Revisiting theRelationship between Human Rights and Bioethics: Supportive or Counteractive?

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Abstract:

Modern bioethics is unequivocally founded on the pedestal of the values consecrated in the Universal Declaration of Human Rights. The Universal Declaration on Bioethics and Human rights, on the other hand, practicallypays heed on the need to harmonize bioethics and human rights in reorienting bioethical discourse towards a broader basis and symbolically, reminds that the mere rhetoric of rights is insufficient to protect those who are most vulnerable in the world. Hence, at a point human rights and bioethics acts and counteracts in reaching their respective goals.The object of the study is to critically analyze the relationship between human rights and bioethics. A pluralistic methodology is followed in this regard. In order to achieve the objective the study after certain conceptual clarity, asked one question- to what extent human rights and bioethics assist, counteract and overlap each other in reaching their respective and shared goals? The study concludes that although at a certain point, human rights and bioethics merge, still there are good differences between them and a significant substratum must be carried out, to clarify exactly how the respective claims and conflicts of both of them can be mitigated, before they can reinstate their expedition in the similar way.

Key Words: Human Rights, Bioethics, Nuremburg Code, Universal Declaration of Human Rights, Universal Declaration on Bioethics and Human Rights.

Introduction

> *I do think that merging bioethics and human rights is not just worthwhile, it is essential. For one thing, it is not clear what constitutes human rights, and their scope remains controversial—for instance, whether embryos have human rights. Whereas, human-rights debates normally take a legal form, bioethics arguments tend to take a philosophical form, so they argue in different and sometimes conflicting ways. Human-rights statements are positive declarations of what is obligatory, whereas bioethics documents are frequently exploratory or speculative in nature, arguing about what may or may not be permissible or necessary.*
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Human rights are generally defined as the fundamental rights that humans have by virtue of being human, and that are neither created nor can be abrogated by any government. These are the interrelated, interdependent and indivisible rights inherent to all human beings. Bioethics, on the other hand, which covers the ethical, legal, social and cultural dimensions of the medical and life sciences, as well as the technologies associated with them, plays a predominant role in ensuring respect for human dignity and the protection of human rights and fundamental freedoms. In fact, both bioethics and human rights stem from the same fundamental axiom: all human beings are born free and equal and possess 'dignity and worth'. Therefore,at least on the basis of this fundamental aphorism, there is an innate relationship between human rights and bioethics.[1]

There are certain and significant consequences that ensue from this relationship in more areas than one. One important consequence of this close relationship is that: "A global bioethics that envisions principles as mechanisms for protecting human rights will….inherit an internationally accepted ethical discourse, rights discourse is the best means available for achieving the shared goal of both bioethics and human rights theory…."[2] Modern bioethics is unequivocally founded on the pedestal of the values consecrated in the Universal Declaration of Human Rights (hereinafter UDHR). The Universal Declaration on Bioethics and Human rights, 2005 (hereinafter UDBHR) on the other hand, practically pays heed on the need to harmonize bioethics and human rights in reorienting bioethical discourse towards a broader basis and symbolically, reminds that the mere rhetoric of rights is insufficient to protect those who are most vulnerable in the world. Hence, at a point human rights and bioethics acts and counteracts in reaching their respective goals.

It is noticeable that quite a few contemporary bioethicists argue that human rights frameworks prove a more useful approach for analyzing and responding to the modern bioethics challenges than any framework and therefore, bioethics intends to apply human rights approach more often than not. This argument leads to deepen the relationship between human rights and bioethics which has been reflected in the writings of many. John-Stewart Gordon for example, in his analysis[3] note certain reasons- why bioethics tend to apply a human rights approach, *firstly*, the language of human rights has a great rhetorical, moral and popular force and violations of human rights are seen as serious incidents that call for immediate action;[4]*secondly*, human rights instruments already exists within the established framework of international law, i.e., treaties, agreements, conventions and thus can help solve

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1 UNESCO, *UNESCO IBC Report of the IBC on the Possibility of Elaborating a Universal Instrument on Bioethics* (Paris, 2003) 2.

2 Robert Baker, 'Bioethics and Human Rights: A Historical Perspective' (2001) 10 *Cambridge Quarterly of Healthcare Ethics* 241, 250.

3 John-Stewart Gordon, 'Human Rights in Bioethics-Theoretical and Applied' (2012) 15(3)*Ethical Theory and Moral Practice*.

4 Baker, above n 2.

ethical conflicts in international and national levels;[5] *thirdly*, the universality of human rights facilitates the establishment of universal moral norms in bioethics;[6] *fourthly*, the notions of human dignity are sometimes unable to provide clear answers in bioethics such as privacy and human rights may come into play then since these are usually formulated in terms of rights.[7] To be mentioned John acknowledged that some scholars might be less enthusiastic about applying human rights *without stint* because of their unresolved justification, the complexity of their application, and the problem of relativism.[8]

However, it will not be an exaggeration to state that the corpus of international human rights developed after the Second World War as an expression of the commitment of governments and the peoples they represented to principles sustaining certain great social virtues, for instance, justice, equity, and most importantly respect for human dignity.[9] Bioethics, on the other hand, arose as an academic discipline in roughly the same period.[10]Bioethics unlike human rights, as the application of moral philosophy to ethical problems in the life sciences[11] came to apply in controversial areas for example, reproductive and end of life issues, genetic testing, manipulation, and data storage[12] and so forth. Norms of bioethics have also been devised to regulate the conduct of scientific research, access to, and quality and safety of technology, medical services, essential medicines, and other preconditions for health.[13] A close analysis thus evidences that the bioethical discourses are also for ensuring the human dignity on which the whole human rights edifice is erected. Thus, although human rights and bioethics came to ensure human dignity in their ultimate goal and end but the means they follow are certainly not similar rather conflicting in some cases.

