INTRODUCTION.
CONFRONTING LIFE, TECHNOLOGY AND LAW
IN A COMPARATIVE PERSPECTIVE

Carlo Casonato

After centuries in which science and law peacefully coexisted, and sometime were actually the same, at a certain moment (a different one depending on considerations of time and space) they parted and law began to conceive science and its technological applications as a threat. As a result, sometimes, the law, deeply influenced by or just mixed with religion, tried to control the scientific thought, imposing what it considered the Truth on the evidences of new discoveries. And law went so far as to directly threaten, and punish, anybody not in line with its assumptions. In this way, for instance, Giordano Bruno was sent to the stake in Campo dei Fiori in Rome (1600), while Galileo Galilei was forced to abjure «what is clearly written in the big book of nature, what is established for anyone with seeing eyes and hearing ears» (1633)1. By the way, “And yet it moves” is applicable not just to earth’s movements: in a little more than a century, the Enlightenment emancipated science and the desire of knowledge from prejudice and superstition. So, Diderot and d’Alembert could write in their Encyclopédie:

We must examine everything, clear away everything, without exception, without care, we must dare see (...). We must wipe out the old puerility (...), restore to sciences and arts the freedom which is precious for them2.

Just as law tried to stop science, though, science too, once free, tried, sometimes, to evade limits of any kind. Respect for human dignity was not able to prevent Nazi “experimentation”, involuntary

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1 From a letter of Galileo Galilei about his abjuration.
experimentation of the detainees at Tuskegee or mandatory sterilization of the feebleminded on the basis of the «Three generations of imbeciles are enough»; humanitarian law, mutatis mutandi, could not block the use of the atomic bomb. And the respect for the environment and for future generations seems not able to stop the disfigurement of our planet, notwithstanding the awarding of a Nobel prize.

As a whole, one may say that history teaches us that both law and science fail if they try to do all by themselves, if they want to proceed without the acknowledgment of mutual limits and the need to respect reciprocal restrictions and proportions.

Today, the relationships among science, technology and law are strongly complicated. From assisted human reproduction techniques to end-of-life decisions, from genetic engineering to cloning, bioscience and biotechnology constantly carry with them new opportunities and new threats. And the balancing of interests between pros and cons is not an easy one: blocking genetic research might be considered consistent with the precautionary principle, but it can at same time deprive the future generations of more effective therapeutic treatments; withdrawing a life sustaining procedure from an incompetent patient might actually let the patient die but keeping the patient for years in an irreversible vegetative state might simply prolong a state of agony or infringe the patient’s right to refuse medical treatments.

The question, always and everywhere, is to find the proper limits in order to develop science and technology in a way which might respect life and self determination and dignity of people; concepts, furthermore, whose meaning and content might be very different, sometimes opposite, depending on the individual ideological, philosophical, and religious thought. Answering what is life and when it begins and stops, for instance, is not an easy task. And a more difficult one is to be specific on when, and under what criteria, its legal protection should start and end. Dignity is at the core of the legal and ethical discourse on biotechnology, but again it is a plural concept, whose legal meaning depends on where we are: Italy or Oregon, Germany or Netherlands.

In the face of this potential conundrum, the only effective legal way to answer this question is based on the capacity to find an agreement, variable as it may be, among the main stakeholders of the society. With no more possibility to invoke objective normative standards, like nature (which still is a conventional formula) or God
(whose God?), in order to solve hard cases, law might just try to steer scientific and technological activity by dialoguing and persuading, not through imposing ineffective legal commands.

In this difficult task, biolaw (meaning the law which is involved in regulating life processes) seems to resemble an onion: different layers are one on top of the other, each of them overlapping at least part of the others. To clarify the point, the first, more general but vague layer of biolaw is international law (mainly human rights treaties) variably affecting domestic law. A little more specific, the constitutional dimension provides, depending on the country and on the issue involved, guidelines, principles or directly enforceable rights. In the chosen perspective, constitutional adjudication is an example of an overlapping layer with the capacity of concretizing and modelling general principles on the peculiarity of cases. Statutory law is another stratum of the onion, a stratum which, notwithstanding the general and sometimes naïve beliefs still persisting in many civil law countries, is hardly the ultimate or even the main point of reference for biolegal issues. Actually, judge made law, secondary level sources of law, and both the regulative and adjudicative powers of agencies and (more or less) independent authorities constitute the dimension in which the decision is very frequently taken.

Besides, the picture cannot be complete without mentioning a couple of further layers, at least. On the one hand, professional ethics, deontology, the codes of conduct can realize a very effective normative sheet, if properly enforced by professional associations. On the other hand, science itself or (rectius) generally shared scientific results may sometimes enter the normative dimension of biolaw. Not only the Italian Constitutional Court established the principle that legislators have to take into account scientific outcomes, declaring unconstitutional, for instance, a statute which forbids a treatment that the international medical literature proved to be, even seldom, effective (decision n. 282/2002).

Since the complexity of the structure of biolaw, and the number of diverse yet complementary levels to be combined, a first step may consist in confronting the way in which different legal branches in different legal cultures try to face biolegal issues. In this perspective, this book collects the proceedings of the international meeting organized by the Biolaw Project of the Department of Legal Sciences of the Trento University. The meeting, which constituted the Second
Conference of the *Permanent Forum for Transnational and Comparative Legal Dialogue*, was originated as a privileged place for the examination of advantages and disadvantages of the different solutions adopted in our countries, but also for checking if (and how much) the law and the legal categories we are used to thinking about are the most successful way to rule on the delicate and paradigmatic issues involving life, technology and law. Following the structure and the goals of the meeting, this book collects papers of the Constitutional, International, Private, Family and Criminal lawyers, plus an essay in Economics, who gathered at the University of Trento in June 2006, coming from Canada, France, Germany, Italy, Spain and the United States: all of them dealing with Life, Technology and Law.

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