

Researching LAW

FALL 2020

Vol 31 | No 2



**Reliable Research in
An Unprecedented Time**



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This has been an unusual and extraordinary year, filled with simultaneous unprecedented crises in the United States and worldwide. In early spring 2020, the COVID-19 (Coronavirus) pandemic spread rapidly throughout the world. Since that time, the pandemic has infected tens of millions of people in more than two hundred countries and territories. It led to stay-at-home orders and other restrictions that disrupted livelihoods. As case numbers rose and public spaces were transformed, the pandemic profoundly impacted lives and resulted in what many have described as "the new normal."

Amid this already uncertain time, the death of George Floyd in police custody prompted a seminal moment of racial reckoning in the United States. His death, along with other stories of police brutality and police killings, sparked a cascade of widespread protests in hundreds of cities across the

country and around the world. The mass protests brought an intense focus to the inequality within the criminal justice system, and demonstrators called for an end to institutional racism and police brutality. This renewed focus on inequality and justice converged with the public health threat of

COVID-19 to further disrupt the status quo and exacerbate uncertainty.

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events. During this time, the American Bar Foundation's (ABF) award-winning research community continues to study the global legal system's most pressing issues. Timely ABF projects include the role of law and globalization in medicine, end-of-life decision making, and fair housing for renters with evictions and other stigmatizing backgrounds. The ABF is also exploring how legal and constitutional measures during the pandemic pit public health against privacy, assembly, religion, and other protected rights.

This issue of *Researching Law* reflects scholarship that underscores some of the ABF's current cutting-edge work. The first article highlights ABF Research Professor Carol Heimer's work studying how

international public health law confronts and contends with public health issues, including the COVID-19 pandemic. The second article presents ABF Research Professor Traci Burch's research examining how exposure to police use of lethal force impacts political participation and engagement.

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Would Better Law Mean Less COVID?

For years, both specialists and the public have worried about global pandemics and the death, disability, and general chaos that would come with them. With each new infectious disease, experts have become increasingly concerned that the world, especially the United States, was not adequately prepared.

Pandemics raise unique questions about what the law can do to mitigate the effects of a biologically based crisis that might seem beyond the law's reach. Although some public health governance elements, such as the International Health Regulations (IHR), have been strengthened



Carol Heimer

in recent years, COVID-19 has made the limitations of current legal structures painfully and often fatally apparent. But what can we do to enhance the legal tools for protecting public health in the face of present and future epidemics?

The Fellows of the American Bar Foundation recently hosted a virtual seminar, soon after the American Bar Association (ABA) Annual Meeting, that examined the root of how public health law confronts a pandemic. This seminar was anchored by a research presentation by Carol Heimer, ABF Research Professor and Northwestern University Professor of Sociology.

For the past decade and a half, Heimer has been conducting research in HIV clinics in Uganda, South Africa, Thailand, and the United States. Her work, studying the relationship between law and infectious diseases, is of enormous relevance during COVID-19. She has investigated what happens when laws, regulations, and guidelines, created with the best of intentions, increasingly organize medical work and are also transported to new sites

within developing countries. Her work exposes the gap between the intention of the law and the application on the ground in confronting the realities of medical care and healthcare administration.

“All too often, we think the threat of these pestilences lies in the domain of the biological sciences and medicine, and that law can’t have a great deal to do with it,” said Heimer. “I’m suggesting that the social arrangements we use to deal with these situations are critical to the outcomes.”

“Unfortunately, I’m suggesting that just as there is work to be done in the realms of medicine and biology, we have a lot of work to do in the realm of law and other kinds of social arrangements to deal successfully with the pandemic and other diseases.”

The Legal Environment of Pandemics

The legal environment of pandemics and public health is complex. Global health governance is simultaneously distinct and interlinked with domestic law, which includes actions within the federal, state, and local

municipalities. These global and national health laws intertwine as they work to promote and protect health while ensuring transparency and accountability.

