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Symposium Articles

SYMPOSIUM

Global Health Governance

Guest Edited by
Lawrence O. Gostin
and
Emily A. Mok

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*Letter from
the Editor*

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Foreword

Lawrence O. Gostin and Emily A. Mok

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Seven Challenges in International Development Assistance for Health and Ways Forward

Devi Sridhar

This paper outlines seven challenges in development assistance for health, which in the current financial context, have become even more important to address. These include the following: (1) the proliferation of initiatives, focusing on specific diseases or issues, as well as (2) the lack of attention given to reforming the existing focal health institutions, the WHO and World Bank. (3) The lack of accountability of donors and their influence on priority-setting are part of the reason that there is “inertia,” and resistance to creating a strong UN system. (4) Other than absolute quantity of aid, three other challenges linked to donors relate to the quality of aid financing particularly the pragmatic difficulties of financing horizontal interventions, (5) the marginal involvement of developing country governments as aid recipients, and (6) the heavy reliance on Northern-based organizations as managers of funds. (7) The final challenge discussed focuses on two unintended consequences of the recent linking of health and foreign policy for international development assistance. The paper then provides three suggestions for ways forward: creating new mechanisms to hold donors to account, developing national plans and strengthening national leadership in health, and South-South collaboration.

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Global Health Governance: Commission on Social Determinants of Health and the Imperative for Change

*Ruth Bell, Sebastian Taylor, and
Michael Marmot*

In May 2009 the World Health Assembly passed a resolution on reducing health inequities through action on the social determinants of health, based on the work of the global Commission on Social Determinants of Health, 2005 -2008. The Commission's genesis and findings raise some important questions for global health governance. We draw out some of the essential elements, themes, and mechanisms that shaped the Commission. We start by examining the evolving nature of global health and the Commission's foundational inspiration — the universal pattern of health inequity and the imperative, driven by a sense of social justice, to make better and more equal health a global goal. We look at how the Commission was

established, how it was structured internally, and how it developed external relationships — with the World Health Organization, with global networks of academics and practitioners, with country governments eager to spearhead action on health equity, and with civil society. We outline the Commission's recommendations as they relate to the architecture of global health governance. Finally, we look at how the Commission is catalyzing a movement to bring social determinants of health to the forefront of international and national policy discourse.

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Achieving Health Equity on a Global Scale through a Community-Based, Public Health Framework for Action

Laura Anderko

Despite good intentions and decades of discussion addressing the need for transformative changes globally to reduce poverty and improve health equity, little progress has been made. A fundamental shift in framing the current conversation is critical to achieve “health for all,” moving away from the traditional approaches that use the more narrowly focused medical model, which is intent on treating and curing disease. A public health framework for action is needed, which recognizes and confronts the complex, and often-times difficult-to-achieve social determinants of health. A restructuring of global health policy development and implementation will be ineffective unless key areas are addressed including primary education and the environment, in addition to economic considerations. A public health framework that embraces a community-based participatory approach would provide a comprehensive platform for identifying critical components that impact health, and for developing effective strategies for change. A participatory approach would encourage dialogue and problem-solving for region-specific issues among those most affected by the broader health and social justice issues, with those who create policy.

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Global Health Governance and the Challenge of Chronic, Non- Communicable Disease

Roger S. Magnusson

This paper considers how we can conceptualize a “global response” to chronic, non-communicable diseases (NCDs) — including cardiovascular disease, cancer, diabetes, and tobacco-related diseases. These diseases are the leading cause of death and disability in developed countries, and also in developing countries outside sub-Saharan Africa. The paper reviews emerging and proposed initiatives for global NCD governance, explains why NCDs merit

a global response, and the ways in which global initiatives ultimately benefit national health outcomes. As the global response to NCDs matures, and the number of initiatives and partnerships increases, it will become increasingly important to map their respective contributions, and to evaluate progress overall. It is not yet clear what institutional mechanism, if any, will rise above the sea of surrounding initiatives to play this global role. This paper therefore aims to provide a conceptual map for making sense of what individual initiatives contribute to global governance. This map also draws attention to the distinctively “global” public health functions that a global response to NCDs should seek to discharge.

