

11-27-2021

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Leonardo Mendoza
Loyola Marymount University

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Recommended Citation

Mendoza, Leonardo "Global Bioethics and Indigenous Peoples," *Journal of Hispanic / Latino Theology*.
Vol. 23 : No. 2 , Article 7. (2021) :231-244
Available at: <https://repository.usfca.edu/jhlt/vol23/iss2/7>

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Global Bioethics and Indigenous Peoples

Leonardo Mendoza

Loyola Marymount University

Introduction

Indigenous peoples are part and parcel of the global community and are the native peoples in most nation-states. No nation, especially a so-called “developed” or “First World” country, can argue that it does not have an Indigenous population. Nation-states therefore have an ethical obligation to safeguard the rights of their Indigenous populations. More specifically, nation-states must consider the circumstances, customs, cultures, and traditions of their Indigenous peoples in the discussion and creation of policies relating to bioethics and human rights. On the world stage, the United Nations (UN) has attempted to address the bioethical problems that affect Indigenous peoples by adopting resolutions and promulgating declarations that articulate a global framework for human rights. The UN has adopted resolutions that directly address these topics, most notably in the UNESCO *Declaration on Bioethics and Human Rights* and the UN *Declaration on the Rights of Indigenous Peoples*.

This paper will focus on the UNESCO *Declaration on Bioethics and Human Rights* and the UN *Declaration on the Rights of Indigenous Peoples* in light of the experience of the Colombian Indigenous peoples. To this end I will argue that the principle of solidarity can be an ethical guide for a truly global framework of bioethics because it will include the voice of a community that is often ignored or marginalized in discussions of global and domestic human rights policies. The two-part research question that guides this paper is this: What (human) rights do Indigenous peoples have in light of the UN Declaration on the Rights of Indigenous Peoples and how are countries safeguarding or violating the (human) rights of Indigenous peoples? If

global bioethics disregards the existence of Indigenous peoples or ignores their human rights, any framework for global bioethics ceases to be “global” and instead becomes a colonialist or western-imposed framework. The creation of any global framework must acknowledge and safeguard the human rights of each member and group of the global community.

A secondary question is this: How does the principle of solidarity present an opening for an articulation of global bioethics that respects and safeguards the rights of Indigenous peoples? I argue that that the principle of solidarity makes way for the inclusion of Indigenous communities because it requires “developed” nations to collaborate and communicate directly with their Indigenous populations to determine their present needs and address them in an intentional, concrete manner.

Literature Review

The UNESCO *Declaration on Bioethics and Human Rights* was adopted at the thirty-third session of the General Conference of UNESCO on October 19, 2005. This declaration sought to “address the ethical issues related to medicine, life sciences, and associated technologies as applied to human beings, taking into account their social, legal, and environmental dimensions.” This document also called on UN member states to create policies that would embody the goals of this document in their own jurisdictions.¹ The purpose of the declaration was to put forth a global framework that would provide a balance between the ongoing developments in scientific research and technologies and the safeguarding of human

¹ UNESCO, *Declaration on Bioethics and Human Rights*, October 19, 2005, A. 1 and 2, http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html.

rights. The declaration also sought to set a framework ensuring a system of equity in terms of access to the goods stemming from the developments in scientific research and technologies.²

Articles 10 to 13 of the UNESCO *Declaration on Bioethics and Human Rights* articulate the rights that nation-states ought to protect. Article 10 stipulates that people have a human right to be treated with impartiality, equality, justice, and equity under the law. Article 11 protects persons and groups from discrimination and marginalization. The rights enshrined in Article 12 protect persons and groups from being denied their human rights or access to public goods and services on the basis of ethnic or religious background. Lastly, Article 13 calls for solidarity between persons and nations; the term “solidarity,” however, is not given a clear definition.³

The UN *Declaration on the Rights of Indigenous Peoples* was adopted by the UN General Assembly on September 13, 2007. The UN adopted this resolution following the recommendation of the UN Human Rights Council.⁴ In this declaration, the UN condemns any form of racial superiority, acknowledges the rights that Indigenous have to their land and natural resources, and calls on nations to respect the customs—religious, spiritual, cultural, and medical—of their native peoples.⁵ The first two articles of the UN *Declaration on the Rights of Indigenous Peoples* declare the rights of all Indigenous people to be equal to those of non-Indigenous people. By setting Indigenous persons as equal to their non-Indigenous counterparts,

² UNESCO, *Declaration on Bioethics and Human Rights*, A. 2.

