified?

1.1 Research question and statement of purpose

In modern time, the two main moral philosophical currents have been deontology, which constitutes the basis for rights theory, and utilitarianism. Utilitarians traditionally have rejected the existence and importance of rights advocating instead the principles of calculus of consequence and maximization of good. This theoretical discussion about which principles that should act as a guideline for moral action could easily be connected with the analytical part of this study, which concerns whether all immigrants, disregarding their legal status, should get access to social services. As far as we know, there have been made no scientific investigations, and certainly not any of normative character, into the case of Sweden in this matter. Neither have any studies been made on any country, at least that we know of, that discuss the question on utilitarian premises.

The purpose of this study is two-folded. Firstly, we aim to reconcile utilitarianism with a rights-based theory, and postulate a right to healthcare with this theory as a basis. Secondly, we wish to examine the moral foundations of the policy concerning adult asylum seekers’ and adult undocumented immigrants’ limited access to healthcare, and, with the presented rights-based utilitarianism as a basis, argue that all immigrants, asylum seekers, as well as those residing illegally in Sweden, should be granted full access to The National Healthcare System and be treated as equals to Swedish citizens in this regard. Another purpose of this second part is to test the presented theory on a current empirical case with moral implications. We wish to highlight that since our purpose is two-folded, the theory chapter will, to a certain extent, be independent. This implies that some parts of it will be irrelevant for the analysis, yet necessary for the sake of the theory itself.

At the end of this paper we intend to give an affirmative answer the following questions:

1. Can utilitarianism and rights-based theory be reconciled and can a right to healthcare be postulated on such grounds?

2. Should adult undocumented immigrants and asylum seekers in Sweden have full access to subsidized healthcare?

1.2 Literary survey

Little attention has been paid within political science to the subject of access to healthcare for undocumented immigrants. Two scholars, Phillip Cole and James Dwyer, have discussed the ethical implications of this problem from a normative perspective. Cole discusses the tension between human rights and national interest and the distinction between citizens and immigrants and the consequences this has for their access to healthcare. He discusses the situation in Britain where certain groups of migrants recently have been excluded from free treatment under National Health Services. Cole argues that this exclusion cannot be morally acceptable (Cole, 2007).

Dwyer accounts for arguments from “nationalists”, who argue that only a country’s citizens should have the right to use the welfare system, and “humanists”, who proclaim that healthcare should be seen as a human right disregarding citizenship. Dwyer argues that both sides are wrong by stressing the importance of shifting the discussion to the realm of social justice and social responsibility (Dwyer, 2004).

There are only a handful of scholars who have discussed a reconciliation of rights and utilitarianism thoroughly and even fewer have considered such reconciliation possible. Those worth mentioning are: Allan Gibbard, who discusses the reasons why a utilitarian should adopt rights in order to achieve the best possible outcome in the long-run (Gibbard, 1984); David Cummiskey, who have traced utilitarian thinking in the work of Kant (Cummiskey, 1982); Richard Brandt, who discusses the theoretical requirements for utilitarian adoption of rights and refers a lot to the work of R.M. Hare (Brandt, 1992); Michael Freeden, who discusses rights from different theoretical perspectives and briefly, by referring to the work of H.J. McCloskey and R.G. Frey, the possibilities for reconciliation of utilitarianism with rights (Freeden, 1991).

2 Methodological discussion

In this chapter we will discuss (2.1) methodological questions concerning our study, (2.2) what implications our choice of material has on this study and (2.3) concepts of central importance to the study and adequate definitions of these.

2.1 Method

Throughout this study we will strive to fulfil the requirements for adequate normative analysis, i.e. to present a precise, clear, transparent and logically coherent argumentation that is possible to criticize and reproduce (cp. Badersten, 2006:189-190). If these goals are accomplished, the study will provide a better basis for political decision-making that will be detached from personal opinion and instead be relying on logical reasoning from given premises.

This study is mainly based on normative argumentation. This requires a thorough survey, evaluation and development of arguments. We have attempted to meet these requirements by taking on literary studies and by interviewing people with certain insight to the question.

The interviews we have made play a minor role in our study since we do not intend to embark on an analysis of the argumentation of the interviewees. The interviews have instead been used as a source of inspiration for our normative reasoning. They are of a qualitative character which implies that we have asked different questions in each interview and, furthermore, that we have sought to minimize our own role in the interviews by avoiding interruptions and by not taking personal stands in the interviews. In other words, we have conducted the interviews in accordance with standard recommendations for qualitative studies (cp. Trost, 2005). Given the peripheral role of the interviews, we will only occasionally refer to them and they will not be included in the appendix. The transcriptions are nevertheless available upon request and we have chosen to list all the interview respondents in section 6.1.

2.2 Material

Literature on rights theory, utilitarianism, immigrants and healthcare, as well as non-scientific articles on immigrants' access to healthcare constitute the main material for this study. Above all, we have focused on philosophical literature concerning the reconciliation of utilitarianism and rights.

The interviewees are healthcare workers that provide immigrants with healthcare on voluntary basis and representatives from the government (Justitiedepartementet) and SALAR. It has unfortunately been impossible to find respondents representing the Swedish government who were willing to motivate the policy of exclusion some immigrants from healthcare.

We have chosen not to use the interview material extensively since it is not possible to apply our theory on their normative reasoning. We do not intend to account for their line of arguments, and will in our analysis refer to merely a few interviews as a source of facts.

2.3 Definition of concepts

We will below discuss some concepts that are central to this study.

Firstly, we will define *moral objects* as those we need to take into consideration when engaging in moral decision-making. According to utilitarianism, all objects that can experience happiness and well-being, and the lack of both should be regarded as moral objects. This raises the question of whether or not to include animals since they also can be considered as capable of experiencing happiness or wellbeing or the lack of it. We have chosen not to include animals as moral objects in this study, even though it could be argued that we should do so. Including animals as moral objects in our study would make the study less coherent and tangible. Since this study focuses on Sweden we can establish that the moral objects of concern for this study are all human beings, mainly those within Swedish jurisdiction. This will be dealt with further in 3.2.

Another definition of importance is the *moral subject*, i.e. who we should regard as a moral actor. Anyone who is capable of moral action should be considered a moral subject. We will however focus mainly on the government, since it is the actor responsible for excluding adult undocumented immigrants and asylum seekers from equal access to subsidized healthcare.

Finally, we need to clarify the concept of undocumented immigrants. This notion will be referring to individuals who reside in Sweden on illegal grounds.

3 Health, rights and utilitarianism

This chapter is intended to, firstly (3.1), present the theoretical grounds for regarding health as a specifically desirable value. This value will act as the basis for both theory and argumentation in this study. Secondly (3.2), we will show that it is possible to claim, from different theoretical viewpoints, that people should have rights and discuss how we should perceive these rights. Thirdly (3.3), we will introduce the concept of utilitarianism and, as a final point (3.4), show that it is possible to reconcile utilitarian theory with a rights-based approach, and apply this on the value of health.

