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Bioethics and restrictions to liberties in times of COVID-19

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Abstract

This study analyzes Law 13,979/2020 (Quarantine Law), according to the principles established by the *Universal Declaration on Bioethics and Human Rights*, to identify the main similarities and differences between both legal frameworks in terms of the determinations imposed by the former to combat COVID-19. A bibliographic and documental search was conducted on constitutional legislation, on the Executive's norms, and on international regulations about bioethics. Comparison between the dictates of Law 13,979/2020 and the declaration's principles shows that the law is in line with the field of bioethics. Compliance with health measures implies recognizing and valuing human dignity and caring for one's own vulnerability and that of others.

Keywords: Human rights. Bioethics. Public health.

Resumo

Bioética e limitações às liberdades em tempos de covid-19

Este artigo analisa a Lei 13.979/2020 (Lei da Quarentena), segundo os princípios da *Declaração Universal sobre Bioética e Direitos Humanos*. O estudo tem como objetivo identificar os principais pontos de contato e distanciamento entre esses dois marcos legais em relação às determinações impostas pelo primeiro para enfrentar a covid-19. Utilizou-se pesquisa bibliográfica e documental, com base na legislação constitucional, em normas do Executivo e no regulamento internacional sobre bioética. A comparação entre os ditames da Lei 13.979/2020 e os princípios da referida mostra que a lei exibe conteúdo de princípios consoantes ao campo da bioética. O cumprimento de medidas sanitárias implica reconhecer e valorizar a dignidade humana e cuidar da própria vulnerabilidade e da do outro.

Palavras-chave: Direitos humanos. Bioética. Saúde pública.

Resumen

Bioética y limitaciones a la libertad en tiempos de la COVID-19

Este artículo analiza la Ley 13.979/2020 (Ley de la Cuarentena) bajo la mirada de los principios de la *Declaración Universal sobre Bioética y Derechos Humanos*. Su objetivo es identificar los principales puntos semejantes y diferentes entre estos dos marcos legales respecto a las determinaciones legales para enfrentar la COVID-19. Se utilizó la investigación bibliográfica y documental a partir de la legislación constitucional, de las normas del Ejecutivo y de la normativa internacional en materia de bioética. La comparación entre los dictámenes de la Ley 13.979/2020 y sus principios apunta que la ley contiene principios en consonancia con el campo de la bioética. El cumplimiento de las medidas sanitarias implica reconocer y valorar la dignidad humana y cuidar la vulnerabilidad de sí y de los demás.

Palabras clave: Derechos humanos. Bioética. Salud publica.

Research

The author declares no conflict of interest.

Due to its widespread reach and impact, the COVID-19 pandemic inaugurated a new period in the world history of health, economics and politics, posing a threat in all of those areas. Despite the occurrence of previous pandemics, the world's population proved to be unprepared to face it. Although society is now more scientifically and technologically advanced, it has become more complex and fraught with crises—existential, environmental, economic, racial, ethnic and ethical—which has increased social inequalities and tensions.

This context revived social, economic, political and legal clashes, given the health and political decisions adopted to contain or mitigate the effects of the pandemic on public health. Such clashes directly affect the democratic rule of law regarding its principles of constitutionality, democracy, fundamental rights, separation of powers and social justice.

The health measures adopted to contain the spread of COVID-19 were designed considering a homogeneous society and an abstract temporality. However, reality immediately revealed dilemmas and conflicts in the various complex contexts of Brazilian states and cities: economic, social, cultural and political barriers posed difficulties to complying with the measures; the limits of the State's power and intervention actions were questioned, paving the way for potential disruptions and legal battles.

Many issues emerged that call for acceptable ethical and bioethical solutions, whether in relation to science and technology—which require new parameters for the use and research of medicines and vaccines to fight the disease—or to the political and legal decisions and instruments adopted to contain its spread and socioeconomic impact.

