

## BIOETHICS AND HUMAN RIGHTS REFLECTIONS ON THE JEOPARDIZATION AND THE DIGNITY OF THE HUMAN EMBRYO

CARDINAL KARL LEHMANN

Many topics in the field of bioethics have come to the fore just recently, becoming the focus of much public attention. These include the Human Genome Project, pre-implantation diagnostics, stem cell research, various forms of cloning, life patents and genetic therapy. There is, however, a kind of common leitmotif or a perspective that runs through them all, which has dominated and directed these concerns from the very beginning, whereby this frequently occurs cryptly, indirectly or implicitly. First and foremost, this involves the question of the anthropological, ethical or indeed moral status of the human at the beginning of his or her existence. It is precisely this question of the need for protection that depends crucially on the answer to the fundamental question: When does human life begin? The question is even more acute in this address because of the reference to human rights.<sup>1</sup>

<sup>1</sup> In this address I am using many realizations and insights, which I have already spoken of on several occasions in a broader context. These also contain more details on the relevant literature, cf. K. Lehmann, *Das Recht ein Mensch zu sein und zu bleiben = The President of the German Bishops' Conference 22, Bonn 2004*. This is supplemented by: *Vom Staunen vor dem Leben als bleibender Imperativ*, in: *Festschrift for Prof. R. Schröder*, to be published on his 60th birthday in 2004 – In this article I have omitted the approach of various traditions to the question of when the soul/spirit develops in humans (successively and simultaneously) and the history of its influence into modern times. Equally, it would be impossible to go into the matter of extracorporeal fertilization with all its individual ethical problems in more detail in this context, cf., as examples, M. Rhonheimer, *Etica della procreazione*, Rome 2000 (Pont. Univ. Lateranense); M. Aramini, *La procreazione assistita*, Milan 1999.

## I.

Occasionally, the thesis is put forward that the question of the time at which human life begins has lost meaning and importance and that owing to the development of family planning and birth control, responsibility has shifted entirely to the time prior to procreation. The right to life is therefore no longer something that is naturally given; it has become the responsibility of parents and the community to grant this right.

Children must be accepted. Human life is accepted life. This act of acceptance precedes the conscious procreation of a child by the parents and must always be repeated in the circumstances of its growing up. No matter how correct this may be, it reveals some aspects of a fundamental problem complex: for here, vis-à-vis a certainly most impressive, personally oriented way of thinking, the physical being of humans with its biological, somatic fundamentals is pushed into the background.<sup>2</sup> A not inconsiderable number of trains of thought in the current discussion conclude that a crucial hiatus in the development of human life is the fact that a real human embryo requires the mother in order to develop into a human being. And this is only fulfilled by the full acceptance and reception of a fertilized human ovum. To speak appropriately of a human must occur in the form of a dialog; a substance cannot declare itself. Being means being and living together. With this kind of conviction it is extremely problematic if human life is regarded as an 'embryonic human' from the time of fertilization.

If this opinion is carried to the end – as some people believe – it would mean that all embryos engendered by extracorporeal means, which the physician and the woman involved decide are not to be nidated, have no protection and are available for another purpose and use. The effectiveness and the scope of the protection of life would therefore ultimately depend on the arbitrary will of the mother. However, the right to life is not founded on acceptance by the mother, but on the embryo's right to life.

This is one argumental pattern that occurs repeatedly in a modified form and that appears to be spreading even further. It stands in opposi-

<sup>2</sup> I have described in greater detail this lack of focus on the actual physical being of mankind and particularly, for example the subject of birth in anthropology and philosophy as well as in theology: *Zusammenhalt und Gerechtigkeit, Solidarität und Verantwortung zwischen den Generationen* = Der Vorsitzende der Deutschen Bischofskonferenz 24, Bonn 2004.

tion to a fundamental conviction, which is written into many constitutions and the declarations made by the Churches – namely, that a human begins life when the ovum and sperm fuse. This is the beginning of a new biological reality. It has its own control system, its own life principle and a genetic program from which this living being evolves consistently. This marks the beginning of a complete, in the sense of an individual, human life. This is why embryos share in the right to the protection of human life from the very earliest stage of their development. Incidentally, this basic model permits – and indeed demands – differentiated reflection.

There are, however, different assessments, which result in competing answers to the question as to the moment from which a human being is a human being. It is important to be familiar with these other ways of seeing it:<sup>3</sup>

One very wide-spread conception today defines human life as beginning with nidation in the womb, which is around the fifth to sixth day. Some advocate the theory that it is this original ‘adoption’ by the mother that gives rise to human dignity and thus also the need for protection. It is correct that an embryo without a mother – and this does not have to be the genetic mother – cannot develop into a fetus and be born. The point here is certainly the unique union of two between the woman and child. The link with the maternal organism is indispensable for the development of the embryo. But this does not mean that the genetic information inherent in the embryo is supplemented in any way through nidation or that it is fundamentally changed in its ontological status.

