Estud. fem. vol.5 no.se Florianópolis 2011

Anencephalic fetuses and research embryos: subjects of rights?

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ABSTRACT

The present article analyzes the emergence of social subjects in the form of beings which had previously been embedded in mother's bodies and which have later become defined and circumscribed by biomedicine: extracorporeal embryos, created by *in vitro* fertilization, and anencephalic fetuses. The embryos were at the center of the controversy regarding their use in scientific research during the debates for the approval of Brazil's new biosecurity law. Anencephalic fetuses became the center of a debate regarding the relaxing of Brazil's abortion laws. This article analyzes mass media news stories provided mostly by a systematic review of articles published in *O Globo* newspaper between 2000 and 2005 in order to recover the arguments presented in these debates. The arguments to justify or ban embryo research or to anticipate the birth of anencephalic fetuses coincide, in large part, because the are derived from the same value configuration and are founded upon *the person*: Dumont's individual-as-value.

Keywords: Human embryo, anencephalic, abortion, life, personhood

RESUMO

O artigo analisa a emergência de sujeitos sociais em seres antes embutidos na figura materna, depois definidos e circunscritos pela biomedicina: os embriões extracorporais formados por fertilização *in vitro* e os fetos anencefálicos. Os embriões estiveram no centro de controvérsia nos debates para a aprovação da Lei de Biossegurança, que autorizou o seu uso em pesquisa. Já os fetos anencefálicos foram objeto do debate quanto à possibilidade de ampliação dos permissivos para o aborto. Analisando notícias da grande imprensa, principalmente em levantamento sistemático do jornal *O Globo*, entre 2000 e 2005, o objetivo é retratar os argumentos que integraram esses debates. Os argumentos que justificam ou recusam o uso de embriões para pesquisa e a antecipação de parto de anencéfalo coincidem em vários pontos porque são tributários da mesma configuração de valores e se fundamentam na figura de pessoa: o indivíduo como valor segundo Dumont.

Palavras-chave: embrião humano; anencéfalo; aborto; vida; pessoa.

The present article analyzes the emergence of social subjectivity in beings who were, up until recently, subsumed in the person of the mother and who have since been redefined and circumscribed by biomedicine. I'm talking, of course, about extra-uterine embryos formed by *in vitro* fertilization (IVF) and anencephalic fetuses.

During the discussions surrounding the new biosecurity law in Brazil, laboratory-formed embryos were at the center of a debate regarding their possible use as research material for the production of stem cells, with an eye to their future use in therapeutic practices. Anencephalic fetuses were part of the polemic created by the various and several deliberations of the lower Brazilian courts before the topic arrived in the lap of the Supreme Court, which was charged conceding or negating authorization for this type of gestation. Though anencephalic fetuses and laboratory-formed embryos are two distinct objects (one being created in a woman's womb and the other in a lab), my thesis is that the arguments justifying or rejecting the use of embryos in research and the interruption of pregnancy in the case of anencephalic fetuses coincide at various points because they are themselves both founded upon a configuration of values rooted in the same view of the person: the individual as a positive value, according to Dumont[1].

According to Dumont, the individual is "the moral being, independent and autonomous (and consequently essentially non-social), who carries our supreme values and occupies first place in our modern ideology regarding man and society"[2]. In this sense, the arguments surrounding laboratory-formed embryos and anencephalic fetuses has generally revolved around whether or not these were to be given the condition of "human subject" and the consequent rights dependent upon that definition.

In an earlier text, I explored the biological descriptions used in thee debates regarding the status of *in vitro* embryos.[3] In the present article, aside from considering anencephalic fetuses as an object of reflection, I also widen my approach to take in the structure of the arguments (whether based upon biology or not) which underpin the debate regarding the condition of both embryos and fetuses, particularly with regards to them being rights-bearing subjects. I have selected texts taken from the media, via a systematic review of material published in *O Globo* newspaper between 2000 and 2005, as well as a more random search in other Brazilian newspapers and magazines with national circulation. I focused my research on articles printed on the editorial page and on the "opinions" page, in which the majority of the authors are not news professionals, belonging to other social categories which supposedly confer upon them some degree of authority. I also looked at "letters to the editor", a more

1 Louis DUMONT,1992, 1997.
2 DUMONT, 1992, p. 35
3 Naara LUNA, 2007

democratic newspaper forum in which notable citizens also often made their views manifest. I have also cited a smaller number of journalistic stories. In order to investigate representations of the human embryo, I have focuses upon texts that deal with the use of human embryos as research material, particularly those used to form stem cells. My investigation began before the Brazilian Congress passed the new biosecurity law and continued beyond its passage. This law's initial bill was sent by the President to Congress on the 31st of October, 2003 and was signed into law on the 24th of March, 2005, with an accusation of unconstitutionality being raised in May of that same year.[4] With regards to the debates surrounding anencephaly, I also identified a cycle of controversies which took place between 2002 and 2005. With regards to authorization to terminate anencephalic fetuses, the cycle as marked by several requests to interrupt gestation, all of which were negated and all of which caused some degree of repercussion in the press, followed by a decree by the Federal Supreme Court (FSC) authorizing interruption in these cases, in accordance with acts proposed by the National Confederation of Health Workers. The Supreme Court's decree was partially revoked four months later and we are now awaiting the Court to take up the issue once again.[5]

With regards to the new reproductive technologies that are now available, Marilyn Strathern has pointed to the creation of a new legal and social entity: the extra-corporeal embryo created by IVF.[6] These embryos created by laboratories are not the only object of debate however: they have been joined by anencephalic fetuses (so-called “brainless babies”) after a juridical debate (on hold at the moment) regarding the termination of pregnancies involving these fetuses. Coverage in the Brazilian press of the debates surrounding the new biosecurity law and also upon the legal authorization for the termination of pregnancies involving anencephalic fetuses (or the extension of legal abortions for women carrying such fetuses) were both understandable as social dramas.[7] “Social drama” is a tool used to analyze crisis situations that periodically emerge and through which one can perceive contradictions and conflicts that are normally hidden in a given social system. Conflicts challenge the norms that govern behavior. In a social drama, conflicts stemming from latent interests become manifest. This can occur on any level of social organization and said conflicts develop until some form of conventional behavior is publically ratified as optimal. The juridical resolution authorizing research and the end of public demonstrations represent the end result of the drama in the case of the use of human embryos for

4 Letícia CESARINO, 2006.
5 Maíra Costa FERNANDES, 2007.
6 Marilyn STRATHERN, 1992.
7 Victor W. TURNER, 1957.

research.[8] In complex societies, courts are the means through which resolution of or agreement about a given social drama or conflict is reached, even if this solution turns out to be temporary and tense. For this reason, both of the topics which I deal with in the present article have been the object of juridical debate and analytic production on the part of legal scientists.[9]

Recognizing the fact that both cases became structured as social dramas, I do not focus on the development and outcome of events, but on the type of argumentation employed by those people who decided to make their opinions manifest in the press. Before looking at these arguments, however, we must first look at and analyze the historical process through with the new beings under discussion were formed, beginning with the autonomization of the fetus.

