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Article:

O'Shea, Tom (2017) Civic Republican Medical Ethics. *Journal of Medical Ethics*, 43 (1). pp. 56-59. ISSN 0306-6800

<https://doi.org/10.1136/medethics-2016-103697>

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Civic Republican Medical Ethics

Forthcoming in the Journal of Medical Ethics

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Abstract: This article develops a civic republican approach to medical ethics. It outlines civic republican concerns about the domination that arises from subjection to an arbitrary power of interference, while suggesting republican remedies to such domination in healthcare. These include proposals for greater review, challenge, and pre-authorisation of medical power. It extends this analysis by providing a civic republican account of assistive arbitrary power, showing how it can create similar problems within both formal and informal relationships of care, and offering strategies for tackling it. Two important objections to civic republican medical ethics — that it overvalues independence and political participation in healthcare — are also considered and rebutted.

INTRODUCTION

The civic republican tradition in political philosophy can provide us with valuable tools for analysing social power in medical contexts. Yet, despite some limited discussion in philosophy of disability and public health ethics,[1-5] republicanism remains marginal at best within medical ethics. This article shows how civic republicanism can help us to identify, problematise, and challenge often-neglected forms of arbitrary power in medicine. Furthermore, it demonstrates how a civic republican approach to medical ethics can be defended from the objections that it places too much value on the independence of individuals and imposes excessively demanding requirements for political participation.

CIVIC REPUBLICANISM AND DOMINATION

The republican tradition comprises a loose collection of thinkers in the history of political thought who have drawn heavily on ancient Greek and particularly Roman writing about republics.[6-8] Among its major themes are the public good of the

citizenry, the vehement rejection of tyranny and servility, the importance of civic virtues to maintaining political community, as well as a distinctive conception of liberty often contrasted with liberal accounts. The remarkable revival of civic republicanism within political theory in the past two decades has focused on this latter account of liberty, which is most often defined in opposition to domination.[9]

While republican accounts of domination differ in their details, the following definition by Frank Lovett is particularly helpful:

persons or groups are subject to domination to the extent that they are dependent on a social relationship in which some other person or group wields arbitrary power over them.[10]

Civic republican focus upon dependency underpins a concern with relationships which heighten vulnerability to the power of others – such as slavery, autocracy, colonialism, patriarchal marriage, and wage labour. The intensity of such dependency has been taken to be proportional to the unfeasibility, cost, and risk of exiting the relationship.[11]

Domination is distinguished from mere dependency by an additional subjection to arbitrary power. The precise nature of the relevant arbitrariness remains contested, yet there is a broad republican opposition to power which can be exercised over someone through another's uncontrolled or unaccountable will.[12] The relevant power is often – although not invariably – understood as “the capacity to interfere, on an arbitrary basis, in certain choices that the other is in a position to make.”[13] This encompasses abilities for intentional manipulation and coercion of the body or will, including powers to physically restrain or compel, to punish or credibly threaten punishment, or to deceptively shape beliefs or desires.[14] Our initial discussion will begin with this interference-centric domination in mind.

Liberal thinkers often contrast liberty to interference with action rather than to domination.[15] Yet, republicans claim that liberty can be infringed by an arbitrary power to interfere, even when no actual interference takes place. Consider what Cicero says about slavery in this respect: “the most miserable feature of this condition is that, even if the master happens not to be oppressive, he can be so should he wish.”[16] The slave who happens to avoid interference is already sufficiently subordinate to the master to preclude her freedom, since she has no latitude to act for

herself without his implicit permission, which may be withdrawn with impunity. Her master's indulgence conditions everything she can do. While such a lack of security when subject to arbitrary power is itself enough to constitute unfreedom, her awareness of her vulnerability not only breeds harms such as fearful uncertainty, but can also further undermine liberty by incentivising servility towards the powerful.

DOMINATION IN HEALTHCARE

What is the upshot of this account of domination for medical ethics? Some civic republicans emphasise minimal procedural requirements for non-domination, whereby power is no longer arbitrary when it is reliably constrained by rules or processes that are common knowledge. The goal of such measures is to provide people with “reliable expectations”, so they “know exactly where they stand” with respect to power held over them.[17] For example, the so-called ‘doctrine of medical necessity’ can confound such expectations when used to justify wide-ranging and ill-defined emergency powers to authorise compulsory treatment. Conversely, mental capacity legislation with transparent, well-demarcated, and enforceable criteria for compulsory treatment would reduce procedural arbitrariness even if such treatment were no less frequent as a result. Similarly, this kind of arbitrariness would be reduced by an explicit hospital visitors policy, which outlined who can visit and under what conditions, rather than ward managers deciding to disallow visitors on an ad hoc basis. Both measures would disrupt uncontrolled power within social relationships of dependence. When patients are confident that there are clear rules governing how power is exercised over them, this can also reduce the inclination to be deferential towards healthcare authorities in the hope of influencing their decisions.

