EMBO reports

talking point

Public health and civil liberties

Introduction to the Talking Point on public health versus civil liberties

Reinhard Kurth

The opinion pieces that constitute this month's 'Talking Point' address the old conflict between the enforcement of public health measures and the inevitable infringements of individual rights and liberties that are the result. The task of the 'neutral commentator' is made difficult by the fact that the authors are not particularly at odds with each other. George Annas argues that compulsory enforcement of public health measures is both an infringement of individual rights and is ineffective or even counter-productive; Ronald Bayer believes that the inevitable conflict between public health measures and human rights must be acknowledged and dealt with according to the situation. The neutral commentator's role is hindered further by the fact that, as a scientist and advisor to the German government, I believe that there are indeed situations when compulsory measures are the only reasonable option—but these must be the last resort when all voluntary measures fail.

Annas blames politicians and public health officials for fostering a climate of fear about health threats. Certainly the extreme measures to prevent perceived—but in reality slight or even non-existent—dangers can be highly counter-productive except to the individual who gains the desired public exposure. In the USA, these 'threats' are primarily about terrorism, and the related fears that thrive in the post-9/11 society. Europe has had similar disproportionate reactions to perceived threats, such as mad cow disease, but more often public health officials have had to calm feelings of hysteria and fear among the public whipped up by an uninformed and often unscrupulous press. They have to walk a thin—and often uncertain—line between relieving public fear by giving fact-based advice and ensuring that steps are taken to minimize any actual threat.

Annas draws a parallel between the knee-jerk reactions of the US government in the wake of the terrorist attacks of September 11—that is, hastily introduced laws allowing government agencies to circumvent standards of human rights—and the reaction to a possible pandemic, whether it originates from terrorism or nature. In many ways, this is a fair analogy: there is little doubt that the 'one percent doctrine' he describes is all too pervasive among both the US and European governments, and that politicians fear being held responsible for a lack of preparedness following a disaster, natural or otherwise. However, the draconian measures introduced in the wake of September 11 were directed at those suspected—no matter how slight—of terrorism. It is not clear whether innocent victims of a future pandemic would be treated in the same harsh manner.

Although he rightly condemns fear-mongering, Annas's refutation of the claims about the potential deaths resulting from a deliberate release of anthrax or botulinum toxin—he points out that the few cases in which such bioweapons were used resulted in a negligible death toll—does not hold up. The failure of these amateurish attempts does not negate the potential damage from a well-planned and executed attack using these agents; most microbiologists will confirm that the potential threat is quite real.

Both authors correctly point out that the threat of disease has often been used in the past to further political agendas or to justify discrimination of minority groups. As Annas describes in some detail, the advent of HIV/AIDS was the trigger for intense debates about the conflict between the rights of the individual and the need to both monitor the spread of the disease and to protect the public. This controversy, for several reasons, was primarily based in the USA, whereas a more liberal atmosphere in most European countries made it easier to reach a reasonable compromise. Constructive dialogue between, for example, the gay community and public health authorities, and a responsible attitude taken by most who are at risk eventually helped to curtail the explosive nature of the epidemic. This was achieved without the need for enforcement—as was advocated by some—and led to the destigmatization of AIDS. HIV is, however, a sexually transmitted disease, and it is likely that had the virus been found to be also transmissible by casual contact, aerosol or insects, then public reaction would have remained hostile and discriminatory, and support for compulsory public health measures would have been high.

Annas is perfectly correct to defend individual rights and to point out that drastic measures that curtail such rights do not necessarily contribute to better public health. Yet, I believe that there are situations in which the good of the public must come before the rights of the individual. How should the authorities react to a person who carries a potentially deadly infectious disease but refuses all voluntary measures to protect other members of the public? Admittedly, such cases are likely to be rare, but I think that there must be mechanisms in place to enforce compulsory isolation if necessary. This is basically the line taken by Bayer: liberty-depriving measures should not be ruled out *per se* because not all members of the public can be trusted to do the right thing.

