

Organising democracy and techno-science: a challenge to “the brave new world”*

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The development of contemporary societies is deeply related to the progress of scientific knowledge and to its bio-medical applications.

However the differences that exist today in different countries and which makes so distinct, for example, the situation of Western Europe and the context of sub-saharian countries, can find their roots in history.

The political history-I mean the ideology and social organisation- is certainly concerned and may even be of a special interest if we keep in mind that the relationship between science and society is a determining factor of the social development.

As Mexico is at the very beginning of the common history between two worlds the « Old Europe » and the « New World », it is particularly relevant to raise here in Guadalajara in a comparative perspective the issue of life and freedom faced to the development of biosciences.

Regarding Europe, the present lifescience revolution was indeed facilitated both by the Enlightenment of the XVIIIth century and by the Industrial Revolution of the XIXth century. But today, we may fear that the political and cultural heritage of those centuries would be challenged by a Techno-Scientific Revolution and its socio-political consequences. The real power is no more in institutions controlled by the people and the nations lack capacity to solve alone problems that have become global.

The relevance of this reflexion is also true for Mexico. Looking back at the Mexican history we can wonder about the Mexican Revolution, ideology and practice ? We can ask the question what is left of it in the present context ?

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Broadly speaking, what can we say about the influence of science and the idea of progress in the reframing of the societies of this part of the world ?

Unfortunately, I am neither a political scientist nor a social anthropologist. I am only a lawyer with an experience in law policy approach in the fields of biomedicine, biotechnology and human rights both at national and international levels.

It is therefore as « a politically compromised lawyer » that I would like to present a few remarks with the objective that what we call today Bioethics can really encompass the preoccupations of our fellow contemporaries in the societies in which they live or struggle for life and freedom.

I will then keep in mind « la necesidad que la bioética debe ser un compromiso de todos ».

My first remark will be to raise the question how far life and freedom are concerned by the life sciences revolution.

Then, my second point will be to look at the existing tools we may use to facilitate a debate in society regarding these issues.

And finally, we have to wonder if our different societies have the capacity to integrate the potential changes deriving from the new technological Revolution and what political perspective this integration would bring : a « Brave New World » or a peaceful and equitable organisation of the world.

I. NEW INTERROGATIONS ON LIFE AND FREEDOM

The present controversies raised by the use of the new biotechnologies are so well known world wide—the human cloning issue or the biodiversity issue, for example—that it may seem useless to give other evidence of the challenge faced by freedom and life. But the fact that we have gained control of human life, nature and the environment does not give in principle a clear view of how life and freedom are affected.

Further analysis is needed which should give place to an interdisciplinary overview of our different societies. However some common trends can already be mentioned.

The social fear of techno-sciences is certainly the most visible aspect of these trends. As we underlined it

in 1994 ago in a previous conference held in Mexico, this fear is the evidence of deep social changes to which the biosciences Revolution has greatly contributed. And these changes have forced societies to move from bioethical awareness to biopolitics and biolaw.

Generally speaking, the individuals have won more liberty, at least potentially, but these new areas of liberty imply new types of social relationship which put individual freedom under the limits of a new social control.

On one hand, new hopes were created for the benefit of human life, specially in the field of medicine but, on the other hand, accessing to this progress has social implications and demands a collective approach that questions the organisation of our societies.

Let us examine those two points.

A. a greater individual autonomy for a better or a greater social control ?

Two major changes reflect the greater autonomy of the individual.

First, this is the decline of the paternalistic model that used to govern the patient-physician relationship.

Second comes the restructuration of the family bounds.

In the meantime the genetic revolution appeared to be more ambiguous because it could lead to impose a stronger social control on individuals but also on some groups of population, creating therefore new types of discrimination.

1. The new medical relationship

A more balanced relationship between patients and physicians is certainly the result of the present (r) evolution. It is also a sign of a better education of the people but also of a lower social consideration for the « magic » power of the physicians. This may be the consequence of the market society which has transformed the physicians into health care providers and the patients into consumers buying medical services.

However this new approach acknowledges the importance of the concept of autonomy of the patient, a concept which should benefit to everyone, including children and vulnerable persons.

Therefore comes the idea adopted in different legislations that those who cannot express themselves should be assisted by a proxy or have the possibility to give prior instructions for their medical treatment.

