

Post-code lottery for Europe's undocumented children: unravelling an uneven geography of entitlements in the EU

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Acknowledgements

Research for this article was supported in part by the Open Society Fellowship, which is funded and administered by the Open Society Foundations. The opinions expressed are the author's own and do not necessarily express the views of the Open Society Foundations. The author also acknowledges with appreciation the contribution of Vanessa Hughes to the study and co-authored report (Spencer and Hughes, 2015) to which this article refers.

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Abstract

This paper explores the competing policy imperatives within and between tiers of government, and policy-makers' perceptions of the relative 'deservingness' of undocumented children, which contribute to an uneven geography of entitlements to public services across the European Union. While scholars have contrasted the formal exclusion of undocumented migrants with their informal inclusion, the paper explores the tension between formal exclusion and *formal* inclusion: where the state, through granting legal entitlements to services, contradicts the logic of its own enforcement paradigm. The analysis presents the findings of a comprehensive mapping of entitlements to healthcare and education for undocumented children across the EU's 28 Member States and draws on interviews with policy makers across 14 Member States to explore the justification for entitlements granted at national and sub-state level. It finds that competing policy imperatives are most acute in relation to children where the logic of immigration control faces competing social and humanitarian imperatives within the national administration and in regional and municipal tiers of government. That tension reflects the social construction of undocumented children as both 'illegal' and vulnerable, negative perceptions among policy makers of the deservingness of undocumented migrants countered, to a degree, by positive perceptions of the deservingness of children.

Keywords: undocumented children; EU; entitlements, public services; deservingness

This paper explores a paradox: that despite a retrenchment of European welfare states that disproportionately impacts upon migrants (Sainsbury 2012); negative perceptions of the deservingness of immigrants to welfare support (Van Oorschot, 2006); and an emphasis in policy towards undocumented migrants on enforcement and removal (European Commission, 2015), we nevertheless see European states granting a level of access to public services for undocumented adults and, in particular, to children. While exclusion from mainstream services remains the norm, with consequences for the wellbeing of children (PICUM 2008; Sabates-Wheeler, 2009), national, regional and local authorities provide a level of access to healthcare, education and other services, contributing to the uneven geography of migrants' entitlements across the EU.

In the literature on undocumented migrants it is well recorded that there can be a disconnect between their formal exclusion from legal entitlements and *informal* inclusion: in part through the practices of local service providers whose provision of support runs counter to official policy (Van der Leun, 2006). Chauvin and Garcés-Mascreñas have noted, however, that where entitlements are accorded by the state itself the contradiction is between formal exclusion and *formal* inclusion – the state appearing to validate breaches of its own sovereignty (2012:253). This paper explores why, in relation to undocumented children, this is the case.

For the purposes of this article, I use the term undocumented, rather than the term now more frequently used in Europe, 'irregular'. The number of undocumented adults and children was estimated in 2008 to be between 1.8 and 3.8 million (between 0.39 and 0.77

percent of the population of the then EU27), in which no separate estimate for children was possible (Clandestino, 2009). In the UK alone, however, the number of undocumented children has been estimated at 120,000, 0.9 percent of the UK's population under 18 years of age (Sigona and Hughes, 2012). Undocumented children are diverse in countries of origin and pathways to undocumented status. Their status may derive from that of their parents who entered Europe without permission or in many cases entered legally, as workers, asylum seekers, students for visitors, but did not leave when their permission to stay expired. Other children are born to undocumented parents in an EU country and do not acquire the citizenship of that country at birth. Among undocumented children, however, are those who enter unaccompanied and may or may not be known to the authorities. They may rejoin family members already in the country or have been sent alone to Europe by their families in search of better opportunities or safety. In the Sigona and Hughes study (2012) around half of the children were born in the UK to undocumented migrant parents, entitled in that case to apply for UK citizenship after ten years living in the country. Most were found to be under 12 years of age and to be living with their parents.