The object of the study is to critically spell out, the relationship between human rights and bioethics.A pluralistic methodology combining a wide array of primary and secondary materials, without any endeavor to independent factual investigation or to collect primary statistical data, is brought under analytical appreciation. In order to achieve the objective the study after certain conceptual clarity, asked one question- to what extent human rights and bioethics assist, counteract and overlap each other in reaching their respective and shared goals? This is mainly done through a critical examination of some of the dominant instruments in the fields of

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5 L. P. Knowles, 'The Lingua Franca of Human Rights and the Rise of Global Bioethics' (2001) 10(3) *Cambridge Quarterly of Healthcare Ethics* 253.

6 Mann J (ed), *Health and human rights* (BMJ, 1996).

7 Gordon J.S., Poverty, human rights and just distribution. In: Boylan M (ed), *International public health policy and ethics* (Springer, 2008).

8 Ibid.

9 Thomas Faunce, *Bioethics and Human Rights*<https://law.anu. edu.au/sites/all/files/users/u9705219/bioethics_and_human_rights_2014_1.pdf>accessed 21 February, 2016.

10 Ibid.

11 J. Harris, *Bioethics* (Oxford University Press, 2001) 1-4.

12 A. R. Jonsen, *A Short History of Medical Ethics* (Oxford University Press, 2000).

13 Harris, above n 11.

human rights and bioethics like, the *Nuremburg Declaration*, the *UDHR*, the *Helsinki Declaration*, and the *UDBHR*. The study consulted further certain other relevant concepts and examples of implementation, both textually and contextually, for better understanding in this regard. The study concludes that although at a certain point human rights and bioethics merge, still there are good differences between them and a significant substratum must be carried out to clarify exactly how the respective claims and conflicts of both of them can be mitigated, before they can reinstate their expedition in the similar way.

Conceptualizations of Human Rights and Bioethics

The normative convergence between the fields of bioethics and human rights is not the same and the distinction can be drawn from a variety of aspects. Following this, bioethics is not regarded as automatically transferable to human rights, not even in a codified form or the *vice versa*. But it is more common that the bioethical norms take over legal expressions or even concrete legal techniques used in human rights instruments.[14] In spite of this, in our days, the two domains cannot be considered entirely distinct any longer- since various legal issues have become organic part of both and so intertwined that any effort to segregate them would turn into vain.[15]

The foregoing discussion, apart from the general conceptualizations of both will focus on the philosophical values on which human rights and bioethics are centered. To be mentioned that the conceptualization is deliberately directed in order to assess the relationship between human rights and bioethics.

Conceptualization of Human Rights

The history of human rights is as old as the human civilization itself. It has come across a long way following an unpleasant journey. Human rights, as we do understand today indicate a wide variety of values and capabilities reflecting various circumstances of human history and human circumstances. In general understanding, human rights are those rights which a person can claim because he is a human being. Human rights literally mean the rights of man. They are also called natural rights. *Thomas Paine* may have been the first to use the term human rights,[16] in his English translation of the 'French Declaration of the Rights of Man' adopted by the National Assembly of France in 1789 which prefaced the Constitution of 1791. Later on, the term 'human rights' has been used in the English text of the *Universal Declaration of Human Rights, 1948*[17] and such usage continues in this day.

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14 Judith Sandar, 'Human Rights and Bioethics: Competitors or Allies? The Role of International Law in Sharping the Contours of a New Discipline' (2008) 27(1) *Med Law*15, 16.

15 Ibid.

16 Thomas Paine, *The Rights of Man* (Gutenberg, 1789).

17 Alan S. Rosenbaum, *The Philosophy of Human Rights: International Perspective* (Greenwood Press, 1980) 9.

Human rights are commonly understood as inalienable fundamental rights backed up by state obligations and are essential for the existence of human beings themselves.[18] They are intrinsic to every human being, simply because of being human. They include all, and only, human persons. Around the world, people and nations have recognized the importance of human rights as a fundamental part of social justice.[19] They represent the minimal moral standards for human society.[20] The possession of human rights is the principal means for maintaining a notion of human dignity. Human rights are concerned with the dignity and self-esteem of the individual that are essential for securing personal identity and promoting human community.[21]

To be mentioned the term 'human dignity' may convey a multiplicity of understanding, it may even be referring to different meaning.[22] Dignity's intrinsic meaning is left to an intuitive understanding or an assumed shared understanding.[23] For human rights theorists, human dignity refers to the intrinsic worth of all human beings and the requirement that all human beings should be treated with appropriate respect, although work on human rights has not yet defined the contents and requirements of human dignity.[24] Therefore, there is an obvious need to develop a meaningful concept of human dignity, and preferably with specific criteria that could be used for evaluative purposes.[25]

However, dignity in whatever way is explained or contextualized has appeal to many field like, philosophy, bioethics or even legal discourse. The insistence on the universality of human dignity is one of the significant contributions of the human rights paradigm. In this regard the observation of Chapman is worth to mention:

> Commitment to human dignity is a widely shared value. Concept to human dignity reach back to the seminal writings of Immanuel Kant and arguably to the Stoic tradition in ancient Greece and Rome as well. Appeals to human dignity are common in bioethics, philosophy, and legal discourse. Human dignity also serves as the grounding for human rights. In recent years, protection of human dignity has also emerged has a central criterion for the evaluation of controversial technologies, like cloning and embryonic stem cells.[26]

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18 Samantha Power & Graham Allison (eds), *Realizing Human Rights: Moving from Inspiration to Impact* (Palgrave Macmillan, 2000) 357.