3.1 The value of health

In this study, when discussing the concept of health, we will refer to the absence of physical disease and mental illness.

In the following section we will account for different ways of justifying health as a desirable value. We will not make a clear stand regarding which view we consider accurate, this section is merely meant to point out that one can justify health as a value regardless of which fundamental moral philosophical assumptions one adheres to.

The *intuitionist* refers to self-evidence when motivating philosophical positions. If a value or a moral logic seems obviously true, or in correspondence with our direct moral intuition, it is considered justified (Badersten 2006:137-140). From this point of view health as a value seems easily vindicated since few, or no one, would question its importance for human existence.

Naturalists would instead claim that justification should be based on observations of reality. If a value is well grounded in human behaviour, it could be considered justified (Badersten, 2006:142-143). Again, health as a value can be easily vindicated since people in general primarily strive for it and consider it desirable. Indeed, we can make observations of people consciously worsening their health status. However, this is done in aspiration for other needs or goods with the health deterioration as an unfortunate consequence (or as an act of irrational behaviour caused by for instance mental illness).

A promoter of the principle of *common sense* as well as supporters of *empirical value analysis* would instead, although in slightly different ways, argue that a value can be justified because people in general consider it valuable. The perspectives differ insofar that a promoter of the former perceives certain values as obvious, yet varying with societal context, while a promoter of the latter advocates use of systematic empirical observations of human values (Badersten,

2006:146-147, 149). It seems reasonable to assume that health can be motivated as a desirable value from both perspectives above; it is certainly in correspondence with common sense and probably most people would agree on considering health as an important value.

Finally, health can also be justified from a conception founded on *hypothetical mind constructions*. These are based on the idea of a rational, independent agent with complete information who determines what is desirable for all mankind. In a utilitarian manner, the hypothetical mind construction would lead to proposing a society that aims for aggregate wealth maximization (Badersten 2006:156). Health would in such a construction constitute a value only insofar that it is included in the concept of welfare. If we were to assume that it would not be included, it could nevertheless be regarded important as an extrinsic value, since it in general is reasonable to consider health a prerequisite for welfare. Correspondingly, greater lack of health often directly prevents welfare.¹

3.2 Rights theory

“All human rights – including the right to health – apply to all people: migrants, refugees and other non-nationals. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of mental and physical health” (WHO, 2003:4).

As stated above there remains no doubt about what international human rights demand from those countries that have ratified the conventions regulating them. But how should we perceive rights and how can we justify them morally?

The concept of rights is a much debated one with different meanings attached to it within different fields of science. First, it is necessary to make a distinction between legal and moral rights. While the legal positivist definition of rights is that they are the established rules that societies agree on, a philosophical definition of rights is that they are ”normative attributes that belong to persons” (Freeden, 1991:4-6). Another point worth mentioning is that the notion of rights also implies that a society has obligations to provide its people with certain rights. Yet, the right-bearer is free to waive his or her rights (Brandt, 1992:187).

While legal positivists locate the origin of rights in established rules, some theorists claim that there are *natural rights*, and some even that these rights exist independently from human existence (Freeden, 1991:5). Below, in 3.4, we will return to this discussion and argue for a conception of rights that rejects the idea of rights as being innate or natural. Within natural rights theory there are different ways of establishing rights. Here we will focus on the concepts of *self-evidence* and *indefeasibility*.

¹ Of course, there are cases when a person is in pain and still experiences happiness.

McCloskey identifies some human features which, he argues, support the claim that human rights are self-evident. This is because human rights, according to McCloskey, “can only be grasped by reflection on the nature of a person as a person”, that is, as a rational, autonomous, emotional, imaginative and creative being (Freeden, 1991:28). Freeden pinpoints that the concomitant of asserting self-evidence is to perceive the world as evincing a very high degree of moral consensus (Freeden, 1991:28-29).

Indefeasibility is another term used to describe innate natural rights and it refers to the impossibility of a person’s rights being annulled by others. The term indefeasibility erects a hermetic barrier around a right and implies that the members of society must honour this particular right (Freeden, 1991:32).

The concept of indefeasibility of rights is interconnected with the idea of *the absoluteness of rights*, i.e. that rights may never be violated. This idea must reasonably entail the question of how to solve situations where one absolute right conflicts with another absolute right or when one moral object’s right conflicts with another moral object’s right. The hypothetical, yet not particularly unrealistic, scenario of abortion – where the mother’s life may be saved if the foetus gets aborted – can serve as an illustration of such a conflict of rights (provided that the foetus is considered a moral object). A rights-theoretical solution to these kinds of dilemmas is the concept of *prima facie rights* which implies acknowledging the prioritizing and protective aspect of basic rights. Simply put, some rights, *prima facie* rights, should be considered less important than others (Freeden, 1991:36). However, the idea of *prima facie* rights presents no solution to the specific abortion dilemma since the conflict is between two moral objects’ claim for the same right, and not between two different rights.

The idea that rights are *universal* in character and thus applying equally to *all* human beings, has been contended mainly from two fundamental approaches. The first identifies a minimum shared by all people, such as the ability to suffer pain or the fundamental need for nourishment, which constitutes the grounds for perceiving all humans as equals. A second possibility is to ground the basis of equality on the conception of a common moral core existing independently of other empirically determinable human attributes (Freeden, 1991:36).

It is important to differentiate between the idea that humans have certain rights and the claim that they have *human rights* and it is also vital to ask on what grounds one can claim there are human rights. Freeden argues that “human rights are the most basic, pertaining to what is essentially human, while other categories of rights are more specific, limited and, normally, derivative.” Furthermore, he defends the idea of human rights as, rather than being a product of an individual’s mind, involving the acceptance of others (Freeden, 1991:6-7). Freeden also stresses that without human rights, communities would lack rational goals, indeed means of survival. The right-bearer is also given an important status within Freeden’s argumentation: he describes the right-bearer as an unusually important object that without human rights would not be enabled to flourish (Freeden, 1991:9).

Freeden presents a short attempt to define how the concept of human rights should be perceived. He contends that “a human right is a conceptual device,

expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeals for deliberate action to ensure such protection.” Furthermore, he argues that ”the needs and capacities protected by rights are humanly functional and necessary for the rights-bearer, rather than logically entailed by our understanding of what is objectively right” (Ibid). Freedén’s perception of human rights can clearly be related to the idea, mentioned above, of identifying a minimum shared by all people. We will also argue for this approach in 3.4.2.

