

Bioethics, Religions and The European Institutions

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INTRODUCTION: RELIGION, BIOETHICS AND THE EUROPEAN DEBATE

– Bioethics clearly appears at the beginning of the XXIst century as a field of discussion which deals with the limits that should be set up to regulate biosciences.

However, both the definition of what is bioethics and the exact grounds which found this expected regulation is still uncertain or ambiguous. Religious believes have certainly some influence in the field of bioethics but it depends on how we interpret the word religions. Does it refer to the role of churches or to spiritual values?

Religious influence may also differ from one country to another according to the national history. That is particularly true in Europe where the influence of Catholicism and Protestantism has led to different cultural approaches, in particular regarding the well known concept of autonomy. We may also consider the influence of other phenomenon such as the secularisation of the society or the presence of other religious or non religious views that may today participate in the bioethical debate. Should we also deduce from the globalisation which affects the development and use of biological technologies that a European approach would be a better way than a national one to deal with bioethical issues?

And is it possible to define what would be the basis of this European approach?

– Therefore, there is great uncertainty in what may result from this interrogation on Bioethics, Religions and the Europeans Institutions. This questioning is bringing together old and new questions. The oldest issue concerns the relationship between religions and Europe and the newest the relationship between bioethics and religions, on one hand, and bioethics and European institutions, on the other hand. This is our view that the historical experience of the role of religions in Europe may help to understand the present development of the more recent questions that are the relationship between bioethics and religions and between bioethics and European institutions.

If we compare the history of the development of bioethics in Europe with its history in the USA, it is obvious that bioethics made in the USA has deep religious roots while in Europe the religious influence is not primarily at the founding origin of “European Bioethics”. But this does not mean that the European approach to bioethics does not find roots in the European religious and cultural heritage and that religious value are not influential in the choice of the fundamental values that support “European Bioethics”.

– As part of the European history and tradition, religions may certainly claim for some form of participation in the process of constructing Europe and its institutions. How far this relationship is legitimate for “modern” societies is a key issue of this contribution: does it imply the secularisation of religious institutions or the enchantment of European ones?

Should bioethics follow a similar pattern? Is the involvement of religions in ethical issues more legitimate as in political issues because it concerns the respect for human life and the power we may use to treat or change our human condition? Or does it infringe more acutely the respect for human rights which implies the primacy of individual freedom on moral dogma?

A RELIGIONS AND THE EUROPEAN CONSTRUCTION

Major geopolitical changes have affected Europe after the Second World War

Europe has moved from the centre of the world to its periphery and many of its values slightly collapsed: patriotism, religiosity...

However the political ideal of a reconstructed Europe founded on the culture of peace, human rights and democracy had to acknowledge the experience of European history among which is the role of religions and its interference with the political development of European countries.

With the beginning of the XXI century, the legitimacy of the European construction

seems to be deeply questioned while the importance of Europe appears both as a reality and a necessity.

Looking to religions may be then a good way to analyse the present socio-political and cultural aspects of the European construction both in term of institutionalisation and values. The reason for such a choice is that religions are often part of the collective identity. It is also a good example of how social diversity is regulated and how the distinction between the public and the private sphere is being operated.

1) Religion as part of the European history

It may be interesting to stimulate our reflection on how religion contributed to shape the European history in term of political organisation to quote Dr Rowan Williams's speech when visiting the European institutions in November 2005. The archbishop of Canterbury reminded us that "what we mean by "Europe" culturally speaking tends to be the complex of civilisations and language groups brought into political relationship by two factors-the great Germanic, Turkic and Slavonic migrations that destroyed the Roman Empire and the emergence of new institutions that sought to salvage the legacy of the empire. Among the latter, the Christian church is quite simply the most extensive and enduring..."

"In the west, the new Germanic kingdoms governed by tribal law and feudal obligations while "for the roman-centred church, the fact of Christian identity was a theoretically universal thing, which made it possible to legislate across cultural, linguistic and economic frontiers..." For the Primate of All England, "the Roman system worked on the basis that any local jurisdiction was subject to a higher law" and he concluded that "it was this spirit that...enshrined the principle that consent was necessary for a valid marriage ".

After the Reformation produced a new map of European political territory in which the evolving nation-states were eager to affirm the right of the state to have its own jurisdiction, only the Enlightenment offered with the French Revolution a new model of universal secular legality. » Both Catholic universalism and the remnants of "common -law" custom and mutuality were removed from public life in the name of a universal system of legally conceived equality and freedom, divorced almost entirely from religious sanction".

