

# A Synergistic Approach to Human Rights and Public Health Ethics: Effective or a Source of Conflict?

COMMENTAIRE / COMMENTARY

Madeleine Steinmetz-Wood<sup>1,2</sup>

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## Résumé

Les inquiétudes concernant les disparités croissantes en matière de santé et de richesses entre les membres de la société ont incité Stephanie Nixon et Lisa Forman, dans leur article de 2008 *Exploring synergies between human rights and public health ethics: A whole greater than the sum of its parts*, à proposer que les principes de droits de l'homme et de l'éthique de la santé publique soient utilisés en combinaison afin d'élaborer des normes pour les actions de santé. Ce commentaire renvoie aux avantages ainsi qu'aux difficultés qui pourraient surgir suite à l'adoption d'une telle approche.

## Mots clés

santé publique, éthique, droits de l'homme

## Summary

Concerns over the growing disparities in health and wealth between members of society incited Stephanie Nixon and Lisa Forman, in their 2008 article *Exploring synergies between human rights and public health ethics: A whole greater than the sum of its parts*, to propose that the principles of human rights and public health ethics should be used in combination to develop norms for health action. This commentary reflects on the benefits as well as the difficulties that could arise from taking such an approach.

## Keywords

public health, ethics, human rights

## Affiliations des auteurs / Author Affiliations

<sup>1</sup> Département de Médecine Sociale et Préventive, École de santé publique de l'Université de Montréal

<sup>2</sup> Spherelab, Santé des populations, Centre de Recherche Hospitalier de l'Université de Montréal, Montreal, Quebec, Canada

## Correspondance / Correspondence

Madeleine Steinmetz-Wood, [madeleine.steinmetz-wood@umontreal.ca](mailto:madeleine.steinmetz-wood@umontreal.ca)

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Aucun déclaré

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## Conflicts of Interest

None to declare

## Introduction

The growing disparity in health status and wealth between groups in society, as well as between rich and developing countries, are issues that have serious human rights and health ethics implications. These concerns led Stephanie Nixon and Lisa Forman [1], in their 2008 article entitled "*Exploring synergies between human rights and public health ethics: A whole greater than the sum of its parts*", to suggest that the principles of human rights and public health ethics should be used in combination to develop norms for health action. These norms for health action can be used to address health problems such as disease pandemics, increasing levels of non-communicable diseases, the limited access to healthcare of the global poor and other health challenges [1]. They argue that using both approaches in combination would reduce the limitations of using only one of these approaches

separately. That is, human rights could help public health ethics by emphasizing the moral responsibility of countries to ensure the health of their citizens, while public health ethics could help people to see human rights principles as not solely an issue of human rights but also as ethical principles to aid in decision making. The disadvantages to this combined approach were also addressed by Nixon and Forman in their article, where they noted the conflicting orientations of the two fields, more specifically that the human rights approach is individualistic in orientation whereas public health ethics is more attentive to collective interests. I nonetheless argue that the authors neglect to address two key limitations of using such a combined framework. First, many of the burdens associated with public health programs infringe upon the rights of individuals, a key concern of human rights. Second, the Siracusa Principle – which states that threats to the health of the population or individuals can provide just cause to limit individual rights – can be difficult to apply in practice, as the violation of human rights will not always hold up in a court of law.

## Public Health Ethics and Human Rights

Public health ethics addresses health issues dominant in both the western and developing world such as the existence of profound inequalities in access to healthcare within and between countries [1]. Nixon and Forman describe public health ethics as stemming from utilitarianism, liberalism and communitarianism and having a fundamental focus on collective health. They describe Callahan and Jennings' typology of public health ethics, which is composed of professional ethics, applied ethics, advocacy ethics and critical ethics. Professional ethics encourages the identification of the ethical principles that are key to practitioners for the practice of their profession. Applied ethics provides principles that can be applied to real life situations that occur when practicing the public health profession. Advocacy ethics is based on principles of equality and social justice and advocates for the provision of health services for the poor. Finally, critical ethics calls for ethics and public health policy to be the result of collective deliberations rather than plans enacted by an elite [2].

