Whose dignity? Resolving ambiguities in the scope of "human dignity" in the Universal Declaration on Bioethics and Human Rights

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In October 2005, the United Nations Educational, Scientific and Cultural Organization adopted the Universal Declaration on Bioethics and Human Rights (UDBHR). A concept of central importance in the declaration is that of "human dignity". However, there is lack of clarity about its scope, especially concerning the question of whether prenatal human life has the same dignity and rights as born human beings. This ambiguity has implications for the interpretation of important articles of the declaration, including 2(c), 4, 8, 10 and 11. The paper applies relevant provisions of the UDBHR to specific cases, addresses problems of internal consistency and considers attempts at clarifying the scope of "human dignity" by the negotiating parties. An analysis of the important relationship between the UDBHR and the Universal Declaration of Human Rights, to which the UDBHR refers in its title and elsewhere, shows that because of a crucial emphatic asymmetry, a broad reading according to which the UDBHR must be understood to ascribe human rights and dignity to prenatal life is untenable. However, the view that the UDBHR confers human rights and dignity on humans from the moment of birth onwards is robust and defensible. This conclusion is important for a proper understanding of the declaration and its use, as stated in Articles 1(2) and 22, the latter urging states "... to give effect to the principles ... in this declaration". Similarly, it has implications for the use of the declaration in the wider context of bioethics-related law and policy, as well as in academic and other discussions where increasing reference to the UDBHR is likely.

Organization (Unesco) adopted the Universal Declaration on Bioethics and Human Rights (UDBHR) on 19 October 2005. The concept of human dignity is of central importance in the UDBHR. How does it relate to the cases introduced above? Does the UDBHR extend the scope of human dignity to prenatal forms of human life? Assessing whether or not this is the case is not straightforward, but clarity about the issue has crucial implications for the interpretation and use of the UDBHR.

OCCURRENCE OF DIGNITY IN THE DECLARATION

The UDBHR uses the term *dignity* nine times. *Human dignity* occurs six times, but *dignity* is also related twice to "persons", once to "the life of human beings" and once to "all human beings". In addition, there is one reference to the dignity of "individuals".

When considering this variance, there are three possible starting points: one is to assume that although different words are used in the declaration, this should not be understood as suggesting differences in meaning. For example, all expressions of "dignity" could be taken to refer to humans, as we commonly use the term in everyday language. The second possibility is that, as with many high-level international instruments, a certain degree of ambiguity is deliberate and useful, as it allows all UN member states to interpret the declaration's provisions in line with their regional and local, culture-specific norms and values. A third is that, in so far as different expressions are used, this is done with the intention of denoting different instantiations of humans, referring, for example, to humans in different developmental or other stages or states.

In a significant sense, the interpretation of "human dignity" would have best been helped by more explicit language in the declaration itself or in an accompanying explanatory report, as with other comparable documents, such as the Council of Europe's European Convention on Human Rights and Biomedicine. Although this was contemplated at various stages—for example, Unesco's International Bioethics Committee (IBC), involved in the early stages of drafting the

Is the moral status of an embryo of 3 days the same as that of a born, living adult human being? Does the concept of "human dignity", commonly understood as being at the basis of "human rights", and establishing certain actions as categorically impermissible, apply to humans in all their different states of development and capacity? These questions are relevant for many bioethical debates, ranging from abortion to pre-implantation genetic diagnosis, stem cell research and cloning. Recent scientific developments have brought the controversy into sharper focus, with consensus becoming ever more elusive. It is in this context that the General Assembly of the United Nations Educational, Scientific and Cultural

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document, considered providing operational definitions of ethical and scientific terms—both ideas were abandoned.¹ While an explanatory report was produced for a draft version of the declaration published in January 2005, there is no such report for the final UDBHR, although more recently two working groups have been established to produce explanatory notes on Article 6 (informed consent), and Article 14 (social responsibility and health).^{2,3} Does this situation provide reason to believe that the various references to “dignity” should be understood as interchangeable? Should it be taken as an expression of a collective view by those involved in the negotiations between government experts who finalised the UDBHR that interpretation of fundamental provisions should simply be left up to individual countries? This seems questionable. Throughout the negotiations, especially in Spring/Summer 2005, delegates vehemently discussed the precise wording of paragraphs that relate to “human dignity”. For example, the US delegation expressed a strong preference for the repeated use of the dignity of “human life”.^{4,5} A considerable number of written responses to the consultation held in Autumn/Winter 2004 also brought various arguments concerning the terminology to the attention of the drafting committee.⁶ In the absence of further guidance, one could therefore assume that the final wording is intended to represent an appropriate response to the comments made, and that different accentuations in meaning are thought to be necessary, justified and helpful. For the purpose of the following discussion it is instructive to consider the references to “dignity” briefly in their respective context (see box 1).

