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The question of the embryo's moral status

_Original Article

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Abstract French and German abstracts see p. 80

The embryo's moral status is a hotly debated question. Some authors give the embryo the same status as that of an adult human being, while others consider it as more akin to things or living beings such as animals. The difficulty is that, although an embryo will sometimes become an adult human being, he is not already one. To shed some light on this vexing topic, it is necessary to go back to the notion of moral status and examine the way in which we attribute it to human beings. We deem that a being's moral status depends on its intrinsic value, and that its intrinsic value depends on its intrinsic properties. The relevant intrinsic property for an adult human being is the possession of reason, and this property confers to its bearer the status of a person. So, is the embryo a person? The answer depends on the meaning we give to the expression «to possess reason». Is it an actual or a dispositional property? If it is a disposition, is it an actual one or a future-oriented one? The examination of the notion of a disposition gives a stronger support to the thesis that an embryo is not a person proper, but rather a potential one.

Key words: embryo; moral status; personhood; intrinsic value; dispositional property

What is «moral status»?

During the debate on Preimplantation Genetic Diagnostic (PGD) in the Swiss parliament, several opponents argued that cells taken from the embryo for testing should be considered equivalent to an embryo proper. The reason is that each cell is totipotent. So, continue the opponents, this cell should be treated as a human being, and PGD thus constitutes an unethical instrumentalization of a human being.¹ But is this really the case? Is such a cell, even totipotent, the moral equivalent of an embryo? And if it is, is an embryo a kind of entity that it is unethical to instrumentalize? In this paper, I want to examine these questions, which centre on one topic: the problem of the *moral status* of the embryo.

Mary Warren says quite correctly: «To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please» (1). So, if an entity has no moral status, then we may act toward it as we please; this is no longer the case if it possesses moral status. As the debates on PGD – and those on abortion and embryonic cell stems – show, for most participants, human embryos have moral status. If this were not the case, questions about its fate would not even be raised. However, as those same debates also show, there is no agreement on the *kind* of moral status the embryo possesses. Thus, there exist several sorts of moral status. How can we de-

scribe and determine them? This amounts to asking: what gives moral importance to entities that possess moral status? Giving a general answer to this question is easy: the moral status of an entity depends on *certain of its intrinsic properties*. We can see this with an example. In our relations with non-human animals, we often ask ourselves how we ought to treat them and if our attitude toward them should be different from our attitude toward our fellows humans. To answer this question, we point to animals' and human beings' different relevant intrinsic properties. Those properties are identified on the basis of several predicates, such as the following ones:

S*: to be in pain	R*: to want to secure justice
S*: to feel hungry	R*: to summarize the point nicely
S*: to be excited	R*: to be an astute judge of character
S*: to be afraid of you	R*: to be a smug hypocrite

According to Pucetti, says LeRoy Walters, the S*-predicates in the left-hand column can be applied to conscious nonpersons like dogs, whereas the R*-predicates in the right-hand column presuppose the possession of a conceptual scheme and the capacity to act as a moral agent. This latter capacity is, for Pucetti, the primary distinguishing feature of personhood, for persons are the only conscious entities who can adopt moral attitudes toward moral objects (2). In short, the moral status of these beings depends on what they intrinsically are, respectively beings with properties sustaining S* and beings with properties sustaining R* (entities of this last sort being called *persons*, says Walter – we shall come back to this point later).

1 Olivier Guillod, a Swiss health law specialist, put it thus: «For the opponents of PGD, the cell taken for analysis is totipotent, so it is apt to develop as a human being. This being so, it must be considered as an embryo, whose destruction for diagnostic ends is an unacceptable instrumentalization.» (Personal communication).

Let us return to the embryo. To outline its moral status, we must determine its relevant intrinsic properties: those which make it morally weighty. As we have seen, those properties are, for some authors, linked to totipotency – the property to develop in an adult human being. Is this the relevant property? Before answering this question, we must dig further to better elucidate the concept of *moral status*.

