

Is bioethics of protection pertinent and legitimate?

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Abstract

The article deepens the debate on epistemological landmarks of bioethics of protection from its definition, genealogy and conceptual analysis, aiming at instrumentalizing its use as reference in reflection about ethical deadlocks. It evaluates the relevance of the theory as a tool capable to guide and solve conflicts in public health, as well as those related to inequalities in the social relationships, both in the human and environmental dimension. It presents and responds criticism received by bioethics of protection, considering, as finding, two scopes for inserting the proposal I which can be taken either in graduate non-degree or graduate degree programs.

Key Words: Bioethics. Protection. Public health. Bioethics of protection. vulnerability analysis.



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Bioethics of protection can be understood as a critical and normative reflection focused on the moral conflict resulting from *human praxis*, what, according to the social sciences is regarded as the *unthought* of social relationships, as characterizes by Bourdieu ¹. The proposal for a *bioethics of protection* is recent and it was initially understood as ethics applied to public health ² and then extended to the practices that apply to the phenomenon of life as a whole, living beings and the natural environment, modified by human actions under the term of biotechnoscience, biopolitics and globalization ³⁻⁷. However, their theoretical assumptions are older, since the idea of an *ethos protector* is confused with the prehistory of Greek ethics itself.

The design of *bioethics of protection* as pertinent to the sphere of public health refers to the problems of justice of access in situations of resource scarcity ⁸. Once established such a link with the public health and taking into account the complexity of its problem, it was possible to reformulate its scope by extending the field

of application of *protection of bioethics* tools⁹. Thus, the *bioethics of protection*¹⁰ now includes, for example, the morality of practices that occur in the *world of life* as a whole, formed by other living creatures that may be negatively impacted by human practices (such as the sentient beings), covering also the natural world (or environment)^{5,7,11}. This possible extension of the field of possible bioethics' objects in *bioethics of protection* was made possible by the recovery of the archaic sense of *ethos* (*protect*) considering all the tradition that arose from the Greek ethics and its focus on *homo sapiens*, understood as a being of action who, as such, can act for the good and the evil of himself and of others, due to his character, his habits acquired in coexistence with his peers, his practices as a responsible citizen.

Although the term *protection* is part of common sense language, with an intuitive sense rather shared due to the fact that it corresponds to experiences of giving and receiving support as parents, children, citizens etc., when entering in the field of critical analysis of bioethical language (which includes questions on the appropriateness and justification of using certain words to indicate used concepts) may arise questions of various types, starting with those of the semantic type. An example refers the appropriateness of the proposal, which associates conceptually *bioethics and protection*¹².

The issue of relevance and legitimacy of a *bioethics of protection*, understood as a tool for the critical analysis and corresponding regulatory proposal, seems to stay an open question, deserving greater insights, which will be outlined below.

The proposal to define a bioethics of protection

As a possible aspect of applied ethics, in its descriptive and comprehensive dimension, bioethics can be defined as a consistent tool for the critical reflection on moral conflicts that results from the actions of human *praxis*. In its properly applied dimension, it can be identified as a normative proposal capable of resolving such conflict. Such conflicts involve *moral agents*, who can be considered authors of the acts (normally *empowered*) and *moral patients*, who can be seen as recipients of practices of moral agents, and may also be classified as susceptible or *vulnerable*, i.e., that have no *empowerment* capable of facing the negative consequences of such acts to reverse or avoid them.

Thus, bioethics of protection can be defined as that which applies to moral conflicts involved by human practices *that can have significant irreversible effects on living beings and, in particular, on individuals and human populations, considered in their ecological, bio-technical and scientific and socio-cultural contexts*¹³. Regarding the intrinsic conflicts of human interrelationships, this tool (or toolbox) seeks to build

convergences through principles capable of responding to these conflicts and, if possible, resolve them. On a more analytical accuracy, bioethics of protection:

- (a) describes and understands the *conflicts in the most rational and impartial possible way*;
- (b) *cares to solve them* [normatively], *proposing* [appropriate tools] *to proscribe conducts considered incorrect and prescribing those considered correct*; and
- (c) *acknowledges the correct articulation between (a) and (b)* [provide] *the [practical] means to protect sufficiently those involved in such conflicts, ensuring each life project compatible with the others*¹⁴.

