Foreword: Public Health & the Law—A Symposium Dedicated to Professor William J. Curran

Lawrence O. Gostin

Georgetown University Law Center, gostin@law.georgetown.edu

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Foreword

This double symposium issue of the American Journal of Law and Medicine is dedicated to William J. Curran. The National Law Journal said in 1981: "Name almost any controversial medical-legal topic over the last quarter of a century and Mr. Curran has been pivotal in shaping it." The article described him as the father of modern health law.

Professor Curran has chaired the Harvard School of Public Health Committee on Human Research since 1972; he has directed the Program in Law and Public Health since 1977; and he was the co-director of the Harvard Interfaculty Program in Medical Ethics from 1973 to 1980. He has been an advisor to the World Health Organization from 1986 to the present and has spent two sabbatical periods in Europe with WHO organizations. He has advised and lectured in countries throughout the world, most recently in China.

At Harvard Law School and at the Harvard School of Public Health, Professor Curran has educated three generations of lawyers who have gone on to hold varied positions of influence in the field of health law—from academia to private practice, from health care delivery and management to government leadership. His textbooks have been a bedrock of learning for students in schools of law, medicine and public health. He commands the respect of colleagues for his rigor and fairness in safeguarding the rights and dignity of human subjects. The American Society of Law and Medicine recently honored him, together with Professor Jay Katz of the Yale Law School, as the best health law teacher in the nation. The honor bestowed on Professor Curran is especially important because he has been chosen by other health law professors.

My personal reflections on William Curran began in 1976, when I was the Legal Director of the National Association for Mental Health (MIND) in Great Britain. At that time, he was on a research mission for the World Health Organization (WHO), compiling a worldwide survey of mental health legislation. I had just completed A Human Condition, the first full

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scale analysis of the British Mental Health Act. Professor Curran and I spent a day together, and I was instantly impressed with his intellect, energy and compassion.

Law and Mental Health: Harmonizing Objectives,\(^4\) Professor Curran's report on the results of his mental health legislation survey for WHO, has precipitated worldwide reform in psychiatry and law. The report dispelled paternalistic myths about the virtues of granting unbridled discretion to mental health professionals, and proposed legal measures to protect the human rights and dignity of the mentally ill. In 1982, many of the proposals in Harmonizing Objectives and A Human Condition were incorporated into the revised British Mental Health Act.

I next met William Curran in Siracusa, Italy in 1979, where we formed part of a committee assembled by the International Commission of Jurists and the International Institute of Higher Studies in Criminal Science. Our task was to draft principles for the protection of persons suffering from mental disorder.\(^5\) During the two week-long sessions in Siracusa, I found that Professor Curran and I shared many views concerning the rights of the mentally ill. We worked together at that meeting to support our mutual goals. The document we helped craft during those sessions is now part of the Daes Report,\(^6\) which is currently before the United Nations pending approval as a Declaration of Rights for the Mentally Ill.

Professor Curran's achievements include drafting numerous public health laws as well as writing twelve books and over one hundred professional journal articles. He played a major role in Harvard's 1968 report re-defining brain death.\(^7\) He is most well known for the medicolegal columns he has published in the New England Journal of Medicine over the past twenty-five years. In those pages, he advocated humanity in the practice of medicine, taking on such issues as torture, the doctor's role in capital punishment, and human experimentation. As a follow-up to Harmonizing Objectives, in 1986 Professor Curran prepared a similar survey for WHO on alcohol and drug dependency,\(^8\) which resulted in the establishment of guidelines for drafting legislation.\(^9\) His latest book, written with Louis

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\(^5\) Association Internationale de Droit Penal, The Protection of Persons Suffering from Mental Disorder (1980).


\(^7\) Beecher, A Definition of Irreversible Coma, Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, 205 J.A.M.A. 6 (1968).


McGarry and Saleem Shah, promises to be a standard in modern legal psychiatry and psychology.10

Professor Curran’s work has had a striking influence on such areas as death and dying, risk management, mental health and public health. Currently, he is one of the legal community’s chief proponents of patient-injury risk management programs as a means of reducing malpractice liability risk. His goal is to bring together the data and experiences of major risk management programs from across the country to enlighten future policy decisions. His concern is not with reducing medical malpractice claims alone, but with reducing risk for patients as well.

The AIDS epidemic has challenged science and law more than any other contemporary health issue. In 1986 Dr. James Mason, then Acting U.S. Assistant Secretary for Health, selected Professor Curran and I to prepare a report on the legal and regulatory aspects of AIDS.11 Professor Curran was an influential member of the National Institute of Medicine/National Academy of Science task force on AIDS.12 He also played a key role in the Centers for Disease Control Conference on AIDS Confidentiality in February, 1987.13 Currently, Professor Curran and I are engaged in a worldwide survey of AIDS legislation for the World Health Organization.

This symposium issue reflects the scope of Professor Curran’s distinguished career. The authors are his associates, who have assembled to pay tribute to William Curran and his achievements.

Professor Wendy Mariner was, until recently, Professor Curran’s colleague at the Harvard School of Public Health. Her Article concerns elimination of financial barriers to health care. She proposes a new standard of review for fourteenth amendment equal protection claims, a new form of heightened scrutiny that considers the nature of inaccessible social goods and services rather than the composition of the excluded minority.

Professor Frank Grad, Director of the Legislative Drafting Research Fund at Columbia University, has collaborated with Professor Curran on

various public health legislation projects. His Article is excerpted from the forthcoming revised edition of the *Public Health Law Manual*, authored by Professor Grad in 1965. The Article examines the necessary balance between individual liberty and restrictions required by public health concerns.

Professor Angela Holder, Counsel for Medicolegal Affairs at Yale-New Haven Hospital, shares Professor Curran's concern with the appropriate use and protection of biomedical research. Her Article demonstrates the importance of confidentiality to medical research subjects, and argues that the legal need for disclosure must be secondary to the medical researcher's need for maintaining the trust and cooperation of subjects.

Harold Ginsburg is Chief of the AIDS Program at the National Institutes of Allergy and Infectious Diseases. His Article examines the usefulness and inherent limitations of epidemiologic data in mass tort litigation, contrasting legal and medical notions of causation and evidence.

Genevieve Pinet is the World Health Organization's Regional Officer for Health Legislation in Europe. Her Article outlines the WHO program in health legislation, including the geographic, political, and cultural barriers encountered in creating a unified health care system in Europe.

My Article on the future of public health law closes the symposium issue. Professor Curran and I have a common vision of reforming outdated communicable disease control laws in light of modern conceptions of due process, medical necessity, and confidentiality. My Article provides a blueprint for legislative reform of those outdated communicable disease control measures.

I recall discussing with Professor Curran his plans and dreams to establish the first World Health Organization Collaborating Center in Health Legislation at Harvard, first in Siracusa and later during his occasional visits to London. It was Professor Curran who convinced me to return to the United States to become Associate Director of the Center.

Bill Curran's dream has now been realized. The World Health Organization has just recently designated Harvard University as the first International Collaborating Center for Health Legislation. Professor Curran will be its first director.

**Larry Gostin,**
Executive Director, American Society of Law and Medicine
Executive Editor, American Journal of Law and Medicine
Associate Director, Harvard University/World Health Organization International Collaborating Center for Health Legislation