Legal Scholarship within 'Health of the Public' Research: Opportunities and Challenges

John.Coggon@bristol.ac.uk

Centre for Health, Law, and Society, University of Bristol Law School

fuse Research Event

Exploring the Spaces Where Public Health, Ethics and Law Overlap

Durham Law School, Friday 14th March, 2025

Acknowledgments

University of BRISTOL

Centre for Health, Law, and Society

My brief...

- A talk on the overlap between public health and legal research

- The focus could be on your own experience going from a purely legal background towards public health research...

- Or the challenges and opportunities of interdisciplinary work in this area...

Centre for Health, Law, and Society

Health of the public research

"Public health research has provided fundamental insights into human health and how it can be improved. [...]

"Yet there remains much we do not know about the complex array of interlinking factors that influence the health of the public, and about how to prevent and solve the many health challenges we face as a population, including obesity, diabetes, dementia, depression, cancer and persisting emerging infections. [...]"

Academy of Medical Sciences, *Improving the Health of the Public by 2040: Optimising the research environment for a healthier, fairer future*, (AMS, 2016), p. 4.

University of BRISTOL

Centre for Health, Law, and Society
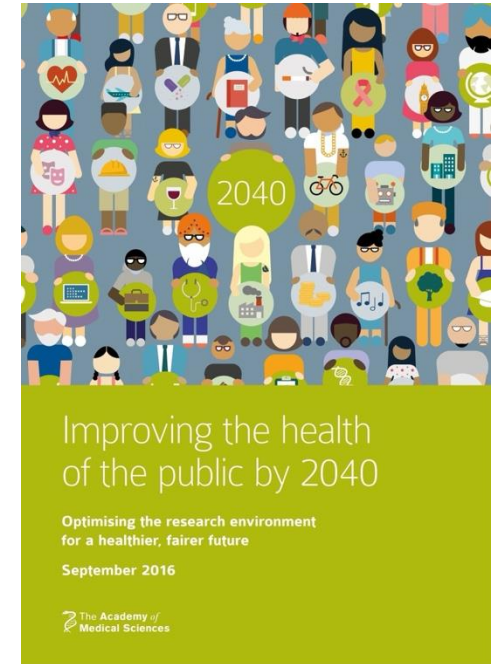
Health of the public research

"Biomedical research as currently conducted does not have the capacity to address these increasingly diverse and complex issues that transcend disciplinary, sectoral and geographical boundaries. We need to move towards a 'health of the public' approach, involving disciplines that would not usually be considered to be within the public health field; an approach integrating aspects of natural, social and health sciences, alongside the arts and humanities, which directly or indirectly influence the health of the public."
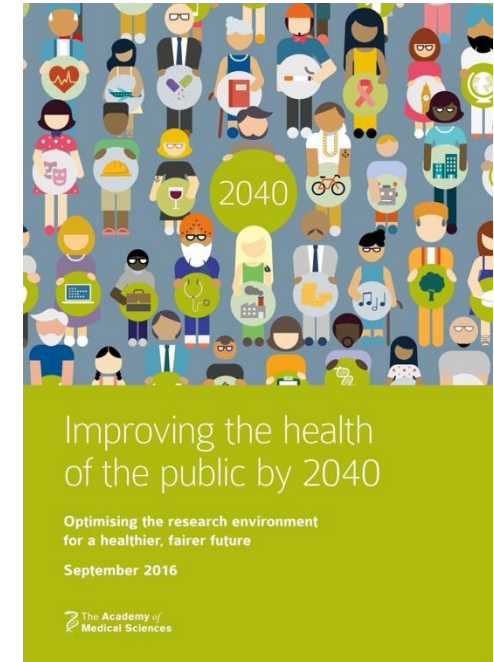
Academy of Medical Sciences, *Improving the Health of the Public by 2040*, p. 5

