

**DIGNITY OF THE HUMAN EMBRYO: FROM JURIDICAL REFLECTION TO ETHICS.**

DIGNIDAD DEL EMBRIÓN HUMANO: DE LA REFLEXIÓN JURÍDICA A LA ÉTICA.  
DIGNIDADE DO EMBRIÃO HUMANO: DA REFLEXÃO JURÍDICA À ÉTICA.

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**ABSTRACT**

The dignity of the human embryo comes naturally from the fact of being a person. But is the embryo a person? The concept of person is mainly philosophical (ontological) whilst the embryo has a biological nature. According to Embryology, the presence of a single primitive furrow would be the proof that a unique human being is in development. The individual is, by definition, indivisible. Therefore, the experimental possibility of originate three, four or more human beings from each single embryo totipotent cell, regardless of the initial's zygotes divisions, shows that the embryo, in this stage, is an aggregation not an individual. Just after the primitive furrow formation we would be in the presence of a new human being, in the ontological sense, with juridical meaning.

**Keywords :** Embryo, zygote, fetus, dignity, value, individual, person and law.

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## INTRODUCTION

The ethical problem of the beginning of life isn't a recent issue for it has been questioned since Aristotle's age. Nowadays human life is untouchable since conception founded in the irrefutable biological evidence that the zygote is already into the genetic program of the new individual. Currently, the human identity problem of the embryo comprehends several contexts.

The following questions can be placed: when does it start the person? What is the embryo? Is it a person? An object? Or "something more"? Something else? Are the embryo and/or the fetus human life?

With this paper, is our intention to reflect, about the "human dignity", in an era where the society is emerged in a tecnociencia, is crucial to know the paths we can step in. It's our goal to neither produce concepts nor end up the subject but to reflect about it in a quest of a better understanding about the theme. The common statement: Is it human life. But asking again: is the embryo a human person? The solution is problematic because, besides the biological issues, there are also philosophical concepts, cultural positions, religious beliefs and perhaps juridical definitions. In our society, based in a Judaeo-christian history and tradition, emerges conflicts through the several views, which diverge in the concept, how to treat the embryo that, for some, already has the dignity of a human person, while for others it's still nothing, which allows it to be manipulated, experimented, rejected and thrown at the garbage as if it was an object.

Here upon, this presentation will only have sense on the assumption that human life has an orientation and so on is worthy of being lived. Therefore, we won't be neutral due to our education and beliefs, we will look for the strongest arguments to acknowledge the human dignity, since the beginning of life. Thus justice will be crucial because it's a being of relation to relation. This paper is organized, in a first section, where author's opinions of "the person to the embryo" concept are disposed.

Embryo's dignity thematic follows this first part and right after there is a reflection about the theme, ending with a short conclusion focused on the discussed issue.

According to Michel Renaud, the human embryo is a complex reality which leads to new problems, despite its biological existence has ever been an issue to philosophy<sup>1</sup>. In this chapter, is our intent to expose several embryo definitions and its inherent dignity according to a variety of scientists, adopting the "European Board" position on keeping the embryo's word instead of divide it into pre-embryo and embryo.

Throughout the work, when spoken about embryo status, it's intended to describe the way the embryo is treated by society. It's not intended to give a status to the human embryo but to try to find out if we are facing an entity that holds potential to be a human being.

The embryo is the first step of human life and thereby the smallest of the patients that a physician has to care. That is why the acknowledgment of his status has a human leads not just to a speculative importance but also to ethical, legal and deontological clashes: since the existence of a human being starts the duty of his guardians<sup>2</sup>.

Nowadays is known that: "the human embryo needs an own status with legal translation, because the Portuguese juridical system almost does not recognise nothing to the unborn child. Nevertheless, the state recognises value to intra-uterine life because money, lands, houses [...] can be attached as inheritance of the unborn"<sup>3</sup>. We need to be aware of the risk and not just the moral in a biomedical practice that changes the human being. For that, there is the European board convention which in this matter was named Convention for the protection of the human rights and dignity of human being facing the biological and medical applications.

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<sup>1</sup> RENAUD, Michel – «Análise filosófica acerca do embrião humano». In: *Brotéria*. 151(2000), p. 251-254.

<sup>2</sup> Cf. LEONE, Salvino – «Guardiões e Servos da Vida Humana desde o seu Início». In: *Acção Médica*. Ano LXIII, 1, (1999), p. 5.

