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Healthcare, borders, and boundaries: Crossborder health markets and the entrepreneurial state

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Abstract

Responding to arguments that states are strongly constrained by global capital, this article uses the concept of the entrepreneurial state to analyze the ways states create crossborder health markets. The article, combined with the others in this special issue, provide three key findings. First, we find that the territorially bound nature of much domestic health policy is being challenged by international integration in a growing number of sectors. Second, we find that crossborder legal frameworks in place to govern markets are extensive but not sufficient to decide questions of global health. Finally, we conclude that states matter in crossborder health because they shape rules that govern markets. Although states are challenged by global capital mobility and global regulatory frameworks, they are still capable of shaping crossborder health markets and should be held accountable for protecting the public from the risks that to health that these markets can create.
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1. Introduction

The social, political, and economic factors which determine both individual and population health are increasingly determined by global processes. A medical procedure might be carried out in one country on a patient from another country by a medical professional who received training in a third country. Transcription of the patient's medical records might be carried out in yet a different country. The cigarettes that caused the patient's disease might have been domestically produced, but it is likely that a multinational firm owned the producer. Products with a profound impact on health, from medical devices and pharmaceuticals to food, tobacco, and alcohol, are frequently produced via complex global supply chains. Despite this, the political and legal structures that govern health systems and produce social policies remain tied to territory (Ferrera, 2005). It is this disconnect between political systems, regulatory frameworks, and global markets makes the regulation of health sectors and welfare states challenging in an era of globalization (Cohen, 2013). Acknowledging these challenges, health services researchers have emphasized the need for social science perspectives on the globalization of health and healthcare (Murray, Bisht, Baru, & Pitchforth, 2012).

This special issue explores the role of states, particularly national governments, in promoting, impeding, and shaping the transnational markets which strongly impact population health. Existing beliefs regarding policymaking

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process are being tested by expanding crossborder health markets. Protecting the public's health, whether through domestic and international rules and regulations; building and funding public health systems and programs; the creation, promotion, and governance of health markets; or public education campaigns is made more complex in a world where government authority is shared with other actors or pooled with other states. In an era of economic globalization, it is impossible to separate the management of crossborder markets from the promotion of health. The development of crossborder markets in health services and health products, the movement of patients or medical professionals who travel from one country to another to receive or give treatment, and the policy and legal frameworks which attempt to address these and related public health issues such as tobacco control cannot be addressed by one country alone. What roles, then, should the state fulfill? How might states simultaneously seek economic growth and promote the rights of their citizens to good health?

The articles in this issue provide three key findings that can inform our answers to these questions. First, the authors find that the territorially bound nature of much domestic health policy is being challenged by international integration in a growing number of sectors. Not only are long-standing global industries such as pharmaceutical and tobacco increasingly globalized and consolidated in large corporations, but more sectors are exposed to globalized trade, including health care. Policymakers need to take into account the connections between global health policy and their domestic health systems in order to promote the health of their populations. International health policies are no longer, if they ever were, just about stopping communicable diseases at the border, and there is an increasing need to coordinate health education and policy between states. States must, and often do, work together and learn from one another in order to influence tobacco use, pharmaceutical markets, or the impacts of crossborder patient movements.

The second finding is that the crossborder legal frameworks in place to govern markets are extensive, but may not be sufficient when it comes to questions of health. The legal frameworks which govern market exchange, including treaties, and public and private legal arbitration, have spread quickly over the past few decades. But in many cases these legal instruments have not been tested on questions of domestic social policy. Application of investor protections or trade law to tobacco control policy, as in high profile cases involving states from Australia and the United States to Uruguay and Indonesia, can lead to new conflicts between previously separate policy objectives of trade and public health protection (McGrady, 2011; Drope & Lencucha, 2013; Voon, Mitchell, & Liberman, 2012; Jarman, 2014). In other words, the extension of international legal instruments into regulation of services and areas affecting the welfare state can lead to clashes of values (for example, free market principles versus public health goals). When multiple political jurisdictions are involved, and no one national political authority has jurisdiction, arbitration among states, firms and private investors is common.

Our third finding is, therefore, that states matter in crossborder health because they shape the rules that govern markets both within their own territory and internationally. State actions shape the actors in international health markets and the markets, and therefore the desirability of participation in a given market. States, too, play a key role in encouraging or denying public and interest group participation in health debates and health markets. Depending on internal and expert all political pressures, states can channel demands from companies or take into account wider questions of public interest. This finding engages with literatures, discussed below, that focus on both the changing role of states and variations between states of different wealth, power, and political orientation.

Given this contemporary policy context, the role of states is vital in formulating, shaping, and governing both established domestic health markets and emerging crossborder trade in health. Many industrialized states are experiencing rising healthcare costs and lower taxation revenues, leading them to consider new ways of funding and providing healthcare. Those with highly skilled populations and growing health sectors are in the position to provide that care. Policymakers in both rich and lower income states may consider health care as a potential source of employment or revenue, and sectors such as pharmaceuticals or tobacco as valuable export sectors. Even if the Philippines has serious problems in its own health sector, its government regards nurses as an export and supports them (Kingma, 2006), and governments in Sub-Saharan Africa that might be expected to regard professional ‘‘brain drain’’ as an unqualified disaster often turn out to appreciate the remittances (Record & Mohiddin, 2006). The increasing tradability of health care and products that affect health in no way solves pre-existing problems of inadequate and inequitable access to health; the risk is that it makes them worse (Jarman & Truby, 2013).

Risks associated with trade in health services and products affecting health, as well as the desire to promote certain kinds of industry (whether it is the United States and EU supporting branded pharmaceutical companies, or India promoting health care exports), have led to the creation of an increasingly elaborate policy framework at the national and sometimes international levels. In response to the application of crossborder commercial law to health policies, states have cooperated extensively to try to protect and strengthen public health regulations through international agreements, such as the

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