

Bioethics and law: A developmental perspective

Abstract

In most Western countries, health law and bioethics are strongly intertwined. This strong connection is the result of some specific factors that, in the early years of these disciplines, facilitated a rapid development of both. In this paper, I analyse these factors and construe a developmental theory existing of three phases or ideal-typical models.

In the moralistic-paternalistic model, there is almost no health law or explicit medical ethics, and the little law there is usually based on traditional morality, combined with paternalist motives. The objections to this model are that its paternalism and moralism are unacceptable, that it is too static and knows no external control mechanisms.

In the liberal model, which is now dominant in most Western countries, law and ethics closely co-operate and converge. Both disciplines use the same framework for analysis: they are product-oriented rather than practice-oriented; they use the same conceptual categories, they focus on the minimally decent rather than the ideal, and they are committed to the same substantive normative theory in which patient autonomy and patient rights are central. However, each of these four characteristics also results in a certain one-sidedness.

In some countries, a third model is emerging. In this postliberal model, health law is more modest and acknowledges its inherent and normative limits, whereas ethics takes a richer and more ambitious self-image. As a result, health law and ethics will partly diverge again.