What Makes Health Public?

John Coggon argues that the important question for analysts in the fields of public health law and ethics is 'what makes health public?'. He offers a conceptual and analytic scrutiny of the salient issues raised by this question, outlines the concepts entailed in, or denoted by, the term 'public health', and argues why and how normative analyses in public health are inquiries in political theory. The arguments expose and explain the political claims inherent in key works in public health ethics. Coggon then develops and defends a particular understanding of political liberalism, describing its implications for critical study of public health policies and practices. Covering important works from legal, moral, and political theory, public health, public health law and ethics, and bioethics, this is a foundational text for scholars, practitioners, and policy bodies interested in freedoms, rights, and responsibilities relating to health.

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Cambridge Bioethics and Law

This series of books was founded by Cambridge University Press with Alexander McCall Smith as its first editor in 2003. It focuses on the law's complex and troubled relationship with medicine across both the developed and the developing world. In the past twenty years, we have seen in many countries increasing resort to the courts by dissatisfied patients and a growing use of the courts to attempt to resolve intractable ethical dilemmas. At the same time, legislatures across the world have struggled to address the questions posed by both the successes and the failures of modern medicine, while international organisations such as the WHO and UNESCO now regularly address issues of medical law.

It follows that we would expect ethical and policy questions to be integral to the analysis of the legal issues discussed in this series. The series responds to the high profile of medical law in universities, in legal and medical practice, as well as in public and political affairs. We seek to reflect the evidence that many major health-related policy debates in the UK, Europe and the international community over the past two decades have involved a strong medical law dimension. With that in mind, we seek to address how legal analysis might have a trans-jurisdictional and international relevance. Organ retention, embryonic stem cell research, physician assisted suicide and the allocation of resources to fund health care are but a few examples among many. The emphasis of this series is thus on matters of public concern and/or practical significance. We look for books that could make a difference to the development of medical law and enhance the role of medico-legal debate in policy circles. That is not to say that we lack interest in the important theoretical dimensions of the subject, but we aim to ensure that theoretical debate is grounded in the realities of how the law does and should interact with medicine and health care.

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John Coggon
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Dedicated to Hosam Bang: a gentleman, scholar, and great friend

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Foreword

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John Coggon, in this seminal book, asks a question of such simplicity, but also of such profound importance: What makes health public? The rigor with which he examines this critical question will make this book a classic in the field of public health ethics – an essential reference point for scholars, students, and policy-makers. Coggon's essential claim is that any normative analysis in the field of public health, or argument in favor of, or against, a particular public health measure, is based in political theory. This remains true whether the proponent favors a limited model of public health (with a narrow public sphere) or an expansive model. In both cases, Coggon treats these as political questions, exposing the political nature of public health claims.

What I wish to do in this foreword is to demonstrate why Coggon's question is so significant in contemporary academic and public discourse. In short, understanding the public/private dimensions of health is indispensible for ascertaining the appropriate scope of governmental public health in a liberal democracy. And that issue, as Coggon points out, is as socially and politically charged, as it is important to the population's wellbeing.

To begin with, scholars often refer to "health" with some imprecision. Health, of course, is a *status* of high value to humanity. Health has intrinsic, but also instrumental, value through its contribution to human functioning – happiness, creativity, and productivity. Health is also essential for the functioning of populations – engaging social interactions, participating in the political process, exercising rights of citizenship, and generating wealth.

But what produces health? There is no definitive answer to that question, but one might divide health-producing interventions as including three overlapping spheres: health care (individual clinical services), public health (population-based approaches), and broader socio-economic determinants (fair distribution of income, jobs, housing, and social

support). There are public/private dimensions to each of these, and they are the subjects of pitched political battles.

The public/private dimensions of health care

Much of the discourse about health is devoted to health care – a complex system of primary, emergency, and hospital services designed primarily to diagnose and treat individuals who become ill or injured. Political disagreements about the public/private domains of health care are rife. If health care is a human right, as many argue, the State has a duty to ensure health goods and services that are available, accessible to everyone (including being affordable and geographically accessible), acceptable (including culturally), and of good quality.

