

# Other Branches of Science Are Necessary to Form a Lawyer: Teaching Public Health Law in Law School

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*Other branches of science, and especially history, are necessary to form a lawyer.*

— Thomas Jefferson<sup>1</sup>

Over two hundred years ago, Thomas Jefferson suggested the need for a broader legal curriculum. As the twenty-first century begins, the practice of law will increasingly demand interdisciplinary knowledge and collaboration — between those trained in law and a broad range of scientific and technical fields, including engineering, biology, genetics, ethics, and the social sciences. The practice of public health law provides a model for both the substantive integration of law with science, and for the way its practitioners work. In addition, public health law also provides a model for interdisciplinary and integrative teaching.

This commentary provides a rationale for a policy that every U.S. law school offer course options on law and public health. Adherents to this position might even view public health law as so fundamental a subject that it be considered a “foundational” body, akin to, for example, tort, contract, constitutional, and criminal law. The tight intertwining of public health issues with existing core courses surely suggests no less a role for public health law than as a unifying, syncretic theme for law school education. Indeed, the companion commentary by Parmet and Robbins in this same issue of the *Journal of Law, Medicine & Ethics* more fully argues that public health provides a set of skills and perspectives that should be introduced to all law students as they examine critical cases in core law school subjects.<sup>2</sup>

The case for including courses on public health law in the law school curriculum has deep roots which derive from a combination of trends in legal education, public health and health-care practice, and federal, state, and local government law. Foremost, and also as noted by Parmet and Robbins,<sup>3</sup> the law and several foundational subjects in legal education increasingly intersect with the domains of public health and health law. For example, tort law broadly encompasses the interests and issues of the public health field in injury control, including the categories of intentional and unintentional injuries. Similarly, criminal law, in part, overlaps with injury issues by addressing the punishment and deterrence of not only intentional injuries, but, increasingly, the challenge of personal behaviors representing other serious health risks. The law of contracts now embodies issues of public health program management in a managed care legal framework, while property law has become a medium through which public health law can be applied to assure healthy and safe communities by way of zoning, nuisance abatement, and environmental law, among other means. Administrative law, a required course in some law schools, often deals with regulatory questions directly concerned with the population’s health.

In addition to the evolving relations between public health law and tort, criminal, and contract law, many of the most compelling questions in modern public health law and practice involve constitutional issues that define the scope of state and federal power to protect the public’s health. Nearly 100 years ago, the U.S. Supreme Court, in *Jacobson v. Massachusetts*, broadly endorsed the state’s police power to include most reasonable acts taken by the legislature to combat disease, including mandatory vaccination. Since then, through a number of key cases, the Court has periodically addressed the public health paradigm, seeking to balance the

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state's interest in the common good with the rights and liberties of the individual. The Court's efforts have included development of the doctrines of substantive and procedural due process in the areas of mental health and public health and the articulation of an individual's right to refuse medical treatment in the context of modern medicine.

In recent years, the federal courts have used "states rights," the long dormant Tenth Amendment, and the takings doctrine to significantly circumscribe what federal public health officials can mandate. Events continuing to unfold since September 11 may further reshape the contours of this paradigm. The emergent threats of biological and chemical terrorism intersect with constitutional law and its fundamental concerns with due process and other safeguards against infringement of personal liberties.

Public health law can play a valuable integrative function across the foundational subjects in at least four other ways. First, the interests and goals of public health law mesh with the basic social/legal theory that one primary role of government is to assure the health of the community's citizens — otherwise there can be no community.

Second, the laws of public health and community safety are more than simply the embodiment of a state's police power — they also compose a common thread that connects local, state, and federal governments. One implication of this proposition is that course work in public health law is highly relevant for those students pursuing careers in both health policy and government because the issues of public health policy embody the interactions between local, state, and federal governments.

Third, public health law provides a unique opportunity for integrative teaching: Because public health is so intertwined with the police power and other fundamental legal principles, public health law can be used to teach the basic tenets of constitutional law — especially procedural and substantive due process, and the tension between individual rights and social well-being.