University of BRISTOL

Centre for Health, Law, and Society

Health of the public research

"Addressing the gaps in our current knowledge will require a more strategic approach to health of the public research conducted by transdisciplinary teams. It should draw on the skills and expertise of a wide range of disciplines outside the traditional sphere of public health research, from environmental sciences to law to ethics to engineering."
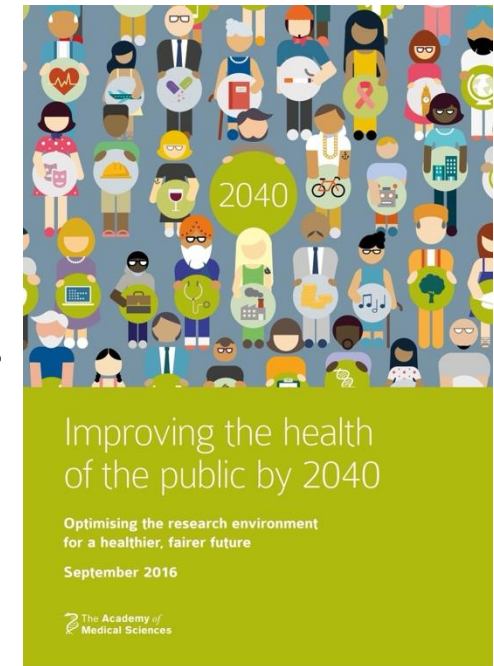
Academy of Medical Sciences, *Improving the Health of the Public by 2040*, p. 56.

University of BRISTOL

Centre for Health, Law, and Society

Aims and structure

Aims: to demonstrate multiple layers of discovery—knowledge, understanding, teaching, and learning—both *from* and *for* legal scholarship in Health of the Public Research.

Two key ideas: **responsibility** and *intra*- as well as *trans*disciplinarity

Structure:

1. Values and commitments within health of the public research
2. Legal scholarship and the public's health

University of BRISTOL

Centre for Health, Law, and Society

Part 1
Values and Commitments within Health of the Public Research

Centre for Health, Law, and Society

Some observations regarding the 'health of the public' research framing

- **Values-driven**, **outcome-focused orientation**:
  - 'Direct': improve health; reduce unfair health inequalities
  - 'Indirect': concepts of health, well-being, responsibility…

- **Invitation for greater critical focus** (especially on values) **and finer-grained understanding**

- **Ranging methodologies and epistemological positions**:
  - Heightened emphasis on plural bases of understanding
  - Incorporation of 'outlier' disciplines

University of BRISTOL

Centre for Health, Law, and Society

Health of the public research

"- **Multidisciplinarity**: An 'additive' approach; uses knowledge from different disciplines but remains within their boundaries.

"- **Interdisciplinarity**: An 'interactive' approach; analyses, synthesises and brings together links between disciplines into a coordinated whole.

"- **Transdisciplinarity**: A 'holistic' approach; integrates the natural, social and health sciences in a humanities context, working across traditional discipline boundaries."

Academy of Medical Sciences, *Improving the Health of the Public by 2040*, p. 116.

2040

Improving the health of the public by 2040

Optimising the research environment for a healthier, fairer future

September 2016

The Academy of Medical Sciences

University of BRISTOL

Centre for Health, Law, and Society
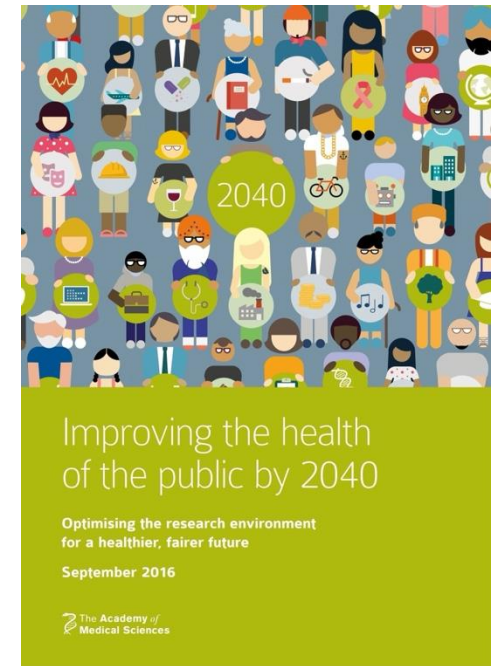
Complementary Understandings of Responsibility at the Heart of Health of the Public Research