The history of this legal environment is long, convoluted, and tangled with other global concerns like trade and tourism. As early as 1851, worldwide regulations were crafted to control diseases like cholera, yellow fever, and the plague. At that time, regulations such as quarantines were intended to keep sailing ships from taking diseases from one place to another. As the world economy and travel have become more integrated, these regulations have only become more vital.

“The history of disease surveillance makes it very clear that it’s difficult to get countries to share information because the sharing of information threatens trade, tourism, and national reputations,” said Heimer. “There’s a lot of strategizing and gaming that goes on at the country level about what they’re going to reveal, and on what timetable.”

The formation of the World Health Organization (WHO) was key to the global legal environment surrounding pandemics. Formed in 1948, the WHO and its member states quickly adopted the international sanitary regulations. These were the precursors to the original IHR, which were first adopted in 1969 to help monitor and control serious diseases. The IHR comprise a legally binding instrument of international law.

They require all countries to have the ability to detect, assess, report, respond to public health events.

“The key issue at stake in these agreements is collecting and publicizing information about disease outbreaks,” said Heimer.

“Only with transparency is there any hope of protecting public health and curbing existing, eradicated, nearly-eradicated, and emerging disease.”

The Change in International Public Health Law: From SARS to COVID-19

In the seventeen years between the onset of SARS (Severe acute respiratory syndrome, also called SARS-CoV) and COVID-19, the international public health legal environment changed significantly. To understand these changes, Heimer examined the differences in the time lines and reactions to SARS and COVID-19. This examination provided a useful lens for understanding the updated regulations and fundamental changes that occurred in the intervening time.

SARS began in China in November 2002. China did not report the disease domestically until February 2003, and the WHO did not receive information on the disease until March 11, 2003. The lapse from November to March, according to Heimer, is a long time in the world of infectious diseases. After the WHO received the information, the organization sent out an alert and issued a travel advisory.

“The history of disease surveillance makes it very clear that it’s difficult to get countries to share information because the sharing of information threatens trade, tourism, and national reputations,” said Heimer.

The virus was then sequenced by April, and it rather quickly became controlled through ordinary public health measures. The first country became virus-free in April, and the epidemic ended by July 2003.

“The consensus about SARS seems to be that the epidemic would have been far worse if it hadn’t been stopped in its tracks by pretty effective actions,” says Heimer. “But, at the same time, there was also a consensus that it could have remained within China’s borders had China been a little more forthright about the existence of the disease when it started.”

At the time of SARS, the original 1969 IHR were in place. Under the 1969 IHR, China was not obligated to report on SARS, and the WHO was not legally empowered to act on the “informal” information it had in hand. These IHR were revised significantly in 2005, and

that major revision was in place at the time of COVID when it started in 2019. The new versions of the IHR brought about some significant changes, including mandated reporting on a broader range of public health threats. The new IHR also ensure that there is no longer any discretion for countries to decide what to report. Instead, decision tools now exist to guide countries on what they must report. Moreover, the WHO is now permitted to act on information for a wider array of sources rather than relying exclusively on official information coming from member states.

Additional infrastructure now exists to support these new IHR. National IHR focal points have been mandated to serve as designated reporters. There are also two toolkits to help harmonize the international regulations and domestic law, which is crucial when both international and national responses are needed for diseases such as COVID. Designated WHO IHR contact points in various regions of the country also receive and track down information to harmonize and facilitate a coordinated national and international response.

As a result of the new IHR in place when the COVID-19 pandemic began in China in November 2019, the first reports were much timelier. China reported COVID-19 domestically and to the WHO in

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late December 2019. When the WHO received the information, they immediately began sending out regular updates, including travel advisories. The WHO declared COVID-19 a Public Health Emergency of International Concern in January 2020, enabling the international community to provide political, financial, and technical support to confront the emergency.

Though SARS and COVID both originated during the month of November in China, public health regulations made a difference in notifying and preparing nations worldwide for an outbreak. The public health regulatory changes and surveillance actions that went into place in the intervening years between SARS and COVID have critically affected how countries responded throughout the world. But while SARS topped out at 8,000 total cases and less than 800 total deaths, COVID has reached many millions of cases, countless

deaths, and is currently ongoing. Still, many experts agree that, given the infection rate and severity of COVID-19, this could have been much worse if the international rules had not been in place.