From a theoretical point of view, the bioethics of protection project arose from the need of thinking about a distinct tool of traditional principlism bioethics of Tom Beauchamp and James Childress¹⁵. The principlism, mainly identifiable with the biomedical ethics, based on the quality of physician-patient relationship, identified itself with the new field of know-how and with new types of conflicts related to the development of biomedicine and the incorporation of biotechnology in health practices. Since the principlism was insufficient to tackle sanitary conflicts, bioethics of protection referred essentially to them. The proposed formula to find possible solutions was based on tools considered, *protective* since they allow

giving support to vulnerable and susceptible populations, unable to face adversity with its own means¹⁰.

Genealogy and conceptual analysis

Genealogy

If we think of a possible genealogy of bioethics of protection, it can be referred to the very history of the *protection* concept, understood as a primary social function, compiled from the outbreak of the Modern State and resulting from the social pact established between rulers and ruled. The essential function of this pact is to *protect* the citizens under its responsibility, both against natural risks that may negatively affect their lives and against social (and interpersonal) risks resulting from the conflict (or violence) among citizens¹⁶.

In particular, the concept of *protective state* refers to the emergence of the social state, also known as *welfare state*), whose task is *to protect a minimum standard of income, food, health, housing and education, guaranteed to every citizen as a political right, and not as charity*¹⁷.

It is, therefore, included in practice of *social protection*, which can be understood in a *minimalist* or *maximalist* sense. In the first case, it is labeled as assistance to individuals and populations which *for the most varied reasons - a physical or psychic handicap, an incapacity due to age, or even a disastrous social situation are provisionally or definitely placed outside the common system of social exchanges,*

and in particular they are unable to respond to their needs. In the maximalist sense, it can be identified as *generalized social security to the whole population*, forming themselves into insurance systems against the main social risks (illness, accidents, unemployment etc..) ¹⁸.

As a result of these two senses, when talking of *social protection* arises the problem of knowing which can be considered a legitimate intervention plan, i.e. whether the protection *should be preferably directed, to the most needed ones to grant them minimum aid, as it appears to let understand the minimalist sense or whether it should concern all* [striving] *to assure to the set of cares the conditions for its social independence* ¹⁸. In fact, such questioning on the extension of protection is pertinent because from the greater or lesser coverage one wants to assign to the protective practice will depend the assessment that can be done from a policy.

As seen, the proposal of bioethics of protection is the product of reflection on the morality of practices in public health. Such practices involve populations of susceptible and vulnerable citizens, and involve problems of justice in situations of resource scarcity, situations that are probably among the most contentious of sanitary bioethics, mainly due to its magnitude and those affected (and excluded) involved.

Initially, the context of the proposal was

of bioethics developed in Latin America, with its apparently specific problems and conflicts and that may be indicated by the extensive term of *sanitary injustice*, but that can also be progressively extended to other regions of the world, as seems to show (and justify) the current situation of *globalized crisis*, which implies, *inter alia*, the progressive disassembly of the welfare state and the coverage of the needs of the population, including in health.

In other words, the tool called *bioethics of protection* arises taking into consideration the specificities of the so-called *developing countries*, but may initially be applied to conflicts and moral dilemmas in the health area in analogous situations that might arise from globalization. It should be highlighted now a relevant characteristic to this bioethical tool, which is the fact that it seems to be questioning the separation between *developed, developing, and underdeveloped* countries, since such features seem to apply to a greater or lesser degree, to any country or region of the globe.

In short, the idea of a possible bioethics of protection understood as a toolbox to be applied to moral conflict of societies in which *prevails poverty, underdevelopment, dependency and lack of power* ¹⁹ as it is particularly the human condition of the majority of the population of Latin America as the product of constant questioning of long history of Colonialism (including cultural) prevalent in the region.

