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From Human Rights to Person
Rights: Legal Reflection on
Posthumanism and Human
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From Human Rights to Person Rights

Legal Reflections on Posthumanism and Human Enhancement

Abstract: In the intersection between law, science and technology lies the debate on the overcoming of the boundaries of the biological structure of the human being and its implications on the idea of human rights, on the concept of person and on the conception of equality – being the latter a fundamental tenet of a democracy.

Posthumanism assumes a biological inadequacy of the human body regarding the quantity, complexity and quality of information which it can muster. The same occurs with the needs of accuracy, speed or strength demanded by the contemporary environment. Under such perspective, the body is considered to be an inefficient structure, with a short lifespan, easy to break and hard to fix.

The body, always seen as the locus for the definition of human, emerges as the object of a commodification process that seeks to exonerate men from their burden - by declination towards a virtual existence, totally free and rational - or to enhance them with bionic devices or drugs.

This issue has already been the subject of attention by many scholars like Savulescu, Rodotà, Broston, Fukuyama and even Habermas.

Therefore, the aim of this paper is to seek, by criticism and revision of the positions on the foreseen problems of this process, an adequate theoretical approach on issues like the concept of person and its connection with the idea of human rights in order to promote the fundamental statement that all men are equal without disregard to the values of diversity and personal identity.

Keywords: Posthumanism; Human Rights; Equality; Concept of person

I. Posthumanity and human rights

A posthuman future, once a subject of the cyberpunk literature and science-fiction movies, is becoming an issue of interest and debate for many scholars. The advances and foreseen development of genetic engineering, bionics, artificial intelligence and pharmaceuticals are a contemporary concern regarding its impacts on the idea of humanity and, for extension, particularly in law, in the idea of human rights.

The central idea of posthumanism is the principle of self-directed and conscious evolution. Such principle asserts the conviction that it is not only possible, but desirable, to decide our evolutionary destiny both as a species and as individuals through the use of technology, which means enhancing the human biological make-up.

Thus, the human enhancement would be a process of overcoming the human biological stage of evolution towards a posthuman stage, in a collective perspective, or of improving the biological structure of one's body, in an individual perspective. The body, always seen as the *locus* for the definition of *human*, emerges as the object of a process that seeks to exonerate men from their burden - by declination towards a virtual existence, totally free and rational, currently named singularity - or to *enhance* them with bionic devices, drugs or genetic engineering.

Before this issue, as Rodotá¹ points, stands out a question about the extension and fate of some fundamental rights historically identified as “human rights”. Can the transition towards a posthuman condition undermine such rights (believed to be grounded on a shared human nature)? Words like “commodification” or “eugenics” immediately pop up and a serious concern about the equality emerges.

As one can see, the first foreseen problem assumes that the philosophical foundation of a category of fundamental rights, known as “human rights”, depends on the idea of a “human nature”.

The second great concern would be that the very idea of political equality is based on an empirical assumption of natural equality of men. Underneath the idea of equality of rights would be the belief that we all have a human essence, despite some small differences such as skin color, beauty or intelligence. This would be the guarantee that all individuals have intrinsic value and, therefore, the heart of political liberalism. Fukuyama², better than no other, express this concern while questioning which rights will these enhanced creatures claim and, more importantly, which rights they may have when compared to those individuals who have not been modified.

Basically, the two exposed apprehensions depend on a controversial link between human rights and a shared human nature³.

II. Human rights and human nature: a controversial link

As mentioned, the two central concerns – about the idea of human enhancement and a posthumanity condition – seem to endorse a normative cognitivism derived from the idea of human nature or human essence.

¹ Stéfano Rodotá, *Il corpo e il post-umano*, 2008, 15 (yet unpublished).

² Francis Fukuyama, *Our Posthuman Future: consequences of the biotechnology revolution*, 2002.