Intrinsic value and personhood

If certain intrinsic properties confer moral status, it is because they have a particular importance. This importance gives the entity its moral value. As this value is founded on intrinsic properties, we call it intrinsic value. So, the intrinsic value of something is the value which it possesses because of its intrinsic properties. On this point, there exists a wide agreement in our tradition.² Regarding human being, this intrinsic value is often named dignity. For example, Aquinas says: «Dignity means the goodness a thing possesses because of itself; utility, because of another thing» (3). Kant expresses himself in a very similar manner: there exists two kinds of entities; each of them has its proper value. Only entities which are ends in themselves (i.e. human beings or persons) have intrinsic value – Kant speaks of «internal value» –, that is, dignity.³

Note that entities do not have only intrinsic properties, properties they possess *because of* themselves; they additionally possess extrinsic or relational ones, properties they possess *because of* others. Warren characterizes both properties as follows: «A thing's intrinsic properties are those which it is logically possible for it to have had were it the only thing in existence. Its relational properties are those that it would be logically impossible for it to have had were it the only thing in existence» (4). As some intrinsic properties confer intrinsic value, some relational ones confer relational value. For example, «to be loved» is a relational property that confers relational value to the entity that is loved (the object of love), «to be hated» relational disvalue. As this example shows, relational value can combine with intrinsic value to enhance the general value of the entity, or diminish it if it is a negative value (a disvalue). Some authors consider that relational values play a role for the status of an entity; for example, it explains why we treat an IVF embryo and a spare embryo differently. I sympathize with this position, but in this paper, I will firmly stay in the main tradition: moral status is a matter of intrinsic value and properties.

Those semantic points are very important because they underlie the manner in which we usually ask the question of moral status. Each time, we have to find what the relevant intrinsic properties are. As Pucetti's considerations show, for a human being these properties are several mental capacities; more precisely, several *rational* capacities. On this point too, our tradition is generally in agreement; it has coined a special term to denote the entity that possesses reason: a *person*. Here too, Aquinas and Kant go hand in hand. For the first, a «person» includes in its meaning the most dignified nature: reason⁴. For the second, conceptual self-consciousness confers dignity to its bearer and gives him the moral status of a person; that is, of an entity completely different from things, a thing being an entity that we can use as we please⁵. But their agreement ends when they put forth the question of the moral status of entities that are not persons. For Kant, if you are not a person, you are a thing: an entity that can be instrumentalized without restraint (although cruelty to animals is prohibited on other grounds). For Aquinas, there exists a continuum of status following the scale of beings: minerals, plants, animals, human beings, angels, and God. For our topic, this difference is not so important, because when we ask what the moral status of the embryo is, what we want to know is if this entity has the status of a person or not. We want to know whether we must treat it like you and me. Since an embryo develops naturally into a person, the question we ask can also be reworded in the following manner: When does a person begin?⁶

The beginning of personhood

Is the embryo a person? If it is, it must possess somehow some relevant kind of rationality. There are three main answers to this question, typical of three doctrines. Alex Mauron and I have proposed to name them actualism, dispositionalism and capabilityism.⁷ Remembering Pucetti, let us call the relevant property for personhood – rationality – R^* . For *actualism*, P is a person as soon as she puts R^* in practice and as long as she continues to put it in practice; so, to confer personhood, R^* must be an actual property of P . For *dispositionalism*, P is a person as soon as she puts R^* in practice and she continues to be a person as long as she is able to put it in practice; so, to confer personhood, it suffices that R^* is a dispositional property of P . For *capabilityism*, P is a person even if she has not already put R^* in practice, inasmuch as she

2 For precisions, see my book *Enquête philosophique sur la dignité*. Genève: Labor & Fides; 2005. ch. 3 and 4.

3 «Im Reiche der Zwecke hat alles entweder einen Preis, oder eine Würde. Was einen Preis hat, an dessen Stelle kann auch etwas anderes, als Äquivalent, gesetzt werden; was dagegen über allen Preis erhaben ist, mithin kein Äquivalent verstatet, das hat eine Würde [...] Das aber, was die Bedingung ausmacht, unter der allein etwas Zweck an sich selbst sein kann, hat nicht bloß einen relativen Wert, d. i. einen Preis, sondern einen innern Wert, d. i. Würde: (Grundlegung zur Metaphysik der Sitten. Frankfurt: Suhrkamp; 1974. p. 68).

4 «Natura autem quam persona in sua significatione includit, est omnium naturarum dignissima, scilicet natura intellectualis» (De Potentia. q. 9, a. 3).