The fetus becomes an autonomous being

By looking at the history of the abortion debate in the Catholic Church, one can understand how the status attributed to the human embryo slowly developed over the years. According to Jane Hurst, in the penitential literature of the High Middle Age, in Canon Law (first compiled in 1140) and in theology, one finds the theory of the "later hominization of the fetus", according to which, prior to the birth of the soul, the fetus was simply an actualizing principal of posterior substantial form, with the body being seen as a resource for later potencialization. Different penitences were assigned to those who performed abortions before and after hominization and these punishments were connected to the laws against fornication. In the 17th century, Paolo Zacchia, a medical doctor, defended for the first time the argument that the rational soul is present in the human body from the moment of conception. In spite of this, the Holy See maintained its prior positions until 1869. In the 19th century, however, other positions appeared which defined the embryo as living and human. In 1864, for example, the Jesuit theologist Jean Gury claimed that even without receiving the soul, the fetus was the necessary step in the formation of a man and that its expulsion from the womb should thus be thought of as homicide. In 1869, Pope Pius IX declared abortion to be murder and this understanding was codified into law in the new Canon Law of 1917. Only in the 20th century, however, does the Church begin to explicitly confirm the concept that the protection of the embryo from conception onwards constitutes a "right to life", a position which has at its basis the belief in immediate hominization upon conception.[10]

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[8] Continuing my research into media sources, I can state that these "opinion" articles and letters to the editor were frequent during legislative debate and the approval of the law, but ceased completely after the law was declared inconstitutional. With regards to the interruption of gestation in the case of anencephalic fetuses, no further articles were found in the press after 2005.

[9] FERNANDES, 2007; Luís Roberto BARROSO, 2007.

[10] Jane Hurst, 2000.

The legislation regarding abortion developed along similar lines within Catholic doctrine. It was only in 1803 in England, for example, that a law was decreed which punished abortions performed both before "quickening" as well as after ("quickening" being defined as that phase of the pregnancy in which the woman feels the fetuses' movements). Earlier laws had only punished those abortions carried out after "quickening".[11] Although the crime was now stretched to cover the entire gestation period, punishments for abortions performed before "quickening" were lighter. In the same way that hominization had earlier understood humanity to Begin only with the entry of the soul into the fetus, the lesser punishments for abortions performed before "quickening" indicate a gradualist view of the status of personhood. This was made very clear in the English law of 1929, which severely punished abortions committed after the 28th week of pregnancy, establishing this point as the point at which the "child" (sic) was considered to be capable of surviving outside of the uterus.

Fyfe identifies the development of this abortion legislation as a process through which women lost control over gestation and also through which the fetus began to be defined separately from the woman, especially after "quickening" stopped being the reference and was substituted for medical notions of viability. The fetus thus began to become autonomous, an object understood as separate from the mother in the medical eye, with the mother being increasingly seen as a receptacle.

The construction of the academic discipline of embryology is also related to the representation of the fetus as an autonomous entity, separate from women who are understood to be passive incubators. Researching the history of embryology in the United States from 1910 until the end of the'20s, Lynn Morgan concludes that the images produced did not result in the personification of the embryo, nor did they influence attitudes regarding abortion, which was illegal throughout the nation. Rather, embryos and fetuses collected after abortions were dissected and served as raw materials for debates regarding pre-natal development, theories of the evolution of species and the embodiment of racial differences. The embryologists tended to discover in embryos exactly those things which enabled them to prove their previously held opinions.[12]

In the second half of the 20th century, the use of ultrasound to accompany gestation was one of the more relevant developments as it permitted direct access to images of the fetus, which were reproduced on a computer monitor. This contributed significantly to the view of the fetus as a separate and autonomous being and also changed views regarding the maternal body.[13] Ultrasound was joined by other obstetric techniques which diagnosed the fetus, including pre-natal tests such as amniocentesis

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11 Wendy Fyfe, 1991.
12 Lynn MORGAN, 2003, p. 288.
13 Rosana Machin BARBOSA, 1999.

and biopsies of chorionic vilosities.[14] Amniocentesis became common in the 1970s in the United States. These techniques, which increased the view of the fetus as an autonomous being, could also be appropriated by their users for other ends. In the early 21st century Brazilian context, we can verify that ultrasound sessions have gone beyond what is necessary to clinically diagnose a fetus: they have become occasions for parents and, indeed, the whole family to "meet the baby" which is "on the way". In these sessions, fetuses are given a high degree of subjectivity, reinforced by their movements and their corporeal images on the ultrasound equipments' computer monitors.[15]

Sarah Franklin affirms that anti-abortion groups in England have moved away from the rhetoric that every human life is sacred because it was created by God, substituting religious definitions of life for biological definitions. In this fashion, the person of the fetus is no longer sustained by its soul but by its possession of a human body and genotype. Fetuses are individual agents, separate from their mothers. This image of the isolated fetus is constructed via visual technologies (such as intrauterine cameras and ultrasound), defining its condition as a person in an asocial manner based on natural facts. This construction of the fetus as a potential person and individual is based upon teleological reasoning; upon concepts of vital biological strength and genetic determinism, in such a way that, from conception on, the fetuses' life course is understood to be genetically mapped. The individuality of the fetus is demonstrated by the concept of viability. Biology thus becomes the base for the cultural construction of social categories.[16] *In vitro* fertilization creates human embryos in the laboratory and thus represents the pinnacle of the autonomization of the fetus, formed as it is outside of the maternal body through medical intervention.

Ondina Fachel Leal and Bernardo Lewgoy (1995) verify different types of ontologies referring to the condition of personhood, as attributed to the embryo, and employed in the debates surrounding abortion.[17] The substantialist ontology is based upon the protection of the embryo according to a biological criterion which stipulates the presence of a human person from conception onwards. In the oldest religious version of this ontology, the soul is understood to exist at the moment of conception.[18] A lay version of this substantialist ontology identifies the juridical status of the human person in the genetic information contained in the individual genome. There is also, however, a relational ontology in which the rights of incomplete human beings depend upon community arbitration, being that embryos are understood to be non- (or pre-) rational. One variant of this relational ontology can be

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14 Ruth HUBBARD, 1990; Ruth S. COWAN, 1992.
15 Lilian Krakowski CHAZAN, 2007.
16 Sarah FRANKLIN, 1991.
17 Ondina Fachel LEAL; Bernardo LEWGOY, 1995.
18 Regarding the condition of the human embryo in recent Catholic doctrine, see LUNA, 2002.

found in the feminist reflection upon the status of the embryo's personhood, proposed by feminist theologian Marjorie Reiley Maguire. According to Maguire, the personhood of the embryo begins when "the mother makes a love pact with the life that is developing within her, promising to carry it to birth".[19] Maguire believes that the elimination of "fertilized eggs" is not immoral as "there are no people floating in test tubes". Sociality is thus the fundamental aspect of personhood: biology alone is not enough to guarantee this status. With respect to the abortion practices of Brazilian women of the popular classes, according to Leal and Lewgoy, although the act is condemned in principal as a sin or crime, based upon religious values (more specifically, Catholic values), initial lack of menstruation is not recognized as pregnancy and this becomes a strategy for denying the existence of an embryo. This relational approach opens space for the use of abortion-inducing medicines or teas.[20]

If the debate regarding the personhood of the embryo originates in earlier discussions regarding the legality of abortion, new reproductive technologies force us to look at the question from other angles, due to the increasing possibilities of intervention for embryos created in the laboratory. The concept of the "pre-embryo", a phase understood to be prior to the emergence of the primitive streak, has opened up space for experimentation on embryos up to the fourth day after fertilization. This is a particular interest of the British scientific community.[21] Na interdisciplinary committee on fertilization and human embryology was instituted by the government of the United Kingdom in 1982. This committee produced the Warnock Report, which established parameters for the creation of public policies and legislation regarding assisted reproduction and experimentation with embryos in Britain.[22] The report's recommendations are a reference point in the discussions surrounding reproductive technologies and the status of embryos. After its publication, the committee's embryologist suggested that the term "pre-embryo" be used for the initial phase of embryonic development.[23] Notions regarding the individuality of the fetus appear in the concept of viability and in the distinction between "embryo" and "pré-embryo".