³ In this sense, Leon Kass, George Annas, Wesley Smith, Jeremy Rifkin e Bill McKibben, called by Nick Broston “bioconservationists”. See Nick Broston, *In Defense of Posthuman Dignity Bioethics*. 19, number 03 (2005),

But to establish a link between human rights and human nature is not that easy. Can human rights be considered grounded on a particular biological structure, that of the *homo sapiens* species? If so, these rights would relate only to a particular set of individuals or group: those who belong to the community of the human species. Moral universalism, and therefore, universal rights, would be justified as a normative derivation of this nature or essence of men which is incrustated on the biological substructure of the species.

This concern with the human nature or essence is a frequent theme in the literature on the ethics of human enhancement through biotechnology. However, there are few occasions where one can define what is meant by the term "human nature" and it is usually taken as meaning some kind of normative essentialism, through which it would be possible to derive a set of substantive rules from the biological constitution of human species⁴. One cannot, of course, accept this position, since it reflects, in itself, a secular version of medieval thought about the place and role of human beings in the universe.

The Sociobiological approach has in fact greatly contributed to this view on human nature⁵. Since the end of the 70's, its reductionist view of human beings, identifying them with their phylogenetic heritage, has spread.

The alternative presented to sociobiology is not less controversial. It is the explanation of human nature or essence through the idea of original incompleteness offered by the philosophical anthropology.

This view on human nature already has its origins in Greek mythology, such as in the Protagoras tale of how human nature is the result of the dialectic between Epimetheus and Prometheus. In short, Epimetheus attributes biological virtues to all animals, but when it came the time for men to receive their share, all the performative gifts were over and men were convicted to inadequacy. At this point, Prometheus intervenes giving men fire and technique. As a compensation for the biological incompleteness another dimension is given to men, that of culture.

This idea also pervades the thought of Desiderius Erasmus, in the *Oratio pro Hominis Dignitate*: Man was designed as a being that can be determined freely and choose his own destiny. Its hallmark is the fact of not being equipped with fixed properties such as animals are and, therefore, not constrained by any relationship with nature.

In fact, this Greek myth leads to two very different tendencies on techno-science and human nature.

⁴ Allen Buchanan, Human Nature and enhancement, *Bioethics*, 2,3 issue 3 (2008)

⁵ Roberto Marchesini. *Il tramonto dell'uomo: la prospettiva post-umanista*, 2009.

With emphasis on Prometheus punishment and influenced by the sociobiological approach, the first tendency looks at the relationship between man and technology allowing for a strict separation between nature and culture. The technique is compared to a glove to be put over human nature (the biological basis) amplifying its operational capabilities, but without contaminating or compromising its integrity. The shift of boundaries between nature and culture leads to the sin of *hybris*. The idea of nature is connected to the idea of purity, innocence, no contamination by culture or technique. In this vision, which can be called hyperumanism, two problems emerge.

First, it supports a vision of simply reactive, condemnation and rejection of new pervasive technologies of the body (or of human nature) called biotechnology. A reaction close to Luddism.

Second, the body is a sanctified, pure, immaculate body. It, therefore, must satisfy a prototypical model shared by the community in which the person must fit. The “different” takes the form of “deviant” and many ways of conforming one’s own personal physical identity are, therefore, marginalized, representing a menace to the idea of fundamental rights, especially one’s right to his or her own body. In fact, the idea of a subjective right to our own bodies is reduced to an objective model of preserving body integrity.

Considering that Human rights must play a role in the protection of minorities and singular conceptions of the good, to shape them from this idea of human nature or essence doesn’t seem adequate.

The second tendency emphasizes the idea of biological incompleteness. The man, primitive, lacking adaptation, without any specialization, biologically inapt, assures his central place and role in the world through the reverser effect of culture on nature ⁶. In this vision, which can be called transhumanism, the myth of incompleteness encounters Decartes dualism, which emphasizes the dimension of the *cogito* when it comes to the idea of human nature and gives rise to the feeling of disregard to the biological body, a mere burden to be carried, a prison to the human essence ⁷.

Here, the idea of boundaries between the human biological basis (nature) and technique (culture) - the concept of the sin of *hybris* - is totally abandoned in favor of a vision of the body as an object belonging to the sphere of nature and, therefore, absolutely submitted to the will of the subjectivity of which it is in service, but is not part of nor represents.