³ UNESCO, *Declaration on Bioethics and Human Rights*, A. 10-13.

⁴ United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295 (02 October 2007), 1, undocs.org/en/A/RES/61/295.

⁵ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, 2.

this declaration also establishes protections for Indigenous people against discrimination on the basis of their native heritage.⁶

Articles 11 and 12 of the UN *Declaration on the Rights of Indigenous Peoples* call for protections to Indigenous culture, arts, and history as well as Indigenous Peoples' right to free speech and the free exercise of their religion.⁷ These rights are important in the context of Indigenous communities because without them, the culture, heritage, and people of these communities run the risk of being erased from history by governments, regimes, and corporations that may deem them unwanted or irrelevant to their particular agendas. Moreover, these rights empower Indigenous communities to fight for their rights or advocate for reforms that would work in their best interest.

Articles 18 and 19 of the UN *Declaration on the Rights of Indigenous Peoples* are directly related to bioethical concerns regarding the enactment or reform of policies that directly affect Indigenous communities. The declaration tasks nation-states with including Indigenous persons in the policy-making processes, especially when their rights are called into question by these policies.⁸ In Article 19, nation-states are called upon to obtain the "free prior and informed consent" of Indigenous communities before enacting policies or laws that affect the rights of the Indigenous community.⁹ These two articles require nation-states to interact directly with their Indigenous peoples as they create and enact laws and policies that affect them. By requiring this, nation-states that honor the rights articulated in this declaration will seek ways to include their

⁶ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 1 and 2.

⁷ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 11 and 12.

⁸ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 18.

⁹ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 19.

Indigenous communities and their concerns when they embark on the process of crafting or reforming policies or laws.

Articles 21 to 24 of the UN *Declaration on the Rights of Indigenous Peoples* address the matters of medicine and health care rights of Indigenous persons. Access to medicine and health care are listed as social goods to which Indigenous persons must be have access.¹⁰ In light of this, members of Indigenous groups who are disabled or have special needs ought to receive the same rights as their fully abled counterparts, and when it is required, these members should be given preferential treatment.¹¹ The state should see to it that social programs geared towards assisting Indigenous groups be overseen by the Indigenous community and that they be included in the design of these social services.¹² Lastly, Article 24 stipulates that Indigenous groups be allowed to access and utilize their traditional forms of medicine without losing out on access to modern medicine.¹³

While the articles taken up for consideration here do not constitute the entirety of the UNESCO *Declaration on Bioethics and Human Rights* or the UN *Declaration on the Rights of Indigenous Peoples*, they are, in my reading of the texts, the articles most closely tied to the principle of solidarity as an ethical guide in relation to the human rights of Indigenous persons. The following literature will provide a glimpse of a United States conception of global bioethics and human rights. This will lead into the discussion of a South American perspective on global bioethics and human rights in light of the experience of the Indigenous community in Colombia.

¹⁰ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 21

¹¹ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 22.

¹² UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 23.

¹³ UN General Assembly, *Declaration on the Rights of Indigenous Peoples*, A. 24.

In their article titled, “Bioethics and Human Rights,” John D. Arras and Elizabeth M. Fenton argue that while bioethics has gone global, there currently is no framework suitable to be called “global bioethics.” Arras and Fenton base this claim on the argument that human rights and bioethics have not yet undergone a merger that would bring the two fields and perspectives together.¹⁴ They also question whether the current articulations of human rights and global bioethics can lead to a successful merger between these two areas.¹⁵

Arras and Fenton contend that a robust philosophical framework may be able to overcome this apparent impasse. They argue that it is necessary to rely on the bioethical foundations that stem from the “moral and political philosophy and from the great religious ethical traditions.”¹⁶ According to them, if the global framework of bioethics relies on the robust philosophical foundations that they offer, certain frivolous rights will not bog down the construction of the framework.¹⁷

For Arras and Fenton, a global framework for human rights and bioethics should be cautious in its identification of rights. They believe that “only the most important interests—those that would be immediately recognized by most people everywhere as prerequisites to a decent life”¹⁸ should be included among “rights.” The purpose of this method of rights identification follows the same logic as the authors’ stated need to have a robust philosophical framework.

