# Books

**de Ruijter, Anniek.** ***EU Health Law and Policy: The Expansion of EU Power in Public Health and Health Care*****.** Oxford: Oxford University Press, 2019. 215 pp. $75.00 cloth.

In any circumstances this book would be one of the best works on European Union health policy and law, and a notable contribution to research on law and society or the European Union in general. In the circumstances of COVID-19 it is also one of the most important. Anniek de Ruijter's book is almost the only work of law or social science scholarship to explain European Union communicable disease control policy and politics. That makes the book necessary reading for those interested in learning what the European Union did and might do in public health during and after the COVID-19 pandemic, or why it was so seemingly invisible early in the pandemic.

*EU Health Law and Policy* works so well because it is both a legal and a qualitative empirical study. It is notoriously difficult to combine legal and political science research. Yet it is also necessary to combine both approaches if one is to write convincingly on this topic. The question of whether there is an EU policy or policies, and what they might be, emerges from specific EU legal structures. Health policy in the EU is complicated by the weak enumerated power of article 168 of the TFEU, which enumerates what the EU can do in the specific field of public health (as against the many things that it can do under some other guise which affect public health). The weak article 168 has little relation to other articles obliging the

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EU to pursue health goals overall or health as an objective within consumer protection, environmental protection, and social policy articles of the EU's constitutional treaties.

The general problem of which this is a case is that everything could theoretically be claimed as a health policy because everything has some impact on health (Fox 2003). The empirical identification of "health policy" is therefore an investigation into not just legal text but also the social and political construction of a policy space (Greer and Jarman, this issue).

The book's overall concern is with bounding and explaining the EU's power or legal jurisdiction in public health and health care. It combines a largely empirical exercise, grounded equally in legal and interview research, with a more theoretical question: what are the implications of the EU's role in relation to health values and health rights? As might be imagined, figuring out just what EU health law might be is a challenging problem in itself (Hervey 2017; Hervey and McHale 2015). Every EU policy has to have some kind of a treaty base. The "treaty base game" (Rhodes 1995) of finding an enumerated power that authorizes some policy works in much the same way as in federations elsewhere. There is intense political activity focused on defining what those enumerated powers permit, just as we see with the Commerce Clause in the United States or the "peace, order, and good government" clause in the Canadian constitution that is affectionately known as the POGG clause (Greer 2020).

In the EU, member states have carefully circumscribed the health policy powers enumerated in its treaties. As the EU's low profile in the early months of the COVID-19 crisis shows, that constraint has worked well. Member states opted to give the EU institutions little legal authority or money (the EU did not have a budget line for health emergencies), and in return got little. It is not even clear that most governments wanted much from the EU in the first months of the pandemic. But the same language that limits the EU's ability to impose on member states also permits considerable action if they agree that they want European coordination supported or led by the EU institutions.

We see this logic in one particularly interesting and relevant story that de Ruijter's book presents, that of the 2009 H1N1 influenza pandemic and developments since. In this story, very little of which is visible in legal documents, the member states do work together to an extent not foreseen in the treaties because they have identified problems that they cannot solve individually but can address collectively through the European Union. The book identifies coordination through and via the EU taking place in areas such as health emergencies despite weak formal powers. For example, the experience of the earlier H1N1 health crisis enabled member state governments and EU officials to prepare a joint procurement mechanism that serves them as, effectively, a buyers' club and which they employed in the COVID-19 pandemic. Joint procurement could be made more useful, but de Ruijter's account might be read as the prehistory leading to visible EU policies in COVID-19 and beyond. Her interview data is especially useful here, uncovering practices such as combining meetings of formally constituted EU committees with informal ones to give force to decisions.