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Implementing Public Health Regulations in Developing Countries: Lessons from the OECD Countries

Emily A. Mok, Lawrence O. Gostin, Monica Das Gupta, and Max Levin

Developing country efforts to enforce basic public health standards are often hindered by limited agency resources and poorly designed enforcement mechanisms, including excessive reliance on slow and erratic judicial systems. Traditional public health regulation can therefore be difficult to implement. This article examines innovative approaches to the implementation of public health regulations that have emerged in recent years within the OECD countries. These approaches aim to improve compliance with health standards among the different actors while reducing dependence on the legal system and the administrative resources of public health agencies in developing countries. Developing countries may find some useful lessons from these approaches that can be adapted for use in their own institutional settings.

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Basic Survival Needs and Access to Medicines – Coming to Grips with Trips: Conversion + Calculation

Rudolf V. Van Puymbroeck

“Access to medicines” is a broad concept. After a review of three authoritative frameworks that help to identify its constitutive components, this essay summarizes the actual situation on the ground in low- and middle-income countries on the basis of recent empirical work. An analysis of survey data from 36 countries concluded that developing countries should promote generic medicines as a key policy option for improving access to medicines. Taking an international perspective to that recommendation, this essay reviews the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and, particularly, how this agreement has been applied in practice. As shown by the experience of Thailand, Brazil, and the Philippines, in order to deal effectively with international pressures for an excessive application of the TRIPS Agreement, some sort of conversion experience appears to be required, which then leads to a switch from a private enterprise, supply-driven approach to a public health vision that insists on universal and affordable access. But moral conviction is not sufficient. In order to muster and sustain the political will to face down international forces, civil society and government offices must be able and ready to show the costs and other adverse consequences of the TRIPS-based model for medicines. This calculation needs to reach beyond the health sector and calls for new alliances, nationally as well as internationally.

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Addressing Global Health Governance Challenges through a New Mechanism: The Proposal for a Committee C of the World Health Assembly

Ilona Kickbusch, Wolfgang Hein, and Gaudenz Silberschmidt

The field of global health has reached a critical juncture, where both its visibility and the complexity of its challenges are unprecedented. The World Health Organization, as the only global health actor possessing both democratic and formal legal legitimacy, is best positioned to capitalize on this new, precarious situation in public health and respond with the governance innovation that is needed to bring the increasingly chaotic network of activities and entities affecting health outcomes under the fold of a centralized, standard-setting agency. One such proposed innovation to guide normative and strategic coordination in global health is the creation of a Committee C of the World Health Assembly that would promote consensus building and multi-stakeholder decision-making within the unique convening power of the World Health Organization.

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Lessons from the Experience of U.N. Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance

Janet E. Lord, David Suozzi, and Allyn L. Taylor

This article reviews the contributions of the UN Convention on the Rights of Persons with Disabilities (CRPD) to the progressive development of both international human rights law and global health law and governance. It provides a summary of the global situation of persons with disabilities and outlines the progressive development of international disability standards, noting the salience of the shift from a medical model of disability to a rights-based social model reflected in the CRPD. Thereafter, the article considers the Convention’s structure and substantive content, and then analyzes in specific detail the particular contributions of the Convention to health and human rights law and global health governance. It concludes with an exploration of the potential implications of the CRPD’s innovations for some of the most pressing issues in global health governance, including the Convention’s contributions to the principle of participation in decision-making.

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A Framework Convention on Global Health: Social Justice Lite, or a Light on Social Justice?