The concept of the "pre-embryo" suggests, again, a gradualist notion of personhood. In the essentialist notions of the emergence of personhood, conception is understood to be the starting point, while gradualists understand personhood to develop over time. According to Strathern,[24] these positions are based upon an evolutionist understanding of time (which is identified with what I call the

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19 Apud Maureen JUNKER-KENNY, 1998, p. 63.

20 LEAL; LEWGOY, 1995.

21 Cf. STRATHERN, 1992; Tania SALEM, 1997. The primitive streak constitutes the beginnings of the spinal marrow and represents a starting point for the embryo's individualization. (Salem, 1997; Strathern, 1992), a theme which will be discussed below.

22 Fenella CANNELL, 1990; SALEM, 1997.

23 Michael MULKAY, 1997.

24 Strathern, 1992, p. 174.

gradualist position) or an episodic understanding of time (identified with what I call the essentialist position).

According to Luc Boltanski, technology such as assisted reproduction and juridical decisions which defend the "right" of people to have children create new categories which are often unclassifiable, in which the rights of a fetus inside a uterus are established or fetal surgeries proposed. A new category appears with the utilization of these technologies: the technofetus, exemplified by the frozen embryos left over after *in vitro* fertilization. Attempts to create legal statutes based upon the attribution of human dignity to extracorporeal embryos push the frontiers of what is understood to be human. The technofetus destabilizes the clear distinction between authentic fetuses (which are "destined to become babies") and tumoreal fetuses (which are "returned to dust"). Visualization of fetuses also put at risk the distinction between authentic and tumoreal fetuses, such as when photos or other images of fetuses are used by anti-abortion groups. The technologies which make the fetus accessible to the senses and the conflicts involving the fetus end up creating a fetus which is a social being. The fetus' access to the social world contrasts with the need to make the fetus disappear through legalized abortion.[25]

Boltanski comments upon deconstructionist approaches that contest belief in the existence of a fetus which exists as an atemporal, unchanging thing, contrasting it's social and historical construction.[26] One example of this sort of approach can be seen in the work of Morgan, who states that the meanings attributed to images vary in accordance with the context in which they are visualized. Embryos in and of themselves do not cause dilemmas: it is only when social controversies furnish the interpretative lens through which embryos are seen that they begin to have meaning.[27]

The status of extra-corporeal human embryos and stem-cell research

What meanings are attributed to the possible use of human embryos in research? In order to accompany the series of arguments within a debate which has become a social drama, I will present newspaper articles as they appeared in chronological order.

In the beginning, the debate regarding research on embryos was encompassed within a greater debate over human cloning. "Bad" cloning – reproductive cloning in which "cloned embryos" are transferred to uteruses in order to produce "copy babies" – was contrasted with "therapeutic cloning",

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25 Luc BOLTANSKI, 2004.
26 BOLTANSKI, 2004.
27 MORGAN, 2003, p. 262.

in which embryos would be used to produce tissues for transplants.[28] It is in this context which Volnei Garrafa,[29] then president of the Brazilian Bioethics Society (Sociedade Brasileira de Bioética), made a statement supporting the use of embryo-generated stem cells "to save or improve people's lives".

Garrafa continued: "The moral status of a sick adult individual cannot be compared to that of an agglomeration of cells that cannot think and which has not acquired form or function". When asked if an embryo is a person, Garrafa said "no" and affirmed that it is impossible to decide, with any degree of precision, "the exact moment when this occurs" (the emergence of personhood). According to the president of the BBS, this "question is not technical: it is moral". The status of the embryo as an agglomeration of cells é thus unfavorably compared to that of a sick adult individual. The embryo here has no defined form or function: this lack undermines its individuality. Aside from this, embryos don't think and are thus non-rational. Garrafa's view of the emergence of personhood can thus be classified as gradualist: at a certain, undefined point in time after fertilization, one becomes a person. Personhood here is linked to differentiation, individuality, self-awareness and rationality. In an interview, geneticist Sergio Danilo Pena contested the notion that life begins at fertilization: "I think it is wrong and a little bit dangerous to believe that a human exists from the very moment that a spermatozoid enters an egg. What exists is the potential to be human. At that point, what we are talking about is a mass of cells". Pena cautions against using a strict right-to-life argument for, after all, "a spermatozoid is a cell which contains life". Taking this rationalization to an extreme, one could argue that millions of lives are snuffed out with each ejaculation.[30]

A reader reacts: Nicolau da Rocha Cavalcanti says that: "it has been proven for quite some time now that, from conception to death, a human being does not substantially change. One cannot thus affirm that na embryo is not a person". Cavalcanti accuses Volnei Garrafa of using the same 15th and 16th century values "that proclaimed that blacks and Indians weren't human beings".[31] This reader presents the inaugural essentialist view of humanity in this debate, arguing that personhood begins upon conception. Cavalcanti recognizes that the attribution of personhood has changed over the course of history, a position that is criticized. Another reader, Enio Porto Duarte, makes an argument based upon religious beliefs: "there is something that is untouchable in man today, that is the meaning of life, something that is permanent and transcendental".[32] Arguments based on religious or philosophical questions are in the minority in the texts that I have looked at. Even religious authorities base their

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28 Naara LUNA, 2001.

29 Volnei GARRAFA. A ética dos clones. *O Globo*, 2 Dec. 2001, Ciência e Vida, p. 50.

30 Sergio Danilo PENA. Clonagem criará bebê com duas mães: geneticista acha que clones de embriões abrem perspectivas inéditas na medicina. *O Globo*, 3 Dec. 2001, Ciência e Vida, p. 24.

31 Nicolau da Rocha CAVALCANTI. Cartas dos Leitores. *O Globo*, 4 Dec. 2001, p. 6.

32 Enio Porto DUARTE. Cartas dos Leitores. *O Globo*, 13 Dec. 2001, p. 6.

views on biological arguments.[33] There is a tension between the value of the embryo's life, identified as a biography by those who are opposed to the use of embryos in research, and the perspectives of the scientists that see biological vitality at the cellular level.[34]

O Globo's editorial criticizes the position of American president George W. Bush, who defends the general prohibition of cloning with the justification that "no human life should be exploited or extinguished in benefit of another".[35] This position would ban the creation of human embryos for the harvesting of stem cells. The editorial disagrees with Bush and says that "human embryonic masses created for the purpose of harvesting stem cells, masses which are not even the width of a hair and which have no developed characteristics according to any reasonable criteria, cannot be considered as definitively human". This text focuses on the embryos' lack of physical organization and differentiation, two characteristics which are "definitively human".

