

THE UNBORN CHILD: HISTORY, PHILOSOPHY AND RELIGION

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Abstract: All throughout history the unborn, and implicitly its protection, have been subject for academics and practitioners of various areas. The problem of the origin of the soul and the exact determination of the moment when it is united with the body was crucial in enabling us to define the exact moment when the human life begins, and, consequently, for providing proper protection for the unborn child. In this context visions of the Greek philosophers like Plato, Aristotle, Albertus Magnus and Thomas Aquinas, and of the Latin writer Tertullian, as well as Christian perspectives were analysed in order to identify the starting point of the human being to help determine the level of protection provided for the unborn in history. Finally, considering the fact that not even today has consensus been achieved concerning the beginning of human life, it was and still is difficult to provide proper legal protection for the unborn child, but in our opinion this is by far not impossible.

Keywords: the unborn, terminology, history, philosophy, religion

1. Introduction

"*The unborn child*" represented a problem in the past and it continues to do so. We can allow ourselves to state this since we always face the lack of consensus - philosophical, historical, legal, ethical, religious [1] etc., regardless of the point of view from which we are approaching the subject. The unborn child has for all of us a different significance, because it is situated on the threshold of life which positions it in an ambiguous situation that gives way to various interpretations [2]. In this paper we speak about "*conception product*", "*unborn child*", "*zygote*", "*embryo*" and "*fetus*". These terms we use interchangeably depending on the context or the form in which they were found in legislation, articles, comments, jurisprudence or any other materials analysed.

From an etymological point of view, the terms "*zygote*" and "*embryo*" are originated in the Greek language: the former has its roots in the Greek word *zygōtos* - meaning to unite, while the latter originates from the Greek word *émvryo* (*en* = in the inside; *vryein* = to grow, to develop). Contrary to this, the term "*fetus*" has its roots in the Latin vocabulary (lat. *fētus*) and it means heir, child, offspring, etc.

According to the Oxford Medical Dictionary [3], in the case of the human species, the term "*embryo*" defines it as an unborn offspring situated in the womb in particular of a human being not more than eight weeks after conception, a period

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during which the main inner organs are formed; while the term "*fetus*" refers to the unborn child from the eighth week of development after conception. The same source defines the "*zygote*" as a fertilized ovum before cell division. [4]

According to our opinion these very terms make the reference to something else, namely the human being dwelling in the womb of the pregnant woman in the period between conception and birth. However, we cannot state that the above mentioned terms are all synonymous, since some of them represent the human being as a whole, being in an intrauterine phase (conception product, unborn child), while others refer to it in a particular way depending on the stage of development in which it is situated (zygote, embryo, fetus). Still, we have to do here with one and the same human being from the beginning (conception) until the end (death).

As we have already mentioned, when discussing on a general level the organism of the newly formed human being, regardless of the stage of development, as well as during our discussions related to the aborted human organism (spontaneous or voluntary), we have employed both the term "*conception product*" and "*unborn child*". Some authors consider that the use of the term "*unborn child*" points towards some kind of prejudice and even denotes anti-abortion attitude as it is mainly used in anti-abortion presentations. According to another opinion, extreme in its attribution of the name "*unborn child*" to the conception product, we can consider the destruction of the human embryo equal to infanticide. [5]

In our opinion the term "*conception product*" is an impersonal one and denotes impartiality. Similarly, "*unborn child*" is a neutral term. Thus both terms provide us with objectivity. We have the opportunity thus, to expose our vision in a peaceful way, without upsetting the public in any way. We have to point out that we also used medical terms such as "*zygote*", "*embryo*" or "*fetus*" when we wanted to refer clearly to the distinction between the newly formed conception product and it's other, more developed forms.

Later, during the analysis of the term "*unborn child*" from a historical point of view, we have noticed that neither the ancient Greeks nor the Romans had a specific term for the newly formed human organism *in utero*. Some Roman authors refer to it using different general terms from Latin which are employed even when addressing already born children regardless of their stage of maturity. The lack of a specific word in the Latin lexicon that would represent clearly the unborn child proves the uncertainty of the Romans in connection to the conception product. We can state that this type of uncertainty can be traced also in the way of thinking of the indigenous inhabitants of Ancient Greece. [6]

However, we must take into consideration the fact that the terms that we use in the present in our everyday language to refer to the conception product in different phases of its development (embryo, fetus) are primarily medical, and the Romans

did not possess the medical technology or equipment available today that enable us to monitor intrauterine evolution of the product of human conception.

