

TOM STODDARD, PUBLIC HEALTH, AND CIVIL LIBERTIES: A REMEMBRANCE

RONALD BAYER*

It has become something of a conventional wisdom over the past decade to assert that there is no necessary tension between the aims of civil liberties and public health. Like all such wisdoms, although often true, there are occasions when bitterly contested battles make it clear that the picture is far more complex than the world as defined by mantras. Too often lost in the debate over claims about the salutary or baleful impact of the civil libertarian perspective on public health is some understanding of how that outlook emerged, took hold, and then achieved some currency. It is a history that can teach us much. And it is there that Tom Stoddard played a central role, for he helped to shape a rights-sensitive conception of public health.

At the dawn of the AIDS epidemic in the early 1980s, there was a profound gulf—conceptual and practical—between the world's views of public health and civil liberties. The former had emerged early in the twentieth century, indelibly marked by tuberculosis, “the white plague.” The latter, which focused on protecting the rights of the individual in the face of an overbearing or intrusive state, had hardly encountered the questions of public health, though the recently won procedural and substantive rights of mental patients and juvenile offenders offered some suggestions about what might be hoped for.

Tom Stoddard came to the issues of public health as a committed civil libertarian and an advocate of the rights of gay people. He came to the public health challenge posed by AIDS convinced that the epidemic need not provide a justification for the abrogation of precious liberties, and deeply fearful that the epidemic, so horrendous a threat to life, would become a pretext for an assault on the right to privacy. With intelligence and boundless energy, he pressed his case not only with generally liberal advocates of public health but against the most retrograde forces committed to a social order in which lesbians and gay men would be deprived of the most elemental rights.

It does not matter, ultimately, whether Tom Stoddard was right on each of the debates that engaged his efforts: whether the bathhouses that provided a social context for the spread of HIV in the mid-1980s should have been shut or severely restricted; whether re-

* Professor, Columbia University School of Public Health.

porting the names of people with HIV to confidential public health registries was "Orwellian;" whether the HIV testing of newborns or pregnant women under conditions less exacting than those demanded by the norm of specific informed consent constituted invidious discrimination. He won some battles, lost others. In time, as the contours of the AIDS epidemic changed, Tom Stoddard modified some of his own positions. For example, he came to recognize that, in terms of heterosexual transmission, contact tracing to inform unsuspecting women that they might have been exposed to HIV would be warranted. What matters in the end is that Tom Stoddard's anticipated defense of liberty helped to define the public debate in a way that guaranteed that, whatever the choices made, no one could misunderstand the vital issues at stake.

But Tom Stoddard did not always take the position expected of a gay advocate committed as a matter of first principle to notions of civil liberties. Two occasions come to mind. I am certain there are others.

In the late 1980s, when there was much passionate discussion of the duty of physicians to care for people with AIDS, and denunciation of those who would desert their clinical responsibility because of fears of infection, I was chair of a national working group on the AIDS epidemic at the Hastings Center, a research institute committed to the study of medical ethics. It struck me that a yet-to-be-addressed issue involved the question of whether physicians who were infected with HIV should, under any circumstances, have their practices restricted to prevent the very remote prospect of viral transmission to patients. There was at that moment not a single case of such a transmission, although the biological possibility was there. (All too soon it would be realized in a tragic dental practice in Florida that still inexplicably accounts for the only American cases of HIV transmission from a health care worker to a patient.) I asked Tom Stoddard to address this issue because it seemed to me to represent a classic example of a clash of rights. I had no idea about how he would confront the conundrum. Carefully, with obvious concern that what he said, even in that closed door discussion, would have dire implications for the rights of people with HIV, Tom concluded that there were indeed forms of invasive surgery that physicians who were infected should not perform. In coming to that conclusion, he stunned more than a few meeting participants, who saw in his position a betrayal of the rights of people with HIV. But to me it represented a special moment in which Tom Stoddard displayed both intellectual integrity and courage. In so doing, he deepened a conversation that threatened to be one-sided, despite its complexity.

A second example demonstrates how Tom's own confrontation with the disease that would ultimately take his life helped to shape his understanding of an issue that, from the perspective of civil liberties, might well have been thought to be a simple matter. The question involved a bitter debate over whether the Food and Drug Administration (FDA) should license a diagnostic kit that would permit individuals to obtain HIV test results by telephone after having mailed a blood sample obtained at home to a designated laboratory. Here, one would have expected the heir to John Stuart Mill's "simple principle" (that to the extent that we act in ways that harm no third party we ought to be free to act without incumbrance, even if in so doing we may harm ourselves) to have resoundingly rejected FDA paternalism. It might be wiser to be tested for HIV in an appropriate clinical setting. It might be foolish to buy a test kit and confront potentially deadly news at home, on the phone, alone. But how could one oppose the state's intrusion on privacy in general and invite it here? I asked Tom Stoddard to discuss this issue at a small meeting. His analysis in this instance was enriched by clinical and human sensitivities that made it clear that a commitment to principle need not degenerate into doctrinal aridity. He feared the terrible impact of testing decoupled from the protective context of the clinical encounter. I did not agree with his argument against FDA approval of home HIV testing, but I came away from that discussion with a much deeper understanding of the issues involved.

Both of these cases reveal how Tom's intellectual probity and capacity for human considerations helped to define the role of first principles in the making of public policy.

Tom Stoddard's ultimate legacy for public health is not the specific positions he took at specific moments. Rather, it is his claim that the shaping of public health policy and practice should never occur without careful consideration of the burden such policies would have for the rights of individuals. It is a precious legacy that is a gift to us from the awful years of the AIDS epidemic. It is a gift wrested by Tom Stoddard and other activists who faced the deaths of their friends, colleagues, and lovers and who then succumbed to AIDS themselves, leaving us to mourn their loss.