This created, in our opinion, the conditions of possibility to question also models and cultural content from elsewhere, as the principlalist model, essentially centered on conflicts in the biomedical field and, therefore, unable to contemplate the actual sanitary conflicts, which occur mainly in the collective sphere.

Conceptual analysis

The conceptual roots of bioethics of protection can be found in the very semantics of polysemic Greek word *ethos*. This word seems to have, at the origin, the meaning of *harbor* (initially referred to the place where can be found and raised animals and, later, also humans) and, subsequently, in the sense of *housing* (only human), acquiring the meanings of *customs*, *habit* and *character* ²⁰.

The use of the term is, therefore, a very broad and imprecise sense for other more restricted, encompassing the individuals and his personal characteristics. It was in reference to the first meaning of the word *harbor* (which has a synonymy relation to *protection*) that bioethics of protection can be thought of as a tool whose practical function would be to *protect* individuals and human populations, as well as other living beings and the environment against threats that could significantly affect them, including threatening its existence. In fact, the meaning *protection*, indicated by the Greek term *ethos* of origins and recovered by the bioethics of protection crosses the

entire history of ethics, although, over time, it acquires increasing complexity and density, due to new features and tasks assigned to applied ethics along their history.

From the lexical point of view, the concept of protection can be understood as referring to individual (or personal) interrelations or social relations; the first relating to support which a moral agent protector offers, but in principle does not impose, to an individual that is not in a position to *get along* alone (as in paradigmatic protecting relationship between parents and children). The second, referred to the support which the State (or any other legitimate agent to this function) should give the population under their responsibility.

Although the term *protection* had not been explicitly associated with the word *bioethics* until then, as a *principle of protection*, there already was in fact in the lexicon of applied ethics, referring, for example, to the research involving human subjects in the field of biomedicine. One can identify this meaning since (at least) the publication of the famous Belmont Report ²¹, in which the word *protection* appears explicitly, both in the text of the report and in the very name of the group that drafted it, although its use is still limited to the elementary: individual protection ²².

Furthermore, the Bioethics of protection

has some institutional background, such as the 1947 Nuremberg Code and the various versions of the Declaration of Helsinki (1964-2004), which regulate biomedical research since the explanation of the abuses committed by scientists and doctors against individuals and populations. Such excesses against the research *objects* have become routine in countries under authoritarian regimes such as those that call themselves *democratic*.

Accordingly, the field of application of the *principle of protection* could be also seen as being the same as that covered by the *principle of vulnerability*, considered as what *prescribes, as the foundation of education, respect, concern and protection of another and life in general, based on the universal verification of fragility, of finitude and mortality of beings* ²³. However, the semantic field of the two principles is not exactly the same, since *bioethics of protection* does not refer to people and populations generally vulnerable, but those specifically *violated*. Such distinction intends to avoid it being confused with some form of paternalism, an attitude rejected by bioethics in general.

Thus, the bioethics of protection can be conceptualized as a theoretical and practical tool box that seeks to understand the conflict on public health, describing the conflicts of interests and values involved and try to resolve them fairly, having regard, therefore, of the asymmetries existing between those who have the means and the power that enables them

to have a quality of life at least reasonable (indicated by the term *empowerment*) and who do not have them. Therefore, in the cases of conflicts between *empowered and non-empowered*, the difference can only be resolved on a fairly basis by protecting those affected not empowered, since they do not have *de facto* the necessary means to defend themselves against threats and damages that adversely affect their quality of life and their legitimate interests.

Pertinence of the bioethics of protection?

Although the economic and sanitary reality of countries like Brazil can indicate the rationale of adopting an analytical perspective as the bioethics of protection, the proposal of conceptually associating bioethics and protection and not the object of consensus among researchers who have initially proposed it to face the conflicts in public health ¹². Not so much due to its main reference which is sanitary justice in situations of resource scarcity ⁸ or the general morality in public health ¹⁰, both referred to the *world of unequal, without power that require support and assistance*⁹. But, essentially, due to the suspicion that the beginning is always an precedent, or the assumption of the critical analysis on the relevance and legitimacy of using the expression *bioethics of protection*.

