

Lawrence O. Gostin, *Global Health Law*. Cambridge: Harvard University Press, 2014. Pp. xvi + 541. \$40.95. ISBN: 9780674728844.

Lawrence O. Gostin's new book begins with the sentence '[t]his is a unique moment to offer a systematic account of global health law' and he is right. The book under review is published at a time when the most influential international institutions are emphasizing the necessity for multilateral cooperation in the field of public health. For example, the United Nations General Assembly (UNGA) addresses this point in its current deliberations on the post-2015 Millennium Development Goals Agenda.¹ Contemporary globalization has irrevocably made borders porous to capital, services, goods, and persons. Global social, economic, and political changes, such as increasing industrialization, urbanization, environmental degradation, migration, drug trafficking, and the marketing strategies of transnational corporations (e.g., in the food, pharmaceutical, and tobacco industries) have a significant impact on health. This impact is transnational and intersectoral: global health hazards go beyond the control of individual nation states and extend beyond the restricted field of health care.²

In *Global Health Law* these new challenges, their causes, and characteristics are explained comprehensively and illustrated with pertinent examples (Chapter 2). Gostin devotes one chapter to the description of what he calls 'global health hazards' in order to give a complete picture of the current situation and to inform the reader about his approach. He emphasizes three relevant points. The first deals with the multiplicity of health hazards that have a global character: infectious diseases as traditional global health challenges that first emerged many centuries ago; non-communicable diseases (NCDs) that have become the main source of mortality not only in developed countries, but also in low- and middle-income countries; injuries that are normally ignored as global challenges for health; and unsafe products, food, and medicines that threaten public health. The second issue is the origin of these hazards that are caused directly or indirectly by contemporary globalization. The transmission of infectious diseases that are caused by newly identified organisms (e.g., severe acute respiratory syndrome) or the re-emergence of well-known infectious diseases (e.g., AIDS, tuberculosis, malaria) is obviously facilitated by the global travel of persons and goods, but also by migration movements, human-animal interchange, ecosystem degradation, and drug prescribing practices. The rise of non-communicable diseases such as cardiovascular diseases, cancer, diabetes, or respiratory diseases can be partially attributed to modern lifestyles that have become increasingly similar worldwide. Injuries are caused by traffic accidents, poisonings, falls, burns, and drowning, that have surged as a consequence of 'unplanned urbanization, increased motorization and dramatic changes in the built environment in low- and middle-income countries' (at 46). Health hazards originate from unsafe food products and unsafe medicines. Legal or illegal international commerce facilitates and accentuates the widespread availability of consumer products worldwide. Finally, the third relevant point in the presentation of global health hazards is the interconnection between them. Infectious diseases, non-communicable diseases, and injuries are closely related (at 33).

¹ The Millennium Development Goals (MDGs) adopted by the UN member states following the UNGA Millennium Declaration in 2000 contain 4 (out of 8) goals related to health. The Open Working Group on Sustainable Development Goals created by the UNGA in 2013 (A/67/L.48/Rev. 1) in order to develop a proposal for the post-2015 MGDs has already selected health ('attain healthy life for all at all ages') as one of the 17 targets for the realization of sustainable development: see, <http://sustainabledevelopment.un.org/index.html> (last accessed 13 June 2014).

² Margaret Chan, Director-General of the World Health Organization, emphasized in her address to the 67th World Health Assembly (WHA) on 19 May 2014 that the factors responsible for poor global health are largely beyond the control of the health sector.

To summarize, Gostin argues that there is an urgent need for collective action at the international level, action that should be non-fragmented, addressing all hazards in a comprehensive manner.

