

Bioethics and Law (Public Policy): Dynamics, Polemics and Paraenetics

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Various fora accept a given truism that Ethics (*Bioethics*) and Law (Public Policy) could easily steal public attention not because of the interest in both disciplines but because of the attendant conflicts that they generate when placed vis-a-vis each other. The conflicts that these disciplines both generate can drag other disciplines to clash as to create confusions in the political and scientific landscapes.

The role of Bioethics and Law in shaping the political and even the scientific community cannot be underestimated. Their distinct roles certainly lie at the very core of human social interactions especially in the pursuit of their chosen ends. Whether or not their roles are complementary or diametrically opposite each other, it is paramount to explore their distinct dynamics, polemics and paraenetics (*prospective recommendations for a working environment*). Knowing their distinct roles may lead to a better understanding rather than to outright indifference and scepticism.

This study introduces the readers, especially the health care professionals and legislators, to the perennial problem that both Bioethics and Law are faced with when it comes to discussing their respective positions in the advancement and resolution of issues that have both ethical and legal dimensions which are often considered in a very antagonistic mode. The health practitioners and legal minds will see how both of these disciplines look at the issues from their respective viewpoints and how the dynamics and polemics present their way in into the crossfire. The knowledge of these though will make them recognize the problem not only in the speculative order but in concrete experience as well. And the understanding of both in their dynamics, polemics and paraenetics must start from the understanding of the various paradigms (*discussed in this study*) that hopefully can accurately describe the issues therein. The familiar and controversial cases of past and present issues like abortion, euthanasia, gay marriage, human cloning, stem cell research, genetically modified organisms and many others should be understood under the context of these paradigms.

While it is admitted that Bioethics and Law can never be reconciled as both use different and often contradictory principles, nothing should close the door for bridging the two disciplines as close as they can without antagonizing each other like belligerent enemies. These disciplines can enlarge each other's scope as much as they can open political and scientific inquiries to disentangle the often complex issues arising from their inimical positions. One has only to bravely open new doors and paths so that each one can freely explore newer prospects for more understanding and acceptance.

There are certainly concepts that both disciplines cannot tinker with. They have to agree that human life has primacy over others. And they both can use this as a common jumping ground with the hope that they will both meet in the end. Inviolability of human life cannot be compromised in any arena including politics and science.

Keywords: *ethics, bioethics, law, public policy, controversy*

This topic will introduce the readers into the dynamics, polemics and paraenetics of the discipline of Bioethics and Law and how both demonstrate patterns of behavior and why. Included here is another discipline of Science (and Technology) and how it also adds to the already interesting dynamics and polemics of the Bioethics and Law. Observably, Science is a witting and unwitting party to the above dynamics. It can also be seen as both an interested and uninterested party. Every now and then, Science will be mentioned.

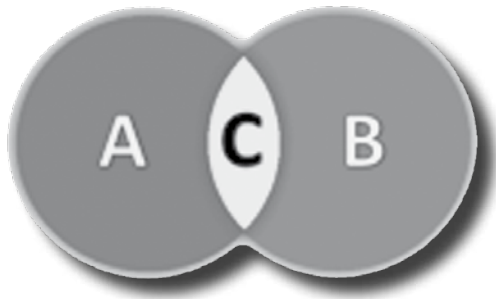
Issues in Bioethics and Law (and Science)

James Davison Hunter in his book, "Culture Wars: The Struggle to Define America," made astonishing reference that brings to fore the struggle of secular government steeped in Law to confront the authority of the Church steeped in morals. With the contentious debates surrounding both, for instance, Reproductive Health and Divorce bills, Gay Marriage, Stem Cell Research or Human Cloning, we might say that the scene is clearly taking on both the progressive and conservative landscapes, with the religiously-charged bills providing the stronger tremors meant to shape or reshape the topography of the market of ideas.

The various paradigms below will illustrate and contribute to the understanding why the dynamics and polemics between the two disciplines are necessarily expected.

