

BOOK REVIEW**GOVERNING PUBLIC HEALTH: EU LAW, REGULATION AND BIOPOLITICS**

Mark L. Flear

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Mark Flear, a Lecturer in the School of Law at Queen's University Belfast, has written a very fine but challenging book in *Governing Public Health*. This is a recent addition to Hart Publishing's Modern Studies in European Law series. In his book, Flear deftly delves into a complex topic of increasing importance in the EU and other jurisdictions: how the governance of public health can shine light on broad, critical questions relating to legal competence, risk and security, human rights and bioethics, accountability and legitimacy, and democracy and citizenship. Of specific relevance to the EU context is the future trajectory of the European integration project. The core concern of this book is "biopolitics" and the role, scope and potential of "citizen participation" in legal and regulatory decision-making. *Governing Public Health* not only seeks to analyse the current regulatory landscape in the EU, it also seeks to furnish discursive tools for citizen participation in legal and regulatory decision-making that can reframe and reshape public health governance, ultimately enhancing its quality.

Considering his book both normative and empirical, drawing on "extensive analysis of documentary sources assisted by interviews with key civil society actors that engage with the EU's public health governance" (p. 6), and informed in part by Michel Foucault's method of discourse analysis, Flear unpacks the techniques, processes and practices of public health governance, especially at the EU level, and explores how they reflect and produce the EU's identity, socio-political order and desire for European integration. His normative position (or "diagnosis" as he terms it) is that the current institutionalisation of citizen participation is inadequate. *Governing Public Health's* central claim (or "prescription") is that "engagement with citizen participation is vital not just as a value in itself, but also in order to enhance the quality of governance and its regulatory interventions" (p. 6). According to Flear, citizen participation is "a technology or assemblage of components through which the EU's citizenry are rendered less as regulatory publics and are instead regulated into providing public legitimation and mediating the boundaries of responsibility and accountability" (pp. 7-8); the techniques vary but the commonality is the incorporation of the perspectives of individuals and communities in regulating or governing.

In Chapter 1, Flear sets out the book's context, approach and overview. Concerned that public health hitherto has been the subject of limited attention in legal scholarship, particularly as it relates to EU law, and that citizen participation in legal and regulatory decision-making is a peripheral or ignored concern in mainstream law and regulation studies engaged with public health, he explains that his interest in writing the book stemmed from the steady stream of news reports on public health problems. The reports have a sense of emergency and a focus on security-oriented and medical responses, which imply "a narrowing of the potential for

political-democratic contestation” and a widening of the gulf “between governance and the governed” (p. 3). Flear’s research agenda is to understand how public health problems are constituted and understood, how they are regulated, and how citizens might contribute towards legal and regulatory decision-making – whilst addressing why their participation is considered important.

The diagnosis of the extant inadequacy or marginalisation of citizen participation rests on three arguments. First, markets, risk and security, and human rights and ethics provide “key contours” for the EU’s apparatus of governing public health and the policy domain. Risk and security are employed to regulate the dangers and threats to the circulation of people and things within the EU’s internal market, while ethics and human rights have limited roles and are employed more as “legitimizing devices.” Second, neoliberalism has permeated traditionally non-market domains like public health, such that the EU actively seeks to shape the contours of its responsibility, i.e. when to claim success and when to define the limits of its accountability and blame in the event of failure. The third argument is that “the centrality and valorisation of scientific and technical knowledge and expertise by and within the risk-based technology used to regulate public health implicitly devalues and limits the scope and potential for citizen participation in decision-making” (p. 7). These three arguments in turn generate a fourth argument, namely that “the foundations of governance and its paradoxes, pitfalls and blind spots open up space and create possibilities for citizen participation in decision-making” (p. 8).

These arguments are expanded through the remaining eight chapters of the book, which is divided in two Parts. In Part I (“Governing Public Health”), Flear sketches the overarching level of EU governance in public health and some its central techniques, processes and practices. Chapter 2 details how the key contours for the technology governing public health and its policy domain are markets, risk and security, and ethics and human rights. The chapter also advances the argument that neoliberalism colours the governing technology and policy domain, establishing the boundaries of EU responsibility. Pointing to multiple EU policy documents, Flear argues that health policy is justified as a contribution to the economy, that is, maximising population health in order to optimise the economy: “Governing public health is increasingly central to producing and legitimating the EU’s identity and socio-political order based on and oriented towards a more innovative, profitable and competitive health sector and wider economy in order to foster growth, jobs and prosperity through healthy citizens and freely circulating products and services” (p. 48).