¹⁴ John D. Arras and Elizabeth M. Fenton, “Bioethics & Human Rights,” *Hastings Center Report* 39, no. 5 (September 2009): 27–28.

¹⁵ Arras and Fenton, “Bioethics & Human Rights,” 28.

¹⁶ Arras and Fenton, “Bioethics & Human Rights,” 28.

¹⁷ Arras and Fenton, “Bioethics & Human Rights,” 28.

¹⁸ Arras and Fenton, “Bioethics & Human Rights,” 30.

Both Arras and Fenton believe that the global framework for human rights and bioethics is fragile and could be compromised by what they call “right-isms”—claims that create an ever-growing and never-ending list of demands in the name of “rights.”

In her article titled “La Solidaridad y Las Declaraciones Internacionales de Derechos Humanos y Bioética: El Caso Del Derecho a La Salud de Los Pueblos Indigenas Colombianos,” Diana Rocio Bernal Camargo assesses the situation of Colombian Indigenous peoples in light of the UNESCO *Declaration on Bioethics and Human Rights* and the UN *Declaration on the Rights of Indigenous Peoples*. Bernal Camargo argues that the principle of solidarity is ignored by the state because health care policies are not constructed with input from the Indigenous peoples.¹⁹ Bernal Camargo also notes that if the principle of solidarity were to be employed in the creation of health care policy, other principles of global bioethics would strengthen the rights of Indigenous persons and the nation. She contends that the additional principles would include the principle of respect for persons and pluralism.²⁰

In her assessment of the UNESCO *Declaration on Bioethics and Human Rights*, Bernal Camargo notes that the principle of solidarity is invoked in undefined terms. However, she writes that Article 24 of the UNESCO declaration implicitly calls for the creation of special protections for groups vulnerable to internal and external struggles.²¹ Bernal Camargo borrows Darryl

¹⁹ Diana Rocio Bernal Camargo, “La Solidaridad y Las Declaraciones Internacionales de Derechos Humanos y Bioética: El Caso Del Derecho a La Salud de Los Pueblos Indigenas Colombianos,” *Acta Bioethica* 19, no. 1 (June 1, 2013): 9–10.

²⁰ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 10.

²¹ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 11.

Gunson's definition of solidarity as "a principle that consists of a willingness to seriously consider the perspectives of others to strengthen it."²²

Within the context of the Colombian legal system, Bernal Camargo notes that the principle of solidarity is provided with a definition. However, she makes it clear that this principle is not adopted in light of the UNESCO *Declaration on Bioethics and Human Rights* or the UN *Declaration on the Rights of Indigenous Peoples*. This definition of solidarity finds its basis in the Colombian social safety net system. It is defined as "the practice of mutual support in order to guarantee access and sustainability to the health social services."²³

Bernal Camargo articulates her own understanding of the principle of solidarity in light of the UNESCO *Declaration on Bioethics and Human Rights*, the UN *Declaration on the Rights of Indigenous Peoples*, and the existence of the Indigenous peoples of Colombia. She defines solidarity as the act of including the perspectives of the Indigenous peoples, especially when drafting policies and legislation that affect their health, their access to medical care, and their rights to access their traditional medicines and practices.²⁴

Bernal Camargo defends this interpretation of solidarity on the following grounds. First, she writes on the Colombian governments reports which express concern about the potential exploitation of Indigenous persons in medical studies due to lack of proper informed consent. The issues that aggravate this problem are the incentives that corporations conducting these studies offer the Indigenous communities. This creates a power dynamic that gives corporations

²² Bernal Camargo, "La Solidaridad y Las Declaraciones," 11.

