

FOREWORD

BY

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Between bioethics and law, between foreign laws, comparative law and international law, the research laboratory of the ‘Western Institute of Law and European Studies’ – the IODE – (UMR CNRS 6262) offers us, under the aegis of the *International Academic Network on Bioethics*, chaired by Brigitte Feuillet, an eleventh collective publication. A work that commands attention like an ancient fresco, given how much it brings to mind, how much it explains and tells us about a people, an era, or a subject. The subject here is one of those that raise questions for anyone, wherever they are, wherever they come from, whatever they think or however they live. *The principles of protection of the human body* in an international approach: what are they? How are they created or imposed? How are they protected or guaranteed? How are they violated? What about sanctions if they are not respected? What do they say about a society? What links do they maintain with the principle of dignity enshrined in article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.” Numerous other questions are also raised.

There was an element of boldness, perhaps even recklessness, on the part of Brigitte Feuillet, Geneviève Schamps and their research team when they embarked on the difficult and fascinating journey of exploration of the protection of the human body in seventeen countries on four continents; in Europe: Germany, Belgium, Spain, France, Greece, Hungary, Italy, the United Kingdom, Switzerland and Turkey; in Asia: China, Japan and Taiwan; in North and South America: Canada, the United States of America, Brazil and Chile; in Africa: Egypt and Tunisia.

In terms of methodology this was a serious undertaking that commands admiration, whether for the collective definition of the subject in the difficult summary chapter of comparative law, or for the workshop presenting and debating foreign laws.

In scientific terms, the reader cannot fail to note the subversive nature of comparative law, the inescapable humility of international law, or of course the links required and formed with fundamental rights and freedoms.

It is an honour as well as a difficult task for the president of the French National Advisory Commission for Human Rights (CNCDDH), to write a preface to this work, given how much the subject echoes the problems that our commission has attempted to study in successive steps and on numerous occasions, as demonstrated by a series of opinions adopted in the unenclosed field of bioethics. I will refer to just one contribution to the debate, presented in a plenary assembly of the CNCDDH on 14 June 2007 under the title "Human rights, bioethics and their relationship to the body". Our commission sought to highlight the important questions that arose when the legislator, French in this case, chose to set out guidelines for a status of the human body to protect the person: by means of 'bioethics laws'.

This status, as defined by French law, is based on two complementary principles: on the one hand, that the human body is unavailable, and that, as a result, the elements that comprise it are "not for sale". Thus any exchange relating to the elements of the human body refers to a donation rather than to commerce. The European Convention on Biomedicine of 4 April 1997 refers to the prohibition of making the body or its elements a source of profit.

The most difficult debate, raised so well by Brigitte Feuillet in the excellent summary chapter of the collective research undertaken, appears to concern the issue of whether or not there is a distinction between the person and the body. This is also the central point of CNCDDH's contribution to the debate. If the body has a status, it is that the law treats it as inseparable from the person. It is a matter of helping the person to preserve the integrity of his body, and to that end sheltering him from the pressures exercised by others to procure elements of the body that have become useful or valuable. The philosophy of our commission, which underlies the analysis, is based on the prohibition of all forms of slavery, from the most

insidious to the most visible. The gravity of the issue implies that the person is protected against himself. The risk is that he might be persuaded to renounce control of his body or elements of it in the name of interests that are not his own and could be profitable.

However, it is impossible to ignore the question of whether one has the right to protect the person against himself in such a private matter. A logic that is individualist rather than universalist opens possibilities and lifts prohibitions, with the aim of giving each individual control over his body.

The debate at the heart of numerous CNCDH opinions on bioethical issues, or more generally on ethical issues, concerns the meaning given to the principle of dignity and the notion of informed consent, with regard to vulnerable persons, as well as to those who *a priori* are not. This problem is found in the research led and coordinated by Brigitte Feuillet and Geneviève Schamps on the comparative and international approach to the principles of protection of the human body.

As with any work related to comparative and international law, a certain unity concerning the principle of respect for physical integrity, albeit one that should not be overstated, emerges from a reading of the successive chapters of this book. Indeed, while the need for protection of the human body is recognised everywhere, and while it transcends cultural differences, as observed by Brigitte Feuillet, it nevertheless covers different realities. It is very interesting to note, along with the co-editor of the work, that “while the principle of respect for dignity, recognised in most countries, is not systematically endowed with a normative scope, in that it only confers subjective rights in certain countries [...] it is generally considered a founding principle for all other principles”.

When it comes to protection of the human body, as with other subjects dealing with the person, a subtle game of balance develops between dignity and autonomy. This game is perfectly illustrated in this collective work.

The publication of this transnational research, with all the difficulties that brings, is as pleasing as it is useful. The work carried out enriches our knowledge, while closing no doors; quite the opposite, in fact, as it opens up new areas for reflection on human rights.

This preface was offered to me on behalf of the French National Advisory Commission for Human Rights (CNCDH), the first independent national institution for the protection and promotion of human rights, created in 1947 by René Cassin. Robert Badinter described our commission as “a company of the vigilant”; this vigilance should only be exercised with modesty, albeit enthusiastically with regard to respect for fundamental rights and freedoms. To have approached the CNCDH is a strong sign that the magnificent undertaking of this collective publication, on the principles of protection of the human body in a comparative and international approach, is part of the long and winding road, often swept by contrary winds, of the universalism of human rights.