It is in this sense that one of the authors of the initial proposition of bioethics of protection ¹⁰ has, subsequently, considered it as *unsatisfactory nomenclature* because

it would not be sufficiently recognizing the fact the bioethics is a persistently *applied ethics emerged in asymmetries between agents and those affected* ²⁴. For this author, it would be more appropriate to speak of a *bioethics protection towards developing a protective view whereby bioethics would reflect on social practices under its responsibility* ²⁴. Or, then, speak of an *ethic of protection located beyond bioethics* and concerned about inequality, i.e., an ethic that *abandons the land of reflection and consecrates action, recognizing the real needs of existing human beings, for whom there is not consolation in philosophy, but only in assistance* ²⁵.

We believe, however, that the core of this critique is the possibility of acting against inequality what would already be contemplated, in reality, in the proposition of bioethics of protection, since when referring to subjects and helpless populations, unable to defend themselves alone and needing, therefore, of protective measures (or assistance measures), bioethics of protection presupposes *de facto* a real asymmetry in terms of empowerment between protector and protected. Thus, it justifies and legitimates the offer of the requested protection, without incurring questionable paternalistic practices. It is important to consider, furthermore, that in the case of a proposal aimed at *praxis*, bioethics of protection does not preclude the action. On the contrary, it stimulates it, taking as a basis the reflection based on social and sanitary injustice and the power asymmetry between moral agents and patients.

Therefore, the question of the relevance in using the term *bioethics of protection* that guides this criticism seems to remain open to the author himself, who uses again the nomenclature *bioethics of protection*, in an encyclopedia, without, however, defining it lately ¹⁶. By leaving the question outstanding, he allows the proposal be retained *in the plan of a reflection that invites to free exercise of a protective practice* ²⁶. In fact, when it arises, bioethics of protection or ethics of bioethical protection aims to be a tool capable of dealing with the conflicts in public health from the assumption that sanitary programs can only be regarded as legitimate if they pursue the assistance (here a synonym of *protection*) of individuals and populations by the State and its devices, such as the Single Health System (SUS), since the State, by contract, must offer support to citizens under its responsibility.

However, when the concept of *protection* is first applied (to public health) to the phenomenon of life as a whole, i.e., of its conception *stricto sensu* for that *lato sensu*, arises the problem of knowing if the sense of the concept used is the same in both cases, because the *protection* of individuals and human populations made by public health has in principle actors clearly identifiable (who might require or offer such protection) while this is much more difficult to be identified in the case of recipients of the practice of protection cannot apply directly the protection. But one can also work around this issue by stating that a concept as the one being examined hereunder cannot verify its

suitability to a situation before being applied to the real, i.e. can only be verified *a posteriori*.

Final considerations

Either as a *bioethics of protection* or *ethics of protection*, we believe that the use of this tool is intended to stimulate the ability of handling the conflicts in public health from the assumption that sanitary programs can only be considered morally legitimate if they pursue the protection of persons and populations by the State, which *de jure* must offer protection to citizens, although it does not always make *de facto*. And this needs to be done without interfering in the private lives of citizens, because otherwise, the State's interference can be seen rightly as authoritarian.

However, as there is no consensus about the use of this name, one should try to build convergence points covering the intrinsic characteristic of the conflict. Considering that conflicts include the dichotomy of its own *ethos*, they are a form of *sui generis* interrelationship, because they establish relationships in the mode of divergence and because in *ethos* there are also anticonflicting factors that manifest themselves in the order, in the organization and systematization, due to the existence of the *contrary to conflicts*, the *concordance* or *harmony* inhibits the conflicting situation since *conflicts establish relationships in the mode of divergence [while] harmony rests in convergence mode* ²⁷.

