

Commentary on the paper “*Alcune riflessioni su Scienza e società nell’era del post-umano*” (Silvia Salardi)

Abstract:

The paper focuses on two main fronts: the opportunity of identifying a post-human category within the meaning proposed by transhumanism and the problem of allowing or forbidding the use of “enhancers”, considering the fundamental rights framework and the current regulation adopted in two different areas.

Paper:

The post-human category, which has attracted the increasing attention of academics all over the world, began to be developed at the end of the previous century, as the result of a number of considerations on scientific and technological developments and the increased possibility of accessing them: it has been used as a discriminating factor in order to distinguish the “human era” and the “post-human era”. This category has its deeper and primary foundation in the distinction between “healthy” individuals and individuals that have been diagnosed with a disorder. Today’s medications and technologies could be employed on both categories of individuals but with different implications. On the one hand, using these modern techniques (for example, the implant of prosthesis on human body) on an individual that has been diagnosed with a malady in order to treat the pathology by which he/she is afflicted would be considered as the fulfillment of a therapeutic purpose. On the other hand, also an healthy individual could take advantage from these techniques: in this case, however, it is not possible to identify a therapeutic aim, since this person’s intention is to increase the functions and performance of his/her body or mind (“human enhancement”). The post-human category has been developed in order to classify these conditions, gathering humans who, as a result of their enhancement, are no longer considered “just humans”, but something different that results in forms of life that go beyond their biological and psychological constitution.

The author doesn’t agree with the opportunity of identifying the post-human category and is inclined at least to scale down its range, considering it inappropriate and also dangerous for different reasons.

First of all, “humans” would still be in the majority, considering the restricted number of individuals that could concretely access the developments of modern science in different areas all over the world: consequently, the post-human era could not be considered as a worldwide time step.

Secondly, referring to “post human” requires to define the concept of “human” by analysing the idea of “human nature”, an unstable and vague concept that has already been used to put in place different kinds of discrimination, all based on the recognition of biological or cultural referents of identity used to classify people in a social hierarchical manner. Therefore, the author observes the necessity of paying attention when a categorisation based on these kind of referents is identified: a factual distinction never has to result in legal inequality, in order to guarantee an equal treatment of individuals. If considered in the post-human perspective, “human nature” is still a difficult concept to define durably, since science and technology are in continuous development: an individual that undergoes a more recent technology will always be more enhanced than an individual that has been enhanced with a less advanced technology. Therefore, it would be necessary to identify someone who selects features that could be employed as main membership requirements to this category of post-human.

Thirdly, the author points out that the post-human category seems to be used by many with the purpose of providing a well-defined vision of humans and society: individuals, in front of science progress, shouldn’t avoid the possibility of enhancing themselves, embracing new discoveries and consequently becoming post-humans. This implies the idea of “post-human” as a positive status that should be pursued

and not obstructed: for those who embrace this concept, human enhancement should be considered morally justifiable itself since it allows people to improve themselves in the direction of post-humanity. In the end, the post-human category is not significant if considered from the perspective of law: indeed, law doesn't distinguish between "human" and "post-human", focusing on a homogeneous idea of "person" instead of identifying two different categories. In other words, law provides different types and levels of regulation, that correspond with the different aims pursued in using new technologies and science development, that is therapeutic or non therapeutic purpose.

The second main problem analysed in the paper concerns the current regulatory framework: with regard to human enhancement, a proper and complete regulation is still missing. Since a regulation choice has not been made yet, the discussion on the opportunity of normatively allowing or not the use of science developments on healthy people in order to enhance them is so far open. However, an exception is represented by two specific areas of non-therapeutic enhancement which have been expressly regulated (sports and the use of substances to improve concentration), even if the balance of interests that has been achieved in these sectors is still controversial.

Therefore, it is necessary to reflect on what parameters could be assumed as reference points in order to set human enhancement in a framework of values. First of all, there are specific rules that have to be considered: privacy rules, informed consent rules etc. Secondly, important and internationally recognised principles could be of help, as the principle of self-determination, which postulates the necessity of allowing the individual to develop a free will by providing him a clear and adequate information on benefits, risks and consequences of his choices. The author also identifies another significant parameter that could be extended to the human enhancement area, the precautionary principle, developed in the environmental protection regulation and now extended also to biotechnological applications, which implicates that lack of scientific evidence doesn't exonerate from taking precautionary measures in order to limit the possible negative consequences of using a certain substance on individuals and environment. According to the author, this principle should be considered relevant whenever a certain activity could affect human life, in order to protect vulnerable individuals.

