

Public Health Law & Policy in Global Perspective

LAW 3057 Georgetown University, Spring 2018

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This course will focus on four core issues: quarantine and criminal penalties, access to affordable medicines and intellectual property, the international and constitutional right to health, and how political institutions and race intersect and condition the effect of law on population health. By looking at these issues in both the United States and abroad, particularly in low- and middle-income countries, students will gain a comparative perspective about how law works in practice.

Utilizing HIV and tuberculosis as core case studies, students will explore how law and policy tools can have a significant impact on population health. Today, state actors continue to use law to address public health issues—with examples of both great successes and significant failures.

As public health law embodies both thorny ethical issues and empirical questions about the power of the state to affect health, examining the intersection of law and social science will reveal substantive issues in key health policy issues as well as the conditions under which law and legal advocacy affects wellbeing. HIV and TB, the world's biggest infectious killers, provide a lens through which to better understand central issues in public health law and policy, which will then be linked to other health concerns in infectious, non-communicable, and environmental health.

This class will be a blend of lectures, discussion, and small group work. Readings will include case law and legal theory as well as texts from political science, economics, and public health. At the end, students will have a better understanding of how and when the law matters for health—which will be of particular interest to students interested in litigation, lawmaking, and public health regulation.

We will focus on five core ideas (split across 5 “units” below):

1. The state's police powers in responding to diseases.
2. The state's obligation to provide for health.
3. The state's necessity to balance public health and economic law.
4. Implications of state power to regulate private behavior.
5. How political institutions drive the choice of policy by the state.

Required Books (available in book store, libraries, and online)

Farmer, Paul. *Pathologies of Power: Health, Human Rights, and the New War on the Poor*. University of California Press, 2005.

Lieberman, Evan S. *Boundaries of Contagion: How Ethnic Politics Have Shaped Government Responses to AIDS*. Princeton University Press, 2009.

Gostin, Lawrence O., and Lindsay F. Wiley. *Public Health Law: Power, Duty, Restraint* 3rd Edition. University of California Press, 2016.

Gostin, Lawrence O. *Global Health Law*. Cambridge, MA: Harvard University Press, 2014.

Pre-Reading: Please read lightly through these two books and one short chapter before the start of class as well as the first week's reading.

- In the Farmer book please read chapters 1, 2 (you can skip the long post-script), 4, 7, and 9 and then skim other sections per your interest and time.
- In the Lieberman book, focus on the core argument and the case studies (chapters 1, 3, 4, 5)—don't worry about the dense political science or the statistics if its not your thing. Note that we will use the Lieberman book in a later class, but it provides some important

background about HIV in South Africa, India, and Brazil that will be helpful in addition to its theories about race and policy.

Farmer, Paul. *Pathologies of Power: Health, Human Rights, and the New War on the Poor*. University of California Press, 2005.

Lieberman, Evan S. *Boundaries of Contagion: How Ethnic Politics Have Shaped Government Responses to AIDS*. Princeton University Press, 2009.

Gostin & Wiley, *Public Health Law*, Chapter 1: Theory & Definition of Public Health Law

Evaluation & Assignments:

Grade assigned will be based on the following assignments:

1. **Participation:** Students are required to attend all class sessions and to come prepared to ask and answer questions and participate in discussions. This means you must do a careful reading of the materials assigned—this is a small class and the quality and quantity of your contributions will be critical and make it obvious if you have not prepared.
2. **Debates:** Each class a different group of students will prepare and engage in a debate, with the rest of the class acting as jury to choose a winner. Whether you win or lose will not affect your grade, only whether you prepare well. Each student will participate in one or two debates. **PLEASE BE SURE to read the full debate questions and instructions on the additional hand-out on canvas.**
3. **Paper:** Your final assignment will be a paper in which you take **one** of the five key issues we have explored and apply it to a different public health issue (not HIV or TB). You are expected to advance a policy position which reflects understanding of multiple perspectives (even as you argue your own) and draws upon substantial evidence to back your position. We will discuss details in class. **BEFORE YOU WRITE** please see the “policies on written work” at the end of this syllabus.

Readings By Unit

Completed reading of *Pathologies of Power: Health, Human Rights, and the New War on the Poor* & *Boundaries of Contagion: How Ethnic Politics Have Shaped Government Responses to AIDS*

Unit 1: Public Health & Police Powers: Quarantine

Mburu, Gitau, Enrique Restoy, Evaline Kibuchi, Paula Holland, and Anthony D. Harries.

"Detention of People Lost to Follow-Up on TB Treatment in Kenya: The Need for Human Rights-Based Alternatives." *Health and Human Rights* 18, no. 1 (2016): 43-54.

Parmet, Wendy E. "Legal power and legal rights— isolation and quarantine in the case of drug-resistant tuberculosis." *New England Journal of Medicine* 357.5 (2007): 433-435.

Celia Dugger, TB Patients Chafe Under Lockdown in South Africa, *NY Times*, 2008

Gostin & Wiley, *Public Health Law*, Chapter 10 p 373-388 & Chapter 11 p 416-433.

(Review: Paul Farmer, *Pathologies of Power*, Chapter 2: Guantanamo, AIDS, and the Logic of Quarantine & Chapter 4: A Plague on All Our Houses, Resurgent TB Inside Russia's Prisons)

Debate: Quarantine and Ebola—New Jersey case.

Please note –we will assign the debate schedule, and assigned arguments on Canvas on Friday, January 5th

Unit 2: State Obligation: Constitutional Right to Health

Gostin *Global Health Law*, Chapter 8, 243-269.