A step forward in this recognition of the right to autonomy, which includes the right to refuse a treatment, concerns the issue of deciding the moment of death when someone is ill and at the end of his/her life.

At the turn of this millenium, a few countries have decided to allow assisted suicide and euthanasia. They have defined in their legislation specific conditions for this procedure.

Moreover, in a case of assisted suicide submitted to its jurisdiction, the European Court of Human Rights ruled in 2003 that the principle of autonomy was the founding value of the right to privacy protected under article 8 of the European Convention on Human Rights.

Although the Court in examining the Pretty case rejected the claim that the attitude of the British Government violated article 8, the Court nevertheless considered that the definition of the right to privacy included the notion of quality of life, specially taking into account the situation of the claimant who was suffering from a lethal disease which put her at the end of her life.

Another aspect of the new medical relationship is certainly the greater role played by the legislation and the jurisprudence to establish a legal system to compensate medical damages.

A similar trend in favour of a greater and better autonomy has also developed in biomedical research involving human beings due to the abuses which were publicly disclosed after the second world war. As more research of this type tends to take place today in countries which have no effective legislation in this field, the issue of protecting the autonomy and integrity of the population concerned is still very acute.

Should we deduce that the freedom of researchers—which is in our view a collectively supported activity involving the major research institutions and the pharmaceutical industry—will be sacrificed to an absolute respect of the individual autonomy of members of vulnerable groups ?

The on-going discussion at the World Medical Association on the question of research involving the use of placebo in developing countries illustrates the risk of adopting a too contextual ethics which would result in discrimination in applying the principle of autonomy.

If those who benefit from the right of autonomy should be the main actors of this right, it is our view that this right can only be exercised under the protection and limits determined by law.

2. *The reconstruction of the family*

Family relationship is another area which was considerably affected by the lifescience Revolution.

Although the new reproductive technologies are not the sole reason for these changes, they largely contributed to their realisation and they even posed new questions about the future of the family.

First they confirmed what is regarded as the new sociology of the family. This is the end of the traditional « bourgeois model » which imposed marriage and man's domination. Today, individual's will and the search of personal happiness play a central role in deciding the composition of the family. Divorce, cohabitation, family recomposition, monoparental families are more and more frequent. They appear as alternative references and do not bear any more bad moral connotations.

The most common feature among this diversity of models is the wish of the individual to decide about procreation.

The reproductive technologies—abortion and contraception on one hand, the assisted reproductive techniques, on the other hand—have secondly been the tools of this revolution which has separated sexuality and reproduction and which allowed women to make their own reproductive choices.

Third, the new reproductive technologies introduced for the first time in human history a third party, the physician, in the privacy of the reproductive process. From « natural » the process then becomes « artificial » and requires more social involvement.

Finally, the reproductive technologies, while using gametes donation, surrogacy and eventually cloning, have opened the Pandora box of new parental bounds which, if socially accepted, could deeply change our anthropology. Single persons but also homosexual couples claim for an equal right of access to those technologies ? Following this approach a few countries have moved to legalise the benefit of marriage or cohabitation for homosexual couples and to allow those couples to adopt children.

In 2003, the European Court of Human Rights has gone a step forward in the legal protection of transsexuals by deciding that when the change of sex has been accomplished legally, the concerned persons should enjoy a full right to marriage with a person of their former gender !

B. The challenge for society

We are aware that these changes may appear far away from the preoccupations and the social cultural context of countries outside the limited number of those in which the new reproductive technologies are currently practiced.

However if the situation may greatly differ from one group of countries to another, they are still some good reasons to look closely at the experience derived from those practices.

One is that European countries, for example, did not expect that those changes would have taken place so quickly. It means that changes of this type may also happen very quickly in other areas of the world. « Gouverner, c'est prévoir » says a French motto and it could therefore be appropriate to look more closely at the consequences of those social changes.

A second reason lies in the fact that the lifescience Revolution does not bring only socio-cultural changes. As we mentioned it already it also gives support to the claim and development of new individual rights.

Therefore, this is a challenge for all our societies to tackle with these new requests. The challenge can be great if the structures of the society have limited experience in social debate and democracy. The challenge is nevertheless acute in the so-called old democracies because the discussion on bioethical issues implies a confrontation of ideological, moral and cultural values and the search of some common agreement.