19 Curtis F. J. Doebbler, *Introduction to International Human Rights Law* (CD Publishing, 2007) 173.

20 Abram, Morris B. Abram, 'Freedom from Thought, Conscience and Religion' (1967) 2 *Journal of the International Commission of Jurists* 40.

21 Abdul Aziz Said,*Human Rights and World Order* (Praeger Publisher Inc., 1978).

22 Audrey R. Chapman, 'Human Dignity, Bioethics, and Human Rights', (2011) 3 *Amsterdam L.F* 3.

23 Ibid, 4.

24 Ibid, 3.

25 Ibid, 10.

26 Ibid, 3.

Human rights inhere universally in all human beings and the principal means for preserving the notion of human dignity, and they, unlike other 'possessions', cannot normally be traded off. 'Universal inherence' and 'inalienability' are the two principal characteristics which distinguished human rights from other rights. Some of the universal human rights having global applications are, among others: right to life, liberty and personal security,[27] right to equality before the law,[28] right to freedom from arbitrary arrest and detention;[29] right to freedom of movement;[30] right to own property;[31] right to social security;[32] right to education;[33] right to a standard of living;[34] right to health;[35] right to housing;[36] right to freedom from discrimination;[37] etc.

Human rights, to be further added are a global vision backed by state obligations and are essential for the existence of human being itself. Promotion and protection of human rights thus, are legal obligations of all states in national and international sphere, as is clearly stated in articles 55 & 56 of the UN charter.[38] The obligation becomes bold, when the states extend their respect to the same by ratifying other binding international human rights instruments i.e., the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966, etc.

Another thing needs to mention here that human rights discussions and deliberations are always meant in almost similar way unless it is connected to any other topical issue. Thus, if a connection is made with bioethics, human rights get a new connotation that might require additional and precise concentration, confusion and argument. For example, the idea of human dignity so long as explained as single idea of human rights, no debate arose but if connected to bioethics, may lead to several unresolved questions[39], like, is human dignity a useful concept in bioethics

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27 *The Universal Declaration of Human Rights, 1948*, Art 2.

28 Ibid, art 7.

29 Ibid, art 9.

30 Ibid, art 13.

31 Ibid, art 17.

32 Ibid, art 22.

33 Ibid, art 26.

34 Ibid, art 25.

35 *The International Covenant on Economic, Social and Cultural Rights, 1966*, art 12.

36 Ibid, art 11.

37 Ibid, art 2.

38 Art 56 of the *UN Charter* says all Members pledge themselves to take joint and separate action in co-operation with the UN for the achievement of the purposes set forth in art 55. Some of the purposes mentioned under art 55 are, higher standards of living, full employment, and conditions of economic and social progress and development, solutions of international economic, social, health, and related problems; and international cultural and educational cooperation.

39 D. Beyleveld and R. Brownsworth, *Human Dignity in Bioethics and Bio law*, (Oxford University Press, 2001); R. Brownsword, 'Bioethics Today, Bioethics Tomorrow: Steam Cell Research and the "Dignitarian Alliance" '(2003) 17 *Notre Dame Journal of Law*, 15.

that sheds important light on a wide range or bioethical issue or, the contrary, is it a useless concept or at best a vague substitute for other more precise notions?[40] Hence, to determine the relationship for example, between human rights and bioethics at a certain point becomes controversial perhaps, difficult in drawing any conclusion. In my study, I shall always ascribe to human rights in the legal sense, as a set of internationally legally binding norms based on international treaties and customs as well as the authorized interpretations of those instruments.

Conceptualization of Bioethics

In the English language bioethics was amplified by Potter in 1970, yet the concept comes from human heritage thousands of years old.[41] This heritage can be found in all cultures, religions, and in ancient writings from around the world.[42] The need for bioethics has continued to be re-emphasized internationally in United Nations declarations,[43] in statements of scientists, teachers and the view of ordinary people and as a response to the decay in moral fabric of societies.

The emergence of the bioethics and the subsequent elongation evidences that there are at least three ways to view bioethics, *firstly*, descriptive bioethics, which is the way people view life, their moral interactions and responsibilities with living organisms in their life; *secondly*, prescriptive bioethics, which is to tell others what is ethically good or bad, or what principle are most important in making such decisions; and *thirdly*, interactive bioethics, which is the discussion and the debate about descriptive and prescriptive bioethics.[44]

Bioethics is multidisciplinary and blends philosophy, theology, history, and law with medicine, nursing, health policy, and the medical humanities.[45] Insights from various disciplines are brought to bear on the complex interaction of human life, science, and technology with the broader aim and promise to uphold the dignity and worth of human being.[46] Although its questions are as old as humankind, the origins of bioethics as a field are more recent and difficult to capture in a single view.