5 «Daß der Mensch in seiner Vorstellung das Ich haben kann, erhebt ihn unendlich über alle andere auf Erden lebende Wesen. Dadurch ist er eine Person und, vermöge der Einheit des Bewußtseins, bei allen Veränderungen, die ihm zustoßen mögen, eine und dieselbe Person, d. i. ein von Sachen, dergleichen die vernunftlosen Tiere sind, mit denen nach Belieben schalten und walten kann, durch Rang und Würde ganz unterschiedenes Wesen» (Anthropologie in pragmatischer Hinsicht. Frankfurt: Suhrkamp; 1980. p. 407).

6 Norman Ford has written a book on this topic under the title: *When Did I Begin?* Cambridge: CUP; 1988.

7 In this section, I use some distinctions from a paper I have written with Alex Mauron: «Moral Status Revisited. The Challenge of Reversed Potency». *Bioethics*, In Press.

possesses the capacity to put it into practice later; so, to confer personhood, it suffices that R* be a *capability* – a dispositional, future-oriented property of P (see Table).

possesses R* as a capability and not as a potentiality: it possesses it now, so it is not the case that it will only acquire it later in becoming a person. For instance, Catholic Church

R* confers personhood if R* is		Paradigm:
Actualism	<i>exercised now</i>	activity
Dispositionalism	<i>could be exercised (again)</i>	virtues, acquired skills
Capabilitism	<i>might be exercised (in the future)</i>	innate aptitudes

Let us now apply those doctrines to the embryo’s status and propose some evaluation. For *actualism*, an embryo cannot be a person because it cannot manifest any sign of rationality. This position, however, does not stand against objections, because it implies among other things that each time we fall asleep, we lose our status as a person. For *dispositionalism*, we do not lose R* when asleep, because it is a dispositional property: a property to behave in a certain manner when placed in certain circumstances – we will again begin to reason when awake. However, P is a person only if she has already put R* into practice, i.e. actualized it, and is still able to do so. A human being is thus a person as soon as she has showed any sign of rationality, but not before. Tristram Engelhardt is a proponent of dispositionalism when he claims: «Not all humans are persons. Not all humans are self-conscious, rational, and able to conceive of the possibility of blaming and praising. Fetuses, infants, the profoundly mentally retarded, and the hopelessly comatose provide examples of human nonpersons.» (5) *Capabilitism* goes beyond this, and denies that R* must have already been actualized for P to be a person. In this view, a human being is a rational entity as soon as she possesses the capability for it; if she cannot immediately manifest it, it is only because she needs maturation in order to do so. In its extreme form, capabilitism asserts that the embryo possesses R* from the *moment of conception* (as is well known, this is the position of the Catholic Church).

doctrine insists that the embryo is a true person with a potential – an entity that possesses capabilities to exercise later that what now makes him a person.⁹

Capabilitism asserts that an embryo possesses R* some time before it is put in practice, because R* is a capability. The extreme version of capabilitism places the beginning of personhood at conception. Actualism and dispositionalism deny this and affirm that the embryo and even the fetous are only potential persons. Some nevertheless consider that this potentiality is not morally trivial: the intrinsic property of becoming later a person confers *some* value on the embryo and on the fetous (to be a potential person is a moral status, even if it is lesser one than the status of a person proper). Let us call them *potentialists*. For the moment, it is not important to evaluate potentialism, because our present question is: Is the embryo a person? Only in case of a negative answer will potentialities come to the fore, inasmuch as it is manifest that an embryo, if not a person, is a potential one.

So, does personhood begins at conception? Since R* is a disposition, dispositionalism and capabilitism are the only acceptable alternatives. Which is the right one? The debate between these two positions is not new, and since its beginning, a great variety of arguments have been presented for and against each position. I will not repeat them¹⁰, but focus on what is in my view the most crucial point of this debate: the question of the nature of dispositions.