II. THE CHALLENGE OF THE PUBLIC DEBATE IN BIOETHICS

It is not sure that the traditional institutions and procedures of the democratic system will always have the full capacity to organise a real public debate on bioethics issues. But, what are the conditions and tools for a pub-

lic debate on key issues regarding the lifescience Revolution. Prior to this reflexion, it is necessary to say a few words about the usefulness of socio-technical controversies.

« contrary to accepted ideas... public controversies have real social productivity both as a means of exploring the stakes and as a way of learning the arguments and the scenarios about them. Moreover, far from demobilising, controversies open the scope of collective actions. They are an opportunity to build identities and actions ».

A. The conditions of the public debate

Let us enter now in the discussion about the conditions which contribute in the public debate.

Bernardo Houssay, wrote « La ciencia no tiene patria, pero el hombre de ciencia la tiene » (carta a un joven investigador que emigra 1943). We will keep in mind this idea to show that the social conditions are part of the scientific development and of the debate derived from it.

1. The idea of progress

A positivist approach to science and technology has influenced over the past centuries the construction of a political and economic model in Western European countries and has also been adopted by Japan during the Meiji era to prevent the country from foreign domination.

The idea that technology can be used by a Nation to reinforce its political independence is largely endorsed by Latin-American countries « desde el periodo que en Mexico se domina la Reforma y en la Argentina Organizacion nacional hasta la crisis de 1930 ».

« En Mexico, por ejemplo, el renacer de la actividad cientifica suele datarse en coincidencia con la creación, en 1853, del ministerio de Fomento, es decir, cuando las tareas y objetivos comienzan a replantearse en forma organica ».

The organisation of the educational and academic institutions plays also an important role in the dissemination of the scientific culture. « En Mexico, por ejemplo, el Primer Congreso Cientifico Mexicano en 1912 puede considerarse como punto final de la cien-

cia prerevolucionaria y punto de arranque del Mexico moderno »

Recordemos que el gobierno de Benito Juarez promulga (2 de Diciembre 1867) la Ley organica de Instruccion Publica, y que de a ella se vincula el decreto del 14 de Enero 1869, entre cuyas finalidades observemos solo la tercera : « Popularizar y vulgarizar las ciencias exactas y las ciencias naturales ».

The bounds between the political values and the educational system have also been great in France when the Republican regime was reestablished at the end of the XIXth century. School masters were certainly those who disseminated the best a rational culture with some of the most commonly accepted republican values. The progressive extension after the Second world war of the highest educational institutions (universities and scientific colleges) to a greater number of students, whatever their social status was, completed this policy of cultural integration.

But this integration is not simply the result of new social values symbolising the Modernity. It is also the consequence of a pattern of living deriving from the industrial society and which provides us with new products and services.

2. A new pattern of living

The invention of taylorism and mass-production has made possible, at least in industrial societies, the appropriation of the new technological products by the individual consumers : cars, washing machines, television, personal computers, cell phones are now part of our life style.

In the medical field, major medical discoveries have made drug producing a true industry while the techniques have conquered the health institutions and transformed physicians in health care engineers.

The new medical age, for which health is regarded as the most eminent value, is presently facing a major crisis.

While in the richest countries, the individuals are expecting more « miracles » from their physicians, creating then new centers of power, in developing countries, the great majority of the population is still waiting for a decent access to primary health care. Paradoxically, health financing and scarce resources management are everywhere key issues because some

are spending too much while others are searching for social solidarity.

It explains why health care has moved from a social issue to a political one which is substantial both for democracy and international cooperation.

B. The present nature of the Bioethics debate

The ethical issues raised by the development of biomedicine and biotechnology are just part of this global approach. They provide with interesting examples about the capacity that our societies have to deal with it.

The social debate on the life sciences Revolution may be characterised by a set of trends : dissemination, appropriation, confrontation, institutionalisation, rule making and internationalisation.

1. Dissemination

Although Bioethics is born in the early 1970's in the USA, the new technologies which challenged at that time the practice of medicine (biomedical research on human beings, organ transplants, life sustaining treatment, new reproductive technologies...) have slightly migrated to other countries, recreating there in a new social context, the « face à face » between those technologies and the ethical values.