Scott Burris and Evan D. Anderson

With the publication of the final report of the WHO Commission on the Social Determinants of Health, it becomes clear that there is considerable convergence between a policy agenda rooted on social epidemiology and one rooted in a concern for human rights. As commentators like Jonathan Mann have argued, concern for human rights and the achievement of social justice can inform and improve public health. In this article, we ask a different question: what does a health perspec-

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tive adds to the enduring fight for a more just world? We consider three possibilities: (1) that public health, in an inversion of Mann's argument, actually provides useful tools for specifying social injustice; (2) that, contrary to the usual critical stance and assumption of weakness, the institutions of public health bring powerful capacities to the practical promotion of social justice; and (3) that health as a banner mobilizes people who would not be mobilized to act in the name of social justice.

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Why the West Is Perceived as Being Unworthy of Cooperation

Gorik Ooms

Natural selection generated a natural sense of justice. This natural sense of justice created a set of natural rights; rights humans accorded to each other in virtue of being members of the same tribe. Sharing the responsibility for natural rights between all members of the same tribe allowed humans to take advantage of all opportunities for cooperation. Human rights are the present day political emanation of natural rights. Theoretically, human rights are accorded by all humans to all humans in virtue of being humans; however, the idea that the corresponding responsibility is now shared among all humans is not broadly accepted. The natural sense of justice creates an ambiguity: on the one hand humans consider the nation they belong to as the social system that should guarantee their human rights (and likewise they do not consider themselves as having responsibility for the human rights of inhabitants of other nations); on the other hand, as cooperation between nations intensifies, expectations of global mutual responsibility increase as well. As the West does not feel responsible for the human rights of humans in the rest of the world, not even for their most basic survival needs, the West is perceived as unworthy of cooperation. If human rights are understood as conditions for the well-functioning communities, lifting the responsibility for the human rights of all humans to the global level can be understood as a condition to take full advantage of all opportunities globalization presents, or as a condition to adequately address all challenges globalization presents. However, this would have to happen without disregarding the particular feelings of mutual responsibility nations embody; we need a sliding scale of responsibility. The first step would be an acknowledgement that all humans are responsible for meeting the very basis survival needs of all humans, which could be achieved through a Framework Convention on Global Health and a Global Health Fund.

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Examining the Global Health Arena: Strengths and Weaknesses of a Convention Approach to Global Health Challenges

Just Balstad Haffeld, Harald Siem, and John-Arne Røttingen

The article comprises a conceptual framework to analyze the strengths and weaknesses of a global health convention. The analyses are inspired by Lawrence Gostin's suggested Framework Convention on Global Health. The analytical model takes a starting-point in events tentatively following a logic sequence: Input (global health funding), Processes (coordination, cooperation, accountability, allocation of aid), Output (definition of basic survival needs), Outcome (access to health services), and Impact (health for all). It then examines to what degree binding international regulations can cre-

ate order in such a sequence of events. We conclude that a global health convention could be an appropriate instrument to deal with some of the problems of global health. We also show that some of the tasks preceding a convention approach might be to muster international support for supra-national health regulations, negotiate compromises between existing stakeholders in the global health arena, and to utilize WHO as a platform for further discussions on a global health convention.

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Mitigation/Adaptation and Health: Health Policymaking in the Global Response to Climate Change and Implications for Other Upstream Determinants

Lindsay F. Wiley

The time is ripe for innovation in global health governance if we are to achieve global health and development objectives in the face of formidable challenges. Integration of global health concerns into the law and governance of other, related disciplines should be given high priority. This article explores opportunities for health policymaking in the global response to climate change. Climate change and environmental degradation will affect weather disasters, food and water security, infectious disease patterns, and air pollution. Although scientific research has pointed to the interdependence of the global environment and human health, policymakers have been slow to integrate their approaches to environmental and health concerns. A robust response to climate change will require improved integration on two fronts: health concerns must be given higher priority in the response to climate change and threats associated with climate change and environmental degradation must be more adequately addressed by global health law and governance. The mitigation/adaptation response paradigm developing within and beyond the United Nations Framework Convention on Climate Change provides a useful framework for thinking about global health law and governance with respect to climate change, environmental degradation, and possibly other upstream determinants of health as well.