Causal responsibility	A question for health and social sciences, asking how we establish causal factors regarding better or worse health, and the continuation, worsening, or lessening of health inequalities.
Agentic responsibility	A question for social and political sciences, seeking to establish who (potentially) has power/influence over those causes, and what forms that power takes.
Ethical responsibility	A question focused on arguments regarding moral responsibility, but demanding consideration of associated questions of social, political, and legal responsibility; questions both of who holds rights and duties in relation to health, and of accountability, scrutiny, and who has responsibilities to oversee or ensure the vindication of such rights and enforcement of such duties.

Adapted from John Coggon, 'Global Health' in Tuija Takala and Matti Häyry (eds.) *Concise Encyclopedia of Applied Ethics in the Social Sciences*, (Edward Elgar, 2024), p. 116

University of BRISTOL

Centre for Health, Law, and Society

Part 2:
Legal Scholarship and the Public's Health

Centre for Health, Law, and Society

The legal determinants of health…

Lawrence O. Gostin *et al.*, 'The legal determinants of health: harnessing the power of law for global health and sustainable development,' *The Lancet* (2019) 393:10183, 1857-1910

The Lancet Commissions

The legal determinants of health: harnessing the power of law for global health and sustainable development

Lawrence O Gostin, John T Monahan, Jenny Kaldor, Mary DeBartolo, Eric A Friedman, Katie Gottschalk, Susan C Kim, Ala Alwan, Agnes Binagwaho, Gian Luca Burci, Luisa Cabal, Katherine DeLand, Timothy Grant Evans, Eric Goosby, Sara Hossain, Howard Koh, Gorik Ooms, Mirta Roses Periago, Rodrigo Uprimny, Alicia Ely Yamin

Executive summary

Health risks in the 21st century are beyond the control of any government in any country. In an era of globalisation, promoting public health and equity requires cooperation and coordination both within and among states. Law can be a powerful tool for advancing global health, yet it remains substantially underutilised and poorly understood. Working in partnership, public health lawyers and health professionals can become champions for evidence-based laws to ensure the public's health and safety.

This *Lancet* Commission articulates the crucial role of law in global health within the legal determinants of health.

drawing on identified areas for reform, as well as principles of good governance and the right to health, we offer seven concrete recommendations for action.

Legal determinant 1 states that law can translate vision into action on sustainable development. The UN Sustainable Development Goals (SDGs) present a bold and unifying vision for global health and development. Law offers the mechanisms, frameworks, and accountability measures to achieve this vision. In particular, law can be used to lay the foundations for Universal Health Coverage (UHC), which is a crucial element of sustainable development. We describe the power of law...

Lancet 2019; 393: 1857–910

Published Online April 30, 2019 http://dx.doi.org/10.1016/S0140-6736(19)30233-8

See Comment pages 1781 and 1782

O'Neill Institute for National and Global Health Law, Georgetown University Law Center, Washington, DC, USA (Prof L O Gostin JD, E A Friedman JD,