However, now-a-days bioethics, both as an academic discipline and as a professional activity, has evolved from the domain of medical ethics. It is a multidisciplinary field that extends far beyond the spheres of healthcare and medical ethics which encompasses a wide range of ethical problems in the life sciences.[47] These include but are not confined to the issues related to genetics, theories of human

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40 Chapman, above n 22.

41 Darryl R J Macer, *Bioethics is Love of Life: An Alternative Textbook* (Eubios Ethics Institution, 2015) 6.

42 Ibid.

43 UNESCO, 1997, 2005.

44 Ibid, 7-8.

45 <https://www.practicalbioethics.org/what-is-bioethics> accessed 22 February, 2016.

46 Ibid.

47 *International Encyclopedia of the Social &Behavioral Sciences*<http://www.udo-schuklenk.org/files/bioethics.pdf> accessed 22 February, 2015.

development, behavioral psychology, and resource allocation in healthcare management and so forth.

That noted, bioethics is ascribed as the study of ethical dilemma strictly in biological sciences and generally in all aspects of life. It is the application of considered right action, the determination of the "ought" in the "can". It is argued that bioethics emerged today, does not merely describe ethically good or bad conduct, along with the presentation of underlying arguments and analysis but also uses the language of rights and frequently formulates norms very similarly to human rights.[48] To quote JuditSandor:

> Bioethics and human rights are two different systems of norms but bioethics can enrich human rights by extending the traditional catalogue of rights in certain new fields. The theory of human rights nevertheless dictates some discipline in formulating new and new rights. Therefore, it offers to bioethics, as an exchange, a more sufficient enforcement mechanism and international recognition.[49]

Bioethics as a discipline engages in the discussion, deliberation and decision of typically controversial ethical issues which arise from new situations and possibilities. It is also moral discernment as it relates to medical policy and practice. Its scope is the analysis and development of norms for conduct and policy relating to the variety of practices that is related to ethical questions and basic human values[50] such as the rights to life and health, and the rightness or wrongness of certain developments in healthcare institutions, life technology, medicine and so forth. Since, the pursuit of any of the values results in either an accordance with one another or a conflict with at least, one other value, bioethics tend to resolve them.[51] Therefore, bioethics has an impact on a wide array of human life-which is easy to indicate but difficult to ascertain.

The linkage between Human Rights and Bioethics

At least two major reasons encumber the determination of the relationship between human rights and bioethics. They are, *firstly*, the significant overlaps and common objectives between them; and *secondly*, b) the distinct intersecting endeavors they pursue. The unparalleled journey of bioethics and human rights as argued by many, since the former is more practical oriented and daily life ethics- subsequently been condensed by those two reasons in many cases. Taking this into forehead the

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48 Sandar, above n 14.

49 Ibid.

50 TsutomuSawai, 'The moral value of induced pluripotent stem cells: a Japanese bioethics perspective on human embryo research', (2014) 40(11) *Journal of Medical Ethics* 766.

51 <http://www.bioethics.org.au/Resources/Bioethical%20Issues.html> accessed 22 February, 2016.

critiques sometimes argue not to assess the relationship between them, but to allow serving their respective goals and objects. In contrast others put forward their contention that although they have chosen their respective streams- which might be different but they have a common historical origin- which help them to be common, at least, in the attainment of some objectives and goals. They go far by saying that:

> …it is not surprising that both modern bioethics and international human rights were born from the same historical events: the Second World War, the Holocaust, and the Nuremberg tribunals that condemned the Nazi doctors. The common origin of both systems makes even more understandable the recourse to the existing human rights framework to protect individuals from harm in the biomedical field.[52]

However, the foregoing discussion will put light on those historical instruments along with some examples of implementation, in order to re-assess the intricate relationship- both positive and negative between human rights and bioethics.

The Nuremburg Code and the UDHR

International human rights and bioethics share a common historical beginning and a common ideological basis.[53] Both human rights and bioethics trace their ancestry to the Nuremberg trials of Nazi war criminals following World War II.[54] The Nuremberg Trials, and, in particular the case of *US v Brandt*,[55] focused the world's attention on the atrocities committed by physicians and scientists, and in some cases in the purported interests of medical and scientific progress. Not only did they participate in the 'final solution', but they also conducted non-consensual experiments, commonly with inmates of concentration camps.[56] It is pertinent to mention some of the experiments they conducted are, how long individuals immersed in freezing water could survive, how well they functioned at pressure levels existing at high altitudes, the viability of various sterilization techniques, the development of vaccines for a variety of diseases, including jaundice, malaria,

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52 Roberto Andorno, 'Human dignity and human rights as a common ground for a global bioethics', (2009) 34(3) *Journal of Medicine and Philosophy* 223.

53 In contrast there are reverse opinion, for example, George Annas and others have recently observed, human rights and bioethics have since grown apart. For decades, each has developed independently from the other. See <http://www.bu.edu/experts/profiles/george-annas-jd-mph/> accessed on 22 February, 2016.

54 Thaddeus Mason Pope, *Reuniting Human Rights and Bioethics to address Medical Futility and End of Life Treatment*<http://www.thaddeuspope.com/ images/Pope_ abstract_for_ NYC_AALS. pdf> accessed on 5 February, 2015.