AMBIGUITIES

There is variance with regard to whose dignity is to be “respected”/“fully respected”, “recognized”, “not infringed” or “not violated”. At one end of the spectrum, there are “all human beings” (or “the life of human beings”): although these terms may have metaphysical–vitalistic undercurrents, they are primarily biological concepts that can be understood to refer to humans in all stages of development, from the newly merged DNA that can be found in a fertilised egg, to infants, to children, to physically and mentally healthy women and men, to those with disabilities, to older people, as well as to patients in a state of brain death, and, in principle, even to corpses of recently deceased persons. All of these are forms of human life, or human beings at different stages of capacity or development. Then there is the reference to “human person”, which is primarily a legal or philosophical term, often used to refer to human beings with specific capacities, or qualities—these terms *can* be coextensive with biological definitions but they may also relate to a more narrow range of instantiations of humans. And there is the somewhat vaguer, albeit quantitatively most frequent, concept of human dignity: the adjectival construction suggests that dignity relates to humanity, although it is not clear whether this is humanity in the *biological* sense, or in the *philosophical* or *legal* sense. Finally, there is the similarly ambiguous “individual”, which likewise could fall into either of these categories.

The scope of human dignity—all forms of human life?

Why should it really matter to which forms of human life dignity is ascribed? Consider, first, the following two cases to which, in line with the scope defined in Article 1, the UDBHR might be applied:

- (1) Rogue physicians carry out pharmaceutical research on adult patients with normal mental capacity. They use a new experimental treatment that may have extremely harmful side effects but do not tell the patients about the risks.
- (2) Members of a stem cell research centre develop stem cell lines for research purposes from supernumerary embryos

obtained with permission of the donors from in vitro fertilisation clinics.

If one adopts what I will call a “broad reading” of the UDBHR—according to which human rights and dignity must be ascribed in exactly the same way to all forms of prenatal human life as to born living human beings—both actions are equal violations of human dignity, as they do not show respect for human life. In case 1, research takes place without *consent*. With reference to Articles 2(c) and (d), 3.1, 5, 6 and 10 of the UDBHR, it can be argued that dignity is not respected, in the sense that the crucial capacity of moral agents to agree or disagree with certain forms of treatments is ignored.¹ In case 2, with reference to Articles 2(c) and (d), 3.1, 10 and 28 of the UDBHR, the argument might be that embryos, as early forms of human life, are prevented from developing into born human beings and that their existence is therefore nothing but a means to an end, a type of instrumentalisation that is profoundly incompatible with their dignity.

But *are* these cases morally equivalent, as a certain reading of, especially, Articles 2(c) and 10 could suggest? Should states seeking to establish bioethical legislation view these and cases such as abortion as identical, in terms of lacking respect for human dignity? Should countries, such as Germany, that allow the use of intrauterine devices (“the coil”) revise legislation so that the common prevention of implantation of embryos is prohibited on the grounds that embryos are bearers of human dignity, given that numerous alternative methods of contraception exist?

It is not straightforward to infer from the provisions of the UDBHR how to answer these questions. The central provisions on autonomy and individual responsibility (Article 5) and consent (Article 6) appear to acknowledge the special status of people who are in a significant sense aware of the consequences of their treatment. Hence, it could be argued that the declaration is concerned primarily, or exclusively, with born human beings. At the same time, the prominent Article 2(c) states that the declaration’s aim is “to promote respect for human dignity and protect human rights, by ensuring respect for the life of human beings ...”. The use of “by” is noteworthy: it appears to establish that respecting “the life of human beings” is crucial in ensuring respect for human dignity—and it could be argued that the destruction of an embryo in the context of stem cell research would constitute lack of “respect for the life of human beings” and thereby, following the logic suggested in Article 2(c), lack of respect for human dignity. Article 10, which proclaims the “fundamental equality of all human beings”, could also appear to support this view.

