Human Rights and Public Health in the HIV/AIDS Pandemic

by Lawrence O. Gostin and Zita Lazzarini

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Reviewed by Alissa Spielberg

Since its discovery over 15 years ago, HIV/AIDS has caused policymakers worldwide to redefine the role of government action in disease control. Initially, HIV/AIDS impacted populations that were already marginalized and stigmatized such as male homosexuals, commercial sex workers and intravenous drug users. Although the official policies of the World Health Organization and other international bodies sought to prevent discrimination on the basis of HIV/AIDS status, a number of governments initiated policies that had devastatingly discriminatory effects on those infected with the virus. The growing fear of contracting the disease through casual contact, along with the political ease of identifying and isolating already stigmatized groups, led many governments to adopt strictly traditional public health measures—typically compulsory screening and quarantine—despite the discriminatory impact of these policies and without adequate proof of their efficacy.

By appealing to commonly held international standards of human rights, discrimination against people with the virus could be mitigated or avoided entirely while still protecting public health. Accordingly, new methods of program analysis utilizing these new public health values are being developed in order to evaluate proposed public health interventions, educational programs and political strategies. In their new book, *Human Rights and Public Health in the HIV/AIDS Pandemic,* Larry Gostin and Zita Lazzarini, scholars who have been at the forefront of identifying the legal, ethical and human rights aspects of the HIV/AIDS pandemic, consider a method by which to evaluate and understand the sensitive interrelationship between public health intervention and human rights. The book is also the first comprehensive compilation of HIV/AIDS and human rights sources and further documents the close connection between health promotion and human rights. Although other scholars

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and policymakers have contributed widely to the development of a health and human rights framework, this volume offers a detailed chronicling of specific international declarations, agreements and covenants and directly applies them to the HIV/AIDS context. Gostin and Lazzarini import evidence from both traditional epidemiological and international legal cultures to demonstrate that public health measures must be designed in light of international human rights standards and that human rights must be upheld generally in order to better protect the international public health.

The tension between public health and human rights has only recently been exposed and explored. Gostin and Lazzarini summarize the conflict:

> International human rights law (human rights, for short) seeks to promote and protect individuals' rights against the state's interference or neglect. The area we refer to as public health, in contrast, encompasses efforts by the state to ensure the conditions under which people can be healthy and often includes governmental intervention into individuals' lives to protect the community's health. Thus, the two compete: Human rights protect the rights of individuals, and public health protects the collective good (p. 43).

Despite this fundamental difference in purpose, public health advocates have begun to acknowledge the value of preserving individual freedoms as a method for protecting communal interests.

To situate the integration of human rights with HIV/AIDS prevention and control measures, Gostin and Lazzarini provide some background in international human rights law and the position of health within it. In addition to the United Nations Charter, three key documents emerge to form a reference body of international human rights principles, known together as the International Bill of Human Rights: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although taken together these provisions promote principles of freedom, equality, dignity and non-discrimination, they are relatively recent additions to international law; while the UDHR was adopted in 1948, the Covenants were not positive law until 1976.

Perhaps the clearest example of a traditional public health strategy interfering with human rights is when individual compliance with governmental initiatives is coerced or compelled. Such measures often include compulsory testing, isolation of infected persons and the criminalization of certain behaviors deemed "high risk" for disease transmission. While it may appear at first to some policymakers that coercion in public health is justified in the name of effective disease prevention, forcing individuals to behave in a prescribed manner raises serious questions about human rights. Moreover, such coercion is often unjustified, even by the available scientific evidence. Gostin and Lazzarini offer several arguments that demonstrate the counterproductive nature of coercive public health policies:

> [Although] coercive measures may prevent a few cases of transmission...they are unlikely to reduce the overall prevalence of HIV/AIDS infection in the population. First, individuals' fear of and resistance to compulsory measures impede attempts to educate and counsel people on safer sexual and needle-sharing behaviors. Coercion may drive persons with HIV/AIDS or HIV/AIDS away from needed services (p. 50).

The intersection of human rights concerns and public health is also apparent in the areas of confidentiality, privacy and discrimination. Gostin and Lazzarini discuss these issues with specific reference to underlying international legal principles. They exhort policymakers and governments to develop public health policy that complies with international human rights standards. Given the history of failed coercive public health strategies in HIV/AIDS and other epidemics, Gostin and Lazzarini propose that voluntary programs be developed in cooperation with affected populations in order to promote compliance through culturally sensitive education.