Across Europe, differing paths to undocumented status can result in differing entitlements in national laws. A distinction in entitlements is made between those who are unaccompanied and known to the authorities relative to those who are with their parents or other carers (PICUM, 2008; FRA, 2011a); and between those in the Return Procedure (under the EU Return Directive 2008,¹ which accords certain rights to them) and those who are not.

Undocumented children live at the intersection of conflicting policy agendas: the enforcement of immigration controls, on the one hand, and the protection of child welfare,

on the other; what Uehling, in a study of unaccompanied children in US border detention centres, calls the competing agendas of security and humanitarianism (2008). Underpinning that tension is the social construction of children as both vulnerable, in need of protection, and as a risk, in which she finds 'undocumented children are simultaneously perceived as the most vulnerable of the vulnerable and as security risks to the United States'. There is an impulse to protect them, and an impulse to protect communities from the consequences of rising immigration (whether adolescent crime or a drain on welfare resources) (2008:837). While those competing constructions appear contradictory, it has been argued that they are consistent with the framing of children as non-rights bearing, semi-citizens, lacking moral agency and voice (Meloni et al, 2013). Notwithstanding that analysis, the outcome of the tension in the entitlements or exclusion that applies can differ sharply, and the consequences for the children concerned.

Sigona and Hughes found that the unresolved tension between those two impulses fundamentally shapes the lives of undocumented children in the UK and the experiences of service providers in their responses to them (2012). We can situate that tension within two separate strands of the migration literature. We know, first, that migration policy is the outcome of policy trade-offs between competing economic and social policy objectives and vested interests: trade-offs that may be overt and calculable (as in the cost to higher education of curbing the entry of international students) or less transparent but no less real (Spencer 2011; Ruhs 2013). While conflicting priorities are experienced within the national administration, notwithstanding its primary responsibility for immigration control, it is at the local and regional levels that competing imperatives towards inclusion of migrants can be most keenly felt (Penninx et al, 2004; Caponio & Borkert, 2010), a tension which can lead

to a disconnect or ‘decoupling’ between policy framing and responses at the local and national level (Scholten, 2013).

How policy options are framed in relation to welfare support in particular depends on ‘a socially constituted, and subjectively validated, set of shared moral assumptions’: the moral economy of welfare states (Mau, 2003). One key factor in that equation is perceptions of the relative deservingness of recipients (Hasenfeld & Rafferty, 1989; Raven et al, 2015). Deservingness is the ‘flip-side’ of rights: where rights have formal, legal standing, blind to individual particularities (though not, of course, to immigration status), deservingness is articulated in a moral register that relates to specific situations and to presumed characteristics and behaviour of the individual concerned (Willen, 2012: 814). Van Oorschot found notions of deservingness in relation to welfare support are multi-dimensional, our judgement on relative deservingness resting on five criteria: relating to perceived levels of need; control (those who bear no responsibility for their predicament seen as more deserving than those who are to blame); identity (‘are you one of us?’), attitude (the more compliant the more deserving) and reciprocity (2000:36). In ranking that emerged in a pan European study (2006), she found immigrants considered among the least deserving and, in the earlier Dutch study, that chimed with findings on the framing of undocumented migrants elsewhere, ‘illegal foreigners’ considered the least deserving of all, below ‘people who are not willing to work’ (Van Oorschot, 2000: 46). In those calculations, race, if not necessarily skin colour, is likely to play a central part in the ‘identity’ criterion (Willen, 2012; Anderson, 2013:47).

Children, while not the focus of these European studies, have been found in the United States to feature high on the deservingness stakes, along with elderly and disabled people (Hasenfeld & Rafferty, 1989:1028). We might expect that children would indeed score highly in relation to Van Oorschot's 'control' criterion if perceived as bearing no responsibility for their situation and, if destitute, in relation to need. Significantly, we know that a group may rank low on one criteria of deservingness but more highly on another (Raven et al, 2015:75). We might then anticipate that undocumented children may be considered more deserving than undocumented adults, if seen to bear no responsibility for their immigration status, but less deserving than other children because their irregular status marks them out as 'not like us' on the identity criterion.