Therefore, in absence of a proper and general regulation for human enhancement, law pursues a balance of interests with the aim of protecting vulnerable individuals whose life could be in danger. The author agrees with this leaning, considering the "responsible use of science acquisitions" a fundamental aim, and consequently mistrusting the thesis of those who criticize the current regulation of controlled substances. The author observes that the idea of those who affirm the opportunity of achieving a deregulation in this area is misleading: indeed, free availability of these substances whose real effects are still unknown would entail an enormous danger for individuals since it could turn into a "mass experimentation" that eludes any form of supervision, violating the principle of self-determination and the right to health (which nowadays is considered a fundamental right of individuals).

The analysis of the legal framework provided by the author also focuses on regulations that have been developed in the two areas of sport and cognitive enhancement. The choices that have been made in these two fields are different. In sports, it is forbidden for athletes to take substances for non-therapeutic purpose in order to improve their performances: a phenomenon labeled as "doping". This choice is the result of a complicated balance of interests that takes in main consideration the value of health, which is considered both a fundamental right and the one aim of elite sports (art.1 l.376/2000), as well as a sportsmanship's component.

Instead, with regard to cognitive enhancement, the access to substances that could bring to this result, which are normally employed for therapeutic purposes to treat individuals with deficit of attention and hyperactivity, is subjected to the obligation of medical prescription. This obligation is based on the necessity of guaranteeing the exercise of an effective control by physicians on the use of these substances and consequently an aware consumption through an appropriate and clear information, in order to protect

individual's health. However, taking these medications without previously consulting a physician is nowadays a widespread practice among students who hope to improve their studying abilities: this trend is dangerous for individuals and raises highly problematic questions. Therefore, according to the author, the use of these medications for non therapeutic purposes could not be allowed apart from every kind of regulation and should be framed into the care relationship although only healthy individuals are involved: consequently, legal guarantees that traditionally characterise the physician-patient relationship should be extended also to the latter. The author mostly focuses on the necessity of developing a proper informative and communicative process in order to protect individuals and to guide them towards the development of an authentic awareness, thereby enabling them to express an informed consent. Indeed, as the author points out, the fulfillment of the principle of self-determination is not synonymous with solely granting free access to scientific advances: proper information is a key aspect to help people making reasoned and conscious choices when they approach these innovations.

The author concludes the paper with a wish and an observation. First of all, the purpose that should be taken into account for present and future is to always embrace science progress, which is important for the development of society and the improving of individuals' life, but always being careful not to be dominated by it. From this perspective, legal regulation should always go hand in hand with scientific development, ensuring an adequate level of control on the access of individuals to new technologies by paying special attention to information and transparency. The author also proposes to develop an anticipatory legal model based on preventive action that could take into consideration predictable risks which might appear just potential.

My opinion

Before exploring in a more detailed way the issues debated in the paper, I think it is relevant to point out that the notions of "healthy" individuals and "ill" individuals, like those of "enhancement" and "therapeutic use", are controversial notions.

First of all, a new category of individuals makes the distinction between healthy and ill persons crumble. This new category is named under the notion of "unpatients": individuals who are still considered "healthy" but have discovered their predisposition to potentially developing a certain disease by means of genetic testing. Therefore, how could those "unpatients" be considered when they decide to resort to a certain medication or technology in order to prevent the risk of being affected by a certain pathology in the future? Are they enhancing themselves or using those technologies for a long-term therapeutic purpose? The matter is still discussed, because unpatients are not ill yet, since they may just hypothetically develop the disease indicated by the results of the genetic test: however, there is still a higher or lower probability that they could become ill persons in the future.

The second issue I would like to point out is the difficulty of understanding what is enhancement and what is therapy referring to certain treatments, namely those procedures that are employed on healthy individuals and could be both considered as enhancers or as methods to prevent future diseases (vaccines): do these treatments enhance individuals or cure them in an anticipatory perspective?

Set these preconditions and ascertained that there are still open issues which are not easy to solve, we can now explore the main problems that emerge from the paper.

In my opinion, it is first of all important to clearly discern between two different perspectives. One thing is to look favorably at scientific development and the improvement it could bring also into healthy people's life, while another thing is to accept the idea that a category with specific standards could be identified with the aim of distinguishing between humans that resort to scientific advances to enhance themselves ("post-humans") and humans that don't. Denying the utility of this categorisation or even considering it dangerous does not necessarily imply refusing that healthy individuals could resort to

enhancing techniques or even support the concept of “human” as a creature that needs to be entirely loyal to his biological origin. Indeed, humans could abstractly use substances to improve their physical or cognitive abilities without necessarily being considered “post-humans” according to the transhumanistic meaning.