The message that derives from this "uncontroversial tour of Western European history" is quite clear for Dr Rowan Williams: "what I am arguing is that the virtues we associate with the European identity, the virtues of political liberalism in the sense I have outlined, will survive best if they are seen as the outgrowth of the historic European tensions about sovereignty, absolutism and the integrity of local communities that were focused sharply by Christian church and its theology". Consequently, he suggested that «a mature European politics will (not keep religious communities in the private sphere) but will take another route, seeking for effective partnership..."

2) The mutual influence of religions and European institutions:

Indeed, when we analyse the reciprocal influence of religions, churches and European institutions, we may be far from this objective of partnership.

The regulations of religious activities is still mainly based on the primacy of national models and within the European institutions, religions and churches are mostly acting as lobbies, religious activities being put aside.

a) the primacy of national models

First of all, it should be reminded that European institutions have not received a mandate to define official relationships with religions and, of course, to regulate them. The declaration appendix n°11 of the Treaty of Amsterdam clearly recognizes the exclusive competence of member states in religious matter and article I-52 1 of the elaborated European constitution incorporates this rule.

In Europe, the regulation of religious activities is then a matter of national law which should nevertheless be in conformity with the European Convention on Human Rights and in particular its article 9 concerning the freedom of thought, conscience and religion. The European Union's Charter of Fundamental rights also includes an article 10 on the freedom of thought, conscience and religion. Moreover, secondary community legislation

takes religion into account, in a meticulous manner, in different sectors of activities (custom tariffs, protection of personal data, employment, equality, regulation on animal slaughter...) when it is particularly necessary to adapt the EU legislation to religious specificities as recognised by national law.

Finally, the European Court of Justice as well as the European Court of Human Rights has judged several cases regarding the religious freedom and activities of religious organisations. We should also remind the importance of concordat agreements to regulate religious activities in mainly European states .The EC Regulation 1347/2000 on the recognition and enforcement of judgments in matrimonial matters specifically refers to the concordat treaties between the Vatican and Italy, Spain and Portugal in order to guarantee that the provisions of those treaties will not be affected by the EC Regulation.

These references let appear that religions and their institutions may be part of the European governing process. Does this mean that there is an attempt to renew with the tradition of making the churches participating in the political life? The reply may be positive if we consider the recent changes which occurred in Italy, Spain and Poland.

It may be interpreted differently, especially in the field of bioethics, if we consider that choices in this area are essentially diversified individual choices. But, even in this area, the quest for a European identity may leave some room to the influence of religions and churches in the emergence of a European bioethical public forum.

b) the participation of religions and churches in the activities of European institutions

There is some paradox in the attitude of churches towards European institutions. They essentially behave as lobbies while the initiative to develop closer partnership came from the European Commission.

– Religions and churches as actors of the “European society”

As it has been noticed by analysts of religions, the activities developed by Catholic and Reformed institutions at the European level – information, education, networking and pastoral– are indeed widely opened to non religious people. In particular, the Commission of European Bishop Conferences (COMECE) and the Council of European Churches (KEK), which assumed the contact with European institutions respectively for the Catholic Church and the protestant denominations, mainly act as lobby groups, participating in wider networking with non religious groups when necessary for the promotion of their objectives. They mainly work as experts deeply involved in the complexity of the European construction process.

This may be explained by two reasons. The first one is the professionalism which affects all the lobbies in contact with the European institutions. The second one derives from the difficulty to speak with a purely religious discourse in a society broadly secularised.

– European institutions’ initiative for a global dialogue with religions

Assuming that the European Union should have a soul, President Jacques Delors initiated an informal but structured dialogue between the European Commission and the religions and humanists. First of all, he established in 1994 the project “A soul for Europe” designed to funding inter-religious seminars about the spiritual dimension of the European integration.

Secondly, there is another tool for the dialogue between the Commission and religions and humanists: the twice-yearly briefing sessions following European summits. And there are also unofficial tripartite meetings between the European Council and COMECE and KEK before each new EU presidency.

Regarding the Council of Europe, one of its priorities is the intercultural and religious dialogue in Europe as a tool to develop tolerance, human rights and democracy in a pluralist society.

Finally churches and religions try to adapt themselves to the structures and working methodology of the European institutions to weight with some efficiency on the elaboration of the European policy. In the meantime, the European institutions are soliciting the European religious heritage both to bring some new enchantment to the European ideal

and to maintain peace, tolerance and democracy in a European world still largely divided by potential intercultural conflicts.