3.3 Utilitarianism

The consequences are at the focal point for the utilitarian. According to utilitarianism, an action cannot be morally justified in itself. To be able to judge a moral action one has to determine whether or not the consequences are as good as possible. Only if the outcome of two different alternatives is identical they can be considered morally equal. Otherwise, there is always an alternative that can be seen as better than the other. What would a utilitarian then consider a good consequence? The answer to this question differs among scholars. The founder of the theory of utilitarianism, Jeremy Bentham, argues that happiness is the only relevant value and that only those actions which maximise happiness for everyone affected should be considered morally justified. This teaching is called *hedonism*. Other utilitarian scholars have presented other suggestions on what value that should be maximized. One of these suggestions is the fulfilment of intrinsic wishes, i.e. wishes that are independently valuable. This view is called *preferentialism* and is more complex than hedonism since it takes all intrinsic wishes into account and, consequently, is not limited to only one parameter as hedonism is to happiness. We will in this essay use the traditional hedonistic variant of utilitarianism, although we will not exhaustively argue for this choice since we within this essay do not have the possibility to make an account of the large debate on the topic. However, we agree with the argument contended by Tännsjö that preferentialism can be reduced to hedonism since intrinsic wishes can be reduced to wishes of personal welfare (Tännsjö 2000:30). Apart from this, we believe the outcome of this essay to be relatively independent from this choice of utilitarianism.

Besides from the question of value, another important aspect is the question of who counts as a moral object. The most common utilitarian answer is that anyone counts who can feel happiness or pain (according to the hedonist) or hold intrinsic wishes (according to the preferentialist). In a similar manner, the consequences of an action affecting someone in a distant country should not be considered less important than the consequences for one’s own child. If a choice arises between buying a hungry family member food and instead buying dying people in Africa medicine, and thus preventing their death, the latter is – all other things alike – the morally correct alternative since it maximizes aggregated welfare.

There are, however, alternative views regarding who is to be considered a moral object. The moral principle of *egoism* states that a person only has to consider the welfare of herself when choosing how to act (Tännsjö, 2000:46). Hence, consequences for other moral subjects become morally irrelevant. This opens up for questioning of the theory. In accordance with the principle of egoism, Josef Stalin, responsible for the death of millions of people, did not act morally wrong since he himself probably lived and died satisfied with the impression that he had improved the situation for the citizens of the Soviet Union.

We have now excluded some alternatives and determined that universal hedonism will constitute the theoretical foundation for this study. Three things are worth mentioning before we continue.

Firstly, although we will apply a traditional hedonistic utilitarianism we will substitute the notion of happiness with *welfare*. This concept will be “widely understood [but] in terms of the wholesome exercise of human faculties. Welfare can quite readily encompass expressiveness and autonomy as well as enjoyment and health” (Freeden, 1991:87). Different levels of welfare can theoretically always be graded on a uniform scale.

Secondly, we will refer to the different variants of utilitarianism described above as *act-utilitarian*. This concept refers to the principle of *always* calculating consequences when faced with a moral decision. Act-utilitarianism contrasts with the rights-based utilitarian perspective we promote below, in the respect that the latter allows the establishment of general guidelines for moral action.

Finally, when we choose course of action based on act-utilitarianism, we are left with an empirical problem of mere calculation of expected consequences for affected people in different scenarios. This is in theory simple, but in practice difficult, yet possible, since although we cannot measure welfare we can make approximations of it and thereby determine what alternative to choose.

3.4 A rights-based utilitarianism

The concept of rights and utilitarian theory have for a long time been considered mutually exclusive. Utilitarianism cannot be combined with the idea of indefeasible and absolute rights since it allows for violations of basic rights if these violations are a prerequisite for the attainment of the highest possible utility level. Thus, if a person would have to kill an innocent in order to save two, this would be morally correct from a utilitarian point of view but incorrect for a rights theorist. Accordingly, it is not morally justified to sacrifice anyone for the rights theorist, even if the consequences would be overwhelmingly positive.

The rights-based utilitarianism that we will advocate represents an attempt to reconcile the two perspectives, while still recognizing these moral conflicts. We do not believe it is possible to combine traditional utilitarianism with a theory of absolute rights. Instead, we will base the following argumentation on the former. It is not possible within the scope of this essay to account for the discussion leading up to this choice and the philosophical debate on the matter. Still, we will

briefly motivate our standpoint. It is obvious that we, as humans, experience different levels of welfare. To us it seems reasonable that the appropriate attitude towards this observation is to consider high levels of well-being as more desirable than low levels. Consequently, a situation where aggregated levels of well-being are maximized would be the most desirable. We cannot find a corresponding argument within rights theory.

We will extend the concept of utilitarianism in order to include an acknowledgment of non-absolute, but universal rights. Without it, we do not believe utilitarianism will accomplish its goal of maximization of aggregate well-being. Initially, a general reconciliation of the two theoretical perspectives will be presented, followed by a discussion of the specific case of utilitarianism in relation to the right to healthcare.

3.4.1 Reconciling utilitarianism with rights

To argue for the postulation of rights for the sake of good consequences is to argue from utilitarian premises, not for the possession by all individuals of human moral rights, but for various judicial and social rights for some individuals under certain social circumstances. Only the latter is consistent with utilitarianism (Frey, 1984:123-124). To respect a right is in this view not intrinsically good, but extrinsically good; it is desirable not because the right-provider or the 'right-respectee' refrains from violating something morally forbidden, but because her or his actions lead to the maximization of good consequences in the long run. According to Gibbard, the problem with a utilitarian theory of rights is dependent on a general question: What is the corollary of the rational objective of general welfare, when it is mediated through the institutions of society (Gibbard 2004:365)? It is hard to imagine a just society (no matter what we mean by "just") without rules and legal rights. The legislation forbids some actions but also provides certain goods which the citizens of a society have a right to use. These rights, however, are not exclusively moral, even though they are often motivated on partly moral grounds. Here lies the difference between a utilitarian perception of rights and rights in the legal aspect. The answer to Gibbard's question can be found in the presentation of legally binding moral rights, which can be assumed to be more persistent than rights with *only* legal status. However, because our foundations are utilitarian, the rights are negotiable to a certain degree and can be adapted to new circumstances. It is also necessary to define which these rights are. In fact, every single right needs to be specifically argued for. We will return to this question in the next section.

3.4.1.1 Why utilitarian rights?

Why do we need utilitarian rights at all? Would it not instead be preferable to constantly alter the existing legal framework in such a way that utility is maximized? Our answer is no. We agree with Gibbard that the reason for a

utilitarian to argue for the honouring of human rights is the conviction that violations against these in general conflict with the goal of welfare maximization, that people's judgement regarding when to make exceptions is notoriously untrustworthy, and that criticism grounded on the promotion of aggregate welfare is inefficient in comparison with criticism referring to commonly acknowledged norms for human rights because of great contention regarding what promotes the aggregate welfare (Gibbard, 2004:365). We believe that there are further arguments for regarding rights as valuable for a utilitarian and will continue by making an account for these.