Internal consistency

If we look for other important provisions within the declaration that might help resolve this ambiguity, there seems to be a further increase in confusion. An important example can be found in Article 11, on non-discrimination and non-stigmatisation, when we ask the question, who is “an individual”?

If we adopt the understanding found in the preamble (Recitals 3 and 12 confer dignity on *persons*), it would seem that “individuals” are born, living human beings. In support of this view, one could also refer to paragraphs 53–59 of the explanatory memorandum on the equivalent article (then Article 8; see Unesco, Explanatory memorandum, 2005²) in the preliminary declaration of January 2005, which commented along these lines. The implication would be that it is unacceptable to discriminate in unjustified ways against born human beings—for example, on the basis of their genetic

¹As recognised, for example, in The Nuremberg Code of 1947, or the World Medical Association’s Declaration of Helsinki (first published in 1964).

Box 1: References to the dignity of “persons”, “life of human beings”, “all human beings”, “individuals” and “human dignity” in the Universal Declaration on Bioethics and Human Rights (the relevant terms are in italics)

References to the dignity of “persons”

- Recital 3
 - Recognizing that ethical issues raised by the rapid advances in science and their technological applications should be examined with due respect to the *dignity of the human person* and universal respect for, and observance of, human rights and fundamental freedoms, ...
- Recital 12
 - Recognizing that, based on the freedom of science and research, scientific and technological developments have been, and can be, of great benefit to humankind in increasing, inter alia, life expectancy and improving the quality of life, and emphasizing that such developments should always seek to promote the welfare of individuals, families, groups or communities and humankind as a whole in the recognition of the *dignity of the human person* and universal respect for, and observance of, human rights and fundamental freedoms, ...

Reference to (human) dignity and “the life of human beings”

- Article 2(c)—Aims
 - to promote respect for *human dignity* and protect human rights, by ensuring respect for *the life of human beings*, and fundamental freedoms, consistent with international human rights law; ...

Reference to the dignity of “all human beings”

- Article 10—Equality, justice and equity
 - The fundamental equality of *all human beings* in dignity and rights is to be respected so that they are treated justly and equitably.

Reference to the (human) dignity of the “individual”

- Article 11—Non-discrimination and non-stigmatization
 - *No individual* or group should be discriminated against or stigmatized on any grounds, in violation of *human dignity*, human rights and fundamental freedoms.

References to “human dignity”

- Article 2(c)—Aims [see above]
- Article 2(d)—Aims
 - to recognize the importance of freedom of scientific research and the benefits derived from scientific and technological developments, while stressing the need for such research and developments to occur within the framework of ethical principles set out in this Declaration and to respect *human dignity*, human rights and fundamental freedoms; ...
- Article 3.1—Human dignity and human rights
 - *Human dignity*, human rights and fundamental freedoms are to be fully respected.
- Article 11 [see above]
- Article 12—Respect for cultural diversity and pluralism
 - The importance of cultural diversity and pluralism should be given due regard. However, such considerations are not to be invoked to infringe upon *human dignity*, human rights and fundamental freedoms, nor upon the principles set out in this Declaration, nor to limit their scope.
- Article 28—Denial of acts contrary to human rights, fundamental freedoms and human dignity
 - Nothing in this Declaration may be interpreted as implying for any State, group or person any claim to engage in any activity or to perform any act contrary to human rights, fundamental freedoms and *human dignity*.

make-up, which may be relevant for the use of some forms of genetic testing carried out in the context of employment.

However, if we focus more on the terminology of Articles 2(c) and 10 of the final UDBHR, it would be difficult to see why a broad reading should be ruled out, according to which the term “individual” refers to any form of human life at whatever stage of its development—that is, to a fetus, an embryo or even a newly formed, genetically unique diploid set of DNA strands. Here, the implications would be very different ones. For example, laws in many countries currently allow some form of prenatal or pre-implantation genetic diagnosis, which may involve the decision to end the life of a developing embryo or fetus. These laws could be said to be incompatible with a broad reading of Articles 2(c), 10 and 11. Similar ambiguity concerning the use of “individual” can be found in relation to Articles 4 and 8.ⁱⁱ

