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Chapter 1

Transhumanism and its Legal Analysis from a Human Rights Perspective

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Abstract

Change is inevitable, progress marks the advancement of society in order to improve its environment, quality of life, efficiency, innovation, and creativity. Challenges are also part of this scenario. Transhumanism represents the intellectual and cultural movement that affirms the possibility and advantage of improving the human condition through applied reason, through the development and deployment of technologies. In view of this, it is inevitable that various concerns and arguments will arise in favor of and against what this movement proposes. Therefore, a legal analysis of this issue from a human rights perspective will allow us to reflect on the future of humanity and take a position based on the law.

I. Introduction

Transhumanism has been a topic of interest in recent decades, generating controversy due to its postulates, which have not been ignored by thinkers such as Jürgen Habermas, Peter Sloterdijk, Michel Sandel, and Nick Bostrom, since this movement draws on biotechnology, artificial intelligence, nanotechnology, and other forms of advanced technology to improve the human condition and combat aging. Evidently, technologies for the improvement of the human species arouse interest and generate controversy due to their social, political, and legal impact in the face of economic inequality and discrimination that exists throughout the world. Therefore, this topic invites critical reflection from a human rights perspective, which is what this article seeks to achieve (Terrones, 2019).

II. Conceptualization of transhumanism

It is important to define what is meant by transhumanism in order to understand its postulates and to project the problems involved in the use of

technologies applied to the human condition. Therefore, we can say that transhumanism is defined as the intellectual and cultural movement that affirms the possibility and advantage of improving the human condition through applied reason, through the development and deployment of technologies to eliminate aging and enhance the intellectual, physical, and psychobiological capabilities of human beings. It also studies the ramifications, promises, and dangers of these technologies in allowing us to overcome fundamental human limitations, in addition to studying the ethical aspects related to the development of such technologies (Walker, 2015).

Man's ability to challenge nature and his own evolution have enabled significant advances in science and technology, which have enabled significant improvements in human life, but also poses major challenges. According to Bostrom, the rapid pace of technological change in recent times naturally leads to the idea that continued technological innovation will have a profound effect on humanity in the coming decades. While it is true that transhumanism seeks to improve human nature, overcoming its limitations and prolonging its existence through reason, science, and technology, this raises a number of questions that are worth considering. Emphasizing Walker's point, we find that three proposals are being promoted to create posthuman beings. The first states that the technologies used for enhancement must be widely available; the second posits that each individual should have the right to transform their body as they see fit; and the third specifies that parents should have the right to choose the technology that suits them best when they decide to have children. For transhumanists, this implies the redesign of the human condition in terms of the aging process, intellect, suffering, and confinement to planet Earth (Walker, 2015).

Defined in another way, transhumanism is considered a cultural and intellectual movement of a philosophical nature that can be seen as a utopia, but which in turn raises ethical controversies in the field of human enhancement, proposing a paradigm shift, especially for traditional medicine, where the therapeutic aspect and the restoration of health are questioned in order to determine what is best and the means to achieve such ends, understanding the multidisciplinary approach proposed by

transhumanism for the use of technology to improve the human condition and organisms, focused on health, cognition, genetics, and emotional behavior, considering nature as something that is susceptible to improvement and human beings as capable of understanding and assuming the responsibility to improve (Terrones, 2019).

For its part, a transhumanist subject is a being that can enjoy indefinite good health, intellectual faculties superior to any other human being, as well as the ability to control their own emotions (Fernández, 2021).

It is important to distinguish transhumanism from posthumanism because they are not the same thing. Transhumanism is considered a transitional stage towards posthumanism, becoming an instrument. D'Angelo refers to two large groups that are opposed to each other in terms of their adherence to or disagreement with the postulates of the transhumanist movement, on one hand, there are the transhumanists or technoprogresives, and on the other, the bioconservatives (D'Angelo, 2020).

III. Problematicization of transhumanism from a human rights perspective

In principle, human rights are those rights that provide individuals with a basis for physical and mental well-being, in harmony with their environment, and that aim to enable them to live a dignified life. For Fáudnez, human rights are considered to be the prerogatives of the individual vis-à-vis the state, whose main purpose is to preserve their dignity as a human being, excluding the state's interference in specific areas of their life or ensuring the provision of certain services to meet their basic needs (Fáundez, 2004); Therefore, these rights become the minimum basis of requirements that any person must have in order to achieve a dignified life, which is why talking about human rights involves starting from minimum conditions as general rights that must be duly guaranteed and protected by the State.