Firstly, consider a situation where moral rights are absent but where the government aims at maximizing utility and can commit any acts against its citizens as long as it is motivated on utilitarian grounds. Faced with the reality of limited information of consequences, some government action will naturally threaten this goal. Such an action would be for instance if the head of state would decide to murder the leader of the opposition, based on a rumour that if the opponent would win the following election his hidden agenda would severely threaten the aggregate utility of the people. If the information on which the decision is based would be inaccurate, a postulation of rights would avoid the directly devastating consequences for the opposition leader's welfare. Yet, the possibility remains that the decision to commit murder is taken on legitimate grounds, and there will be situations where it is obvious that a rights violation will bring about considerable good effects. Consequently, we do not advocate absolute rights but we argue that rights can function as a restraint on utilitarian decision-making by providing guidelines to avoid rash decisions based on inadequate or poor information.

Secondly, utilitarian rights are desirable because without them we may create a *slippery slope*, where we risk normalizing government action with severe consequences for individuals. If a utilitarian society *without* utilitarian rights allows murder to become established practice in cases where the calculated consequences of this action are only slightly better than those of the alternative, it might result in insensitivity to the welfare loss implicated in taking someone's life because murder becomes easily justified and not only a last resort. This may entail sloppiness in the calculation of consequences, which in turn leads to advocating murder on poor grounds.

Another argument why we from a utilitarian perspective should promote rights is that perceptions of human rights as valid are ubiquitous, at least in western societies. If rights that the public believe they are in possession of are violated, this is likely to produce great indignation and civil unrest, something in itself undesirable, and as a long-term consequence this would reduce societal trust and security.

3.4.1.2 Violating a utilitarian right

We now turn to the question if it is ever morally justified to violate a right. According to Brandt this is possible since the "consistent utilitarian can regard

both *acts and* moral systems as desirable if they maximize expectable utility, and therefore he can perfectly well hold that a utility-maximizing *act* has a claim to be recommended by the utilitarian, even though a moral system, which he also recommends, prohibits it” (Brandt, 1992:202). If we take this into consideration, when should a rights promoting utilitarian violate a right, given that the action is utility-maximizing? It is reasonable to believe that the traditional utilitarian would demand quite strong reasons for actions such as taking someone’s life or preventing someone from speaking their mind, as long as they are utility-maximizing. When do the traditional utilitarian and the rule-based utilitarian disagree regarding what course of action to recommend? Let us consider an example: imagine that a society is exposed to a threat from a terrorist who plans to contaminate an entire city with anthrax and the police knows that only one of their two prime suspects is guilty, but not which one, while the other is completely innocent. Would it then be morally unjustified to arrest both of them? Furthermore, would it be morally justified, if necessary, to torture both of them to extract information, or even kill both of them as a preventive measure and a last resort? The traditional utilitarian would most likely consider the posed threat towards society as more important to avert than the act of torturing or killing the terrorist *and* the innocent. A constrained utilitarianism that incorporates respect for rights is however put to the test with this hypothetical example. It becomes clear that it is necessary to establish the boundaries of the inviolability of rights in our utilitarian model. Since our theory aims at maximizing aggregate well-being, it would allow the torturing and the killing, and thus also allow violations of the postulated rights. However, it can only be allowed in circumstances such as the one presented above where the direct consequences of a violation is overwhelmingly positive. In cases where the rights violation is committed in order to prevent a violation of a utilitarian right (either the same or another right that we argue is utterly important) it facilitates the justification. Correspondingly, it is harder to justify violating a right when the circumstances are such that the outcomes of the alternatives are less clear, or where violating rights will merely generate a slightly better outcome in the short-run, or were we violate a right for merely economic reasons. This because, in the long run, society may lose trust in the validity of the right. They may also develop mistrust towards the executing power if it is making seemingly unjustified decisions. If a government continuously violates a right, with the objective of maximizing welfare, it is reasonable to assume that the public will regard the right as less rigid. As a consequence, people might more easily commit rights-violating acts themselves.

Gibbard has raised an objection to the idea of violable utilitarian rights. He contends that the commitment to an unambiguous principle of non-violable rights will be stronger than the commitment to a principle with exceptions. Hence, the expected utility of maintaining the unambiguous principle might be greater than it would be if we maintained the opposite (Gibbard, 2004:368). Even though we find Gibbard’s argument plausible, we still consider it to be of minor importance in comparison with the possibility of maximizing utility through a rights violation, such as the case mentioned above about the two terrorist suspects. Another possible solution, highlighted by Gibbard, is lying. If the moral subject manages

to conceal that it carries out rights violations, the possible consequences mentioned above might be avoided. Gibbard carries on by questioning this solution and argues that the lie may be difficult to uphold and the fact that he is trying hard to prevent it from being revealed may affect his personal relations in a negative way (Gibbard, 2004:367). Gibbard focuses on an individual moral agent while we concentrate on governmental action. This makes his objection to the lie as a solution less weighty. Yet another objection can be raised. There is always the risk that the lie gets uncovered which could lead to dire consequences for public trust. Furthermore, if we assume that the rights violation will have overwhelmingly positive consequences, which our theory demands, then the public will most likely accept the motivation for it, and the lie consequently becomes unnecessary.

3.4.1.3 Conflicting utilitarian rights

One unanswered question about the rights-based utilitarianism remains and it is that of conflicting rights, which we discussed in 3.2. This is a problem that act-utilitarian perspectives naturally do not face, but from our perspective it has to be dealt with. As mentioned in 3.2, rights theory faces a serious problem when it comes to resolving conflicts between two moral objects claiming the same absolute right. Rights-based utilitarianism provides a way of solving such a problem. This can be done by choosing, in an act-utilitarian manner, the alternative that maximizes aggregate welfare, i.e. by prioritizing the moral object that will contribute the most to this goal. For instance, In the abortion case where we have to chose between saving either the mother or the foetus, it is probably optimal to save the woman instead of the foetus since: the woman will be mourned by friends and relatives while the foetus only will be mourned by a small number of people; the woman probably will be able to have another child; letting the woman die possibly could deter other women from having children and create fear among those already pregnant.