Human rights are ethical claims to defend the freedoms of individuals in society. These rights are not legally binding but can inspire the creation of legislation [3]. Additionally, many rights are internationally recognized in treaties such as the Universal Declaration of Human Rights, a treaty that was instigated after the events of the holocaust to protect the dignity and rights of all people [1]. Inherent to Nixon and Forman's article is the conception of the right to health, that is, the right of all humans to the services and necessities that are required to stay healthy, such as medical care, food clothing and housing. This right has been recognized by many human rights treaties that emerged after the formation of the Universal Declaration of Human Rights, such as the 1976 International Covenant on Economic, Social and Cultural Rights; this treaty that recognizes the responsibilities of states to provide medical care for their citizens so that all citizens may obtain an optimal state of physical and mental health [4].

## The Advantages of a Combined Approach

Nixon and Forman suggest combining the frameworks of public health ethics and human rights to resolve health challenges. There are several benefits to taking this approach to resolving important health ethics issues. For example, they discuss how public health ethics could complement human rights principles by offering assistance to the legal and political force of the human rights field, specifically by helping to reinforce the application of human rights principles. They further argue that public health ethics can help people to see human rights principles, such as the principle of solidarity, as not solely an issue of human rights but also as an ethical principle used for decision-making. In an international context, solidarity can be understood as a principle promoting the cooperation between interdependent states and is already used in the field of public health. As public health can assist in the global understanding of solidarity for nations, this could then help in shifting towards the consideration of this principle as an international legal principle. Nixon and Forman also argue that

critical public health ethics will broaden the advocacy framework of human rights by helping key stakeholders to understand that many of the problems facing poor countries arise from institutional arrangements and power structures. As such, this perspective can provide a convincing rationale for richer countries to implement concrete action to help alleviate poverty and ill health in developing countries. Finally, the principles of human rights can be used to positively influence the health of populations, because: “human rights hold a normative force irrespective of their legal status that can be mobilized to effectively shift some of the political practices that perpetuate and exacerbate current global health challenges.” [1] Nixon and Forman argue that applying the principles of human rights can contribute to public health ethics through the former’s emphasis on the moral responsibility – and thus the duty – of states to ensure the health of their citizens. The authors also argue that human rights will help clarify that the right to health is a determinant of health, and so emphasize that the right to health is inseparable from other human rights [1].

One example of using concepts from both public health and human rights was the public health promotion strategy implemented by the World Health Organization (WHO) in the early 1980’s to respond to the HIV/AIDS epidemic [5]. Many countries had enacted screening laws, travel restrictions, and coercive isolation or quarantine requirements that limited or even violated important and widely accepted human rights. Jonathan Mann, the head of the WHO Global Program on Aids (GPA), argued that public health, ethics and human rights were all inextricably linked and that violations of human rights would result in adverse affects on public health [6]. Mann argued that discriminatory measures enacted by states to prevent the spread of HIV/AIDS caused individuals to hide their seropositive status, thus making it even more difficult to prevent the spread of the disease. To address this predicament, the WHO partnered with the United Nations human rights system, a system that establishes international human rights principles using its charter and endorses experts that work to promote the protection of human rights. Together they implemented the WHO Global Strategy on AIDS, a strategy advocating for equitable access to health-care, non-discrimination and the development of educational programs that informed individuals about those behaviours that lead to HIV/AIDS transmission. However, Mann’s ability to implement the rights based approach to HIV/AIDS prevention was diminished after the election of Hiroshi Nakajima as the new director General of the WHO [5]. A power struggle between him and the new director general finally forced Mann to resign in protest in 1990 [7]. Nonetheless, the rights based approach to HIV/AIDS prevention persisted even after Mann’s resignation and the WHO assuming a less prominent role in the campaign against the HIV/AIDS epidemic [5].

