

Critical Public Health Legal Theory: Proposing a New Approach to Public Health Law as a Tribute to Professor Charity Scott

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It was a great privilege to know Professor Charity Scott. I first met her when I was finishing Emory University's joint law and public health program in the early 2000s, through the Office of General Counsel at the U.S. Centers for Disease Control (CDC), in the early days of CDC's Public Health Law Program, now the Office of Public Health Law Services. In those days, introductions were generous and frequent for excited students beginning their careers, but meeting Professor Scott made an impression on me. She was the first and only female health law professor in the field that I had the opportunity to know in the early years of my career.

As I embarked on teaching public health law at Emory's Rollins School of Public Health in 2003, she was one of few people in the community that sought to build a connection between Georgia State University, Emory, and CDC. She invited several of us from different institutions to her lovely home in Druid Hills to talk about how to build the field of public health law over coffee. Those sessions undoubtedly shaped my own teaching and scholarship in health law and policy, which continues more than 20 years later. She convened a group she called the Oxford Group, after the area where she lived, and the conversations we had were collegial and inclusive. We discussed ideas of how to convey the relationship between law and public health to those in the field, and in the early days, we lacked theories and terminology to bridge the two disciplines.

As a tribute to Charity, I would like to share what I hope is a unifying idea that her influence helped me to develop over the years— Critical Public Health Legal Theory (CPHLT). Critical Legal Studies (CLS) theory is the idea that law is intertwined with social issues, and law both shapes and is shaped by those social issues.¹ I propose, therefore, that Critical Public Health Legal Theory is the understanding that our social need to maintain and promote the public's health and positive health outcomes does and should shape the law. In other words, it is not just the idea that law determines

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health, it is the idea that we, as a society, have intentionally shaped laws in a variety of ways that impact our health both positively and negatively.

Many of us are familiar with the widely shared school of thought that law can be used as a tool to shape the public's health. Scholars like Michelle Mello and Larry Gostin and others have proposed multiple frameworks for the various ways in which law can be used to shape public health.² We also know well that many of the greatest public health achievements in terms of lives saved or costs avoided are the result of legal interventions.³ Other frameworks, like Daniel Dawes's *Political Determinants of Health* framework,

For example, in law school, usually when encountering a public health law question, we often try to treat it in a normative fashion, evaluating how the law restricts freedoms or the extent to which those impacted by the laws must follow the law. Using a normative framework, we might ask a public health law question like "Is the law requiring masking during COVID-19 outbreaks Constitutional? Under what circumstances must people follow it?" Once implemented, these mask mandates and their impacts can be quantified. These are important and fundamental questions, and ones every lawyer and public health professional must be able to ask and answer. How-

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reflect the opposite.⁴ Dawes helps us understand that American law can and has been used in ways that create public health problems here at home and across the world, such as the impacts of *Dobbs v. Jackson* on reproductive health at a global scale⁵ or the impact of *de jure* racial discrimination in housing lending on populations of color in the U.S described in Richard Rothstein's *Color of Law*.⁶

CPHLT enables us to see that while law is a tool that can be used to shape public health and that political factors play a key role in those laws, law is shaping and being shaped by significant anthropologic and social factors, including racism, xenophobia, gender bias, economic interests, and power dynamics. CPHLT analysis can help us understand law in this context, and it allows for existing methods like mine and Jamie Chriqui's policy measurement approaches and Alexander Wagenaar and Scott Burris's public health law research theory and methods to be applied.⁷

ever, our analysis is more powerful and complete if we apply a Critical Public Health Legal Theory lens, and we ask questions like who created the law? Why it is necessary? Does it have an inequitable impact? And, if so, was that impact by design? In the case of mask mandates, we would ask "Who is making the mask mandate law? Is it supported by evidence? Will it help or harm the community to which it is being applied? What historical and social context exists around this law? Can we use data to model what would happen if we altered those contents? Should the law or laws be changed to improve outcomes?"

By taking this CPLT approach, we can not only describe how law shapes our health, but analyze what opportunities there are for both the legal and public health profession to shape the law and policies in an equitable way using scientific and social advancements today. In health, we often talk about the social determinants or drivers (SDOH) of (poor) health.⁸ SDOHs include housing, education, economic stabil-

ity, and access to health care among others. However, SDOH models often only describe the problem and fail to offer pathways to identify opportunities for improving health. Using CPHLT, lawyers and public health professionals can come together and use methods that cross disciplines to identify and prioritize systematic policy solutions that consider broader social factors as well as scientific factors to improve health outcomes. CPHLT capitalizes on the public health professional's purpose of redefining the unacceptable in terms of health status and advocating for change, and the lawyer's role as an advocate for their client or cause.

While Professor Scott and I had fewer opportunities to connect as my career took me deeper into public health practice and educating primarily public health students, her work teaching and mentoring a generation of health lawyers was a gift to the field. I know that she believed there are a multitude of ways to apply the law to improve health outcomes. And, I believe she would have continued to seek opportunities to unify the fields of health and public health law and promote transdisciplinary work. CPHLT offers exactly this type of opportunity to continue her work and continue to deepen and strengthen the relationship between health and the law.

Note

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