55 The Medical Case, U.S.A. v Karl Brandt, et al. (also known as the Doctors' Trial), was prosecuted in 1946-47 against twenty-three doctors and administrators accused of organizing and participating in war crimes and crimes against humanity in the form of medical experiments and medical procedures inflicted on prisoners and civilians.

56 Sheila A.M. McLean,*Human Rights and Bioethics*<http://www.unesco.org/new/ fileadmin/MULTIMEDIA/HQ/SHS/pdf/Bioethics-Human-Rights-McLean.pdf> accessed on 21 February, 2016.

diphtheria and typhus, which involved directly injecting subjects with infectious agents, and experimentation with novel surgical techniques and so forth.[57]

As a direct outcome of this heinous event, following the subsequent Nuremberg trials, the Nuremberg Code was promulgated as a set of research ethics principles for human experimentation in 1947. Although the Code was specific to human research and experimentation, areas of medicine, but it can well be described as the 'grandmother' of modern bioethics.[58] Katz says that:

> The Nuremberg Code is a remarkable document. Never before in the history of human experimentation, and never since, has any code or any regulation of research declared in such relentless and uncompromising a fashion that the psychological integrity of research subjects must be protected absolutely.[59]

One year after the Nuremberg Code was promulgated the most significant event in the arena of human rights occurred – the adoption of the UDHR by the United Nations as a " as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education . . . and by progressive measures, national and international, to secure their universal and effective recognition and observance .. . "[60] This perhaps, inaugurated the era of modern human rights movement.

The declaration has been compared by Professor R. Cassin, one of its principal authors, to the vast portico of a temple of which the forecourt is the preamble affirming the unity of the human family and the foundations are the general principles of freedom, equality, nondiscrimination and brotherhood proclaimed therein.[61] However, according to Baker, the most important impact of the UN declaration was, as he claims, to rectify the problem that until then ''the nature of "human rights" was left unspecified….'[62] In the 1948 declaration, on the other hand, the world was given both 'an agenda and a philosophy[63] and the numerous international declarations that have proliferated since 1948 have striven to follow that agenda.[64]

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57 Ibid.

58 McLean, above n 56.

59 J. Katz., 'The Consent Principle of the Nuremberg Code: its Significance The and Now'. In Annas, G.J. and Grodin, M.A. (eds), *The Nazi Doctors and the Nuremberg Code (*OUP, 1992) 227.

60 Preamble to the Declaration.

61 Albert Verdoodt, 'The Significance of the Universal Declaration of Human Rights: The record so far and future prospects', (1966) 6 *International Review of the Red Cross* 287.

62 Ibid.

63 Annas, G.J., 'American bioethics and Human Rights: The End of All Our Exploring', (2004) Winter *Journal of Law, Medicine & Ethics* 658, 660.

64 McLean, above n 56.

That noted, the UDHR was in part informed by the revelations that led to the adoption of the Nuremberg Code. Therefore, the details revealed at Nuremberg and also in the UDHR evidenced that not only both of them erected their foundation on the same philosophy of human dignity, but also they shared some contents equally found in the code and also to the rights recognized by Articles 4 through 20 of the declaration.'[65] For example, some contents common both in the UDHR and Nuremburg Code are, free consent, welfare of the society, avoidance of physical and mental suffering and injury, absence of coercion, properly formulated experimentation and so forth.

Medical Ethics and Helsinki Declaration

Between Nuremberg and modern times, came the development of what is generally referred to as 'medical ethics' which seeks to provide a set of principles designed to inform the way in which doctors relate to their patients. Irrespective of the ethical model used, however, medical ethics arguably hinges on the duties of physicians to their patients, and has a correspondingly limited – *albeit* not negligible - emphasis on human rights, since right to health is a fundamental human right among all other significant rights.[66]

However, the question of human research can usefully be returned to as a template of the relationship between medical ethics and human rights, by addressing the World Medical Association's Declaration of Helsinki. The aim of the declaration was to provide an ethical framework for human experimentation and research. The basic principles of the declaration includes: respect for the individual;[67] right to self-determination and the right to make informed decisions regarding participation- both initially and during the course of the research; [68] investigator's sole duty to the patient and volunteer;[69] the subject's welfare in precedence over the interests of science and society;[70] the superiority of ethical considerations over laws and regulations;[71] the recognition of the increased vulnerability of individuals and groups and calling special vigilance for them;[72] the obligation of obtaining the surrogate consent form an individual acting in the subjects best interest, where the research participant is incompetent, physically or mentally incapable to giving consent, or is a minor.[73]

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65 R. Baker, 'Bioethics and Human Rights: A Historical Perspective', (2001) 10 *Cambridge Quarterly of Healthcare Ethics* 241, 242.
66 McLean, above n 56.
67 *The Helsinki Declaration 1964*, art 8.
68 Ibid, art 20-2.
69 Ibid, art 2, 3, 10, 16, 18.
70 Ibid, art 5.
71 Ibid, art 9.
72 Ibid, art 8.
73 Ibid, art 23-5.