Additionally, political issues like the legalization of abortion, the rights of the fetus or the mother-fetus conflict were not so controversial in the Roman society as they are today. In this respect we can also take into consideration the fact that, contrary to us, the Romans had no reason whatsoever, to develop a more complex nomenclature for the unborn child.

During our research we noticed that, along history, the position of erudition regarding the unborn child had been in constant change. We can state that the attitude of the various authors from old times to the problem of the unborn child is often influenced by various factors like religious inclination, scientific innovation or social customs. From our point of view, these changes of vision are perfectly normal, considering that in any society, the definition of the level on which the embryo or fetus possesses human identity is highly subjective.

Evidently, the unborn child is incapable to defining or justifying its own identity. Consequently, the moment from which the unborn can or rather could be considered a human being is inevitably determined by others. Moreover, based on the theories provided by the authors we have studied, we can infer that the value of an embryo or of a fetus is influenced in an inherent way by the philosophical and cultural perceptions regarding the soul, the body, and the communion between the two. [7]

At the same time, discussion of the topic of the protection of the conception product and of the fetus are inevitably politicized because the historical perspective regarding abortion often plays an important role in the definition of modern politics. For example, in the case *Roe versus Wade* [8] known as the case that determined the legalization of abortion in the United States of America, the court opted for history as the starting point for the motivation of its legal decision determining the following:

"We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to colour one's thinking and conclusions about abortion. [...] Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection. We seek earnestly to do this, and, because we do, we have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries." (Case *Roe v. Wade*, parag. 117).

Accordingly, on 22nd January, 1973, the Supreme Court of the United States of America announced its verdict in the case *Roe versus Wade*, which was a real challenge for the American state of Texas, where the penal law condemned abortion except for situations when the mother's survival was compromised by life threatening events. Legal action was filed by Jane Roe, an unwed woman who wished to undergo abortion within safe, as well as legal conditions. Out of empathy with the plaintiff, the court criticized the penal law in force which regulated abortion in the American state Texas. In its verdict the court recognized for the first time that the constitutional right to privacy is comprehensive enough to incorporate a woman's decision to interrupt her pregnancy. [9] The verdict announced in the case of *Roe versus Wade* functioned as a legislative precedence, triggering legalization of abortion on a national level.

We have to point out that, abortion was illegal in almost all the states of the United States of America, with the exception of certain situations like life saving emergency intervention or the maintenance of the health of the pregnant woman, in cases of rape, incest or fetal anomaly. So, through this decision the Supreme Court of the United States of America declared unconstitutional all laws banning abortion, which lead to the improvement of the safety standards of abortion related services and made these services much more accessible for all the women in the country. Such a significant change in the legislation was possible due to historical research that provided the court with the possibility to examine the problem in an objective way, without subjective preconceptions of philosophy or religion.

2. Historical, philosophical and religious aspects of the unborn child

During the time the judiciary approach towards the unborn child has got various valences. Thus all kinds of different fashionable beliefs were generated and the ancient attitude to abortion cannot be determined precisely.

In the beginning, the majority of the legal codes [10] that guided the great ancient civilizations prohibited abortion. Moreover, it was also forbidden to hit a pregnant woman with the purpose to cause the death of the unborn child. Thus some kind of legal protection was indirectly provided for the unborn child (zygote-embryo-fetus).

Later, the ontological and anthropological status of the embryo and the ethical obligations concerning it, had occurred also in Ancient Greece. Starting from the fact that the human embryo belonged to the human species, the most widespread argument, backed up with the Greek philosophers, stated that murdering a human embryo constituted a criminal act. However, the exact moment when the human life begins was still unclear. The solution of the problem of the origin of the soul and the exact definition of the moment when it unites with the body was crucial for

determining the starting point of the human being and, consequently, for enabling us to provide proper protection for the unborn child.

The Greek philosopher Plato distinguished in the human soul the power of ratio, the power of volition and the power of crankiness (the irascible power) [11] and he stated that the soul was existent even before birth. [12] Later, for Aristotle [13] - the disciple of Plato -, as well as for many other philosophers who had based their various theories on the Aristotle's biology, such as Albertus Magnus or Thomas Aquinas, the moment when the conception product becomes a real human being coincides with the moment when it is ultimately "generated" (created): in the case of the feminine embryo sometime between the 80-90th day of pregnancy, and in case of the masculine embryo, on the 40th day of pregnancy. This idea is generically called "*the theory of the delayed ensoulment*". [14] The Greek philosophers, as advocate supporters of this doctrine considered that the soul was going to keep the body together in all the upcoming phases.