In Mexico, the State has a constitutional obligation to promote, respect, guarantee, and defend human rights, ensuring that they are respected. This express recognition was achieved in Mexico with the constitutional reform of 2011, which establishes that all people shall enjoy the *human*

rights recognized therein and in the international treaties to which the country is a party. This generated a profound and positive change in which not only are these rights expressly recognized, but the way in which they are protected has also been modified.

Article 4 of the Constitution embraces the right to health as a fundamental human right, protecting it under the protection of laws and regulations such as the General and State Health Law, which set the course for accessibility in this very important field.

Nevertheless, the ideas of humanity and posthumanity present us with various scenarios that appear complex, especially from the point of view of human rights, since it is inevitable that multiple questions will be raised to challenge these trends and the use of the most advanced technology for the improvement of the human species, starting, for example, from the postulate of “equality” given that in our country and throughout the world there are significant disadvantages and differences between those who, for economic reasons, could have access to genetic engineering, nanotechnology, biotechnology, information technologies, or artificial intelligence, and those who cannot access it, which would further increase the social distance or gap due to economic reasons and opportunities in a scenario of humans with superior intelligence and modified physical and psychological conditions.

As seen before, transhumanism considers the advancement of human beings in the future by promoting favorable conditions for quality of life, bodies that do not age, increasing cognitive abilities, choosing the best genes to produce gifted and healthy children, achieving a life free of pain and disease, using robots to perform heavy work, all of which requires renouncing human nature and creating posthuman beings. On one hand, this could represent a great achievement in terms of health, but on the other hand, the consequences of this type of intervention, which tends to alter nature itself, must be rethought. This should be the subject of debate and critical analysis from the perspective of ethics, bioethics, and law, under a human rights perspective that protects dignity, equality, and individual and collective well-being.

At this point, it is worth mentioning the principles of the Declaration of Transhumanist Principles adopted in 2009 by the international non-profit

organization Humanity+, which state that humanity may be profoundly affected by science and technology in the future given the possibility of expanding human potential by overcoming aging, cognitive deficiencies, involuntary suffering, and confinement to planet Earth. It recognizes the benefits of some scenarios that allow for extraordinary human conditions, but also acknowledges the risks of misuse of new technologies and the possible scenario of losing what is considered valuable, suggesting a careful analysis of these possibilities and highlighting the benefits of developing means to preserve life and health, alleviate severe suffering, and improve quality of life.

Valuable, suggesting a careful analysis of these possibilities, highlighting the benefits of developing means to preserve life and health, alleviate severe suffering, and improve human wisdom, but under a regulatory framework with policies guided by a moral, bioethical, responsible, and inclusive vision, weighing autonomy, individual and collective rights in a global context and in the general interest, acting responsibly for future generations due to the implications of proposing a modified way of life (Terrones, 2019).

Fernández states that for the proposals of transhumanism to have practical meaning, it is necessary to construct a transhuman cognizant subject that can apply technological improvements to society, the environment, and its own body and mind (Fernández, 2021).

The scenarios proposed by the transhumanism movement are diverse, given that scientific and technological progress is rapid and progressive. One of the issues in the field of health concerns the right of parents to procreate, and this right encompasses the possibility of choosing to have children with selected genes. On the other hand, the possibility of developing medical techniques and therapies to combat aging in humans implies, from our point of view, a modification of the natural process of life itself. Talking about posthumanism also implies achieving the superiority of the human species by altering human performance, both physically and psychologically and cognitively, with substances, exceeding the maximum that any human being can achieve without undergoing technological enhancements (Terrones, 2019).

Therefore, if we were to talk about a humanized society, technology could be used in an ethical manner, pursuing positive goals for the

advancement, development, and improvement of humanity. However, uncontrolled use can have negative consequences for all living beings and the planet.

It is important to delve deeper into the complexity of human nature and understand that the uncontrolled use of technological and scientific advances in accordance with the postulates of transhumanism could jeopardize the very survival of the human species or generate an irreversible transformation of it with negative consequences.

D'Angelo points out that biotechnology is based on scientific and technological methods applied to living beings to achieve greater well-being and knowledge, with consequences for both humans and their environment, meaning that biotechnology has a social, economic, legal, and cultural impact. When we talk about biomedicine, an important field opens up for specialties, especially in genetics or those related to the human genome (D'Angelo, 2021).

