

INTRODUCTION

Law and the Nation's Health

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In an epidemic affecting many millions of Africans, I am alive because I am richer than most others on my continent. Had I been born black and poor, I would have had little chance to afford antiretroviral drugs. I would have died from AIDS not because treatments did not exist, but because they were unaffordable to me.

Much has changed in Africa and the world since then. Much has not.

What has changed for the better owes a good deal to Professor Lawrence O. Gostin. By my good fortune, Larry has been a stout friend in his quest for global health with justice. Unequivocally, resonantly, he joined the struggle for the rights of people living with HIV and AIDS. As Founding O'Neill Chair in Global Health Law at Georgetown University and Director of the World Health Organization's (WHO) Center on National and Global Health Law, he has fought tirelessly for a world without unconscionable inequalities in health access and provision. Larry's pioneering work defined the fields of public and global health law. And yet he did not do so as a purely academic pursuit without a greater goal. Rather, his mission was to advance global health with justice based on the human right to health.

For how can we think of global health without also considering justice, when hundreds of thousands of women die in childbirth every year and when the country, or area, in which you are born determines whether you are likely to live a short life burdened by disease or a long, vibrant one?¹

Securing justice is a process. Even today, millions of people with disabilities are relegated to institutions and prisons, or simply left on the streets homeless. For example, in South Africa, in a national scandal, government neglect caused more than 100 mental-healthcare users to die in shocking conditions in unlicensed organizations—but in a step toward justice, former Deputy Chief Justice Dikgang Moseneke ordered the government to compensate the families of the deceased.²

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1. See COMM'N ON SOCIAL DETERMINANTS OF HEALTH, WORLD HEALTH ORG., CLOSING THE GAP IN A GENERATION: HEALTH EQUITY THROUGH ACTION ON THE SOCIAL DETERMINANTS OF HEALTH 1 (2008), https://www.who.int/social_determinants/thecommission/finalreport/en/ [<https://perma.cc/2U5N-3SMA>] (“[T]he structural determinants and conditions of daily life constitute the social determinants of health and are responsible for a major part of health inequities between and within countries.”).

2. Families of Mental Health Care Users Affected by Gauteng Mental Marathon Project v. Nat'l Minister of Health of Republic of S.Afr., Arbitration Award (SA 2019), <http://www.saflii.org/images/LifeEsidimeniArbitrationAward.pdf> [<https://perma.cc/3QW9-WQWG>].

But Larry's dedication to health justice for people on society's margins predated AIDS. It began with his fight for the human rights of persons living with mental disabilities—people pushed so far to the margins as to be often hidden from view in institutions.³ As Legal Director of MIND (National Association of Mental Health), he drafted the British Mental Health Act,⁴ which, after an insistent reform campaign that he led, placed patients' rights at its heart.⁵ He brought pioneering, landmark cases to the European Court of Human Rights. These, for example, secured the right to vote, access to the courts, and due process of law, for instance, establishing that a mental condition giving rise to detention must be of a degree warranting compulsory confinement, and that the validity of continued confinement depends upon the persistence of the disorder.⁶

As Larry was fighting for the rights of people with mental disabilities, the HIV and AIDS pandemic—which would become the world's largest—were taking hold. This pandemic energized and focused Larry's career, as he fought against cruel stigma and discrimination alongside Jonathan Mann, head of the WHO's Global Program on AIDS. Jonathan and Larry developed a foundational framework for the health and human rights movement.⁷ This framework remains influential to this day. They also conceived of a pioneering human rights impact assessment for formulating and evaluating public health policies.⁸

Larry has also advanced the right to health through two foundational texts. One is on public health;⁹ the other on global health law.¹⁰ These have inspired countless students and activists to enter these growing fields, joining in the quest for justice. He founded Georgetown University's O'Neill Institute for National and Global Health Law, which today works to ensure the rights of people living with HIV and AIDS, of people with substance use disorders, and of women.¹¹ And the Institute partners with WHO, the United Nations Development Programme, and

3. Lawrence O. Gostin, *From a Civil Libertarian to a Sanitarian*, 34 J. LAW & SOC'Y 594, 594–95 (2007).

4. Mental Health Act 1983, c. 20 (UK), <https://www.legislation.gov.uk/ukpga/1983/20/contents> [<https://perma.cc/PQF9-4TPV>].

5. Gostin, *supra* note 3, at 595.

6. *See, e.g., X v. United Kingdom*, App. No. 7215/75, 4 Eur. H.R. Rep. 188 (1981).

7. *See* Jonathan M. Mann et al., *Health and Human Rights*, 1 HEALTH & HUM. RTS. 6 (1994).