Given this context of risks and threats, concerns and questions arise about the defense of human and fundamental rights and about possible setbacks, with harmful consequences for previously consolidated public policies. These aspects motivated an academic study aimed at performing a critical analysis and providing answers, even if partially.

This study analyzes Law 13,979, dated February 6, 2020 (Quarantine Law – fight against the 2019 coronavirus pandemic) [1], according to the (appropriate) principles of the *Universal Declaration on Bioethics and Human Rights* (UDBHR) [2]. The goal is to identify main points of convergence and divergence between those two legal frameworks regarding the measures imposed by the former to fight COVID-19.

The discussion is restricted to the contexts, so far premature, that emerged in the pandemic period and to the incipient theoretical and analytical approaches to the problem. However, it is an important task, as these are difficult and dangerous situations for public order and security. Legal and constitutional explanations and assertions are required, on which law is bound to manifest itself as a theoretical, academic and practical field, given its importance for global and local health.

The study drew on the deductive method as well as the critical descriptive process. A qualitative method of bibliographic research was adopted in books and scientific articles, besides documentary research on Brazilian legislation—the Constitution of the Federative Republic of Brazil (CRFB/88) [3] and Law 13979/2020 [1]—and the International Health Regulations (IHR) [4], the Siracusa Principles [5], the UDBHR [2] and a decision by the Brazilian Federal Supreme Court (STF) [6].

The critical analysis approach considers intervention bioethics, due to the latter's acknowledgment and appreciation of the social dimension in analyzing and understanding the health-disease-care process, as well as its importance for the analysis of the discussion, design and execution of public health policies.

The COVID-19 pandemic in Brazil

Initially considered a new respiratory disease, caused by a new coronavirus, in late 2019 in the province of Wuhan (China), COVID-19 spread to several countries on all continents. On March 11, 2020, the situation was officially declared a pandemic by the World Health Organization (WHO) [7].

In Brazil, in line with the IHR protocols [4], the Ministry of Health (MS) declared COVID-19 a public health emergency [8]. Also following the IHR, the National Congress and the federal

government approved, on February 6, 2020, Law 13,979 [1], providing non-pharmacological measures to protect the community and deal with the emergency resulting from the pandemic, which include:

1. Isolation;
2. Quarantine;
3. Compulsory medical examinations, lab tests, collection of clinical samples, vaccination and other prophylactic measures, or specific medical treatments;
4. Mandatory wearing of face masks;
5. Epidemiological study or investigation;
6. Exhumation, necropsy, cremation and handling of corpses;
7. Exceptional and temporary restrictions on travel on highways and through ports and airports (in and out of the country and interstate and intercity movement);
8. Requisition of goods and services from individuals and legal entities, with guaranteed subsequent payment of fair compensation [1].

Also, as determined by MS Ordinance 365/2020 [9], MS announced the regulation and implementation of the provisions of Law 13,979/2020, indicating how the measures should be adopted in the country. On March 13, MS and all state-level health departments announced recommendations and strategic measures to prevent the spread of the disease. MS acknowledged the occurrence of community transmission across the country [8].

These measures were determined based on scientific evidence and analysis of strategic health information released by the WHO. There was no vaccine against this new virus and drug prophylaxis was at an insufficient stage of development and confirmation [10].

In addition to the direct effects of the disease on people's health and the health system, the non-pharmacological measures imposed limited the exercise of individual and/or collective rights, restricting the right to freedom of movement, suspending and/or restricting the operation of industry, retail and services, including transportation, limiting the right to work of street vendors, etc.

In this context, the problems generated by the effects of the pandemic started to be publicized by the media, public bodies and civil society organizations. At first, they showed sporadic cases of not compliance with isolation, social distancing and face mask wearing; gradually, the social, economic, political and legal impacts of the health measures on the behavior and attitude of people and government officials were revealed.