In the case of in-vitro fertilization nidation has a different meaning than in natural procreation. In case of the latter the mother does not become aware of the creation of the embryo until afterwards. Precisely in the case of artificial procreation, the mother has a live relationship to the embryos in vitro, because the mother often waits with great expectation and apprehension for this new life. It is not simply a matter of the ‘physical nidation’.

There remains the argument that a large proportion of the embryos generated in the mother’s body abort undetected before nidation takes place. Figures stated refer to up to 70% of fertilized ova the development of which is thus aborted. There is a tendency to transpose this ‘extravagance of nature’ to man’s conscious potential for active intervention. A

<sup>3</sup> I have presented the evidence for the following guiding principles in detail in the article mentioned in footnote 1.

person then decides what is to happen to the embryo in the Petri dish. It thus becomes exploited.<sup>4</sup>

Some favor the moment when the formation of multiple embryos can be precluded. This is approximately on the thirteenth day of embryonic development. Up to that time, i.e. up to the fourteenth day, research on embryos could still be given clearance, as has been enforced in Great Britain. There is the conviction that one can only speak in terms of individual life if this life is no longer able to divide. It has been pointed out that one must assume a more complex concept of 'individual', namely a structured, closely cooperating functional unit which takes its differentiation from within, thus bringing forth a complete embryo. So, one must again rethink the concept of the individual in respect of cell division. What's more, individuality must not be confused with singularity.

Frequently the thesis is put forward that self-awareness and the capacity for self-determination is the essence of being human. This means that the nasciturus is discounted a priori from possessing the right to live. This, in turn, provokes the question as to whether the protection of life is not suspended during sleep, and whether it does not even exist for the insane or, in particular, for those in a coma.

But human beings in their current forms of evolvment are not merely rational beings. 'However, life is not a phenomenon of freedom, it is its vital basis. Life is prerequisite for freedom and not the other way round'.<sup>5</sup>

There is a whole series of other conceptions based on the notion of the capacity for independent life of the unborn child outside the mother's womb; this seeks to identify the relevant time as the moment from which a fetus is able to live if it is born prematurely. However, this moment is very relative owing to medical developments and the quality of medical care. Furthermore, there are still people – and they keep on cropping up – who would like to see human life beginning at birth, which would mean that the right to live depends on a social acceptance. Under such conditions, the demand that human dignity be sacrosanct would be lost completely.

All these various theories assume that incarnation proceeds in stages, thus implying that the protection of life also manifests itself in stages. In

<sup>4</sup> On this point and the following: J. Isensee, *Der grundrechtliche Statuts der Embryos*, in: O. Höffe *et al.* *Gentechnik und Menschenwürde*, Köln 2002, 37-77, particularly 55ff. W. Huber, *Der gemachte Mensch, Christlicher Glaube und Biotechnik*, Berlin 2002, 38-47.

<sup>5</sup> J. Isensee, *loc. cit.* 57.

reality, although there are indeed ruptures and decisive moments, they are rooted in a unified, dynamic and extremely consistent process. Each 'stage' follows from the previous processes in a continuum. Individual sections are identified above all owing to our precision as observers and our conceptual classifications. Some people take the fact that there are different names (zygote, morula, blastocyte, pre-embryo etc.) to mean that there are different phases forming the basis for a qualitatively different moral status of human life. In reality, these are rather 'parameters of maturation processes (...), in order to arrive at an unambiguous description'.<sup>6</sup> Nothing significant is added. In this sense, in my opinion, the species, identity and potentiality arguments may have become more differentiated, yet at the same time they have, in principle been confirmed and reinforced.<sup>7</sup> There is no point in time in its development where one can say this is when the embryo first becomes a human being. At all stages, it is always a human embryo. A human being does not become a human being; he or she is a human being from the very outset. I also regard the insight that the control of the evolution of human life is in itself differentiated as eminently important. At the beginning – up to the four-cell stage – it is largely subject to control by the maternal genome, whereas in its further course the embryonic genome becomes increasingly activated.

## II.

There is no denying that there are elements and moments which can add a significant aspect to the overall debate. Nevertheless, I feel it is important to see that these sometimes rather clumsy insights do not signify a fundamental, decisive moment in the development of human life in

<sup>6</sup> G. Rager, in: *Ärztliches Urteil und Handeln. Zur Grundlage einer medizinischen Ethik*, Editors: L. Honnefelder and G. Rager, Frankfurt 1994, 86.

