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DOSSIER ‘‘CORE VALUES IN BIOETHICS’’ / *Practices and concepts*

## Basic ethical principles as symbolic foundations and core values of European biolaw



*Des principes  ethiques fondamentaux comme des fondations symboliques et des valeurs fondamentaux du bio-droit europ en*

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Received 15 December 2015; accepted 7 March 2016

### KEYWORDS

Bioethics;  
Biolaw;  
Autonomy;  
Integrity;  
Dignity;  
Vulnerability;  
Human body

**Summary** This article is an analysis of the basic principles of autonomy, dignity, integrity and vulnerability as the essence of the symbolic function of European biolaw and foundation of implied biorights. This approach considers the rights of the individual to her own body as human rights. The methodology is a critical hermeneutical analysis of the presuppositions of ongoing legal practice in the symbolic function of principles as the foundation of law. Regulation of biomedical problems is an exercise of reflective legal and legislative judgment guided by basic principles and based on the symbolic universe of protection of the human person in biolaw. The bioethical ideal of respect for patient autonomy is in law by the concept of informed consent the basis of self-determination. Furthermore, the principles of dignity, integrity and vulnerability are becoming increasingly important as legal principles. In this sense, they are not only important legal principles but also strong ethical symbols of humanity because they constitute necessary concerns for the human person in bioethics and biolaw. This is the case of the development of human rights to include rights in relation to the human body and its parts. This development evolves in a principle-based symbolic conception of law behind the system of pragmatic and positive law. Here emerges a special sphere of protection of human beings, between person and object for technological manipulation. The concepts of non-commercialization and anonymity of donation of human body parts are important supplementary ideas. These are dominant but still controversial principles that have a symbolic dimension in the sense that they refer to a vision of humanity in tension with sub-humanity and trans-humanity in the

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development of biomedical technology. We can observe in Europe's present legislation and law-making on bioethics and biolaw a kind of legitimacy crisis of law with regard to the definition of the human body. Therefore, it is necessary to be aware of not only pragmatic legislation but also to develop biolaw as a symbolic narrative of fundamental values in the perspective of basic ethical principles of concern for the autonomy, dignity, integrity and vulnerability of the human person. This approach has been the basis for conceiving the function of the body between person and technology in biolaw. Here, we can see that the body has a double status, being between subject and object, so that the human body appears in terms of the symbolic function of the human body as indicating a concern for protection of all persons in the present and the future of humanity. Based on interpretations of legislation and legal practice in European countries, we can define the concept of humanity in biolaw as a principle-oriented and symbolic legal thinking founded on respect of the autonomy, dignity, integrity and vulnerability of the individual human person in confrontation with biomedical technologies. This is also the foundation of a sphere of protection of fundamental rights of the human person in bioethics and biolaw. The body has, as a symbolic object, a special position in a specific biomedical sphere of legal justice that also includes future generations of human beings. The new biorights include the rights of individuals over their bodies, at the same time, there being limits to these rights imposed by the state. The intervention of the state in the human body is accordingly taking place in a symbolic space between state "biopower", or the state's belief that it has ultimate and overarching jurisdiction over the human body, and protection of the privacy and dignity of the human body in legislation and law-making. The appropriate guiding vision in law of humanity, expressed in the symbolic function of biolaw, should be a humanism that values all aspects of the person, including the human body and all aspects of humanity in order to be sure that there will be in the future optimal human function and genuine, authentic human life on earth. A symbolic nature of biolaw emerges in a reflexive stance with respect to biolegal principles, giving rise to thought having a deeper second meaning with strong impact for respect for humanity. This can form the essence of a symbolic protection of the humanity of the human person. It emerges through the respect for basic ethical principles of autonomy, dignity, integrity and vulnerability applied to biolaw, legal practice and legislation about protection of the human body in biotechnology and biomedicine.

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### MOTS CLÉS

Bioéthique ;  
Bio-droit ;  
Autonomie ;  
Intégrité ;  
Dignité ;  
Vulnérabilité ;  
Corps humain

**Résumé** L'article présente une analyse des principes éthiques fondamentaux d'autonomie, de dignité, d'intégrité et de vulnérabilité comme l'essence de la fonction symbolique de la bioéthique et du bio-droit européen et aussi de la fondation de ces bio-droits impliqués dans ce droit européen. Cela est montré dans la considération des droits de l'individu à son propre corps comme des droits de l'homme. La méthodologie est une herméneutique critique d'analyse des présuppositions de la pratique juridique dans la fonction symbolique des principes comme le fondement du droit. La gouvernance des problèmes biomédicaux est considérée comme un exercice du jugement réfléchissant et du jugement législatif informé par des principes fondamentaux et fondé sur un univers symbolique de protection de la personne humaine dans le bio-droit. L'idéal bioéthique du respect de l'autonomie a été introduit dans le droit par la notion de consentement éclairé comme le fondement d'autodétermination. En plus, les principes de dignité, d'intégrité et de vulnérabilité deviennent plus en plus importants comme des principes juridiques. Dans ce sens, ils sont plus que des principes juridiques et aussi des symboles forts de l'humanité. Cela se manifeste dans le cas du développement des droits de l'homme pour inclure des droits par rapport au corps humain et ses parties. Cette approche peut être considérée comme une conception symbolique du droit fondé sur des principes qui se manifeste derrière la conception pragmatique et positive du droit. Une zone spéciale de la protection des personnes humaines entre personne et choses peut être définie. Les principes de la non-commercialisation et de l'anonymat de la donation des parties du corps humain sont des idées importantes. Ces principes sont généralement reconnus, mais ils sont quand même toujours des principes controversés qui peuvent être conçus comme des visions de l'humanité de l'homme et de l'humanité en tension avec la sous-humanité et la trans-humanité dans le progrès de la technologie biomédicale. Nous pouvons également observer une sorte de besoin de légitimité concernant la définition du corps humain et c'est pourquoi il est nécessaire de développer

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