The health, economic and social crisis was compounded by the poor supply of vaccines against COVID-19, which is an additional struggle in access to public health and frustrates expectations of a definitive suspension of health measures. The desire for the return of full individual and collective freedom in everyday life cannot yet be fulfilled and the restrictions remain in place.

Restrictions on fundamental freedoms and the right to health

The guarantee and promotion of fundamental rights—such as the right to health—require specific state action through legislation and public policy, including to limit and impose restrictions on action by public authorities. On the other hand, there are cases in which, in order to guarantee and promote such rights, the state is responsible for imposing limitations and restrictions on individuals, legal entities or the community.

This is the case of Law 13,979/2020 [1], drafted in accordance with the relevant precepts of IHR [4], with rules to be adopted to face the outbreak of the new coronavirus. It was initially designed to remain in force throughout the duration of the Public Health Emergency of International Concern declared by WHO, which later recognized the existence of the COVID-19 pandemic, on March 11, 2020. The duration was changed by Legislative Decree 6/2020 [11], which recognized, exclusively for the purposes of waiving the fulfillment of financial results, the occurrence of a state of public calamity, effective until December 31, 2020, pursuant to the request of the President of the Republic.

However, the term was extended due to an injunction in the Direct Action of Unconstitutionality 6,625-DF [6], filed by the Rede Sustentabilidade political party. It remains in effect until the legislative and executive branches decide on the matter, with an extension limited to December 31, 2021 or until the end of the

international health emergency resulting from the coronavirus, whichever occurs last [6].

Law 13,979/2020 [1] presents innovations in terms of enforcing rules within the scope of Brazilian legislation, with significant measures regulating public health issues related to fighting the COVID-19 pandemic. This is especially the case of the entire Article 3 (Chart 1).

Chart 1. Summary of the provisions of Law 13979/2020 and the International Health Regulations

Provisions of Law 13,979/2020 (Quarantine Law) [1]	IHR principles and recommendations [4]
Measures to address the public health emergency of international concern: **Articles 1 and 3, § 1** Aim at collective protection, being limited in time and space. **Article 3, § 1 and § 7** Based on scientific evidence, strategic information and technical recommendation by health surveillance agencies. **Article 3, § 2** Guarantees people affected by the measures: right to information; family healthcare; free treatment; respect for dignity, human rights and fundamental freedoms. **Articles 3, § 4; 3-A, § 1** Establish liability for non-compliance with measures, as provided by law. **Articles 3, § 7-C, § 9 and § 11; Article 5-A** Protect the functioning of public services and essential activities. **Articles 3-A; 3-F** Determine the mandatory wearing of face masks in public and private spaces accessible to the public, public transport and establishments of all kinds. **Article 3-A, § 7** Exempts people with any disabilities that prevent them from adequately wearing a face mask, according to a medical statement. **Articles 3-B; 3-H** Determines that public agencies and private goods and services businesses shall: sanitize areas where people circulate and the interior of service vehicles; provide sanitizing products for users free of charge; and provide free personal protective equipment for active professionals. **Article 5** All shall cooperate with the health authorities by immediately communicating possible contact with infectious coronavirus agents and circulation in areas considered regions of contamination by the coronavirus. **Article 6** Mandatory sharing, between public administration bodies and agencies, of data essential to the identification of people infected or suspected of being infected by the coronavirus, with the sole purpose of preventing the spread, safeguarding the right to confidentiality of personal information.	**Article 2** The purpose and scope of these Regulations are to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade. **Article 3** **Principles** 1) Respect for the dignity, human rights and fundamental freedoms of persons. 2) Implementation of Regulations guided by the Charter of the United Nations and the Constitution of the World Health Organization. 3) Implementation of Regulations guided by the goal of their universal application for the protection of all people of the world from the international spread of disease. 4) Respect for the sovereign right of states to legislate and to implement legislation in pursuance of their own health policies. In doing so, they should uphold the purpose of these Regulations. **Article 42** Health measures taken pursuant to these Regulations shall be initiated and completed without delay, and applied in a transparent and non-discriminatory manner. **Article 43** Additional health measures These Regulations shall not preclude States Parties from implementing health measures that achieve the same or greater level of health protection than WHO recommendations, provided such measures are otherwise consistent with these Regulations. The States Parties shall base their determinations upon: • scientific principles; • scientific evidence; • available information from WHO and other relevant intergovernmental organizations and international bodies; • any available specific guidance or advice from WHO.