⁶ See Marchesini (note 5)

⁷ See Broston (note 3)

The consequence of this vision is the attitude of submission to and acceptance of technological developments without any limits, despite the risk of disappearance of the very idea of personhood through the concept of singularity. Such risk exists because without a body, that is, without an insertion in time and space, any sort of consciousness is unconceivable for the lack of interface with the world, with others and the very historical dimension that characterizes an identity, which is necessarily diachronic, and not synchronic like a computational algorithm, which is deprived of intentionality, though a system that processes information ⁸.

So, it doesn't seem easy to ground the foundations of human rights on the idea of a shared essence or of a shared human nature, especially if the purpose or objective is to strengthen their effectiveness.

III. The idea of person rights as an alternative to human rights and its link with the posthuman thought

The doctrine of human rights has been developed with a particular focus on the belongingness to the human genre. However, as a mere form of rejection of the positivist formalism of law regarding the category of "person" in the nineteenth century and the first half of the twentieth century. One can say, as a measure of rhetorical reinforcement aiming to avoid the exclusion of any human being from the universe of persons, which means to avoid the denial of dignity to any human being.

On dignity, thus, on the concept of person, lies the true foundation of the historically called human rights. As stated by Spaemann ⁹: "with Boecius the concept of person has become a *nomem dignitates*, therefore, a concept with axiological connotation. With Kant, who operates the connection between dignity and autonomy, 'person' becomes a central concept in the foundation of human rights".

Three distinct crucial co-related features can be identified on the concept of person: the rational self, the psychophysical identity and the feature of alterity, which means the openness to others or the relational aspect.

These three features put together generate, in time and space, agents able to elect ends or goals and to have interests and desires. They also entail the ability of such agents to reexamine and possibly abandon their goals and desires. The abilities themselves, and the person constituted by them, are previous to any end, interest or desire. When one talks about an interest or a desire, a subject of such interest or desire is assumed: a person.

⁸ Pietro Barcellona e Tommaso Garufi, *Il furto dell'anima: la narrazione post-umana*, 2008.

⁹ Robert Spaemann. *Persone: la differenza tra "qualcosa" e "qualcuno"*, 2007, 4.

It is also assumed that the identity of a person does not change with his or hers interests or desires. This separation between the person and its ends, interests or desires is what allows her to detach herself from the causal chain of events in which the past, as an empirical phenomenon, is immersed. Therefore, the possibility of electing ends or having desires is not determined by the causal chain of events so that the elected end or interest can be normatively attributed to the person. Ergo, a person is endowed of inherent dignity by the virtue of being able to, in relation with others, constitute for himself or herself an identity and to be able to pursue the ends or goals elected and valued from this identity.. In this process, the presence of an individualized psychophysical domain is essential for the understanding that his or her ends, desires, beliefs, or interests are elected separately from the aims, desires or beliefs of others and provides, in this manner, a stable platform in time and space for the construction of an identity.

These beings, who possess these characteristics in any moment of their existence, are ends in themselves and therefore endowed with inherent dignity. They are persons, and the so called protection of human rights or fundamental rights is a protection afforded to the free construction of a personal identity and the quest of one's own elected ends.

Admitting that all humans are persons does not mean, however, to concede that only humans can be persons. This kind of thought encloses the idea of what is a person - a concept of axiological entities opened to the world, to alterity and therefore to difference - in a self-sufficient ontology.

In fact, the coordinates within which those three characteristics are recognized have radically changed historically in a process of growing expansion of the universe of beings or entities recognized as persons (the opposite sex, the foreigner, the other ethnicity and, currently, all humans).

The idea that fundamental rights are grounded in the concept of person, rather than in human nature or essence, provides, therefore, a new approach to the problem of the man/technology interface or the process of hybridization between humans and machines or non-human elements.

Unlike the traditional approaches on the concept of person, which emphasize the feature of rationality or the feature of individualized psychophysical domain for the construction of an identity – despite the necessary co-dependence relation of the three referred features of the concept of person – the focus of the approach taken here is alterity.

