

# Public Health and Human Rights: Does the Theory Fit?

*Salus populi est suprema lex*-the welfare of the people is the supreme law (from Rosen, 1952)

The U.S., however, "maintains one of the shabbier systems of communal provision in the Western world" (Gostin, 2000)

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# Human rights—‘Laws of Mann’

- The relevance and effectiveness of public health is challenged in light of research showing that population health is affected more by social, political, and economic structures than by the individualist paradigm of current public health policy.
- Public health is in need of new theory that incorporates determinants of population health and informs public health actions and policy
- The need for new theory to inform public health and its actions is clear. Mann (1999) and others attempted to fill this need with a framework of health and human rights.

# Health and Human Rights

- A Health and human rights framework incorporates an inextricable link: health effects result from violation of human rights, and health policies affect human rights.
- Human rights are rights of the individual in her relationship to the state. They promote individual capacity and protection against unreasonable governmental interference:
  - ‘what government can do to you, can’t do to you, and must do for you’ (Gruskin, APHA, Boston, 2006).
- Linking health to human rights is justified because the combination advances “human well-being beyond what could be achieved through an isolated health or human rights-based approach.” (Mann, 1999)
- A reformulation of the relationship between health and human rights is recommended as a theoretical foundation for public health.
- Yet human rights are often at odds with public health policy.

# Domestic Law in Public Health: Old Possibilities for New Theory

- Defining health as a right is difficult, “international human rights law seldom provides easy answers; rather, it struggles to define and enforce human rights in the context of the legitimate powers of governments” (Gostin, 2000).
- A theory of public health law is characterized by an inherent responsibility of government to advance the population’s health and well-being as a requirement of the Constitutional security obligation.
- This is reminiscent of Gruskin’s *what governments must do for you* except that the responsibilities are characterized as the common welfare or security, not defined as health, and traditions of American individualism often prevent government from doing anything *for you*.
- As with human rights and health, public health legal theory may conflict over the rights of the individual.

# Public Health Law

- Most of public health law theory and policy are not controlled or influenced by the public health profession or institutions
- The connection between democratic governance and the design of public health is often not evident.

# Human Rights or Civil Rights

- Civil rights are a body of law that may provide theory to satisfy the social determinants and population focus of public health.
- Civil rights inhere to the citizen, providing for a defined if not unchanging body of law that relates to public health.
- Human rights on the other hand, inhere to the human by virtue of being human, yet domestic law and the boundaries of nations remain the foundation of health and health policy.
- It is difficult to operationalize human rights law as a theoretical foundation for health, but civil rights law is already subject to deliberative, democratic processes and enforcement within national boundaries

# Civil Rights

- Civil rights houses the same conflict of individualism and collective good that is seen in human rights and public health law theory.
- In spite of the fact that civil rights also inhere to the individual, they, like human rights, have a collective effect.
- It appears that the presence and enforcement of civil rights improves health above and beyond free speech and the right of association
  - Racial parity in longevity did not exist before the civil rights era and was lost in the neo-liberal era beginning in the early 1980's.

# Governance and/or Social Justice as Theory for Public Health

- Beauchamp equates public health as public discussion, education and free speech with the right to self-government: "indeed, self-government, properly understood, is what we mean by public health" (1988).



# Governance and Social Justice

- The *republican equality* borne of collective governance in this tradition could provide a political framework for a fairer and more expeditious settling of conflicts related to collective provision of health.
- Intimate knowledge of the community and the desire for participation in governance for the common good is a bottom-up, social justice-style theory, very familiar to public health.

# The Second Language

- Bellah describes the “second language” of the republican tradition in terms of a collective responsibility for governance derived from the Judeo-Christian ethic (the “first language” being that of American individualism).

# Non-Participatory Governance and Health

- The social democracies are not necessarily characterized by Bellah and Beauchamp's participatory governance model
- They are characterized by attention to social welfare, full employment, and the voice of labor which are several of the determinants of population health .

# Participatory Governance and the Second Language of Public Health

- The American value of communal provision in the republican scheme may be the necessary underpinning to a socially just form of policy in the U.S.
- Yet, Wallack & Lawrence suggest we are currently unable even to describe Bellah's unsatisfying absence of collective concepts because we lack the language to do so.

# Social Justice and Public Health

- Social justice is at the root of historic public health practice and theory.
- The U.S. largely fails to recognize social justice in health policy, and the first language of American individualism often crowds out the collective understandings of social justice.
- Resolving the social determinants of poor health and equitable delivery of the fruits of society are at the core of a social justice theory of public health.