<sup>7</sup> Cf. in greater detail G. Damschen/D. Schönecker (Ed.), *Der moralische Status menschlicher Embryonen*, Berlin 2003; A. Holderecker *et al.* (Ed.), *Embryonenforschung*, Freiburg/Switzerland 2003; R. Beckmann/G. Loer (Ed.), *Der Status des Embryos*, Würzburg 2003; F.S. Oduncu *et al.* (Ed.), *Stammzellenforschung und therapeutisches Klonen = Medizin – Ethik – Recht 1*, Göttingen 2002; M. Düwell/K. Steigleder, *Bioethik*, Frankfurt 2003, J.P. Beckmann, *Fragen und Probleme einer medizinischen Ethik*, Berlin 1996; A. Lienkamp/C. Söling (Ed.), *Die Evolution verbessern*, Paderborn 2002; I. Schmid-Tannwald/M. Overdick-Gulden (Hg.), *Vorgeburtliche Medizin*, München 2001; B. Nacke/St. Ernst (Ed.), *Das Ungeteiltsein des Menschen*, Mainz 2002; Th. Zoglauer, *Konstruiertes Leben*, Darmstadt 2002; J. Reich, „Es wird ein Mensch gemacht“, Berlin 2003.

terms of the acknowledgement of dignity and the protection of life. This has consequences for the method whereby ethical judgments and deliberations take place. The conception should be given priority, which best harmonizes with the totality of the individual partial results in the course of embryonic development and which best avoids arbitrary decisions. I still believe – and I have no doubts about this – that with the fusion of the nuclei of the ovum and sperm, life begins immediately. The entity emerging from this contains the potential for fully developing into an individual human person. This development indeed takes place in such a way that the criteria of identity and continuity play a part in it. So, one is justified in referring to a development continuum.

After all, in this context we are concerned with an at least hypothetical human existence – if it is indeed, or would be, a human being – requiring and deserving the appropriate protection. The axiom that applies here is: In case of doubt one must decide in favor of the assumption of human existence and human dignity requiring the appropriate protection, as well as a form of tutiorism which, by the way, is also to be found in contemporary ethical concepts. Anyone who thinks along these lines will desist from featuring a specific stage in the evolvment of human life in such a way that official worthiness of protection does not begin until after this decisive point. Simply because there is little way to protect embryos engendered naturally, which abort without our interference, we may not infer that we may at will give clearance for embryos produced by artificial means, allowing us a quite different access, to be used in research. Clearly, not all embryos have the chance to develop, but for those that can develop, a specific and individual life begins with the fusion of the nuclei of the ovum and sperm. ‘Consequently, the embryological view of human development leads to the conclusion that the embryo represents human life from the time of fertilization and possesses the potential to unfold this human life to the full if it is provided with the necessary environmental conditions’.<sup>8</sup> Hence one must be permitted to say that in the embryo there is more that is predefined than the fact of belonging to the human race. The individual – and as such unique – genome, in other words the genetic identity of the person is to a large degree predetermined. The fact that the genome incarnates in one or more organisms in no way contradicts these findings.

Many attempts are made by way of specific linguistic tricks and semantics to convey decisive points and differences to justify a qualita-

<sup>8</sup> G. Rager, in: *Ärztliches Urteil und Handeln*, 82.

tively varied, graded protection of life. Correspondingly, there is the desire to speak in terms of belonging to the human race and of the diverse characteristics of individual human life, of human life and human beings, of latent human life and human beings in the sense that these constitute qualitative differences. However, in respect of nidation it must be stated categorically, that it is a necessary condition of the continued development, but not a qualitative turning point in it. It is also imperative to realize that the individual life of the unborn child, no matter how necessary and formative its link with the mother may be, is not merely a part of the mother and subject to her will alone. The embryo is protected for its own sake, not for the sake of the mother. Hence, with regard to being worthy of protection, the embryo has a significance in its own right.

Human dignity is bound neither by age nor reason. This is why the insane also possess human dignity. And the protection of human dignity has influence and consequences. For example, there is protection of the personality after death. From the point of view of constitutional law, it may be formally controversial whether an embryo possesses human dignity or whether the dignity of the already born human being radiates onto it. However, *de facto* human dignity is attributed to the embryo. With this in mind, J. Isensee, expert on constitutional law, having described the problem complex in detail, is able to state: 'Ultimately, all attempts to adjourn the protection of life to a point in time after the fusion of the nuclei, involve elements of arbitrariness. The reference to fusion is without arbitrariness and it is logical. The Basic Law (constitution of the Federal Republic of Germany) protects life from the very beginning. Its point of view is that life grows and unfolds from the moment when the female and male nuclei unite, 'not to *become* a human being, but *as* a human being'. Recognition under constitutional law is unconditional, without exception and without reservations. It includes life before and after nidation, before and after birth'.<sup>9</sup> Life at this early stage is never simply biomass or a 'pile of cells', but a specific person, an individual. This means that there can be no such thing as human life without dignity. In this sense, the embryo is a 'bearer of fundamental rights', a subject with individual rights. Human dignity cannot be restricted to those who are sensible and capable of performing well. This is why the embryo is not merely a protected object; it is indeed the subject of a legal claim. Thus conceived, human dignity exists prior to any kind of

<sup>9</sup> J. Isensee, loc. cit., 61; cf. with Nidation *ibid.*, 59f.

standards and legal values. It is the foundation for all basic rights. It is inherent in them. All other legal values are centered round it. Consequently, human dignity also radiates into the sphere in which life emerges. Maybe it is not so much the dignity of an individual human being that is violated but that of mankind as a whole.

