Law in a Social Determinants Strategy
A Public Health Law Research Perspective
Scott Burris
The Gradient Cuts Across the Range of Wicked Problems

**Odd couples**

*Japan* and *Sweden* are odd couples. Sweden has a big welfare state and a progressive stance on women’s rights, whereas in Japan the government is a small spender by international standards and traditional gender divides remain important. But in both countries incomes are unusually evenly spread, and the chart reveals that both suffer from fewer social problems than other industrial societies.

*Spain* and *Portugal* are Mediterranean neighbours with many cultural connections and close parallels in their recent history - both democratised in the 1970s after the fall of authoritarian regimes. One difference is that Spain is the more ethnically diverse, and diversity is sometimes said to strain social solidarity. But Spain is mid-table in the inequality league while Portugal is near the top. And the chart shows that the Portuguese side of the Iberian peninsula has many more social problems.

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**Public Health Law Research:**
Making the Case for Laws that Improve Health

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**The Spirit Level**
Why Equality is Better for Everyone
Richard Wilkinson and Kate Pickett

- A big idea, big enough to change political thinking
  - Sunday Times
- A sweeping theory of everything
  - Guardian
NCHHSTP will reduce health disparities in HIV/AIDS, viral hepatitis, STDs, and TB by promoting health equity

A Rose by Any Other Name…

Before the gradient, there were the twin curves…

**Figure 2** Distributions of systolic blood pressure in middle-aged men in two populations.²,³
A Rose by Any Other Name…

The Causes of Incidence

The Causes of Cases
A Rose by Any Other Name…

Social determinants of health (e.g., inequality) → Particular pathologies (e.g., HIV)
A Rose by Any Other Name?

Structural interventions: Changing the environment

- Limit pre-tax income gap
- Increase tax progressivity

Social determinants of health (e.g., inequality)

Individual interventions: Helping people cope with current environment

- Stress Management
- Safer sex education

Particular pathologies (e.g., HIV)

NCHHSTP will reduce health disparities in HIV/AIDS, viral hepatitis, STDs, and TB by promoting health equity.
Law is There, But It’s Fuzzy
In Fact, “The Law Is All Over”
Integrating Law and Social Epidemiology

Scott Burris, Ichiro Kawachi, and Austin Sarat

Social epidemiology has made a powerful case that health is determined not just by individual-level factors such as our genetic make-up, access to medical services, or lifestyle choices, but also by social conditions, including the economic, legal, and cultural. Indeed, at the level of populations, evidence suggests that these "structural" factors are the predominant influences on health. Legal scholars in public health, including those in the health and human rights movement, have contended that human rights, laws, and legal practices are powerful tools to health. Social epidemiology and health-oriented legal scholarship are complementary in their focus and research needs. Legal scholarship has identified plausible ways in which legal and human rights factors could be influencing health, but empirical evidence has been limited. Epidemiology has marched considerable evidence that social structures are broadly related to the level and distribution of health in a society, but compelling claims of causation and intermediacy require the elucidation of the mechanisms through which social structures actually influence health. As Mortimer has argued, finding these mechanisms requires the integration of all the sciences that can offer explanations of the phenomena at issue, from the physiology of stress to the sociology of social impact. Law, we suggest here, is an important mechanism to pursue.

In this article, we present a heuristic framework for including law as a social factor in epidemiological research, and convened for understanding how law can have health consequences worthy of consideration by lawyers. The framework posits law operating simultaneously in two broadly defined roles: Laws and legal practices contribute to the development, and influence the stability, of social conditions that have been associated with population health outcomes (i.e., law contributes to the creation and perpetuation of fundamental social determinants of health), and law operates as a pathway along which broader social determinants of health may have an effect (i.e., law is one of the social systems through which more fundamental social characteristics work to create health effects). Consideration of existing data in epidemiology and the social science of law supports the plausibility and usefulness of this framework.

THE FRAMEWORK

Social epidemiology

Social epidemiology seeks to uncover the social determinants of health. The distinction between social epidemiology and other epidemiology can be succinctly summarized by the question that each poses. Whereas traditional epidemiologists are trained to ask the question, "Why are some individuals healthy and others not?" the social epidemiologist is concerned with the question, "Why are some societies healthy, while others are not?" This distinction is more than a semantic difference because the causes of individual variations at health and illness are conceptually different from the causes of population well-being. Populations with the same genetic make-up, lifestyle habits, and access to medical care can nonetheless exhibit dramatic variations in health achievement. Japanese immigrants to the Nilsson Study, for example, came to resemble, in their health, the people of their adopted U.S. homes rather than the Japanese they left behind. Obviously, genes had little to do with this, but neither could lifestyle factors, such as diet, account for much of the differences. One is forced to look toward societal factors to explain why Japanese have better health than Americans, despite smoking more and spending roughly half of what the United States does on medical care.
Two Relationships Between Law and Health

1: Law operates as a pathway along which fundamental social causes of disease have their effect.

2: Law contributes to the development and maintenance of unhealthy social conditions.

Social determinants of health: e.g.,
- inequality
- social cohesion
- racism

Other social conditions

Law

Health
What do we mean by “law”? 

“Law on the books”
- Management policies, standard operating procedures, training
- Practices, knowledge, attitudes and beliefs of front-line agents
- Knowledge, attitudes and beliefs of those subject to law

“Policy-transformation” process
From Drug Policies to Health Outcomes of Injection Drug Users

“Law on the books”

Criminal justice management policies, standard operating procedures, training

Practices, knowledge, attitudes and beliefs of front-line officers

Knowledge, attitudes and beliefs of injection drug users

“Policy transformation” process

• Syringe access
• Injection behavior,
• Incarceration
• Network dynamics
• Drug market characteristics

Health outcomes
A Rose by Any Other Name?