# Conclusions

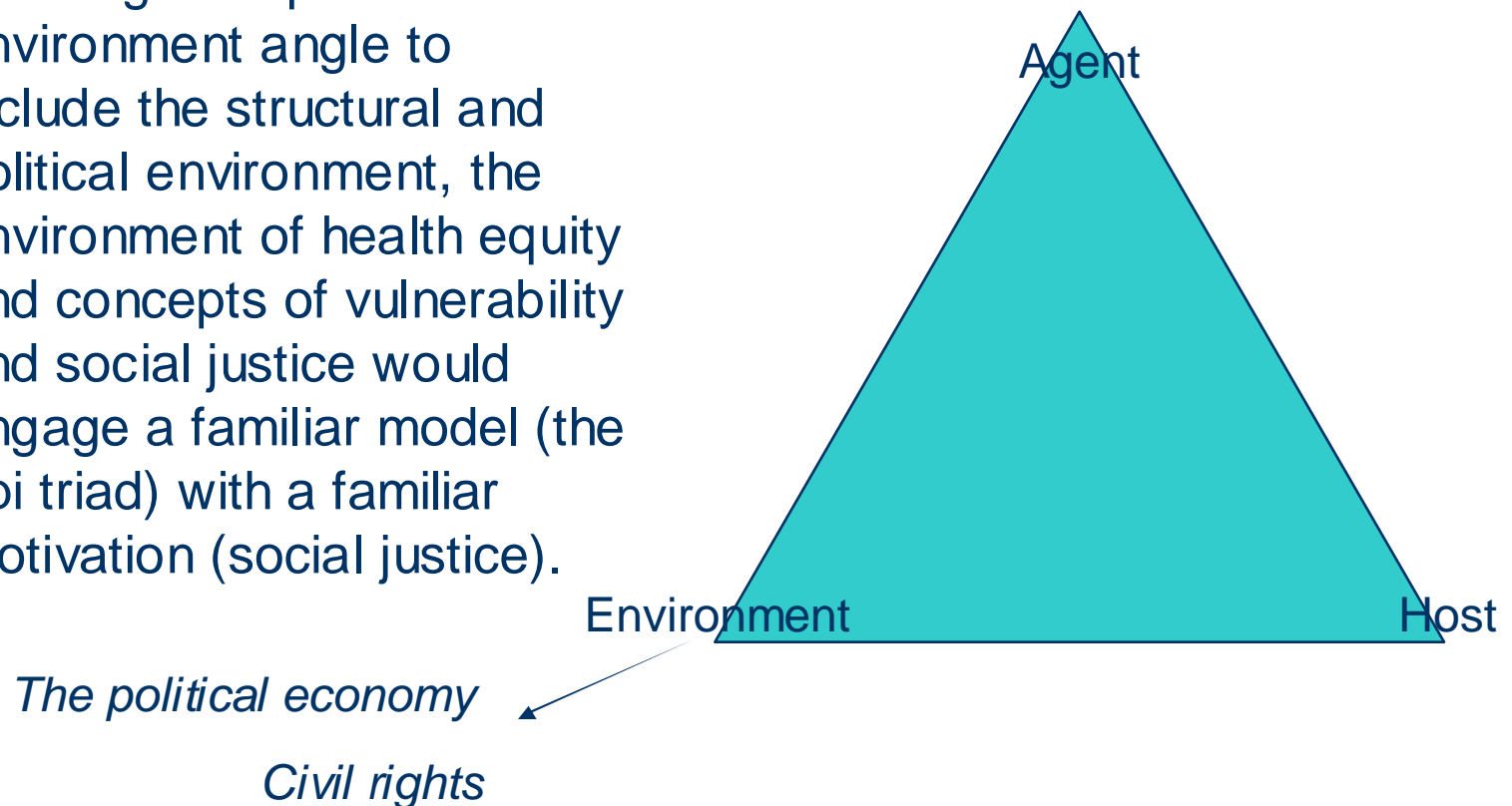
- The human rights framework identifies the civil, political, economic, social, and cultural dimensions of life that are determinants of population health

# Conclusions

- These same elements are characterized as tools of public health:
- “Public health is quintessentially a social enterprise . . . . public health looks at patterns of health and disease in populations . . . public health focuses on the links between an individual and the environment (physical, social cultural, political, and/or economic) in which she lives, *seeking in that linkage both an explanation for her health status and a potential entry point for policies and programs to address it.* The primary research analytical tool of public health is epidemiology.” (Freedman, 1999)

# A modest proposal for theory . . .

Broadening the epi triad environment angle to include the structural and political environment, the environment of health equity and concepts of vulnerability and social justice would engage a familiar model (the epi triad) with a familiar motivation (social justice).





# A modest proposal . . .

- Human rights, public health law theory, and forms of governance are all viable approaches to a new theory of public health that can address social determinants and equitable policy. Social justice (including a focus on civil rights) and the epi triad as foundations for new public health theory, however, have the advantage of existing as a motivation and method already, and most importantly of already knowing success in improving the public's health.