Paradigms of Dynamics and Polemics between Bioethics and Law

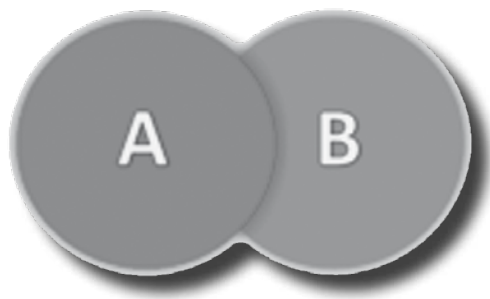
1. The Common Denominator Paradigm. This can be illustrated by the figure below.



The traversing/transecting area (C) is the point of commonality and the non-traversing areas (A) and (B) remain as the substantial points of controversy. Although Law often embodies ethical principles, Law and Bioethics are far from being mutually cooperative. Many social acts that would be widely condemned as unethical are not prohibited by Law.

However, in the case of the doctrine of Law of Samaritanism, both Law and Bioethics will condemn a man for not responding to a person in distress or in the verge of death, presuming again that he/she has the capacity to do so. Whereupon, revealing about a person's health status as HIV/AIDS positive to a would-be sex partner is certainly in order to both Law and Bioethics.

2. The Dominant Law Paradigm. This views Law (A) as having more force or area of responsibility than Bioethics (B). The figure below illustrates that Law is more prominent and covers wider area than Bioethics.

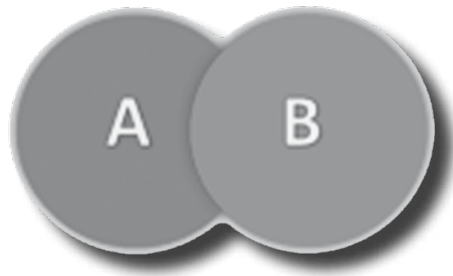


Establishing ethical norms or guidelines in the practice of the profession, individual, group or institutional, can contribute to detecting, resolving and forestalling unethical practice, as well as legal conflicts. Many bioethicists would

agree that it would be unethical to prolong unnecessary treatments, like continuously hooking life sustaining devices on a **terminally-ill**, if such have become ineffective, burdensome and do not offer substantial hope of recovery. But since Law has police power and Bioethics has none, except conscience, the physician and family must abide by it. This is a clear case of the **Dominance of Law** over Bioethics.

A classic example of this paradigm, as reported in many articles, is the famous case of Nancy Cruzan (*in Nancy Cruzan vs. the Director of Missouri Department*), when after becoming apparent that Nancy had virtually no chance of regaining her mental faculties, her parents asked the hospital to terminate the artificial nutrition and hydration procedures. The case of *Terri Sciavo* and the surrogacy case of *Baby M.* may be included here likewise.

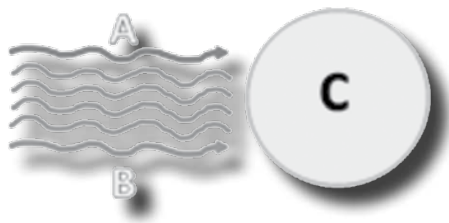
3. The Dominant Ethics Paradigm. This illustrates the dominance of Bioethics (B) over Law (A). The area covered by Bioethics is wider than Law as illustrated below:



The paradigm demonstrates the primacy of Bioethics in the life of individuals and society. While it is true that in case of conflict with Bioethics, Law has more authority and can exercise police power over those who do not comply, Bioethics can still claim pre-eminence over Law in many aspects.

One of the best illustrations of this paradigm is the famous case of Karen Ann Quinlan (*Quinlan vs. St. Clare's Hospital, New Jersey et al., 1975*) when Karen's father sought judicial authority to withdraw the life-sustaining mechanisms temporarily preserving her life, and his appointment as guardian of her person to the end. His request was opposed by her doctors, the hospital, the Morris County Prosecutor, the State of New Jersey et al. (*Menkinoff, 2001*)

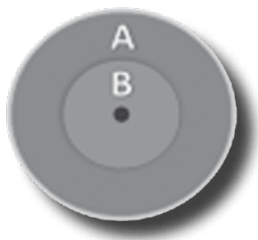
4. The Parallel Banks Theory. This illustrates Law (A) and Bioethics (B) as analogically viewed like two parallel banks of a river. Both banks are in the opposite position but leading the water to the same end.



This theory loosely states that conflicts between Law and Bioethics can never be reconciled or resolved. While there are some provisions of Law and principles of Bioethics that can mutually agree with each other, they can be encouraged to clash, bitter as they sometimes happen and both can always agree not to agree.