The occurrence of new global health threats and the need to understand public health law in a global perspective were acknowledged by Gostin already in the second edition of his book *Public Health Law: Power, Duty, Restraint* published in 2008.³ In that book, he devoted an entire chapter to global health law, describing the international health infrastructure, analysing international trade laws and their impact on health issues, and international responses to epidemics and pandemics. In his new book, Gostin goes much further by analysing global health law in a comprehensive manner and, more importantly, with the goal of solving global health problems. These two elements render the book unique to date in the legal literature. Few legal scholars have worked on global health⁴ compared to the strong interest in other disciplines such as public health,⁵ international relations, and political sciences.⁶ The focus of the literature in these fields has been on the identification of global health challenges, on the interpretation of health concerns as national and international security threats, and on the importance of health for the economic interests of state and non-state actors. Research has also been particularly important in the field of 'global health diplomacy', which is defined as bringing together the disciplines of public health, international affairs, law, economics, and management.⁷ Within the legal literature two particular tendencies stand out. The first one is represented by monographs on public health law that generally concentrate on national law and address sources of international law only in so far as they influence the development of national law and not as an answer to global health issues.⁸ The second is characterized by legal work that individually addresses⁹ different global health issues such as the institutional architecture of global health law and, more specifically, the activities of the World Health Organization (WHO),¹⁰ the legal framework applicable in the case of pandemics¹¹ or for the control of tobacco,¹² the impact of trade rules on health issues,¹³ or the recognition of the right

³ L.O. Gostin, *Public Health Law: Power, Duty, Restraint* (2008), at Ch. 7.

⁴ Two short monographs offer a first introduction to global health law: Crouzatier, 'Droit international de la santé', in *Edition des Archives Contemporaines* (2009), at 136; Bélanger, 'Introduction à un droit mondial de la santé', *Agence universitaire de la francophonie* (2009), at 182.

⁵ Public health authors, historians, and sociologists have particularly concentrated on the analysis of the AIDS pandemic. See the references given by Gostin in Chapter 10 of his book.

⁶ See one of the first articles establishing the connection between globalization and health issues, and the propagation of the notion of 'global health': Yach and Bettcher, 'The Globalization of Public Health', 88 *Am J Public Health* (1998) 735. See also Aginam, 'Global Village, Divided World: South-North Gap and Global Health Challenges at Century's Dawn', 7 *Indiana J Global Legal Stud* (2000) 603; O. Aginam, *Global Health Governance: International and Public Health in a Divided World* (2005); K. Buse, W. Hein, and N. Drager (eds), *Making Sense of Global Health Governance: A Policy Perspective* (2009).

⁷ See notably I. Kickbusch et al. (eds), *Global Health Diplomacy, Concepts, Issues, Actors, Instruments, Fora and Cases* (2013).

⁸ In the European literature see A. Laude et al., *Droit de la santé* (2009); T. Gächter and B. Rüttsche, *Gesundheitsrecht, Ein Grundriss für Studium und Praxis* (2013).

⁹ Note, however, Taylor, 'Global Health Law', in I. Kickbusch et al. (eds), *Global Health Governance* (2013).

¹⁰ See J.L. Burci and C.-H. Vignes, *The World Health Organization* (2004).

¹¹ See Taylor, 'Controlling the Global Spread of Infectious Diseases: Towards a Reinforced Role for the International Health Regulations', 33 *Houston L Rev* (1996–1997) 78; Fidler, 'From International Sanitary Conventions to Global Health Security: The New International Health Regulations', 4 *Chinese J Int'l L* (2005) 325; Hill, 'The Spread of Antibiotic-Resistant Bacteria Through Medical Tourism and Transmission Prevention Under the International Health Regulations', 12 *Chinese J Int'l L* (2011–2012) 273.

¹² See Taylor, 'An International Regulatory Strategy for Global Tobacco Control', 21 *Yale J Int'l L* (1996) 257.

¹³ See H. Hestermeyer, *Human Rights and the WTO, The Case of Patents and Access to Medicines* (2007).

to health.¹⁴ The approach adopted by Gostin is much more inclusive: he successively presents the actors of global health law, its legal sources, its fields of application, and its theoretical foundations. Central to his book and at the core of his broad approach is an emphasis on a central notion (1), a method (2), and a framework (3).