Finally, the focus in public health law on the importance of the community's health and welfare, including that of marginalized populations, could provide an opportunity to expand the public service commitment and raise the social consciousness of law students and future lawyers. The education and training of medical students emphasize that they incur some debt to society in the process of learning their profession. Perhaps through examples of the role of law and lawyers in protecting both the health and rights of the population, law students could also be encouraged to include public service in their professional role.

#### **CURRENT STANDARDS FOR PUBLIC HEALTH LAW INSTRUCTION IN THE CURRICULUM**

Although data helping to quantify and characterize the amount of public health content in the curriculum of law schools are

limited, the American Association of Law Schools (AALS) provides us with some information. In June 1996, AALS conducted an assessment of curricular development by law schools. Specifically, the AALS's Committee on Curriculum and Research surveyed 179 law schools regarding new upper-level courses and seminars offered during 1994–1997.<sup>4</sup> The responding law schools ( $n = 83$ ) collectively reported 1,574 new courses during that period. The investigators sorted these courses into categories, including lists of the "Top 25 Areas of Curricular Growth" and "A Dozen Additional Areas of Potential Curricular Growth." Although the topics of "public health" or "public health law" did not appear on either list, some public health-related courses were reported in the category of "health law," the fourth most commonly ranked category (126 courses) among the "Top 25" list. Examples of relevant courses were those on tobacco regulation, AIDS and criminal law, vaccine injuries, and children's health.

The AALS investigators offered no conclusions or comments regarding law in relation to public health. However, the authors did draw conclusions of a more general nature, conclusions which have implications relating to the directions in which legal education may be evolving. Specifically, they concluded that their findings indicated a strong trend toward specialization in every area of the upper-level curriculum — a trend documenting that law students are studying narrower subjects, indicative of requirements for advanced knowledge in preferred specialties and/or law schools' pedagogic goal of allowing each student to explore some subjects in depth. One implication of this trend is that, at some point, legal education runs the risk of becoming too highly differentiated and specialized. Because public health law invokes so many of the foundational subjects, incorporating public health-related subject matter into the curriculum could help to counter overspecialization within legal education.

In an attempt to provide a more current and specific characterization of law school courses having some relation to law and public health issues and topics, in August 2001, at the request of one of this commentary's authors (Goodman), professional staff of the AALS searched the subject title field of the AALS database of courses (consisting of courses reported by its member institutions) using the string "public health." That search yielded only seven matches.<sup>5</sup>

The AALS professional staff then expanded the search by using a series of key terms adapted from the previous AALS report<sup>6</sup> and supplemented by one of this commentary's authors (Goodman). These key terms included: AIDS, bioethics, cancer, children's health, correctional health, environment, food and drug law, HIV, infectious diseases, occupational injuries, public health, tobacco, vaccine injuries, vaccines, and women's health. This expanded search identified approximately fifty-one member institutions that offered one or more

courses carrying a key term in the course title during the 2000–2001 academic term. Courses highly prevalent among those reported covered AIDS (twenty-three institutions) and bioethics (twenty-six institutions). Examples of other relevant reported courses included: food and drug law, vaccine injury, health and safety regulation, reproductive health law, public health and the law, and tobacco and the law.

The proliferation of these subspecialty courses related to public health might have disparate explanations, possibly reflecting the research interests of individual professors, the availability of adjunct faculty, and the demands of students. An important related question is *who is teaching* these public health law and related courses? Systematic study of this question could help in assessing important related factors, including whether faculty teaching such courses disproportionately consist of “instructors” and adjuncts rather than tenured or tenure-track professors; whether the number of full-time senior faculty with experience in public health law and public health practice is limited; whether there is an absence of commitment to public health teaching among those responsible for faculty recruitment; and whether this state of affairs somehow relates to student interests and demand.

The data from AALS do not reflect other sources of public health courses currently available to law students through cross-registration in public health schools, public health programs, medical schools, and other graduate programs. In addition, many schools have established joint degree programs (J.D./M.P.H.) that allow students to coordinate work on two degrees, often between two institutions. It is not clear where and whether these students receive specific education in public health law or in other specialized areas. These examples, of course, illustrate elective options for law students, rather than the required curriculum. Such course work, however, can provide pedagogical advantages because it allows law students to learn in an interdisciplinary environment, with physicians, epidemiologists, and other public health professionals. This context encourages law students to realize they will need skills beyond the black letter law to communicate and practice effectively. Additionally, joint degree programs are illustrative of the potential overlap between, and integration of, the two curricula.