University of
BRISTOL

Centre for Health, Law, and Society

Legal research and public health informed by _intra_disciplinary reflection

1. A view of legal scholarship generally

2. A representation of the practical and critical landscape of public health law scholarship

3. Law (and law, and law, and law, and law) within the idea of 'global health law'

4. Some critical reflections

Centre for Health, Law, and Society
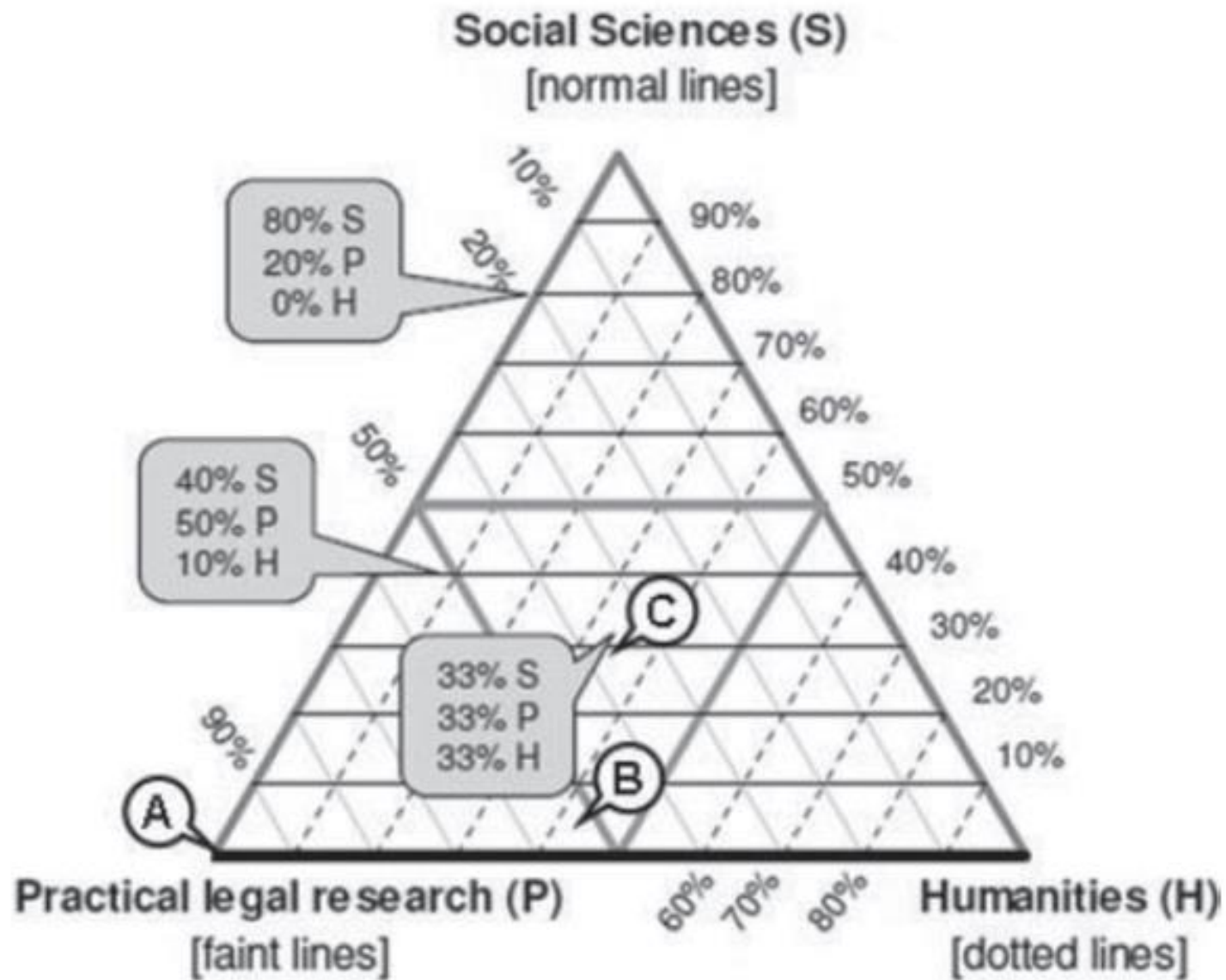
Figure 3: Ternary Plot Showing Individual Research Preferences

Legal scholarship as:
- Practical legal research
- Law as social sciences
- Law as humanities

Mathias Siems and Daithí Mac Síthigh, 'Mapping Legal Research,' *Cambridge Law Journal* (2012) 71(3), 651-676, p. 669