A geneticizing definition of the zygote and clone appears in a letter from reader Marcos Paulo Castilho Costa.[36] He defines the egg and spermatozoid as having 22 chromosomes each (sic), which, after fertilization "form a single cell called a zygote, which possesses 44 chromosomes" (sic). In cloning, "44 chromosomes are extracted... from a cell our body and inserted in an empty egg" (an egg without a nucleus). This "zygote", once formed, "has the characteristics of the donor only and is thus an exact copy, an identical twin with a different age". Finally, the reader asks "where is the creation of life?" Costa, in short, questions if there is "creation of life" in cloning. Two other readers react. Everton Jobim assures us that there would be "a recreation of life through the deliberate intervention in a natural process, establishing a way of duplicating individuals…. In fact, the possibility of producing life is created but only through the use of pre-existing organic materials".[37] Antônio Carlos de Oliveira Laus reminds readers that criticisms of cloning revolve around the "immorality of the act" and also compares cloning to the creation of an identical twin: "twins occur naturally, using the genetic material of the father and the mother, within the mother, Who has the biological function caring for and feeding the twins, without adding to the essence of these tiny creatures, who are human from the moment of conception on".[38]

Mentions of "pre existing organic materials" which produce life or "the genetic material of the father and the mother" utilize a biological understanding of being. Laus' letter shows his essentialist

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33 Naara LUNA, 2002.

34 Catherine WALDBY, 2002.

35 BUSH e a clonagem. *O Globo*, 12 Apr. 2002, editorial, p. 6.

36 Marcos Paulo Castilho COSTA. *O Globo*, 10 Apr. 2004, Cartas dos Leitores, p. 6. The author makes a small error, because each gamete contains a set of 22 chromosomes and the sexual chromosome (X or Y), there being thus a total of 23 chromosomes.

37 Everton N. JOBIM. *O Globo*, 14 Apr. 2002, Cartas dos Leitores, p. 6.

38 Antônio Carlos de Oliveira LAUS. *O Globo*, 14 Apr. 2002, Cartas dos Leitores, p. 6.

leanings, in its affirmation of the mother as not "adding to the essence of these tiny creatures, who are human from the moment of conception on".

Eloi Garcia, an ex-president of and researcher for FIOCRUZ[39] , asks the crucial question in an article about cloning humans and animals: "when does human life begin? When does a mass of cells with no vestigial nervous system, placed on a petri dish in a lab, earn the protection of society?"[40] Different from the opinions expressed above, Garcia doubts that cloning produces exact copies of persons: "Cloning creates a copy of the genome and not of the person who donates the cellular nucleus". Garcia then goes on to put his finger on the key point in any debate surrounding interventions in human embryos and fetuses: when does life begin? An associated question is when and to what degree should society protect individuals recognized as human, an issue also touched upon by Boltanski.[41] Comparative ethnology shows us that this is a thorny issue, given that many societies do not even recognize a newly born baby as essentially human, but construct this personhood out of the baby's network of social relations.[42] By describing the embryo as "a mass of cells with no vestigial nervous system" and situating it in the context of a laboratory, Garcia highlights the absences which surround the figure of the embryo: a small-scale being, disorganized and undifferentiated – lacking individuality, in other words – which also lacks a nervous system, without which it cannot be a rational, self-aware human being. Finally, Garcia places this being in an environment where its future development is impossible: a lab and not a womb. Without a relationship to its mother, the embryo thus becomes unviable. Garcia's description of the extracorporeal embryo negates it the basic characteristics of humanity or individuality – the basic condition of personhood in the western tradition, according to Dumont. By focusing on genetics, Garcia defines the cloning process not as copying beings, but as copying genomes: the transcription of nuclear DNA. The author then takes up the question of law, invoking the responsibility of society to legally protect beings. The protection due to humans in this formulation is distinct from that due to biological material, according to society's definition of both.

Yet another article, this time written by José Ebrienos Assad, the ex-Health Minister for the City of Rio de Janeiro, discusses the possibilities of therapeutic cloning and questions whether the human embryo is life or the possibility of life.[43] Assad remarks that the embryo is "a group of formless cells, of which less than 10% will quicken in the uterus of the woman – if it is frozen, this percentage falls to 3%". Given the low probability that an implanted extra-corporeal embryo will result in pregnancy

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39 The Oswaldo Cruz Foundation, Brazil's most prestigious health research institute.

40 Eloi S. GARCIA. Pesquisa, perigo e progresso. *O Globo*, 18 Apr. 2003, Opinião, p. 7.

41 BOLTANSKI, 2004.

42 Cf. Beth CONKLIN; Lynn MORGAN, 1996.

43 José Ebrienos ASSAD. Que venha a clonagem terapêutica. *O Globo*, 25 Apr. 2003, Opinião p. 7.

(10%, reduced to 3% in the case of cryogenically preserved embryos), Assad defends the harvesting of embryonic stem cells. In this author's argument, then, the key point is viability. Following this line of thought, a new editorial in *O Globo* then discusses the theme of ethics and embryos, declaring it to be obscurantist and cruel to ban scientific investigation using rejected embryos.[44]

In response to this editorial and representing another opinion, Eliane Azevedo, tenured professor of bioethics at the State University of Feira de Santana, points to international human rights documents that establish protection for persons who are research subjects. Stating that "the limits to research on human beings are set by human dignity", Azevedo claims that the use of human embryos in experiments would be "a means without a justifiable end". She believes that "the respect for human life should be absolute", because "the human person of the embryo is a potentiality, not a probability".[45] Azevedo assumes a religious posture, affirming that human dignity is an absolute value and attributing the condition of personhood to the embryo, an essentialist representation. Reader Herbert Praxedes takes a similar position and says that "ever since the first experiences with mothers renting their wombs to produce babies for others, the Catholic Church has positioned itself against this sort of activity" in "defense of human dignity, even when it is embryonic".[46] Praxedes claims that there are no "scientific doubts about whether or not an embryo is alive, even during its initial stages, but even so, worthy of respect". For this reason, embryos cannot be used in research even if said research has therapeutic goals.

The editorial for the *Folha de São Paulo* for June 2004, was written in the context of the debates in the Brazilian Senate regarding the Biosecurity Law.[47] The bill authorized the use of "embryos – blastocysts, actually; masses of some hundred cells – which are left over from fertility treatments and which will never be implanted in a uterus in order to generate a pregnancy". The editorial states that the values of the "evangelical-Catholic lobby" should not "set the rules of a pluralist, secular republic which values effective, actual, life more than the mere possibility of life contained in a blastocyst". The authors also emphasize that the blastocysts in question are only found in test tubes and not in a woman's reproductive system and thus have no possibility of generating a fetus. Aside from pointing out the groups polarizing the debate, the *Folha's* editorial distinguishes the real and effective lives of

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44 NOSSA opinião: esperança médica. *O Globo*, 24 Jul. 2003, Editorial, p. 6.

45 Eliane AZEVEDO. Outra opinião: respeito à vida. *O Globo*, 24 jul. 2003, Editorial, p. 6. A professora participa do grupo de assessoria em questões de bioética da CNBB. Cf. CNBB forma assessoria em bioética. Disponível em: <http://www.cnbb.org.br/index.php?op=pagina&chaveid=236.013>. Acesso em 20 out. 2007.

46 Herbert PRAXEDES. *O Globo*, 26 set. 2003, Cartas dos Leitores, p. 6. The medical doctor and UFF professor was present at the "Vida: o primeiro direito da cidadania" seminar, organizaed by the Pastoral Universitária do Regional Leste 1 da CNBB in July 2005. Cf. o the CNBB's electronic bulletin: Boletim Notícias - Nº20 (1825) de 16/06/2005. Available at: <http://www.cnbb.org.br/index.php?op=pagina&chaveid=240a000013 > Acessed on: 20 Oct. 2007.