1 'Equity' as the Central Notion of Global Health Law

Gostin aims towards the realization of global health justice and develops 'a transformative agenda for health equity' (Chapter 1) that is capable of 'achieving the highest attainable standard of physical and mental health, fairly distributed' (at xiii). Global change is needed since health inequalities are manifold as illustrated broadly in the book. Gostin analyses the profound inequalities that affect populations in lower-income countries: unequal preparation and financial and scientific capacities to respond to rapidly spreading infectious diseases (Chapter 12); inequalities with regard to tobacco (Chapter 7) and non-communicable diseases (NCDs) (Chapter 13), the populations in low- and middle-income countries being today disproportionately affected by tobacco and NCDs-related deaths;¹⁵ inequalities with regard to affordable access to health-related goods and services that are part of global trade liberalization (Chapter 9); profound inequalities in the distribution of health care workers: poor countries with greater health needs are confronted with human resource shortages exacerbated by the migration of their local physicians, nurses, and other health workers to richer countries (Chapter 11). Inequalities with regard to health personnel can well be illustrated by numbers: '[o]f the fifty-seven countries with critical shortages, thirty-nine are in Africa, which has 25 percent of the world's disease burden but only 3 percent of the world's health workers and 1 percent of the world's health financing' (at 342).

The notion of equity guides Gostin's broad definitions of 'global health' and 'global governance for health'. Global health is defined through a reference to what it is not – 'health aid' (at 18) – and what it is aiming at: '[t]o many, the primary aim of global health remains – even to this day – to reduce health threats that traverse national borders, such as emerging infectious diseases Although security is important, the deepest global health challenges have little to do with cross-border threats. The primary challenge is to significantly reduce the enduring and unconscionable burdens of endemic disease and early death among the world's poor' (at 414).¹⁶ In the same way 'global governance for health', in contrast to global health governance which is mostly limited to health care issues, is shaped by the broad aim of health justice and defined 'as the collection of rules, norms, institutions, and processes that shape the health of the world's

¹⁴ The literature on the right to health has become very important in recent years: see A. Clapham *et al.* (eds), *Realizing the Right to Health, Swiss Human Rights Book 3* (2009); L.O. Gostin *et al.* (eds), *Advancing the Human Right to Health* (2013); J. Tobin, *The Right to Health in International Law* (2012); J. Harrington and M. Stuttaford (eds), *Global Health and Human Rights: Legal and Philosophical Perspectives* (2010). See also the review of these two monographs in 24 *EJIL* (2013) 1239.

¹⁵ According to Gostin, '[o]f the world's 6 million tobacco-related deaths, 80 percent occur in low and middle-income countries' (at 209). The same is true today for NCDs. Gostin describes this: '[t]he conventional wisdom conceives of NCDs as a First World problem, but this is starkly belied by current data: 80 percent of the 35 million people who die annually from NCDs live in low- and middle-income countries. The death toll is projected to rise by 17 percent over the next decade unless meaningful steps are taken urgently' (at 383).

¹⁶ This definition is comparable to the one adopted by the European Community for the presentation of its global health strategy: '[g]lobal health is a term for which no single definition exists. It is about worldwide improvement of health, reduction of disparities, and protection against global health threats': see Communication from the Commission, *The EU Role in Global Health*, COM(2010) 0128 final.

population. Governance strategies aim to organize divergent stakeholders, and manage social, economic, and political affairs, to improve global health and narrow health inequalities' (at 72).