The UDHR establishes a right to health among other basic human rights. Article 25 presages the current public health/human rights connection by providing the right to "a standard of living adequate for the health and well-being of himself and his family, including...necessary social services..."Other equally important rights grounded in the UDHR include: rights to life and liberty; freedom from slavery, torture, and cruel and degrading treatment or detention; and protections against government interference with personal privacy, family, home, movement and travel, expression, religion and association. Each of these fundamental human rights articulated in the International Bill of Rights carries implications in the HIV/AIDS context.

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Gostin and Lazzarini systematically analyze a series of rights that most directly affect people with HIV/AIDS. For example, they elucidate the connection between the abstract notion of freedom of expression and its central place in promoting health through accurate medical and scientific information. Similarly, they argue that the right to education requires countries to provide HIV/AIDS education and counseling to their constituents. They contend that people have a correlative right to clear information about reducing their risk of transmission through specific behavioral changes and that such information alone may not be enough without direct access to condoms or sterile injection methods. Moreover, health education efforts might be undermined when other types of educational empowerment are absent.

After the general discussion of the relationship between public health and

human rights, Gostin and Lazzarini present the central paradigm for evaluating human rights in public health. The balance of the book is then structured around the practical application of human rights principles and standards to actual public health proposals. To this end, they propose a systematic "method of analyzing public health policies and programs to ensure that they constitute beneficial public health strategies that do not unduly burden human rights"(p. 57). One of the proposed methods is the Human Rights Impact Assessment (HRIA), a seven-step checklist for policymakers who are concerned with uncovering potential human rights violations or inserting human rights protections into HIV/AIDS program proposals.

Interestingly, the evaluative criteria presented here parallel those found in the domestic constitutional interpretation of the American human rights analogues "due process" and "equal protection." Although Gostin and Lazzarini do not make this connection explicit, the resemblance is noteworthy. Indeed, the proposed program evaluation proceeds much like American constitutional analysis of statutory law. For example, after determining the unbiased facts, policymakers assess whether the public health purpose offered is "compelling." To facilitate specifically tailored public health interventions, "vague and overbroad" goals will fail this standard. Determining whether a proposed policy is well-targeted involves a rigorous examination of potential stereotyping which resembles the suspect classification scheme which triggers an American equal protection analysis. Gostin and Lazzarini remind policymakers that:

> Policies that appear neutral may, in fact, disproportionately burden certain groups. For example, programs that automatically isolate persons with tuberculosis who do not complete the full course of treatment may disproportionately burden poor persons who have inadequate access to health care, housing, or transportation. Awareness of this notion will sensitize policymakers to human rights concerns and help to ensure that they create classifications that are related to the public health (p. 62).

Similarly, HRIA asks policymakers to consider whether a proposed policy would achieve the necessary purpose using the "least restrictive alternative" — for example, considering non-coercive measures first. Questions of appropriateness, effectiveness, degree of risk and individual consent likewise provide further human rights checks when devising public health strategies. The entire analysis is then measured by a balancing test which would help to identify which human rights burdens may be justly outweighed by public health driven intrusions.

This assessment method may indeed serve as a useful tool for policymakers and governments in raising awareness of human rights issues and avoiding their abuses. Although it is an innovative contribution to public health practice, a more theoretical justification for its use may be warranted. The striking similarities between HRIA and American constitutional interpretation suggest that HRIA must be analyzed in light of other possible methods,

in order to gain the critical distance necessary to accept HRIA as methodologically sound and culturally sensitive.

Using the method proposed by the HRIA, Gostin and Lazzarini systematically examine specific areas of HIV/AIDS public health policy. They methodically relate international human rights standards, including HIV/AIDS-specific international agreements and policy statements, with social, cultural and epidemiological bases for public health measures in the following areas: prevention and education; anti-discrimination; epidemiological surveillance; travel and immigration restrictions; health care systems; personal control measures; harm reduction strategies; and research on human subjects. By considering these disparate settings through tightly crafted, well-documented entries, Gostin and Lazzarini display the flexibility of the human rights paradigm.