Those important provisions, since its adoption in the declaration have become embedded in national and international codes, laws and court judgments in cases involving allegations of abuse in clinical trials[74] and thus a major shield for the promotion and protection of human rights. The fundamental human rights set out in human rights instruments are of a general nature, and do not detail the obligations entailed by a right or the means of ensuring its protection. Therefore, far from being a superfluous addition to human rights instruments, ethical codes of practice are essential. These codes elaborate detailed ethical standards which are developed and maintained by discipline-specific professionals like medical practitioners.[75]

However, it is important to note that the declaration of Helsinki, rather than fully endorsing the human rights focused in the Nuremberg Code, in fact, moves away from its first, and most fundamental, principle; namely, that research is only permissible with the free and informed consent of the individual subject. The Helsinki Declaration's concession that research can be conducted on non-competent individuals could be said to be a response to changing political and social regimes. Childress describes the declaration's two major deviations from the Nuremberg Code in the following words:

> ….it offers a less stringent requirement of the research subject's own voluntary, informed consent: it allows some incompetent subjects to be enrolled in some research protocols on the basis of a legal guardian's consent or permission.[76]

While this no doubt assists in the development and progress of medicine and healthcare, it also shows the 'bioethical drift' the 'drift' which may also be politically generated or responsive. Since one of the major promise of human rights is to uphold the right to life and personal liberty, such kind of drift may come to contradict with the human rights regime, unless it is rigorously tested.

The Universal Declaration on Bioethics and Human Rights

In the past the United Nations Educational Scientific and Cultural Organization (UNESCO) has adopted two declarations in the field of bioethics: the *Universal Declaration on the Human Genome and Human Rights* (1997) and the *International Declaration on Human Genetic Data* (2003). The previous declarations had focused on the specialized area of genetics and genomics. But the global nature of science and technology implies the need for a global approach and expansion to bioethics. Member states have mandated UNESCO to set universal ethical benchmarks covering issues raised within the field of bioethics.[77] And the ultimate outcome was the *Universal Declaration on Bioethics and Human Rights*.

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74 A Plomer, 'In Defence of Helsinki and Human Rights', (2012) 5(2) *The South African Journal of Bioethics and Law* 83.

75 Ibid.

76 J.F. Childress, 'Nuremberg's Legacy: Some Ethical Reflections: Perspectives in Biology and Medicine', (2000) 43(3) *Spring* 347, 351.

77 <http://unesdoc.unesco.org/images/0014/001461/146180E.pdf> accessed 22 February, 2016.

The scope of the adopted text of the declaration is an obvious compromise between these views like, medicine and health care, access to health and environment. It addresses "ethical issues related to medicine, life sciences and associated technologies as applied to human beings, taking into account their social, legal and environmental dimensions".[78]

Although the aims of the declaration are multiple, the most important one is to provide "a universal framework of principles and procedures to guide States in the formulation of their legislation, policies or other instruments in the field of bioethics".[79] The declaration primarily addresses States. But at the same time, since the bioethical principles identified are founded on human rights and fundamental freedoms, every individual is involved in bioethics. The declaration, therefore, also aims "to guide the actions of individuals, groups, communities, institutions and corporations, public and private."[80]

The heart of the declaration is found in the 15 principles that are listed. The principles determine the different obligations and responsibilities of the moral subject in relation to different categories of moral objects. The principles are arranged according to a gradual widening of the range of moral objects: the individual human being itself, other human beings, human communities, humankind as a whole and all living beings and their environment. The declaration recognizes the principle of autonomy[81] as well as the principle of solidarity[82]. It emphasizes the principle of social responsibility and health[83] which aims at re-orienting bioethical decision-making towards issues urgent to many countries. Finally, the declaration anchors the bioethical principles firmly in the rules governing human dignity, human rights and fundamental freedoms.

A critical analysis of these core principles reveal that the declaration has not invented new bioethical principles or to has not provided the definitive solutions to the growing list of bioethical dilemmas. Its main goal is much more modest: to assemble some basic standards to help states in their efforts to promote responsible biomedical research and clinical practice, in conformity with the principles of international human rights law.[84]

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78 *The Declaration on Bioethics and Human Rights*, art 1(a).
79 Ibid, art 2 (i).
80 Ibid, art 2.
81 Ibid, art 5.
82 Ibid, art 13.
83 Ibid, art 14.
84 R Andorno, 'Global Bioethics at UNESCO: in Defence of the Universal Declaration on Bioethics and Human Rights', (2007) 33 *J Med Ethics* 150.

To be mentioned that the declaration is also not free from several criticisms. Some of the criticisms put forwarded are, for example, *firstly*, the bioethical norms are not properly elaborated; *secondly*, the UNESCO is not the proper authority to articulate such norms; *thirdly*, the contents of the document are too vague or general to be useful; and *fourthly*, some regards the document as a clog in the effort of like-minded cosmopolitans to codify their particular moral intuitions in international law.[85]

Evaluating the Linkage of Human Rights and Bioethics

The linkage between human rights and bioethics was historically strong and has become stronger through the affirmation of that relationship by different international instruments notably, the *Nuremberg Code* and the *UDHR*, the *Helsinki Declaration* and the *UDBHR*, as mentioned above and their acquiescence by the global community in their respective subsequent progress. The rise of bioethics also regarded as a political and, to the extent that it advocates a coherent system of values, ideological phenomenon capable of acting in opposition to the economic regulatory dynamic.'[86] For Annas, '[t]he disciplines of bioethics, health law, and human rights are….all members of the broad human rights community, although at times none of them may be able to see the homologies, even when responding to a specific health challenge.'[87] It was further added by him that the boundaries between bioethics, health law and human rights are permeable, and border crossings, including crossings by blind practitioners, are common.[88]Gostin agrees, but laments that '[b]ioethics scholars are only beginning to go beyond individual interests to explore the fundamental importance of a population's health and well-being.'[89]