47 Clonagem terapêutica. *Folha de S. Paulo*, 6 Jun. 2004, Opinião, p. A2.

those who could benefit from the therapy from the potential for life which would not be realized in any case if the "blastocysts" continued in cryogenic storage. Here we find form being emphasized, once again, as well as means: "masses of some hundred cells" called blastocysts. The use of this term – blastocyst – instead of "embryo" is a rhetorical device employed to disassociate the embryos from life and personhood. In the fertility clinics, cryogenic preservation of embryos occurs before the formation of the morula, thus it's only after the embryos have been unfrozen and cultivated are blastocysts formed and stem cells harvested.

In the same context, Lygia V. Pereira, a professor and researcher of the Biology Department of the Biosciences Institute at the University of São Paulo, wrote an article in which she revealed her worries regarding the National Conference of Brazilian Bishops, which was lobbying politicians to maintain the ban on "the production of human embryos destined to serve as biological raw materials".[48] Pereira contrasted the vision of these religious leaders, who believed that the use of human embryos amounted to the destruction of life, with the position of scientists who saw the use of embryos as an opportunity to save lives. In her article, once again we find mentioned the fact that the embryos in question are not implanted in a uterus and descriptions of their undifferentiated internal state: "a conglomerate of some 100 to 200 cells". Pereira emphasizes that some of these embryos are defective and cannot be used to create babies, even under the best of circumstances. Here, the embryos are described as lacking form, individuality, perfection and viability – both in terms of their quality and in terms of being removed from a maternal uterus. They thus cannot be understood as lives or persons. Their incomplete nature and the fact that they won't be transferred to a uterus negates personhood to these human embryos.

Maria do Carmo de Souza Rodrigues' article is thematically centered on the status of the human embryo.[49] The author – a medical doctor and geneticist at the Fernandes Figueira Institute of FIOCRUZ and member of the Association of Catholic Doctors of Rio de Janeiro – points out an alternative: the use of adult stem cells. She questions the "insistence on sacrificing the lives of human embryos". According to Rodrigues, "Scientifically speaking, one cannot contest that human life begins at the moment of fertilization, when a series of events occurs involving the developmental genes and leading to the development of the embryo until birth". Rodrigues concludes that the "resulting egg-cell is a human life and the human embryo is a human being that possesses human dignity and all the human rights dependent upon the fundamental right to life". This Catholic medical doctor thus defends the value of human dignity and considers embryos to possess rights.

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48 Lygia V. PEREIRA. Ecos de um passado de trevas. *O Globo*, 19 jul 2004, Opinião, p. 7.

49 Maria do Carmo de Souza RODRIGUES. Outra opinião: Limites. *O Globo*, 11 Oct. 2004, p. 6.

An opposite position comes in the form of a letter from reader Marco Aurélio Gonçalves Ferreira who questions "the discourse" that privileges "embryos to the detriment of already formed individuals who have self-awareness and full life". [50] Ferreira takes up the debate over "the true beginning of life" and when one "acquires the status of human being", reminding readers that the concepts of "human" and "human dignity" are culturally rooted. The article by Stevens Rehn (UFRJ professor and researcher at the Scripps Research Institute in California) and Alysson Muotri (researcher for the Salk Institute in California) take up once again the argument regarding embryonic form, explaining that the stem cells used in research are not derived from fetuses, but from "little developed cellular masses, frozen in fertilization clinics and eventually discarded". [51] They talk about an event that occurred in the U.S. which brought together scientists, philosophers, economists and representatives of several religions in order to discuss stem cell research, The Jewish and Muslim representatives favored the research and only among the Christians was there no consensus. This observation breaks the oft-repeated stereotype regarding a division between the scientific and religious communities on this issue, showing divergences both within both communities.

With regards to the opposition between science and religion, the authors most identified with religious values generally began their arguments by citing the scientific basis for their positions. The article by Cristiane Melo, a professor at the São Paulo Catholic University, states that "contemporary embryologic studies affirm, beyond any doubt, that the human life begins with fertilization".[52] The author defends the idea that "the fertilization of a human being, whether embryo or not [sic] should reaffirm its natural right to life". Melo affirms that people should not be treated as things, which is what she believes occurs when "frozen embryos are not successful and do not acquire the status of human being and are thus considered to be things to be destroyed or harvested for their stem cells, becoming laboratory test subjects". With regards to the juridical question, Melo affirms that the embryo already possesses an inviolate right to life under the Brazilian constitution, as this "guarantee would have no meaning if it did not cover all phases of human life, beginning with conception and carrying on until death". Melo thus hits the principal question square on: is an embryo a human being which possesses rights or is it an object? As Melo believes that this being is a person, she believes that the harvesting of stem cells transforms embryos into laboratory test subjects. It is necessary to point out, however, that the Portuguese term "cobaia", used by Melo, is only applicable to complex animals with a defined form and not to microscopic beings, whether these be bacteria or human embryos.

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50 Marco Aurélio Gonçalves FERREIRA. *O Globo*, 18 Oct. 2004, Cartas dos Leitores, p. 6.

51 Stevens REHEN; Alysson MUOTRI. A chance do Brasil. *O Globo*, 4 nov. 2005, Opinião p. 7.

52 Cristiane MELO. Perigoso precendente. *O Globo*, 4 Nov. 2005, Opinião, p. 7.

While the debate regarding the use of human embryos in research was occurring, however, another controversy broke out in the press regarding the authorization of abortions for anencephalic fetuses, which would allow women to voluntarily terminate pregnancies involving such fetuses.

The anencephalic fetus: questions of life and personhood

If the discussion regarding the status of embryos generated by *in vitro* fertilization and their possible use as research material deals with questions regarding their non-viability due to their circumstances (i.e. in a laboratory and not in a woman's womb), in the case of anencephalic fetuses, non-viability is a function of their biological state and not a result of their insertion in an unfavorable environment. Here we find judgments regarding the perfectibility of the human condition. Perfectibility is a value which originated during the Enlightenment, according to which the human species is endowed with the capability for indefinite perfection.[53] In both cases dealt with here, certain attributes considered essential to perfectibility are lacking. If, in the case of the embryos, their use in research and their consequent destruction is argued as justified by the possibility of benefits accruing to sick people (perfecting the health of others, as it were), in the case of the anencephalic fetuses, the argument revolves around reducing the suffering of the mother who is aware of the physical condition of the fetus that she bears.