The rights-based utilitarian perspective can also resolve conflicts between *different* rights, although this is a task associated with greater endeavour. In these situations the choice is between act-utilitarian or rights-based reasoning. As we look upon it, what we ought to choose is dependent on the number of rights postulated, and which these rights are:

i) Consider an example with only two postulated rights that seldom conflict with each other. When they *do* conflict, we believe it is preferable to resort to act-utilitarianism. The reason for this suggestion is that in this situation we do not face the risk of the slippery slope. If the government murders someone in order to secure one of the rights, in this case violating the right to life by necessity constitutes an exception. Because the government faces the rights conflicts so rarely, it does not run the risk of normalizing murder as a political choice, and not only a last resort. Yet, there are exceptions. When the problems, mentioned above in 3.4.1.1, concerning rash decisions and poor information are prevalent, we propose that we construct an order of preference of the rights, in accordance to

which that right will be prioritized which in general, if violated, will amount to the most damage in terms of aggregate utility. In face of these problems, this must be done in order to avoid grave miscalculation.

ii) If however we have a situation with many rights, or a situation with few rights that often conflict, we should not mainly resort to act-utilitarianism. Because rights in this scenario would conflict often, the risk of the slippery slope would be graver, since the government more often would have to consider the option of, for instance, murder. The model of applying an order of preference should be the basis for political decision-making (cp. Brandt 1992:208-209).

We have now outlined our basic theory which will provide the basis for a rights-based utilitarian right to healthcare.

3.4.2 A rights-based utilitarian view on health

In section 3.1 we contend that health can be considered an important value from different approaches. In this section we intend to present a utilitarian motivation for, and definition of the right to healthcare.

As mentioned before, with a utilitarian approach every right needs to be specifically argued for, since rights are not seen as given by nature, but rather as a means of maximizing utility. With such a conception of rights, they can be seen as dependent on societal context since what means that maximizes utility will differ between societies. This assumption leads us to an important discussion. First of all, we live in a world characterized by limited resources. It is obviously not possible to guarantee every human being complete mental and physical wellbeing, at least not within a foreseeable future. Furthermore, healthcare is primarily provided by states to their own citizens, but there are possibilities to assist other states with healthcare through unilateral or multilateral foreign aid. Thus, governments are faced with the decision of whether to allocate resources exclusively to national healthcare systems or to foreign healthcare systems as well, in order to equalize differences in health status around the world. A complete equalization would of course imply lowering the health status of the country's citizens. A utilitarian would, *ceteris paribus*, argue for the latter option since he or she, in accordance with the ideal of universalism, cannot discriminate between moral objects on such arbitrary grounds as national borders. However, we assume that people in general are not willing to compromise with their standard of living for the benefit of people in distant countries to whom they might not feel culturally, nor socially affiliated. In order to be able to provide guidelines for political action we need to adopt a realistic view of the societal context, and consequently, at least in the short-run, accept differences in standard of living to some extent around the world. This is also the case with rights, although it might sound awkward since we normally perceive these as ascribed to individuals regardless of circumstance. As mentioned in the beginning of 3.4.1, we represent a view of rights as possessed by some individuals under certain social circumstances. In this view, a specific right is dependent on certain societal contexts in certain geographic areas. A utilitarian right to healthcare can be

implemented in societies with widely differing income levels, but it will be applied differently since it is not, within a foreseeable future, realistic to adopt an absolute level of global health, still with the goal to maximize aggregate utility. Yet, this does not imply that we abandon the ideal of universalism. The utilitarian right that we promote is universal in such respect that it acknowledges every human being's basic need for health as a means for existence and development (both human and societal) and it requires each society to provide the optimal, not absolute, level of healthcare possible to attain given the economic, social and geographic context.

There are several ways of arguing for health from a rights-based utilitarian approach. Firstly, there are different ways of establishing the grounds for viewing health as a desirable value, as we show in 3.1. However, we will here account for the grounds for a utilitarian to regard health as worth striving for.²

It is currently impossible to directly observe and reliably measure happiness or welfare. Instead, one needs approximations. Such an approximation is health. Partly, health can be seen as directly conducive to happiness, but mainly as a means for producing happiness in other fields. Absence of health produces lack of welfare. A good reason to ascribe all people the right to healthcare is because all human beings are equal in the sense that they are all potentially capable of experiencing lack of health (perhaps excluding people in a permanent vegetable state). Furthermore, if we embrace the idea that access to healthcare outweighs the costs for healthcare for one arbitrary group of people, thus producing welfare surplus for this group, it is reasonable to assume that it would do so for any other arbitrary group. This combined with the assumption that it is hard to imagine situations where it would maximize utility to exclude one or a group of persons from access to healthcare, on whatever grounds, provide the basis for a utilitarian to promote healthcare as a right applying equally to all. We are likely to find situations where it would favour utility maximization to constrain the right to freedom of speech, for instance if someone threatens national security by revealing sensitive material, while we can hardly perceive any downsides to the right to healthcare. Another feature is worth mentioning. Health for one person not only affects him, but also the society of which he forms a part. In this sense, the welfare of one person or a group of persons becomes important because of what it contributes with to the aggregate utility, not only on an individual level but also on a societal level. This because we avoid running the risk of spreading diseases if we refrain from providing everyone with healthcare and because it is conducive to societal development by making people more productive (Freeden, 1991:88).³ But if it is correct that we will never gain welfare by limiting access to healthcare for any person, the traditional utilitarian would not advocate any such limitation either. Why is a right to healthcare then to be considered necessary? We contend that it will constitute a bulwark against the temptation of restricting

² Notwithstanding, since we advocate a universalist equal respect for equal interests, our ideal world would evince a considerably more equal allocation of resources.

³ Consider, for instance, the productivity loss in countries with high prevalence of HIV-positive.

healthcare in order to free resources for other goods. This needs to be done because only in extreme cases can other goods outweigh healthcare in terms of generated utility.

A second way of embracing the right to equal access to healthcare is by regarding it as related to the principle of *diminishing utility returns of money* – the idea that a fixed amount of money is worth more to a poor person than to a richer. A poor person is much less capable of financing his or her own healthcare than a rich person is. Given that we strive for equal access to healthcare and equal treatment according to need, the people of greater means will necessarily have to finance the healthcare of people of lesser means. This arrangement should be perceived as desirable from a utilitarian point of view since it has a redistributive effect (cp. Tännsjö, 2000:42).

We can now outline a definition of a utilitarian right to healthcare: *Every human being has a right to be granted equal access, according to need, to a healthcare system that is constructed in a way that maximizes aggregate utility, and that is given the amount of resources necessary to do this.* This definition allows a government to completely deny healthcare any of the scarce resources in such extreme scenarios where replacing the resources would enable rescuing the population, e.g. when hostile forces threaten to attack and exterminate it. In such a case, it would be morally justified to deny people healthcare. Equal access implies that a person cannot be denied healthcare on the grounds that he or she cannot pay for it.

4 Immigrants and healthcare

We will dedicate this chapter to arguing for equal access to state subsidized healthcare for *all* immigrants with the rights-based utilitarian theory we have drawn up in chapter 3 as a basis for our argumentation. This will be organized as an evaluation of the policy pursued by the Swedish government which will be based on the idea of testing whether or not the policy is a product of proper rights-based utilitarian calculus.