<sup>3</sup> Tema apresentado no Seminário realizado no início de Março 2002 na Escola Superior de Biotecnologia UCP, Porto, promovida pelo Gabinete de Investigação de Bioética.

According to Natália Teles, the embryo word comes from the greek *embryo* and concerns to something that starts, beginning, what presents itself primarily in a confuse and unspecified state or in a simple way, the human development over the initial moments of the process<sup>4</sup>.

#### **FROM PERSON TO EMBRYO CONCEPT**

Despite everything, the human person concept is more or less peaceful. Though when reported to an embryo and/ or fetus the situation becomes more complex. The respect to human person is due to the embryos and/ or fetus body, because is a human body and this is integral part of the person, let's say that is the own person in it visible and physical state.

Professor Rui Nunes says: “both the Convention for the human rights and the biomedicine (CHRB, 1996) as the Unesco’s human genotype declaration (Lenoir, 1997) do not define clearly what embryo, human being and person are. They assert the inalienable principle of respect for the human dignity and for its genetic identity”<sup>5</sup>. The same author to consider the embryo an human being proposes three grounds: the genetic argument, the human embryo’s potential argument and the discontinuity-continuity argument. These are the arguments in favor of the ethical relevance of the being starting at the fecundation because it’s a new human genome and has genetic heritage, unequal from the progenitors, thus unrepeatable and possess its own potential to develop and become a person, as long as there are the necessary conditions and the continuing development line since the first cell until death. Therefore “has the potential to become “something”. Through the religious view, since fecundation there is soul or something more, thereby human life<sup>6</sup>.

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<sup>4</sup> TELES, Natália – «Questões Éticas do Diagnóstico Genético Pré-implantação». In: *Genoma e Dignidade Humana*. Coimbra: Gráfica de Coimbra, 2002, p. 74.

<sup>5</sup> NUNES, Rui – «Natureza do Embrião Humano». In: *Clonagem. O Risco e o Desafio*. Porto: Gabinete de Investigação de Bioética da Universidade Católica Portuguesa, 2000, p. 62.

<sup>6</sup> Cf. NUNES, Rui – «Natureza do embrião humano», *op. cit.*, p. 62.

Thus embryos, fetus, newborn, infant, early childhood, childhood, adolescence are not more than names of consecutive divisions of human life until adulthood. "But other difficulty is the embryo's nature, existing in society different lines of thought related with this topic such as the ones stating we face a human life since conception full of dignity and rights, ending up with those which argue that is a complex process, where hominization starts just with life extra-uterine.[...]"<sup>7</sup>.

Traditionally the idea of person is philosophical. But, as Michel Renaud states "it's not possible to isolate philosophy from science neither science from philosophy"<sup>8</sup>. According to Jorge Batista, "the most common is to name embryo to human life until the 12 weeks of pregnancy. But, recently, a work group of the European board about the embryo's status has already agreed to considerer as embryonic period just the time until the nidation's period, between the fifth and the eighth days after fecundation"<sup>9</sup>.

The embryo is the junction of the sperm with the egg in the scientific and cultural sense. Because we admit that the unicellular being has dignity. It has a plea of dignity, there is a new human identity and not just human material. The truth is that it's recognised has an individual having the right to inherit, but, in contrast, there is a huge silence about some of other rights.

The embryo's ontological status can be understood in several ways. Helena Melo said that "though, two major lines of thought can be referred in the subject: the one defending the human being should be respected as a person since the first moment of his embryonic existence and the other current advocating that the human being just gradually becomes a person, not being it in the first moment, the fertilization"<sup>10</sup>.

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<sup>7</sup> Relatório: Parecer sobre a Experimentação no Embrião – 15/CNECV/95, ponto 4.

<sup>8</sup> RENAUD, Michel – «Análise filosófica acerca do embrião humano», *op. cit.*, pp. 251-268.

<sup>9</sup> BISCAIA, Jorge – «Os direitos do feto». In *Cadernos de Bioética*. 24 (2000), p. 32.

<sup>10</sup> MELO, Helena Pereira de – «O embrião e o direito». In: NUNES, Rui (Coord.) – *A ética e o Direito no Início da Vida Humana*. Col.: *Bioética Hoje – III*. Coimbra: Gráfica de Coimbra, 2001, p. 167.