Accordingly, one of the ways to avoid the risk of incomprehension is to distinguish between two types of *protection* and to consider the possibility of a *bioethics of protection stricto sensu* and a *bioethics of protection lato sensu*. The first one, detailed, refers to acts (or to the *praxis*) which aim to protect people and populations that do not have sufficient conditions to carry out their legitimate and reasonable life projects and form the group of susceptible and violated ones. The second, covering a wider field of possible moral patients, as can be the sentient animals, but probably also other living beings, including living systems (such as ecosystems and the earth itself), which would bring the bioethics of lato sensu protection close to global bioethics.

Currently, this field extension seems relevant and legitimate, at least when part of the ethical premise that there are collective and ecological interests that cannot be subsumed to interests of individuals, groups of individuals, corporations, nations, regions and species. In fact, *the issue of the relationship of humans with nature is probably the most crucial of this century*, because *environmental problems have become a subject of public debate at planetary level and because it became difficult to continue to believe that nature is a domain entirely separate from social life* ²⁸.

On the other hand, the bioethics of protection *strito sensu* cannot initially be applied to individuals and populations that

can confront their *vulnerable* existential condition with their own means or with the means offered by the existing and engaged institutions. Otherwise, as we have seen bioethics of protection became synonym of paternalism, as that prevailing in traditional patient-physician relationship and biomedical ethics and object. This would be contradictory, first, with one of the fundamental values and secular and democratic societies in which one live nowadays: the right to the exercise of personal autonomy, at least where the latter can be exercised without significantly harming the rights of others.

In other words, in the broad sense (or *lato sensu*), *protecting* refers to the world as a whole, whereas the problems that we can call *environmental* or *ecological* concern our common home (and which should also be of future generations as probably they would want to). This meaning was already indicated by the Greek philosophers with the approximation of the terms *oikos* and *ethos*, although the two words together had

a broader sense than usually given them today, i.e., *the habitat of living beings and the way or form of general human life* ²⁹. This would establish probably for the first time a semantic proximity between what we call *environment and ethics*, anticipating in millennia, therefore, what we here is called the field of bioethics of protection *lato sensu*.

This primitive sense of protection, assigned to the *ethos*, was partially recovered by the founder of bioethics as we know it today. Potter, in 1970 ³⁰, conceived it as the *science of survival*, i.e. as a way of knowing that it should also be a form of *wisdom*. This association also refers the Greek origins, *phronesis* (prudence), able to ensure the preservation of the biosphere. Prudence is the reason that takes Potter to consider, years later, the need for a global bioethics, capable of addressing the morality of relationships that humans establish with the environment and nature to which they also belong, although they continue to transform it for good and for evil.

Resumo O artigo aprofunda a discussão acerca dos marcos epistemológicos da *bioética de proteção* a partir de sua definição, genealogia e análise conceitual, visando instrumentalizar sua utilização como referencial para refletir sobre impasses éticos. Avalia a relevância da teoria como ferramenta capaz de orientar e dirimir conflitos na saúde pública, bem como aqueles relativos as desigualdades nas relações sociais, tanto na dimensão humana quanto ambiental. Apresenta e responde críticas recebidas pela bioética de proteção, considerando, como conclusão, dois âmbitos para a inserção da proposta I que pode ser tomada em *lato* ou *stricto sensu*.

Palavras-chave: Bioética. Proteção. Saúde pública. Bioética de proteção. Análise de vulnerabilidade.

Resumen

Es pertinente y legítima la bioética de protección?

El artículo profundiza la discusión acerca de los marcos epistemológicos de la bioética de protección a partir de su definición, genealogía y análisis conceptual, visando instrumentalizar su utilización como referencial para reflexionar acerca de impasses éticos. Evalúa la relevancia de la teoría como herramienta capaz de orientar y dirimir conflictos en la salud pública, así como aquellos relativos a las desigualdades en las relaciones sociales, tanto en la dimensión humana como en la ambiental. Presenta y responde a críticas recibidas por la bioética de protección, considerando, como conclusión, dos ámbitos para la inserción de la propuesta - que puede ser tomada en *lato* o *stricto sensu*.

Palabras-clave: Bioética. Protección. Salud pública. Bioética de protección. Análisis de vulnerabilidad.

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