²³ Bernal Camargo, "La Solidaridad y Las Declaraciones," 11.

²⁴ Bernal Camargo, "La Solidaridad y Las Declaraciones," 12.

leverage over the Indigenous people.²⁵ Because Indigenous people lack access to health-related goods and services, they have no other recourse than to sign up to be a part of a medical study that is exploiting them.

Second, Bernal Camargo notes that there is an extreme disparity between the Colombian Indigenous people and the rest of the Colombian population. She cites a 2004 report published by the Colombian government stating that ninety-one percent of Indigenous Colombians lack access to medical care and other health-related goods and services.²⁶ This problem is aggravated by the internal problems experienced by the Indigenous peoples of Colombia. These problems include sexually transmitted diseases as a result of sexual exploitation, assault, and violence. Also aggravating the access to health care is the language barrier. Bernal Camargo and the Colombian government also acknowledge that while some resources do exist and are available, they are not publicized in the language(s) of the Indigenous Colombian peoples.²⁷ The language barrier makes it difficult, if not impossible, for Indigenous persons to gain access to public services, consent to treatment, or even communicate with doctors and other health professionals.

In the last few pages of her article, Bernal Camargo focuses on and expands her view of solidarity and its place in the context of the Colombian Indigenous Peoples. She argues that the principle of solidarity calls on policy makers and legislators to consider the traditions and medical customs of Indigenous peoples while maintaining a balance with western medicine. To this end, solidarity would seek to bridge together the western medical tradition with the Indigenous Colombian traditions—not to impose or marginalize the Indigenous customs, but

²⁵ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 12.

²⁶ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 12.

²⁷ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 12.

engage them in a serious, genuine manner.²⁸ With an approach to Indigenous Colombian customs based on solidarity, the principles of respect for persons, diversity, and pluralism are more likely to follow.

Bernal Camargo supports her definition of solidarity by claiming that it will be able to provide the Colombian Indigenous people with an integral vision of health. To achieve this goal, Bernal Camargo urges government officials, policymakers, and legislators to assess the system that “is” and to consider what “it should be.”²⁹ These reforms would seek to turn the tide of what is to what should be by requiring legislators and policymakers to seek input from the Indigenous community. Thus the reforms enacted can better reflect the needs of all peoples, especially those who have not been included in these discussions in the past.

These efforts require policymakers and legislators to have the will to enact these reforms.³⁰ Some, if not most of the difficulties that keep policymakers and lawmakers from making reforms is the issue of poverty. In his chapter on “Poverty” in the *Handbook of Global Bioethics*, Juha Räikkä asks, “Can Poor Countries Help Themselves?”³¹ He later considers the idea of poverty as a “self-fulfilling prophecy.”³² Räikkä cites poverty related issues such as political instability, corruption, and anti-democratic governments as among the many reasons why reforms go undone.

²⁸ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 14 – 15.

²⁹ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 15.

³⁰ Bernal Camargo, “La Solidaridad y Las Declaraciones,” 16.

³¹ Juha Räikkä, “Poverty,” in *Handbook of Global Bioethics*, ed. Henk A.M.J. ten Have and Bert Gordijn (Dordrecht, The Netherlands: Springer, 2014), 789, https://doi-org.electra.lmu.edu/10.1007/978-94-007-2512-6_124.

³² Räikkä, “Poverty,” 791-794.

Personal Critique

The UNESCO *Declaration on Bioethics and Human Rights* and the UN *Declaration on the Rights of Indigenous Peoples* both discuss prominent issues in the ongoing debate on human rights and bioethics. The UNESCO *Declaration* names some of the most pressing and agreed-upon rights of all global citizens. Moreover, it provides a starting point in the discussion on human rights theory in relation to clinical trials, medical and scientific research, and emerging technologies. The UN *Declaration on the Rights of Indigenous Peoples* lays out a framework to include the often-ignored Indigenous communities of nation-states. This resolution establishes a proposal that would assist nation-states in reforming their laws on health and human services to ensure that the rights of Indigenous peoples are respected and protected under the law.