Restrictions on discretionary powers to interfere that are imposed by commonly known and enforceable rules can help prevent some people being at the mercy of another's will. However, we might think that the codification of a practice does not necessarily preclude it being dominating, especially when the process of determining the rules themselves is uncontrolled, such that subjection to an arbitrary will takes place at a second-order level. What also matters is how and by whom social power is subject to control. For instance, one prominent republican account takes domination to be generated by power that is “not subject to your own control and in this sense is arbitrary.”[18] This control need not be absolute: what is required is that citizens are

subject to power on an equal basis without some being fundamentally subordinate to others. In this respect, consider the conclusions of a report into services for individuals with intellectual disabilities who exhibit challenging behaviour:

Support staff had control over every aspect of the lives of participants, and the casual denial of participants' requests is demonstrative of how little power and control participants sometimes had.[19]

This is a striking example of dependence upon a relationship subjecting people to a power to interfere with their choices, without them possessing meaningful control over the conditions of its exercise, or a feasible means to exit the relationship. Domination will not always be so comprehensive, but this gives some sense of the profound differentials in authority and social status which civic republicans aim to problematise.

The control over power necessary to avoid domination can be secured to a limited degree by citizens having equal access to the democratic process that generates laws authorising interference – for instance, ensuring the voices of patients are not drowned out by those of medical professionals or the healthcare industry lobby, and dismantling the barriers to voting that still exist for some people diagnosed with mental disorders or intellectual disabilities.[20] The greater contribution to reducing domination in healthcare, however, will be made by more direct and local mechanisms for restraining and shaping power.

Some civic republicans have called for contestatory democracy, including “institutionalized forums for contestation”, where citizens can challenge domination.[21] Contestatory democracy requires that citizens are able to flag what they take to be arbitrary power over themselves, and to find impartial review, redress, and revision of policy. This suggests several measures within medicine: expansion of the purview of existing oversight instruments, such as mental health tribunals, to review the ability to interfere and not merely its exercise; fora within healthcare institutions that allow patients to periodically and publically hold to account those with powers of interference over them; and educational and political initiatives to inform patients of their legal and moral rights, and to foster their confidence to assert them.[22]

Other republican strategies for combatting domination involve pre-authorisation rather than contestation. Pre-authorisation renders power over someone non-arbitrary insofar as they have controlled it in advance.[23] This provides civic republican grounds for recommending some familiar measures, such as advanced decision-making in the context of declining or fluctuating mental capacity. It should also lead republicans to support forms of advanced care planning that are currently less common, including ‘crisis cards’ for patients who may experience psychotic episodes, and which outline an agreement with their care team about when they will and will not encounter interference with their actions.[24] For the civic republican, the primary goal of these measures is not to decrease interference, but to ensure that the power to interfere cannot be exercised in an arbitrary fashion, whereby some citizens are ancillary to others and subject to their mutable will.

ASSISTIVE ARBITRARY POWER IN HEALTHCARE

The domination considered so far arises from the arbitrary power to interfere with another’s choices within relations of social dependence. We should be careful not to underestimate the scope of such interference. While the paradigm cases are coercion and manipulation, some acts of medical omission will, in context, also count as interference on republican approaches – e.g. “the pharmacist who without good reason refuses to sell an urgently required medicine”. [25] Likewise, the intentional exploitation of medical need by making assistance extortionately expensive also constitutes interference – for instance, massively jacking up the price of a medicine to take advantage of a monopoly upon supply. Thus, domination can sometimes be generated by the arbitrary power to withhold or increase the costs of support.

Some limitations in access to healthcare and assistance in adapting to illness or disability do not interfere per se but simply fail to provide an additional benefit.. Consider the power of healthcare staff to determine access to beneficial services in the absence of emergencies or intentional exploitation – for instance, deciding whether someone is prioritised for physical rehabilitation or offered additional sessions of psychotherapy. Likewise, coping with poor health is also affected by the willingness of friends and family to contribute, such as the extent to which they make themselves emotionally available, or are prepared to dedicate their time and resources to tasks like driving for someone with mobility problems. The non-conferral of these benefits

does not ordinarily seem like outright interference, and thus even the capacity to arbitrarily withhold them will not amount to domination, so long as we retain an interference-centric account.