Clarity of terminology is hence of editorial or aesthetic relevance and also has important and far-reaching implications for policy: first, concerning existing laws and regulations; and second, and more importantly, for countries that do not yet have in place such devices and would like to use the UDBHR for guidance. Which of the above interpretations should be adopted? How can we decide which one is more compatible with the spirit of the UDBHR? Is it sufficient to point out that operational provisions of declarations should be understood in the light of their preamble?⁷

PROPOSALS FOR CLARIFYING THE SCOPE OF HUMAN DIGNITY IN THE UDBHR

At this stage it is useful to consider that Article 2(c), which has given rise to some confusion, also includes an important qualification. The provision states that respect for “human dignity” through respect for the life of human beings is to be promoted “... consistent with international human rights law”. In an attempt to clarify the question of the scope of “human dignity” more generally, it is instructive to note that Canada, the Netherlands and the USA commented explicitly on their understanding of Article 2(c) in Unesco’s 33rd General Assembly, during which the UDBHR was adopted (see box 2).⁸

An interesting line of argument can be found in the statement by the USA, which had been the driving force behind the inclusion of a reference to “human life” during the negotiations of government experts at meetings held in the first half of 2005. They emphasise that “human dignity” should be seen as the fundamental basis for human rights, and that respect for human dignity “requires” respect for “the life of human beings”—thus stating that “respect for human life” is at the basis of human rights more generally. Canada and the Netherlands, on the other hand, appear less certain that the concept of “human life” has this direct role in motivating human rights and emphasise the importance of international human rights law as guidance in determining appropriate ways of judging actions that may affect different forms of human life. Both countries also appear to assume that their respective *domestic* law can be used as a guide in identifying how respect for human dignity and human life can be achieved.

ⁱⁱ Article 4—Benefit and harm: “In applying and advancing scientific knowledge, medical practice and associated technologies, direct and indirect benefits to patients, research participants and other affected individuals should be maximized and any possible harm to such individuals should be minimized.” Article 8—Respect for human vulnerability and personal integrity: “In applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.”

Box 2: Excerpts from statements on the interpretation of specific provisions of the Universal Declaration on Bioethics and Human Rights

USA

The United States believes it is particularly important that this Declaration is aimed at ensuring fundamental freedoms and respect for the life of human beings. The United States fully endorses the Declaration’s recognition that respect for human dignity and human rights requires respect for the life of human beings. The United States, moreover, applauds the primacy accorded to human dignity, which is the basis for human rights.

Canada

With respect to Article 2(iii), Canada will interpret the phrase “respect for the life of human beings” in a manner consistent with existing Canadian and international human rights law.

The Netherlands

The Netherlands welcomes in particular the respect for the life of human beings as referred to in Article 2(iii), but would like to state that this provision will be interpreted in consistency with its domestic law and international human rights law.

In the following, I will not pursue the question of whether domestic law can be a sufficient constraint,ⁱⁱⁱ but instead will focus on the context of international law, referred to explicitly in Article 2(c). Here, the pre-eminent reference is the United Nations’ Universal Declaration of Human Rights (UDHR) of 10 December 1948.

RESOLUTION OF AMBIGUITIES: CONTEXTUALISED ANALYSIS OF THE SCOPE OF “HUMAN DIGNITY” — THE ROLE OF THE UDHR

The title of the UDBHR makes clear and intended reference to the UDHR (see also Unesco, Explanatory memorandum, 2005, paragraphs 8–12²), and Recital 5 explicitly recalls it (see also Unesco, Explanatory memorandum, 2005, paragraph 11.³). Paragraph 34 of the explanatory memorandum to the draft declaration of January 2005 observes that “... modern bioethics is indisputably grounded in the values enshrined in the Universal Declaration of Human Rights and the human rights treaties that have followed it” (see also Unesco, Explanatory memorandum, 2005, paragraph 45²). Although to some extent^{iv} the UDHR has a similar variance in ascribing human rights and “dignity”, overall it is far more clear. Importantly, Article 1 states that “All human beings are *born* free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (emphasis added).

ⁱⁱⁱ Note that while Canada refers to domestic human rights law, the Netherlands appears to state that any (relevant) domestic law is sufficient to serve as a guide as to what constitutes appropriate respect for human dignity.

