



Judicial Branch



INTERNATIONAL SEMINAR ON BIODIVERSITY LAW

**Speech delivered by Justice
Antônio de Pádua Ribeiro, Chief
of the Superior Court of Justice,
on May 11th, 1999.**



Speech delivered by Justice ANTÔNIO DE PÁDUA RIBEIRO, Chief of the Superior Court of Justice, on May 11th, 1999, at the opening session of the International Seminar on Biodiversity Law, held in the auditorium of the Superior Court of Justice

Biodiversity Law *

By Justice ANTÔNIO DE
PÁDUA RIBEIRO, Chief of the
Superior Court of Justice.

The Seminar which is now being inaugurated is of great relevance for Brazil, since it will be the forum for the discussion of topics of special meaning to Humanity, all of which stem from both the great developments of the biological sciences and the technology applicable to them. Proof of its relevance is the presence, here, of high-ranking authorities, among whom are the acting President of Brazil, Dr. Marco Antonio de Oliveira Maciel, and the experts who will attend it, either as speakers or debaters.

For Aristotle, the ultimate goal of life would be happiness, the path to which lay in the identification of the specifically human quality, which distinguished man from other beings. Therefore, the particular excellence of man would be his ability to think, which allowed him to overpower and rule over all the other forms of life. The philosopher assumed that the development of this ability would bring fulfillment and happiness.

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As a philosopher, the great Greek thinker was not a visionary and, therefore, he could not anticipate that this same peculiarity would lead man to land, in the 20th century, on unthinkable fields which would compel him to stand on the threshold of his own nature.

Not even the thousands of years of human history have prepared man for that, and if there is something capable of identifying our times, it is certainly the speed of technological progress: let us recall, for example, that more than two thousand years stand between row boats and caravels and the steam boat. Nevertheless, only a few decades separate the engine which moved vehicles at thirty kilometers per hour from the engine which allowed man to conquer the moon.

In face of the speed of scientific discoveries and of its transformation into technology we, the living creatures of this century, are confronting consequences which we could not have anticipated and which force us to endure the double task of adjusting to and reflecting upon the new realities so that they will fit into the system developed by reason.

This rational task has proven to be urgent, especially in the field of biology, where the latest developments have allowed for genetic manipulation, i.e., have allowed man to modify the material of life itself. In order to accept this possibility, man needs to redevelop his principles, his views of the world, so that they can include this newly acquired knowledge.

Therefore, we clearly understand why certain concepts are currently being imposed upon humanity. And biodiversity is certainly one of them. With no intention of replacing the expert, one could try to explain “biodiversity” as the variety of life forms which exist on the planet, and which should be analyzed under different perspectives, taking into account the genetic biodiversity of the ecosystems.

By applying an etymological criterion to the word, one can affirm that the diversity of live organisms is a factor inherent to the world as we know it, and that the constant changes which occur in the relations among live beings is but a natural process, the study of which, by the way, gave Darwin a place in History. After all, it was the diversification and the evolution of the species that called the attention of the British naturalist and biologist.

Therefore, the existence of a mechanism which allows for the modification of animal or vegetal strains is nothing new to us. Nevertheless, the human ability to modify not only the structure of a live being in particular, but also the ecological balance is something of unprecedented nature.

The deliberate manipulation of the genetic code of plants, animals or micro-organisms through genetic engineering is already a fact with regard to transgenic products. The procedure intends to suppress the activity of the genes or to transfer them from one species to another. This transfer allows for the replacement, the adding or the subtraction of a chemical command or gene of a given genetic strain,

in order to produce a genetically modified organism – the so-called GMO or transgenic organism. One of the stated objectives of this manipulation is the obtainment of products which are more resistant and better adjusted to the human needs. Another form of control over the mechanism of life is cloning, i.e., the reproduction of species as of cells other than the gametes, with the consequent production of identical species.

By subjecting nature to interests of different sources, the human race has also promoted both the destruction and fragmentation of habitats, the introduction of exotic species and diseases, the over exploitation of plants and animals and the contamination of the soil, the water and the atmosphere by pollutants, among other forms of attack against the biosphere.

As I have recalled, Aristotle referred to the human ability to overpower and rule over all the other forms of life through reason. But what the philosopher probably never realized is that this same control would ultimately threaten both the quality and the survival of life itself. Nevertheless, we have fallen prey to this specter, as anticipated not only by national and international scientific communities, but also by governments and environmental non-governmental organizations. The speed at which the findings of the biological sciences and their applications overlap, what is known as biotechnology, does not allow us enough time to correctly assess the consequences of such behavior. Furthermore, the economic interests of groups which finance some of this research can lead them to ignore or even conceal the signs of hazard.

