

BOOK REVIEW

Reimagining Health Law BY ATINA **KRAJEWSKA** AND JEAN V **McHALE**, eds.
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Reimagining Health Law is an edited volume in which the editors, Atina Krajewska and Jean McHale, both of Birmingham University, have brought together a cross-disciplinary team of experts to rethink how health law as a field has been – and should be – conceptualised. The central question, which kicks off the introductory chapter is succinct: “What constitutes health law today, both as a set of legal principles and as an academic field?” The book addresses this question in two distinct parts. The first lays the foundation of health law with the editors drawing insights from selected primary areas of law that interact with and shape health law. The second part of the book studies health law from cross-disciplinary perspectives, mapping the boundaries and borders of the field.

The introductory chapter provides a detailed review of the historical development in the field of health law. The historical survey is impressive not just for the insights it offers but also for the extensive citations to the relevant literature, providing a treasure trove for researchers. Noting that its history goes back much further, Krajewska and McHale highlight that the roots of the modern discipline of health law may be found in the 1980s. The 1980s was an important point in history as it was a period when various developments affecting medical law coalesced, including the rise of biomedical ethics, the burgeoning scholarly interest in the field, the proliferation of medico-legal publications, and the establishment of research centres on medical law and ethics (at 2–27).

The chapter also grapples with the appropriate nomenclature for the field. Should it be medical law, healthcare law, or health law? Jonathan Montgomery (“What’s in a Name? Labelling Effects on Analysis of the Role of Law in Health” (2019) 72 *Journal of Medical Law and Ethics* 111), whose work is cited, has argued that a pluralist approach may be necessary. However, Krajewska and McHale prefer to label the discipline as health law, arguing that it “reflects much more accurately the richness of this area of academic inquiry today” as the field covers a wide range of “topics, perspectives, methodologies, and methods” (at 10). While acknowledging that health law can be so broadly defined as to become meaningless, they nonetheless believe that a broad approach is necessary to ensure adequate engagement with the inherent complexities. True, but there is a risk that an overly inclusive approach can have unintended adverse consequences on the narrower field of medical law which governs the intersection of law and medicine in the practice of medicine by professionals.

Medical law is about the relationship between doctor and patient as well as the professional and ethical obligations of the doctor. Healthcare law is about the provision of healthcare by a range of individuals and entities, including nurses, allied healthcare workers, and community services. Health law is the broadest category, encompassing all aspects of individual and public health, including the impact of the climate, the environment, and socioeconomic conditions. Health law is thus much broader than medical law. It is valuable as a broad tent to engage cross-disciplinary perspectives and out-of-the-box thinking, but it risks marginalising the professional expertise, responsibilities, and identity of doctors. In a recent position paper, the American College of Physicians (in Lois S Sulmasy & Jan K Carney, “Physicians Are Not Providers: The Ethical Significance of Names in Health Care: A Policy Paper From the American College of Physicians” (2026) 179 4 *Annals of Internal Medicine*) set out its objection to describing doctors and physicians as healthcare providers, arguing that this has de-emphasised professional identity and diminished the practice of medicine as a calling.

The selected core areas, described as the “primary colours”, that have shaped health law include public law, criminal law, tort law, family law, social care law, and mental health/capacity law. Each of these primary areas is covered in a dedicated chapter, except tort law. This is a curious omission as the editors themselves acknowledge that tort law has had a significant role in shaping health law, stating, “[t]he importance of Tort law for the development of health law cannot be understated” (at 35).

The chapter on public law by Keith Syrett is especially relevant to the UK where healthcare is largely government-funded through the National Health Service. So much of health law is driven by public health considerations, including national vaccination programmes, emergency responses, and policy-based responses for different demographics, including reproduction, ageing, and dying. Syrett’s thesis on public law and health law draws on the work of Jonathan Montgomery, who had reconceptualised health law as a matter of public concern that went beyond the personal relationship between patient and clinician, or as Syrett put it, the “relationship between the individual and the state” (at 52).