## The Disadvantages of Using a Combined Approach

As is well illustrated in Nixon and Forman’s article, the two fields of public health ethics and human rights could benefit from using a combined approach. However, as was also noted by the authors, there is one important element in which these two approaches differ. Namely, the human rights approach is individualistic in orientation whereas public health ethics is based on the concept of and attention to collective interests [1]. So it is possible that using a combination of these two approaches could result in an irreconcilable tension between the two fields due to their different orientations. Callahan and Jennings [2] takes a similar view, except with respect to the field of bioethics (in its biomedical incarnation) more generally, arguing that many scholars focus on autonomy and the protection of civil liberties, in comparison with the more paternalistic view advocated by some scholars in public health ethics, who justify limiting freedoms in certain cases in the name of the greater public good (i.e., public health). This argument could certainly be applied to the case of human rights and public health ethics, for as already mentioned, the human rights perspective also has a strong focus on respect for autonomy and the civil liberties of individuals.

A challenge faced by the combined approach that was not discussed by Nixon and Forman is that many of the burdens associated with public health programs infringe upon the rights of individuals [8]. According to Kass these burdens can be grouped into three categories: “risks to privacy and

confidentiality, especially in data collection activities; risks to liberty and self-determination, given the power accorded to public health to enact almost any measure necessary to contain disease; and risks to justice.” [9, p.1779] These burdens are likely to produce important conflicts between public health and human rights objectives, and not the mutually reinforcing effect advocated by Nixon and Forman.

Finally, Nixon and Forman suggest that the Siracusa Principle could be used to resolve the differences in perspective and orientations of the two fields, when decision-making is necessary [1]. However, as already mentioned, this principle can be difficult to apply in practice. As noted by Nixon and Forman, there are different national human rights models and some will emphasize balancing individual and collective rights, whereas others will not. The authors give the example of the United-States where individual rights will take precedence over collective interests, whereas in Canada the rights model seeks to find a compromise for the two sets of interests. In jurisdictions where legislation emphasizes individual rights, such as in the US, the application of the Siracusa Principle could be limited. For example, in 2009 the state of New York tried to implement a law requiring mandatory influenza vaccination of healthcare workers. This law aimed to increase levels of vaccination in health care facilities – estimated to vary between 33% and 66% in US health institutions – in order to reduce the risks of influenza outbreaks [10]. An effective vaccine against influenza exists, however elderly and immunosuppressed patients are still at greater risk of dying from influenza, since this vaccine is not effective for these patients [11]. Randomized control trials have demonstrated that vaccination of healthcare workers can result in a substantial decrease in influenza related deaths amongst the elderly [12,13]. The vaccination of healthcare workers is thus a key prevention strategy to reduce influenza related mortality in at-risk populations. However, healthcare workers in New York argued that this law violates the 14<sup>th</sup> amendment, by denying their liberty without due process and limiting their self-determination. Furthermore, they argued that the law violates the First Amendment, as the law does not allow religious exemptions and thus interfered with the public’s right to exercise their religious beliefs [14]. Despite the fact that low vaccination rates among healthcare workers presents a constant threat to the health of the elderly population, healthcare worker unions in New York were nonetheless able to obtain a court injunction blocking the application of the law.

## Conclusion

Nixon and Forman’s innovative suggestion to combine the frameworks of public health ethics and human rights has many benefits. On one hand, public health ethics can help to reinforce the application of human rights principles and can help people to see human rights principles as ethical principles. On the other hand, human rights can benefit public health ethics by providing a convincing rationale for richer nations to help alleviate poverty and ill health in developing nations and can encourage states to provide healthcare for their citizens. However, this approach could lead to many disputes between the fields of public health and human rights due to the different orientations of the two fields and the burdens of public health programs infringing on human rights. Finally, the principle proposed by Nixon and Forman, the Siracusa Principle, to be used in times of conflict is a principle that is difficult to apply in practice. The benefits and repercussions discussed in their article are numerous, however we will not know the true outcomes of such a synergistic approach until it becomes more widely used in public health practice.

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