The State's obligation to ensure the right to health under international law, however, has not tamped down the division between those who see health care as a core public obligation and others who see it as a market commodity. Most States broadly accept that health care is a public responsibility, which takes many different forms ranging from a national health service to a single or multiple payer system. The private sphere, however, can dominate in certain countries such as the United States. In the debates over President Obama's health care reform, political adversaries cast public financing and quality standards (even comparative cost effectiveness) as government-imposed "death panels." And even in primarily public systems, the tension between public and free market principles is palpable. Consider, for example, the Canadian Supreme Court, which struck down a prohibition on private medical insurance because it violated patients' "liberty, safety and security" under the Quebec charter.[1]

Another dimension of the public/private divide is whether individuals have primary responsibility for their own health. In the health care context, conservatives argue that individuals who fail to take good care of their health ought to pay more for their insurance or even be excluded from coverage for certain conditions. Increased premiums for smokers is common in private run systems, but conservative scholars argue that it should extend to persons who are obese, abuse alcoholic beverages or drugs, and even individuals with sexually transmitted infections such as HIV. Those who engage in high-risk activities, such as skydiving, would also have reduced coverage or pay higher premiums. Conversely, many private insurance companies are now offering premium discounts

[1] *Chaoulli* v. *Quebec (Attorney General)* [2005] 1 SCR 791, 2005 SCC 35.

for those who engage in healthy behavior, such as going to the gym or maintaining a favorable mass/body index.

Consequently, John Coggon's question, "what makes health public?" becomes exceedingly important in evaluating how health care is financed and provided, and whether and to what extent health goods and services should be governed by free enterprise principles.

The public/private dimensions of public health

One might assume that controversies about the public dimension of public health would be less intense than with health care. After all, health care professionals serve individuals, while public health agencies serve the population as a whole.

The word "public" in public health can be understood to have two overlapping meanings – one that explains the entity that takes primary responsibility for the public's health, and another that explains who has a legitimate expectation of receiving the benefits.[2] The government is the public entity that acts on behalf of the people and gains its legitimacy through a political process. And it is the population that has a legitimate expectation of benefiting from public health services. What best serves the population, of course, may not always be in the interests of all its members, making public health highly political. What constitutes "enough" health? What kinds of services are necessary? How will services be paid for and distributed? These remain political questions.

Almost everyone understands that the level and kinds of services that government offers are political. There are finite resources and public officials will take differing views about the relative value of health as opposed to other public goods, such as energy, defense, transportation, or even tax relief. But it is not only the allocation of public health resources that are within the political realm, but also the very role of government together with its relationship to the individual.

The dominant liberal perspective holds that the State can interfere with individual autonomy only to prevent harm to others. It is for this reason that conventional infectious disease services (e.g., screening, reporting, and quarantine) are relatively uncontroversial. But when the State intervenes in personal choices that are primarily self-regarding (e.g., what to eat, whether to smoke, or even whether to wear a helmet) the political divisions are at their height.

[2] Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (2nd edn) (Berkeley: University of California Press, 2008), available at www.ucpress.edu/books/pages/11023.php.

The political fault line is between a government that actively orders society for the good of the people (a "nanny state") on the one hand, and a government that leaves individuals to make their own personal and economic choices on the other. Arguments over the nanny state range from mandating motor cycle helmets and fluoridating drinking water, through to a tax on sweets, a ban on trans fatty acids, and zoning or taxation to incentivize shops that sell whole foods and disincentivize fast food establishments.

Paternalism remains at the heart of the political debates over the appropriate role of the State in creating the conditions in which people can be healthy. Public health paternalists rely on the fact that people face constraints (both internal and external) on the capacity to pursue their own interests, including cognitive and informational deficits, as well as limited willpower. They may objectively know what is in their best interests but find it difficult to behave accordingly. Finally, individuals face social and cultural constraints on their behavior. Human behavior is influenced by many external factors including parents and family, peers and community, media and advertising.