Anencephaly is a fetal malformation which is incompatible with life. The anomaly occurs due to a failure in the formation of the neural tube, resulting in the absence of the greater portion of the fetus' brain, cranium and scalp, with the remnant being exposed without hair or skin covering[54] According to data from the Brazilian Gynecological and Obstetrics Federation (Federação Brasileira de Ginecologia de Obstetrícia - FEBRASGO), one in every 1,600 live births is anencephalic and between 2.7 and 3 million children are born every year in Brazil.[55] According to Pinotti, 18 cases occur in every thousand live births.[56]

Defending the interruption of pregnancy in cases of fetal anencephaly, Penna attempts to clarify the distinction between brain death and neurological death. The opponents of anencephalic abortion argue that, given the existence of the brain stem in these fetuses, one cannot claim that they are brain dead. In the ethical debate, these two states (death of the brain and death of part of the brain) are often confused. In order to demonstrate the difference, Penna uses the example of brain death as an event which permits organs to be donated, with the brain dead donor being considered to be dead. In this

53 Luiz Fernando Dias DUARTE, 1999.
54 FERNANDES, 2007.
55 Apud FERNANDES, 2007.
56 Apud Maria Lúcia Fernandes PENNA, 2005.

case, the concept "biologically active" serves to resolve the contradiction between a dead person and a living organism. The author defends the concept of neurological death in the sense of the death of the person due to the impossibility of consciousness.[57] In the case of anencephaly, there is no physical formation of a brain that would permit consciousness and the Brazilian Federal Medical Council permits the donation of organs from a stillborn anencephalic baby, understanding this to be a case of brain death. Nothing changes between the 12th week, when the fetus is diagnosed via ultrasound and birth: an anencephalic embryo or fetus is dead. Penn affirms that the proper conduct for dealing with a dead fetus is to remove it from the uterus. Various authors in the field of law also agree with this opinion: there is no reason to protect the life of a anencephalic fetus as there is no living person.[58]

The debate regarding the legal authorization for aborting an anencephalic fetus, which would widen the interpretation of the law in Brazil permitting legal abortions (currently only permitted in cases of rape or risk of life to the mother), created huge repercussions in the Brazilian press between 2003 and 2005. At the end of 2002, a certain mother had her fetus diagnosed as anencephalic.[59] This woman received a recommendation from the medical ethics committee of the Fernandes Figueira Institute of FIOCRUZ for the interruption of her pregnancy. Her request was denied by the Criminal Justice system, the decision of which was maintained after appeal. During the years under examination here, this case was the first of a series which came out in the media, some of which involved decisions in which superior courts overturned the original ruling. The debate finally reached the Brazilian Supreme Court in 2004, with the first case regarding anencephalic fetuses to be judged by this court.[60] A few months later, the National Health Workers Confederation (Confederação Nacional de Trabalhadores da Saúde) proposed a legal measure that would guarantee mothers of anencephalic fetuses the right to interrupt their pregnancies. On July 1st 2004, Health Minister Marco Aurélio Mello passed a decree that would have permitted the therapeutic interruption of pregnancy when a fetus was diagnosed as anencephalic by a certified physician. This decree was revoked in a plenary session three months later and a final decision is now awaited. I will not discuss how this issue unfolded in the Justice System in the present article, however. Instead, I wish to analyze newspaper texts draw from editorial pages and "letters to the editor" sections which discuss the personhood of anencephalic fetuses, in order to contrast these with the representations examined above regarding embryos.

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57 PENNA, 2005, p. 97.

58 FERNANDES, 2007.

59 Rolland GIANOTTI. Esperando Emanuel: a angústia da grávida que gera um bebê desenganado por médicos. *O Globo*, 10 Feb. 2003, Rio, p. 13.

60 The description of the details of the juridical proceedings can be found in FERNANDES, 2007.

A few days after the decree allowing for the abortion of anencephalic fetuses was passed, Dom Eugênio Sales, Cardinal Archbishop Emeritus for the Diocese of Rio de Janeiro, wrote an article decrying the difficult times the Brazilian Christian family was passing through and citing abortion as something whose opposition "God established and Christ taught".[61] In his article, the Cardinal mentioned a woman who refused to request the termination of her anencephalic child "because death has to come according to divine will". The Cardinal then justified his position teleologically: "The sacredness of human life should be carefully preserved independent of religious beliefs, because this is enshrined in the natural law written on the heart of each being created in God's image". The acceptance of abortion would be a sign of the weakening of the absolute respect for human life. The Cardinal then alerted Catholics to not vote in the upcoming elections for candidates who favor "the crime of abortion, the interruption of pregnancy in the case of anencephalic fetuses (sic), and the biosecurity project with references to bioethical themes" (here he refers to the authorization of research involving human embryos permitted by the new Biosecurity Law). Finally, the Cardinal affirmed that "the Court of God" is above "the Court of Men". Sales' text is a rare example of a direct argument couched solely in religious terms, without appeals to biology, with "natural law" in this case being situated as a divine creation. Human life is here understood to be metaphysical and transcendent and the human fetus – anencephalic or not – is identified as sacred life endowed with the human condition.

The arguments here repeat the terms of the debate regarding human embryos, but a new factor also comes into play: the conflict between the rights of the mother and the fetus. This, of course, was absent in the case of extracorporeal embryos in laboratories. Lawyer Luis Roberto Barroso comments on the decision of the Federal Supreme Court to revoke the decree authorizing the termination of pregnancies involving anencephalic fetuses, remarking that questions of this nature should not be resolved by decree.[62] He describes the conditions of anencephalic fetuses in great detail (remarking that these fetuses lack the cerebral cortex and hemispheres) and emphasizes the impossibility of extra-uterine life in these cases. He defends the option for abbreviating these pregnancies in order to alleviate the suffering of the mothers. His strongest argument is that "the anencephalic fetus tragically does not have any cerebral life". Although he claims to respect the points of view of "influential religious sectors", he also says that "science, religion and the State are not a good mixture".

Several readers reacted to Barroso's article, specifically arguing the point that life does not end with brain death and that this would mean that anencephalic fetuses were not alive. Reader Rafael Leite

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61 D. Eugênio SALES. Um crime contra a vida. *O Globo*, 10 Jul. 2004, Opinião, p. 7.

62 Luís Roberto BARROSO. Há luz no Supremo. *O Globo*, 2 Nov. 2004, Opinião, p. 7.

Guimarães differentiates between brain death and encephalic death,[63] with the second category being understood as the only certainty of death. This would consist of "the total absence of metabolic and electric activities in the brain stem", that part of the brain that "contains the centers controlling breathing and the heart". Only the irreversible cessation of activity in the brain stem would allow for the removal and donation of organs. Reader Herbert Praxedes takes this line of thought even further, arguing that according to Resolution 1480/97 of the Federal Medical Council (CFM), brain death should be called encephalic death.[64] Praxedes describes this as involving "non-perceptual coma, lack of upper spinal motor activity and apnea". He also contests Barroso's affirmation that anencephalic fetuses do not have cerebral life. Praxedes claims that they do: that the proof of encephalic life is that the fetus moves, has heartbeats, swallows, urinates and defecates. The fetus' genome is proof of its human status and it thus should be considered as human life according to the Brazilian Constitution. Once again, this is an argumentation for the right to life. Finally, a third reader, Sérgio Bezerra de Matos contests Herbert Praxedes and defends Luís Roberto Barroso, pointing out that the Federal Medical Council recognizing that Resolution 1480/97 should not cover anencephalic fetuses, later emitted Resolution 1752 in 2004.[65] This later resolution affirms that anencephalic fetuses are considered to be stillborn and brain dead and it corrects "the arguments of those who believe them to be alive after the anomaly is diagnosed".