Firstly, in 4.1 we will investigate whether or not, different possible arguments for excluding *some* immigrants from equal access to healthcare, are good reasons to violate the right to healthcare, i.e. reasons that maximize utility. We would like to point out that we have inquired about the motives behind the decision to exclude adult undocumented immigrants and asylum seekers amongst different governmental authorities, such as the Ministry of Justice (Justitiedepartementet), The National Board of Health and Welfare and The Ministry of Health and Social Affairs (Socialdepartementet). We have also contacted a former official that used to act as a negotiator in these types of questions, as well as a political advisor of the cabinet minister Göran Hägglund who is responsible for healthcare issues. Unfortunately, no one has been willing to motivate the policy. Thus, it is difficult to evaluate these motives, since there seems to be no articulated policy, a fact that was emphasized by an official at the Ministry of Justice (Zeidler, 2007). Nevertheless, this decision must be based on some line of argument which we will try to reconstruct.

Secondly, in 4.2 we will discuss further arguments for why immigrants should be granted equal access and relate these arguments to the goal of utility maximization.

4.1 Arguments against including all immigrants

There are a number of arguments for restricting healthcare in a manner such as has been done in Sweden. The first refers to scarcity of state resources. The state has a limited budget and is consequently always facing problems of priority. One such problem is the distribution of resources between people within a society, which brings to the fore the question of who counts as a moral object. A supporter of the current policy could argue that Swedish citizens have unfulfilled health needs and that these need to be met before we can distribute resources to non-citizens. This seems to be one line of reasoning behind the decision of excluding adult undocumented immigrants and asylum seekers from state healthcare. In an answer to a written question on the subject, posed in the Swedish parliament in

November 2000, cabinet minister Maj-Inger Klingvall wrote that it would “imply a far too extensive commitment if the state would compensate regional governments [landsting] for providing everyone travelling into the country [Sweden] with complete healthcare” (Klingwall, 2000).

The validity of this argument is dependent partly on the question of who counts as a moral object, and partly on the question of what consequences the policy will bring about. In accordance with our theory, it is not morally justified to exclude any conscious human being only on grounds of lacking citizenship. As Cole contends, national borders should play little or no role in determining the welfare of a moral object since where national borders fall is arbitrary (Cole, 2004:270). Instead, we should focus on interest, and all essentially equal interests are to be regarded equal. If we think we ought to provide Swedish citizens with healthcare, we ought to do the same for immigrants. Hence, the argument that we ought to prioritize Swedish citizens is not in accordance with our theory, provided that the policy does not have external effects, i.e. provided that one does not take the consequences into account. This, however, is by necessity something a utilitarian has to do. According to our theory, it is justifiable to violate a right only if the violation will bring about considerably better consequences in the long run. One imaginable argument here could be that the financing of healthcare would undermine the state budget, if more people were to be included. However, the UN special rapporteur in Sweden Paul Hunt claims that, “relatively speaking, the costs of including asylum-seekers and undocumented individuals are unlikely to be significant” (Hunt, 2007:20). If what Hunt says is valid, this argument fails as well. This claim is supported by our own rough calculations estimating that additional costs of healthcare (dental care excluded) for undocumented immigrants would be approximately 170 million Swedish kronor. This leads us to a second argument for why exclusion could be considered justified (Nevander, 2007).⁴

The main point of the second argument is that if we were to grant undocumented immigrants’ access to The National Healthcare System, this would act as a *pull factor*, i.e. making Sweden a more attractive country for immigration. In the long run, this could lead to lack of state resources, making Swedish citizens worse off. Yet, research on the subject gives no support for including healthcare as a pull factor. Immigrants do not make a rational choice of their destination country after comparing the benefits of different welfare systems (Romero-Ortuño, 2004:250). But what if healthcare really was a pull factor? Once again we return to the possible justification for a rights violation. If free healthcare for everyone would increase the inflow of immigrants in such a magnitude that the risk of a breakdown of the Swedish healthcare system, which would make a majority worse off, became impending, then the pull factor argument could be

⁴ We reached this number by taking the total cost for healthcare in Sweden divided by the number of Swedish citizens times the number of undocumented immigrants. We are aware of the uncertainty of this estimation and that it could vary quite a deal if all variables, such as differences in demographic structure, initial physical and mental status etc., were to be included. However, our aim is here merely to provide an idea of the proportions of the costs, not an exact calculation.

valid. John Rawls argues in this manner when he suggests that migration should be limited in order to avoid a tragedy of the commons, i.e. the deterioration of welfare systems, caused by excessive exploitation (Bauböck 2007:400). If such a tragedy was impending, and our only means of preventing it were to exclude illegal immigrants from healthcare, this policy could be justified. However, we consider this scenario highly unlikely.⁵

The statement by the Swedish Prime Minister Göran Persson made in November 2004 in which he expressed concern for abuse of social benefits as a consequence of the expansion of the EU (Brors, 2004). Although the statement concerns a different situation, it is an indication of a line of thought prevailing within the government. This is confirmed by Stig Wintzer, responsible for migration issues at SALAR, who states that one of the two the main reasons given by the government in negotiation with SALAR are fear of a situation where migrants come to Sweden driven exclusively to get healthcare. The second argument was that it would be too costly to give migrants already living in Sweden healthcare (Wintzer, 2007).

A third argument for not providing immigrants with equal access to healthcare is based on the idea of desert. This implies that, in order to deserve access to common goods one has to contribute to society in some way (e.g. by paying taxes). A good example of this way of thinking we find in the UK Health Secretary John Reid's statement from 2003: "I am not talking about emergency treatment, matters of life and death. I am talking about routine treatment that causes the people of this country, who are legally and morally entitled to it, to have to wait longer" (Cole, 2007:270). In accordance with our theory it cannot be seen as justified to discriminate between people on the grounds of desert when it comes to the access to healthcare since we assume that healthcare is a basic need for all humans, without which maximizing utility would be difficult. But when it comes to the possible utilitarian right of freedom of movement, the case would be different. By imprisoning someone who is a criminal we may be able to maximize utility since we prevent the prisoner from inflicting damage upon society and thus from lowering aggregate welfare. Hence, when it comes to a right with such characteristics, desert could constitute the basis for discrimination.

Another argument against excluding immigrants based on desert is that it would be inconsistent since it might as well entail excluding people in a vegetable state, unemployed, children or other groups that could be considered as not coextensively contributing economically to society. If the government might as well discriminate against many other groups, but choose to single out immigrants, one can suspect that the policy has populist or even cynical motives. It would be populist because the government expects to gain popular support, and cynical in the sense that it believes that it can make economic profits by excluding some immigrants from moral concern. Yet, it is questionable whether or not the state in fact gains economically from excluding some immigrants. We will discuss in 4.2

⁵ The idea that excluding some immigrants from access to healthcare could act as a *push factor*, i.e. making immigrants leave the country, neither finds any evidence in existing research on the subject.

that it could actually be the other way around, that the policy inflicts economic loss in the long run. The argument is also flawed because we cannot claim that all immigrants do not work or pay taxes. On the contrary, immigrants often do work a job and pay taxes or contribute in other ways (Cole, 2007:271-272).