The major question to be answered is: in face of the progress of genetic engineering and biotechnology, what behavior should be adopted by the professionals of the different areas involved, upon facing the challenges imposed upon us by this evolutionary process? Maybe the answer would be simpler if society had already set the guidelines for the issue, but society itself is also in bewilderment.

How should we deal with extremely polemic issues that can be assessed under different perspectives, are they of social, psychological, moral, ethical, economic or legal nature? For example: what are the ethical or unethical implications of cloning, *in vitro* fertilization, organ transplant, euthanasia, therapeutic abortion? What arguments would be strong enough to advocate the substitution of the natural reproduction process by a difficult, expensive procedure of uncertain outcomes? Some authors despise even *in vitro* fertilization, for they believe that a child conceived through such means is not the consequence of the love that binds his/her parents, but rather of an alternative resource which does not dignify the relation upon which the family should be based. Furthermore, what destination should be given to the fertilized ovules which are not chosen for implantation in the uterus? And what about the situation of surrogate mothers?

How should one react vis-à-vis the possibility of a transplant of the brain, which is the source of memory and character? Who should be given the power to decide on the life or the death of another, be it a fetus a terminal patient? What risks are involved when such divine power is bestowed upon a human being?

I do not intend to guide opinions, but rather to raise issues which show the complexity of the decisions which, in fact, should be made by society after serious and long discussions.

The media recently brought to light the story of a woman who, following her husband's death, decided to have his semen collected for further use, taking to herself the decision to conceive, as she actually did, a child who could never nurture the hope of meeting his father, due not a misfortune, but to the express wish of his mother. A situation such as this gives rise to arguments of moral, ethical and, why not to say it, legal nature, since it involves a child who is the product of an act of a third party, other than his father. What should the limits for decisions of such nature be? We do not have the answers yet.

Another current discussion involves health and economic issues. Is it safe, for example, to eat transgenic food? Some say it is. Nevertheless, the "O Estado de São Paulo" newspaper published, on the 5th of this month, that there is strong resistance against this type of product in Europe and Asia, based on the argument of "qualitative safety, environmental impacts, health related implications, ethical and moral issues, concentration of companies, consumer's freedom of choice, among others." These are relevant arguments which can not be neglected. The arguments of economic nature are indeed strong – production increase at low cost –, but are not capable of providing a satisfactory answer to the British scientist who announced the shrinkage of a mouse's brain, followed by its death, after the animal

had been fed transgenic potato. Advocates of the practice allege, on their behalf, that the cause of death was the ingestion of a type of lecithin mixed with the food. Whom should we believe?

In Brazil, the issue is currently undergoing a broad debate, for we still lack regulation and the public opinion has just begun to wake up to the problem. The transfer of genes between different species, such as in the case of the transgenic soy, in which scientists attempted to improve its nutritional quality by using genes of a chestnut, is still a source of great concern. People who had never eaten this type of nut became allergic to its components after eating the modified soy.

Thus another legal deadlock: should it be mandatory to inform the consumer, on the product's label, if it is of transgenic origin or not? Or should one run the risk of, without the consumer's knowledge, getting him to eat food to whose components he is allergic or which contradicts his religious belief? What values should prevail in situations such as these?

In the same field, an additional variable should be taken into account: transgenic products can be patented, thus obliging the producer to pay royalties in order to trade the product. And as a consequence, we have the commercial interest of those who have invested heavily in research and who, naturally, are seeking the return and profits of their investments. And at this point, an important ethical aspect emerges: what should the limits for the rush to patent the matter of life be?

This question demands a prompt answer, since we have already witnessed biopiracy, i.e., the fact that scientists from well-known institutions of the Northern Hemisphere take possession, in the Amazon region, of samples of the flora of medicinal properties. The methods they resort to, which are part of a large set of covert practices, are so many and of such a sly nature that legislatures have spent a whole month in the states of Amazonas and Acre collecting information on the looting within local residents.

The time has come for these and other aspects of an issue which is not only new to us but also rather instigating to be brought to light, so that they can be submitted to the assessment of the learned members of this panel and of the debaters who will honor us with their presence. They, as well as those of you who are here today, have the responsibility to pave the way to be trodden by the operators of Law, bearing in mind that the issues to be raised shall be taken into account in all of their dimensions, without neglecting the fact that man and his right to dignity are the major values to be preserved.