



Liberty and limitation in public health

Public health law: power, duty, restraint

Lawrence O. Gostin

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Any country faced with spiralling health care costs has attempted to control the problem through some form of governmental involvement. As a result, interest in health law has grown over the past two decades, and so has the demand for articles and books on the subject — of which there has been no shortage, except in the field of public health. Lawrence O. Gostin's *Public Health Law: Power, Duty, Restraint* is the first available general text on population-based health law issues.

Gostin, professor of law at Georgetown University Law Center and professor of public health and law at Johns Hopkins School of Public Health, is a well-recognized contributor to law and medical journals alike. His many articles have been geared to two topics: the legal aspects of HIV infection, and the privacy and confidentiality of health care information. Although these issues dominate his selection of examples in *Public Health Law*, he clearly has as his broader mission the investigation of the role of government in protecting the health and safety of populations. Of critical importance to Gostin is the question of the limitations that exist — or should exist — on the government's ability to restrict individual liberties.

Gostin melds together political philosophy, politics and ethics in his discussion, widening the inquiry of the proper balance that should be achieved when we weigh the collective right to health-promoting social conditions against the individual's right to self-determination, whether in the personal or commercial realm. Gostin's multidisciplinary approach lends depth

to his subject and, in fact, may broaden the audience of interested readers to members of the general public as well as public health officials, health care providers and academics. Any well-written discourse on government intervention — when it should begin and where it should stop — is of help to all of us.

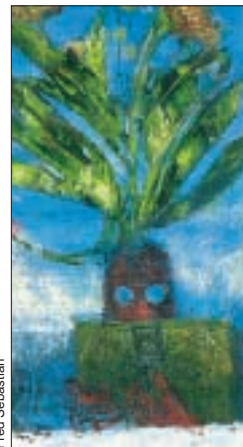
At nearly 500 pages, this book has breadth. However, it will not readily appeal to anyone looking for discussions pertinent to all subfields of public health. With some imagination, though, an extrapolation to other areas can yield an understanding within, for instance, occupational or environmental health. Gostin's work imparts a solid enough foundation for an understanding of population-based governmental mandates and constitutional repercussions to satisfy anyone truly interested in public health law.

The book is divided into three substantive parts; these deal with the conceptual foundation of public health law, specific civil liberties issues and governmental regulation, and the future of public health. The more philosophical first part logically precedes the middle section's specific topics, which include immunization, the use of health-related information and tobacco control efforts. In the last section, Gostin offers his ideas on the legal standards that should guide public health in the future.

The book includes creative and helpful diagrams of various kinds. For instance, a chronology of the United States Supreme Court rulings on constitutionally permitted commercial speech limitations complements his written materials (although legal scholars may take issue with his interpretation of US law on this topic). Too, historical illustrations of public health problems and state interventions remind the reader why public health regulations came into being in the first place.

As in any human effort, weaknesses accompany the strengths. First, as noted earlier, the title of his work creates a false impression that the focus is purely on law. The melding of ethics and policy may lead to confusion, since on many occasions legal principles are not distinguished from statements based on, for instance, political theory. For example, in the chapter entitled "A Theory and Definition," Gostin writes that "Government ... is compelled by its role as the elected representative of the community to act affirmatively to promote the health of the people" This statement is ethical, not legal, in nature. Although the legislature could mandate a governmental agency to adopt regulations, Gostin's statement implies the presence of an affirmative duty to protect public health. Sections devoted separately to policy, law and ethics would alleviate the problem.

Second, the fragmentary presentation periodically causes malabsorption of the intellectual content. For example, the basic definitions of privacy and confidentiality appear almost halfway through the chapter on public health information, sandwiched between discussions of the various kinds of uses of



Fred Sebastian

information for public health ends. Also, following a paragraph on the deplorable Tuskegee research project in the US and the withholding of information from the men with syphilis, Gostin comments that the sub-Saharan AZT research protocol is ethically unsupportable, without mentioning the connection with nondisclosure of information or the glaring informed-consent problem with the research.

Third, the recommendations in the last part of the book are logical outgrowths of the examples the author uses from his areas of interest in public

health. However, the limited coverage of the public health field does not warrant his global statements about the future of public health law overall. Without the inclusion of environmental or occupational law, an eager prescription of a trajectory for the field is overzealous at best, and harmful to the public at worst. Different public health ends may in fact justify the use of different public health means.

Yet these shortcomings do not eclipse the book's value. It lays a foundation for public health law discourse, and we can expect contributions and

more discussion of sound standards to come more readily. For this reason, Gostin's attention to politics and ethics will generate interest in what public health law *ought* to be. For these reasons, *Public Health Law: Power, Duty, Restraint* is a welcome addition to the health law literature, and readers from any country will gain from the way in which Gostin raises and analyzes issues.

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