^{iv} Recital 1 of the preamble to the UDHR refers to the “inherent dignity and ... the equal and inalienable rights of all members of the human family”, Recital 2 notes the aspiration of a “world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want”, and Recital 5 reaffirms that “the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.” However, Article 1 states unambiguously that human dignity and human rights engage from birth, and all following articles likewise have in mind born living human beings as bearers of rights and dignity.

The use of “born” is striking, and discussion about its inclusion is documented in Johannes Morsink’s seminal monograph *The universal declaration of human rights: origins, drafting and intent*, chapter 8.⁹ On the question of whether human rights were something that humans were able to claim simply by virtue of being human, or for extraneous reasons (social conventions, acts of government, decisions of parliaments or courts), Morsink shows that, as far as possible, the drafters abandoned specific religious, philosophical or political concepts. They “... severed all connections between God and nature and voted for a thoroughgoing secular document [...] they felt they could bargain away the reference to nature [and God] in Article 1 ... because the words “inalienable”, “inherent”, and “born” still anchored the rights in human nature, unadorned and not capitalised” (p283).⁹

Further to an exploration of the *foundations* of human rights and dignity, discussion also focused on what developmental stages of humans should count as bearers. Several South American countries objected to the inclusion of “born”, arguing that a much earlier point of time was the more adequate threshold. Pedro de Alba, speaking for the Mexican delegation, noted that “a human being’s right to freedom and equality began from the moment of conception and continued after his birth” (see Morsink, 1999, p291).⁹ However, the majority of delegates were against a reference to the point of conception, whether for religious or philosophical reasons, or because they did share de Alba’s view but were reluctant to undermine the secular spirit of the declaration, which was likely to contribute significantly to its authority. In an attempt at a diplomatic solution to the problem, the delegate of the Chinese delegation proposed simply to omit “born”, as then “... the question of whether human rights began at birth or at conception would not arise”. However, after “vigorous debate, the word *born* was kept in with a sizeable majority of 20 votes to 12, with 5 abstentions” (p291).⁹

In refusing to accept the Chinese proposal, and in refusing to make reference to the point of conception, the drafters of the UDHR explicitly placed an important and crucial emphasis on the scope of “human dignity”. They established that human dignity and human rights can clearly and with certainty be ascribed only to *born* human beings. The implication is that the same cannot be claimed automatically for prenatal human life—although it could be argued that the phrase also has the advantage of not necessarily excluding such views.^v However, even if one were to assume that the latter should be permissible, it is important to be aware of a crucial asymmetry of emphasis enshrined in the language of Article 1: it may be that the UDHR does not *exclude the logical possibility* that human dignity can be ascribed to prenatal life, but this categorically different from an *explicit positive affirmation*, which would be required to argue the case that the UDHR provides robust support for full moral status of prenatal life. If the latter had been the intention of the drafters, they would have agreed with

^v In isolation, focusing on the meaning of Article 1 only, it could be interpreted in three ways: (a) as saying that humans are equal in dignity and rights if and only if they are born, (b) that they may have had rights and dignity before being born, but that the ascription for this period is less straightforward, and that it can only be made with certainty in the case of humans who have been born, or (c) that “born” is chosen merely to emphasise the continuity from documents such as the French Declaration of the Rights of Man and of the Citizen (1789), which provides in Article 1 that “Les hommes naissent et demeurent libres et égaux en droits.” Accordingly, it might be argued that Article 1 UDHR is neutral vis à vis bioethical questions such as those concerning the moral status of the embryo. However, analysed in context, and following Morsink,⁹ it becomes clear that only option (b) is an accurate interpretation.

the Mexican proposal, or at least the Chinese proposal. But they did not.

CONCLUSIONS

It is immediately obvious that the clarity on the scope of “human dignity” found in the UDHR is not replicated in the UDBHR. Recitals 3 and 12 refer to the dignity of the “human person” and, thus far, could be said to be in keeping with the understanding of the UDHR.^{vi} However, the prominent Article 2(c) then seems to create confusion by introducing the suggestion that respecting “human dignity” is achieved *by* respecting “human life”. If one followed the US interpretation as expressed in the statements on the interpretation reproduced in Box 2, and believed recent commentators from pro-life quarters,^{vii} one might think that the UDBHR stated that human dignity and human rights extended to prenatal and all subsequent forms of human life, and that the broad interpretations considered earlier in assessing problems of application and internal consistency were correct.^{viii} However, the discussion of the background to Article 1 of the UDHR above has shown that such interpretations are not helpful. Article 2(c) is constrained by the provisions of international human rights law, and the pre-eminent source here stipulates, as outlined above, that because of an important asymmetry of emphasis, the only thing about which there can be certainty is that *born* human beings are equal in rights and dignity.