In fact, the goal here is to recognize a process named by Marchesini ¹⁰as “anthropo(de)centrism”, meaning the removal of men from their claimed central position in the universe, a claim which has arisen with humanist thought. “Anthropo(de)centrism” also implies the comprehension of posthumanism not in a strict sense of an evolutionary stage, but as a new approach on man and his relations with the world. In other words, a humanism without anthropocentrism.

The quest for a human nature or human essence departs from an anthropocentric ontology that projects itself onto ethical and epistemological levels, according to which man would be a self-referred being, the measure for everything else and self-contained. Thus, from an anthropocentric thinking, a rigid separation between human and non-human emerges on an ontological dimension – the existence of a human essence that opposes itself to everything that is non-human –, ethical dimension – man, beholder of dignity, is the only moral agent and patient and everything else assumes an instrumental dimension – and epistemological – acceptance or refusal of cognitive objects by anthropomorphization or instrumentalization with basis on a simplifying categorial duality of human *versus* non-human ¹¹

The anthropocentrism here proposed is the substitution of the concept of human for the concept of person as the gravitational center of a system of references from which man relates with himself and the world.

With an axiological concept occupying the central position of such a system, a paradigmatic ontology based on the duality human *versus* non-human cannot be sustained in ethical and epistemological levels. Referring to the central subject here approached, this means that an ethical paradigm based on the idea of human nature cannot be sustained.

Considering that the concept of person presents within its features a dimension of alterity, and alterity can be defined as openness to the other and to the world, the centrality of the concept of person allows an expansion of the circle of recognition and the inclusion of possible non-human entities in an alterity relation as subjects, regardless of the fact that these entities do not belong to the *homo sapiens* species, do not possess the same biological structure or do not possess any biological structure at all ¹².

¹⁰ See Marchesini (note 5).

¹¹ Michelle Farisco, *Uomo – natura – tecnica: il modello postumanistico*, 2008, 58.

¹² Roberto Marchesini, *Alterity and the non-human, Humanimalia*, v1 n2, 2010 91-96.

Alterity – meant as a state or quality of what is diverse or distinct, and not only referring to those entities with whom is established a discursive relation – contributes in two aspects for the construction of a personal identity ¹³:

- a) Other entities as a basis for a confrontation from which emerges a subject.
- b) Other entities as orientation points in a dialectical polarity that can give support to the construction of an identity.

The relevant issue on this approach, based on the expansion of the circle of alterity, is the evaluation of what is different or divergent no longer as a form of contamination of or deviance from a human nature or essence. Differences are recognized plainly as “differences” and must be integrated to the process of construction of a personal identity as elements for confrontation and orientation. The “different” is recognized only as such, without axiological prejudice. This is the dimension of alterity implied by the concept of person: openness not only to the “other” but also to the world.

Hence, non-human alterity assumes a cofactorial role regarding the construction of a personal identity and no longer can the technique be compared to a glove to be put over human nature (the biological basis) amplifying its operational capabilities, but is integrated with it and constitutes it. This is the posthuman thinking here advocated: a person-centered proposal of interaction between human and non-human and also between nature and technique.

A man and a tool, for example, are taken as a hybrid system that represents more than the mere sum of the potentialities of each. The hybridization gives rise to potentialities that didn't existed before and man ends up transformed by the interaction or relation with the tool. The feeling of incompleteness is not a consequence of the biological constitution of man, but emerges from the relation between man and technique¹⁴.

Therefore, the ideas of nature and culture or technique are intertwined and when it comes to the definition of a biotechnology, it seems that every technology is a biotechnology¹⁵ due to the fact that it:

¹³ See Marchesini (note 12).

¹⁴ On this particular issue, see Andy Clark, *Natural-Born Cyborgs: minds, technologies and the future of human intelligence*, 2003; Andy Clark, *Mindware: an introduction to the philosophy of cognitive science*, 2001 and Andy Clark, *Being There: putting brain, body and world together again*, 1997.

¹⁵ See Farisco (note 11).

- a) modifies the perception of performative optimality and therefore, of biological incompleteness (in decades);
- b) modifies man's ontogenetical environment (in centuries);
- c) redistributes natural selection pressures modifying a population genetic pool (in millenniums).