To be mentioned that the linkage of human rights and bioethics should not, however, be taken for granted. Although both seem to seek similar, if not the same, outcomes, some deviations or differences can be identified which could arguably be a matter of concern.[90] As McLean remarked:

> 'It must be remembered that much of bioethics has concerned itself not with human rights in general, but rather has focused on medicine and healthcare. While it is more philosophically based than medical ethics, it is nonetheless driven – in large part - by the same, or similar, concerns. Further, it is arguable that the technological 'revolution' that resulted, amongst other things, in the

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85 Griffin Trotter, 'The UNESCO Declaration on Bioethics and Human Rights: A Canon for the Ages', (2009) 34 *Journal of Medicine and Philosophy* 195.

86 B. Salter, M. Jones, 'Regulating Human Genetics: the Changing Politics of Biotechnology Governance in the European Union', (2002) 4(3) *Health, Risk & Society* 325, 328.

87 G. J. Annas, 'American Bioethics and Human Rights: The End of All Our Exploring', (2004) 32 *Journal of Law, Medicine & Ethics* 658, 658.

88 Ibid.

89 L.O. Gostin, 'Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann', (2001) 29 *Journal of Law, Medicine & Ethics* 121.

90 McLean, above n 56.

> birth of Dolly, hijacked bioethics, and pointed it towards a more narrow focus than a human rights agenda might seem to require.' [91]

In addition to that, the fast moving scientific research and the tremendous progress can outstrip the ability of its lines of social, ethical and regulatory support to keep up.'[92] Bioethics seeks to fill that gap. It is also true that the interests of a particular and powerful social enterprise, like medicine, can drive the agenda to which its partner discipline – in this case bioethics – subscribes.[93]

Baker says that 'originally, the principles of bioethics were a means for protecting human rights, but through a historical accident bioethical principles came to be considered as fundamental.'[94] He identifies the 'accidental divorce of bioethics and human rights',[95] while Pope pleads for 'bioethics and human rights to be 'be reunited and harmonized.'[96] For Knowles: Adopting the language of human rights means moving toward a more expansive understanding of the relationships between human health, medicine and the environment, socioeconomic and civil and political rights, and public health initiatives and human rights.[97] The distinguished commentator, David Thomasma, further believes that there is a lesson that bioethics can learn from human rights, saying that,

> 'Human rights are grounded in the community and in nature itself. They cannot be isolated from economic and social rights. This is what bioethicists will have to explore internationally and inter-culturally.[98]

If so, then the agenda and scope of bioethics needs to be expanded into arenas beyond the medical, and into environment, poverty and other important social questions. This is a position which, of course, now getting support and given to the wider context, the scope and applicability of bioethics is getting multiple, mixed and complex.

Further, since science and medicine and the goals pursued by them, are not value-free enterprises, bioethics can be tempted by an agenda set by an individual 'society's priorities and interests.'[99] Moreover, since '….bioethics has been to a

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91 Ibid.
92 Salter and Jones, above n 86.
93 McLean, above n 56.
94 Ibid, 24.
95 Ibid.
96 T. M. Pope, *Reuniting Human Rights and Bioethics to Address Medical Futility and End-of-Life Treatment*<available at http://www.thaddeuspope.com/images/ Pope_abstract_for_ NYC_AALS.pdf> (accessed 23 February 2016.
97 Knowles, above n 5, 260.
98 D.C. Thomasma, 'Bioethics and International Human Rights', (1997) 25 *Journal of Law, Medicine* 295, 303.
99 P. Farmer, N. Gastineau Campos, 'New Malaise: Bioethics and Human Rights in the Global Era', (2004) 32 *Journal of Law, Medicine & Ethics* 243.

large extent a phenomenon of industrialized nations….',[100] according to Farmer and Gastineau Campos, this has meant that 'the great majority of the world's ethical dilemmas – and, in our opinion, the most serious ones – are not discussed at all by the very discipline claiming expertise in such matters.'[101] While conceding that 'bioethics has, for too long, focused on a too-narrow range of high-technology issues affecting few people….',[102] Pope argues that bioethics and human right can usefully learn from each other. For example, he argues that 'human rights' focus on globalization and public health can be used to beneficially reorient bioethics to address broader issues.'[103] In addition, since human rights commentators, he argues, lack experience in health related issues, 'human rights law can gain a rich vocabulary and conceptual toolkit from bioethics.'[104]

Of course, like all human rights endeavors, bioethics confronts the accusation that it is culturally relativistic; in other words, that – as some of the commentators already referred to have suggested – some bioethical (and human rights) norms which are aspirational for the western or rich world, may be ill suited to other countries and their interests. The importance of respect for cultural diversity is, of course, specifically referred to in article 12 of the UDBHR, which mandates that 'the importance of cultural diversity and pluralism should be given due regard.'[105] However, and importantly, this same article goes on to insist that nonetheless, 'such considerations are not to be invoked to infringe upon human dignity, human rights and fundamental freedoms, nor upon the principles set out in this declaration, nor to limit their scope.' This is a clear spirit of the fundamental principles of the UDHR.