A second similar argument is that immigrants who have entered a new resident country illegally should not be granted access to healthcare because of their illegal entrance. We can dismiss this argument in the same manner as above.

4.2 Arguments in favour of including all immigrants

A major part of this essay, 3.4.2, has been dedicated to the outlining of a right to healthcare. We have argued that hardly any violations of this right would be justifiable, except in situations where the consequences were calculated to be overwhelmingly positive. Such a situation, however, we consider highly unlikely, mainly because of the right to healthcare's inherent characteristics mentioned in 3.4.2. Our discussion naturally constitutes the foundation for a postulation of a right to equal access to the Swedish healthcare system for everyone residing within our borders and we have in 4.1 above argued that the current policy regarding the exclusion of some immigrants from healthcare, from a rights-based utilitarian perspective, is not morally justified. For what further reasons than those mentioned above should we then include all immigrants and in what ways can the inclusion be seen as utility maximizing?

Firstly, we would like to shortly discuss the reasons for migration. Reasonably, both pull factors, such as hope for better standards of living, and push factors, such as war, famine or oppression in the country of origin, determine this choice. Irrespective of which the crucial factor might be, migration is a natural reaction to unfortunate social circumstances, and should not, in general, be considered as morally unjustified since it is reasonable to aspire to improve one's standard of living. Similarly, we do not, and should not make a moral judgement about people in Sweden who leave depopulated areas for employment in other parts of the country. This does not imply that we necessarily must promote free immigration, rather it should be seen as a defence against the idea that it is unjustified to migrate in order to improve one's standard of living. Generally, though, we believe that migration to a certain extent is positive for aggregate utility, since the aggregated possible negative consequences for the public in the receiving country is likely to be outweighed by the utility addition for the migrants. Economically, migration has a redistributive function, which, according to the law of diminishing utility returns of money mentioned in 3.4.2, is, *ceteris paribus*, to be considered positive from a utilitarian point of view. To grant immigrants equal access to healthcare is part of this redistribution.

Three further arguments concern possible positive external effects of the right to healthcare. Firstly, in order for a person to be optimally productive and reproductive, he or she inarguably needs healthcare. This applies to Swedish citizens as well as immigrants. Since illegal immigrants are working here,

excluding them will prevent optimal productivity and reasonably lower reproductivity.

Secondly, emergency care is much more costly to produce than primary care (Romero-Ortuño, 2004:254). Hence, providing all immigrants with preventive care would consequently lower the healthcare costs since it would minimize the cases where emergency care is needed.

Thirdly, the state will gain economically by allowing all asylum seekers to be medically examined in order to prevent infectious diseases from spreading. The Swedish state seems to be aware of this, and compensates the regional governments for such costs. Yet, the problem of spreading infectious diseases still remains since undocumented immigrants and immigrants with temporary residence permit still are excluded from this sort of treatment.

The last argument we will present might in fact be the most important, since it discusses grave direct losses of utility. The current policy leads to great suffering and even in some cases death (Wieslander, 2007). The postulation of utilitarian rights is meant to prevent those results in the name of utility maximization. This must reasonably be regarded as one of the heaviest weighing reasons to include immigrants since it is hard to imagine that the amount of resources this change of policy would demand could be differently reallocated within our borders with better utility results. If the government were to use these resources in a foreign aid project intended to help individuals even worse off, this of course would be to prefer. However, in practice we do not believe these two groups of people compete for the same bundle of resources. And even if they would, our theory's demand to redistribute resources from Swedish citizens in favour of immigrants' healthcare would not change.

5 Conclusion

The purpose of this essay has been two-folded. Firstly, we aimed at presenting a reconciliation between traditional utilitarianism and a rights-based perspective, and postulating a right to healthcare. Secondly, with this theory as the basis, we argued for the inclusion of all immigrants as equals regarding access to the Swedish healthcare system.

The theoretical part of this essay was forestalled by a set of fundamental philosophical questions. The first of these was briefly dealt with in 3.1 and concerns the question of how to justify a value. We argue that each of the presented approaches can constitute a basis for embracing health as an important value. This renders it unnecessary to choose between them in this study. One might raise an objection regarding the choice to focus specifically on health instead of some other value. However, we consider it utterly important for enabling human welfare and development. And the fact that some members of our society are denied health makes it highly relevant to investigate.

The second was the choice of utilitarian perspective, discussed in 3.3, where the two taken into consideration were hedonism and preferentialism. We chose to take a stand for hedonism, based on Tännsjö's argumentation. However, we do not think that choosing to promote preferentialism would affect the general outcome of the study gravely.

The third of these fundamental questions, and indeed one of the great bones of contention within philosophical debate, concerns the choice between utilitarianism and rights theory. Although we aimed at reconciling these two perspectives on a practical level, we do not consider such reconciliation possible on a fundamental level. Since we find utilitarianism more plausible, it has formed the basis for the reconciliation.

Section 3.4.1 resulted in a proposal of a utilitarian theory allowing rights to be postulated as a means of maximizing utility, thereby solving problems act-utilitarianist perspectives face. Even though we in theory might advocate a "pure" utilitarianism based only on calculation of consequence, in practice this type of calculus is inarguably associated with substantial difficulties. The perspective we present tackles these difficulties by postulating rights, but still allows the violation of rights if the consequences are considered to be overwhelmingly positive or, naturally, when rights conflict. We argue that our solution for such a rights conflict is more conceivable than the method rights theorists propose. In the case of two moral objects claiming the same right, for instance, our method offers a clear solution while the rights theorist encounters serious theoretical obstacles.

In the following section, 3.4.2, we argued for a right to healthcare. One might question the choice not to postulate other rights as well. Since our theory demands that every right be specifically argued for, including other rights would entail a

less thorough discussion of the rights chosen. We consider that it is of greater importance to exhaustively reason about only *one* right, and given the case we have chosen, the right to healthcare seems to be the most relevant. Yet, one feature of general nature worth mentioning is that, in contrast to rights theory, from our perspective it might be easier to postulate negative rights than positive. It is hard to imagine that a violation of negative rights will bring about desirable effects, whereas it is easy to imagine situations where murder or torture will do so.