It is not easy to handle the concept of human rights here. For some time now, the term human rights has been used with an extended meaning. It signifies fundamental rights to which each human being is entitled as a human being. It has a universal claim to validity. The only thing to which this right is attached is the state of being human. The practical claims arising from its content represent the answers to the collective experience of historic wrong. There can therefore be no exhaustive and eternally valid list of human rights. Nevertheless, certain threats by national and social powers have proved to be so profoundly injurious, constantly recurring or latently present that, being typical, they have been compiled into literal catalogs. These include the right to life and, for example the right to religious freedom and freedom of conscience. Inasmuch as human rights urge the implementation of moral standards in practical politics, thus indeed exposing the positive right to the ethical conception of justice to criticism, they represent an interface between law and morality. Bearing this in mind, in this context I like to put it this way: It is about the right to be and remain a human being. This is the most elementary and fundamental human right.<sup>10</sup>

### III.

In principle official church teaching bestows the same ethical and legal status on the human embryo as it does for each human being born. In the view of official church teaching, a continuous, coordinated and graduated process begins at fertilization; this precludes any categoriza-

<sup>10</sup> Further references on this subject: B. Hamm, *Menschenrechte*, Oblaten 2003; W. Odersky (Hg.), *Die Menschenrechte*, Düsseldorf 1994; St. Gosepath/G. Lohmann, *Philosophie der Menschenrechte*, Frankfurt 1998; M. Fleischhacker (Ed.), *Der Schutz des Menschen vor sich selbst*, Graz 2002; O. Höffe, *Sittlich-politische Diskurse*, Frankfurt 1981, 173-278; Idem., *Moral als Preis der Moderne*, Frankfurt 1993; E. Iliadou, *Forschungsfreiheit und Embryonenschutz = Schriften zum Öffentlichen Recht*, 799, Berlin 1999; R. Merkel, *Forschungsobjekt Embryo. Verfassungsrechtliche und ethische Grundlagen der Forschung an menschlichen embryonischen Stammzellen*, Munich 2002.



tion in pre-human or non-human phases of life, as well as any kind of classification with a graduated right to live. The life of an embryo is like any human life, independent of its current stage of development; it is precious and must be given absolute protection. The Church emphatically contradicts attempts at justification that might be of use with regard to the positive consequences of experimental research on embryos for coming generations. The dignity of the embryo is sacrosanct and may not be sacrificed to the calculating approach of assessments of actions that take their orientation only from the possible consequences. Human dignity also forbids any kind of commercial use of living or dead embryos. Since the life of the embryo is a personalized human life in the fullest sense, the guarantee of its wellbeing and therefore the obligation to uphold its integrity ultimately also forbid its cryoconservation.<sup>11</sup>

The language used more recently in church documents is possibly clearest in the instruction to the congregation in the doctrine on respect for the very beginnings of a human life and the dignity of reproduction, which was published in 1987 under the title of 'Donum vitae'.<sup>12</sup> It states that (I,1) 'The human being must be respected – as a person from the very first instant of his/her existence'. The same instruction comments:

Certainly no experimental datum can be in itself sufficient to bring us to the recognition of a spiritual soul; nevertheless, the conclusions of science regarding the human embryo provide a valuable indication for discerning by the use of reason a personal presence at the moment of the first appearance of a human life: how could a human individual not be a human person? The Magisterium has not expressly committed itself to an affirmation of a philosophical nature, but it constantly reaffirms the moral condemnation of any

<sup>11</sup> For official church teaching sources cf. Chr. Götz, *Medizinische Ethik und katholische Kirche = Studien der Moraltheologie* 15, Münster 2000 (with an extensive collection of ecclesiastical source texts: 363-620; cf. also the collection of texts by G. Filibeck, *I diritti dell'uomo nell'insegnamento della chiesa. Da Giovanni XXIII a Giovanni Paolo II, Vaticano 2001 (Texte 1958-1998). Texte zum Lebensrecht: 527-561*; See also the publications by the Pontificia Academia pro Vita, especially: *Identità e statuto dell'embrione umano, Città del Vaticano 1998; Natura e dignità della persona umana a fondamento del diritto alla vita, Città del Vaticano 2003*; cf. also the collection of texts of Pope John Paul II on the topic of protection of life on the occasion of the 25th anniversary of his pontificate: *Difesa della vita e promozione della salute, Rome 2003*.

<sup>12</sup> Cf. the Latin and Italian text with important comments: *Congregazione per la dottrina della fede, Istruzione 'Donum vitae' = Documenti e studi 12, Città del Vaticano 1990*.

kind of procured abortion. This teaching has not been changed and is unchangeable (I.1).