Veatch argues that it is necessary to identify principles which are 'sufficiently abstract to identify general norms.'[106] He urges what he calls 'universalism' on bioethics, and claims that 'for ethical judgments this universalism makes sense.'[107] This, of course, is not to ignore cultural diversity, but rather, as Thomasma puts it, the 'relativistic challenges' faced by both human rights and bioethics require that 'attention is paid to those features of human existence and culture that unite human beings without overruling the very real differences.'[108]

In this regard it is to be noted here, that Jonathan Mann famously theorized that public health, ethics, and human rights are complementary fields motivated by the paramount value of human well being. He felt that people could not be healthy if

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100 Ibid, 245.
101 Ibid.
102 Pope, above n 96.
103 Ibid.
104 Ibid.
105 *The Universal Declaration on Bioethics and Human Rights*, 19 October 2005.
106 R. M. Veatch, 'The Foundations of Bioethics', (1999) 13 *Bioethics* 206, 216.
107 Ibid, 208.
108 Thomasma, above n 98, 307.

governments did not respect their rights and dignity as well as engage in health policies guided by sound ethical values. Nor could people have their rights and dignity if they were not healthy. Mann and his colleagues argued the public health and human rights are integrally connected: Human rights violations adversely affect the community's health, coercive public health policies violate human rights, and advancement of human rights and public heath reinforce one another. Despite the deep traditions in public health, ethics, and human rights, they have rarely cross-fertilized-although there exists an important emerging literature. For the most part, each of these fields had adopted its own terminology and forms of reasoning. Consequently, Mann advocated the creation of a public health ethics and the adoption of a vocabulary or taxonomy of 'dignity violations.'[109]

So, from the above discussion, it is crystallized that in spite of different arguments, counter arguments there is an innate relationship between bioethics and human rights, for example, *firstly*, Human dignity serves as the grounding for human rights that refers to the intrinsic worth of all human beings and the requirement that all human beings should be treated with appropriate respect. Appeals to human dignity are common in bioethics, philosophy and legal discourse;[110]*secondly*, human person is the central subject of human rights, bioethics on the other hand, relates to all forms of life including the human beings themselves; *thirdly*, in the human rights discourse human person is regarded as the principal beneficiary and active participant, whereas bioethics although speak about the benefits of all forms of life spheres including the environment itself but the human person is conceived as the main actor for the ethical application of value judgment and decision; *fourthly*, human rights are the universal and inalienable rights to the members of the human community, bioethics, particularly, after the UNESCO declaration on bioethics and human rights it got an identity of global application although the declaration contains the provisions of cultural diversity and pluralism; *fifthly*, both have the common object of human development, although the concept of bioethics tends to apply the ethical principles and concepts for the well-being of not only human person but also others having the intricacies of ethical dilemmas connected to the everyday life of people, society and their interactions.

Conclusion

It is difficult to ascertain the precise moment, when the human rights history began its journey. Although it is undisputed that the human rights history has come across a good number of ordeals and it is as old as the human civilization itself. The corpus of international human rights developed after the World War II as an expression of the commitment of governments and the peoples they represented to the principles

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109 Gostin, above n 89.

110 Chapman, above n 22.

sustaining three major social virtues: justice, equity, and respect for human dignity.[111] It was also, a profound reaffirmation of an idealist view of reality and the norms human create to function within it. Nations incorporated judicially enforceable human rights in their constitutions that provided, for example guarantees about access to health services and medicines as well as civil and political freedoms of speech, association and prohibitions in torture or unlawful death and certain other significant rights. Such commitments mark the start of a process whereby governments would not only provide physical security but maintain social structures that allowed their citizen to flourish in good health, which is a precondition for the proper enjoyment of a number of other human rights.[112]

Bioethics, on the other hand, arose as an academic discipline in roughly the same period which may usefully be described as the application of moral philosophy to ethical problems in the life sciences.[113]The ethical issues we face in healthcare, justice, and human rights extend beyond national boundaries—they are global and cross-cultural in scope. It has expanded its purview to accommodate issues of trans boundary significance in areas like,academics, international drug trials, physician, human genetic engineering, population control, and access to pharmaceuticals, to name but a few.

In response to this expansion perhaps, shift, human rights regime calls for a legally sanctioned, universal moral framework—to serve as the *lingua franca* of the new global bioethics order. Claiming that traditional bioethical principles are excessively focused on the individual and lack universal traction, proponents of this movement argue that human rights can provide much-needed guidance on difficult health-related issues that affect whole nations, populations, and even humanity itself.

Therefore, the unequivocal historical journey started both by the human rights and bioethics through the *Nuremburg Declaration*, the *UDHR*, the *Helsinki Declaration*, and the *UDBHR,* at this stage may have to combat and go through a new challenge, which may in turn lead their archival linkage to face a new paradigm, for example, human rights may need to importthe principles of bioethicsinto it or *vice versa*. And following that, any imbalance importation would lead the mutual relationship between human rights and bioethics to be counteractive rather than supportive. In this regard, a significant philosophical groundwork must be carried out, at least, for two reasons, since that (a) will clarify exactly how human rights or bioethics claims should be understood in their subsequent expansion and contextualization; and (b) will help obtain their reciprocal goals. And this is, perhaps, the point that we need to recognize in these days in order to meet the major promises of bioethics and human rights relating to their effective relation with each other for the promotion and protection of human dignity.

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111 Faunce, above n 9.
112 Ibid.
113 Ibid.