Kavanagh, Matthew M. "The right to health: institutional effects of constitutional provisions on health outcomes." *Studies in Comparative International Development* 51.3 (2016): 328-364.

TAC v. Minister of Health, Constitutional Court of South Africa, 2002. Read closely paras 1-29, 71-73, 92-114, 122, and 135 and skim the rest.

[Note: review chapter 4 sections on South Africa for context for TAC case]

Yamin, Alicia Ely, and Oscar Parra-Vera. "Judicial Protection of the Right to Health in Colombia: From Social Demands to Individual Claims to Public Debates." *Hastings Int'l & Comparative Law Review* 33 (2010): 431.

Ferraz, Octavio Luiz Motta. "Harming the Poor Through Social Rights Litigation: Lessons from Brazil." *Texas Law Review* 89 (2010): 1643.

(Review: Paul Farmer, *Pathologies of Power*, Chapter 2: Guantanamo, AIDS, and the Logic of Quarantine & Chapter 4: A Plague on All Our Houses, Resurgent TB Inside Russia's Prisons)

Debate: U.S. right to health.

Unit 3: Regulating Essential Goods: Access to Affordable Medicines

't Hoen, Ellen. *Private Patents and Public Health: Changing Intellectual Property Rules for Access to Medicines*. Health Action International, 2016, pages 19-77 (though read others as interested).

Stiglitz, Joseph E. "Economic foundations of intellectual property rights." *Duke Law Journal* 57 (2007): 1693.

Kapczynski, Amy. "Harmonization and Its Discontents: A Case Study of TRIPS Implementation in India's Pharmaceutical Sector." *California Law Review* 97 (2009): 1571.

Gostin *Global Health Law*, Chapter 9, 289-298.

Lancet Commission (Wirtz, Veronika J., et al.) "Essential Medicines for Universal Health Coverage." *The Lancet* 389, no. 10067 (2017): read 449-459, skim rest

Supreme Court of India. *Novartis v. Union of India & Others*, Civil Appeal No. 2728, 2013.

Debate: TRIPS & patent abolition.

Unit 4: Public Health Regulation & Police Powers (revisited): Sex & Drugs

(note while there are several readings they are mostly short...)

Strathdee, Steffanie A., Leo Beletsky, and Thomas Kerr. "HIV, drugs and the legal environment." *International Journal of Drug Policy* 26 (2015): S27-S32.

Edith Kinney, Edith "Raids Rescues & Resistance: Women's Rights and Thailand's Response to Human Trafficking," from Showden & Magic, *Negotiating Sex Work* (2014) p 145-69.

Outshoorn, Joyce. "The Contested Citizenship of Sex Workers: The Case of the Netherlands," from Showden & Magic, *Negotiating Sex Work* (2014), p 171-194.

Scott Cunningham and Manisha Shah, "Decriminalizing Indoor Prostitution: Implications for Sexual Violence and Public Health, *The Review of Economic Studies*, 2017.

(do not worry too much about understanding the mathematical and econometric analysis, which you can skip through, note instead the sections on legal actions taken and the core findings)

Gostin & Wiley, *Public Health Law*, Chapter 6 p 219-224.

(Review: Paul Farmer, Pathologies of Power, Chapter 7: Cruel & Unusual)

Note: In class we will be looking at these issues in context of core human rights documents—ICCPR, ICESCR, UDHR, etc. so if you have not seen these before skim them if you have time.

Debate: NGO funding of Brothels.

Unit 5: Political institutions as policy determinants:

March, James G., and Johan P. Olsen. "Institutional Perspectives on Political Institutions." *Governance* 9, no. 3 (1996): 247–64. *(read lightly; it will help you understand the rest)*

(Review: Lieberman, Evan S. Boundaries of Contagion: How Ethnic Politics Have Shaped Government Responses to AIDS.

TB and Native Peoples articles, available on Canvas

Dionne, Kim Yi. "The Role of Executive Time Horizons in State Response to AIDS in Africa." *Comparative Political Studies*, 2010.

(Review: Paul Farmer, Pathologies of Power, Chapter 9: Rethinking Health & Human Rights)

Debate: Rights & law's matter or not.

Discussion: Summary of the class

Note: Please bring an idea for your paper topic to class with you for discussion.

Policy for Written Work—please read before you write

- All papers are to be turned in **via Canvas** by the times specified. You can confirm online that the message was sent, so there should be no “confusion” about lost emails, etc. **No work should be emailed directly to me or left under my office door.**

When marking your written work, the following will be considered:

- *Content*: We expect work that demonstrates comprehension of the class content, that presents critical analysis of the topic chosen, and brings in relevant materials from outside (you may use class materials as part of your paper, but you are also expected to do original secondary source research and bring in additional materials). Work that misses essential points and/or that simply summarizes the topic you are writing on will not be sufficient. The key here is critical engagement with the issues of this class.
- *Argument*: We expect work that has a clearly stated thesis and a set of logically developed and reasonably comprehensive evidence and arguments in support of that thesis.
- *Grammar, Spelling, and Style*: We expect work that is not difficult to read or understand due to excessive grammatical and/or spelling errors.
- *Mechanics*: Please submit work that is **double spaced, 12 point font, with numbered pages, a one inch margin and your name clearly indicated**. References to the ideas or words of scholars besides yourself must be cited in a consistent format—Blue Book or any consistent system is acceptable so long as you follow the rules of that system.
- *Plagiarism*: It should be obvious that any use of another’s words or ideas as your own without proper attribution to the source is unacceptable. It is also conduct prohibited under the Student Disciplinary Code (See §§ 102 and 103).