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The Varying Domestic Responses to COVID

Although uniform and coordinated global rules and tracking made for a swifter global response to COVID-19, domestic responses to the pandemic have varied considerably. These divergent domestic responses have resulted in disparate and inconsistent public health impacts within different regions, countries, and even localities.

Global health law and domestic health law form a fractal system, noted Heimer. The parts are in the same structure as the whole, so the patterns tend to recur.

“The disease challenges on the global level are mirrored domestically. There are conflicts between health and the economy. And there are issues about the movement of populations and the transmissions of diseases, and how you control borders, whether those are national borders, state borders, or borders of municipalities.”

Whether it is international or domestic, the response to COVID is complex and requires getting participation on many levels. This includes reaching an agreement on what must be tracked, getting consensus on the reporting, balancing costs and benefits of raising the alarm, harmonizing the domestic and the global, and sharing resources.

Examples abound of countries that responded to COVID-19 very differently from neighboring countries and others around the world. Some places, like China, implemented a strict lockdown and put into place a heavily policed, gradual reopening. China also required frequent testing and mandatory hospitalizations.

There have been multiple success stories from around the world. Only three days after the WHO declared COVID-19 a public health emergency, New Zealand began introducing disease prevention measures and continued strengthening them in the following weeks. The country progressively tightened restrictions from late February through March, guided by technical advice, outbreak updates, and risk assessments from the WHO. By June, the country had gone more than three weeks without any new infections. In late June, when New Zealand authorities detected several imported cases, they were isolated and their contacts traced to reduce the transmission risk.

The United States responded to COVID in a much different way than other countries. In general, the government left responses to the pandemic to the state and local level, as public health law assigns many responsibilities to states rather than to the federal government. As a result, responses across the U.S. have been varied and inconsistent. Lockdowns in certain individual states and municipalities proved to be effective. In contrast, other states faced demonstrations, lack of testing, shortages of equipment in hospitals, and the continued violations of safety guidelines with parties and other gatherings.

The U.S. has faced severe challenges that come with a highly privatized health care system, including complications with testing, equipment sharing, and paying for care. There is also a greater emphasis on individual privacy in the U.S., both in law and American culture. With a privatized health care system, people worry about losing their jobs and their health insurance. One way to combat this, Heimer notes, is by strengthening public health powers and federal emergency powers.

There is no doubt that COVID-19 has created unprecedented and significant impacts in the United States. The U.S. was hit harder than many other countries worldwide, with a quarter of the world's confirmed COVID-19 cases and deaths. In addition to the sheer

number of cases and effects on health, the pandemic has also had a significant impact on the economic and legal aspects of life.

Just as SARS presented an opportunity to learn lessons at the global level, Heimer is hopeful that there will be some lessons learned at the domestic level due to COVID-19. How can the U.S. learn lessons analogous to those the WHO learned during SARS? One lesson, according to Heimer, is that we need an augmentation of the federal government's emergency powers.

"The federal government controls the purse strings, including

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emergency funds, and some are funds that can be distributed through routine means like Medicaid and Medicare. But there have to be ways of making that happen with decreased political controversy.”

To decrease the politicization of responses to public health emergencies, Heimer says there needs to be stronger support for augmented legal powers in other social and cultural areas.

“Even legal powers depend on trust, expertise, and goodwill... In some ways, we’ve had a perfect storm in the U.S. with issues of declining trust in science, medicine, government. The legal things matter, but they have to work in tandem with the other powers.”

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How Does Exposure to Lethal Force Affect Political Interest?

This summer yielded a seminal moment in the United States and throughout the world. Nationwide protests, fueled by grief and outrage, surfaced in response to police violence and systemic racism in the criminal justice system. To address this pivotal moment, the ABF hosted a nationwide Fireside Chat on Policing and Protests featuring Executive Director Ajay K. Mehrotra in conversation with Research Professor Traci Burch.