Many high-level international documents are beset by some degree of ambiguity that is often an almost necessary result of negotiations between a great number of parties with different sets of values and belief systems. However, while directly comparable constraints existed in the negotiations of the UDHR and the UDBHR, it is noteworthy that more, rather than the same degree of, ambiguity exists in case of the UDBHR. This ambiguity can be seen as disappointing, as it affects several important provisions. In view of Articles 1(2) and 22, it may also be of limited use to countries that are in the process of establishing bioethics-related legislation. The same applies to countries that may revise existing legislation, and the situation is not helped by the absence of an explanatory report for the final UDBHR. Concerning the scope of “human dignity”, it would have been desirable to follow suggestions during the drafting process that urged consistency of terminology and proposed to focus on the term “person” as bearer of dignity in the provisions of the UDBHR (See Unesco, Results of the

^{vi} See also Article 3 of the UDHR: “Everyone has the right to life, liberty and security of person.”

^{vii} See, for example, the statement on the final UDBHR by the UK-based group CORE (Comment on Reproductive Ethics), available at <http://www.coreethics.org>, or the statement by Nigel M de S Cameron, an advisor to the US delegation, who commented in October 2005 that the “resonant assertions of the centrality of human dignity and the limitations of science give us hope and ammunition to make our case” (see Life matters—Nations united on bioethics. Christianity Today, Oct 2005, available at <http://www.christianitytoday.com/ct/features/opinion/columns/nigeltcameron/>). See also ScidevNet, Sparks fly over UNESCO bioethics pact, 21 Oct 2005. <http://www.scidev.net/News/index.cfm?fuseaction=readnews&itemid=2433&language=1> (all accessed 18 August 2007).

^{viii} It is also interesting to note that of the two extreme ends of the spectrum of positions on the moral status of pre-natal forms of life, only one position commonly refers to the UDBHR in support of their views, namely the one seeking to establish the “broad view”, according to which human rights and dignity must be ascribed in exactly the same way to all forms of prenatal human life as to born living human beings. By contrast, it appears that recent arguments set forth in support of, for example, embryo research, abortion or the use of certain kinds of contraceptive methods do not see the need to refer to the authority of the UDBHR.

written consultation, pp76–8).⁶ It could then have been clarified that whether or not prenatal forms of human life should count as “persons” is a matter that individual countries need to decide for themselves, while making it equally clear that whether or not *born* human beings are bearers of human rights and dignity is *not* a matter for individual decision of states. As shown, this would have followed the understanding of the UDHR and would have reflected the traditional consensus on human rights and also respected the current divergence of views on this matter. In addition, it would have been consistent with a considerable body of philosophical discussion on the foundation and scope of “human dignity” (as I have discussed elsewhere¹⁰).

The discussion above is intended to help clarify the scope of “human dignity” in the UDBHR. It also seeks to show that a broad reading is far from straightforward. Both points are crucial in interpreting the UDBHR, and in using it, especially in two main areas.

Implications for law and regulation

Besides being referred to by states that establish or revise bioethics-related legislation or policy, the UDBHR may, in principle, be used itself in settling policy or juridical conflicts. In formal terms, the document merely has the status of a *declaration* and is therefore *prima facie* a non-binding instrument. However it may, first, carry considerable weight in informing those involved in policy and legal processes. Second, even if it is not transformed into a binding *convention*, it could take on a more binding form if a sufficient number of states followed Article 22 and implemented its provisions, thereby signalling that they felt obliged to do so. It is in this sense that frequent reference is made in courts to the UDHR, which, similarly, is “nothing but” a declaration, but has come to be accepted as representing international customary law.¹¹ It is also noteworthy that the European Court of Human Rights has already referred in at least two decisions to bioethical guidance, in the form of the European Convention on Human Rights and Biomedicine, and may, in the future, refer to the UDBHR.^{ix} Furthermore, the field of human rights legislation, and of policy and guidance concerning human rights issues, continues to expand, the recent Charter of Fundamental Rights of the European Union (2000) and the UN Declaration on Human Cloning of March 2005 being pertinent examples. New instruments may build on the UDBHR, and clarity about the role of crucial concepts such as “human life” and “human dignity” is crucial, although, as discussed above, not straightforward.