A similar position, this one founded on law, is argued in the letter written by Fernando Cesar Magalhães Reis. He considers the "technical aspect" that abortion should not be punished "in those cases where the subject of the abortion is lacking": "if there is no cerebral life after conception", then one cannot speak of life in terms of the law.[66] Guimarães and Praxedes, according to Penna's analysis, confuse the physical criteria of brain death with the concept itself. Guimarães compares the anencephalic condition to that of people who are not considered dead and whose organs cannot be harvested for donation, as there is brainstem activity and vital functions in both cases, Praxedes bases his position on the defense of the life of the anencephalic fetus, affirming that both its vital signs and its human genome qualify it as a human person. In this argument, the genome once again appears as the proof of human existence. Matos, relying on the CFM's most recent resolutions and using biological arguments demonstrates that anencephalic fetuses are brain dead and stillborn and are thus not living babies. If they are not living babies, then one cannot protect their right to life as they are not rights-

63 Rafael Leite GUIMARÃES. Cartas dos Leitores. *O Globo*, 6 Nov. 2004, p. 6.
64 Herbert PRAXEDES. Cartas dos Leitores. *O Globo*, 10 Nov. 2004, p. 6.
65 Sérgio Bezerra de MATOS. Cartas dos Leitores. *O Globo*, 12 nov. 2004, p. 6.
66 Fernando Cesar Magalhães REIS. Cartas dos Leitores. *O Globo*, sexta-feira, 12 Nov. 2004, p. 6.

bearing subjects. The same logic is taken up in juridical form by Reis: in the case of anencephalic fetuses, there's simply no life to protect.

An example of the religious position on this issue can be found in Gerson Simões Monteiro's article. Monteiro is the president of the Paulo de Tarso Christian-Spiritualist Cultural Foundation (Fundação Cristã-Espírita Cultural Paulo de Tarso).[67] He recalls the Petrean clause regarding the inviolability of life encoded in the Constitution and cites the Brazilian Civil Code: "man's civil personality begins at birth with life, but the law protects him from conception onwards with all rights of the born". Questioning the argument that a woman should have the right to control her own body, Monteiro says that "the body in question no longer belongs to the woman, given that she shelters another body inside of her during pregnancy; a body which is in no way an extension of her own". From "the spiritual point of view", Monteiro defines the "crime of abortion" as impeding the spirit from passing through "the necessary trials for its spiritual progression" here on Earth. The only admissible abortion is that which is undertaken to save the life of the mother who, in a future pregnancy, can "receive the same spirit that had its life interrupted". Monteiro situates himself against what he calls "eugenic abortions" in the cases of malformed fetuses, pregnancy resulting from rape and also abortions for socio-economic reasons. His arguments bring together the legal language regarding the inviolability of the right to life, a right considered to exist from conception (a biological state) onwards, and combines them with the religious values of an individualism centered upon a spirit which needs to incorporate. The abortion of anencephalic fetuses is here understood to be a "eugenic abortion".

The theme discussed by the *O Globo* editorial, "anencephaly and abortion" counterpoises the point of view of the directors of the newspaper *O Globo* and a divergent view. The newspaper's view is that Brazilian law is remiss in not authorizing abortions of anencephalic fetuses, given that these fetuses would die during childbirth or, if born alive, would only live a few instants or hours "with no vestige of consciousness".[68] The newspaper contrasts the permission for abortion in the case of pregnancies resulting from rape, alleging that it is "brutally cruel" to oblige a woman to carry the child generated in this fashion, with the prohibition of abortions of anencephalic fetuses, in which "pregnancy always results in a tragic end". The mother should not be treated as a "criminal" in these cases if she seeks ways to end her suffering. The editorial, entitled "Free Choice", considers the mother as a subject. The anencephalic fetus is not understood as a rights-bearing person due to its lack of viability and its lack of consciousness.

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67 Gerson Simões MONTEIRO. Outra opinião: Inadmissível. *O Globo*, domingo, 19 Dec. 2004, p. 6.

68 NOSSA OPINIÃO: livre escolha. *O Globo*, 29 Apr. 2005, Editorial, p. 6.

Doctor Marlene Nobre engages the editorial in an article entitled “Another Opinion: Scientific Basis”.[69] According to Nobre, the reasons to oppose abortion are not “exclusively religious”, but also “have roots in science”. The author affirms that “the zygote and the initial embryo are living human organisms in which contain all the bases for an adult individual”. Nobre’s text mixes religious and scientific discourses and demonstrates the belief that facts as described by science serve to guarantee the truth of modern western cosmology.[70] She defend the idea that human life begins at fertilization, declaring that the zygote contains “all the bases for an adult individual” (one presumes she means the genetic basis) and that it manifests its own personality and memory in “imprints”. Nobre’s description of the embryo is imbued upon the modern western understanding of personhood based upon the individual:[71] a person is able to “manage themselves”, “adapt to circumstances” as well as select these and “learn from experiences”. His life thus belongs “exclusively to himself”. Basing her arguments on “scientific reason”, Nobre uses psychological discourse when she claims that the mother of an anencephalic fetus needs “help to work out her feelings of guilt”. The author concludes, however, with a religious discourse, encouraging the mother to “guide her heart towards compassion and mercy”. Nobre intends to show us “the real meaning of life”. But what does this meaning consist of? Her religious definitions or their reformulation in scientific molds?

While the texts regarding embryos almost always treat biological characteristics generically, emphasizing the moment when life begins or the embryos’ undifferentiated and unindividualized character, the texts regarding anencephalic fetuses deal with biology in the most minute way possible. Dafne Dain Gandelman Horovitz (geneticist and physician of the Medical Genetics Department of the Fernandes Figueira Institute of FIOCRUZ) and Murillo Campos Porto Jr. (sanitary physician and president of the Medical Ethics Committee of the IFF, FIOCRUZ) confirm the total lethality of the anencephalic condition and defend the parents’ right to abbreviate an unviable gestation by terminating the pregnancy.[72] They describe the condition in the following terms: “Absence of the cranial cap and cerebral degeneration, following the failure of the embryonic structure in which the brain and bone marrow are formed”. They guarantee that “cerebral and cranial regeneration” is impossible in these cases. Here, arguments Center on the autonomy of the parents, whose suffering should not be

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69 Marlene NOBRE. Outra opinião: base científica. *O Globo*, 29 abr. 2005, p. 6. It is the president of the Associação Médico-Espírita do Brasil, not identified in the paper. Cf. Page of the Associação Médico Espírita do Brasil. Available at: <http://www.amebrasil.org.br/html/exc.htm>. Acessed on 20 Oct. 2007.

70 STRATHERN, 1992.

71 Cf.DUMONT, 1992; 1997; STRATHERN, 1992.

72 Dafne Dain Gandelman HOROVITZ e Murillo Campos PORTO JR. Elas têm o direito de sofrer menos. *O Globo*, 13 May 2005, Opinião, p. 7.

prolonged. The attribution of personhood to the anencephalic fetus is not even contemplated due to the fetus' utterly unviable state.

Reader Silvio Luiz Medeiros takes a stand for the "human dignity" which he attributes to the anencephalic fetus and declares that no one has the right to decide who should die.[73] He contrasts the mothers' problems with that of the fetus "who carries the weight of a capital sentence: death". Nevertheless, the fetus remains "a human from a biological and physical point of view". Medeiros argues that there are documented cases of anencephalic babies who have survived for over a year and that the parents should treat them as children and give them a burial, something which is impossible were they to be "aborted" and "thrown in the trash after being gutted like a chicken. The human dignity of the fetus is attested to by the practices of treating intra-uterine fetuses. In Monteiro, we see on the one hand an argument that the human condition resides upon a biological base: "human from a biological and physical point of view" from conception onwards, even in the case of intra-uterine fetal medicine. On the other hand, human dignity is associated with the baby's reception by its parents, who should love it and subject it to the cultural rite of burial.