Structural interventions: Changing the environment

- Limit pre-tax income gap
- Increase tax progressivity

NCHHSTP will reduce health disparities in HIV/AIDS, viral hepatitis, STDs, and TB by promoting health equity

Social determinants of health (e.g., inequality)

Individual interventions: Helping people cope with current environment

Particular pathologies (e.g., HIV)

Stress Management

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

Scott Burris and Evan D. Anderson

We are the folk song army
Every one of us cares
We all hate poverty, war and injustice
Unlike the rest of you squares

We are the folk song army
Guitars are the weapons we bring
To the fight against poverty, war and injustice
Ready, Aim, Sing.
—Tom Lehrer, “The Folk Song Army”

I. Introduction
A decade ago, Jonathan Mann made a powerful case that human rights could provide a vocabulary and mode of analysis for understanding and advancing health. He made the case well, and put the idea into inspired practice, but the idea was neither new nor his alone. The idea that social justice— and henceforth in this article we will use that term loosely (and with obvious imprecision) to embrace goods like human rights, social equality, and distributive justice— was intrinsically important to health resonated with the social epidemiology already gathering force (not to mention an enduring theme running through the history of public health work). That social structure and relations of power explain a great deal about the level and distribution of population health was implicit in the work of pioneers like Geoffrey Rose,1 evidence in Marmot’s seminal Whitehall studies,2 explicit in the writings of Mervyn Susser,3 and the main thrust of scholars like Nancy Krieger4 and Meredith Buehler.5 Although researchers tend to avoid using a term with such normative weight, it is safe to say that Mann— and Susser, and Marmot and Krieger among others— were right: social justice is central to the proper understanding of health.6

But Mann did not just argue that social justice was useful to people trying to understand health; he also argued that a social justice standpoint could help us act more effectively to advance health. This same premise animates the report of the Commission on Social Determinants of Health (CSDH).7 Lawrence Gostin’s campaign for a framework convention on global health,8 and academic writing about global health governance.9 If we can show that health is inequitably distributed in populations and through—

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“The scientific study of the relation of law and legal practices to population health.”

Making the Case for Laws That Improve Health: A Framework for Public Health Law Research

SCOTT BURRIS, ALEXANDER C. WAGENAAR, JEFFREY SWANSON, JENNIFER K. IBRAHIM, JENNIFER WOOD, and MICHELLE M. MELLO

Temple University; University of Florida; Duke University; Harvard University

http://www.milbank.org/quarterly/8802featBurris.pdf
Logic model of PHLR

Inputs
- Law
- Law-making
- Legal Practices

Mediators
- Changes in behavior
- Changes in environments

Outcomes
- Population health
Measuring Law for Evaluation Research

Charles Tremper¹, Sue Thomas², and Alexander C. Wagenaar³

http://www.publichealthlawresearch.org/node/178
The model relates a young person’s exposure to OPL at T1 to their weight at T3. This effect is mediated by behavioral changes, including physical activity, eating, and weight monitoring. The length of time needed to produce these effects is uncertain.

**OPL began to be adopted in earnest around 1999-2000 and continue to be adopted through present day.**

Some OPL are laws of general applicability, while others apply only to children of a certain age (e.g., elementary schoolchildren). An individual is only consider “exposed” to an OPL if s/he was a member of the target age group during the time the law was in effect.

**The Behavior Change measures available in the BRFSS are:**
- Frequency of physical activity
- Now trying to lose weight
- Now trying to maintain weight
- Now eating fewer calories or less fat for weight control
- Frequency of consumption of fruit juice, fruit, salad, some vegetables (all separate questions)

**BRFSS obesity measure is BMI. We can model this as a continuous variable or assign values of 1/0 to 2 dummy variables: Overweight (BMI 25+) and Obese (BMI 30+).**

**BRFSS data are available annually 1993-2008 and consist of repeated cross sections of adults 18 and older (no repeat measures for the same person).**
Working Together

PUBLIC HEALTH LAW RESEARCH

Public health law research is the scientific study of the relation of law and legal practices to population health.

Public Health Law Research (PHLR) is a five-year, $17.3-million national program of the Robert Wood Johnson Foundation, administered by Temple University’s Beasley School of Law.

The goal of this program is to build the evidence for and increase the use of effective regulatory, legal and policy solutions – whether statutes, regulations, case law or other policies – to protect and improve population health and the public health system.

The program focuses on three primary activities:
• Fund research and evaluation of public health laws and their impact
  • Improve the quality of public health law research
  • Support outreach to researchers, policy makers, advocates and the media

IMPROVING PUBLIC HEALTH THROUGH LAW

From air bag requirements for cars to smoke-free regulations in restaurants, laws can make communities healthier and safer.

Public Health Law Research and Public Health Law Network are two important initiatives that focus on the effective use of laws to improve public health.

From research to application, these initiatives can:
• Build evidence to inform and guide laws that promote public health Public Health Law Research
• Develop, implement and enforce laws to solve public health challenges Public Health Law Network

PUBLIC HEALTH LAW NETWORK

The Public Health Law Network is an initiative to help individuals and organizations apply the law to solve public health challenges. The Network includes legal experts, public health practitioners and officials, lawyers, policy-makers and advocates.

The Network provides:
• Legal technical assistance to help you develop, implement and enforce public health laws. The Network has access to legal experts on a wide range of topics, from health reform and emergency response to environmental public health and more.
• Training and educational resources about how to effectively apply the law to improve, promote and protect the public’s health.

Join the Network to share your knowledge and experiences, to connect with experts and users of public health law and to create healthier, safer communities.

www.publichealthlawresearch.org