Flear illustrates the central techniques, processes and practices through the specific case studies of cancer, HIV/AIDS (Chapter 4), and pandemics (Chapter 5). To focus here on cancer, Chapter 3 posits that the EU’s governance of cancer is framed by risk and that a key priority is cancer treatment through innovative technologies that can promote industrial development and corporate profitability instead of health per se. This relates to the second of the book’s core arguments, which is that neoliberalism operates in the governance of cancer, “particularly in delineating the boundaries of EU responsibility and accountability through attempts at governing at a distance seen in the partnership approach involving responsabilised actors, and

in terms of the alignment and co-production of knowledge, governance and power” (p. 79). This partnership approach makes it easier for the EU to evade blame in the event of a failure to meet the clearly defined targets for reducing the incidence of cancer. While the EU’s governance of cancer has been largely successful and reflects its identity as a public health actor, Flear believes that the techniques produce a socio-political order founded upon economic optimisation and the perpetuation of the project of European integration. Yet, because the techniques favour scientific and technical knowledge and expertise, it “configures governance in relation to those it governs, and in doing so it implicitly limits the potential contribution of citizens to decision-making” (p. 108).

In Part II (“Enhancing Citizen Participation in Governing Public Health”), Flear turns towards his “diagnosis” of the current institutionalisation of citizen participation as a key concern, and his claim that citizen participation is crucial to avert “the threat, that, if unaddressed, these regulatory failures and ‘societal risks’ could produce ‘institutional risks’, to the EU’s standing and reputation, that undermine and delegitimize its governance, identity and project of integration” (p. 170). While there have been some attempts to include citizens in decision-making in the EU’s public health domain, including through impact assessments and dialogue and collaboration around risk in the context of public health, they have been marked by configuring citizens in relation to scientific and technical knowledge and expertise, thereby perpetuating the much-maligned “deficit model” within which participation is viewed as a (top-down) means of education for citizens who ostensibly lack sufficient knowledge about science.

What are the details of Flear’s prescription for improved citizen participation? He argues that there is possibility for opening discursive space and powering technologies of participation along two axes: one, the material or substantive scope for participation; second, diverse territories and multiplicity of peoples. Both lean towards increasing citizen participation to the widest possible extent such that citizens might even “control” (p. 190, fn 97) the decision-making process upstream – including in framing the issues – and throughout the governance process. As for resources that can empower citizen participation, bioethics and human rights both serve as powerful discourses that could “power discussion and technologies of participation and highlight concerns around framing, distribution and vulnerability” (p. 192). Another possible resource is so-called (supra-)stewardship responsibility, which means “the EU’s *sui generis* or supranational nature and its responsibilities towards its citizens defined broadly to encompass ‘the governed’” (p. 196). Taken together, Flear thinks that human rights, bioethics and (supra-)stewardship responsibility can open up a discursive space for citizens to publicly query issues around framing, distribution and vulnerability.

Chapters 7 and 8 offer illustrations of the ways in which “citizens might intervene to generate important supplementary knowledge on the distortions, failures, paradoxes and pitfalls – key normative dimensions – attendant to the EU’s risk-based governance and its regulatory interventions” (p. 202). Chapter 7 explores the framing, gathering and production of knowledge in the context of indicators and clinical trials. Chapter 8 explains how the favouring of magic bullet responses and technological fixes (through e.g. pharmaceuticalisation) produces additional openings and possibilities for citizen participation, especially around vulnerability.

In both chapters, Flear sketches ideas for “citizens” who “might” contest or push for something, yet I am not as confident as he is that many citizens, even if empowered to do so, will “ease out the normative in the scientific and technical” (p. 277) in a sufficiently democratic manner and in a manner that avoids collapsing into cacophonous factions or entrenched selective interests that may be outside of a market economy, but still privately orientated.

To be fair, some of these concerns appear to be shared by Flear. He admits: “I remain pessimistic about the actual configuration, scope and use of citizen participation in legal and regulatory decision-making” (p. 273). But he is also optimistic at a general level about the potential for biopolitics and participation in governing public health, if participation is understood to mean “sharing power and benefiting governance and the governed by improving the quality of the regulatory decisions made” (p. 19). The details remain somewhat blurry at the end of the book, and perhaps we cannot expect much more than a blueprint and a call to action at such an early stage of the discussion in public health governance. To this end, in the Conclusion (Chapter 9), Flear suggests some priorities for future research to further flesh out the contours of participation and perhaps improve the chances of its success. This includes: research into other fields where the scientific, technical or medical are privileged, where markets and private interests operate and increasingly dominate, and where normative questions are obscured and governance is placed beyond the reach of democratic debate; better reflection on citizen participation; and exploration of citizen participation and the biopolitics as an essential component of *ex ante* processes, and especially framing, problem definition and knowledge creation. Without question, further research and discussion in these areas and others are warranted.

In sum, *Governing Public Health* is a thoroughly well-researched and interdisciplinary book that produces insightful and positive prescriptions for improving governance and the relationship between the state/supranational union and its citizens. Flear is clearly passionate about increasing the substantive involvement of “the governed” in governing so that their needs, however so defined, are better met and respected. At the same time, Flear’s arguments occasionally become repetitive and the dense, academic style of writing may disengage even intellectually curious readers, whether they come from law, political science, science and technology studies, or another cognate discipline. While I am doubtful, therefore, that this book will be readily accessible to the general reader or European citizen, *Governing Public Health* merits reading and deep deliberation by all scholars interested in law and public health (including outside the EU) and the vital roles of the citizen in modern governance and democracy.

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