Civic republicans do not always accept that domination presupposes the power to interfere. For example, Lovett denies that the power to raise costs and lower benefits of choices is more significant to domination than the power to raise their benefits and lower their costs. He reminds us that tremendous social power can be contained in offers and not simply threats (e.g. the power of an enormous retailer in its transactions with suppliers).[26] We do not need to determine here whether outright domination can be generated by arbitrary power to assist others within a relationship of dependence. It is sufficient to note that it can foster similar problems to the arbitrary power to interfere (as republican accounts of corruption and largesse have emphasised).[27]

We might demur at the idea that power to make someone better off can make them less free. But this becomes more plausible when it is latitude over whether to meet someone's basic needs within a relationship with high exit costs and few alternatives. Illness will often create these conditions by reducing a person's own capacity to fulfil their needs, bear the costs of ending a relationship, and find new forms of support. The sheer vulnerability to being abandoned or neglected when already experiencing heightened needs may incentivise compliance and make opposing the will of others especially risky. Thus, dependence upon social relationships in which arbitrary power is assistive rather than interfering can exhibit comparable challenges to freedom as interference-centric domination.

The provision of formal healthcare is seldom dependent on the radically uncontrolled will of medical staff. In the absence of immediate financial pressures, the main factors determining the care someone receives are institutional procedures and professional judgement. However, we should be sensitive to the harms that discretionary power to assist others can introduce when such procedures are lax and such judgement cannot be sufficiently held to account. The standard republican remedies would recommend ensuring that decisions about access to healthcare are guided by a consistent rationale which is transparently communicated. Furthermore, mechanisms must be in place to allow such decisions to be challenged, and to periodically review whether the current level of flexibility that healthcare gatekeepers are granted is becoming too stifling.

The problem of assistive arbitrary power in relation to friends and family is even thornier. While these are relationships that can be strengthened by someone's need for additional care, there is also potential for worrying imbalances of power when they are reliant on support that others are under no enforceable obligation to provide. Yet, it seems neither practicable nor desirable to demand that friends and family account for the level of support they are willing to provide, or to restrict their prerogative to provide no such assistance at all. Nonetheless, the problems of arbitrary assistive power can be indirectly lessened if someone can be confident that other forms of psychological and material support are available to them should their relationships with friends or family break down. When someone's medical and wider needs can be met on a more secure basis, republicans can recognise that this leaves them less beholden to others, even if they never actually use such a failsafe.

OVERVALUING INDEPENDENCE?

Civic republicanism provides a framework for understanding how social relationships of dependence characterised by arbitrary power can contribute to subordinating some agents to others in problematic ways. But might such republican hostility to dependence be misguided? We are finite, vulnerable, social animals, who cannot feasibly dispense with relationships in which we depend or are depended upon by others. Fantasies of self-sufficiency which result in the disavowal or refusal of bonds of care can be deeply harmful. In this spirit, Alasdair Macintyre identifies "virtues of acknowledged dependence", which facilitate social relationships in which we recognise human fragility, and are open to both giving and receiving help without undue reluctance.[28] Aaron Cobb has recently emphasised the significance of these virtues within medical ethics in enabling us "to appreciate human vulnerability and to respond with appropriate forms of care."[29]

Civic republicanism might seem to hinder this embrace of dependence. Marilyn Freidman explicitly accuses republicans of an "inadequate grasp of the essential role of dependency relationships in human life",[30] which results in a failure to appreciate how much damage would be done to the ability to care for others by the attempt to minimise such dependency. For example, since the "capacity to help someone climb the stairs is also the capacity to throw her down the stairs",[30] then

eliminating relationships in which arbitrary power is held can also reduce opportunities for caring for someone. This challenge is particularly important for a civic republican approach to medical ethics because our need for social support can be so much greater when we are ill.

If a civic republican medical ethics required wholesale opposition to caring relationships in which those with poor health are reliant on others, then its aversion to dependence would be excessive. This is not the case on the analysis developed here, which only problematises social relationships of dependence which embed arbitrary power over others – whether that is the arbitrary power to interfere, or the more expansive withholding of support for the provision of basic needs. Dependence is not a locus of republican opposition in the absence of such power, and there is no intrinsic problem with medical or caring relationships which have high psychological or material barriers to exit.