To Natália Teles a universal definition of embryo “is a difficult task for any exact science and in philosophical terms impossible. [...] The embryo’s status point must be approached in a multidisciplinary way. At the present time it have been attributed to the embryo four major types of status (biological, philosophical, ethical and juridical)”<sup>11</sup>.

Several authors the embryo as a “person” since fecundation because it’s endowed with genetic identity unique and irrefutable in its nature. The man is the only who possess individuality which allows him to say “I” and to exist as “person”. Also here seems preferable not to distinguish ranks: human life deserves respect, whatever the moment due to its essential dignity. The embryo is, in any phase and since the beginning, the physic and biological support necessary to the development of the human person and in him anticipate what he might be: there is no reason why we shall establish a respect scale.

Also Walter Osswald says that “the classic definition of the embryo [...] is still accepted today, though some recent events predicted the need to revise this concept. Though is known at present that nothing of special importance happens at the 8 weeks, so nowadays embryo and fetus when quoted are not distinguished”<sup>12</sup>.

The discernment about the personal nature of the human embryo, since it’s an act of human reason, occurs necessarily from the evidence of the biological data which involves the acknowledgement of the presence of a human being capable to develop and not just a possibility of life.

In the biological perspective of Helena Melo “since fertilization there is a new human organism, either it happened *in vivo* or *in vitro*”<sup>13</sup>. Also the same author, quoting Daniel Serrão, states that human life is a continuous process. The conjugation of a living cell,

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<sup>11</sup> TELES, Natália – «Questões Éticas do Diagnóstico Genético Pré-implantação». *Op, cit*, p. 73.

<sup>12</sup> OSSWALD, Walter – «Experimentação em embrião e fetos». In: *Novos desafios à Bioética*. Porto: Porto Editora, 2001, p. 122.

<sup>13</sup> MELO, Helena – «O embrião e o direito». *Op, cit*, p. 161.

the sperm, with other living cell, the egg, originates an unicellular being, also alive. This living being, the zygote or human egg, is a human organism with a development program, continuous and permanent which is an inherent skill, self-regulated as it is peculiar of living organisms<sup>14</sup>.

But, in an ontological way, we can ask: “Is the embryo one of us?”, as stated the Italian national ethical board: the Italian recently published a documentary entitled “Identità e Statuto dell’ Embrione Umano” (identity and status of the human embryo). Dr. Francesco D’Agostinho committee’s president presented it to the press. The conclusive thesis from the text, after a year and half of studies, echoes: “the embryo is one of us”, is a person, is people. In detail we can read: “the committee unanimously recognised the moral duty to care the human embryo, since fecundation following the criteria of respect and care that shall be adopted when facing human individuals”<sup>15</sup>.

This statement fits perfectly in the essential individual rights, acknowledge and safeguarded in the Universal Declaration of the Human Rights (article 3) – “every individual has right to life”<sup>16</sup>.

Therefore, we consider important again to be interpreters of these inalienable rights of the human being since his conception. It’s considered thereby the embryo in all his dignity, the dignity that the unborn possess since conception. The embryo’s life shall be protected and fed in the natural womb due to his intrinsic dignity, a dignity which belongs to the embryo and shall not be “something” that is granted by others, by the genetic parents, medical staff or by the state.

Concerning the embryo’s Ontological Status Helena Melo mentioned the position adopted by the National Ethics Board for the Sciences of life (CNECV), “having analysed the issue of the embryo’s ontological status throughout several of opinions

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<sup>14</sup> *Ibidem*, p161.

<sup>15</sup> Cf. <http://www.redempor.com.br/revistas/logus/report/embrião1.htm>

<sup>16</sup> Consultado em: Documentos Éticos-Jurídicos – Seleção e anotação de Paula Martinho da Silva. In: NEVES, M. Patrão (Coord.) – *Comissões de Ética. Das Bases Teóricas à actividade quotidiano*. Coimbra: Gráfica de Coimbra, 2002, p. 505.

issued [...] pointed out that the embryo will never turn into a subject of any other species”, as a result says that human life deserves respect whatever moment is in due to its essential dignity<sup>17</sup>.

The theological perspective, by the light of the Revelation projected into the meaning of human life and the dignity of the person reinforces the human reason in its own conclusions, without damaging the effectiveness of the acquisitions reached through the rational evidence. From here comes the duty of respect for the human embryo, duty that appears from the reality of things and from the power of rational argumentation and not from a position of faith.