Research

One notes the imposition of restrictions on the exercise of fundamental rights (individual and collective) provided in the Federal Constitution of 1988, but also the presence of guarantees against abuses. Examples are those provided in §§ 2, 7-C and 9 of Article 3 and in Articles 5 and 6: spatial and temporal limitation of measurements; assured right to information, family healthcare, free treatment; respect for dignity, human rights, fundamental freedoms and conditions of incapable and vulnerable persons; protected functioning of public services and essential activities; and confidentiality of personal information (Chart 1).

It is noteworthy that IHR [4] complies with the *Universal Declaration of Human Rights* (1948) [12], the Siracusa Principles (1984) [5] and the *Vienna Declaration* (1993) [13]. As a member State of the United Nations (UN) and signatory, Brazil adopts those documents and accepts the proposals outlined therein, as governed by Article 5, §§ 2 and 3 of its Federal Constitution [3].

The Siracusa Principles [5] determine that limitations or restrictions on fundamental rights should meet the following criteria: be provided by law; be based on scientific evidence; meet a legitimate collective interest; be strictly necessary in a democratic society; draw on the least invasive and restrictive means available; be applied in a non-arbitrary or discriminatory manner; have a limited term; and be subject to review.

Prominent among the justified reasons for limiting or restricting fundamental rights is public health, in order to allow a state to take steps to prevent a serious threat to the health of the population or any of its members. These steps must be specific to preventing illness or injury or providing care to the sick and injured, in addition to observing WHO international health standards [5].

In declaring health a fundamental right and public good (articles 6 and 196), the 1988 Federal Constitution [3] instituted and protected it with formal mechanisms and by means of constitutional principles and sub-principles against arbitrary and abusive state action: the dignity of individuals as a founding principle (Article 1, III), the principle of legality (Articles 5, II and 37), the public interest and the common good (Article 193).

Given the above, it is understood that Law 13,979/2020 [1] limits and conditions the exercise of individual and collective freedoms in favor of public health during the COVID-19 pandemic, but in accordance with the legal dictates of international agreements and constitutional precepts.

Defense of fundamental rights in health initiatives

With the review and expansion of UDBHR [2] in 2005, the concept of bioethics was broadened to provide more adequate responses to social problems through a more humanistic and community-based understanding, related to human development. To ethical conflict issues stemming from scientific and technological developments, new treatments and public health in general, it added approaches to inequalities and social injustice [14].

Bioethical analyses of such social conflicts and issues gave rise to human values that must be safeguarded and rights which must be guaranteed by legal means that outline and delimit initiatives in the context of human rights.

The content of this new UDBHR [2] democratizes the bioethics agenda of the 21st century, making it more applied and committed to the improvement of citizenship and universal human rights [15]. UDBHR is a soft law, non-binding and solemn regulation that provides general principles or long-term goals.

This document is aligned with the entire body of legal, social and economic instruments adopted by the UN, which are based on the *Universal Declaration of Human Rights*. It also embraces the previously proclaimed international and regional instruments in the field of bioethics [2]. Prominent among the aims of UDBHR (Article 2) that most express concern about legislation and fundamental rights are:

1. To provide a universal framework of principles and procedures that guide States in the formulation of their legislation, policies or other instruments in the field of bioethics;
2. To promote respect for human dignity and protect human rights, by ensuring respect for the life of human beings, and fundamental freedoms, in a manner consistent with international human rights law [2].