The Second Vatican Council had clearly expressed that, for this reason, it protects human life with the utmost care from the moment of conception (cf. GS 51). This was continued by the 'Charta of Family Rights', dated 1983 which states: 'Human life must be respected and protected absolutely from the moment of conception' (n. 4).<sup>13</sup> The Declaration on Procured Abortion in 1974<sup>14</sup> explains that

from the moment in which the ovum is fertilized, a new life begins that is neither that of the father nor of the mother, but a new human being that develops independently. It would never become human if it had not been human from this moment on. Recent genetics confirm this fact, which has always been unambiguous (...) in an impressive way. It has shown that from the very first moment this living being has a fixed structure of its own: namely that of a human being, indeed this particular human individual already containing all its precisely defined characteristic features. The adventure of human life begins at fertilization; its various significant inherent qualities take time to fully unfold and become ready to act.<sup>15</sup>

It is important to heed the painstaking argumentation at the interface of embryology, philosophy and theology. We have already cited text from 'Donum vitae' (I,1), which is more of a commentary, and we will return to it later. The circumspection in the course of its argumentation is perceptible. This refers to the various methods and cognition processes of the human sciences, philosophy and theology. However, empirical research also holds valuable findings for 'perceiving an individual human presence by means of reason even before this human person becomes manifest'. There is a clear statement that the empirical findings require further reflection, via which they may lead to a valid deeper understanding, whereby the statement that the embryo is a 'person' is unambiguous on the one hand (also in the other sources quoted!), while on the other hand a certain reflectiveness is expressed concerning the term 'person', and particularly the

<sup>13</sup> Cf. the German edition as n. 52 of the announcements of the Holy See (1983).

<sup>14</sup> Cf. the Latin text in: AAS 66 (1974) 730-747, here: 738

<sup>15</sup> For the purposes of interpretation cf. the series of the Sacred Congregation for the Doctrine of the Faith cited in note 33 'Documenti e studi' n. 3: Dichiarazione sull'aborto procurato, Città del Vaticano 1988 (also with Latin and Italian text).

unexpected *question*: 'How is it possible for a human individual to not be a human person?' It asserts with surprising perspicuity that official church teaching has not 'committed itself explicitly to statements of a philosophical nature' when using the term person. Moreover, the original intention of these statements, namely that the doctrine of the Church has constantly rejected procured abortion is taken up fervently. Ultimately, recognition as a person applies primarily also to the protection of the embryo.

In 1995 this differentiated description was included and reinforced in an even more binding form in terms of official church teachings by the Encyclical 'Evangelium vitae', one of the great axis among the doctrinal documents of Pope John Paul II. This circular letter to the world in particular explains how it is rooted in revelation. In spite of being closely bound to the doctrinal texts, overall the tone of it is more in harmony with the Catechism and preaching. Summarizing this more recent doctrinal development in the Catechism of the Catholic Church: 'Because the embryo must be treated as a person from the moment of conception, like any other human being it must, as far as possible, be kept intact, be cared for and healed'.

Even in the texts containing the official Church teachings there is a degree of ambivalence in using the word person for embryo.<sup>16</sup> This is why the use of the term is initially somewhat hesitant. One is proceeding on the assumption that the embryo is an individual, that it is worthy of protection, that it possesses rights and the human dignity ascribed to it. These intentions form the basis for approaching the term 'person'. The rhetorical question in 'Donum vitae', but certainly not only this, is instructive in this respect: 'How can a human individual not be human person?' The restraint stems from the various different ways the term person is used and evidently seeks to avoid endangering the matter by a dispute on terminology. In the first instance a human being is a person, because he or she is gifted with reason and conscience, i.e. is a subject capable of moral responsibility. The fact that someone is accorded protection of their dignity as a person depends on nothing other than the circumstance of being a person. In classical philosophy and theology 'person' is the answer to the question of who

<sup>16</sup> Cf. in this respect C. Breuer, *Person von Anfang an? Der Mensch aus der Retorte und die Frage nach dem Beginn des menschlichen Lebens = Abhandlung zur Sozialethik*, 36, Paderborn 1995 (with a very extensive bibliography: 308-400); Chr. Götz, *Medizinische Ethik und katholische Kirche*, Chapter 3, particularly 120ff. The statements in the official teachings of the Pope on questions of medical ethics since the second Vaticanum = *Studien der Moraltheologie*, 15, Münster 2000.

someone is and what someone is. A person is a unit that is distinguished from all other phenomena and that cannot be copied and is above all endowed with the capacity for reason. Roman tradition emphasizes responsibility for one's own action and human dignity. Particularly for the classic use of the term person it is important that the character of 'person' also manifests itself in the sanctity of the human body. This means that person and nature form a substantive unity. This is why, for example, Thomas Aquinas describes the soul separated from the body as not being a person for as long as they are separate. In the light of classical understanding there is no division between person and being human.<sup>17</sup>

The modern concept of person has certain common aspects, but it takes a different turn in that the person is constituted by the unity of consciousness. In the classical version of the concept of person, all human beings are persons. However, much of modern reasoning sees the person as a conscious, moral subject. But there are evidently human organisms which, in their current state, are not capable of acting, such as the unborn or those who have irreversibly lost consciousness. There are many indications that we should adhere to the unity of being human and being a person. L. Honnefelder has demonstrated this convincingly, precisely with the argument favoring potentiality, continuity and unavailability.<sup>18</sup> Personality is not acknowledged, accorded or awarded by somebody; it is fundamental to all relationships. With the reverse attitude one would make being a person dependent on characteristics which would have to be proved, limiting the demand for equality.