Where children and their parents present as a family, the child's deservingness relative to that of the parents may not be so clear to the decision maker. A recent UK study of local authority staff responses to destitute migrant children and families (of whom two thirds had irregular status) did indeed find evidence that the immigration status of the parents affected social workers' approach to assessing the needs of the child. Although local authorities have a duty to safeguard children 'in need'² regardless of immigration status, their status did intrude into the decision making process, articulated by one of the social workers interviewed for the study:

Within the initial assessment it is very much needs led for myself. I like to keep it that way. I think when you look through the lens of immigration, that's when you start to be the gatekeeper and you start to label people as deserving or undeserving,

or eligible or not eligible. I think that's not the purpose of an assessment of children in need. (Price & Spencer, 2015: 48).

Public perceptions of deservingness have been found to correlate with policy on access to welfare (albeit the line of causality is not consistent; Raven et al, 2011). Whether that would apply equally in the area of migrants' social rights, however, is unclear. There is a tendency for such decisions, in fear of electoral disapproval, to be taken away from the limelight, where possible: the 'shadow politics' of migrants' rights in contrast to the 'sunshine politics' of immigration control (Guiraudon, 2004). It may therefore be the perceptions of policy makers rather than of the public towards the deservingness of undocumented children, coupled with policy imperatives that compete with immigration enforcement, that shape decisions on entitlements towards them. In this paper, having first mapped the entitlements of undocumented children to healthcare and education across the EU28 I thus explore the *stated* reasons of policy makers (elected representatives and officials) why entitlements to undocumented children have been granted at the national and the sub-state level.

The study

The focus of the study (2012-2015) was undocumented children and adults from outside of the EU who are living in an EU Member State. We set out to establish, first, the extent of entitlements for undocumented children and adults to health care and for children to education in the national laws of the 28 Member States (findings set out in full in Spencer & Hughes, 2015).

In our mapping of entitlements we used data from two studies on the rights of irregular migrants by the EU Fundamental Rights Agency as our baseline (FRA 2011a; 2011b), first

updating changes in law subsequent to 2010 identified in academic and grey literature (including the informative PICUM monthly bulletins)³ and adding data for the most recent EU Member State, Croatia. Our mapping of entitlements was sent to one or more national expert in each country, recruited through the authors' legal, academic and NGO networks who agreed to check whether the information is correct. Some provided further updates and nuanced our findings with additional details.

Further evidence was obtained through 108 interviews (137 interviewees⁴) conducted with policy makers, jurists, professional and civil society organisations across 14 EU member states⁵ between 2012 and January 2015 in which national legal entitlements and formal policies on access to a broader range of entitlements at regional and local level, and tensions arising from divergence with national policies, were among topics covered. Interviews also explored the justification for entitlements, cross-checked where possible with official policy statements and parliamentary debates.

The study explored entitlements in law and official policy, not the exercise of discretion of individual 'street bureaucrats' (Lipsky, 1980), albeit recognising that the line between official and unofficial policy is not always clear. Nor in most cases did we assess the barriers which may nevertheless exist in practice to individuals securing access to the service. Such 'implementation gaps' can be substantial, their causes ranging from requirements for documentation that undocumented migrants cannot provide, lack of knowledge of the entitlement and language barriers through to exclusion by service reception staff who are hostile, and fear of detection if the service is used (PICUM, 2007; Cuadra, 2012; FRA, 2011b:41; HUMA Network, 2010; OHCHR, 2014:40). In mapping entitlements, the study did take into account two formal barriers in law which fundamentally erode the entitlement:

where a requirement to pay for the full cost of the service effectively excludes most undocumented people; and where there is a duty on service providers to report the details of undocumented service users to the immigration authorities (rather than the wider absence of a 'firewall' (Carens, 2008) preventing that data transfer). In those instances we recorded 'no entitlement'.

