

Opinion that the human body should not be used for commercial purposes.

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From the beginning, the National Consultative Ethics Committee for health and Life Sciences (CCNE) was confronted by a fundamental choice : would it start by defining a doctrine on which Opinions could be based, or would it adopt a more pragmatic approach and develop a doctrine as work progressed ? The second method was preferred, and certain principles were adopted which gradually influenced its outlook. The two summary reports : " Recherche médicale et respect de la personne humaine" (*Medical research and respect of human dignity*) and " Ethique et connaissance" (*Ethics and knowledge*) contain the complete set of principles upon which Opinions expressed from 1984 to 1990 are founded.

One of them, to which constant reference is made, is that the human body should not be used for commercial purposes. A few examples can be quoted :

As early as 1984, we wrote : " Tissue samples taken from a dead embryo or foetus in legitimate circumstances cannot give rise to remuneration". (The same wording was used in 1989 on the subject of the transplantation of nerve cells). Again in 1984, on the subject of experiments involving human beings : participants may receive "compensation for the inconvenience suffered. Under no circumstances can any financial reward be paid"; finally, again in 1984, on the subject of so-called substitute mothers : "it is unacceptable that the operation should be lucrative".

In 1986 : "Gamete or embryo donors must not be compensated and persons or organisations storing human embryos must not derive profit from this activity".

In 1987 : "Humans cannot be authorised to sell their own cells";

In 1989 : "...none of the steps required for achieving embryo donation can give rise to remuneration or profit. The principle of embryo donation being entirely free of any commercial aspect is inviolable...."

In 1990, it was recommended that for embryo donation only voluntary contributions should be allowed, and only those centres which observe non-commercial principles be authorised to exercise this kind of activity. Finally, these principles are outlined in the general reports mentioned above. In particular, the report " Ethique et connaissance" states : "The view of French law on this problem is clear. It does not accept that the human body be used for commercial purposes. The body is not an object and cannot be used as such ; for instance, blood and organs are not for sale, a position which is rarely encountered elsewhere.

It is therefore logical that the CCNE should embark on a specific study of issues raised by the links between bioethics and money.

A working group was created for that purpose in 1990. It is unlikely to come to a conclusion before the end of 1991. However, the preliminary studies already undertaken allow the CCNE to state some considerations which will no doubt remain unchanged. They tend to express the idea already set out in the previously mentioned Opinions that neither the

human body, nor a part of the human body, can be sold or purchased. This statement follows the teachings of French law. It may be useful to determine the domain, and therefore the limits, of this principle.

When it is said that the human body is not for sale and not on the market, the two statements are complementary : on the one hand, the human body or one of its components cannot be the object of a contract, on the other hand, it cannot be negotiated by anyone. For instance, an organ such as the kidney, cannot be sold by the person to whom it belongs and, even if it is donated free of charge, cannot be sold by a third party however much the would-be recipient or his entourage insist on it. Such insistence may be tantamount to blackmailing dependent individuals, for examples prison inmates or misused minorities. Human dignity is at stake if financial gain becomes the result of physical weakness, however temporary.

It is easy to see the consequences if a different attitude prevailed and economic distress led to abuse of the most vulnerable sections of a population or of the most vulnerable populations as a whole. This concept extends to any separate component of the body which must not become the equivalent of a commodity, even through the use of a legal instrument such as a patent. In this context, it is worth quoting article 3 of law n° 76-1181 of 22nd December 1976 which coincides with the CCNE's own belief : "Although reimbursement of any expense incurred is acceptable, the collection of (...) cannot give rise to any pecuniary counterpart".

We have stated our opposition to commercial use as extending far beyond the case considered above which concerns those accepting a reduction of their physical potential for financial reward. We consider that individuals should also be prevented from trading in foetuses, embryos, gametes, tissues, or cells. This represents the broadest possible interpretation of the dignity of the human body. When injury - however minute - to the human body is accepted, the purpose must be therapeutic.

That being made clear, it must be allowed that money cannot be prohibited altogether from scientific activities. To demand the exclusion of any profitable aim does not mean that researchers and physicians are required to work without pay. The body or its organs are neither paid nor sold, but that is no reason to refuse payment to those whose work is involved. In that case, what is expressed in monetary terms is not the value of a body or a component of the body, but that of the work of observation, sampling, analysis, and processing which they make possible. We described this in our 1987 report on using human cells and their derivatives in the following terms : "The subject here is no longer a product of the human body, but a derivative in the form of a manufactured substance. Consequently, after the collection phase there is the processing phase. In this case, the price is not for a portion of a human body, it is for the work done and the resulting substance". We can only maintain these pronouncements which set the criteria for the principle of non commercial use.

In the face of threats against these principles of fact and law which are emerging in various countries, the CCNE wished to make its position clear without delay. In its final report, the detailed implications will be reviewed in detail so as to demonstrate that if the advent of money stifled the motivation offered by solidarity and generosity, the ethical contents of research would suffer, but that financial reward can also have the opposite effect if aiming for profitability and efficiency can include the ethical dimension, particularly when credits are allocated to the public or private sectors and beneficiaries are chosen. Thus, the fundamental ethical criterion represented by the dignity of man would find its proper place in relation to money and its most effective protection.

This issue will be the subject of another section of the ongoing study.