It is important not to confuse the *capabilities* that constitute the heart of dispositionalism and of capabilitism with *potentialities*. Both belong to the large set of dispositional properties and ordinary language often refers to both as capabilities. Strictly speaking, however, a *capability* is a disposition to do or to *undergo* something (now for dispositionalism, now or later for capabilitism) and a *potentiality* is a disposition to *become* something. In this strict philosophical sense, when we say that the embryo has the potentiality to be a person, or is a potential person, we say that it has the capability or disposition of becoming a person and not that it is truly a person. As Robert Elliott states: «Potential persons are actual organisms with a potential for developing those characteristics definitive of personhood» (6).⁸ It will later become a person but is not yet a person, thus it does not have the moral status of a person. This is why capabilitists insist that an embryo

The nature of dispositions

It is relatively easy to tell if a certain entity has a certain property as long as it is an actual property: an actual property is an observable property (of course, from observable to observed, the path is sometimes long, tortuous, and fraught with difficulties). A disposition is not observable *per se*; it is an inferred property, and to be inferred it must have manifested itself. We know that glass is brittle because pieces of glass have broken. Contrary to appearances, this is not an argument in favour of dispositionalism: if we cannot say that

8 In France, Lucien Seve adopts the same position when he says that an embryo has the potentiality to become a person (See Pour une critique de la raison bioethique. Paris: Odile Jacob; 1994. p. 99).

9 More precisely: as we cannot exclude that an embryo possess R* from the moment of conception, we must treat him as a person (a doctrine named tutiorism).

10 I have contributed to this debate in my book La valeur de la vie humaine et l’integrite de la personne. Paris: PUF; 1995. ch. 5.

glass is brittle before some pieces of glass have actually broken, we can say that a particular piece of glass is brittle before it breaks, and even if it never breaks. In the same manner, if we could not say that embryos possess R^* before some embryo had manifested R^* , we could say that a particular embryo possesses R^* even if it has not yet manifested it. Nevertheless, there is a special difficulty in the case of an embryo: an embryo as such never manifests R^* , has never manifested it and will never manifest it. As an embryo is a developmental entity, it does not have all the properties it will possess later from the outset, because it will acquire many of them later. Whence the difficulty: at which point of its development does it acquire R^* ?

To answer this question, we must further analyse the notion of disposition. A disposition is a tendency to behave in a certain way in a certain environment. Glass is brittle, i.e. it has the tendency to break when it is thrown to the ground. Glass has this tendency because of its molecular structure. So, to have a certain molecular structure is the actual property that underlies brittleness. We call such a property a *basis property*. Such a property is an actual one and therefore is observable. What is the basis property of R^* and when does the embryo get it? It is not easy to tell precisely, but it does seem that it must be something in the brain (even dualists, at least of the thomistic stance, concede that the soul cannot inhabit a body as long as the latter is not appropriately contrived for the former). So it could seem that a human being cannot be a person before the brain is in his skull, and that therefore the embryo cannot be a person. This conclusion, however, does not follow, because basis properties and dispositions are situated on causal chains: the brain has the capacity to think (to have R^*), a capacity that the embryo does not possess because it has no brain. But the embryo has all the basis properties (i.e. genetic properties) that will initiate the development of the brain (the embryo has the disposition «to be brained»).

The existence of this causal chain supports capabilitism: as soon as the embryo possesses human characteristics (a human genome, a human nature), it is a person. As Aquinas so elegantly said: as there is no flesh without a soul, there is no human flesh without a human soul, i.e. a rational one.¹¹ As soon as a body is human – and it is human from conception –, it possesses R^* , that is, it is a person.

But if it is the continuity of human characteristics that counts, why stop at fecundation? Are not the gametes human, too? Of course, they are, but they are not human beings, and to be a person is to be a human being or, more precisely, a human *individual*.

Prima facie, this answer seems to be a very good one, and apparently it strongly supports capabilitism. In reality, however, it is fatal to this position! The reason is very simple; we have good reasons to doubt the individuality of the early embryo. What is it to be an individual? It is, etymologically, to

be indivisible. An individual dies when it suffers division. But the early embryo does not die when it divides, it twins. Some strategies have been proposed to avoid this conclusion. One claims that, before twinning, the embryo is an individual different from the two twins: a third one, which disappears (dies) when the other two come into existence. A second one proposes that «the original embryo could simply develop twice» (7); so «both twins were one embryo during their earliest developmental stages, and at some point started developing in separation from each other». A kind of soft death, or alternately of cloning. A third way out claims that «when an embryo twins, it is not the case that it is «dividing», but that it loses some of its matter – a cluster of cells. Since the separated cell cluster is totipotent [...] it is informed – once divided – by a newly created rational soul» (8). Religious metaphysics apart, these three claims are in my view rather desperate moves: they resort to very peculiar capabilities, more characteristic of plants than of human beings. I would claim that it is more faithful to the facts to conclude that a totipotent multicellular entity is not an individual, and therefore not a person.