Health care entitlements for undocumented children in national laws

In relation to health care we can compare the entitlements of undocumented children in the national laws of the EU Member States to those of undocumented adults as well as to children with citizenship of the country or who have regular immigration status. We can also see differences between undocumented children who are with their parents or carers, and those who are unaccompanied. We find that entitlements for children with irregular status are usually (but not in all cases) more extensive than for adults: particularly but by no means only for those who are unaccompanied. The latter chimes with constructions of childhood in which those travelling without carers are seen as particularly vulnerable and the obverse, that those with their parents may receive less favourable treatment (Uehling 2008:847).

In stark contrast to the position of undocumented adults who nowhere in the EU enjoy parity of entitlements with nationals to health care, we thus find that in eight Member States children, whether with their parents or unaccompanied, have the same entitlements to health care as children who are nationals of that country: that is, in Estonia (if attending school), France, Greece, Italy, Portugal, Romania, Spain and Sweden.⁶ The age to which the entitlement extends can vary: in Portugal, for instance, it is for those up to 16 years of age and in Spain those less than 18. In most but not all cases the entitlement is explicit in law or

regulations: in Estonia and Romania it is implicit: the law stating that all children are insured for the cost of health care, with no exception made for those with irregular status.

In a further three countries children with irregular status have the same entitlements as children with regular immigration status, but elsewhere only the same entitlements as their parents. At the far end of the scale that can mean access only to emergency care, as in Bulgaria, Finland, Lithuania, Luxembourg and Slovakia. In a further seven countries - Austria, Croatia, Hungary, Latvia, Malta, Poland, and Slovenia – they are entitled only to emergency care and, if applicable, to a few specialist services such as treatment for infectious diseases to which access is granted.

Children who are unaccompanied and known to the authorities often receive greater protection than those living with their parents. We found this to be the case in 11 countries, among which, in Belgium, Croatia, France, Luxembourg and the UK, unaccompanied children are entitled to the same level of health care as nationals of the country (Spencer & Hughes, 2015: Table 3).

Significantly, there are some indications that the direction of travel is towards greater health care entitlements for children. Law reform to grant equality of entitlement with nationals in Sweden came only in 2013. Italy's regions had agreed the previous year that undocumented children should have full access to health care and each assigned a paediatrician, though the region of Lombardy initially refused to comply.⁷ Most recently, Ireland has passed legislation which will remove the requirement to pay the full cost of treatment for children under six.⁸

Legal entitlements to education

Mapping of children's access to education equally reveals a polarisation of entitlements across the EU28 (Spencer & Hughes, 2015). Education is nevertheless notably more inclusive than children's healthcare entitlements and there have been extensions in recent years. In 23 of the EU28, undocumented children are entitled to attend primary and secondary school. In ten countries, that entitlement is explicit in law - in Belgium, Croatia, Czech Republic, France, Greece, Italy, the Netherlands, Romania, Spain and Sweden – as is also the case for primary education in Slovenia.

In Italy, for instance, where the Constitution states '*School is open to everybody*' (Art. 34), legislation is explicit that '*foreign minors staying in Italy have the right to education irrespective of their regular status*'.⁹ Education is compulsory from 6 – 16 years of age and a right until 18. As a fiscal code is normally required for parents to register their children in school, a special procedure enables parents with irregular status to obtain a temporary code for that purpose, demonstrating that procedures that present an obstacle can, with political will, be overcome. A Ministry of Education circular clarifies that schools are not required to pass on information about these children to the immigration authorities (Delvino & Spencer, 2014).¹⁰

In all but five of the remaining countries, the entitlement to attend school is *implicit* in an inclusive reference to 'all' children in constitutional or statute provisions, an ambiguity that can create uncertainty, and conflict with exclusionary procedural requirements in relation to sitting public exams or receiving a school leaving certificate.