But the dissemination did not only affected the medical practice ; it also raised a social awareness about the new opportunities offered by the recent development of biomedicine. The reason for such a change can certainly be found in a better general education of the public and in an easiest access to information, including specific information on medical and scientific knowledge. To complement the popular newspaper style of information, a lot of initiatives appeared : the elaboration of educational programs at colleges and universities, post-graduate training offered to professionals, and also conferences for the general public. Specific academic courses have also been launched in Bioethics and we should particularly mention here the initiative of the Pan American Health Organisation (PAHO) to create in 1994 a regional program which is the first initiative of this type existing for a whole continent.

Because they are better educated, the individuals express more claims while a market oriented society tends to satisfy these new desires, including the quest for a better quality of life.

Concerning health professionals they are now invested with enormous power on our life because of the control they have acquired on human reproduction and genetics. As a counterpart, they are also regarded as responsible for the risks that may affect our health : the HIV contamination of blood products, the « mad cow » disease (BSE) or simply the failure of a surgical intervention. Finally what they have gained in technical power over our lives, they have lost it in social trust and consideration. On one hand, traditional ethics is often rejected by the patients as too paternalistic and, on the other hand, the medical profession is not viewed any more by the patients in a capacity to suscite a new and up dated ethics that will fit with a pluralistic and individualist society.

Our awareness of bioethical issues has opened our eyes on the complexity of the social questions related to the health field.

2. *Appropriation and confrontation*

The appropriation of those issues by the different actors concerned is a possible reply to the search of a between balanced relationship all the actors. In the overview of the first bioethical decades that we presented in 1994 in Ixtapa CIOMS conference, we already insisted that in bringing « to public attention, for multidisciplinary discussion, ethical issues raised by biomedical advances, ... (the) « founding fathers » led to the revival in the professions of concern about ethics, and to the establishment of new groups ».

Clearly today, it is widely recognised that bioethical issues are not solely physician's concern. They are a matter of discussion for the community at large because they embrace the question of individual rights, family organisation, and more broadly the perspective of possible changes in our species and in the environment.

Appropriation also means that the cultural context in which the medical technologies developed should not be neglected.

Because techno-science tends to stimulate a standardisation process, some people fear that there is a high risk to induce a kind of cultural globalisation that will give little consideration to local socio-cultural approaches concerning what is life and death, and how the family should be organised, for example.

In the same perspective Bioethics has raised a significant movement of appropriation among populations or groups that may be particularly at risk. The new

reproductive technologies question the role of women in society. On one hand, those technologies can be viewed as a tool for emancipation while, on the other hand, because they imply the medical production of eggs and embryos, they can be considered as a new type of domination over women.

Contraception has also been used by some national health policies (it was the case in Mexico during the 1970's but we can also mention the Chinese example) as a means to allow a better demographic control in order to improve the socio-economic development.

In certain circumstances some groups and communities may be particularly vulnerable (children, handicapped people, persons with a different sexual orientation, ethnic groups, prisoners...) and may face discrimination or even special injuries.

As Pr Kauser S Kahn underlined in the Ixtapa conference « Health or medical ethics may not aim to change the world but does strike to protect the vulnerable ». This is probably an answer to the question she raised : « how to counter the dominant mode of behaviour of those in power ». Let me add another possible reply : appropriation should also be a way to disseminate the power and to give more to those who are only involved in the life sciences Revolution because they are regarded as patients and consumers and not yet as full citizens.

Another form of appropriation is geo-cultural and in some way geo-political. If bioethical issues have finally reached Europe and other continents, it does not mean it should be approached in the same way as in the USA.

If what we may call the « USA made Bioethics » has some influence in Europe, a specific approach emerged in the Old continent as a result of different social, political, cultural and philosophical factors.

While Asian countries have not yet reached the step of an integrative regional Bioethics, it is important to quote the numerous initiatives that have permitted the appearance of a broad bioethics movement in Latin America. This movement is largely supported by a common culture and language but also by a political perception of Bioethics which may reinforce the moral independence of Latin American countries in their fight for human rights, democracy and social justice.

