Bioethics, the Council of Europe and the Draft Convention

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Rapid advances in biology, biotechnology and medicine have increased the need for informed discussion, debate and analysis of the problems which they generate. The Council of Europe has a long and distinguished tradition in this field, issuing guidelines and recommendations on a wide range of issues arising from medical developments over a number of years. It is fair to say that their comments have authority both within the jurisdictions of the member states and also serve as valuable models outside that area. In this most recent Draft Convention, the Steering Committee on Bioethics (CDBI) tackles some of the most urgent issues arising from bioethics, urgent not least because the pace of development is running far ahead of our apparent capacity to identify problems and our framework for controlling them.

Perhaps not surprisingly, then, the preamble to the Draft Convention sets a somewhat gloomy remit for members of CDBI. Recognition is immediately made of the fact that advance does not always bring unsullied benefits and that the potential exists within any community for knowledge to be exploited and abused and for individuals to become pawns in a great scientific experiment. Thus, the Draft Convention at the outset recognises that the “...misuse of biology and medicine may lead to acts endangering human dignity ...”. For this reason, among others, the Preamble encourages the promotion of public debate and awareness and exhorts individuals to remember both their rights and their responsibilities.

This last reminder sets the scene for what follows. Although international Declarations tend to focus on individual rights, the aim of this one is also to reinforce the fact that rights do not exist in a legal, social or spiritual vacuum. Rights also bring with them responsibility to others and to the community in which we live. That this is so inevitably means that a balance requires to be struck between what we can do and what we should do. However, at no stage is the Draft Convention moving from the tradition of the supremacy of the individual. Article 2 states clearly that “the interests and welfare of the human being shall prevail over the sole interest of society and science.”
This is, of course, the traditional and oft-repeated reminder that individuals must not be used as a means to an end. However, and also traditionally, this apparently clear-cut statement begs a number of questions. Who, for example, is a human being? This problem was one which taxed the drafters of numerous international statements, for example the United Nations Convention on the Rights of the Child, and its resolution is probably one of the more complex of tasks. Religious, social and legal traditions vary as to the rights and interests of, for example, the embryo and foetus, with some according human status from the moment of conception and others from the moment of birth. Still others walk an uneasy line between the two.

Yet, and this draft Convention does not take us any further towards an answer to this question, it is unarguable that an agreed resolution of this question has seldom, if ever, been more urgently needed. Much of the development in biotechnology relates directly to the embryo/foetus and many contemporary dilemmas concern those at the end of life whose capacities are lost but who remain alive for legal purposes. As health services are increasingly stretched and as infertility treatment develops exponentially, the status accorded to these (and other) groups becomes a matter of increasing interest both individually and politically. Perhaps surprisingly, this is not directly tackled in the draft Convention, although that it is an issue is directly recognised in the explanatory notes which accompany the draft. Noting that no other Convention has been able to reach an agreement on what it is to be a human being, they leave the definition to national laws, whilst agreeing to “construe the expression broadly, covering both the connotation of individuality and that of membership of the human race”.

In analysing a document such as this, it would be all too easy simply to pick holes in an unconstructive manner. Given the nature of consensus-driven documents, analysis of each article would inevitably result in an exercise in nitpicking which we do not believe to be fruitful. In any event, it must be remembered that this is the mother document – protocols will follow which pick up particular issues and flesh out the bones of this draft. Comment must, in some ways therefore, be constructed with this in mind. However, there are some broad issues which can be addressed and it is to these that we now turn.

As we noted earlier, documents of this sort represent the outcome of a process of discussion, negotiation and compromise. The compromise is, of course, not just between the parties to the debate but also between different interest groups. Often, a direct result of this is the insinuation of conflict into the agreed statement, conflict which needs to be highlighted. There are three main areas of vital significance which we take to reflect this concern, and these will be addressed in turn.