Isra Black and Lisa Forsberg focus on the intersection between criminal law and health law, drawing on criminal law’s rich theoretical jurisprudence to provide a theoretical framework to reimagine health law. They rely on Antony Duff’s work to conceive of health law as “a social institution concerned with the distribution of, and responsibility for, the good of health as within a society and as between its members” (at 73). They propose that health law’s objects should be described as being “about health, specifically those deontic matters relevant to health that law claims authority to treat” (at 84). This resonates with the approach to questions of criminalisation: in health law that question is about juridification.

Chapters 4 to 6 of the book examine health law from the perspectives of family law, social care law, and mental health law respectively. Unlike criminal law and public law, these areas are less “primary” in nature and have more in common with derivative fields, lending themselves to comparison with health law. Jo Bridgeman, writing on family law, notes that the two fields share common values, “namely the protection of autonomy and welfare, and are both concerned to determine the extent

to which the care of the vulnerable can be met by families and to which the state needs to intervene to protect the welfare of the vulnerable” (at 97). In her chapter on social care, Jean McHale points out that health care and social care developed separately since the establishment of the National Health Service in 1948. However, the two fields are synergistic; it would therefore be appropriate to reimagine health law as incorporating social care law. She notes that both health law and social care law reflect a fundamental right to health, highlighting that the nature of care naturally involves both health and social dimensions. This reimagination aligns with the current administrative structure as both fields are managed by a single department, the Department of Health and Social Care.

The second part of the book maps the boundaries and borders of health law, examining the field from perspectives of history, feminist studies, critical legal studies, socio-legal studies, anthropology, and science. A common theme running through these chapters relates to the power difference between the state/health-care professionals and individuals, with the arc of history bending toward greater restrictions on medical authority and paternalism. This power differential thesis is seen most clearly in Chloe Romanis’ chapter on feminism. David Benbow, Atina Krajewska, and Marie-Andrée Jacob, in their respective chapters on critical legal studies, socio-legal studies, and anthropology develop this theme from their disciplinary perspectives.

The penultimate chapter by Sandra González-Santos and Rebecca Dimond bring a science and technology studies approach to the study of health law. They question the epistemological foundations of science and technology, encouraging scientists to “look beyond the laboratories” and lawyers “beyond the courtroom” in their quest to discover and verify facts (at 354). They bring a critical approach to their inquiry, inviting readers to question assumptions and the apparent neutrality of scientific knowledge. Their approach ensures that the complexities inherent in health law are not dismissed and are thoroughly considered.

Roger Brownsword closes the book with an eye on the future of health law. He explores two related questions, namely whether health law should be treated as a discrete field of legal inquiry, and if so, what kind of inquiries should be pursued. Brownsword, in *Law 3.0: Rules, Regulation and Technology* (Abingdon: Routledge, 2020), focuses on questions of regulation and governance, arguing for what he describes as a Law 3.0 approach. Law 1.0 was about applying rules, standards, and principles to fact. Law 2.0 engaged policy considerations and an instrumentalist approach. Law 3.0 imagines the future of the legal landscape based on how rules have to be reimagined to deal with technological disruptions. Brownsword argues that regulatory legitimacy depends on a triple licence: regulators must (i) “protect and maintain the conditions that are fundamental to human social existence;” (ii) “respect the values that constitute a group as the particular kind of community that it is;” (iii) “seek out a reasonable accommodation of conflicting legitimate interests” (at 357). Finally, Brownsword argues for coherence in legal doctrine and regulatory legitimacy.

This work by Krajewska and McHale pulls together deep insights that support a bold rethinking of the field of health law both in terms of what the field is about and how it should be developed in the future. It is thought-provoking and rich with

references to relevant literature. It is a book that will be of interest to scholars of health law and should be prescribed for any course on the future of health law.

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