Research

The declaration is important for enshrining bioethics among international human rights and ensuring respect for the lives of human beings and fundamental freedoms, so that everyone may benefit from the use of procedures involving the health-disease-care process.

With the incorporation of the human rights framework, other forms of theoretical and critical approaches to bioethics emerged, especially intervention bioethics (IB), developed by Volnei Garrafa and Dora Porto [4] of the Unesco Chair of the University of Brasilia (UnB).

IB plays a prominent role in the analysis of social, health and environmental actions, which is important for the public dimension of ethics for its analytical function of public health practices, especially those related to public interventions. It proposes that interventionist practices cooperate to create balanced conditions between individuals and states. To this end, it promotes the universal realization of the right to a dignified life, represented by the possibility of access to health and other essential rights for human survival [14].

IB views international human rights treaties as guiding parameters for intervention strategies, based on the recognition that such documents are aligned in expressing collective morality on a global scale, or at least the expectation of countries to achieve such morality [16].

Regarding bioethical care in times of the COVID-19 pandemic, the UN issued several documents advising countries to be careful when taking decisions and measures related to COVID-19. For the United Nations, the decisions and practices related to fighting the COVID-19 pandemic must be designed and implemented based on the foundations of respect for human dignity and human rights. Fighting the pandemic requires new forms of interrelationship between public health, bioethics and human rights [17-19].

Garrafa and collaborators [20] had already called for such interrelationship when they pointed out that UDBHR emphasizes that it is directed towards states, albeit not restricted to them. This means that its provisions can legitimize regulatory and interventional actions when relevant and/or necessary.

From the perspective of bioethics, the comparison between the provisions of Law 13,979/2020 [1] and the principles of UDBHR [2] shows that the aforementioned law includes content aligned with the field of bioethics. Its articles contain aspects of democratic fundamentals related to rights that, despite limiting them, also safeguard them. The principles present in the articles of that law, as well as those of UDBHR, originate from the principles of human dignity, equality and risk (Chart 2).

Regarding the democratic essentiality of these principles, Garrafa and collaborators [20] explain that regulatory issues in health interfere in people's daily lives and therefore are related to the very concept of citizenship.

One notes that the UDBHR [2] principles permeate Law 13,979/2023 [1] in its entirety and it is not possible to establish a linearity between the articles and the principles, as both are multidimensional. Some articles show a stronger relationship with specific principles, such as Article 3, § 2 of Law 13,979/2020, and Article 3 of UDBHR, which address respect for human dignity and opposition to abuses and illegalities of restrictions; and Article 3, § 7, and Article 5 of UDBHR on autonomy and vulnerable people.

The protection principle of Article 16 (of future generations) can be viewed as far-reaching, since the measures charge current generations with the care of their own life and health, thus safeguarding the life and health of future generations, besides the existence of mankind. Only the principle of Article 17 of UDBHR (protection of the environment, biosphere and biodiversity) is deemed not to be directly related to the articles of Law 13,979/2020.

Articles 3, § 4 and 3-A, § 1 of Law 13,979/2020, which provide punishment (fines and/or seizures) for non-compliance with the measures, are the only points of divergence with UDBHR, which has no punitive power nor recommends any penalties: its power is moral and represents the political will of the signatory countries, which must do their utmost to implement and respect it; it is declaratory in nature, without imposition or recommendation of sanctions.

Chart 2. Summary of the provisions of Law 13,979/2020 and the Universal Declaration of Bioethics and Human Rights principles

