

Guest Editorial

**Public Health Literacy for Lawyers:
Teaching Population-Based Legal Analysis**



Anthony Robbins

Throughout the world of public health, and environmental health in particular, we work with lawyers; yet, many of us remain unaware of recent developments in the law and legal scholarship that may be critical to the success of our work. Many lawyers, even those working on major public health challenges such as tobacco control, are similarly unaware of relevant changes in the world of science. There is a new but growing effort to provide lawyers and the legal community with deeper understanding of public health and the science that guides it. I urge the public health and environmental health community to participate.

Recently, I have watched how lawyers in the Justice Department have handled the Vaccine Injury Compensation Program, perhaps unaware of the population perspective underlying immunization; these lawyers have done what they are trained to do—be adversaries. This no-fault compensation program was created as a way to eliminate fear of injury as an obstacle to protecting a population, but lawyers have routinely contested the claims for injured children covered by the statute. A little public health training would have made a big difference in how these cases have been handled and how the lawyers responded to the claims.

Over the last 30 years, law in the United States has grounded individual rights in the Constitution, statutes, court decisions, and accompanying legal scholarship. This tradition protects all Americans from certain threats. However, public health, which must protect Americans from threats to their health, has not prospered in a society focused on individuals and curative medicine. American law emphasizes the rights of individuals, attending little to common issues of groups or societal concerns. One way to give new attention to public health would be to elaborate within American jurisprudence a new foundation in the law: population-based legal analysis.

By tradition, American law attends to persons, including corporate persons, in ways that have no analog for populations. The science of epidemiology did not exist at the inception of our legal system, but today in public policy—including legislation, regulation, and litigation—debate centers on matters of population-based science. Congress is considering tort reform; the Data Quality Act (Office of Management and Budget 2002) produced a large number of new federal regulations about how government agencies may use scientific data; Daubert hearings (Project on Scientific Knowledge and Public Policy 2003), based on a 10-year-old Supreme Court decision and its progeny, dominate product liability and toxic tort litigation; and the American Law Institute is revisiting its Restatement of Torts (American Law Institute 2003) that proposes to tell judges and others how scientists determine causation. How can legal education catch up?

For the last few years, I have collaborated with colleagues at Northeastern University School of Law (Boston, MA), first in creating a JD/MPH (Juris Doctor/Master of Public Health) dual degree program (Tufts School of Medicine 2001), and then the Public Health Advocacy Institute (Boston, MA). One of the problems we have taken on is public health literacy for lawyers—how to introduce law students and lawyers to the population perspective of public health and how to do so by teaching them public health context, public health powers, and public health methods. (This effort, which was explored at a national meeting, “Public Health Literacy for Lawyers”

held 11–13 April in Boston, Massachusetts, is hindered by law school admission standards that do not require any special quantitative ability, although these skills are increasingly required in many aspects of legal practice, for example, for handling epidemiologic evidence.)

Some have suggested additional elective courses on public health topics (e.g., environmental law, HIV/AIDS, food and drug law, etc.) (Goodman et al. 2002), but only students already committed to addressing these issues enroll. Thus, a new strategy has been proposed (Parmet and Robbins 2002), one that incorporates public health materials in core law school courses such as torts, constitutional law, and administrative law. As part of the exposition and discussion of major teaching cases, law professors would use the long-neglected underlying public health facts and analysis originally associated with them. For this public health slant to be attractive to legal educators and law schools, a scholarly approach is necessary—one that expands application of population-based analysis in the law and then demonstrates its utility to lawyers.

Population-based legal analysis, the core of teaching public health to lawyers, can be useful to lawyers beyond public health problems. Environmental lawyers and scholars are already coping with epidemiology and causation issues. Lawyers, more generally, will find that their understanding of populations contributes broadly to comprehension of the law involving groups—not limited to studying disease and injury-causing exposures and societal interventions. Legal scholarship will be able to use population science to address legal questions of disparate impact and discrimination by race, age, and sex. Labor law, civil rights law, and even telecommunications law all focus on allocations and thus populations.

Legal scholars are moving toward conscious development of population-based legal analysis, but we in public health, environmental health, and epidemiology can contribute our support and talents to the effort. We must provide the public health background, critical evidence, methodologic analysis, and epidemiologic details to engage lawyers in the public health issues that underlie dozens of classic law school teaching cases. Progress in our own fields may depend on well-educated legal allies.

Work on population-based legal analysis has started, and there are precedents for bringing new scholarly domains into the law. Starting 25 years ago, with generous funding from conservative foundations, the law and economics movement successfully introduced microeconomic theory and the logic of markets to legal scholarship and education. Economics, as understood by most lawyers, is far removed from calculations and equations used by econometricians, but as a field, American law accepts the notion that neoclassical economics is a way to understand and assess human decisions, particularly choices of risks and benefits. Market doctrines are now built into legal decision making (Parmet and Robbins 2002). A similar concerted effort will reward public health by building our concern for populations into American law.

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