Through the juridical point of view, the central issue of the debate concerning the human embryo’s protection is not the search of the humanity level, more or less late relating to fecundation but in the acknowledgement of the fundamental human rights since the fact of being man claims especially, in the name of equality, the right to life and physic integrity since the beginning of his existence.

Helena Melo says yet that “related to the matter of knowing if the embryo should or not be considered human person, aware of the diversity of opinions in our society the CNECV proposes that as long as this controversy is not finished and doubt is still alive it has application meanwhile and always the ethical principle which establish to be seriously elicited to attempt against any entity which presents doubts if is or not an individual full of human dignity”<sup>18</sup>.

We agree thereby with the statement of Rui Nunes when states that “until exists unmistakable confirmation that the embryo, throughout his first divisions, doesn’t has

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<sup>17</sup> MELO, Helena – «O embrião e o direito». *Op, cit*, p. 169.

<sup>18</sup> MELO, Helena – «O embrião e o direito». *Op, cit*, p. 169.



enough and necessary characteristics to be considered of similar status as the one of a human person, it shall, in our opinion, be considered as if it had them”<sup>19</sup>.

From our point of view the most important is to recognise that exists life in the embryo and it develops by an intrinsic principle, unitary with his own capacities. There is life into this cell’s union which develops and origins a human being. Thus no biological doubt remains of the existence of life there. “It’s not possible to establish a chronological bottom line in a personal dimension than the moment of conception”<sup>20</sup>. The embryo is a new biological organism, an entity with unique genetic content, with a typical human potential of biological development as a specimen of the *Homo sapiens* species. Therefore from the biological point of view there is no reason to not considerer and care the human embryo as a human being. Then the zygote is the only not ambiguous biological beginning of an individual and for that reason is the best bottom line for the full protection of all human beings in society.

The human being transcends the mere biological and physic’s existence, it’s possible to distinguish the duality of physic, mental and spiritual life as an integrated unit.

Outlooks undeniable that the human embryo belongs to the human family in accordance with the universal declaration’s preamble. Thus the acknowledgement of his inherent dignity and inalienable rights is the basis of freedom and of justice. Also the convention for the rights of children preambles states the same.

Roberto Andorno refers, in the embryo’s status analysis, three different approaches: the biological, the philosophical and the juridical ethical one. Biologically it is a human individual gifted of his genetics’ data. But this sight becomes empty and it concerns to philosophy the definition of person as an individual substance of rational nature. Yet emerges a doubt because we can’t deny neither assert that the embryo is a person. There are no technical means that might endorse the presence of a rational soul in the

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<sup>19</sup> NUNES, Rui – «A natureza do embrião humano». *Op, cit*, p. 62.

<sup>20</sup> MIRANDA, Isabel – «Quando começa a pessoa». In: *Cadernos de Bioética*. 16 (1998), p. 44.

embryo. The doubt send us for an ethical frame of respect for the embryo as a person. And thereby when doubts remain about which approach to follow the most favourable to the weaker should be taken<sup>21</sup>.

Undoubtedly: “the respect for the embryo, especially in an zygotic state is the hardest one – because the zygote is the most far from others, the most originary. [...] only by duty we must respect the embryo”<sup>22</sup>.

Yet to the “Royal College of General Physicians”, quoted by Agostinho Almeida Santos, the beginning of human life can be considered as the fecundation, moment in which the embryo genetically completed is formed. On the same line of thought, the French Committee of Ethics for the sciences of life and health after long argumentation concluded that the human embryo shall be considered as an *in fieri* human person since the moment of his conception<sup>23</sup>.

### **CONCEPT OF DIGNITY OF THE EMBRYO**

Kant when stated that the man is an end in itself and not a means, helped in the human dignity topic. When referring to “person’s dignity”, in this paper, is in the sense of the known value attributed to the man by the fact of being a man.

We can try a definition: dignity is the measure of the “moral ideal” of a person, i. e., assessment of perfection since a spiritual being can be more “perfect” than another. Accordingly the human being is unique for it the only one that has, besides the immutable intrinsic dignity, an extrinsic dignity possible of being increased or decreased. Spiritual perfection because as said before the dignity refers to spiritual

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<sup>21</sup> Cf. ANDORNO, Roberto – *Bioética y dignidade de la persona*, Tecnos, Madrid, 1998, pp. 91-94.

<sup>22</sup> BOURGUET, Vincent – *O Ser em Gestação – Reflexões Bioéticas sobre o Embrião Humano*. Tradução do Francês Nicolás Nyni Campanário. São Paulo: Edições Loyola, 2002, p. 234.