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Organizationally, the book might have benefited from reversing the first two chapters, so that the interrelationship between public health and human rights first sets the stage for the introduction of the specific international legal sources. Additionally, the theoretical basis for their ideas might have been featured more prominently. Oddly, the most nuanced arguments for the integration of human rights principles into public health practice are interspersed throughout the issue-oriented analyses of public health measures. Gostin and Lazzarini do frame the public health issues at stake within an evolving human rights doctrine. They raise interesting issues about the philosophical connection of public health goals with human rights theory, such as whether human rights claims may compete or be prioritized and indeed whether such rights are universally or culturally derived. Because these theoretical discussions worked so well when they were presented, readers might have appreciated one separate section devoted to a fuller development of the underlying theoretical perspective—perhaps as a conclusion. Moreover, as a persuasive device, a formal exposition of rights language, its direct effect in promoting public health, and a serious examination of opposing arguments might engender increased political support. While the specific issue-analyses offered in this volume are significant contributions to a rights-sensitive public health perspective, amplified justification for the interpretive methods applied to international legal documents and social phenomena may be necessary to fully convince otherwise non-compliant or rights-insensitive governments to alter their public health strategies.

Gostin and Lazzarini have nonetheless provided a valuable guide for policymakers in developing public health and human rights initiatives and increased awareness of the human rights impact on public health. The book serves as an excellent teaching device, chronicling diverse legal and public health issues made evident by the HIV/AIDS pandemic experience. By including three case studies in the book's last section, Gostin and Lazzarini in-

vite readers to engage actively in integrating the principles presented throughout into practical situations.

Certainly, Gostin and Lazzarini have made their readers aware that after HIV/AIDS focused public attention on the intersection of public health and human rights, all individuals, diseased and healthy, must remain ever vigilant—not only to the diseases which threaten them, but also to the governmental policies which would unwittingly seek to oppress individual liberties in the name of public health.

The Pan-American Dream: Do Latin America's Cultural Values Discourage True Partnership with the United States and Canada?

by Lawrence E. Harrison

New York: HarperCollins, 1997, 288 pp., $25.00 cloth.

Reviewed by Russell Crandall

If one compares crossing the border from the United States into Canada with crossing from the United States into Mexico, it does not take long to realize the vast differences between America's two neighbors. Canada bears striking similarities to the United States in its racial, social and economic composition while Mexico has a very distinctive culture, language, and level of economic development. In *The Pan American Dream,* Lawrence Harrison, a former U.S. AID (Agency for International Development) mission chief in Latin America, asks whether a coherent and durable hemispheric community can be created despite such great differences between Mexico and its neighbors to the north. While few dispute that the creation of this community will be tough to implement, Harrison suggests that due to the extreme cultural differences that divide the two regions, it will perhaps be impossible.

Indeed, Harrison believes that much of the lopsided development of these two regions is due to culture: in the North, the Anglo-Saxon Protestant culture has spurred democracy and modernism, while the Ibero-Catholic traditions of Latin America have perpetuated inequality, economic mismanagement and corruption. To back up this claim, Harrison lays out a set of criteria that serves to illustrate the profound differences between the two cultures. He sees an extreme disparity between North American and Latin American attitudes toward the values of hard work, community, education, frugality and justice and believes such values are respected in the United States but blatantly disregarded in Latin America. Harrison is convinced that if the hemisphere is ever going to integrate, Latin America must adopt the "progressive" cultural values of the United States.

To bolster this notion that culture drives condition, Harrison first attacks the intellectual school known as dependency theory. Dependency theory pos-

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tulates that developing regions such as Latin America are bound to be forever exploited by industrialized nations and that institutions such as free trade, primary product export and multinational corporations all serve only to enrich the modernized North at the expense of the developing South. The architects of dependency theory argue that the only way to break this vicious cycle is to raise protective tariffs and subsidize domestic producers so that developing nations can rely less on imports and more on their own manufactured goods. Harrison chronicles how the resulting policy of import-substitution industrialization (ISI) succeeded only in protecting inefficient domestic producers from global competition and creating widespread economic instability rather than lifting Latin America out of poverty. His argument does seem to be supported by the economic facts; during the decades that Latin America experimented with ISI, high inflation, inefficiency and corruption crippled many Latin American economies.