There remain problematic situations where the combination of social dependence and arbitrary power are difficult or impossible to disentangle from the capacity to provide valuable care for others. Yet, when it is not practicable to eliminate domination or other combinations of dependence and arbitrary power in healthcare provision, the civic republican does not transform into the zealot that Friedman fears – refusing to countenance any insufficiently controlled power. They instead recommend that the evaluation of rival healthcare policies recognises it is a major advantage to avoid some citizens being significantly subordinate to others due to such arbitrary power held over them. To structure social relationships so that some are not unnecessarily at the mercy of others is an important goal in healthcare provision; yet, republicans need not be committed to paying any price in human health to secure it.

OVERVALUING PARTICIPATION?

We can take seriously civic republican concerns about a subset of dependent relationships in the context of medicine without unreasonably marginalising valuable relationships of care in which the sick are reliant upon the support of others. But republican approaches to medical ethics might appear to be vulnerable to another objection: that they are too burdensome not for the recipients of care but for the

citizenry as a whole. This criticism takes aim at the participatory civic culture that republicans promote in order to achieve goods like non-domination.

Discussing republican public health ethics, Stephen Latham tell us that, “Non-domination, as Oscar Wilde might have said, will take a lot of evenings.”[31] He believes that the provision of health is best left to competent governments who we are able to replace if necessary. Latham recognises that republicans may propose a division of labour whereby not all citizens must devote their time to combatting domination in health contexts. Furthermore, he notes that the sheer willingness of citizens to hold those with power to account can often be an effective constraint – exercising a ‘virtual influence’ on healthcare policy. Nevertheless, Latham asks:

Might it not be better for a government simply (and paternalistically) to give the people the health—and the security, and the peace—they need, without demanding their legitimizing engagement in that project, in a way that leaves them free to engage their attentions and cultivate their virtues in pursuit of higher, weaker values?[32]

Similarly, do we have nothing better to do with our evenings than the laborious organisational work a vigilant citizenry would need to undertake to effectively challenge the dependent relationships embedding arbitrary power identified by a civic republican medical ethics?

It is worth noting that the civic republican goal of reducing social dependence underpinned by arbitrary power in healthcare will not stand or fall with popular participation. Some measures require little to no civic engagement – for example, the state might unilaterally increase the choice of medical services available to patients, or the financial, social care, or rehousing support it provides to sick or disabled individuals, in order to lessen their vulnerability to the uncontrolled will of particular healthcare providers or informal carers. Other proposals would require participation only from some of those running or directly affected by medical institutions, such as efforts to identify and remedy domination by providing long-term patients with fora within which they can scrutinise the power to which they are subject. Thus, even those sharing Latham’s scepticism about the net benefits of an engaged citizenry willing to challenge domination in healthcare can still endorse other aspects of civic republican approaches to medical power.

The more fundamental challenge to republicanism posed by Latham is the suggestion that healthcare should be delivered by technocratic governments without much gained by the extra-electoral participation of citizens. Of course, this rests on a no less controversial understanding of political life and its relation to health. The wager made by radical republicans is that given the alternative between acting for others and enabling them to act for themselves, there is something of value in their democratic self-rule.[33] While this is not a political and ethical ideal that can be comprehensively defended here, it should be particularly attractive on the terrain of health. This is not only because greater participation of patients could further check the subset of problematic dependencies that civic republicanism identifies, but also because hierarchical distributions of power in some medical institutions unduly restrict the diversity of experience that informs decision-making within these organisations. Significantly, neither claim relies upon the more contentious perfectionist idea that participatory self-rule is the proper end of human beings.

CONCLUSION

This article has outlined the contribution civic republicanism can make to medical ethics. Republican conceptions of domination help to articulate the threats posed by even unexercised medical power to interfere when it can be used arbitrarily. This might find practical expression in an expanded purview for mechanisms of review such as tribunals, more institutional spaces in which patients can query the power held over them, and greater use of pre-authorisation strategies such as advanced care planning. Civic republicanism also shows how assistive arbitrary power can be problematic, which should prompt us to value transparency in healthcare gatekeeping decisions and alternative options for those in both formal and informal care relationships. The civic republican opposition to dependence in healthcare is appropriate when its focus is social relationships marked by arbitrary power to interfere or withhold assistance towards basic needs, rather than any contingent acts of mutual aid or care. Furthermore, the republican emphasis on civic participation was found neither to be required by all its normative recommendations nor to be necessarily an excessive ideal within healthcare. Thus, this suggests that medical ethics is likely to be enriched by greater engagement with civic republican concepts, values, and policy proposals.

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