Introduction: International Criminal BioLaw

Anja Matwijkiw
Indiana University Northwest, Gary, IN, USA
amatwijk@iun.edu

Biolaw is a large area,\(^1\) which is legally still in its embryonic stage. Certainly, this is true if globalisation is used as the criterion for development. The explanation may be simple and straightforward – that biolaw’s emergence takes time and that legal evolution does not conform to scientific and prognostic models. Then again, the explanation may be more complex and involve a need for targeted and selective reflection in order to be able to concentrate on fewer tasks and topics that deserve attention. – And, this is exactly the idea behind ‘Paving the BioLaw Path in International Criminal Law’.

---

\(^1\) In 2009, a petition at the annual meeting of the American Association of Law Schools (AALS) proposed the following definition to have biolaw recognised as a ‘Section’: “Biolaw encompasses both the law of biology and the biology of law. Advances in the biological sciences, such as genetics, biochemistry, cell biology, reproductive biology, evolutionary biology, ecology, and the behavioural sciences, continually challenge both society and the laws that attempt to order, regulate, and protect it. Biolaw combines the use of biological science to describe, analyse, and improve the law with legal analysis of biological science, its institutions, and its implications. Biolaw integrates insights from such biologically-informed research areas as law and genetics, law and neuroscience, reproductive law, behavioral economics, cognitive psychology, law and biotechnology, biotechnology patent law, bioethics,
As a special issue, ‘Paving the BioLaw Path in International Criminal Law’ addresses a limited number of topics in the context of an attempt to investigate foundational aspects. These aspects are both legal and ethical in nature, thereby making the link between biolaw, international criminal law, and bioethics broadly construed the focus of analysis and assessment.

One concession that experts have to make is that the link between biolaw and bioethics is actually an outcome of legal and progressive developments. In dynamic terms, the paradigm of intrinsically superior norms emerged together with norm-positivisation processes that closed pre-existing gaps in international criminal law and, as a consequence of this, ceased to reveal a ‘missing link’. In international criminal law, jus cogens norms exemplify such ‘higher values and principles’.2

In the modern era, a lack of bioethics is neither desirable nor acceptable. To pave an appropriate path, biolaw instruments (should) require respect for ‘the principles of medical ethics’, especially the ‘basic principles of bioethics’ that are anchored in proper ethics as opposed to positive or customary morality.3 Pre-existing perceptions and practices may not capture or express the values and principles that (should) function as direction-posts. Ethically founded values and principles, on the other hand, fulfil that purpose. Furthermore, by virtue of deriving from a notion of singular ethics, the values and principles operate as universal standards. To establish a link between ethics and law entails or, using jus cogens reasoning, compels stakeholders to secure global law-making.

Disconnections may lead to ‘distorted and perverse’ outcomes that despite their serious criminality would secure impunity as opposed to accountability on behalf of the perpetrators unless legal norms and procedures were mixed with ethical elements, as also illustrated by the post-World War II recognition and prosecution/punishment of medical experiments in terms of crimes against humanity (CAH).4 The leap from the ‘failed precedent’ situation for

---