It is quite obvious that for the reasons already cited, modern thinking balks at applying the term person to embryos and unborn children. It is consistently argued that consciousness, mutual recognition and sensibil-

<sup>17</sup> On the history of the person concept, d.f. the great work by Th. Kobusch, *Die Entdeckung der Person. Metaphysik der Freiheit und modernes Menschenbild*, Erste Auflage, Freiburg 1993, second corrected and extended edition, Darmstadt 1997; L. Honnefelder, *Person und Menschenwürde*, in: L. Honnefelder/G. Krieger (Hg.), *Philosophische Propädeutik*, Vol. 2: *Ethik* = UTB für Wissenschaft: Uni-Taschenbücher 1895, Paderborn 1996, 213-266; J. Reiter, *Menschliche Würde und christliche Verantwortung*, 103f. On this whole topic, cf. also the significant writings of G. Pöltner, *Grundkurs Medizin-Ethik* = UTB 2177, Vienna 2002; D. Mieth, *Was wollen wir können? Ethik im Zeitalter der Biotechnik*, Freiburg i.Br. 2002; Zum weiteren Umfeld cf. G. Maio, *Ethik der Forschung am Menschen* = *Medizin und Philosophie* 6, Stuttgart 2002.

<sup>18</sup> L. Honnefelder, loc. cit., 252-254.

ity are lacking, whereby this last argument must be handled with a good deal of differentiation and caution in view of modern discoveries.<sup>19</sup> At least I. Kant sees being a person and human nature in an inseparable correlation, although this cannot be cognized by theoretical reason, and practical reason is forced to postulate: Kant imputes it but is unable to identify it with his basic approach.

Undoubtedly it is a matter of linguistic convention whether one should really describe unborn human life – particularly in the light of the modern way of speaking of persons – in terms of personal categories. At all events it was, and still is, harmful to exclude the embryo from being a person and in a way also from being a human being. It is primarily Locke's concept of person that is responsible for this. However, it cannot have caused the embryo to have been denied the status of 'ens morale' by a large part of modern philosophy.<sup>20</sup> For those schooled in classical philosophy, it is impossible to conceive of human thought, which is not personal thought.

For what would transform human life into personal life at a later date? Could it, for example, possibly be self-determination or the acknowledgement of others... being a person indeed presupposes the original capacity for self-determination and cannot therefore be constituted by it in the first place. And even if being a person were constituted by acknowledgement by others, the person would become a product of human society, whereas it is indeed given as something, which this society must respect.<sup>21</sup>

In the perspective of modern thought, which has indeed been partially overcome by now,<sup>22</sup> there will perhaps be a greater restraint in using diction with a strong philosophical emphasis. At all events, the concept must be explained, which is not so easy, as well as pointing out the intentions that necessitate this language. In this sense, the matter at hand justifies one in speaking of the personality or of the personal beginning of the embryo. For the sake of clarity, this term should on no account be abandoned.<sup>23</sup>

<sup>19</sup> Cf. here, only with many analyses, examples and pictures: Irene von Hardenberg, *Erlebnisraum Mutterleib*, in: *GEO*, July 2001, issue n. 7, 18-42.

<sup>20</sup> Cf. on this subject: Th. Kobusch, *Die Entdeckung der Person*, 102ff. 267ff.; L. Honnfelder, *Person und Menschenwürde*, 230ff.

<sup>21</sup> J. Reiter, *Menschliche Würde und christliche Verantwortung*, 104f.

<sup>22</sup> Vgl. Th. Kobusch, *Die Entdeckung der Person*, particularly the epilogue in the second edition, 263-280.

<sup>23</sup> For the concerns addressed here the significance of the two volumes, "Personen" (Stuttgart 1996) and "Grenzen" (Stuttgart 2001) by R. Spaemann has by no means yet been

The term has strong practical connotations. As a theologian familiar, above all, with the concept of person in the Trinity Doctrine and in Christology, this is not immediately recognizable. From the Roman world, especially from Cicero, the Occident has been accustomed to considering the position of the human being as being found in human dignity. As early as Boethius and, particularly, Thomas Aquinas it was linked with the status of being a person. It centers on the responsibility for one's own actions. From the point of view of content, this concept of person is largely filled with the doctrine of man's likeness to god, but it does not simply coincide with it. This is why the early modern era adopted and used the concept of human dignity to express both the creative potential and the equality of all humans in thought systems that have a looser connection with the Christian doctrine.<sup>24</sup> Kant conceives the innate dignity of humans as being an end in itself and therefore on the basis of its autonomy. In the Charter of the United Nations (1948) and the Universal Declaration on Human Rights (1948) and similar texts the term attains high recognition. It stands for the inalienable and indefeasible innate value of the human person in contrast to the way in which in totalitarian societies the human person is valued according to his or her expediency and usefulness.<sup>25</sup>

Human dignity is by no means a meaningless concept as is often claimed. Its limitation is certainly the fact that for the most part it represents a formal dimension from which it is impossible to directly derive any concrete standards of a positive nature. The sometimes inflationary invocation of human dignity as it is practiced today can indeed invalidate this

recognized. Cf. also B. Gillitzer, *Personen, Menschen und ihre Identität = Münchener philosophische Studien* 18, Stuttgart 2001.

