Commentary

Republicanism and the Paradox of Public Health Preconditions Comments on Steve Latham

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This is a commentary on Steve Latham's paper for the PHE Special Issue on Republicanism and Public Health.

Steve Latham's paper in this special issue raises an important criticism against the political theory of civic republicanism as applied to public health. Proponents of the role of republican ideas in public health ethics, law and policy, such as Bruce Jennings (2007), argue republican thinking has the necessary resources to legitimate public health interventions. Latham disagrees, however, because 'Civic Republicanism's concern with non-domination will lead any Civic Republic to expend all its citizens' energies merely in maintaining themselves as free' (Latham, 2016). On the republican view, the pursuit of health requires a constant intensive engagement of each citizen in political life, leaving little or no time to employ their healthy body to further their respective life plans.

Latham substantiates his argument with the assistance of Nicolai Hartmann's (2003) hierarchical theory of value. In particular, Latham is interested in 'Hartmann's distinction between "high" values and "strong" values, and his claim that height and strength of values are in inverse proportion to one another' (Latham, 2016). Following Hartman's theory, a value is 'high' if its achievement confers great merit, and a value is 'strong' if being deprived of it is considered a great wrong. High and strong values are both important, but they nevertheless stand in a particular hierarchical relation, with strong values being the conditions upon which to exercise the high values (Latham, 2016). Latham applies the distinction between high and strong values directly to public health. 'Life and health are, for most of us, quintessential strong values. One who deprives another of his life, or who injures his

health, has greatly wronged that other. But no person deserves much praise merely for being alive and healthy. Being alive and healthy is merely the baseline from which a person can hope to build toward higher achievements' (Latham, 2016).

The distinction between high and strong values suggests a division of labour between personal and social responsibility. Where individuals take responsibility for pursuing the 'merit goods' embodied in the high values, the state is charged with securing the foundation of strong values that allow individuals to devote their time and energy in pursuit of their life plans. Here, Latham argues, Civic Republicanism gets into trouble. Non-domination, like life and health, is best regarded as a strong value, a condition of being free to pursue one's life free from alien control, as Philip Pettit has it (Pettit 2012). The state plays a key role in securing the condition of freedom from domination for all its citizens, but state agency itself can rapidly turn into domination in its own right. The republican solution against state-based domination (or *imperium*) is the constant active vigilance of its citizenry. The problem for Latham is that this suggests that citizens' virtue is entirely dispensed by securing a strong value (non-domination), leaving no time or energy to private pursuits of high virtues.

The same conclusion applies with respect to the achievement of the value of public health. 'Health is too basic a goal to demand citizen's time. Citizens should be engaged in the pursuit of higher values' (Latham, 2016). Latham runs the arguments against republican theory and public health in tandem, but it remains unclear how they interact. One key question

becomes whether the republican approach to public health is particularly vulnerable to the challenge of devoting too many private resources (time, energy, etc.) in the pursuit of the strong value of health. The answer to this question would require a better understanding of how good health relates to non-domination: should we understand the relationship in terms of good health contributing to non-domination or instead being free from domination having positive health effects? Or might we consider that at some point the pursuit of health and republican freedom may conflict, perhaps because individuals spending their time invigilating the state have insufficient time to pursue a healthy lifestyle? Unfortunately, Steve Latham offers us little by way of explaining this relationship.

Following Latham's description it would appear the republican approach to public health is trapped in a version of the 'paradox of preconditions', as outlined in detail by Carlos Nino (1996). In the context of a deliberative democracy, Nino has suggested that a democratic decision-making procedure has epistemic value only if certain requirements are satisfied: these requirements are the preconditions of the process itself, and as such exempted from democratic deliberation. The paradox consists in that a more robust deliberative procedure effectively restricts the scope of deliberation itself. Similarly we can interpret Latham's concern as a *paradox of public health preconditions* the more intense engagement is required from citizens to legitimate public health interventions and promote good health, the more we restrict the scope for people's pursuit of higher activities while enjoying their hard-earned freedom and health. The trade-off between securing the preconditions for public health and the pursuit of personal life plans made possible by public health seems inevitable, and Civic Republicanism offers no way out.

However, this conclusion may be premature. Nino (1996) has suggested that we can avoid the paradox of preconditions by adopting a 'balancing approach' between the prerequisites of democracy and the scope of democratic decision-making. In a nutshell, there is no need to make the democratic process perfect while reducing its scope to decisions about trivial issues. The epistemic value of democracy is not all or nothing (Nino, 1996: 139–140). I believe Nino's suggestion applies directly to Latham's challenge against the republican approach to public health. Latham believes the apparent trade-off between securing the strong values of health and freedom and the pursuit of higher values is detrimental to Civic Republicanism. But republicans can avert this problem at least in part by pointing out that citizens' personal engagement in achieving public health

is not an all-or-nothing-affair. The lack of full satisfaction of public health preconditions may deprive people of the opportunity to fully engage in the political life, but the republican concern with non-domination does not need to lead to the elimination of the opportunities for using their freedom. We must balance achieving non-domination while engaging in political life, on the one hand, and the pursuit of higher values, on the other hand. So one republican strategy is to accept the inherent trade-off represented by the paradox of public health preconditions, but insist that this still leaves us with considerable collective freedom to determine what constitutes the correct balance between the pursuit of strong and high values. A second strategy is to think carefully about arranging the public institutions responsible for public health interventions in a way that promotes non-domination while leaving individual citizens with time to move on with their own plans of life. Here the distribution of labour between various controlling institutions guaranteeing the overall accountability and transparency of public health policy is critical.

Chief amongst public institutions, in my view, is the role of the courts in legitimating public health interventions. While the intervention of courts remains very controversial, both in general and amongst republicans (Pettit, 1999, 2012; Bellamy, 2007), elsewhere I have argued they constitute an invaluable part of the public health policy process (Morales, 2015). Judicial review is by no means a full answer to Steve Latham's concerns, but introducing an additional voice through the judicial process nevertheless may promote contestation, expand participation, include alternative points of view, and generally broaden social debate (Syrett, 2011, 2014). Admittedly, existing judicial systems require substantial reform for the courts to effectively grant a robust voice to the people, and republican political theory will offer important guidelines to ensure courts play a proper role in legitimating public health interventions in a democratic society.

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