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A Global Framework Convention on Health: Would it Help Developing Countries to Fulfil Their Duties on the Right to Health? A South African Perspective

Mark Heywood and John Shija

This article argues from a South African perspective that national experience in attempting to fulfil the right to health supports the need for an international framework. Secondly, we suggest that this framework is not just a matter of good choice or even of justice but of a direct legal duty that falls on those states that have consented to operate within the international human rights framework by ratifying key treaties such as the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). States can either accept this duty or face with growing pressure from those who believe in global social justice to find lasting solutions to the terrible inequities in global health standards.

Symposium articles are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

Independent articles are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

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Developing a Policy for Sexual Assault Examinations on Incapacitated Patients and Patients Unable to Consent

Mary E. Carr and Alda L. Moettus

Sexual assault examinations consist of a medical evaluation and forensic evidence collection. Usually the patient signs a consent form allowing the examination to occur. Occasionally circumstances exist that render a patient unable to give consent for this examination. Such circumstances include young age, mental health disease, cognitive delay, or drug/alcohol ingestion. This article provides suggestions for developing a policy allowing a sexual assault examination to be conducted without patient consent. A sample of such a policy is provided.

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Medical Marijuana 2010: It's Time to Fix the Regulatory Vacuum

Peter J. Cohen

This article examines the history of assigning a banned status to medical marijuana; describes the politics of medical marijuana research; provides evidence of the scientifically-demonstrated efficacy and safety of Cannabis for certain pathologic conditions; analyzes several vaguely worded state statutes governing the recommendation, distribution, and use of "medical marijuana" that render its use open to abuse; and recommends the development and enforcement of statutory and regulatory reforms that would bring state oversight of this drug into agreement with stringent federal regulation of other controlled substances with proven medical utility.

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Death, Brain Death, and the Limits of Science: Why the Whole-Brain Concept of Death Is a Flawed Public Policy

Mike Nair-Collins

Legally defining "death" in terms of brain death unacceptably obscures a value judgment that not all reasonable people would accept. This is disingenuous, and it results in serious moral flaws in the medical practices surrounding organ donation. Public policy that relies on the whole-brain concept of death is therefore morally flawed and in need of revision.

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Bridging the Divide between Genomic Science and Indigenous Peoples

Bette Jacobs, Jason Roffenbender, Jeff Collmann, Kate Cherry, LeManuel Lee Bitsói, Kim Bassett, and Charles H. Evans, Jr.

The new science of genomics endeavors to chart the genomes of individuals around the world, with the dual goals of

understanding the role genetic factors play in human health and solving problems of disease and disability. From the perspective of indigenous peoples and developing countries, the promises and perils of genomic science appear against a backdrop of global health disparity and political vulnerability. These conditions pose a dilemma for many communities when attempting to decide about participating in genomic research or any other biomedical research. Genomic research offers the possibility of improved technologies for managing the acute and chronic diseases that plague their members. Yet, the history of particularly biomedical research among people in indigenous and developing nations offers salient examples of unethical practice, misuse of data, and failed promises. This dilemma creates risks for communities who decide either to participate or not to participate in genomic science research. Some argue that the history of poor scientific practice justifies refusal to join genomic research projects. Others argue that disease poses such great threats to the well-being of people in indigenous communities and developing nations that not participating in genomic research risks irrevocable harm. Thus, some communities particularly among indigenous peoples have declined to participate as subjects in genomic research. At the same time, some communities have begun developing new guidelines, procedures, and practices for engaging with the scientific community that offer opportunities to bridge the gap between genomic science and indigenous and/or developing communities. Four new approaches warrant special attention and further support: consulting with local communities; negotiating the complexities of consent; training members of local communities in science and health care; and training scientists to work with indigenous communities. Implicit is a new definition of "rigorous scientific research," one that includes both community development and scientific progress as legitimate objectives of genomic research. Innovative translational research is needed to develop practical, mutually acceptable methods for crossing the divide between genomic researchers and indigenous communities. This may mean the difference between success and failure in genomic science, and in improving health for all peoples.

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