<sup>23</sup> Cf. SANTOS, Agostinho Almeida. «Reprodução Humana». In: SERRÃO, Daniel; NUNES, Rui (Coord.) – *Ética em Cuidados de Saúde*. Porto: Porto Editora, 1998, p. 143.

values as kindness and intelligence. Concerning the personal sphere he is the only that has spiritual nature.

Thus the human dignity and the inviolability of human life rises as criteria of resolution of any conflicts between juridical values or principles, emerging as source of charges and of legislative intervention.

The personal identity of each human, expression of the individuality of its own and exclusive physic and mental personality, is based in the present or future non-existence of two equal human beings. Each human being is thereby original, without any copy, unrepeatable, irreplaceable and indivisible, existing a natural right to difference. The human dignity is the basis of the respect for the human person. This develops progressively since conception until the biologic death, having its maximum influence when a human being reaches the age of reason<sup>24</sup>. By reaffirming this idea Agostinho Almeida Santos also says: “the individual’s development starts at the fecundation moment. This is an undeniable fact and in the presence of that the several disputes about the beginning of life can not constitute, today and in the actual state of scientific knowledge and technological development nothing but simple academic speculations or sterile discussions”<sup>25</sup>.

Thereby fundamental issues are raised: according to Agostinho Almeida Santos “is the resulting embryo from the fussion of a sperm cell and an egg just a simple cell with specific particularities or already a human being? Is the human embryo a potential person or a real human person? And from which exact moment shall the product of conception become object of all protection implicit to a human being? Shall the egg or zygote, still before the uterine nidation, have guaranteed less rights than the embryo

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<sup>24</sup> NUNES, Rui – «Dilemas éticos na genética». In: SERRÃO Daniel; NUNES, Rui (Coord.) – *Ética em Cuidados de Saúde*. Porto: Porto Editora, 1998, p.113.

<sup>25</sup> SANTOS, Agostinho Almeida – «Reprodução Humana», *op, cit*, p. 143.

already implanted into the maternal cloister? And is the same human embryo a juridical subject?”<sup>26</sup>.

The reasons for such questions comes more from philosophic matters than scientific doubts. We shall concede to the human embryo the right to be respected with dignity and in an integral way which shall be guaranteed to a human embryo despite the beginning stage of its continuous process of evolution and thereby the right to juridical protection. We agree with the opinion of Agostinho Almeida Santos when says that “abolish some existing tensions between the science advance and the inalienable fundamental rights of the human being”<sup>27</sup>, is an act of caution, efficiency and moderation, i. e., a true challenge for the jurists.

John Paul II declared to Pontifical Academy *Pro Vita*, recently reunited in the Vatican, when discussing about the juridical status of the embryo that “the historical and urgent time to give a decisive step towards civilization and well-being of people has arisen: the necessary step to claim fully human dignity and the right to life of each human being since its first moment of life and throughout all its pre-natal moment”<sup>28</sup>.

Rui Nunes says” the pertinent issue to ask shouldn’t be what or when starts human life”, but yes, when does it starts to attract attention from the ethical point of view”<sup>29</sup>. This was the reason of this paper due to the applicability. After been stated a biological and anthropological conception of man, the human dignity concedes him the right to be always cared as subject in itself with an own end full of ethical freedom and never can be faced as an object by someone else. This ethical freedom, implies that science advances always to improve the conditions of existence of mankind, respecting the identity and the species of which he belongs to.

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<sup>26</sup> *Ib.*

<sup>27</sup> SANTOS, Agostinho Almeida – «Reprodução Humana», *op, cit*, p. 146.

<sup>28</sup> <http://voz-portcalense.pt/7maio/mundo.htm>

<sup>29</sup> Cf. NUNES, Rui – «Dilemas éticos na genética», *op, cit*, p. 128.

This line of thought is the basis of what we know today and value as fundamental human rights. Rights that reflect the recognition represented of axiological pattern which is the intrinsic unquestionable value of human person<sup>30</sup>.

Through a careful analysis we verify that the law doesn't make the custody of the human being dependent of the acquisition of juridical personality. It should interfere before the human embryo birth which is independent of the acknowledgement of juridical personality, at least as it is in the civil code. Hence, perhaps, the custody conceded by law would be more effective if made the beginning of the juridical personality start, at the same time, as the scientific beginning of life. It's not the juridical personality that justifies the treatment provided by law to the human embryo, rather is the circumstance given to the embryo of having human nature that justifies that law recognises it juridical personality.