IV. Transhumanism and Human Rights

It is important to note that in the contemporary legal sphere, humans are the only subjects of law, with the object of law being the instrument for the service of humans, as recognized by international human rights law. For transhumanism, the recognition of the subject of law is limited to those who are not able to protect themselves (the incapacitated, embryos, the terminally ill, etc.), and more broadly to those who are considered human, with the capacity to act with full autonomy.

In this sense, as D'Angelo points out, transhumanism suggests allowing the granting of legal subjectivity to non-human beings or those with the possibility of becoming human through biotechnology (cyborgs, hybrid beings, robots, animals, among others), which suggests a rethinking of the status of the subject of law by becoming a subject of law, as an objective right that would regulate legal situations applied to humans and non-humans (D'Angelo, 2021).

The aforementioned author states that it is paradoxical that this situation of subject and object is conditioned by some humans who, from the transhumanist movement, would determine the formal requirement called law in order to be considered subjects; therefore, this right could

no longer be called a human right since it does not encompass all human beings.

This reflection leads us to consider the possibility of fracturing the harmony between legal subjects, by privileging some over others on an unequal basis, damaging or transgressing the autonomy and self-determination of human beings, including future generations, to choose the life they want to have. We must also take into account the impact that the inappropriate use of biotechnology can have on people's health and biodiversity, therefore we must consider the principle of responsibility as a fundamental duty, so that legal norms will have to be the regulatory axis of harmful behaviors and the protection of human rights.

If transhumanism seeks to improve human beings by overcoming the limits of nature, enhancing human capabilities physically, psychologically, and intellectually, and transforming human beings into posthuman beings, this will completely transform the foundation of human rights and the rules of law themselves, posing challenges regarding the human and transhuman species in terms of their limits and responsibilities, rights and duties.

The irresponsible abuse of science and technology can, of course, pose great risks to humanity and its environment, but its ethical and responsible use to improve people's living conditions is respectable and valuable. In this sense, scientific research would be essential to chart the course for the beneficial use of knowledge and scientific and technological progress, within a properly defined and secure framework.

For our part, we must consider autonomy of will as the right that allows human beings to make decisions about their lives. Any personal choice must be respected and not violated; the exercise of this right must be based on knowledge through timely, reliable, and accurate information. The choice to improve in health through the use of technology is completely valid, especially if it is supported by bioethical principles and does not harm third parties.

As mentioned above and in order to ground these ideas, it is important to highlight some of the basic principles that are consistent with human rights, from declarations and conventions related to biotechnology at the regional and international levels, since they can decide on the direction

to be taken even in the transhumanist approach. The first principle states that interventions that benefit human beings must take precedence over scientific and technological advances, which indicates that the individual must always be at the center of any procedure. On the other hand, the human person is not reduced to their genetic traits; that is, human beings are much more than their appearance or physical, biological, or behavioral characteristics. The third principle states that genetic discrimination or genetic patents that affect future generations must be avoided. This must be strictly regulated to prevent access to research from being restricted or innovation and the advancement or development of new technologies from being slowed down. The fourth refers to the importance of cultural diversity and pluralism, without these considerations being invoked to undermine human dignity, human rights, and fundamental freedoms. All of this clarifies that the essence of every human being goes beyond their traits, beliefs, and preferences (D'Angelo, 2021).

Law and human rights are undoubtedly facing a complex scenario marked by major changes affecting the lives and lifestyles of human beings, where transhumanism presents itself as a challenging trend, which inevitably requires the implementation of legal norms to regulate the complex scenarios that are emerging in this era of technology.

V. Conclusions

The use of technologies for the preservation of life, health, the mitigation of pain or serious suffering, and the improvement of human wisdom must be guided by a legal and policy framework with a moral, bioethical, responsible, and inclusive vision, considering the risks and opportunities that this generates for humanity.

When analyzing the use of technologies to improve the human condition, we must consider the autonomy of the will and individual and collective rights, placing the dignity of all people at the center of this analysis from a human rights perspective.

Humanity is vulnerable, and this should encourage us to raise awareness and avoid unnecessary risks as much as possible, especially in uncertain scenarios. An example of this is what happened during the

COVID-19 pandemic, where all human beings were threatened and irreparable damage was caused, with high death rates around the world.

In any situation involving the use of technologies applied to human beings, the best way to reduce risks while facilitating the most beneficial applications must be established in a careful, responsible, and clear manner.

Policies must be established with a responsible and inclusive moral vision, weighing the risks and benefits, respecting autonomy and human rights, under principles of solidarity and equality, focused on the dignity of people, and with strict respect and moral responsibility towards future generations.

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