An entitlement to attend school, whether explicit or implicit, can be for education up to 18 years or exclude the 16-18 age group, one of many areas of contention: a test case in Spain's constitutional court in 2007, for instance, clarifying that the entitlement to education extends to 18 years of age.¹¹ In rare cases the entitlement to education can include access to apprenticeships, if begun during the years of school entitlement or, as in Italy, include pre-school. There is further variation in whether school attendance brings with it an entitlement to school meals (as specifically provided for in the Netherlands and excluded in the UK) or to a school leaving certificate (FRA, 2011a).

There remain five countries where there is no legal entitlement for undocumented children to attend school: Bulgaria, Finland, Hungary, Latvia and Lithuania. Only those in the Returns Procedure may be able to attend.

Tensions between national and sub-state authorities

The significant restrictions that remain on the entitlements for undocumented children are regularly challenged by regional and local authorities in some Member States. Those challenges have been significant in securing some of the recent extension in entitlements we have seen. Some local authorities are notably unsympathetic to the inclusion of undocumented migrants (as Ambrosini found in northern Italy, 2013), or challenge the financial burden it imposes if an 'unfunded mandate' (Posner, 1998), as in the UK in relation to the duty on local authorities to safeguard all children 'in need' (Price & Spencer, 2015). Yet others go further than national law requires or allows, challenging restrictions through political channels and litigation, but also we found through a myriad of ways to circumvent the rules.

It was Dutch municipalities that insisted, under threat of legal challenge, on the right to allow undocumented young people to take up apprenticeships in the municipal administration when they left school and were successful in 2012 in securing agreement from the government that apprenticeships are a form of education, hence allowed, not work which is not (PICUM 2011,). Swedish regional authorities were influential within a broader coalition of health professionals and NGOs in securing the extension of health care to undocumented migrants in 2013. It was some Italian regional authorities, likewise responsible for health care, that decided unilaterally to extend access to care for children and finally secured agreement across regions to that entitlement in 2012. Obversely, it was the national government that challenged the decision of the City of Milan¹² to exclude undocumented children from pre-school education if their parents could not produce a residence permit. The Minister for Education, Giuseppe Fioroni, argued that a child should not be denied the right to education because of poverty of 'the faults of parents' (Delvino & Spencer, 2014:19), reasoning to which I shall return below.

Some German Länder (regional authorities) led the way in securing access to education for undocumented children in Germany when they by-passed rules requiring schools to notify the police of the presence of undocumented children, foreshadowing a decision by the national government to reinterpret the law in 2011 to exclude that requirement (Laubenthal, 2011). Meanwhile, Berlin instructed its registrar of births to delay informing the police when undocumented mothers register the birth of their child, one of many examples we found of authorities bending rules to facilitate provision of a service that would otherwise be debarred or result in the detection of the family concerned. As the politician responsible at the time, Barbara John, explained:

We talked to the hospitals for instance and arranged that mothers who gave birth would be given a document which they could take to the Registrar of Births so that they could get a birth certificate for the child without the details of the mother having to be identified. We then arranged a time lapse before the Registrars would pass on the information to the police. This was to ensure that mothers got a birth certificate for their child. The child is lost without a certificate to show who they are.¹³.

Elsewhere authorities avoided casting light on the access provided to a service by making arms-length provision through funding of NGOs or for instance by refraining from asking service users for details of their residence status: an extension of Guiraudon's 'shadow politics' of decisions on immigrants' rights to provision in the shadows. Thus they avoided retribution from national governments for breaking or bending the rules and from a public whose sympathy or hostility to this use of welfare resources could thereby remain untested.

Explaining patterns of entitlements between and within Member States

In the study we explored the policy justification given by politicians and officials for the entitlements granted and the contestation between tiers of government that sometimes ensued. There is a broad range of contextual issues which would also need to be considered in a full analysis of the uneven geography of this dimension of immigration practice. It would be necessary to consider the potential impact of differing levels of undocumented migrant populations across Europe for instance (though for adults found not to correlate with patterns of access to healthcare in one study (Cuadra, 2012)) and the absence of data on undocumented children makes such an analysis problematic. Nevertheless it is notable that

among the states with the most restrictive approaches towards entitlements for children are those that have relatively few undocumented migrants and have only recently, as in Finland, begun to review their approach.