Bioethics appropriation may be a soft way to counter the influence of the USA in the region. This is anyway the true meaning of the discourse of Pr Vol-

nei Garrafa when he proclaimed as President of the 6th world congress of Bioethics in 2002 in Brasilia that « this uneven world in which some have the possibility of feeling pleasure while it is left for the others the probability of being immerse in suffering, configures a panorama that in our understanding justifies an ethics of intervention orientated to the search of equity ». We may deduce from these remarks that if « ethics is not lost in the sea of verbalism » appropriation and confrontation will give a new role and responsibility to the « civil society ». But it is an interactive process as observed Guillermo Soberon, Executive President of the Health Mexican Foundation, when he said that « the profound changes now taking place in the Mexican social order are posing significant challenges and demands for changes in the « civil society », and the relationship between government, institutions and civil society ».

Changes in political strategies should also be a normal consequence of the bioethical discussion simply because in democratic societies peaceful confrontation should not be an illusory process but it should bring some effective change.

But new strategies imply new institutions and the life science field has been a good cluster for such institutions over the past decades.

3. Institutionalisation

As appropriation and confrontation give the evidence of the existence of a rhetoric in Bioethics which is associated with the expression of social requests and needs, sometimes strongly conflictual, institutionalisation shows how new links can operate within the « civil society » and between this society and those in power and how new strategies may be endorsed in a way that makes them more socially legitimate.

Ethics committees are certainly a key reference of the institutionalisation of the Bioethics discussion. However the present enthusiasm for ethics committees, which consists in setting up an ethics committee every time a n ethical issue has been raised, needs to be balanced by a better analysis of the role and characteristics of such committees ;

First, we have to remind that ethics committees are fora of discussion which implies that they should come in due time when the social ingredients for the discussion are there or ready to be there. If a committee

may push the discussion forward, it cannot create it if this discussion has not been made socially possible.

Second, the credibility of ethics committees relies, whatever their mission is, on the respect of some founding principles : multidisciplinary — Bioethics is not the physician sole concern — pluralism — it is to take into account the different approaches and opposed arguments — and independence — ethical choices should not be dictated by a mentor but they have to be the result of a social debate —

Some would add as a complement to independence that ethics committees should not have any authoritative power, except a moral authority.

Third, the purpose for which ethics committees are set up is also introducing more complexity in their.

We have indeed to distinguish between committees that do participate in the social regulation of cases regarding medical and scientific practices with the committees in charge of fundamental societal issues.

The first category includes mainly local or institutional committees concerned with the practice of medicine or research. They are either hospital committees in charge to examine clinical cases brought to them because the medical decision is facing ethical dilemmas. (to forego life sustaining treatment, to select patients for an organ transplant...) or research committees reviewing protocols according to the Helsinki Declaration and other pertinent rules. We find in this second category both national bioethics commissions, such as the « Commission nacional de bioetica » in Mexico, which activity was greatly developed by Pr M Velasco Suarez, and international bioethics committees such as Unesco IBC.

The international committees are involved in a debate which challenges not only individual and community interests but also States interests. It means that Bioethical controversies are sometimes a way to hide political disputes.

In principle national bioethics commissions are supposed to be real social fora. But in practice they may elude the debate for different reasons. Either the commission has a specific mandate on particular issues such as GMOs which may create difficulties for every member of the society to formulate a view on a technical matter; either the debate is confiscated by the academic community and/or the government and the commission is only an alibi.

Finally the commission may have simply limited means and capacity to function and to communicate with society members and groups.

In our view, those remarks, among others, may not lead to express disapproval of ethics committees in all circumstances. They rather may serve to give bioethics commissions the rules and facilities they need to better fulfil their task.

We also believe that the bioethical debate should give place to other institutions: the traditional institutions of the democratic society which includes the institutions and groups which may be representative of the « civil society ». In old democratic societies, it may offer a revival to « sleeping » institutions. Parliament is often treated as a voting machine for the only benefit of the government legislative program while physicians' associations are sometimes very conservative and reluctant to participate in public discussion.

In trying to develop democracy in the bioethical field, we should stimulate a more opened public debate. For example, the experience of former soviet countries in Central Europe has shown that the bioethics debate raised major issues: the reform of the health system, to deal with sensitive questions that were regarded as taboos (abortion, psychiatry, aids). It is therefore an incitement to rediscover the way of a democratic discussion: raising arguments publicly in political arenas, discussing them in a manner that would point out the various interests concerned and adopting choices that may be easily understood, even by those who do not fully approved them.