It is not sure that the bioethics field is oriented by the same approach. The recent history of European bioethics **let** merely appear a strong involvement of religions and churches in the European institutions in charge of bioethics while European institutions and their Member States have often difficulties to reach common views on controversial issues and even to propose some agreed process to discuss and resolve those controversies.

B. The strong involvement of religions in the European institutions in charge of bioethics

Considering the role of religions in the field of European bioethics may facilitate the analysis of the complexity of the European construction by focusing on what characterises the most public attitude: a trend to develop the institutional approach in order to encourage the emergence of a public forum and the paradox which exists between the search of common values and the way to apply them to individual cases.

It seems that religions – I mean churches– have been acknowledged again with a central role in the European political arena while the values supported by religions have been left to individual choices or secularised in the concept of human rights principles.

We will look at European bioethics to know in which way these remarks may apply to this new global social phenomenon.

1) Religions and the pilgrim fathers of the bioethics institutions in Europe

Considering bioethics in its medical perspective certainly left to the religions and particularly the Roman Catholic Church an important part in its development from the 1960's.

However, the interest that the Catholic Church has always expressed in the moral dilemmas raised by the medical progress very early opposed to the sexual and family revolution adopted progressively in Europe. Consequently, we cannot ignore that the first bioethics centres were built up, at least in the USA, by Catholic theologians who disagreed with the dogma that the Catholic Church wanted to impose in these matters on the whole society.

This movement of emancipation was not so clear in Europe. While a large number of hospitals are still Christian oriented, the secularisation of the society, including health care institutions, has led to a less pre-eminent role of religious attitudes in providing health care services.

However some controversial practices, mainly concerning the beginning (abortion and reproductive technologies) and the end of life (assisting suicide and euthanasia) have maintained differences in the attitudes of health care providers taking into account religious views.

We may nevertheless conclude that the birth of the bioethics movement was influenced by the idea that the bioethics discourse should be something different from the moral discourse and, by the way, implied “forums of discussion” (the bioethics centres) founded on new methodological principles: dialogue based on multidisciplinary and pluralism and a case related approach for the benefit of the persons concerned.

In a second step of their development, the 1980's, the bioethics centres, which then flourished in Europe, mainly developed as pedagogical and academic research institutions. It was the time for the integration of bioethics centres within the traditional **academic** curricula. It meant that the religions had limited influence on the development of such centres except when they were specifically created with the idea to promote religious views, essentially, but not systematically, in Catholic universities.

With the extension of reproductive technologies and the hope and fears raised by gene therapy, the end of the 1980's became in Europe a time of intense bioethics discussion on the control and limits to be imposed on the new technologies. The bioethics debate then largely concentrated on the normative process. Would flexible ethical standards be more convenient than laws or binding regulations? We were far from the moral and religious views and the battle was much more a battle for lawyers and medical ethicists.

So, the contribution of religious bioethics centres, although not negligible in the field

of clinical ethics, was not globally relevant to the European debate on regulation except in countries where the role of the dominant or official church did still have some influence on the social discussion (such as in Italy, England, Malta or Norway).

2) Religious believes and the new bioethical institutions

The institutions which draw the bioethics landscape in Europe have to be viewed through the following paradox. They necessarily convey the role of religious institutions but they have also tempted to replace the religious institutions in their role of expressing common social views on controversial ethical issues.

This may explain the subtle relationship that exists between the European institutions and religions. On one hand, the European Union has been attributed no responsibility as **regard** religions but could not ignore the role that religions has played in the European construction. On the other hand, although religions and the institutions which represent them have in general no distinctive role in the institutions in charge of bioethics in Europe, these religious institutions, and among them the Catholic ones, are strongly active in the field of bioethics and participate in the European institutions specialised in this field with the idea to influence the normative process.

Two questions should then be raised to understand the reality of this contribution.

a) Who represents religions and churches in the European institutions?

A preliminary remark would be to notice that only the Christian faith – which means the Catholic Church and protestant denominations–, is involved in this “partnership”. None of the other religions which are active in Europe (among them Judaism and Islam) have direct access to the European bioethics institutions. Two reasons may explain this unsatisfactory situation: the difficulty for European institutions to find partners which might be fully representative and a lower capacity for these religions, when organised at the European level, to define bioethics issues as a priority.

Concerning the contribution of the Catholic and reformed churches, we should underlie the following points.

– In the European Union, they do not contribute in participating directly in the work of the European Group on Ethics in Science and Technology, which has been set up in 1991 to advise the European institutions.

They contribute through the two main institutions which represent at the EU level respectively the Catholic Church and the Reformed Churches: the Commission of the Bishops’ Conferences of the European Community (COMECE) and the Conference of European Churches (CEC-KEK).