Burch is one of the ABF’s leading scholars on policing, politics, and inequality, and is also an Associate Professor of Political Science at Northwestern University. She is also the author of several books, including the award-winning book *Trading Democracy for Justice: Criminal Convictions and the Decline of Neighborhood Political Participation* (University of Chicago Press). Burch’s most recent ongoing ABF project, Policing and Political Participation, explores the relationship between the criminal justice system and civic and political engagement.

During the Fireside Chat, Mehrotra and Burch discussed Burch’s recent work examining the public response to police use of lethal force.

In a forthcoming paper, Burch uses survey data to shed light on the effect of police killings on political interest. Her preliminary findings show that exposure to officer-involved killings of black victims who posed little threat to officers or bystanders increases political interest among blacks under the age of 40.

But, as Burch noted during the Fireside Chat, her findings indicate that not all officer-involved killings motivate an interest in politics. Instead, she identifies two key factors surrounding an incident necessary to shape political interest: visibility and framing. Understanding the effect of



Traci Burch

Failure to Police Use of Force Affect Political Engagement?

visibility and framing on political interest is critical for evaluating the public's likelihood of holding politicians, police chiefs, and others responsible for problems in their police department. Burch argues that the failure to contemplate both visibility and framing of officer-involved killings can lead researchers to miss critical political effects in these cases.

"First, you have to know about an event," says Burch. "Then you have to think it's a problem. Only then can we think about how resources and mobilization can come together to show up as political activity."

Visibility of Officer-Involved Killings

Burch contends that visibility is a critical first step towards a political response. She cites R. Douglas Arnold's 1990 work, *The Logic of Congressional Action*, which argues that policy effects must be perceptible in order to generate a citizen response. But Burch finds that police use of force is difficult for the public to assess because it is not easily perceptible. Often, police and government officials work to reduce transparency and construct narratives around police

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and victim actions. Information on officer-involved killings is not made readily available by government officials for the public to assess. In fact, officials can work actively to hide such incidents from the public, and the failure to investigate police use of lethal force can contribute to a lack of visibility.

News organizations, social media, and public interest groups help amplify the visibility of victims of police-involved killings. Activists and the media play a vital role in publicizing counter-narratives of police killings. They may even provide the only data that is readily available. But despite these sources of information, few instances of officer-involved killings are ever known by the public. The Black Lives Matter movement and increased media attention have resulted in amplified visibility for only certain victims.

Thus, members of the public may overestimate the extent to which they know about these incidents.

To support the idea of overestimation, Burch cites statistics about the media coverage of officer-involved killings in the United States over the past several years. She found that fewer than half of the victims examined for her study trended on Google in their local area at the time of the killing. She also found that nationwide between 2000 and 2014, only about half the victims of officer-involved killings were reported in local or national news. This suggests that approximately fifty percent of police killings may not be highly visible to the public.

This absence of comprehensive media coverage has led the public to recognize and protest some deaths more than others. A lack of public perceptibility surrounding officer-involved killings leads some victims

Activists and the media play a vital role in publicizing counter-narratives of police killings.

to go unrecognized, despite protests occurring over similar incidents.

“Right now, there has been a lot of media attention to protest and activism,” says Burch. “Still, most victims don’t get covered in their local paper.”

“The question is, what is it about the few victims we do know about that generates such a wide-ranging response?”

To understand why the few names that gain widespread attention generate such a response, Burch notes other factors that may affect the public’s perception. These factors include the victim’s race and gender, the city where they reside, and even if the city has had issues with police killings in the past. Burch also finds that proximity affected survey respondents’ personal connection to the victim, which leads to selective exposure to these incidents.

Framing of Officer-Involved Killings

Burch’s evidence reveals that, in general, officer-involved killings do not necessarily heighten political interest, even if the black victim is highly visible. Instead, her study indicates that “only killings that are framed as unjustified, threatening, or discriminatory should heighten political interest among young blacks.” According to Burch, the presentation and framing of police encounters affect the public’s evaluation of police-involved

killings. She notes that “different frames place emphasis on alternate facts or make new circumstances relevant or salient in ways that can alter public opinion.”

