

Annotated References

Cases

Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064 (1886).
Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358 (1905).
Lochner v. New York, 198 U.S. 45, 25 S. Ct. 539 (1905).
Buck v. Bell, 274 U.S. 200, 47 S. Ct. 584 (1927).
Korematsu v. United States, 323 U.S. 214, 65 S. Ct. 193 (1944).
Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 101 S. Ct. 1309 (1981).
Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).
General Electric Co. v. Joiner, 522 U.S. 136 (1997).
Kumho Tire Co. v. Carmichael, 119 S. Ct. 1167 (1999).
Hamdi v. Rumsfeld, 542 U.S. 507, 124 S. Ct. 2633 (2004).

Journal Articles

George J. Annas, "Puppy Love: Bioterrorism, Civil Rights, and Public Health," 55 Fla. L. Rev. 1171 (December 2003).

This commentary is a sharp critique of prevailing doctrines of emergency legal preparedness and of proposed new public health statutes. Professor Annas suggests that the government's response to perceived threats from terrorism is exaggerated and lacking in firm scientific basis. He sees new public health statutes as a serious erosion of civil liberties and suggests that public health preparedness need not require the violation of human rights and is not in conflict with civil liberties.

James F. Childress & Ruth Gaare Bernheim, "Beyond the Liberal and Communitarian Impasse: A Framework and Vision for Public Health," 55 Fla. L. Rev. 1191 (December 2003).

This commentary seeks to find a middle ground between Annas' and Gostin's positions. The article suggests that a more sophisticated legal philosophy and political science is required. A proposed framework for evaluating any proposed public health regulation that would curtail civil liberties is suggested.

Colgrove, J., & Bayer, R. (2005). Manifold restraints: Liberty, public health, and the legacy of *Jacobson v. Massachusetts*. *American Journal of Public Health*, 95(4), 571-576.

An examination of the relationship between the individual and society in 20th Century public health practices including the use of law and other compulsory measures to constrain personal liberty for the sake of protecting the public health. It highlights the varied tools employed by public health professionals (laws, persuasive campaigns, financial incentives or disincentives, etc.) and the rationale and relative success for using those tools. It highlights the relevance of *Jacobson* to more contemporary public health issues such as motorcycle helmet laws and HIV/AIDS.

Goodman, R.A., Lazzarini, Z., Moulton, A.D., Burris, S., Elster, N.R., Locke, P.A., & Gostin, L.O. (2002). Other branches of science are necessary to form a lawyer: Teaching public health law in law school. *Journal of Law, Medicine & Ethics*, 30(2), 298-301.

A commentary on the value of public health law and the importance of a more substantive integration between law, science and public health as an interdisciplinary approach to addressing some of today's most compelling challenges. Highlights the benefits of incorporating public health coursework in legal curricula as well as recommendations for next steps.

Gostin, L.O. (2005). *Jacobson v Massachusetts* at 100 years: Police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576-580.

A succinct overview of the *Jacobson* case including an examination of the 4-point balancing test presented by the court (necessity; reasonable means; proportionality; and harm avoidance), the number of U.S. Supreme Court decisions citing *Jacobson* since 1905, the historical context for the development of police powers and social compact theory, and commentary on the enduring meaning (or lack thereof) of the *Jacobson* case today.

Lawrence O. Gostin, "When Terrorism Threatens Health: How Far are Limitations on Personal and Economic Liberties Justified?", 55 Fla. L. Rev. 1105 (December 2003).

Public health and civil liberties are described as being in conflict. Professor Gostin discusses terrorism threats and new public health law responses. Suggests a framework for evaluating state claims about public health and mitigating the conflict with individual liberties.

Gostin, L.O. (2002). The Model State Emergency Health Powers Act: planning for and response to bioterrorism and naturally occurring infectious diseases. *Journal of the American Medical Association*, 288(5), 622-8.

This article reviews the origins and provisions of the draft model state emergency health powers act prepared in December 2001 by the Center for Law and the Public's Health.

Mariner, W.K., Annas, G.J., & Glantz, L.H. (2005). *Jacobson v Massachusetts*: It's not your great-great-grandfather's public health law. *American Journal of Public Health*, 95(4), 581-590.

A pointed summary of the *Jacobson* case, its historical context and the meaning of the decision as well as a thorough discussion of the evolution of the individual liberty and public health issues over the last century up to present-day issues such as SARS, bioterrorist attacks, HIV and wartime detainment.

Mensah, G.A., Goodman, R.A., Zaza, S., Moulton, A.D., Kocher, P.L., Dietz, W.H., Pechacek, T.F., & Marks, J.S. (2004). Law as a tool for preventing chronic diseases: Expanding the spectrum of effective public health strategies. *Preventing Chronic Disease – Public Health Research, Practice, and Policy*, 1(2), 1-6.

An overview of the role that law has played in public health interventions. Provides a conceptual legal framework and an account of varied legal tools, remedies, and mechanisms available to public health practitioners and policy makers for achieving public health goals. It also examines law as a tool for expanding strategies for preventing and controlling chronic diseases.

D. Michaels & C. Monforton, "Manufacturing Uncertainty: Contested Science and the Protection of the Public's Health and Environment" 95 A. J. Pub. Health S39 (2005).