<sup>24</sup> Cf. G.P. della Mirandola, *Über die Würde des Menschen*, Zürich 1988; E. Schockenhoff, *Naturrecht und Menschenwürde*, Mainz 1996; Ph. Balzer *et al.*, *Menschenwürde vs. Würde der Kreatur*, Freiburg i.Br. 1998; F.J. Welz, *Die Würde des Menschen ist antastbar*, Stuttgart 1988, particularly chapter 7, 271-399.

<sup>25</sup> Cf. clearly and precisely on the topic: L. Honnefelder, *loc.cit.*, 221ff.; cf. also concerning the broader background and with extensive bibl. J. Reiter, *Über die Ethik der Menschenwürde*, in: *Weg und Weite. Festschrift für Karl Lehmann*, edited by A. Raffelt in collaboration with B. Nichtweiß, Freiburg 2001, 443-454. cf. also on the secular source texts: St. F. Winter *et al.*, *Genmedizin und Recht*, München 2001; H. Hasskarl (Ed.), *Europäisches Gentechnikrecht*, Aulendorf 2002; A. Eser (Ed.), *Biomedizin und Menschenrechte. The European Council Human Rights Convention on Biomedicine*, Frankfurt 1999; Investigative Committee: *Law and Ethics of Modern Medicine. Stem cell research and the debate in the Federal German Parliament on the import of human embryonic stem cells*, Berlin 2002.

great idea. But it is precisely the subject matter of the moral status of the embryo, which gives the concept greater content and particularly in respect of human rights it is authoritative in terms of content as well as being ethically demanding. With this in mind, it is helpful if both the concepts of person and human dignity are seen from the point of view of their practical function. Seen from this standpoint, both concepts join people together, because they are prompted to acknowledge each other's dignity. This also supports the practical aspects of the concept of human rights. The concept of human rights therefore involves the precept of the inviolability of the person and the forbiddance of making this depend on anything other than the fact of being a human.<sup>26</sup> R. Spaemann has found a good formula for the matter by making all this coincide with the entry of a human to the whole human family: 'There can and indeed there may be only one single argument favoring personality: the fact of belonging biologically to the human race'.<sup>27</sup> This is also why the greatest right of humans, namely original protection, consists in the fact that as a human the embryo cannot be refused the entrance ticket to the world and the human family. Precisely because of the helplessness of the unborn child, which does not cancel its human dignity, but indeed calls even more for attention, this would be an utterly unlawful infringement of fundamental human rights.

Clearly, one may point out that here and there several questions are still open between embryology and the philosophical and theological analysis of the empirical findings. Ultimately, however, this cannot diminish the power of the argument put forward here. The question as to what determines life in the beginning must be traced back from the final gestalt of the human person. If one then has no problem in acknowledging human dignity and realizes how consistently the actualization of the genetic heritage of the human takes place, more or less without any breaks, and without any discernible anthropological caesurae, then – even if one has doubts – as a precaution and for safety's sake, i.e. from a tutioristic point of view – one must assume that the embryo is already a human being possessing individuality and therefore a personal character. In the spirit of this tutioristic principle – modern ethics calls it the benefit of the doubt argument – if there is a doubt that cannot be eliminated in the moral assessment of how to act, one is under obligation to follow

<sup>26</sup> L Honnefelder, loc. cit., 261

<sup>27</sup> R. Spaemann, *Personen*, 264; *Grenzen*.

the principle: *idem est in moralibus facere et exponere se periculo faciendi* (to commit an act and to expose oneself to the danger of committing it rates the same in terms of morals). In this case, therefore, in order to safeguard human dignity and human rights one is always bound by the duty to act in compliance with the more rigorous opinion.<sup>28</sup> It may be that these deliberations apply so strongly and earnestly to no other ethical sphere than that of prenatal human life. For, while life is not the supreme good of mankind, it is its most fundamental.

#### IV.

At the heart of all these deliberations, the concept of human dignity surely requires more intense reflection. Particularly just recently it has been criticized repeatedly because it is 'empty' and almost impossible to apply. There is a tendency to want to limit its range and scope in order to obtain greater latitude for the approval of research using stem cells.<sup>29</sup>

This is why it is absolutely imperative to give a deeper fundamental dimension to the concept of human dignity. This applies not only to the field of ethics,<sup>30</sup> but also to theology,<sup>31</sup> whereby philosophy must ask itself to what extent – initially owing to Kant – it is able to reason that human dignity is an absolute value and whether this is possible based only on

<sup>28</sup> Cf. on tutorism in this context: *Beginn, Personalität und Würde des Menschen*, 238, 309f., 389, 396 (quotation: 396)

<sup>29</sup> In this context am unable to elaborate on the attempt by Minister B. Zypries 'Vom Zeugen zum Erzeugen? Verfassungsrechtliche und rechtspolitische Fragen der Bioethik' of 29.10.2003 at the Humboldt University in Berlin, to adhere to human dignity as an absolute axiom on the one hand, while questioning whether the embryo *in vitro* is entitled to this protection. These thoughts certainly have a larger context and they qualify the content and priority of human dignity, which is guaranteed under constitutional law. Cf. in this context E.-W. Böckenförde, *Menschenwürde als normatives Prinzip. Die Grundrechte in der bioethischen Debatte*, in: *Juristen-Zeitung (JZ)*, 58 (2003), n. 17 dated 5.09.2003, 809-815.