We confirm, thus, a divorce between the definition of the moment where juridical personality starts in the civil code and the custody that constitution gives to human life before birth. The Constitution of the Portuguese Republic in the article 24, nº 1, by asserting the inviolability of human life, doesn't distinguish about extra-uterine or intra-uterine nature, not limiting itself to recognise a life but yet a right to life.

Michel Renaud states that "the dignity of man is not a static concept but dynamic, requiring permanently the adjustments and improvements that the dialogue can reach. Overcoming the pure formalism, the dignity of the human being ultimately communicates the identity of the being a content, which preserves this of being reduced to mere identity card's data"<sup>31</sup>.

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<sup>30</sup> Cf. NUNES, Rui – «Dilemas éticos na genética», *op, cit*, p. 128.

<sup>31</sup> RENAUD, Michel – A «Dignidade Humana. Reflexão Retrospectiva a Prospectiva». In: *Cadernos de Bioética*. 23 (2000), p. 19.

## **SELF REFLECTION ABOUT THE EMBRYO'S DIGNITY**

Taking as biological criteria that the embryo is "human life" and shall be faced as "person" thus it deserves all the respect. If minded the relational criterion the human being is more than biology, needs the relation and the passage of human life through the "relation of recognition" made by the mother at a given time of the pregnancy. Developments of these studies have been locating the "dignity for the human embryo" topic beside other themes about human life.

Nowadays is difficult to deny that each human life starts with fecundation. More problematic is the point of knowing if in the first phases of development the embryo's human life deserves the same protection and respect as conceded to a developed person.

It's clear that the major ethical dilemmas we face emerge in the own nature of our attitudes as human beings whence the difficulty in our attitudes because the embryo status' problem is in the applicability.

Rui Nunes says that the "human dignity breaks out from the interior of the own human being. [...] The attribution of a status to the human embryo assumes, *a priori*, that it has been made a profoundly introspection about what human life is in the biological frame and in the moral universe. [...] The human being shall be respect since the fertilization moment given the non-existence of irrefutable biologic data that shows the opposite"<sup>32</sup>.

Actually human life is no more than a continuous process started by the formation of the zygote, after the synganaus union of the genetic contends from the egg and the sperm. This life is, since the first moment, liable to risks. The embryo, still in its initial

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<sup>32</sup> NUNES, Rui – «O diagnóstico pré-natal em Portugal». In: *Cadernos de Bioética*. 10 (1995), pp. 46-48.

moment, is a man and turn him in “something” would not just put his life in danger but also damage his dignity and his personal integrity.

The biological science shall be ruled by codes and standards which ensure an ethic that regards the human being since its beginning as human person beloved by the Creator. Otherwise the future of mankind can be in danger as referred by John Paul II in the Encyclical *Evangelium Vitae* (E.V.60) “from the moment which the egg is fertilized starts a new life that is not the one of its father or mother, but the one of a new human being which develops by itself”<sup>33</sup>. Thus the human being shall be respected and cared as a person since its conception, since that small cell and, therefore, untouchable. The other is guardian of my dignity<sup>34</sup>.

The constitutions plead the right to life but aren’t enough to face technology. Thereby the indispensability of dowering the human being, in an initial stage of its existence, with a legal protection that ensures him not just the life as also the dignity as human person. It’s undelayable and indispensable the legal status of the human embryo which confirms not only the right to life since fecundation but also the respect of the dignity as human person from the moment of conception. This will be the major aim of the State: to assert embryo’s human dignity, recognizing it as a person holder of rights since fecundation.

The embryo’s fundamental rights, as the right to life and integrity, are not guaranteed by law though are intrinsic to human nature (or for the believers guaranteed by God) and the duty of law is to preserve them. The ethical attitude of respect and care for life and integrity of the embryo is claimed by the unitarian conception of man which should be recognised since its first moment of corporal organism: his personal dignity.

Is well known the attitude that societies and governments have progressively adopt in a way to defend the embryo’s life, integrity and dignity establishing principles, most of

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<sup>33</sup> <http://www.cliturgica.org/arquivo/anoA-01-02/Edicao3/documentacao.htm>

<sup>34</sup> [http://providafamilia.org/bioetica\\_embriao\\_humano.htm](http://providafamilia.org/bioetica_embriao_humano.htm)

the times constitutionally supported, of respect for those values and creating legislation that defines principles, borders and rules for experimentation in the human being.