The normative process and the internationalisation of rule making, which is part of it, would therefore be a good illustration to test the capacity of our societies to offer an alternative to the « Brave New World ».

III. IS THERE AN ALTERNATIVE TO THE « BRAVE NEW WORLD » : FROM ETHICS TO LAW ?

Ethics and law have different scopes and bioethics should not be considered as the first step towards a legislative process. Nevertheless, the definition of the social rules implies that we question the role of the law regarding the challenges raised by the development of biomedical sciences.

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PRÉSENTATION FAITE À LA MEXICAN BAR CONFERENCE IN GUADALAJARA

Tal confrontacion entre el mundo de derecho y las ciencias de la vida conlleva importantes implicito: el temor de que abra el camino a enfrentamientos liberticidas o la esperanza de que logre apaciguar los temores sociales causados por la intervencion humana en el ser vivo.

Esperamos, entonces, que el derecho e su actores organicen un orden juridico capaz de gobernar y, por ende, de reconocer las actividades relativas a la ciencias de la vida. La demanda de derecho es una demanda de orden y de paz social, que implica la busqueda de un equilibrio, asi sea evolutivo.

Esta demanda, que linda con la angusta existencial, esta acorde, sin duda, con la crisis modernista que vive nuestra civilizacion y, « arte en busca de sabiduria », « la obra del derecho podria no entenderse si, al avanzar en la reflexion, no defieramos esa sed de derecho, esa linea discontinua que han trazado los textos y las reflexiones juridicas » en respuesta a ella y los limites, naturales o temporales que ella encuentra.

A. La sed de derecho

Esta sed nace de la situacion de nuestras sociedades actuales, que « mucho es esfuerzan per encontrar los referentes que permitan establecer la velocidad real cual cambian las cosas ».

Mientras la « modernita » construia su inmenso esfuerzo cognitivo sobre la creencia racional en las virtudes de la ciencia y la fe en el progreso de la condicion humana, el « posmodernismo » confirma nuestra pertenencia a una sociedad del cambio pero nos dera frente a una situacion paradójica: « las mutaciones aceleradas que vivimos no tienen salida racional unitaria ».

En lugar de una organizacion estructurada y duradera, la incertidumbre queda atrapada en una constelacion de redes flexibles, localizadas, retroactivas? Alcanzado el tambien por esto fenomeno, golpeado por la perdida de sus atributos tradicionales, en particular el espiritu de sistema, el derecho es convocado, mas que nunca, para ofrecer sus referencias, sus metodos, o simplemente su *savoir-faire*.

La atraccion por el derecho se debe a lo que el dice, la manera en que el lo dice y la percepcion que de el se tiene.

1. La búsqueda de una palabra

El debate sobre el « aumento del saber y del poder que los avances de la ciencia y de la técnica proponen, en bruto, a la sociedad » ilustra perfectamente el peso deso que le espera individual o colectivamente respecto del derecho :expresar valores, proclamar principios, reconocer derechos, imponer límites.

Comportamientos individuales y practicas sociales —esten o no dentro de las normas— nada escapa a esta reivindicacion del derecho sustancial.La construccion, que surge entonces, es la de un derecho « a medida » y curiosamente, este convive con la emergencia de un derecho comun de la ciencias de la vida.Las leyes llamadas de « bioetica », como los textos internacionales, son concebidas en base a este modelo binario : proclamacion de principios generales y debilitamiento de normas pariculares, de las que algunas no du dan en decir que vacian a los principios de sentido.

Frente a la desconsideracion de las ideologicas, al rechazo o a la diversidad de las morales sociales, ¿ donde encontrar un lugar que explique el vinculo que une a los hombres ? Por la fuerza comun, si no universal, de los principios que expresa, el derecho seria entonces el ultimo espacio de religiosidad.Reuniria las ramas de las practicas en un tronco comun.

2. La voluntad de participar en la elaboracion de la norma social

La forma en que le derecho dice las cosas genera atraccion tambien entre los actores del derecho. Ya nada es impuesto solamente por la fuerza del sistema juridico.Todo es resultado da una negociacion que valoriza una procesalizacion acentuada en la elaboracion de las normas juridicas.A los clasicos represantantes de los distintos intereses sociales se agregan en los sucesivo nuevos actores y mediadores :cientificos, por un lado, comites de bioetica y expertos en bioetica, por otro.Se trata de adaptar la norma a las circunstancias concretas y, si es posible, para que sea eficaz con el minimo de coacciones, reducir las eventuales reacciones de rechazo.El derecho debe ser flexible para adaptarse :el bioderecho en un buen ejemplo de la experimentacion legislativa que supone la posibilidad de reencaminar su obra.