In the assumption of autonomy, Law exercises power over citizens in their legal acts and Bioethics over their ethical acts. In Bioethics, man is primarily motivated to act for individual and social rewards, through **positive** acts, while in Law, man is primarily motivated to act for social harmony, peace and order, mostly through **negative** acts.

5. The Inner and Outer Circle Paradigm. This illustrates Bioethics (B, outside circle) and Law (A, inner circle) as having commonality in the center of functions.



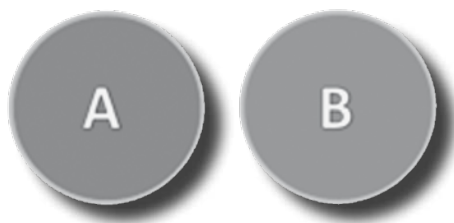
The Inner and Outer Circle demonstrate the simile by the philosopher, Jeremy Bentham that Law is a circle with the same center as Bioethics but with a smaller circumference. Similar conclusion has been made by another writer, Jellinek, who asserted that Law is a “minimum ethics” and that it is contingent upon Ethics.

Two illustrations can explain the above paradigm. The first is the schoolmaster who said: “Boys, behave and be pure in heart or I’ll flog you.” (*Jellinek, 1878*). The point here is that Law can only operate through sanctions---through punishments, redress, or forcible preventions---and therefore can only insure the outward morality of words and acts.

The second illustration is that of an athletic young man with a rope and a life-belt at hand, who sits on a bench in a park along a river bank, and quietly sees a

child drowning, although he could act without the least danger. (*Pollock, n.d.*). The Law has refused to impose liability on the young man. As Ames puts it: "He took away nothing from a person in jeopardy, he simply failed to confer a benefit upon a stranger. . . The Law does not compel active benevolence among men and women. It is left to one's conscience whether he will be the Good Samaritan or not. (*Pound, 1926*).

6. The Mutually Independent Bioethics and Law Paradigm. The illustration is self-explanatory.



Due to the endless frustrations by both the advocates of the primacy of Law (A) on one side and of Bioethics (B) on the other side, and the judgment of hopelessness for both to reconcile or even cooperate, it is deemed practical that both Bioethics and Law should just occupy positions of mutual independence.

Mutual independence paradigm makes both Bioethics and Law act in ways that assert self-governance and self-determination as essential properties of both. Many practices of sovereign states in the world have to contend with some moral issues that have been torpedoed by laws that are diametrically opposed to common sense morality. The case of capital punishment maybe a classic example over which bioethicists insist that it is unethical, but, constitutionally, it is legal. The practice of abortion is another issue where sovereign states have to contend with its legality and morality.

Conceptual Framework for Paraenetic Endeavors

The following below will contribute to forging a conceptual framework by which these two disciplines can agree and from there travel in an atmosphere of mutual recognition and cooperation, rather than antagonism, namely:

1. The protection, respect and defense of human life from conception to cessation is supreme and non-negotiable.

2. Compromising the dignity of human life is reprehensible and must oblige both Law and Bioethics to condemn obvious violation.
3. The primacy of human life supersedes all other rights and even cultural, religious beliefs and law.
4. Public policies must be such that the common good must have pre-eminence over any individual value.

Conclusions and Recommendations

Observably, the contentious issues in Bioethics and Law are seen as ultimately moral in its essential core. Both are unyielding. This gives rise to parochialism, where Hunter affirms as “competing moral visions, *that may be both politically correct but morally repugnant, (italics mine)* and vice-versa, and the rhetoric that sustains to insure the integrity of the moral institutions and of democratic principles of the society.” As it is, this parochialism is deemed the darker side of the scenario that seems to be at work in the current issues of RH and divorce bills.

Bioethics and Law have very minimal commonalities. In fact, there are more dissimilarities. Reducing the gap that separates both disciplines needs serious research to mitigate the often unnecessary differences.

Mutually benefitting endeavors must be undertaken so that a wider understanding of their dynamics, conflicts may lead to some common paraenetics.

Proponents on either side however are expected to demonstrate culture and civility in the best possible sense, that is **respectful in dissent, circumspect in judgment and attentive to others.**■