The COMECE secretariat monitors and analyses current developments in research policy, biotechnology and bioethics at the European Union level. For this purpose, it has set up a group of experts- the Bioethics Reflection Group- to provide advice and monitor developments in biomedicine and biotechnology at the EU level. The group consists of moral theologians, ethicists and lawyers.

The CEC has established in 1999 a Working Group on Bioethics within the Church and Society Commission. The Group consists of specialists in the different fields concerned (medicine, genetics, biochemistry, theology, law, ethics) and representatives of European churches.

– Within the Council of Europe, both Catholic and Protestant churches participate directly in the work of the European Steering Committee on Bioethics (CDBI), which is the intergovernmental committee of experts which since 1983 is working on harmonizing European regulations in the field of biomedicine. Both religions are observers but with a different status. The Catholic Church is a permanent observer in the Organisation and is represented as a State, the Holy See, in all committees, including the Committee of ministers, while the CEC is only an observer in the CDBI since 1997. This difference of status has some consequence on the representation of the two religions. The CEC, and in particular the secretary of its Working Group on Bioethics, is assuming the same role in the Council of Europe than in the EU. The situation is quite different for the Catholic Church which is represented in the CDBI by an observer directed appointed by the Holy See.

b) How religions and churches influence European bioethics institutions?

The influence of religions may be seen as direct or indirect and also differs depending on the objectives that the different religions have regarding what they should contribute in the European institutions.

– Direct influence is clearly expressed by the opinions delivered (written opinions and hearings) by churches on the ethical issues that come to discussion in the different European institutions.

Since the 1990 both COMECE and CEC have produced a series of contributions or organised conferences in relation with the topics currently discussed in the European institutions.

But “direct” influence has a stronger meaning in the Council of Europe where, due to its political status, the Holy See may convince some Member States (in particular the Lichtenstein) to veto recommendations proposed for adoption by the Committee of Ministers (we may quote three specific examples: the 1982 draft text on artificial insemination, the 1985 Recommendation on the duties of physicians towards patients and the 1987 draft Recommendation on reproductive technologies and related embryo research).

Indirect influence should not be neglected as it gives to religions the possibility to have their views supported by people who do not officially represent them.

Since the creation of CDBI, it has been suggested to Member States that they should appoint multidisciplinary delegations including ethicists. For a few countries, those ethicists are theologians. Moreover, the joining of new Member States in the 1990’s has certainly reinforced the importance of the group of States which shares the **view** that religious **opinions** should be taken into account in bioethics. This tendency may also be detected in parliamentary institutions.

Regarding membership in the EGE, controversy bursts out when in 2005 **when** the President of the European Commission appointed a group of members that were obviously pro-life people.

– The objectives of the Catholic and Reformed churches also deeply differ in their contribution to the European bioethics debate.

We may say that the contribution of the CEC both within the EU and the Council of Europe is in conformity with the following statement of the Working Group on Ethics: “the approach taken in our churches is to allow and encourage open dialogue on (bioethics), guided in the Holy Spirit by the wisdom of the Bible and the traditions of the church. The task of the churches is to help believers to take their responsibility– both individually and as a community of faith–”.

Regarding the Catholic Church, the objective is slightly different. It is clearly to influence international organisations, States and the communities concerned to adopt practices and regulations in conformity with the ethical principles promoted by the doctrine of the Church.

The attitude of the Catholic Church is nevertheless not the same in the two European organisations. The COMECE can only act as a lobby while the Holy See in the Council of Europe may develop a strategy of “rapports de force” to prevent the adoption of principles that would heavily fight its dogmatic views on sexuality and reproduction, the beginning and the end of life and the exercise of individual autonomy. But this strategy is not only defensive as it could appear during the 1980’s when the Holy See succeeded in stopping the adoption of the different texts mentioned above. Since then, it is also **an** active strategy trying to influence as much as possible the work of the CDBI, in particular in the elaboration of the European Convention on **Biomedicine** and Human Rights and its protocols. It benefits from the support of some Member States (Croatia, Ireland, Malta, Poland, the Slovak Republic...) which bioethics policy is very **close** to the opinions developed by the Catholic Church.

CONCLUSION: CAN THE EUROPEAN INSTITUTIONS SAVE THE RELIGIOUS DIMENSION OF THE BIOETHICS DISCOURSE?