Indeed, the post-human category raises several problems since transhumanism uses the idea of “post-human” individuals in order to introduce a certain anthropologic model and vision of society: a society where people, having at disposal scientific development, are morally obliged to make themselves better through enhancement and abandon their “human” condition. The transhumanistic vision is clear: those who do not agree to enhance themselves will be left behind, discriminated, excluded from the new society inaugurated by the post-human era.

Is the post human category necessary or, at least, useful? “Post-human” is interpreted by transhumanists as something that “goes beyond” the narrowness of human beings, postulating the idea that there is necessarily something to improve, as if humans were certainly not enough for themselves and for society. Consequently, “human” and “post-human” are indicated as two categories that are not placed on the same level, since the superiority of post-humans is intrinsically assumed: the post human category is the desirable and necessary development of the human category.

In my opinion, it is possible to contrast the use of this categorisation by simply imagining and accepting a wider and modern meaning of “humanity”: we can define “humans” not just as individuals in their biological origin, but also as individuals who have the possibility to intervene on their bodies in different ways and for different purposes, by resorting to artificial methods.

Therefore, what is the utility of identifying a specific category with well-defined standards for individuals who enhance themselves when they can easily be considered humans? We can conclude that this category is not necessary and has been developed for specious purposes.

The other main problem pointed out in the paper is the absence of a specific legal framework for enhancement and the consequent necessity to refer to already existent normative regulations. In particular, the reference to the care relationship paradigm and the possibility to extend it also to enhancement could be considered appropriate and fully justified. Indeed, the principles that characterize the care relationship, that is the right of self-determination and the right to health, are considered as fundamental human rights in Italy and in the wider European Union context: consequently, they have to receive the same protection even when a physician has to address the requests of a person who is not ill, but is considering the possibility of taking medications in order to improve his abilities or physical performances.

First of all, the right to health certainly assumes different features if considered referring to therapy or enhancement, but it has to be safeguarded in both cases: from the perspective of an individual who is ill, health represents a condition to reach and whose achievement needs to be guaranteed; differently, from the perspective of an individual who is already healthy, health represents a condition to preserve and that has to be protected from any form of assault. Considering the range of this right weaker when talking about enhancement would be founded on the idea that an individual should receive a lower protection just because he has voluntarily decided to take the risk of potentially putting his full health in danger by taking, for example, a certain drug to improve his concentration: this concept is misleading, since health needs to be equally protected in both of its forms and not just when it has to be re-established (therapeutic aim).

Also the principle of self-determination takes on great importance since it completes the right to health, whose fulfillment can be totally achieved only when a person is enabled to express autonomously and consciously her will on choices whose consequences involve or could potentially involve their own body and state of health. Therefore, also the principle of self-determination has to be extended to enhancement. Indeed, when an individual considers the possibility of enhancing himself through a certain technique, he/she is making a choice which involves not just the benefits of improving a certain ability, but also the dangers in terms of health harm. For this reason, as the author points out in the paper, it is necessary to

enable individuals to acquire a clear information on enhancers (including uncertainties due to lack of scientific evidence in this area), which could be efficiently provided by healthcare professionals. Therefore, the care relationship could be considered established when a physician accepts the request of a person to be examined by him and begins the visit, irrespective of the kind of patient he/she is facing: indeed, the principles of beneficence and nonmaleficence, which characterize the care relationship, regard medical practice both when the patient is already healthy or ill. Consequently, we could affirm that medical “care” has nowadays assumed a different meaning: “care” not just in the meaning of re-establishing a sick patient’s health, but also as “taking care” of the patient and his requests, addressing him so that he can choose wittingly.

In conclusion, I think that it is appropriate to place enhancement in the care relationship context because as soon as we exit this paradigm, many problems related to enhancement occur (Where could individuals find the enhancing substances they are looking for? What type of information on enhancers could they get? Could they be fully aware of the risks they could face in terms of health?). Indeed, for sure there is a lack of scientific evidence in this area, but that doesn’t imply leaving individuals alone in front of scientific development. It is useful to involve people in a communicative process which allows them to develop a true awareness by interacting with experts that could provide them information, even within the limits of what is known and predictable nowadays.

Elaborato originale, soggetto a valutazione da parte di un supervisore del corso ‘Le tecnologie ‘moralì’ emergenti e le sfide etico giuridiche delle nuove soggettività’