University of BRISTOL

Centre for Health, Law, and Society

The Practical and Critical Landscape of Public Health Law Scholarship

Broad contexts	Analytical approaches defined by tasks for legal studies	
A. Health of the public focus Prevention of ill health and injury, provision of healthcare, cross-sector promotion of good health and well-being / **B. Focus on sources and systems of governance** Social coordination and influence through e.g. politico-administrative, socio-structural, and commercial systems	**Practical inquiry**	**1. Description and explanation** What effects do (perceptions of) law and laws have on the public's health and why/how; both in terms of constraint and limits on, and the advancement of, the provision of favourable conditions for health?
		2. Strategy and impact How might law and laws be used to improve the public's health and address health inequities?
	Critical inquiry	**3. Evaluation/critique given legal values, principles, and norms** How might basic legal values, principles, and norms—e.g. the rule of law, respect for human rights, legality—inform critical analysis of health of the public activities and agendas?
		4. Evaluation/critique beyond law as a contained system How do wholesale theories of ethics and social justice inform understanding of the place and use of law in health of the public activities and agendas?

Each area able to inform the others

Combining the outcome-oriented aims, methods, and insights of health of the public research with law as a discipline embedded in practice, social sciences, and humanities

University of BRISTOL

Adapted from John Coggon, 'The Boundaries and Goals of Legal Scholarship within Health of the Public Research,' *Northern Ireland Legal Quarterly* (forthcoming, 2025)

Centre for Health, Law, and Society

Five Senses of 'Law' in 'Global Health Law'

A field of study spanning doctrinal legal analysis and law as practice, empirically-driven understandings of law in applied settings, and philosophical and critical approaches to understanding values, ethics, and justice.

Laws as individual measures and instruments

Hard Laws
Positivist understandings of 'law'.

Soft Laws/(Some) Governance
Constructivist understandings of 'law'.

Law as a higher-order phenomenon: superstructural framing and normative foundations

Governance of Governance
'Law' as an overarching legal and institutional architecture to achieve coordination of governance for health under law.

An Empowering and Constraining Source of Institutional Virtue/Practical Authority
As e.g. through human rights compliance, or adherence to doctrines such as the rule of law.

A Theory of Justice
'Law' denoting a wholesale theory of justice, identifying the moral obligations of different actors and defining key ideas such as equity, ethics, justice.

↑ Each area able to inform the others ↓

Adapted from John Coggon, 'Defining Global Health Law,' *Journal of Global Health Law* (2024) 1:2, 150-176

University of BRISTOL

Centre for Health, Law, and Society

Critical reflections: bringing law to health of the public scholarship...

1. **Transdisciplinary research agendas create a site for new opportunities and challenges for generating (applied) understanding**:

   - Challenges include division by common language;

   - Assumptions about other disciplines;

   - E.g. varying REF understandings, esteem indicators: universities have their own political economies and these are their own determinants of behaviour!

2. **Distinct methodologies and epistemologies bring distinct pitches for rigour and evidence**:

   - But even with transdisciplinary, logic dictates that a final word is given

   - *Cf* judging, law review exercises...?

University of BRISTOL

Centre for Health, Law, and Society

Critical reflections: bringing law to health of the public scholarship...

3. **Notable space within law—as in philosophy—for *reasons as 'evidence'***

   - This includes values-based reasoning
   - Public health aims and the means for achieving them are not value-neutral

4. **Need to distinguish <u>formal</u> and <u>substantive</u> effects of law within broader governance contexts**

   - Law is not a unitary or singular phenomenon or idea
   - Nor does it always 'do' what might be perceived/hoped...

University of BRISTOL

Centre for Health, Law, and Society

Concluding Reflections

Mindsets…

- Collaborative and/or otherwise pluralist research requires:
  - Humility;
  - Open-mindedness;
  - Patience;
  - Final calls
- In our inquiry, we need to take care not to beg questions:
  - E.g. 'how do we make sense of…?' may wrongly assume that sense can be made…!
- There can be value (even utility) in achieving richer confusion

University of BRISTOL

Centre for Health, Law, and Society