Global Health with Justice: Controlling the Floodgates of the Upstream Determinants of Health through Evidence-Based Law

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This article introduces a special issue on the legal determinants of health, following the publication of the Lancet–O’Neill Institute of Georgetown University Commission’s report on the subject. We contextualize legal determinants as a significant and vital aspect of the social determinants of health, explain the work of the Lancet–O’Neill Commission and outline where consequent research will usefully be directed. We also introduce the papers that follow in the special issue, which together set out in greater detail the work of the Commission and critically engage with different aspects of the report and the application of its findings and recommendations.

Going Upstream to See How the Floodgates Work

The idea of upstream causes is a prevailing metaphor of the public health community. Upstream interventions include preventing injury and disease, assuring the conditions in which people can be healthy and safe and addressing the key structural factors that lead to avoidable and unfair health inequalities. It is when we look ‘upstream’ that we find the most effective, efficient and equitable place for interventions for the public’s health. In practice, however, there are significant challenges in instituting population-level interventions rather than reacting once injury and disease have occurred.

Geoffrey Rose explained the difficulty in gaining public and political support for public health, in what he powerfully articulated as the ‘population paradox’ (Rose, 1981, 1985). Rose posited that small changes in risk behaviour may have a major impact on population health but only have marginal impact for any given individual. For individuals, this relates in part to questions of motivation and priority: why worry (say) about how much fat, salt or sugar producers put into food, if the harms that they will cause are probabilistic, silently accumulative, and will anyway not materialize until some point in the future? As Rose and others have recognized, our understanding in this area cannot be limited to considerations of individual-level action. Research in social epidemiology has shown why it is mistaken, practically and philosophically, to treat responsibility for health as a purely individual pursuit (Venkatapuram, 2010). And this leads to further challenges that are well categorized by reference to the social determinants of health (Commission on the Social Determinants of Health, 2008). Overarching social determinants theses have opened up a ranging subset of questions, focused on different sorts of social determinants, including education, housing, social safety nets and more.

Amongst these, commercial determinants of health have become a vital lens through which to explore population health and safety. Given the practices and power of many commercial actors (e.g. tobacco, alcohol, food and petrochemical), public health scholars have critically examined the implications for the public’s health (see, e.g. McKee and Stuckler, 2018). For societal organizations generally, scholars have asked how governance for
health can become a shared value and agenda (see, e.g. Davies et al., 2014; Ottersen et al., 2014). And for governments, analysts have challenged contexts wherein attention to the short-term preferences of voters, or being beholden to influential actors—such as providers of economic and other forms of support—trumps concerns for benefits to the public’s health that will only materialize sometime after terms in office will have expired (see, e.g. Ottersen et al., 2014; Raphael, 2015; Greer et al., 2017). Public health protection requires a long-term horizon (cf Coggon, 2020a).

Given the profundity of these and related challenges, which are made all the more complex in international and global contexts, leadership and coordinated efforts are required in the structures and conditions that can create positive, equitable health outcomes and opportunities (Gostin, 2014). Within the imagery of going upstream, it is important to identify the points at which the flow may be controlled, stemmed and redirected: the ‘floodgates’ that the most powerful actors in society may open or close. Thanks to epidemiological research, we can imagine the flows of causal factors—positive and negative—that influence the incidence of disease amongst different populations within and across nations. Crucially, many of these are shaped by political and legal superstructures and frameworks. National and international laws—and broader concepts of governance—have a unique and vital place in the machinery that, for better or worse, controls the floodgates that determine what happens to the people living ‘down the river’. Law, both in its more refined senses and as it stands alongside the related idea of governance, is an enormous part of upstream social determinants. If it is used effectively, with good evidence, and consistently with fundamental human rights and the rule of law, it has a central role in assuring public and global health with justice. This is why scholars, activists, experts and leaders are directing interest towards the legal determinants of health, in the words of the Lancet–O’Neill Institute of Georgetown University Commission on Law and Global Health (Gostin et al., 2019).

The Lancet–O’Neill Report: Law’s Power as a Determinant of Health Outcomes and Equity

Legal scholars’ interest in public and global health law has been growing considerably over the past 20 years, tracking furrows alongside comparable developments in public and global health ethics (cf Kass, 2004). As this has happened, such scholars have become increasingly interested to promote transdisciplinary understandings, so that experts can work across the boundary lines of disciplinary and professional customs and traditions: this is about expanding the expertise, capacities and understanding of the legal profession and of other groups (see e.g. Burris et al., 2016). A landmark development within public and global health law agendas is the recent Lancet–O’Neill Institute of Georgetown University Commission report: The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development (Gostin et al., 2019).

The Lancet–O’Neill report explains conceptually and practically how law may be used as an upstream factor in the social determinants of health; used to achieve better, fairer conditions for the public’s health. The report sets out how laws can empower individuals and communities and provide authority for governments, public agencies and international organizations to act to serve the common good. Laws found aims and goals and structure governance and practice. Crucially, the report explores how law’s power can be either to the benefit or detriment of fair and healthy environments and governance. The Lancet–O’Neill Commission does not invite uncritical reverence for law. Laws that are discriminatory or violate human rights can harm individuals and undermine population-based health. Nor does the Commission suppose that legal measures are always the most efficient, or that legal ideals—such as the rule of law or respect for human rights—are always realized. Nevertheless, the report spells out and exemplifies the key links between law and governance and law’s effect in assuring authority to activities for global health with justice. And the report stresses that good law and good ethics require strong examination of the scientific evidence and respect for human rights.