Is undeniable that the ethical assessment and the juridical statement become very sensitive when dealing with unborn's experimentation. Independently of the artificial distinction that might be done between embryo and fetus since none morphological nor functional event marks the supposed passage from embryo to fetus we shall accept the embryo as a place with human life which inexorably develops to the plenitude of a member of human species.

Furthermore the physician's Deontological Code says in the 47 article "the physician shall manifest respect by human life since its beginning". By admitting that the embryo in not "an individual" we can't deny the resemblance between the "generator" and the "generated. The embryo' status must be defined having into account what he is *per se*, simultaneously as biological and ontological reality and not based in the subjective definition.

As Luís Archer says "the beginning of human life was, in other times, a mystery as impenetrable as love was. Like love, it escaped in it majority to our programming. By one side, undesirable children appeared but for the other, it's missing, to many, the children they always wished"<sup>35</sup>.

According to Luís Archer exists, in a global scale, an irreducible controversy about the licity of the embryo's research, based in the diversity of opinions about the embryo' status: does he has the same dignity of an adult person? Does it deserve the same protection and respect? According to some, the dignity of a human person is just acquired gradually throughout the process which leads the egg to a human individual. For those the embryo's axiology will just be symbolic but not intrinsic. Thus the respect

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<sup>35</sup> ARCHER, Luís – «Questões éticas no início humana». In: NEVES, Patrão (Coord.) – *Comissões De Ética: Das Bases Teóricas À Actividade Quotidiano*. Coimbra: Gráfica de Coimbra, 2002, p. 251



and protection conceded shall be smaller than the ones preached to an adult turning ethically acceptable under determinate conditions, the use of embryos or its creation for research of proved scientific benefit. Such position is said to be in accordance with protestant traditions, besides of being consentaneous with several positions of catholic theologians even if the Catholic Church position is different.

However, to other thinkers, the embryo has the same dignity as a human person. It's, *in actu, naturae rationalis individua substantia*, according to Boecius' classical definition. The embryo has *ab initio* the natural and intrinsic dynamic of a unidirectional development, which expresses itself by gradual phases of a continuous process up to the shapes of fetus, child, adult and elder. Thus, for these, the embryo has an intrinsic human value and not just symbolic. It deserves, for all reasons, the same protection and dignity as conceded to an adult. Naturally to submit an embryo to a research that nothing has in his favor constitutes a serious attack to human dignity and to a whole personalistic axiology.

While this controversy is not solved and *in dubio pro reo* it seems to have application the precautionary principle which establishes to be seriously illicit to attempt against an entity about which we still don't know if is a individual full of human dignity

As a matter of fact for those that accept this position it shall not be ethically acceptable to sacrifice for therapeutic benefits a human life already *in fieri*, whichever might have been the purpose of its creation even if said that the enucleated oocyte which moved to a somatic nucleus is not embryo since it didn't come from the fusion of gametes. However what matters, beyond its beginning, is that this entity shall be aimed, by its intrinsic dynamic, to become into an individual as I.

From the legislative spectacle the two most relevant documents which approach the embryo's issue (embryonic life) are the Universal Declaration of the Human Rights and the convention about the human rights and the biomedicine<sup>36</sup>.

In the biological optic, there is no consensus about the embryo's concept but Natália Teles says that " of a genetical point of view we might say that from the moment in which fertilization happens the genetical heritage and the sex of the being are defined and consequently genetical studies are possible; as the possession of the genetical heritage is characteristic of a species, is possible to say of a embryo which is human being"<sup>37</sup>.

Natália Teles states in the CNECV's report that "the ethical argumentation shall support itself in a concept of human nature, with no limits to the purely biological sphere, neither extend improperly to the point of not distinguish it from non-human nature. The embryo shall always originate a representative of the human species and will never lead to a individual of other species [...] human life deserves respect whichever is it stage or phase due to its essential dignity. The embryo is, in any stage and since beginning, the physic and biologic suport vital to the human person development and in it we predict what he will become in to: thus there is no reason to establish a scale of respect"<sup>38</sup>. The embryo is the own person in its visibility of course according to its functions.