In chapter 4 we argued for granting immigrants equal access to the Swedish healthcare system. Firstly, in section 4.1, we tried to refute arguments based on grounds of nationality, desert and the pull factor. Since we did not manage to extract any motivation from government representatives, we were forced to make an interpretation of the grounds for the policy and supplement that with further arguments based on logical reasoning. We sought to make *all* arguments logically coherent and to treat them equally. Secondly, in section 4.2, we presented reasons in favour of the right to healthcare, mainly based on positive external effects of an inclusion. It might be questioned whether the external effects we have brought up are reasonable. In fact, providing all immigrants with healthcare might not improve productivity and reproductivity to a great extent. Furthermore it might be argued that the risk of infectious diseases spreading might neither be very impending. We contend, nonetheless, that these consequences are reasonable and that, taken together, with the argument of avoiding expensive secondary care, they contribute considerably to aggregate welfare.

The result of our theory indicates that it is possible to reconcile utilitarianism with rights, to postulate a right to healthcare and argue for its implementation with the motive to grant all immigrants access to healthcare. Our theory is of a general nature. We argue that, although our study is limited to the Swedish case, we could apply our theory on any country. Similarly the right to healthcare might as well be substituted by a different right, if we were to examine a case with different characteristics. This constitutes one of the most important points of this essay. A further point of principal character worth emphasizing, which may be the strongest points of all, we contend is that it does not exclude neither utilitarian nor rights-based reasoning, but rather offers a way of solving their traditional conflict in a satisfactory way.

As a final point, we would like to discuss the government attitude concerning the healthcare policy on immigrants. We find it remarkable that, when inquiring for motives among different government representatives and in written sources, we have hardly been presented any. The few motives we have found are not very thoroughly explained, to say the least. The statement, mentioned earlier, made by Klingwall in 2000 is the only direct source of information that really contains an outspoken motivation for the policy. The reasonable interpretation of this politics without official policy, we believe to be that the government does not find it possible to defend the policy officially while it simultaneously is under the perception that it is economically profitable to exclude immigrants.

While the government seems to find no reasonable motivation for the policy, we have presented several arguments which ought to be considered if the

government wishes to act morally justified and prevent the suffering of illegal immigrants and asylum seekers.

6 References

6.1 Primary sources

- Kjellström, Lars, 2007. Lars Kjellström is Chief Physician at Ersta Hospital in Stockholm, telephone interview, November 23rd 2007.
- Klingwall, Maj-Inger, 2000. ”Svar på skriftlig fråga 2000/01:287, den 29 november år 2000, Svar på frågorna 2000/01:251 om flyktingars rätt till vård och 287 om asylsökandes rätt till hälso- och sjukvård.” www.riksdagen.se, November 15th 2007 (translated by us).
- Migrationsverket, 2007. “Överenskommelse mellan staten och Landstingsförbundet om hälso- och sjukvård för asylsökande m.fl.” www.migrationsverket.se/index.jsp?swedish/press/dokument/overenshalsovard.html, December 3rd 2007.
- Nevander, Lars, 2007. Lars Nevander is Chief Physician at The Lund University Hospital, personal conversation, January 3rd 2008.
- Sjögren, Anne, 2007. Anne Sjögren is a spokeswoman for The Rosengrenska Foundation in Gothenburg, telephone interview, December 20th 2007.
- Sveriges Radio P1, 2007. An interview in “Studio 1” with an official at the National Police Board, December 5th 2007.
- Taylor, Marie-Louise, 2007. Marie-Louise Taylor is member of the committee of Läkare i Världen, telephone interview, December 17th 2007
- Wieslander, Åsa, 2007. Åsa Wieslander is a spokeswoman for The DELTA Foundation in Malmö, personal interview, December 6th 2007.
- The United Nations, 2007. “The United Nations’ Universal Declaration of Human Rights”, www.un.org, November 27th 2007.
- UNHCR, 2007. “The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live”, http://www.unhcr.ch/html/menu3/b/o_nonnat.htm, November 27th 2007.
- Wintzer, Stig, 2007. Stig Wintzer is officially responsible for issues concerning migration at The Swedish Association of Local Authorities and Regional Governments (SALAR), telephone interview, December 13th 2007
- Zeidler, Anna, 2007. Zeidler is an official at the Ministry of Justice, personal conversation, December 13th 2007.

6.2 Secondary sources

- Ahlenius, Henrik, 2004. *Vad är moraliskt rätt? Texter i normativ etik i urval av Henrik Ahlenius*. Stockholm: Bokförlaget Thales.
- Badersten, Björn, 2006. *Normativ metod: att studera det önskvärda*. Lund: Studentlitteratur.
- Bauböck, Rainer, 2007. "The Rights of Others and the Boundaries of Democracy", in *The European Journal of Political Theory* 2007; 6; 398.
- Bosch, X., 1999. "Pregnant illegal immigrants get free health care", in *The Lancet* 354 (9187): 1368. Oct 16 1999.
- Brandt, Richard B., 1992. *Morality, Utilitarianism and Rights*. Cambridge: The Cambridge University press.
- Brors, Henrik, 2007. "TV-inslag fick Persson byta fot", in *Dagens Nyheter*. April 5th 2004. www.dn.se/DNet/jsp/polopoly.jsp?d=1042&a=251717, December 28
- Cole, Phillip, 2007. "Human rights and the national interest: migrants, healthcare and social justice", in *The Journal of Medical Ethics*, 2007;33;269-272.
- Cummiskey, David, 1982. *Kantian Consequentialism*. Oxford: Oxford University Press.
- Dwyer, James, 2004. "Illegal Immigrants, Health Care, and Social Responsibility", in *The Hastings Center Report*, Vol. 34, No. 1 (Jan. - Feb., 2004), pp. 34-41.
- Freeden, Michael, 1991. *Rights*. Minneapolis: The University of Minnesota Press.
- Frey, R.G., 1984. *Utility and Rights*. Oxford: Blackwell
- Gibbard, Allan, 1984. "Utilitarianism and Rights", pp. 357-369, in Ahlenius, Henrik, 2004. *Vad är moraliskt rätt?: Texter i normativ etik i urval av Henrik Ahlenius*. Stockholm: Bokförlaget Thales.
- McCloskey, H.J., 1984. "Respect for Human Moral Rights versus Maximizing Good", pp. 121-136, in Frey, R.G., 1984. *Utility and Rights*. Oxford: Blackwell
- Médecins Sans Frontières, 2007. *Gömda i Sverige: Utestängda från hälso- och sjukvård*. www.lakareutangranser.se/gomda, December 15th 2007.
- Romero-Ortuño, Román, 2004. "Access to Health Care for Illegal Immigrants in the EU: Should We be Concerned?", in *European Journal of Health Law* 11: 245-272, 2004.
- Trost, Jan, 2005. *Kvalitativa Intervjuer*. Lund: Studentlitteratur
- World Health Organization, 2003. "International Migration, Health & Human Rights." in *Health and Human Rights Publication Series*, Issue No 4 December 2003.