Burch says that the idea of fairness, particularly with respect to racial discrimination, is an important frame for thinking about police encounters. To support this, she refers to Mark Peffley and Jon Hurwitz’s 2010 book, *Justice in America: The Separate Realities of Blacks and Whites*, which finds that individual beliefs about system fairness contribute to evaluations of police use of force. According to Peffley and Hurwitz, “people who see the system as fair are less likely to see police use of force as problematic.” A framing of this system might invoke the fear of crime, highlighting the necessity of tough policing practices for keeping citizens safe from dangerous criminals.

Another frame that is often used for a police-involved killing is the characteristics or behavior of the person killed. In evaluating fault, the public may ask if the person

killed was doing something to threaten the life of the officer or another bystander. In the case of *Tennessee v. Garner* (1985), the Supreme Court found that an officer shooting a person to defend themselves or another person from imminent danger to be a legitimate use of lethal force. According to Burch, perceptions of danger can vary across situations, and attitudes toward victims can influence whether observers believe police actions against suspects are justified. Within this frame, racial bias toward victims can influence whether the public interprets police actions as just or unjust.

Traditional media plays a key role in framing victims of police-involved killings since it is usually the first actor in moving the narrative forward in these events. The media shapes the narrative of a given case through headlines, uncovering scandals, and humanizing victims. Media can also frame the public response to a given incident, including protests, as a means of accountability for government officials.

By highlighting the role of perceptions of victim behavior in generating public attention, this research highlights the importance of activists and the media in publicizing and producing counter-narratives of officer-involved killings.

“The details of the victims, to humanize them, and about the incident really matter,” says Burch.

According to Burch, the presentation and framing of police encounters affect the public’s evaluation of police-involved killings.

While citizen political participation is essential, Burch argues that citizens should not be the last line of defense when it comes to police reform.

“The media needs to be careful of how incidents are framed in terms of what information is presented in the initial stages.”

Burch also notes media headlines should also be carefully evaluated since it can set the tone for fairness in the case of police-involved killings.

“Should the media write headlines that say, ‘armed suspect killed by officers?’ This headline sets up a dynamic that this person also had a weapon and was intending to use it, so this presupposes the self-defense in the headline, and it sets the tone immediately,” says Burch.

Citizen Political Participation

Burch identifies the critical roles that reporters, watchdog groups, and activists play to increase visibility, provide transparency, and address framing. Competing narratives often arise surrounding an officer-involved killing, and these groups have used social media and other devices to provide

the counter-narrative for victims whose encounter with police has been otherwise villainized. They can also publicize police violence and organize events like protests to generate attention.

“When it comes to social media and hashtag activism, people can be dismissive of it as real activism, but in actuality, this plays an important role in framing and shaping the narrative in a particular incident,” says Burch.

Burch notes that protests can influence politicians and broader political thought and signal the significance of these issues within the public discourse. Beyond protesting, Burch said citizens can also get more politically involved in policing reform through voting, writing to elected officials, and partaking in community efforts.

While citizen political participation is essential, Burch argues that citizens should not be the last line of defense when it comes to police reform. The limitations in both visibility and framing make it challenging to get and maintain a high level of public attention. Even when the public does pay attention, Burch says, they will usually focus only on black victims framed as non-threatening. In addition, citizens lack the investigative power and access to data to pursue all instances of officer-involved killings. Instead, according to Burch, a more effective solution is institutional management.

“There should be more routine oversight before it gets to the point where citizens have to take to the streets in order to demand justice in any particular case,” says Burch.

Burch argues that different kinds of system oversights such as courts, county prosecutors, and citizen review boards should be strengthened to help in the reform process.

“The idea is that function of accountability and reform is better left to an entity that can provide oversight without the bias,” says Burch. “The extent to which judges, lawyers, and even the chief of police are willing to engage in conversations of providing oversight and make major policy change, that in itself can really help shape how reform happens.”

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