According to the philosopher Thomas Aquinas, who was substantially influenced by Aristotle's theory, the stages of human development from conception are the following: *vivum* (the living entity), *animal* (animal entity), and *homo* (the human entity). For all these stages a particular type of soul is attributed - vegetative, sensitive and rational. [15]

According to Aristotle, there existed three types of soul - the nutritive (vegetative), the sensitive and the rational, which all follow each other in the stages of the human development. [16] Taking into consideration that back then there was a serious lack of essential scientific notions related to the theory of the reproduction cells, Aristotle's biology does not include the idea of fertilization. In his theory of human reproduction, he explains that, the process of generating the embryo (conception product) itself is quite similar to the nutritive (vegetative) function characteristic for the plants and animals, since this process of generation of the product of conception is the result of the fusion between the menstrual blood of the woman and the seminal liquid of the man. Both are rooted in the blood, which is the substance sustaining life itself. [17]

This way, Aristotle considered that the conception product needed a nutritive soul for enabling it to survive and to help its future development, reason for which it is from the beginning gifted with this type of soul. This idea of his is based on the fact that, in this particular stage of development the philosopher did not manage to identify on the level of the product of conception any other activity apart from that of nutrition. So, the presence of the nutritive soul can be confirmed with certainty when the living human organism is capable of absorbing nutrients as well as other substances necessary for its development. We understand that, according to the philosophical theory of Aristotle, this is the contribution that the nutritive soul can

bring to the human development. This is the main reason why this type of soul is present from the very beginning.

According to the same reasoning we can discern the presence of the sensitive soul which, at a certain moment replaces the nutritive soul. Just like the heart - the inner organ that has the role of granting the circulation of the blood in the body - was considered the major indicator of the presence of the nutritive soul, the emergence of the sensory organs proves the presence of the sensitive soul. [18] We have to point out that Aristotle did not conceive the process of the genesis of the organs, but, according to his viewpoint, the organs were constructed in a successive way. [19] It was the Greek philosopher who developed the theory of epigenesis - the formation and development of some new body parts of the future human being, which beforehand had only showed the potential of existence.

So, in Aristotle's vision, the gradual development of a human being had at its basis the succession of the three types of soul (nutritive, sensitive and rational) in the sense that in each phase of its formation, the human being is gifted with a particular type of soul which gradually ceases to exist and it is substituted with another one according to the level of development. More precisely, the freshly formed living organism possesses the nutritive (vegetative) soul and as it disappears its place is taken by the sensitive soul. Finally, the rational soul emerges at a certain moment (not determined by Aristotle) from the outside, in a mysterious way, to carry out the final steps of the formation of the human being. Contrary to the other two types of soul, the emergence of the rationale soul is not conditioned by the existence of one or another physical organ. Although the existence of a fully functional brain is considered as a necessity, it is by far not sufficient for the emergence of this type of soul.

In conclusion, according to Aristotle's argument human beings generate the formation of other human beings. Today, the most important evidence that science can provide us with for enabling us to identify a human being is the human genome itself. The lack of biological knowledge did not prevent the great Greek philosophers to create some genial ideas and transforming them into real theories connected to the beginning moment of the human being.

Taking into consideration all those described above we can deduce that, if Aristotle as well as the other philosophers who had drawn their own ideas on his arguments, had combined their philosophical speculations with the scientific information that we do possess in the present, they could have reached the conclusion that the newly formed living organism belonging to the human race is consequently a human being from its very moment of conception (fertilization).

In what follows, taking into consideration the fact that, in their opinion, after the creation of the product of conception, this can be considered a member of the human race, the Greek philosophers condemned all violation attempts threatening

the life of the unborn child as a criminal act. Moreover, Thomas Aquinas stated that abortion was and continues to be considered a serious action even if it is done before the completion of the process of "generation" of the conception product. [20]

On the other hand, in its incipient phases, the Roman law allowed abortion but at the same time, provided the fetus the status of a potential human being and integral part of the pregnant woman. Later the Roman lawmakers arrived to the conclusion that abortion had to be outlawed because it endangered the health of the pregnant woman, it violated the rights of the father to his child and it provided negative examples for the society. [21] Additionally, the Roman law considered that once conceived, the child had full citizen rights on the condition that it is born alive in order to be taken into consideration in an eventual census - (lat.) *Infans conceptus, pro natur habitu*. [22]

Tertullian is the oldest Christian author who had fought against abortion and, at the same time, the first Latin writer to succeed in the detailed analysis of the unborn child. In a recent study by Julian Barr entitled, *Tertullian and the Unborn Child: Christian and Pagan Attitudes in Historical Perspective*, examining the works of Tertullian, the author suggests that the ideas of the Roman writer concerning the unborn child should be read as complementary rhetoric to his major theories. [23] We have to take into consideration that Tertullian, in some of his discourses argued that the existence of the human being starts with its conception, while in other instances he missed to do so. This proves Tertullian's tendency of getting into contradiction with himself. Consequently, we understand that the references of the Roman author to the unborn child should be removed from the context in order to avoid their erroneous interpretations.