None of the instruments relating to bioethics and human rights that have emerged since the UDHR have so far “undone” the important asymmetrical characterisation of human dignity and human rights in its Article 1. However, few have replicated its admirable clarity. For this reason, renewed emphasis on the appropriate scope of “human dignity” is crucial in ensuring consistency of new bioethical instruments and future decisions with the UDHR as the pre-eminent guide.

Implications for debates by bioethicists and others

The second context where clarity about the scope of “human dignity” is important is what John Harris has called “the globalisation of ethics”, or what in this context might be called “declaration creep”. Bioethics-related declarations and policy documents have, over the past 50 years or so, had a

considerable impact on both medical and other professional practice, as well as on academic and non-academic discourse. While many important moral concepts such as “autonomy” have found their way into the mainstream debate, they have not always been used in full awareness of the underlying philosophical arguments or normative frameworks. Furthermore, in an interdisciplinary field such as bioethics it is not uncommon for philosophers to talk about scientific facts and for physicians or scientists, for example, to talk about philosophical concepts. As in all interdisciplinary fields, such mixing of disciplines and expertise poses challenges, and it is crucial to be aware of one’s limitations in crossing disciplines. In the present context, this means that care is required not to misinterpret the provisions of the UDBHR on human dignity. For most philosophers and lawyers, it will be clear that it does not by default envisage prenatal forms of human life as bearers of human dignity. However, this may be less straightforward for people from other fields. There may be temptations to use the UDBHR as an authoritative source to argue the case that all forms of human life are characterised by equal dignity and rights; as the discussion above has shown, this is neither the case nor would it be an appropriate way of presenting an ethical argument. Declarations must not and cannot supplant the need for sound premises, arguments and conclusions in bioethical debates.

Finally, high-level declarations not only influence discussions of the immediate stakeholders and experts, but also affect more general debates. Sometimes their authority is reinforced by a feeling that they have caught, and given form to, an important aspect of ethical *Zeitgeist*. Thus, urging respect for “autonomy” and “consent”—enshrined as a foundational ethical concept in the Nuremberg Code—was recognised beyond the medical profession as a fully justified response to abhorrent forms of research carried out in Nazi Germany. To a significant extent, it was also an expression of the prevailing global consensus on the matter. Similarly, the formulation of a set of universal human rights in the UDHR as a response to atrocities committed in World War II more generally has influenced, and was influenced by, discussions beyond the courtroom. Although at the time of the drafting of the UDBHR there were heated debates in many societies about the moral status of prenatal human life—whether in the context of discussions about pre-implantation genetic diagnosis, stem cell research or reproductive cloning—it is important to realise that these debates have not led to a new definition of “dignity” in the UDBHR. The scope of “human dignity” in the UDBHR *vis á vis* the UDHR has remained unchanged.

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^{ix} It is also noteworthy that both in *Glass v United Kingdom*, 9 March 2004, application no. 61827/00, and in *Vo v France*, 8 July 2004, application no. 53924/00, the countries involved were not formally members of the convention: France has not yet ratified it, and the UK has not even signed it.

- February 2005. <<http://unesdoc.unesco.org/images/0013/001390/139024e.pdf>>.
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 - 4 **Unesco.** Summary note, Informal meeting with permanent delegations organized by the chairperson of the Intergovernmental Meeting of Experts (category II) aimed at finalizing a Draft Declaration on Universal Norms on Bioethics. Paris: Unesco, 17 May 2005, paragraphs 16 and 17.
 - 5 **Unesco.** Second session of the intergovernmental meeting of experts aimed at finalizing a Draft Declaration on Universal Norms on Bioethics: final report, 20–24 June 2005. Paris: Unesco, 27 July 2005, paragraph 13. <<http://unesdoc.unesco.org/images/0014/001402/140287E.pdf>>.
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 - 7 **Bennion FAR.** *Statutory interpretation*. London: Butterworths, 2002. See section 272 on the function and effect of a preamble.
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