Much European integration research suggests that this is how EU integration proceeds—not out of a general desire for broad European control but as part of a search for a "European rescue of the nation state" (Milward 1999). Broadly, member states start to find that collaboration helps them address a particular problem that they cannot address adequately on their own (Jones, Kelemen, and Meunier 2015). Decades of integration have given member states' political elites the mindset and coordinating mechanisms to identify shared problems, discuss them, and negotiate common solutions (Van Middelaar 2013). While governments' preferences are often explicitly intergovernmental, over time they do more and more coordination through EU institutions, and start to see a need for some combination of legal and bureaucratic support to make their decisions more effective. The result is an expansion of EU powers in a slow and reciprocal process whose operation is frequently obscured by the stylized duels of neofunctionalists and intergovernmentalists that are staples of EU politics textbooks (Greer 2012) and reasonably enough ignored by scholars of other topics.

This process of integration certainly seems to be at work in public health, where specific shared problems of public health in a highly integrated continent (e.g., the speed of vaccine approvals or purchasing difficulties) have slowly led to coordination that is becoming Europeanized. The process is if anything more dramatic in animal health—a zoonotic disease will feel the force of a much more powerful EU than a pandemic human disease. COVID-19 will obviously turn out to be a test of this process, but de Ruijter's book gives us ample reason to expect that more was going on behind the scenes than we saw at the time and that, as the crisis drags on, we might see governments concluding that the EU can once again rescue them (see also Purnhagen et al. 2020).

In contrast, in health care, there is less demand among member states for a shared solution to their problems. Few problems in health care seem to require common European action, and the obvious problem—massive economic inequalities between member states—does not have a politically viable European solution. The search for shared solutions, and institutional creativity, that she finds in public health is largely missing here. Instead, de Ruijter's findings are in line with most existing research, which finds that enterprising litigants and judges managed to create an EU policy area in health care regulation, but that member states largely managed to circumscribe its actual effects (Greer and Rauscher 2011). Most governments did not think that health care quality, access, or other issues required European action. Rather, they seemed to see the intrusion of the EU institutions into health care policy as the problem that needed a solution. Legislating on cross-border patient mobility, the issue that had authorized the incursion of EU law into health care, was a way to constrain the EU.

The thread that unites these two stories is de Ruijter's focus on the development of "health values" and "health rights." These are both challenging concepts. Member states have made multiple statements of their shared health values, including in the European Charter of Fundamental Rights, which is effectively an EU constitutional document. These statements are both aspirational and rather unsurprising (e.g., access and quality). Policies and jurisprudence are what give them some detail and impact.

The policies and jurisprudence that EU law delivers are not always the ones we might ethically prioritize. Of all the health care access problems that could be found in Europe, courts chose to lighten the burdens of a very small number of people who sought nonemergency care in other member states without preauthorization, paid out of pocket, and wanted reimbursement from their home systems (Obermaier 2009). That is an absurd place to focus if we wish to promote health care access as an ethical value, but it was the one that fit with a long-standing EU legal focus on nondiscrimination and market integration.

The intrusion of an approach focused on the EU internal market that is so strange to health policy makers and researchers over broader systems naturally led to a backlash that helped reshape the political terrain. One of the member states' responses to the Court's effort to regulate health care as a service in the patient mobility cases was to start articulating health values of more ethical and practical weight, thereby making it easier to make policies for and in the name of health. The values and rights articulated in the policies can then help shift EU debates by authorizing action that explicitly values health and rights rather than other goals such as market integration. She does not find that these shared values or rights point to a compelling ethical need for much more integration, which is refreshing in a literature that is often more prointegration than its findings warrant. It is clear, though, that the development of EU health law in the areas she studies includes steadily more respect for "health values" such as equity, access, and respect relative to the market logics that drove the original intrusion of EU law. Even if you see the EU as a largely negative force in health policy, the story this book tells is a story of its taming.

In short, this book is a fine piece of scholarship whose timeliness is a favor to all of us. By mapping the formal and informal ways in which the EU operates in health, and the extent to which member states think it solves problems, she lets us understand what to expect of it and what we might presently learn about the dynamics of European integration in health and elsewhere.

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