Argues how opponents to public health and safety regulations take advantage of legal procedures to "manufacture uncertainty" about the scientific bases of regulations. Argues for tighter evaluation of

scientific evidence and discusses modern legal doctrines and their effect on effective public health regulation.

Morbidity & Mortality Weekly Report (1999). Ten Great Public Health Accomplishments ~ United States, 1900-1999. Volume 48, Number 12. Centers for Disease Control & Prevention.

A series of articles that present an overview of ten areas in which the health of Americans made especially significant gains in the 20th century and that review the population-based, preventative interventions that made them possible.

Moulton, A.D., Gottfried, R.N., Goodman, R.A., Murphy, A.M., & Rawson, R.D. (2003). What is public health legal preparedness? *Journal of Law, Medicine & Ethics*, 31(4), 1-12.

Outlines the essential role that law plays in public health and the importance of public health legal preparedness to ensure that the public health system is ready to deal with terrorism and other potentially catastrophic health effects. Defines basic concepts in public health and law, initiatives and a framework to improve public health preparedness, benchmarks and standards, and calls for action to strengthen public health legal preparedness.

Wendy E. Parmet, "Liberalism, Communitarianism, and Public Health: Comments on Lawrence O. Gostin's Lecture," 55 Fla. L. Rev. 1221 (December 2003).

The author critiques Gostin's approach, arguing for a more sophisticated political science in evaluating legal preparedness. The commentary also argues for more empirical analysis to determine the true nature of threats and for a more cautious approach to coercive measures that would harm populations.

Parmet, W.E., Goodman, R.A., & Farber, A. (2005). Individual rights versus the public's health ~ 100 years after *Jacobson v. Massachusetts*. *New England Journal of Medicine*, 352(7), 652-654.

A succinct summary of the *Jacobson* case including key players, historical context, role of public health, role of law and the judiciary, and the context this decision has set for the continuing debate over the relationship between liberty and public health.

Wendy E. Parmet, "Informed Consent and Public Health: Are they Compatible When it Comes to Vaccines?," 8 J. Health Care L. & Pol'y 71 (2005).

Provides an example of civil liberties working in cooperation with public health to achieve public health goals. Parmet argues that public health vaccination campaigns are not incompatible with doctrines of informed consent. In fact, respect for informed consent will promote public health goals.

Books

Margaret Berger, *The Supreme Court Trilogy on the Admissibility of Expert Testimony*, in Reference Manual on Scientific Evidence (2d ed., Federal Judicial Center, ed. 2000).

Provides a short summary of the trilogy of cases that govern the admissibility of expert testimony under the Federal Rules of Evidence. This is a good starting point for learning more about these cases and the law of evidence.

D. Coggon, Geoffrey Rose, DJP Barker, *Epidemiology for the Uninitiated* (4th ed. 1997).

A short handbook on epidemiology that is indispensable for those without training in public health. Provides a basic overview of the fundamental concepts of epidemiology and gives the tools necessary to read epidemiological reports and studies.

Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (2000).

This is a popular and widely read work on public health law. Provides a basic theoretical overview of the subject with detailed discussions of various public health programs and legal doctrines. This work is often a starting point for further study in public health law.

Frank P. Grad, *The Public Health Law Manual* (3d. ed. 2005).

Provides an “in the trenches” description of public health law. This manual is specifically geared to the public health officer and seeks to provide the basic legal tools he/she needs to work effectively. Provides less theoretical legal discussions and instead focuses on the explication of legal doctrine in public health.

Michael D. Green, D. Mical Freedman, & Leon Gordis, *Reference Guide on Epidemiology*, in *Reference Manual on Scientific Evidence* (2nd ed., Federal Judicial Center, ed. 2000).

This guide was written specifically for lawyers and seeks to explain the basic concepts behind epidemiology in terms most relevant for lawyers. It thus focuses on error in epidemiological studies and an analysis of causation in epidemiology as compared to legal causation.

Health and Human Rights (Jonathan Mann, Sofia Gruskin, Michael Grodin, George Annas, eds. Routledge 1999).

This book explores the relationship between health and human rights. It examines the importance of human rights to human health and explores the relationships between the two.

Institute of Medicine. *The Future of the Public's Health*. Washington, DC: The National Academies Press; 2003.

A comprehensive assessment of the U.S. public health system and set of recommendations to strengthen it, including reconsideration of its legal bases.

Law in Public Health Practice (Richard A. Goodman, Mark A. Rothstein, et al. eds. 2003).

This is also a popular work on public health law. An anthology composed of chapters written by leading legal scholars, public health practitioners, and attorneys and it discusses the field of public health law in detail and is specifically focused on the legal basis for public health practice. This work is also a starting point for further study in public health law.

Public Health Law and Ethics (L. Gostin ed. 2002).

This anthology provides a general overview of many of the ethical issues that often arise in public health practice and in law. A good source of some of the “difficult cases” in public health law and an exploration of their possible resolution.

Theodore H. Tulchinsky & Elena A. Varavikova, *The New Public Health* (2000).

This is an excellent introductory textbook on public health. It is especially suited for lawyers and other professionals not trained in public health. It provides general, yet detailed, discussions of the history and practice of public health.