Tertullian himself had borrowed, modified and later rejected theories of ensoulment depending on their relevance for his own individual purposes. He studied Christian traditions and selectively borrowed things from the antique theories of embryology to prove certain theological and moral aspects.[24] Thus, he arrived to the conclusion that not God is the creator of the soul but it exists already as integral part of the human body from the very beginning. According to his theory, humankind's original sin penetrates the soul and is transmitted *per traducem*. [25]

Tertullian's arguments were influenced by the Roman customs even more than it was thought to have been, since the contrast between pagan and Christian approaches to abortion was much more of a rhetorical than a real issue. [26] One thing however is clear: Tertullian argued that human existence starts already in the womb and abortion is therefore clearly a criminal act.

Later on, the evolution of the legal path of the West was influenced by the Christian-Judaist culture. In pre-orthodox and early Christian times, even if they

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did not punish abortion committed by the pregnant woman and even if they did not consider the fetus a real human being, they still condemned the interruption of pregnancy by a third party, allowing this act to be carried out only in situations when it was absolutely vital for saving the life of the pregnant woman herself. Later the Jewish culture changed its views and started to consider the fetus as a human being in the proper sense of the word from the very beginning of its existence. Consequently it introduced capital punishment for those who would commit the act of abortion. [27]

Even if the Bible provides us with references to the intrauterine life of the human being, these references cannot be used to determine its starting point. It is true however, that it is proof to the fact that God is the Creator of the human being but without precisely determining in which phase of the embryological development can His creation be considered a human being in the real sense of the word.

According to the visions of the Cappadocian Fathers, the soul is *"the spiritual essence of the human being, the dynamic power within man that structures the elements of the material world into what is called the human body"*. [28] The Cappadocian Fathers shared Plato's ideas in connection to the three powers - rational, volitional and irascible - that are to be found within the soul. However, contrary to the ideas of the philosopher, they did not consider them as parts of the soul because in their view, this could lead to the false conclusion that the soul is something material. Moreover, they did not speak about any contradiction between body and soul, the former being considered not more than a physical manifestation of the latter. [29]

Even if the Cappadocian Fathers do not support trichotomism, they still somehow embraced Aristotle's theory according to which the human being does provide evidence for the presence of those three functions (nutritive, sensitive and rational) and all three are attributed to the three stages of development (vegetative, animal and human). But they refer to these three functions as being in reality the three aspects of the soul. Thus, they argue for the idea that the human being is made up by three natural aspects and every single phase somehow encloses within itself the aspects of the phase preceding it. [30] More exactly, following Aristotle's arguments, if the nutritive function is characteristic for the plants, and animals possess the nutritive as well as the sensitive function, logically, it comes that the human being possesses within itself all the three functions - nutritive, sensitive and rational. In accordance with these theories we can conclude that if all the three functions are characteristic to one particular nature, than the human being is composed of three such natures.

The Christian tradition of the first 1100 years condemned the destruction of the fetus regardless of the stage of its development. In the next six decades it was considered murder from the moment of conception or ensoulment. After 1869 this

distinctive principle was removed and abortion started to be punished with expulsion - a tradition that found its bitter supporters in Protestant Christianity. [31]

In the present the Church condemns voluntary abortion based on the argument that the killing of a human being that has no possibilities for self-defence is the violation of one of the 10 Commandments, namely "*Don't kill!*". At the same time, the Orthodox Church considers that the human being is more than a biological entity (gifted with rational soul); it is a psychological-physical being having been created by God in His own image. [32] In conclusion, "*all human beings are created equal in their nature and vocation. They possess at the same time the actually and the potentially, the same demnity and value: they are God's image, which however, is in a perpetual process of resemblance to Him.*". [33]

3. Conclusion

The problem of the unborn child was and still is starting point for controversial and delicate discussion, having at its basis scientific (biological), historical, philosophical (ontological), religious, legal or ethical (in terms of obligations implied by it) arguments. Consequently, the problem is of a fundamental complexity and probably this is the only thing related to the issue that everybody agrees on.