8. *See* Lawrence Gostin & Jonathan M. Mann, *Towards the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies*, 1 HEALTH & HUM. RTS. 58 (1994).

9. *See* LAWRENCE O. GOSTIN & LINDSAY F. WILEY, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (3d ed. 2016).

10. *See* LAWRENCE O. GOSTIN, GLOBAL HEALTH LAW (2014).

11. Lawrence Gostin, O'NEILL INST. NAT'L & GLOBAL HEALTH L., <https://oneill.law.georgetown.edu/faculty/Lawrence-Gostin/> [<https://perma.cc/8VHF-YB3Y>] (last visited Mar. 20, 2020); *see Infectious Diseases*, O'NEILL INST. NAT'L & GLOBAL HEALTH L., <https://oneill.law.georgetown.edu/areas/infectious-diseases/> [<https://perma.cc/8VAY-3TVQ>] (last visited Mar. 20, 2020); *Addiction and Public Policy*, O'NEILL INST. NAT'L & GLOBAL HEALTH L., <https://oneill.law.georgetown.edu/areas/addiction-and-public-policy/> [<https://perma.cc/3QTD-ST9R>] (last visited Mar. 20, 2020); *Collaboration with the International Women's Human Rights Clinic*, O'NEILL INST. NAT'L & GLOBAL HEALTH L., <https://oneill.law.georgetown.edu/projects/collaboration-with-the-international-womens-human-rights-clinic/> [<https://perma.cc/8VWW-96K9>] (last visited Mar. 20, 2020).

the Joint United Nations Programme on HIV and AIDS on the Universal Health Coverage Legal Solutions Network.¹²

So, it is deeply appropriate that *The Georgetown Law Journal's* Symposium on the Law and the Nation's Health, conducted in partnership with Larry, should focus on the Affordable Care Act (ACA), women's health and equity, and global health, for the questions of their future are questions of justice. The ACA is imperfect—for instance, in excluding undocumented migrants from its coverage—but it has been essential in widening basic coverage, especially for the poor and those with preexisting medical conditions. No human right, especially the right to health, should depend on people's wealth or where they live. Much is at stake. If America builds on the ACA to ensure healthcare for all, the world's wealthiest country will send a signal to the rest of the world that health with justice can prevail.

Women's health, meanwhile, is a fundamental marker of a society's commitment to the equal rights of women. In too many places, we fail to avoid preventable maternal deaths, limit reproductive rights, or condone practices where girls “eat least and last.”¹³ Each time this happens, we betray our moral and legal commitment to women's equality. But if we take all measures needed to ensure women's health, such as eliminating avoidable maternal death—which is widely known overwhelmingly to affect women at-large in poorer countries and women who are members of discriminated-against groups in wealthier ones—we will have advanced far toward global health with justice.

To conclude: adversity offers a challenge to our nation's character. How we prepare for and respond to the risk of pandemics likewise tests our commitment to global health with justice. The status quo could prevail. That means that if a pandemic strikes, as fearfully as COVID-19 has now assailed the world, poor countries would continue to be the most vulnerable but have the least capacity to respond, and wealthy countries may hoard vaccines and therapies. But there is another way. We could enforce and build on existing principles of international law to ensure that even the least resourced country has the capacity to protect its populations, and that the world will respond to epidemics on principles of need and equity rather than power and wealth. This is the aspiration to which Larry has committed his life work.

Larry has a three-year-old granddaughter, Aviva. He shares a birthday with her, and his joy about her presence in his life is infectious. Aviva is growing up in a perilous world, too often fueled by nationalism, exclusion, racism, and xenophobia. Will the world in which she lives be one where people's opportunity for good health continues to depend on where they live? Or will we embrace justice,

12. See Lawrence O. Gostin et al., *Launching the Universal Health Coverage Legal Solutions Network*, 395 LANCET 112 (2020).

13. *Girls Hit by Food Crisis Eat Least and Last*, PLAN INT'L, <https://plan-international.org/case-studies/girls-hit-food-crisis-eat-least-and-last> [<https://perma.cc/E2EX-PRVA>] (last visited Mar. 20, 2020).

affording everyone—whether poor or rich, migrant or native born, white or brown or black—an equal opportunity for good health and wellbeing?

Certainly, if Aviva's grandfather has his way, she will grow strong and proud in a world in which the forward-looking initiatives that her grandfather is struggling to achieve take hold.¹⁴ Aviva means spring. Spring is a time of hope. My friend Larry's work for global health with justice brings hope that all of today's young people, wherever they are born, will live in a world that is more compassionate and just.

14. Lawrence O. Gostin & Eric A. Friedman, *Imagining Global Health with Justice: Bold Ideas for Advancing the Human Right to Health*, 108 GEO. L.J. 1535 (2020).