Differing approaches to criminalisation of irregular entry and stay might also be expected to be a factor, though of the eight countries in which health care entitlements for children are the same as for nationals, irregular entry or stay is a criminal offence in five. Likewise, in the ten countries where there is an explicit entitlement to education, entry and/or stay is a criminal offence in six, so no clear correlation with that approach to enforcement is apparent (Spencer & Hughes, 2015: Appendix A). Here, any analysis would be complicated by the differing timescales of criminalisation (and de-criminalisation, as in Italy in 2014) relative to the timing of legislation on entitlements.

We might expect relative wealth to be a factor given the cost of service provision, but those countries which allow the greatest access to health care for children include Greece and Romania which, far from among the wealthiest EU Member States, have a GDP well below the European average.¹⁴ In relation to health care it could be relevant to consider whether differing models of health system (whether tax or insurance based or a combination of the two) is a factor in entitlements (Chimienti & Solomos, 2015:34), notwithstanding that a correlation with access to health care (rather than entitlements per se) was not found in an earlier study (Cuadra, 2012:4). Differing public attitudes towards irregularity and undocumented migrants in particular need to be understood, not least in their unique historical context as Casteñada has shown in relation to health policy towards undocumented migrants in Germany (2012).

Rationales provided by policy makers for service provision

Documentary evidence and interviews with policy makers reveal a range of rationales for granting entitlements which, in relation to adults and children taken together, fall under five headings: that provision of the service is necessary to fulfil a legal requirement; to meet humanitarian and ethical concerns; to achieve broader policy objectives (such as public health, cohesion and crime prevention); for the efficient management of public services; or to satisfy public opinion. No single reason is usually cited but a combination, and there is acknowledgement that different reasons are emphasised for different audiences, or prioritised differently by the various policy actors involved.

In relation to children, it is striking that policy makers more regularly cite legal and ethical reasons to justify service provision than, as for adults, reasons related to the authority's broader policy objectives and management of public services.

EU law imposes some requirements, most significantly the Return Directive of 2008¹⁵, which sets down common standards and procedures for returning undocumented migrants from outside the EU. It requires Member States to ensure access to emergency health care, treatment of illnesses and school education for those who are in the return procedure or cannot be removed (Article 14). It also emphasises throughout the need to take due account of the best interests of the child (Article 5). Guidance from the EU Fundamental Rights Agency, endorsed by the Commission, suggested that the police, in seeking to apprehend those without legal immigration status, should not do so near schools or hospitals; that neither of those service providers should be required to share migrants' personal data with

immigration law enforcement agencies; and that undocumented children should be entitled to a birth certificate (FRA 2012).

Domestic legal requirements on local authorities can also be a factor, officials in Amsterdam citing a broad statutory duty of care on all Dutch municipalities, for which the city considered immigration status not to be relevant:

Our duty applies to everyone. The law also requires us specifically to provide shelter for homeless children, and not to separate them from their parents. But there is also the moral reason, that every person is a human being, whether they are here legally or not.¹⁶

Their counterparts in Utrecht similarly cited legal and ethical reasons for putting the child's needs before their immigration status: 'Child protection is another imperative. If there is a child protection issue, period. End of discussion. They must be helped'.¹⁷ The welfare of the child can also be one rationale for providing a service to mothers, as in the practical support given to undocumented street prostitutes in Barcelona to leave that profession:

There is also a child protection dimension to the service [Barcelona] provides. If the woman is on the street there can be a problem in who is looking after her children, or the poor living conditions they are in, and there are currently a number of children taken into care for that reason.¹⁸