People can only be expected to voluntarily submit to liberty-depriving measures in times of crisis and only if they fully trust in the

honesty and competence of the public health authorities. The recommendations must be seen to be for the good of both the individual and of the populace in general, and to be a balanced response to the level of threat. We all know the tale of 'the boy who cried wolf', and both authors emphasize the need to engage the public in an open and reality-based discussion of civic responsibilities in the face of pandemics or bioterrorism attacks. Indeed, a loss of trust can have devastating consequences. The scare in the UK surrounding the 'possible' causal link between the MMR (measles–mumps–rubella) vaccine and autism led to many children missing the vaccine and becoming infected. Disinformation and fear spread by local religious leaders and politicians concerning the polio vaccine resulted in a resurgence of the disease in Nigeria and neighbouring countries. Unfortunately, emotion-based fear-mongering by popular figures is often more readily accepted than fact-based information from a government agency.

As was shown during the SARS outbreaks, the vast majority of the public is willing to act responsibly through self-quarantine and such voluntary measures seem to be highly effective. Annas describes in some detail the handling of the SARS epidemic in different parts of the world and correctly concludes that the requests for the voluntary isolation of suspected contacts was probably more effective than the harsh measures adopted in some Asian countries. I myself was faced with the task of advising the German authorities on how to deal with a plane full of passengers suspected of SARS exposure that landed in Frankfurt in 2003. At the time, reliable information concerning the transmissibility of the virus was lacking and compulsory quarantine was a real option. I, and others, advised voluntary isolation and monitoring, which in retrospect was the correct decision. However, had SARS turned out to resemble smallpox in terms of infectiousness and had some passengers decided to ignore the advice, the consequences of not enforcing isolation could have been catastrophic.

Although in principle I agree with Bayer's line that there are tensions between civil liberties and the goal of public health, he does not sufficiently emphasize that infringements of individual rights and freedom should only be imposed on individuals who pose a real and demonstrable risk to other members of the public, and who steadfastly refuse to comply with voluntary measures such as home isolation. In such a situation, I feel that the only ethical option is to act for the 'greater good' and to implement compulsory measures. As Annas correctly points out, blanket quarantine of whole cities or even states is likely to be counterproductive as people will escape from the area and thereby spread the disease. However, what should be done if, for example, Ebola breaks out in a small village that could be easily contained by isolation and quarantine of infected individuals? In my opinion, individuals who were potentially exposed to the virus should be first counselled to undergo voluntary isolation; however, failing to comply they should be prevented from moving, until a period of quarantine has passed.

As initially stated, the views in the two articles are not actually in opposition. Annas documents the abuses of power that can arise when the right to impose restrictions is wielded in a climate of fear that usually accompanies a new epidemic, be it natural or man-made. Furthermore, he correctly points out that such measures are usually unnecessary or even counterproductive, and foster, rather than inhibit, the spread of the disease. He argues that to avoid the slippery slope of human rights abuse, civil liberties should always come first, and that we should rely on the willingness and responsibility of the public to abide by self-imposed restrictions—a scenario that would work in the ideal world and indeed seemed to work admirably well in the case of SARS. Bayer maintains that there are inevitable conflicts between the rights of the individual and the need to protect the health of the general public, and pleads that this conflict be recognized and addressed openly so that the necessary compromises can be worked out.

In my opinion, individual rights should be a very high priority in any situation, but these rights should be trumped by the 'right' of the public to be protected. Each case has to be evaluated on its own terms and if—and only if—an individual refuses to comply with voluntary measures, then compulsory measures should be enforced. The potential number of such individuals can be limited by fostering the public's trust in health authorities, by giving advice that is based on rational science rather than political opportunism, and by being seen to react to such threats in a measured and balanced manner that stresses, wherever possible, the rights of the individual, while at the same time doing everything possible to protect the health of the public.

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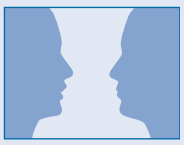

For more discussion on this topic, see also
Annas GJ (2007) Your liberty or your life. This issue p1093. doi:10.1038/sj.embor.7401133
Bayer R (2007) The reality of continuing tensions between civil rights and public health. This issue p1099. doi:10.1038/sj.embor.7401134