2 Law as a Method

For Gostin, the central method of achieving 'optimal health, equitably distributed' (at 72) is (global health) law. His aim, as announced in the first chapter of the book, is to show 'the potential of law, both national and global, to dramatically transform prospects for good health, particularly for the world's most disadvantaged people' (at 18). Which institutions are concerned and which binding and non-binding normative instruments have already been developed to date are consequently at the centre of *Global Health Law*. Part 3 deals with the actors in global health, and more specifically with the WHO created by the UN in 1948. According to Gostin, 'the WHO is the only institution with the legitimacy to rationalize global health funding and activities and to advocate for health in the trade, intellectual property, and environmental sectors' (at 127). The importance of the WHO is obvious with regard to the global trade system as shown in Chapter 9: trade rules that conflict with public health interests and hinder the realization of health justice render indispensable the intervention of the WHO as a counterbalancing institution to the World Trade Organization. Gostin dedicates one chapter (Chapter 4) to the presentation of the WHO, its origins and founding ideals, its core functions, its normative powers, its governing structures, and the institutional tensions that threaten its future. He connects the difficulties encountered by the WHO since the 1980s with the growing intervention in the field of global health of other actors (Chapter 5). Notably, Gostin shows how the World Bank and the International Monetary Fund, originally created as specialized financial institutions, have extended their influence into the health field, and how the practice of conditioning loans and promoting specific reforms often resulted in poor health outcomes or even in the erosion of national health capacities. A second wave of actors such as The Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund), Joint United Nations Programme on HIV/Acquired Immune Deficiency Syndrome (UNAIDS), and the Global Alliance for Vaccines and Immunization (GAVI) Alliance, results from a more contemporary development. It is closely related to the acknowledgement by the international community of the necessity to collaborate in the public health field and the unprecedented financial engagement of national states and private philanthropists, such as Bill and Melinda Gates, in favour of the achievement of the health Millennium Development Goals. Gostin presents the historical and political environment that has facilitated the development of these powerful and influential actors and critically analyses their activities. In particular, he underlines the innovative institutional rules developed by the Global Fund that has favoured the participation of civil society and the effective financing models chosen by GAVI. He analyses the difficulties associated with the tremendous influence that private donors have gained on the global health agenda: for instance, in deciding to finance technology innovation and research to combat selected diseases, the Bill and Melinda Gates Foundation has influenced the international community's global health agenda and has gained a position that seems disproportionate with regard to its legitimacy and accountability. As Gostin puts it, the fundamental question in connection with private donors remains: '[h]ow can global governance capture the immense resources and ingenuity of towering figures such as Bill Gates, Bill Clinton, and Michael Bloomberg while ensuring they do not skew priorities or divert attention from the underlying drivers of inequality?' (at 166).

The WHO has been established as 'the premier global health leader' (at 104) and has been given extensive normative powers authorizing its legislative body, the WHA, to adopt 'conventions', agreements and regulations and make recommendations with respect to international

health matters'.¹⁷ The WHO has rarely exercised its normative authority through legally binding instruments. Only two major treaties have been adopted by the WHA. The International Health Regulations (IHR) adopted in a revised version in 2005 and designed to permit an adequate answer to 'public health emergency of international concern',¹⁸ are analysed in Chapter 6 of *Global Health Law*. In Chapter 7, dedicated to the WHO Framework Convention on Tobacco Control (FCTC) adopted by the WHA in 2003, Gostin shows how the international community has been successful in taking necessary steps in order to stop the tobacco pandemic. However, the WHO has also been extremely active in many other fields, adopting non-binding instruments such as codes of practice – the Global Code of Practice on the International Recruitment of Health Personnel is analysed in Chapter 11 – or global strategies. The more recent strategies concern non-communicable diseases (chapter 13) and mental health (at 108).

3 A Human Rights Framework

According to Gostin, the necessity of resorting to law and, more specifically, of increasing the use of public international law instruments in the field of global health is obvious, and this concept of 'juridification'¹⁹ should be realized within a human rights framework. Norms, institutions, and processes shaping health should be directed at realizing the right to the highest attainable standard of health for all, understood 'as more a collective than an individual right, which assures that healthy and safe conditions are equally available to all people, everywhere' (at xv). Gostin is aware of the deficiencies of the human rights framework, and more particularly of the right to health framework. But he deliberately chooses to promote it. His reasons are theoretical and empirical. First, 'human rights law is the only universally applicable regime designed to safeguard public health' (at xv). Insisting on this point, Gostin presents in Chapter 8 the arguments supporting the recognition of the human right to health not just as a goal but as a legal entitlement. He also develops the content of the right to health relying on interpretations of the right to health delivered by the UN Committee on Economic Social and Cultural Rights (more specifically its 'General Comment' 14), and also by regional (specifically the Inter-American Court of Human Rights) and national courts. Secondly, the human rights approach has proven to be especially appropriate to advance global health issues on the national and international political agendas. Gostin dedicates one chapter to the AIDS pandemic (Chapter 10). He shows how members of minority groups particularly affected by the disease, such as gay men, injection drug users, sex workers, prisoners, and migrants, have been subjected to terrible discrimination. He also shows how advocacy groups, relying on human rights arguments, have finally generated major and unprecedented institutional, financial and normative reforms in favour of HIV/AIDS patients as well as other global health issues. According to Gostin, 'AIDS advocates moved global health onto the international agenda; the historic level of political engagement would have not been possible without the movement' (at 339).