Final Considerations

A historical process has taken place in which fetuses and embryos have become autonomous in relation to the maternal body. In the context of the polemics surrounding abortion, these discourses have become instrumentalized by pro-life groups in order to affirm that fetuses are in fact rights-bearing subjects. *In vitro* fertilization has permitted direct Access to embryos outside of the human body, including their use in research, which has, in turn, unleashed a debate regarding the status of the extra-corporeal embryo – a debate which is itself the continuation of the larger debate regarding abortion. Several themes are repeated in the representations of the embryo destined for research and anencephalic fetuses. The first point is the opposition between "person" and "thing", or "human being" and "object", often translated to "mother" and "anencephalic fetus". In the case of pregnancy with an anencephalic fetus, there is also the opposition between the rights of the mother and the rights of the fetus. Those who defend the idea that fetuses and embryos are lives and rights-bearing subjects present them as autonomous beings, omitting the fact that there development as life is dependent upon their insertion in a maternal body.

The second point thus becomes viability. The concept of viability shifts the focus from the mother to that of the fetus or the embryo. The absence of the embryo or fetus' viability becomes the

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[73] Silvio Luiz MEDEIROS. Aborto em fetos anencéfalos: uma tragédia para todos nós. Fórum dos Leitores. *Jornal do Brasil*, 22 May 2005.

central argument for refusing to give them personhood as they cannot survive outside of the maternal uterus. If there is no viabili9ty, there can be no life, let alone a rights-bearing subject.

Another central value used to argue about personhood is individuality. The affirmation that the fetus is an individual life and that the embryo is an autonomous individual from fertilization on are points which seek to prove what is and is not a person. On the one hand, describing the being in terms that deny its individuality (utilizing biological characteristics in particular, such as "amorphous embryonic mass" or "undeveloped cellular masses") is one way of denying it status as a person. Another argument that is often invoked is relationality (as opposed to individuality), a condition that highlights the social character of the human being. Both fetus and embryo only become people when recognized as such by mother and society. They thus cannot be considered as people in abstract terms and they are dependent upon the maternal body for their development.

Linked to the concept of individuality, we find the concept of perfectibility,[74] which illuminates the criteria utilized to deny or affirm personhood. When an embryo is represented as an amorphous mass of cells, it weakens the impression of an individual characterized by a singular and unique genetic makeup. The mass of cells cannot be a person as it is lacking in several senses: it is a small-scale, disorganized and undifferentiated being, without a nervous system which defines the capacity for rational thought and human self-awareness. Finally, it is set in an environment where its future development is impossible: a laboratory and not a uterus. The anencephalic fetus, in turn, is defined by the lack of that which is the very essence of the human species: rationality.

In designating the embryo, or any other being, with another term such as blastocyt, a rhetorical effect is achieved: to change a name is to change the essence of a thing. This expedient was used in England, with the designation of "pre-embryo" being used as a weapon to win the parliamentary debate and to guarantee authorization of research with embryos up to 14 days old.[75]

Essentialist positions in both cases comprehend the emergence of personhood from fertilization (seen as an inaugural episode) onwards. The formative argument continues to be based on the idea of a being that is a singular individual from the moment of conception, present from the moment that chromosomes and gametes unite in a new totality. This is, in essence, a genetics-based understanding of personhood. Here, DNA becomes the quality that is essentially human.[76]

Another argument which is repeated is the questioning of whether or not these beings are truly alive. "Biologically active" is the concept that is proposed to differentiate dead people from living

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74 Cf. DUARTE, 1999.
75 Cf. MULKAY, 1997
76 Cf. Tania SALEM, 1995.

organisms in the case of brain death.[77] This concept is applicable both to embryos in the lab and anencephalic fetuses. A tension thus exists between an understanding of life as biography and biological vitality,[78] which is found in both cases.

Related to the concept of life is that of human dignity, repeated and refute over and over again. The concept of human dignity elaborated b y Kant permeates both debates, especially in the notion that one cannot treat humans as a means but only as an end. According to Anne Fagot-Largeaut, in Kantian terms, respect is due to moral agents, beings who are capable of defining themselves in accordance with their own representations of the moral imperative.[79] In this sense, neither the embryo in blastocyst state nor the anencephalic fetus have moral autonomy and, for this reason, those who seek to defend life are forced to demonstrate the autonomy of these beings.

Questions of the value of life and human dignity touch upon the metaphysical dimensions of the debate. Religion, of course, is a related aspect of this dimension. Often represented by the Catholic Church in Brazil, religion is accused of being an obscurantist villain which impedes human progress via the use of embryos in therapeutic research, or the reduction of the suffering of the mother of an anencephalic fetus, forced to carry it to term. However, although an expressive minority of articles and letters use religion to oppose abortion of fetuses or the use of embryos in research, most of the time the arguments raised were scientific in nature (genetic composition; life from fertilization on). The exceptions were the texts written by Cardinal D. Eugênio Salles and the spiritualist leader DGerson Simões Monteiro, both of whom used frankly religious arguments. The Cardinal spoke of the sanctity of human life while the spiritualist argued that abortion is a crime “from the spiritual point of view” in that it impedes the evolution of the spirit on Earth. More interesting, however, was the mixture of religious and scientific discourses proffered by the spiritualist physician Marlene Nobre.

Whether or not the people arguing were religious, the main thrust of the arguments was biological or natural. Arguments that justified or condemned the use of embryos in research or the termination of anencephalic pregnancies coincided on various points because both were based upon the same configuration of values founded upon the same concept of the person: the individual as a value according to Dumont.

Both laboratory embryos and anencephalic fetuses are technofetuses,[80] destabilizing the frontiers between what is human and what is non-human. Religious, biological and legal discourses originating among various social sectors attribute or negate personhood and, consequently, the status of

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77 PENNA, 2005.
78 WALDBY, 2002.
79 Anne FAGOT-LARGEAUT, 2004.
80 Cf. BOLTANSKI, 2004.

being a rights-bearing subject. The value of life is a key concept for understanding the polemics surrounding this status. This is not simply the biological life process, but the notion of life as something sacred and transcendental. Abortion of anencephalic fetuses and the employment of human embryos as research material represent the end of a biography,[81] according to the pro-life perspective. The sacral concept of human life underpins Kant's definition of human dignity. The question remains unanswered: are we dealing here with rights-bearing subjects? Is life an essence of these beings or is it something to which they have a right? The autonomization of the fetus in relation to the maternal body via technologies of visualization, the extra-corporeal production of *in vitro* embryos and the legislation that rules over these beings are processes through which new social subjects are created. Once embedded in the maternal body, these biological beings seem to be acquiring their own life, both autonomous and individual.

Anthropological analysis of the presuppositions that underpin these debates shows, first and foremost, that the antagonistic arguments of pro-life and free choice factions both partake of the same root beliefs in the biological constitution of the human condition and the notion of a person as an individual, both vectors of modern western ideology.[82] Secondarily, the analysis provided above furnishes instruments to deconstruct pro-life arguments by invoking other biological referents or alternative interpretations, with respect to human dignity in the sphere of law, that permit us to question the status of person or full rights-bearing subject in the cases of anencephalic fetuses and extracorporeal embryos. These beings are not imbued with human essence, an attribute that is inherent to subjects, but their establishment as subjects or the negation of this status is always a construction that challenges society.

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81 Cf. WALDBY, 2002.

82 Luiz Fernando Dias Duarte and colleagues, 2006, refer to naturalism and subectivism.

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Translated by Thaddeus Gregory Blanchette
Translation from **Revista Estudos Feministas**, Florianópolis, v.17, n.2, p. 307-333, May/Aug. 2009.