3. La búsqueda de una nueva dimension colectiva

Finalmente, la « pasion del derecho » que inspira a nuestras sociedades, otorga el derecho a una nueva fuerrza simbolica.Recurrir al derecho permitiendo a cada uno construir su identidad individual y definir su

pertenencia colectiva, que puede ser plural, se convierte en simbolo de la defensa de una sistema socio-politico :la democracia pluralista y el Estado de derecho.

B. El camino de derecho : ¿como leer la trama de nuestro futuro ?

Y, sin embargo, de esta relacion pasional entre el derecho y las ciencias de la vida, se traza una linea que, aunque deja vislumbrar sus fuerzas, aun esta incompleta.Tenemos un paisaje colorido y multiple en primer plano, algunos bosquejos de perspectiva pero ninguna recta de fuga que atraviese todo el cuadro y nos muestre el final.

1. El derecho de la ciencias de al vida expresa una nueva realidad

Es que el paisaje es colorido y multiple, por no decir cosmopolita. !Y ahi surgen brutalmente, como un desafio a las costumbres y a la antropologia, practicas que lucen los oropeles mas recientes de la ciencia y usan como mediadores a sus doctores !Como consecuencia nos vemos despojados de los ficciones sociales y de los gestos culturales que daban un sentido a lo cotidiano.La sexualidad se ve separada de la procreacion, el parentesco disociado de la sexualidad, la idendidad confudida con lo biologico, el cuerpo desmembrado circulando en piezas sueltas.

Liberados, entonces, tanto de las leyes sociales como de las biologicas, podemos consideranos totalmente libres de elegir nuestro destino.De ahi, la impresion de que el derecho de las ciencias de la vida es un bazar abigarrado. El rigor de unos puede compararse solo con el pragmatismo de los otros, la evolucion de los derechos del hombre no prohíbe el desarrollo del derecho del comercio, el reconocimiento de la diversidad biologica y de su necesaria salvaguardia no impede la extension de los derechos de propiedad intelectual a las biotecnologias, etcetera.

La embriaguez que anima este quermes de las ciencias de la vida, no puede sin embargo disimular por mucho tiempo el formidable desafio de poder que genera este ejercicio de deconstruccion-reconstruccion del hombre y de se universo. El poder de los intelectuales (medicos, juristas, eticos) se codea con el de los comerciantes.Unos y otros cuestionan, por otra parte, la legitimidad de la intervencion en la logica de las relaciones Norte-Sur.

2. Las vias del derecho

En esta completa red de actividades, intereses y decisiones, existen vias que canalizan mas especial-

mente la actividad jurídica :se llaman especialización, institucionalización e internacionalización.

El abanico de aplicaciones del bioderecho se abre a un amplio mercado : cada técnica médica aplicada al hombre tiene su derecho, las biotecnologías generan también nuevas ramas en el derecho de la propiedad intelectual, derecho del medioambiente...

Por así decirlo, la especialización del derecho de las ciencias de la vida condujo progresivamente a una globalización de su enfoque jurídico : es la nebulosa del « bioderecho ».

Otro « avance » del derecho de las ciencias de la vida : su propensión a crear nuevas instituciones — comisiones de ética y comisiones técnicas especializadas — cuyas función pericial y mediadora puede parecer evidente pero cuya función política deja un poco desocupadas a las instituciones existentes y plantea una interrogante sobre la capacidad de los sistemas políticos de generar modos de discusión y de decisión adaptados al debate bioética.

Por otra parte, la dimensión internacional del derecho de las ciencias de la vida ya es un hecho y la consideración de objetivos equilibrados entre la lógica de las ciencias y la de los derechos individuales y de un derecho de la solidaridad se inscribe progresivamente en la definición de un nuevo orden internacional.

C. Los límites del derecho de las ciencias de la vida

Están unidos al objeto mismo de la actividad jurídica, a su naturaleza, que las circunstancias del debate sobre la ética de las ciencias de la vida hacen aun más sutiles.