For the report to lead to the outcomes that it envisages, necessarily much work remains to be done. It is for this reason that the O’Neill Institute’s World Health Organization (WHO) Collaboration on Global Health Law hopes to sign a memorandum of understanding with the WHO to establish a standing Commission on Global Health Law. The standing Commission’s work will involve different communities who are, or who could be, involved in public and global health efforts. The complexity of the challenges has already been noted. Their diversity, breadth and detail add to this. If we are to achieve fairer, healthier societies, multiple contingencies need to be accounted for at local, regional, national, international and global levels. The efforts cover domains that intersect but also will diverge at times on specificities. A core part of achieving global health with
justice is in attending to the motivations that direct the uses we choose to make of law and governance for health. Consideration of such questions is at the core of the papers in this special issue of Public Health Ethics, which we hope will promote wider-reaching research on how the challenges in achieving health with justice might be realized.

**Exploring Assuring Justice in Global Health Research and Practice**

Rather than relate its goals to narrow concepts of legality, the *Lancet–O'Neill* report advances an agenda where law in its different forms might serve health agendas. The Commission advocates for law’s place in wider aims to achieve **global health with justice**. These aims may be related to two prevalent values within public health ethics: better overall population health and diminished levels of health inequities between different communities and groups within societies. Health inequities are evident not simply amongst countries but within them. In giving effect to these aims, we need to be attentive to problems of inadvertently compounding, rather than ameliorating, injustice and disadvantage, a significant practical challenge in the context of complex public health challenges. And we likewise need to recognize that both in abstract and detailed senses, disagreements will arise on what constitute justifiable methods and aims of governance, whether for health or in relation to other important social values (Coggon, 2012: Part II).

The following papers, which build on presentations and discussions at a launch event for the report hosted at the Centre for Health, Law, and Society, University of Bristol, UK, contribute to explorations of these issues. The issue opens with an overview of the *Lancet–O'Neill* report by four of its authors: Jenny Kaldor, Lawrence Gostin, John Monahan and Katie Gottschalk. Their paper describes the composition of the *Lancet–O'Neill* Commission and explains the background, rationale, approach, findings and arguments in the report itself. A clear vision emerges of the need for coherent and actionable understandings of law and what it may do; how laws link to efforts that might promote greater equity; and how realization of the report’s ambitions requires constructive, collaborative efforts with colleagues and partners from across communities and professional and disciplinary backgrounds (Kaldor et al., 2020).

Within the spirit of constructive collaboration, the overview is followed by a critical analysis by Sarah Hawkes and Kent Buse that examines health inequities by reference to gender. Hawkes and Buse look to possibilities for achieving ‘synergistic benefits’ by approaching public and global health (law) with attention to systemic and overlapping points of advantage and disadvantage. Notably, health, gender and law share the quality of being socially constructed. Hawkes and Buse’s ideas are framed with reference to intersectionality, the ways that gender itself determines behaviours and norms (with direct, consequent implications for health) and how gender is embedded within institutions. They are critical of the comparable ways in which law, like health research, may formally be blind to gender whilst demonstrably compounding injustices. Insofar as this manner of critique speaks to understandings of global health with justice, they highlight the sophistication required in cross-disciplinary research efforts to provide further depth and detail to the aims expressed in the *Lancet–O'Neill* report (Hawkes and Buse, 2020).

Hawkes and Buse’s focus on gender continues in the two subsequent papers, which further invite critical attention and detail in debates on what it means, in practice, to strive towards global health with justice. First, Geetanjali Gangoli’s contribution looks to systematized injustices that are manifested in legal framings of, and responses to, gender-based violence. Gangoli draws from her research on these matters in India and the UK. The gender-based critique exposes how problems may emanate from the law and invites careful consideration of how laws might effectively be reformed—and implemented—to create greater equity and respect for basic rights (Gangoli, 2020).

Sheelagh McGuinness and Jonathan Montgomery’s paper also builds on the *Lancet–O'Neill* Commission’s representation of law as a powerful force that can both harm and serve public and global health efforts. In their paper, the focus is on legal regulation and framings of abortion, and the consequent impacts on girls’ and women’s health and other rights, and the care that they might receive. Their paper again serves to highlight the intricacy required of analyses of law as a determinant of (ill) health and injustice, and the complexity of equity in public and global health. Their analysis also provides practical explanations of how legal measures might be developed in efforts to promote greater justice (McGuinness and Montgomery, 2020).

In the final paper, John Coggon provides an analysis of the idea of law and ‘the legal’ within the *Lancet–O'Neill* report. This article aims to explore the concept of trans-disciplinary legal research by engaging in intradisciplinary reflection on the discipline of law itself. Coggon’s arguments draw from the instrumental nature of law within public and global health practice, and also to the broad reach of what counts as law, whether in
domestic or international legal systems. It is hoped through this contribution that the Commission’s aims to break through disciplinary silos might be realized, in part, through approaches to legal studies that themselves do not see law as a contained or singular idea. By seeing law as a means, rather than an end in itself, the paper also underscores the importance of the need to explore further how justice can and should motivate (public and global health) policy (Coggon, 2020b).

The Lancet–O’Neill report is an important agenda-setting document. We hope that the following discussions will advance its agenda further. It is vital that, as a community, scholars with interests in public and global health ethics and law help explain the complexities and challenges that we face, and how these speak back to the practical arguments that we would make in aiming to address them. Efforts to improve and generate fairer conditions for the public’s health, locally, nationally and globally, require us to broaden and deepen our understandings. It is for all of us to build on the current momentum if we are to achieve the vision of better, more equitable population health.

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Conflict of Interest

None declared.

References