For example, after the discovery of fire it has become essential for human survival. It also has modified the environment in which human genetic structure should fit and altered the shared DNA of entire populations by changing the process of natural selection. The same thing can be said of antibiotics or even of airplanes.

Hence the comprehension of human rights as fundamental rights of persons, not of human beings, clarifies where these rights are rooted: not on human nature, but in the dignity of persons being them ends in themselves and, therefore, on the freedom of constituting and developing a personal identity stemming from alterity. An anthropo(de)centered conception, focused in the concept of person, implies a reinforcement of the foundations of such rights as universal rights.

But one question remains: is human enhancement through technology able to menace the idea of equality among persons in such a way as to threaten political liberalism and the very idea of democracy?

IV. Human enhancement and equality

Maybe there is a strong argument against human enhancement. Not a sin of hybris or an appeal to human nature, but the claim that the social foundations upon which individuals see each other as equals can be eroded by enhancement procedures.

This claim assumes that any social cooperation system and the mutual recognition of individuals as persons depends on a so called "natural lottery" regarding health, intelligence, strength, wealth, social class and skills¹⁶. The fact that no one is responsible for its winnings or losses in this natural lottery and the indetermination of future results would be what allows the idea that all persons find themselves in a position of equality.

However, this claim also assumes a society organized upon pure conventional foundations in which consideration for the other and reciprocal assistance depends on a high level of recognition among its members that only could be achieved through sharing the same

¹⁶ Eva Orlebeke Caldera, Cognitive enhancement and theories of justice: contemplating the malleability of nature and self. *Journal of evolution and technology*, v18, issue 1, 2008.

biological basis and the possibility of receiving something in exchange. Social solidarity is taken as a convention and not as a normative assumption.

In this regard, the very concept of person implies solidarity duties as a projection of the dimension of alterity, that is, openness to others and to their differences. It is due to this alterity dimension, and not thanks to the myth of a “natural lottery” that we can accept differences in social class, intelligence and talent, among others. In fact, the “natural lottery” argument could explain equality on a fictitious context like Rawls’ original position. But in concrete situations, even though one can attribute responsibility to others for their winnings or losses, the mutual recognition as persons, therefore as equals, stands. The concept of person offers a broader way for mutual recognition for, due to alterity, equality derives from personhood itself: someone that is an end in himself and beholder of dignity, regardless of his social class, talents, skills or other differences.

The objection of “unsustainable inequality” to human enhancements or to the idea of posthumanity is also based on a wrong assumption: that the co-related features that characterize personhood are not taken as sufficient or adequate but are articulated with the idea of dignity, and therefore equality, in a gradual way¹⁷. It’s a wrong assumption simply because persons cannot be more or less ends in themselves. The concept of person is not gradual.

It must be noted that substantial differences of opportunity or differences that represent competitive advantage generated by enhancement are not qualitatively different from those differences already existing, like substantial differences generated by different opportunities on education which reflects and can be caused by differences in social class.

Therefore, the differences or the substantial inequality that might be generated by enhancement technologies can be compensated by measures of distributive justice, like affirmative action, if avoiding such differences is judged relevant, and not by imposing limits that transmutes a fundamental right as the free development of a personal identity and, therefore, one’s right to his own body on a mere objective protection of body integrity.

As one can see, there are no reasons to reject enhancement in general or in principle. Particular cases or specific enhancement technologies are, of course, in dispute.

V. Conclusion

The relation between human rights and the idea of human nature or essence, therefore, seems difficult and dangerous. Instead of leading to broader mutual recognition and acceptance of

¹⁷ James Wilson, Transhumanism and moral equality, *Bioethics*, 21 n8, 2007

differences, it promotes the emergence of paradigmatic ontologies that push the concrete realization of different forms of personal identity in the direction of transgression and marginalization.

To assume personhood and the concept of person as a basis for human rights – through the dimension of alterity – reinforces its character of fundamental and universal rights and the normative solidarity implicit in the idea of dignity.

Therefore, human rights are person rights, not a privilege of humans, regardless of the psychophysical constitution of a person in a near posthuman future.

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