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## THE VULNERABILITY OF THE EMBRYO ARISES FROM ITS TERMINOLOGY

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### ABSTRACT

The Law is made of concepts. Each legal concept contains a bottom layer and preceding philosophic synonym. Each word has its meaning, as a sign which represents an axiom. For this reason, traditionally, legal sciences are averse to polysemy. Therefore, 'adoption' of embryos and 'donation of embryos' are entirely distinct concepts.

Moreover, nowadays medically assisted procreation procedures are an answer to numerous issues that touch the lives of an uncountable number of families. However, at the pace that these procedures develop the law has to follow the new realities which science has present to us. The eternal purpose of MAP's is the creation of life. It seems undeniable. The trial that consciously we intent to held relies on surplus embryos — a life already created. In the embryonic stage, a highly vulnerable moment. It is indeed, a trial with ethical, scientific, legal, religious and even philosophic claims. In light of this adoption of embryos and donation of embryos are different classifications for the same reality. We oppose one and agree with the other. The conceptual terminology that we choose comes from the recognition and valuation of life in its embryonic stage. We even consider that it comes from naturally valuing life, in whatever stage that it might be.

The vulnerability comes in different stages of human life. However, in this case, it seems to extend, not exclusively but also, to the classification that is being wrongly applied, concerning the acceptance of surplus embryos. With this article, we aim to attend the different European Laws to appraise which concepts are used, the reason for using those and not others, and evenly, interpret the impact on the consensus we desire to build considering the prenatal adoption.

**Keywords:** concepts, medically assisted procreation, adoption of embryos, donation of embryos, vulnerability, prenatal adoption.

### INTRODUCTION

The terminology is, in any field, essential and utterly precious, and even meticulous, if we indeed attempt to explain a given issue. Indeed. The legal terminology is no different. Describes the own valuation of the word and what it means[1]. The stated legal-linguistics must be averse to polysemy. Mainly in such peculiar and sensible issues as the family law. We would say the word must be manifested to certain selfishness, safeguarding its meaning in topics, where effectively, it must be used. The opportunism must be repressed. Do not use terms on issues which do not concern.

The medically assisted procreation is a sensitive issue that walks hand in hand with the beginning of human life. Indeed, it is human life. The terminology applied in topics related to MAP's must be sensitive to the point of no mistake, to ensure not damaging the valuation of those techniques. The judgment of the outcome. Procreation techniques. Human life procreation[2].

The embryo. Human Life. The embryo is already, at this stage, human life. It deserves protection from what it is, a human life. The terminology applied around this embryo condition is, in need, of a review because the Portuguese law implements concepts that are not compatible with human life, with the embryo. The embryo surplus is also life. Adopt embryos or being these donated. The state more or else advance of the embryo deserves certainly custody. We can not use the legal institutions created and thought for on individual circumstance, and then, as we observe, use it on another situation that in nothing is similar to the previous one. The power of the word and the refection of its meaning can be utterly adverse to family terminology construction, and it's new realities. The respect for family and its new realities demands a new conceptual approach; otherwise, the vulnerability of the surplus embryos can grow even more[3].

The embryo. The surplus embryo. The vulnerability of the surplus embryo. The surplus embryo and its evolution cannot be subject to a hermeneutics of concepts used to define the way they make part of the family. Receive a donation. Adoption. These distinctive terminologies are bewildered, yet conceptually different. Not because in its hermeneutics. But, because they are effective and genuinely different.

The life precedes its terminology and endures long after it. A life precedes birth. The embryo is life. Bewildered and use the word donation and adoption, in this issue, is confusing the being with the object. Is classifying as "a thing" the being that is not yet born. We disapprove.

We must reflect on this, is the valuation of life independent from the state, and the attention to this remains of the stage it is. The law must not be adverse to the conceptualism of accuracy. The implications would be, and are, harmful for who wants to understand himself. The linguistic objectivation is already the result of one interpretation. The precision of the concepts must be for the law part of its nature - part of the way it is presented. The embryo and its condition must be embraced by conceptual accuracy. The embryo is a being in an embryonic stage - is an embryonic being, in a prenatal state.

Received a donation of something. Adopt life

#### **REAL TEXT**

The words are a mean in itself. Some are used in detriment of others with the one main goal: communicate. Pass the right message. Concrete. Words bring in them self an undeniable valuation weight. That is why we use them with a clear purpose of wanting to convey a certain message.

Concepts are naturally built from its sociologic configurations in a certain community, they reflect a factual reality. It is in the understanding of this precision that we ambition that the legal concepts are employed - other by being implemented accordingly with what they effectively intent to convey. One rational structure of the legal terminology reduces the possibility of freedom of interpretation, enforcing the singular meaning. The

production of Heidegger and Gadamer are essential when we want to analyze the branch of interpretation. However, what we propose to analyze is the terminology in its narrowly interpretative direction. The terminology from the "referent" takes us to something out of the spectrum of linguistic. There, is the direction, where we aim to focus. - directly in the space where the society lives in contact communication without having rules of interpretation[4].