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Harrison is correct to claim that ISI was essentially a failure. After all, the export-fueled economic performance of many East Asian economies over the same time period is a stark contrast to the limited growth Latin America experienced. Less convincing is Harrison's assertion that Latin culture drove this ideology. Harrison fails to compare Latin America with other parts of the world, such as the Soviet Union, where dependency-oriented ideas proliferated even though these regions did not possess the Ibero-Catholic traditions that Harrison considers key to understanding Latin American "backwardness." Even within Latin America itself there were some regimes, such as Chile under Pinochet, which rejected ISI and instead embraced the free-market, export-oriented economic model. Harrison's view that the contradictory case of Chile can be explained by its small but active European Basque population is both strange and exaggerated.

Harrison also discusses the contradictory case of Costa Rica. He notes that unlike other Latin American countries which formed regional trade agreements, democratic Costa Rica never considered integrating its economy with its authoritarian neighbors. Yet Harrison never explains what made Costa Rica a democratic anomaly. If Harrison's cultural theories were correct, Costa Rica would also be doomed to a state of poverty and corruption due to its detrimental Ibero-Catholic cultural attributes. This is the point in the book where it becomes most obvious that Harrison's cultural focus neglects other important issues in economic and social development. In the case of Costa Rica, a brief

review of the history of coffee cultivation, including settlement patterns of the landed oligarchies, would probably reveal that the coffee crop was more influential in the development of Costa Rican democracy than any of Harrison's cultural causes.

Harrison uses the failure of Latin American nations to control the flow of drugs through their countries as an example of an inability to effectively deal with critical social issues. Yet Harrison never addresses the fact that these Ibero-Catholics, who are surrounded by drugs, do not use these drugs in nearly the same quantity as North Americans. In this case, if there is any cultural evidence about drug use, it is that Latin culture is much better suited to deal with the temptation of drugs than is Anglo-Protestant culture. In this same light, one could ask if the United States, a nation replete with social ills such as racism, dysfunctional families and teenage pregnancies, should be the paradigm that Latin countries use to plan their future development.

The role of U.S. academics over the last several decades is another issue that comes under attack in *The Pan-American Dream*. Harrison believes the vast majority of U.S. academics who study Latin America have taken active anti-American positions and have aligned themselves with the Latin American Left. At this point Harrison's arguments go from porous to disturbing; he counters any criticism of U.S. policies in Latin America with the contention that all U.S. actions, including covert operations, can be explained solely by America's fear of Soviet influence in the region. It is as if Harrison views anyone who disagrees with U.S. policy as somehow un-American.

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As the reader progresses through the book, it becomes increasingly clear that Harrison labels any idea that is not compatible with Washington-led policy as backward and destructive. He believes, for instance, that Latin American nations need a more "citizen-oriented" foreign policy. In other words, Latin nations should forget about sovereignty and focus exclusively on implementing the policies that would most help their populations. One wonders whether Harrison would ever consider recommending the same type of policies for the United States. For example, would the United States listen if the United Nations or the World Trade Organization recommended that it eliminate a certain tariff or withdraw troops from a foreign post in order to be more citizen-oriented?

In sum, Lawrence Harrison succeeds in arguing that culture is an important component of any country's economic and social development. Also true is his notion that the role of culture has been long neglected in the examination of North America and Latin America's divergent paths of development. However, Harrison's analysis is often intellectually shallow and lacking rigor. Labeling Mexico, a country with a rich and complex history, a "failed cul-

ture" is naïve. There is also tremendous irony in the fact that Harrison criticizes Latins for misguided anti-Americanism when his ill-conceived comments on Mexico are exactly what make many Latins resent the United States.

Harrison does not see cultural dimensions outside economic, political and military spheres. He believes that because the United States is the dominant country, it must possess the dominant culture. For Harrison, hemispheric integration dictates cultural homogenization. By failing to even consider the possibility that U.S. actions toward its Latin neighbors may have been flawed, Harrison demonstrates a skewed view of his own country. In his own mind, he has created a near-perfect picture of the United States' role and influence in the hemisphere. Instead of closely examining the United States' covert operations, heavy-handed economic pressure and social fabric ripped apart by race problems, Harrison sees an America that every nation should strive to emulate.

While the United States should promote democracy, accountability and economic liberty, it should not assume that Latin America should adopt, or would ever want to adopt, all of the United States' cultural values. While it still faces tremendous problems, Latin America is a region of the world with a distinctive and fascinating culture that does not deserve to be sacrificed. The possibility of a hemisphere-wide cultural "McDonaldization" is a scenario that I doubt even Harrison would cherish.