Liberty and limitation in public health

Public health law: power, duty, restraint
Lawrence O. Gostin
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A ny 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 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
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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