While these United Nations declarations are a helpful in the sense that they articulate the bioethical issues affecting individuals and groups, they do not go far enough. First, the main problem with these declarations is that they are not legally binding or enforceable. That is, no nation-state, even a UN member, has to abide by it. The guidance provided therefore does not lead to meaningful implementation that would help marginalized communities obtain access to health-related goods and other necessary public services.

The second issue I have with these declarations is their wording and related lack of clearly defined terms. For example, Article 13 in the *UNESCO Declaration on Human Rights and Bioethics* includes one sentence using the word “solidarity.”³³ However, it does not provide a clear definition of “solidarity” and leaves the term open to the interpretation. Moreover, some aspects of these declarations seem too broad to be applied to any individual or group.

³³ UNESCO *Declaration on Bioethics and Human Rights*, A. 13.

In “Bioethics and Human Rights,” Arras and Fenton make a series of claims that I find less than compelling. While they argue that a comprehensive philosophical discussion is a prerequisite for a realistic global framework for human rights and bioethics, their article offers the same unenforceable list of considerations and determinations of what rights are as the UN declarations. The way in which they believe rights should be articulated is also problematic. In their view, “only the most important interests—those that would be immediately recognized by most people everywhere as prerequisites to a decent life—³⁴ qualify for inclusion in the list of basic rights. The perception of “immediate recognition” lends itself to a subjective interpretation or misinterpretation.

For example, if one were to say that people have a particular human right, in the view of Arras and Fenton it must be recognized by the majority of the population in order to meet the threshold of “immediate recognition.” In the context of the Colombian Indigenous community, I find this especially troubling for two reasons. First, the Indigenous populations are already marginalized and cast aside by many governments. So, if their rights have to be “immediately recognizable,” they will not meet that requirement. Second, this begs the question of “Rights according to whom?” Who decides what makes a right a legitimate or true right? If that decision falls to a bureaucrat or to persons or institutions ignorant of the existence and practices of the Indigenous community, then will the rights of Indigenous people be apparent?

Throughout this research process, I found Bernal Camargo’s article, “La Solidaridad y Las Declaraciones Internacionales de Derechos Humanos y Bioética,” the most compelling. Bernal Camargo points to the high marks and shortcomings of the UNESCO *Declaration on*

³⁴ Arras and Fenton, “Bioethics and Human Rights,” 30.

Human Rights and Bioethics and the *UN Declaration on the Rights of Indigenous People* and focuses on the specific issues affecting the Indigenous peoples in Colombia.

The struggle that Indigenous Colombians face from within their community and from outside is made evident in Camargo's article. First, Bernal Camargo mentions the problem of language. While the Colombian government does provide some health and human services to the Indigenous communities, these communities cannot easily gain access to them because they cannot properly interact with health care professionals and the health system itself. Moreover, compared to the non-Indigenous Colombian population, Bernal Camargo notes, ninety-one percent of Indigenous persons cannot gain access to healthcare, and in these cases factors other than language come into play.

Bernal Camargo's article is filled with references to real-life repercussions of bioethical policies. The Indigenous people of Colombia have been failed by the current articulations of the United Nations and by the framework of bioethics that is currently in place. The way in which Bernal Camargo defines "solidarity" and applies it to the situation experienced by the Colombian Indigenous community and the UNESCO *Declaration on Human Rights and Bioethics* and the UN Declaration on the Rights of Indigenous Peoples offers a pathway to correct the current course and discourse of global bioethics and human rights to better represent the best interests of all peoples, especially communities that are vulnerable.

If the global framework for bioethics allows itself to be guided by the principle of solidarity, there is a strong possibility that the rights of the Indigenous peoples around the world will be articulated clearly and protected under international laws and in the laws of individual nation-states. If the principle of solidarity is enabled to guide the decision-making process in domestic and international parameters of health policy, the involvement and contribution of

minority groups, including Indigenous communities, will more readily be considered by international bodies and individual countries.