According to the report about the Embryo's research-5/CNECV/95, the 12 issue mentions that "fro the moment it become impossible to deny the existence of a new human life in the embryo, from syngamic the embryo shall not be an object. [...] the crucial point is the nature of the human embryo, from which will depend his status. That we are dealing with a initial stage of a human life is doubtless: guaranteed the

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<sup>36</sup> TELES, Natália – «Questões Éticas do Diagnóstico Genético Pré-implantação», *op, cit*, p. 74.

<sup>37</sup> *Ibidem*, p. 89.

<sup>38</sup> TELES, Natália O. – «Questões Éticas do Diagnóstico Genético Pré-implantação», *op, cit*, p. 96.

necessary conditions and overcame the choices regarding its implantation and intra-uterine growth, will never turn in an individual of other species”<sup>39</sup>.

Every embryo is, already, a human being. Thereby it’s not an object available to the man. He doesn’t depend of how the others see him or the way they think. Together with them, he belongs to the same and unique community of existence.

There is no doubt that the embryo is a human being and we shall treat him as person, as “other”, thus “the nature of the moral respect is universal: it’s because the respect is for every human being regarding the fact that is directed to the human being without any condition”<sup>40</sup>.

An egg, a zygote, an embryo, a fetus, an unborn, a baby, a child, an unexpected pregnancy or an elder, all deserve to be respected and so on with equal dignity and different status. Will be primary preoccupation to defend the dignity of the human person, in this so fragile phase of life, and to comprehend the limits of human dignity.

To Daniel Serrão the human embryo is “a person because is the first physic demonstration of a human body, irrecusably human in the scientific field. I will say, irrecusably human, obligatory human. And it can’t be anything else”<sup>41</sup>.

Regardless of the moment established to define the passage from embryo to person we can not take the living embryo as a thing. Defining the embryo’ status before this passage to human being will help to decide better what is or not allowed when dealing with embryo’s manipulation. We shall certify that any clinic or chirurgical intervention just takes place if in his benefit that is guaranteed to him the right to live as any of us independently of the normality standards and well-being.

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<sup>39</sup> Relatório: Parecer sobre a experimentação no embrião – 15/CNECV/95, ponto 9.

<sup>40</sup> BOURGUET, Vincent, *op, cit*, p. 234.

<sup>41</sup> SERRÃO, Daniel – «A Defesa da Vida: Um Direito da Pessoa, Um Dever da Sociedade». In: *Acção Médica*. LXIII, 3 (1999), p. 38-39.

This will be the greatest challenge of politicians at the present time: to ensure to the embryo the dignity, recognising it as person fully possessed of rights since fecundation. To be strict and determine a phenomenological analysis for the embryo's status following the thought of Zubiri that this is a "personal substantivity" and brings the ontological aspect of the *intellectualis naturae incommunicabilis existentia* according to the reflection of Ricardus of St. Victor. To define the embryo's status, in the ontological aspect, it might be appropriate to follow the thought of Ricardus of St. Victor, then the naturalist positions and of aristotelic influence of Boecius.

## CONCLUSION

The embryo's status is an actual theme and it's inexhaustible thereby any assigned definition in the several perspectives seems uncompleted.

One thing is sure, the embryo is biologically a life that if followed the right course will end up a man, a person living and progressing through all stages of a single life.

Finished this reflection we concluded that the embryo is an issue of a heavy ethical dimension so emerges the necessity of absolute protection of the person with relevant focus at the inherent dignity of the person and in this case of the embryo. It seems obvious to us that consent about the status of the embryo and the fetus will just be possible through an action of sensibilization and responsabilization of all society. The task of the next generation will be to alter the definitions of society and to change mentalities.

Certainly it's not utopian! The medical and biological sciences aim to human life the moment of conception. We shall have an ontological solidarity, take responsibilities for the being, an unprotected being and confer respect to the embryo and human life since the beginning of its conception. Though more important for us will be the poetic solidarity to well *perfectionis esse* of the embryo.

Our ambition is that man might be more human and acknowledged in his dignity by him and by society. The Man is worthy by the simple fact of belonging ontologically to the human species. We also alert that the resolution of these matters will interfere in the future of mankind. We can not forget the present of all our attitudes as due to them we will be judge in the future as we judged the past.

The importance of statements and ethical consequences regarding the embryo shall be underlined and taken as a general principle. The unthinkable would be to withdraw its value and dignity.

To finish we state that the dignity is in life which is a gift and doesn't depend of the "size", of the number of days, thereby shall be respected.

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