Perhaps it is not even accurate to think of public health paternalism as directed to the individual at all but instead towards overall societal welfare. Public health practices are "communal in nature, and concerned with the well-being of the community as a whole and not just the well-being of any particular person."[3] Public health aims its policies toward the community and it counts its results in improved health and longevity in the population. Even if conduct is primarily self-regarding, the aggregate effects of persons choosing not to wear seatbelts or helmets can be thousands of preventable injuries and deaths.

Again, Coggon's question, "what makes health public?" becomes exceedingly important in social and political life. Do we allow individuals to make their own choices, even if they will suffer adverse consequences and the population as a whole will bear considerable burdens? Or is this purely a matter of personal choice? So much about what the State does, and its relationship with its citizens, is intricately tied to how these questions are resolved in the political realm.

[3] Dan Beauchamp, "Community: The Neglected Tradition of Public Health", in D. Beauchamp and B. Steinbock (eds.), *New Ethics for the Public's Health* (New York: Oxford University Press, 1999), p. 57.

The public/private dimensions of socio-economic determinants of health

A strong and consistent finding of epidemiological research is that socio-economic status (SES) is correlated with morbidity, mortality, and functioning. SES is a complex phenomenon based on income, education, and occupation. Material disadvantage, diminished control over life's circumstances, and lack of social acceptance all contribute to poor health outcomes. Some researchers go further, concluding the overall level of economic inequality in a society correlates with (and adversely affects) population health. That is, societies with wide disparities between rich and poor tend to have worse health status than societies with smaller disparities, after controlling for *per capita* income. The World Health Organization's Commission on Social Determinants of Health concluded, "the social conditions in which people are born, live, and work are the single most important determinant of good health or ill health, of a long and productive life, or a short and miserable one."[4]

Assume that these data are as robust as the public health community believes them to be. Does it follow that the State is obliged to ensure more plentiful, and more equal, distribution of socio-economic goods? This may be the most politically contentious question of all because it goes to the heart of political life – whether government's first duty is to redistribute wealth across the population. The Social Determinants Commission, for example, recommends equity across the life span, beginning with child development and education, through to fair employment and housing, as well as social protection for everyone, including the elderly. Must the State tackle inequitable distribution of power and resources, with health equity becoming a marker of government performance?

On one level, it is only the State that can exercise the legitimate power to redistribute socio-economic goods through its power to tax and spend – for example, steeply progressive taxation and generous social welfare programs. On another level, each individual is positioned to provide these goods for themselves in a free enterprise system. Even the most free market advocates often make allowances for particularly vulnerable groups, such as children, the elderly, and persons with physical or mental disabilities – allowing a modicum of State support services.

[4] Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health* (Geneva: World Health Organization, 2008).

But they would make no such allowance to able-bodied adults who, in their view, are capable of meeting their own needs. In relation to the fully capable, free market theorists posit that state services actually incentivize less productive activities.

Here, the familiar divide between State and individual responsibility is acute. There are certain conditions of life (e.g., food, housing, education, and work) that are well known for their positive influence on health. Yet, Coggon's question remains as pertinent as ever – what makes health (in this case mediated through socio-economic conditions) public?

The book's three broad projects

I have sought to briefly show why the public/private domains involving human health are critically important, and why they are so political. I hope this foreword makes the reader want to know more. John Coggon's penetrating analysis is essential for understanding the public sphere, and its deep political dimensions.

Coggon engages in three broad projects. First, he offers a thorough conceptual analysis, in particular of the different things people mean when they use the term "public health." Unpacking the variety of meanings of this much-used term will significantly improve scholarly and public discourse in the field. Secondly, Coggon provides an analytic framing for arguments in public health law and ethics, discussing what he means by politics (as compared with and sometimes opposed to morality), and then using this framing to explain some of the most influential arguments in public health ethics. Finally, he develops his own preferred understanding of political liberalism, and discusses its implications for arguments about public health ethics.

The field of public health ethics – still relatively young – owes a great debt to John Coggon. His book will be much discussed, and highly influential, as the field matures and integrates with broader social and political discourse.

Lawrence O. Gostin
Washington, D.C.
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