<sup>30</sup> Cf. many of the works of O. Höffe, e.g. *Prinzip Menschenwürde*, Frankfurt 2002, 49-69. *Ibid.*, in: *Medizin ohne Ethik?*, Frankfurt 2002; on the same topic also S. König, *Zu Begründung der Menschenrechte: Hobbes-Locke-Kant = Praktische Philosophie*, Freiburg 1994.

<sup>31</sup> Cf. E. Schockenhoff, *Ethik des Lebens*, Mainz 1993, 168ff., K. Hilpert, *Die Menschenrechte*, Düsseldorf 1991, 94ff., 181ff., 185ff. *et al.*; Ph. Balzer *et al.* *Menschenwürde vs. Würde der Kreatur*, Freiburg i.Br. 1998; W. Vögele, *Menschenwürde zwischen Recht und Theologie = Öffentliche Theologie* 14, Gütersloh 2000 (extensive bibliography).



philosophical thought. In so doing the most important thing is to safeguard the life of the weakest. Success in this is a gauge for the status of the protection of life in a society. It still remains a serious question whether it is indeed possible to establish a genuinely absolute value of human dignity without taking recourse to religion and the bible. In his famous speech on the occasion of the awarding of the Peace Prize of the German book trade in 2001 J. Habermas reminds us of the indispensability of religious thought and speech.<sup>32</sup> It will be especially necessary to reinforce the meaning of the biblical discourse that man is the image of God (cf. *Genesis* 1, 27) in the face of today's challenges.<sup>33</sup> At the same time, it is also necessary to ask whether taking the absolute validity of human dignity seriously beyond our topic<sup>34</sup> does not also have consequences for how life is treated in other spheres.<sup>35</sup> This applies not least of all for all forms of killing, e.g. self-defense, war and the death penalty.<sup>36</sup> Even though there have to be differentiations in the cognition of the protection of life, the protection of life itself is ultimately indivisible. There are many indications that show that theology and the social doctrine of the Church have been moving in this direction for some decades. This also gives new support for the preservation of human dignity and human rights in the sphere of bioethics.<sup>37</sup>

<sup>32</sup> Cf. the speech with the aforementioned title, Frankfurt 2001.

<sup>33</sup> Cf. here W. Vögele, *Menschenwürde zwischen Recht und Theologie*, 467ff.; K. Koch, *Imago Dei – Die Würde des Menschen im biblischen Text* = meetings of the Joachim Jungius-Gesellschaft der Wissenschaften e.V. Hamburg, volume 18 (2000, Heft 4), Hamburg 2000 (Bibliografie: 67f.); cf. J. Habermas, *Peace Prize 2001*, 53f.; Ders., *Die Zukunft der menschlichen Natur. Auf dem Weg zu einer liberalen Eugenik*, Frankfurt 2001, 46ff., 56ff., 105ff.

<sup>34</sup> There are still ecumenical problems that have not been handled, cf. R. Anselm/U.H. Körtner (Ed.), *Streitfall Biomedizin. Urteilsfindung in christlicher Verantwortung*, Göttingen 2003.

<sup>35</sup> Cf. also H.J. Albrecht *et al.* *Wechselwirkungen. Beiträge zum 65. Geburtstag von A. Eser*, Freiburg i.Br. 2001.

<sup>36</sup> On this topic the studies by W. Wolbert on the prohibition to kill, *Du sollst nicht töten* = Studien zur Theologischen Ethik 87, Freiburg/Schweiz 2000; *Was wollen wir, wenn alles möglich ist? Fragen zur Bioethik*, Editor H. Zirten, Munich 2003.

<sup>37</sup> In respect of human rights cf. also W. Kerber (Ed.), *Menschenrechte und kulturelle Identität*, Munich 1991; G. Höver (Hg.), *Religion und Menschenrechte* = publications of the Center for European Integration Studies 29, Baden-Baden 2001. On the power of faith traditions with regard to our topic cf. also H. Joas (Ed.), *Was sind religiöse Überzeugungen?* = Preisschriften des Forschungsinstituts für Philosophie, Hannover 1, Götten 2003, particularly 9ff.; P. Nolte, *Bürgergesellschaft und christliche Verantwortung in der postsäkularen Welt*, Bonn 2003 (Konrad-Adenauer-Stiftung e.V.).