Provisions of Law 13979/2020 [1]	UDBHR principles [2]
Measures to address the public health emergency of international concern:	**Article 3** Full respect for human dignity, human rights and fundamental freedoms.
Articles 1 and 3, § 1 Aim at collective protection, being limited in time and space.	**Article 4** Maximized beneficial effects for patients and other affected individuals and minimized harmful effects of any kind.
Article 3, § 1 and § 7 Based on scientific evidence, strategic information and technical recommendation by health surveillance agencies.	**Article 5** Respect for people's autonomy to make decisions. For persons unable to exercise autonomy, special measures are to be taken to protect their rights and interests.
Article 3, § 2 Guarantees people affected by the measures: right to information; family healthcare; free treatment; respect for dignity, human rights and fundamental freedoms.	**Article 6** Prior, free and informed consent of the person concerned, based on adequate information.
Articles 3, § 4; 3-A, § 1 Establish liability for non-compliance with measures, as provided by law.	**Article 7** Special protection given to persons who do not have the capacity to consent.
Articles 3, § 7-C, § 9 and § 11; Article 5-A Protect the functioning of public services and essential activities.	**Article 8** Individuals and groups of special vulnerability should be protected and their personal integrity respected.
Articles 3-A; 3-F Determine the mandatory wearing of face masks in public and private spaces accessible to the public, public transport and establishments of all kinds.	**Article 9** Respect for people's privacy and confidentiality of their personal information.
Article 3-A, § 7 Exempts people with any disabilities that prevent them from adequately wearing a face mask, according to a medical statement.	**Article 10** Respect for the fundamental equality of all human beings so that they are treated justly and equitably.
Articles 3-B; 3-H Determines that public agencies and private goods and services businesses shall: sanitize areas where people circulate and the interior of service vehicles; provide sanitizers for users free of charge; and provide free personal protective equipment to active professionals.	**Article 11** No individual or group should be discriminated against or stigmatized on any grounds.
Article 5 Everyone shall cooperative with the health authorities by immediately communicating possible contact with infectious coronavirus agents and circulation in areas considered regions of contamination by the coronavirus.	**Article 12** Respect for cultural diversity and pluralism.
Article 6 Mandatory sharing, between public administration bodies and agencies, of data essential to the identification of people infected or suspected of being infected by the coronavirus, with the sole purpose of preventing the spread, safeguarding the right to secrecy of personal information.	**Article 13** Solidarity among human beings and international cooperation towards that end should be encouraged.
	Article 14 The promotion of health and social development for their people is a central purpose of governments that all sectors of society share, without distinction of race, religion, political belief and economic or social condition, because health is essential to life itself and must be considered to be a social and human good.
	Article 15 Benefits resulting from any scientific research and its applications should be shared with society as a whole and within the international community, in particular with developing countries.
	Article 16 Protection of future generations.

Source: Prepared by the authors based on Brasil [1] and Unesco [2].

Research

Such divergence, however, does not imply any disagreement of Law 13,979/2020 with the bioethical principles. Its penalties are not unreasonable, since they comply with the constitutional precepts of Brazilian legislation, which is guided by international legal instruments addressing human rights.

The approach to protecting people according to human rights and the principles of bioethics is present in Law 13,979/2020. Brazil adopts international documents developed within the framework of the United Nations to defend and respect human dignity, justice, peace, equality, democracy, health and the inviolability of life, which are constitutional precepts of the Brazilian democratic State.

Final considerations

This article aimed to identify the main points of convergence and divergence between Law 13,979/2020 and DUBDH, with regard to the determinations imposed by the former to fight COVID-19. It was found that both legal documents converge in their articles and principles, with the promotion and preservation of health and human dignity as the main points.

IB is an important theoretical and critical approach to verify whether a specific public health intervention considers the requirements of ethical treatment of concrete subjects in a given society, culture and time. In the case under study, the Quarantine Law—implemented to fight the COVID-19 pandemic since 2020—addresses the issue of protecting people according to human rights and the principles of bioethics in imposing restrictions and limitations on freedoms in Brazilian society.

The defense of the common good reverberates more loudly and becomes more pressing in times of public health emergencies, to the detriment of individual freedoms. Health measures limit fundamental rights for the sake of the common good and the public interest of collective health. Compliance with them implies recognizing and appreciating human dignity and caring for one's own vulnerability and that of others.

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Research

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