There is no doubt that nowadays global health is on the international agenda. *Global Health Law* offers an excellent and comprehensive analysis of the facts that is indispensable for understanding the breadth and complexity of global health challenges and for the critical appraisal of the solutions and answers adopted so far. It proposes a very convincing formulation of the

¹⁷ Art. 2, WHO Constitution, 7 Apr. 1948.

¹⁸ Art. 6, IHR.

¹⁹ In Jürgen Habermas' theory, international peace should be secured through 'juridification' of international relations, i.e., the development of effective international law rules: see J. Habermas, *The Divided West* (2007). See also the translation by C. Cronin of Habermas, 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?', in J. Habermas, *Der gespaltene Westen* (2004).

global health goals the international community should aim at attaining and sketches solutions. The first goal should be the realization of the conditions necessary for people to be healthy. For Gostin, these conditions are: '(1) public health services on a population level; (2) health care services to all individuals; and (3) the socioeconomic determinants that undergird healthy and productive lives' (at 415). The second goal, which should be understood as intimately bound to the first one, is global health with justice. Gostin pleads for a renewed understanding of equity in health that emphasizes the benefits for the whole population. As he puts it, 'there is no reason to fear that the promotion of health equity will drive down aggregate health outcomes, as the evidence is quite to the contrary: justice, it turns out, is "good for your health"' (at 424). At the very least, transparent and participative procedures should be developed in order to strengthen the effectiveness of equitable policy-making in health.

Having highlighted the benefits of normative activities in the global health field, Gostin concludes with proposals designed to 'achieve global health with justice' (at 428) that concern the improvement of the institutional structures in global health through the positioning of the WHO as a global health leader (i.e., 'an effective convener, mediator and negotiator', at 430) but also the assurance of sustainable financing for health issues. Gostin recalls proposals that have already been formulated for the adoption of a global health treaty to improve Research and Development (R&D) and the creation of a 'health impact fund' (at 500, citing Hollis and Pogge) to finance access to innovative and most needed medical technologies for the poor. He recalls as well his prior proposal for a framework convention on global health to realize global health with justice that has been encouraged by many international actors (at 437). Such a convention might also give an answer to one important and central question that remains to be answered: what are the responsibilities of states for the health of their own populations as well as for the health of the world population?

Global Health Law is an impressive achievement and should be read by anyone interested in global health.

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Timo Koivurova, ***Introduction to International Environmental Law***. London: Routledge, 2014. Pp. xxi + 213. £34.99 (pbk). ISBN: 9780415815741.

Already back in 1987 the Brundtland report by the World Commission on Environment and Development stressed that '[n]ational and international law is being rapidly outdistanced by the accelerating pace and expanding scale of impacts on the ecological basis of development'.¹ Since then international environmental law regimes have multiplied and an up-to-date introduction to the constantly evolving field of international environmental law is very welcome, not least due to the lack of equally concise alternatives in the introductory literature. Aimed at filling this gap, Timo Koivurova with his *Introduction to International Environmental Law* chooses an approach well suited to the student readers he primarily intends to address. The book dispenses with footnotes, tables of treaties, and a comprehensive bibliography. Instead, a manageable number of endnotes accompany each chapter, preceded by a set of questions and research tasks, and followed by suggestions for further reading and websites addressing the respective topics. Thereby, the subject matter is presented in the most general fashion possible without making concessions to the scientific nature of the book, allowing '[i]nternational environmental law

¹ Report of the World Commission on Environment and Development, UN Doc. A/42/427, Annex, 1987.