1. « *Ubi Societas, ibi Jus* »

Contrariamente a lo que el rumor quisiera hacer creer, no se puede pedir todo a los juristas y aun menos al derecho.

El empeño de uno y otro en responder a la pregunta : « ¿ que uso hacer de la técnica ? » resulta vano ante la ausencia de una politización, es decir de una puesta en escena social, del problema planteado. Este empeño no puede ser, además, temerario y supone información y reflexión previas ; no puede afirmarse tampoco sin la búsqueda de un soporte social pues es « junto — señala Gérard Cornu — que estamos especialmente autorizados a afirmar que la decisión pertenece a la ciudad no a la ciencia, que ella es, en el sentido griego, política no científica ».

El derecho que no es solo técnica, no puede renunciar a esta dimensión política. Pero no puede construirla sin un « suplemento de conciencia » que supone que el jurista pueda expresar, aparte de una opinión técnica o personal, el sentido de una elección social.

Ahora bien, esta expresión no es ni evidente ni unitaria en la « sociedad posmoderna », pluralista en sus elecciones y diversa en sus fuentes normativas, incluso en sus « soberanías » políticas.

2. La sociedad del riesgo y el derecho

El malestar que trasciende de la realidad normativa aplicada a las ciencias de la vida, la casuística o el principismo, se explica, en consecuencia menos por inadaptación del derecho que por la necesidad de construir un estado de derecho diferente, que tenga en cuenta el riesgo, relacionado en particular con las aplicaciones de las ciencias, no solamente como fenómeno social a manejar sino también como certeza política.

Si se tiene en cuenta, en efecto, que el riesgo define la relación misma del hombre con la naturaleza y, por ende, que el es el principio de politización y de institucionalización de la política, nuestras instituciones deben adaptarse a los tipos de riesgo que estamos confrontados. Ahora bien, la conciencia mayor que tenemos de los riesgos que acarrea la sociedad de la información aumenta nuestros miedos.

Más aun dado que el hombre y su técnica son vistos como responsables del origen de las catástrofes contemporáneas, estas se hacen posibles en todo lugar y en todo momento, mientras que el azar de las leyes naturales o divinas nos protegían en medio de los desórdenes, ciertamente imprevisibles e irresistibles, pero aleatorios.

Frente a este vertigo de libertad, como señala Gilbert Hottois, « ante la prohibición absoluta y definitiva que muchos desean imponer a la clonación humana reproductiva, dogmatismo y absolutismo aparecen como los mejores remedios contra el miedo a la libertad ».

3. ¿ Cual es entonces la utilidad del derecho ?

Para no caer ni en el procedimentalismo, que no aporta respuesta a las interrogantes planteadas, ni en el dogmatismo moral, que es peligroso para las libertades fundamentales, debemos ordenar y pensar lo múltiple para así producir actos políticos.

El Estado, que conserva una posición capital en la producción normativa, no detenta más el solo, especialmente en el área de las ciencias de la vida, el poder original de dominio sobre los cuerpos.

Cuando el rey y sus súbditos formaban un todo, cuando la Nación, cuya ley es la expresión de la voluntad, se confundía con el Estado mientras que el cuerpo social, hoy, reivindica su autonomía colectiva :el es « la sociedad civil ».

Surgen nuevas instancias, encargadas de dar una expresión a la sociedad civil :los comisiones de ética son su expresión con relación al mundo de las ciencias de la vida. Correlativamente, salen a la luz procesos inéditos de elaboración de las normas, ingeniándose-las para producir consenso.

? Que decir de la sociedad procedural que nace de esta gestión ?debe ser contenida por su búsqueda de lo « bioéticamente correcto », como piensan algunos ?

Anne Fagot-Largeault, invocando a Karl Popper, nos invita, por el contrario, a perseverar : « débater en lugar de matarse unos a otros, es un avance moral decisivo », insiste.

?Sera suficiente para asegurarnos una capacidad social de decisión ?

?No habrá que ir más allá y concluir con François Ewald que « luego de la institución de la democracia política en 1789, la institución de la democracia social bajo la III República, ¿ fallaría construir la democracia del riesgo » ?. Es a esta obra que el derecho debe contribuir. ■