Chiming with the 'control' criterion for deservingness identified in the literature, many interviewees justified service provision for undocumented children with reference to these

children bearing no responsibility for their situation. A Greek Ministerial advisor, asked why undocumented children are allowed to attend school, said 'Education is a basic human right. And it was not the children who decided to come here. It was their parents' decision...'¹⁹ Likewise a German city official, referring to a requirement on public services to report the presence of undocumented migrants, said: 'The only exception here is for children in the area of education. This is because children are not responsible and should not be held responsible for the actions of their parents'.²⁰ A Swedish party political advisor, commenting on the considerations that led to law reform in 2013, said they had anticipated winning the argument at least for child health care 'because they could not help the fact that their parents had made bad decisions'.²¹ A German Federal official likewise saw any reforms relating to children as easier to secure and a potential bridge towards greater entitlements for adults: 'so we see the change in relation to children and education as a first step, because it was the most possible change to effect'.²²

Beyond concern for the welfare of the child, the potential implications of exclusion on the achievement of broader social and economic objectives is also a consideration. Referring to the inclusion of undocumented children in Ireland's constitutional right to education, an Irish national official who had responsibilities relating to immigration control nevertheless defended allowing access to education as in the interests of both the child and wider society:

It is not only better for the children, it is not a healthy situation where you have children going underground with their parents with no interaction outside the home and not developing their education. We don't want to have a child reach their teens completely unable to read or write....It would be an undesirable outcome.²³

While we saw access to birth registration justified on humanitarian grounds in Berlin, the advisor to a city mayor in the Netherlands made the case on public health grounds – without information on child births it would not be possible to ensure that the city's vaccination programme for young children reached all those concerned.²⁴

A Dutch national official referred to the wider implications of exclusion in explaining the stance which municipalities had taken in relation to securing access for undocumented young people to apprenticeships:

..they do not want these young people to become drop-outs. The reality is that most of them will stay in the Netherlands and so it is better that they are trained so that they can get a job. This is a tension between the problems faced by the municipalities if illegal migrants who cannot work will be living on the streets and the principle that they should not work. For the municipalities it is better that they go to school.²⁵

That reference to the likelihood that the children will remain in the country was a rare acknowledgement of that reality as a rationale for access to services now. Where framing at national and local level referred to the social consequences of exclusion it was invariably problem focused, not future goal oriented, with no reference for instance to the achievements or contribution these future citizens would make. It is perhaps significant also that policy makers invariably, in justifying access to services, referred to children not adolescents, the literature finding greater politics of compassion around undocumented

children, perceived as vulnerable, than adolescent migrants who are more likely to be perceived as a threat (Uehling, 2008:838).

Politicians and officials that support a level of inclusion for undocumented children nevertheless find they are caught between the imperatives of child welfare and immigration control: “on the one hand the law says we must take care of children”, an Italian city official told us, “but on the other hand immigrant children come under migration law and these laws are not always compatible.”²⁶

Conclusion

Undocumented migrant children and adults are the subject of formal exclusion from legal entitlements to services in EU Member States but also to formal inclusion through an uneven pattern of entitlements to access essential services and documentation. There is significant variation between Member States in the entitlements granted to undocumented children in relation to health care and education; and within states yet greater variation in the provisions made by those regional and municipal authorities which endeavour to fill the gaps. There is, for undocumented children, a veritable post-code lottery of entitlements across the EU.

A full analysis of the factors that lie behind this variation would require comparison of contextual factors including the geographical dispersal of undocumented migrants, differing models of health care system and differing cultural attitudes towards irregularity and undocumented migrants. Theory suggests nevertheless that some explanatory value can be found in the competing policy imperatives experienced within national administrations and

between national, regional and local tiers. The evidence from our study supports that view, finding in relation to children in particular that domestic legal requirements embodying welfare and human rights principles, coupled with broader ethical standards relating to the welfare of the child, are significant factors in decisions to provide access to services. Social policy objectives are nevertheless a further factor, beyond the interests of the child. Political support for services to children, not least where evidence exists of the damaging consequences of exclusion, has in some instances proved less difficult to secure than for adults.