#### WHAT CAN BE DONE?

This commentary has suggested that inclusion of public health and public health law within the curriculum of legal education will help to address the needs for both integrative and interdisciplinary approaches and for covering evolving issues of great social importance. But to bring about such modifications in legal education, numerous barriers inherent in the processes of curriculum development and implementation first must be overcome, including the lack of faculty specifi-

cally trained in both public health and law. These challenges are reflected in the sometimes brutally frank criticisms and concerns expressed by legal scholars and commentators about law school curriculum.<sup>7</sup> For example, one commentator has gone so far as to suggest that “law school is empirically irrelevant, theoretically flawed, pedagogically dysfunctional, and expensive.”<sup>8</sup> To compound the problem, the bases upon which decisions are made regarding modifications to law school course offerings appear not to be uniformly consistent. Investigators carrying out the assessment on behalf of the AALS’s Committee on Curriculum and Research suggested that “the upper-level curriculum often grows haphazardly, without institutional design.”<sup>9</sup>

Even if the criticisms of law school curriculum are too harsh, there are certainly numerous opportunities to strengthen the quality and relevance of legal education, as well as models upon which to base such change. Robertson has suggested that environmental law is one example of a topic for which there has been debate, discussion, and even action regarding stronger incorporation within the law school curriculum.<sup>10</sup> Robertson has argued that environmental law can be used early in the curriculum not only for what it offers in substance, but also for how it teaches legal processes, including knowledge of the origins, implementation, and interpretation of laws, and the role of lawyers in these processes. In fact, at least one law school requires environmental law for first-year students.<sup>11</sup> The law of public health — which substantially overlaps with environmental law — not only comprises diverse legal subjects intersecting multiple foundational disciplines, but also can be used to teach legal process. The law of public health, too, demands mastery of the legal methods and processes required for understanding the origins, implementation, and interpretation of laws, as well as the complex nuances characterizing relations between federal, state, and local laws.

Further steps should be taken to accelerate the integration of public health law within the law school environment. One helpful adjunct would be the development of more specific and comprehensive data regarding courses on public health law currently offered in law schools, as well as schools of public health. Such information could be obtained by systematically querying all law schools. These data, in turn, might be of assistance to individual law schools and the AALS in considering the development of a policy regarding the need for including public health law in law school curriculum. In tandem with such policy development, AALS could provide guidance to law schools regarding the creation of new, or active use of existing, instructional resources, including compilations of relevant seminal case law, public health law scholarship in both the legal and biomedical/public health literature, the breadth of information and materials on the Internet, and even making use of the expertise of public health practitioners in the myriad federal, state, and local agen-

cies across the country. Even now, law schools can draw on selected resources for teaching public health law (e.g., Gostin's *Public Health Law* and the volume by Curran, Hall, Bobinski, and Orentlicher on *Health Care Law and Ethics*), although such resources are limited and underscore the need for development of additional casebooks and case materials.

In conclusion, the law school curriculum should reflect an influence as pervasive as the law and discipline of public health. The wide-ranging impact of basic public health on U.S. and global society is indisputable through issues and problems that touch each of us on a daily basis — such problems as, for example, reducing hazardous contaminants in the environment, safeguarding the food supply from infectious diseases, curbing the HIV/AIDS epidemic, increasing access to health care and preventive services, and preventing motor vehicle crashes and other injuries. Beyond the practical influence of public health over our lives each day, its tenets intertwine with a multitude of domains related to the education in, theory, and practice of law. In particular, the incorporation of public health law into the curriculum can help to address major curriculum gaps (e.g., social and public policy, state and local government law, and public health itself), as well as serve as an integrative tool for teaching across the spectrum of foundational courses (e.g., constitutional law, property law, torts, and legal professionalism and ethics), specialty tracks (e.g., health-care and health law, environmental law, international law, and human rights), and advanced upper-level courses.

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