Conclusion

The exploration of dispositions gives us some good reasons to think that an embryo is not a person, and that therefore it does not have «full moral status» (9), to quote Warren once more. Therefore, dispositionalism seems to be the more reasonable position. What, then, is an embryo's moral status? In passing, I have said that the embryo is a potential person, because it will develop into a person if nothing prevents it. So, an embryo has the moral status of a potential person. How does this translate into moral importance? Some authors – the anti-potentialists – think that it does not translate into any. Remember: for Kant and his followers, if you are not a person, you are a thing – an entity that is outside the moral community. It is probably not an acceptable position, as we can see with the case of others entities that are non-person, like animals. It therefore seems reasonable to state that an embryo has the moral importance of an entity that will become a person. But what moral importance is that? It is not easy to say, but a general answer can still be given to practical dilemmas: when human interests are in conflict with non-human interests, we must perform a weighing of these interests. Living beings have an interest to live and to develop. Sometimes our interests thwart those interests; in such case, we must weigh them. When we envisage PGD, we are in the same moral situation: in the dish, the extracted cell is a potential embryo or an embryo; its interest must be weighed against the interests of the other parties involved, especially the parents. We have no reason to think that its survival will in general trump those interests.

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¹¹ «Sicut enim non est caro sine anima, ita non est vera caro humana sine anima humana, quæ est anima intellectiva» (Super Evangelium S. Joannis Lectura, I, VII, 1. Stuttgart: Verlag Freies Geistesleben. 1986; p. 117).

Résumé

La question du statut de l'embryon

Le statut moral de l'embryon est une question très disputée. Certains auteurs donnent à l'embryon le même statut qu'à un être humain adulte, d'autres considèrent que son statut est plus proche de celui d'une chose ou d'un être vivant comme un animal. Pour apporter un peu de lumière sur ce difficile sujet, il est nécessaire de revenir sur la notion de statut moral et d'examiner la manière dont nous l'attribuons aux êtres humains. Nous estimons que le statut moral d'un être dépend de sa valeur intrinsèque, laquelle dépend de ses propriétés intrinsèques. La propriété intrinsèque pertinente pour un être humain adulte est la possession de la raison: elle lui confère le statut d'une personne. L'embryon est-il alors une personne? La réponse à cette question dépend de la signification que l'on donne à l'expression «posséder la raison». Est-ce une propriété actuelle ou dispositionnelle? Et si c'est une disposition, s'agit-il d'une disposition actuelle ou orientée vers le futur? L'examen de la notion de disposition appuie en définitive la thèse que l'embryon n'est pas une personne proprement dite, mais une personne potentielle.

Zusammenfassung

Die Frage nach dem moralischen Status des Embryos

Über die Frage nach dem moralischen Status von Embryonen wird intensiv debattiert. Einige Autoren sprechen dem Embryo den gleichen Status zu wie einem erwachsenen Menschen, andere wiederum sind der Überzeugung, dass der Status des Embryos mehr demjenigen einer Sache oder eines Lebewesens (z.B. eines Tieres) ähnelt. Um etwas Licht in diese Thematik bringen zu können muss man sich auf den Begriff des moralischen Status konzentrieren und untersuchen, auf welche Art und Weise wir diesen den Menschen zusprechen. Wir sind der Meinung, dass der moralische Status eines Menschen von seinem intrinsischen Wert abhängt, welcher wiederum von seinen intrinsischen Eigenschaften abhängt. Die relevante, intrinsische Eigenschaft eines erwachsenen Menschen ist seine Vernunftfähigkeit, die ihm den Status einer Person verleiht. Ist der Embryo folglich eine Person? Die Ant-

wort hängt davon ab, welche Bedeutung wir dem Ausdruck der «Vernunftfähigkeit» beimessen. Ist diese Eigenschaft eine aktuelle oder eine dispositionelle? Und falls es sich um eine Disposition handelt, ist sie eine aktuelle oder eine zukunftsorientierte Disposition? Die Untersuchung des Begriffs der Disposition unterstützt die These, dass ein Embryo nicht eine eigentliche, sondern eine potentielle Person ist.

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