Introduction to the Talking Point on public health versus civil liberties

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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 
egenerate 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 surround-
ing the ‘possible’ causal link between the 
MMR (measles–mumps–rubella) vaccine and 
autism led to many children missing the vac-
cine and becoming infected. Disinformation 
and fear spread by local religious leaders 
and politicians concerning the polio 
vaccine resulted in a resurgence of the dis-
ease 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 differ-
ent parts of the world and correctly con-
cludes that the requests for the voluntary 
isolation of suspected contacts was proba-
bly 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 iso-
lation and monitoring, which in retrospect 
was the correct decision. However, had 
SARS turned out to resemble smallpox in 
terms of infectiousness and had some pas-
sengers 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 lib-
erties 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 com-
pulsory 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 
infectected individuals? In my opinion, indi-
viduals who were potentially exposed to the 
virus should be first counselled to undergo 
voluntary isolation; however, failing to com-
ply 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 opposi-
tion. 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 counter-
productive, 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 willing-
ness 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 poten-
tial number of such individuals can be lim-
ited by fostering the public’s trust in health 
authorities, by giving advice that is based on 
rationale science rather than political oppor-
tunism, 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.