We could find out that both the Greek and the Latin philosophers considered the unborn child already a human being. However, neither the Greek nor the Roman legislation granted proper protection for it. It is true that there have been situations when abortion was subject to court discussions, but seemingly this occurred only because the violation of the right of the father to his descendent. [34]

At the same time, along history, philosophical and religious visions in connection to the origin of the soul, the precise definition of the exact moment when the soul is united with the body, and, implicitly, the first moment of existence of the human being, have been multiple and rather different.

In conclusion, taking into consideration that not even today has consensus been achieved concerning the beginning of the human life, it was and still is difficult to provide proper legal protection for the unborn child, but in our opinion this is by far not impossible.

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Notes

[1] According to some religious theories life begins in the moment of fertilization, or on the 40th day after fertilization, or on the 120th day following gestation, or even in the moment when the head of the new-born child emerges from its mother's womb.

[2] O. Sacchi, "The Human Embryo between Res and Person: an ontological perspective inspired from the Legal Debate of the Ancient World", in *Bioethical issues by the Interuniversity Center for Bioethics Research*, Ed. Scientifica, Napoli, 2013, pp. 71-72.

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[4] Ibidem.

[5] J. Barr, *Tertullian and the Unborn Child: Christian and Pagan Attitudes in Historical Perspective*, Ed. Routledge, Abingdon, 2017, p. 14.

[6] Idem, p. 15.

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[7] Similarly, see J. Barr, *Tertullian and the Unborn Child: Christian and Pagan Attitudes in Historical Perspective*, Ed. Routledge, Abingdon, 2017.

[8] For further details visit the page of the Supreme Court of the United States of America, Case *Roe versus Wade* and the verdict from 22nd January, 1973, available on <http://www.sacred-texts.com/wmn/rvw/rvw00.htm> [accessed on 23th October 2017].

[9] Idem, parag. 153.

[10] For instance the Sumerian Code (from the year 2000 B.C.); The Code of Hammurabbi (from the year 1300 B.C.); the Persian Code (from the year 600 B.C.).

[11] Plato, *Republica*, Translated into English by Allan Bloom, Book IV, 441a, available on: http://www.inp.uw.edu.pl/mdsie/Political_Thought/Plato-Republic.pdf [accessed on 12th November, 2017].

[12] Plato, *Timaeus*, Translated into English by Benjamin Jowett, available on: <http://www.gutenberg.org/files/1572/1572-h/1572-h.htm> [accessed on 12th November, 2017].

[13] Starting from arguments developed in his works such as *De Generatione et Corruptione* (About generation and corruption), *Historia Animalium* (On animals) sau *De generationem Animalium* (On animal reproduction), he arrived to his study *Politica*, in which he discusses the starting point of the human being.

[14] J. P. Garcia-Scougall, G. R. Cantu Quintanilla, "The Underpinnings of the Human Rights of the Embryo", in *Persona e Bioetica*, Nr. 2, Vol. 19, 2015, p. 266.

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[18] Idem, p. 31.

[19] J. P. Garcia-Scougall, G. R. Cantu Quintanilla, *op. cit.*, p. 266.

[20] Idem, p. 267.

[21] Law Reform Commission of Canada, *Working paper 58: Crimes against the foetus*, Ottawa, 1989, p. 5.

[22] Father Arsenie Papacioc (Ieron Benedict Stancu Publishing), *On the Harmony of Marriage*, Ed. Elena, Constanța, 2013, p. 68.

[23] J. Barr, *Tertullian and the Unborn Child: Christian and Pagan Attitudes in Historical Perspective*, Ed. Routledge, Abingdon, 2017.

[24] Idem, p. 14.

[25] L. M. Stănilă, *Provocările bioeticii și răspunderea penală*, Ed. Universul Juridic, Colecția Monografii, București, 2015, pp. 90-91.

[26] J. Barr, *op. cit.*, p. 13.

[27] Law Reform Commission of Canada, *op. cit.*, p. 5.

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[29] Idem, p. 163.

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[30] Ibidem.

[31] Law Reform Commission of Canada, *op. cit.*, pp. 5-6.

[32] The Holy Bible, Authorized King James Version. Genesis. Chapter 1:26-27, available on: <http://www.ebible.ro/biblia/romana/ortodoxa/facerea/1/> [accessed on 11th November, 2017].

[33] Translation from the web source: <http://www.patriarhia.ro/avortul-78.html> [accessed on 11th November, 2017].

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