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Postscript: COVID-19 and the Legal Determinants of Health

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Postscript: COVID-19 and the Legal Determinants of Health

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This is a short postscript to the Public Health Ethics special issue on the legal determinants of health. We reflect briefly on emerging responses to COVID-19, and raise important questions of ethics and law that must be addressed; including through the lens of legal determinants, and with critical attention to what it means to protect health with justice.

Since this special issue of Public Health Ethics went into production, the global pandemic of COVID-19 has led to extraordinary measures being taken in many countries, including those where we each live (the UK and USA, respectively). As we draft this short postscript, President Trump has declared a national emergency in the USA, and the fifty state governors have declared state emergencies. President Trump has also now taken the extraordinary move of announcing that he is stopping the USA’s funding of the World Health Organization, which is a highly damaging action in the midst of a pandemic. Prime Minister Boris Johnson, who has since been heavily impacted through contracting COVID-19, declared a national emergency on 23rd March, 2020, in the UK, following which time the UK Parliament has granted extensive emergency powers through the Coronavirus Act 2020.

The resultant position, as we write, is that in the USA, most governors have ordered residents to stay at home and all non-essential businesses to close (Gostin et al., 2020a,b). In the UK, following early highly permissive governance approaches, the government and devolved administrations are now using emergency laws significantly to curtail general freedoms in efforts to contain the spread of COVID-19 (Coggon, 2020).

In both of our countries, as elsewhere, an overbearing concern has been the functioning of the healthcare systems. COVID-19 could overrun doctors’ offices and hospitals, which are also short on critical supplies such as personal protective equipment and ventilators. Scrutiny and evaluation of the COVID-19 response nationally and globally are ongoing. When we come to look back on this crisis, we will see social and legal determinants having a marked impact, both at national and global levels. How effective have governments and the World Health Organization been in curtailing the spread of SARS-CoV-2? How have they balanced public health with human rights? What lessons can we learn about national and global preparedness? As responses to the pandemic run, and after, it will be crucial to explore how law and governance have been used (and not used), and to question their effectiveness, their compliance with human rights, and how equitable they have been.

Across the world, there have been notable distinctions in different national responses. Governments, experts, and citizens are watching closely to see how different methods of governance are, and are not, working as the crisis unfolds and as our understanding improves. Problems abound in relation to scientific uncertainty, paucity of data, and the extreme challenges of achieving equitable, proportionate responses. At one point, we may have considered it unimaginable to have a large-scale ‘lockdown’ in liberal Western democracies, but that is exactly what we have seen in many nations, including our own. At the same time, concerns proliferate for nations and communities who stand to be harder hit still and are ill-resourced or otherwise lacking in infrastructural capacity to respond effectively. The virus, for example, is poised now to spread through Africa and the Indian sub-continent. This is a global health

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emergency, and it demands coordinated responses and political leadership that take a global outlook. Within and among nations, we already see gross inequities. These will become starker as time progresses, and must be given careful, collaborative, cross-disciplinary and cross-sector scrutiny.

Colleagues in global and public health, including scholars in ethics and law, will therefore rightly be attentive to the implications of this crisis at subnational, national, international, and global levels. The challenges of the acute and sustained events consequent to COVID-19, across the globe, have already laid bare the sheer vulnerability of human health, the fragility of social institutions that we may take for granted, our astounding interconnectedness, and the need that these bring for equitable, transparent methods of coordination and regulation; of good governance, including for the public’s health. The need for brave and contemplated political leadership is clear; leadership that looks globally, not just nationally. And however different countries’ responses come to be judged in hindsight, the power of law, its limits, its risks and its relationships to health and other vital values, could not be made starker.

In using law as a tool to serve the public’s health, the need for scientific evidence is clear, as are the challenges of seeking societal responses to threats that are not immediately visible. A key lesson already learned is that we must invest in public health and prepare for rapid identification and response when a situation such as this arises. Beyond a sound scientific evidence base, for legal responses to enjoy legitimacy, they must accord with the rule of law, including by exhibiting a clear commitment to fair and equal treatment, proportionality and administration according to principles of good governance. There is inevitable urgency to responses to COVID-19, but they form parts of a long and complex process. A measure of this moment, which will demand continued analysis as and after it unfolds, will be how well governments fare in protecting health with justice. There is a vital role in continued efforts for scholars interested in public health ethics and law and the legal determinants of health.

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Conflict of Interest

None declared.

References