Our findings show that the level of children's entitlements to services relative to those of adults also reflect differing perceptions of children's worthiness for inclusion, children being seen as in need of protection and as bearing no responsibility for the behaviour of their parents for breaches of immigration control. Perceptions in relation to those two criteria of deservingness – need and control – counter, to an extent, the negative perception of their irregular immigration status. While undocumented children may thus be seen as *more* deserving than their parents it is only in a minority of European countries that they are seen as *equally* deserving as citizens in terms of entitlements to health care and education. In contrast to recent debates in the United States, their deservingness among policy makers rests on their identity as children, rather than any meritocratic argument relating to their achievements or potential contribution as future citizens to the country in which they live.

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¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L348/98.

² A duty under the Children Act 1989 (s17). A child is 'in need' if unlikely to achieve or maintain a reasonable standard of health or development without the provision of services by a local authority; if their health or development is likely to be significantly impaired without services or is disabled.

³ <http://picum.org/en/news/bulletins/>

⁴ The 137 interviewees included 35 national policy makers of whom 29 were officials, three elected representatives and three political advisors; and 49 regional and local policy makers of whom four were elected representatives and one a political advisor to a city mayor. The officials and elected representatives all had, or had had, responsibility for policy area relating to welfare or education entitlements for undocumented migrants, in a minority of cases with managerial responsibility for a relevant public service.

⁵ Austria, Belgium, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Netherlands, Spain, Sweden and the UK.

⁶ A recent PICUM report (2015) identified nine Member States where entitlements are the same as those of nationals. It included Cyprus, where we judge that the Ministerial Circular granting entitlements may not meet our criteria of legal entitlement, illustrating the grey area that can pertain in relation to entitlement/no entitlement.

⁷ See PICUM Bulletins dated 22 January 2013 and 10 October 2013. Also Delvino and Spencer, 2014.

⁸ The Health (General Practitioner Service) Act 2014 (s5) provides an entitlement for children aged 5 and under to have access to a free GP service if 'ordinarily resident'. In Parliamentary debates (Oireachtas Second Stage debate, 2 July 2014) the Minister referred to 'all' children benefiting from the provision; but it remains to be seen whether immigration status is used to deny access.

⁹ Art. 38 of the Legislative Decree No. 286 of 1998 and Art. 45, par. 1, D.P.R. No. 394 of 1998

¹⁰ Italian Ministry of Education, University and Research, *Linee guida per l'accoglienza e l'integrazione degli alunni stranieri del febbraio 2014*; Circular letter No. 28 of 10 January 2014.

¹¹ *Sentencia del Tribunal Constitucional* - STC 236/2007, 7 November 2007, appeal of unconstitutionality number 1707-2001, lodged by the Parliament of Navarre against Organic Law 8/2000, of 22 December, reforming Organic Law 4/2000).

¹² City of Milan Circular letter No.20 of 17 December 2007.

¹³ Barbara John, Commissioner for Foreigners in the Berlin Senate 1981-2003, interviewed by the author, July 2013

¹⁴ 'GDP per capita, consumption per capita and price level indices', Eurostat Statistics Explained http://ec.europa.eu/eurostat/statisticsexplained/index.php/GDP_per_capita_consumption_per_capita_and_price_level_indices accessed 5 January 2015.

¹⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L348/98.

¹⁶ City official, interviewed by the author, March 2013

¹⁷ City official, interviewed by the author, March 2013

¹⁸ City official interviewed by the author, January 2013

¹⁹ Ministerial advisor, interviewed by the author, July 2013

²⁰ Interviewed by the author and Vanessa Hughes, July 2013

²¹ Interviewed by the author, September 2013

²² National official, interviewed by the author and Vanessa Hughes, July 2013

²³ National official, interviewed by the author, November 2012

²⁴ Interviewed by the author, March 2013

²⁵ National official, interviewed by the author, March 2013

²⁶ City official, interviewed by the author with interpreter, April 2013