European institutions leave limited space to religions as such in the process which leads to the elaboration of European policy in the field of bioethics. However religions–

essentially the Catholic and Reformed churches—are influential contributors in the pluralistic and multidisciplinary discussions that have been initiated by European institutions. If the churches behave mainly as experts, trying to clarify the values at stake and to formulate comments on the activities of the European institutions in this field, religious values, through a secularisation process, have often served as the basis of the development of the philosophy of human rights. As a consequence, the human rights approach, which is the support of the European bioethics regulation, has in some way inherited of this religious cultural background.

This does not mean that the principles which governed European bioethics, as incorporated in the European Convention on **Biomedicine** and Human Rights, have the same objectives and priorities than those promoted by religions. For the religions, the principle of autonomy, as applied by the European bioethics regulations, is certainly viewed as giving too much importance to the individuals while the same religions deplore a too restrictive interpretation of the respect due to human life.

Obviously, the Catholic Church has decided to enter into resistance against these “misinterpretations” and to influence, by any means, the process of adopting European harmonised legislations in this field. If we consider that the Catholic Church has historically served as a “model” of universalism, we may understand the paramount importance of this fight against a new secularised universalism that concerned the essence of human life.

The battle of bioethics is also a battle to define the European “identity”. If there is **no** doubt that religious values are deeply rooted in the European cultural heritage, the question is to know who can decide today – the Churches or the whole Community– how we should use and transform this heritage.

For all these reasons, we may conclude that the activities of religions and churches in the European bioethics institutions are oscillating between the discretion of the sphere of influence and the transparency of the sphere of contribution.

BIBLIOGRAPHY

Denis Alexander, *Science et Foi*, Editions Frison Roche, Paris, 2004.

Jean Bailenger, *Biologie et religion chrétienne, histoire religieuse de la biologie*, L’Harmattan, Paris, 2003.

Ignace Berten, *Religion et éthique dans la construction européenne*, Cluj, 1^{er} octobre 2004, www.portstnicolas.org/spip.php?article1948.

Laura Jane Bishop, *Mary Carrington Coutts, Religious perspectives on Bioethics*, National Reference Center for Bioethics Literature, 1994.

Conférence internationale, *L’espace public européen à l’épreuve du religieux*, 16-17 février 2006, Mons, Belgique.

John Hedley Brooke, *Science and Religion, some historical perspectives*, Cambridge University Press, Cambridge, 1991.

Commission des évêchés de la Communauté européenne, sous-commission de bioéthique www.comece.org.

Commission of European Churches, Church and Society Committee, www.cec.kek.org.

Hubert Doucet, *Au pays de la bioéthique : l’éthique médicale aux Etats-Unis*, Labor et Fides, Genève, 1996.

Pierre Egloff, *Et Dieu là-dedans? Eglise et sciences: vers de nouveaux colloques*, L’Harmattan, Paris, 2002.

Juan Guillermo Figueroa Perea (coord.), *Ética, Religión y Reproducción: apuntes para una discusión*, CDD, México, 2002.

Richard Friedli and others, *L’Europe des religions. Eléments d’analyse des champs religieux européens*, Peter Lang, Berne, 2004.

Michel Herman et Pierre Sauvage (éds), *Bible et médecine*, Presses universitaires de Namur, Namur, 2004.

Gilbert Hottois, *Essais de philosophie bioéthique et biopolitique*, Vrin, Paris, 1999.

Bérenghère Massignon, *Regulation of Religious Diversity by the Institutions of the European Union: from confrontation of national exceptions to the emergence of a*

European model, paper presented at the annual meeting of the Association for the Sociology of Religion, Atlanta, Georgia, 15 August 2003.

Bérengrère Massignon, *Les relations entre religions, humanistes et institutions de l'Union européenne*, présentation soumise à la XXVII conférence de la Société internationale de Sociologie des Religions, Turin, 21 au 25 juillet 2003.

Francis Messner, *Etats et religions dans l'Union européenne*, *Etat des Dieux*, N°6, 1^{er} trim. 1995, Des Etats, des religions.

Francis Messner (dir), *Le statut des confessions religieuses des Etats candidats à l'Union*

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européenne, actes du colloque Université Robert Schuman-CNRS, Srasbourg, 17-18 novembre 2000, Giuffrè Editore, Milan, 2002.

Edmund D. Pellegrino and others, *Catholic perspectives on Medical Morals*, Foundational Issues, Kuwer Academic Publishers, Dordrecht, 1991.

Michel Schooyans, *L'évangile face au désordre mondial*, Fayard, Paris, 1997.

Marco Ventura, *La Laicità Dell'Unione Europea*, G. Giappichelli Editore, Torino, 2001.

John R. Williams,