We are in compliance with the existence of a pre-knowledge associated with a linguistic statement. As it explains Gadamer, apprehending a text is comprehend the thing that we associate with. We believe that the polysemy of certain words, in relation to its application without the assistant of the "referent", creates a paradoxical situation to the fairness and consistency of exercising them.

In light of this and forgetting the unneeded legal construction of the topic we are addressing, there are no doubts about the vulnerability of terminology, in this case of legal terminology. The Law. Even the Law claims as other "referent", bringing a weighted valuation and understood in light of order unity. This clearly shows that itself brings a certain interpretation.

A lot we would have to analyze about the relevance of the interpretation in relation to the referent(s) of the word. However, what brought us here is the weighted value of the word in relation to its "referent" in opposition to the situation this wants to classify.

Today, medically assisted procreation techniques are effectively creating real and plausible expectations from the viability of a new life, nonetheless the infertility of the couple. Or from two life's. Or tree. Or even more. Much more. What we purpose to explain is that upon such techniques, are enable various embryos with genetic material from the couple, but for diverse reasons, they are not all used. Are they cryopreserved, aiming in the future, the woman becomes pregnant again from embryos from hers and the men genetic material, or put them through medical research, or can simply be used by other infertile couples.

Nevertheless, it will always be said that surplus embryos result from the application of two different techniques, in vitro fertilization tout court or the intracytoplasmic microinjection of spermatozoids, becoming surplus due to their non-use. Still, let us not forget that we are facing suspended lives at the embryonic stage, only needing to develop and finally be born. They are life. No stuff. Life.

As mentioned, surplus embryos are now used for various purposes, namely for medical research or for cryopreservation with a view to being implanted in the uterus in the future. It is in this track that the matter that holds us in particular arises. It is not uncommon for a man and a woman to have a certain pathology that does not give them the possibility of generating a Being without resorting to the genetic material of third-parties. Thus, Medically Assisted Procreation techniques allow infertile couples to generate human life by adopting third-party embryos.

In the subject under analysis, the terminology is of particular importance, particularly as regards the way in which these surplus embryos are accepted in a given family. Their past is always the subject of inquiries, either of the owner or of third parties. It is unquestionable. It turns out that in the present matter the misuse of certain terminology can be reflected in the way a certain person develops, influenced, even, by the perception that he has of himself involved in a certain community[5].

In matters related to the MAP's the right is called to pronounce incisively in the face of the new realities arising from the successive advances of reproductive medicine. Surrogate pregnancies, in vitro fertilization, adoption, donation, anonymous birth, an anonymous donor, parenthood, conjugality, anonymous are frequent terms when the material refers to the MAP's. The sophistication of reproductive mechanisms is such that law will certainly have difficulty adapting. However, there is no right to rely on an argument which is evident in the degree of difficulty in conceptual adaptation. It has to adapt its terminology in a precise and meticulous way and, in this way, embrace the new realities with the necessary but most adequate terminology, using the already mentioned "referent".

Perhaps we are before the moment when the Law has to reform terminologically.

The "referent" of the word itself has an evaluative weight.

In Portugal, in order to be precise and distinguish one reality from another, it is said that mobile things are rented and things are leased. Very well, in our humble opinion. The terminology precision referring to the things, dividing in subspecies the moving things and the still things. In view of the example, the reason, or the lack thereof, exceeds the justification for the use of the word "donate" and, this time, receive a donation instead of the word "adoption" when the subject matter is the destination of an embryo, the fate of embryonic life.

The conceptual terminology by which we choose part of the recognition and valuation of life in an embryonic stage. We would say, of course, that part of the valuation of life, at whatever stage it may be found.

However, the use of the word donation is not conceived when the value load it brings with it is consistent with objects and not with life.

We understand that the above situation is compatible with prenatal adoption. With an adoption. Certainly, with distinct forms of adoption after birth, but without, however, cease to be. In Portugal, and according to the applicable law, Law 58/2017, of July 25, in its art. 10, is expressed through the concept of "donation" also using in its paragraph 1 the following terminology "It is possible to use oocytes, spermatozoa or donated embryos ...". Now, the terminology used seems to us totally inadequate in the face of the charge that the concept of giving carries itself.

In view of some specificity to the Portuguese legislation, and using art. 940 of the civil law, a contract is understood to mean "a contract whereby a person, by virtue of his or her liberty and at the expense of his or her assets, has a free gift of one thing or right, or assumes an obligation, for the benefit of the other party".

As for the adoption, provided for in arts. 1973 and following paragraphs of the civil law, we will allude only and only, for this purpose, to art. 1974, which expressly states in its number 1 that "Adoption is intended to achieve the highest interest of the child and will be enacted when it presents real advantages for adopting it, merges in legitimate motives, does not involve unfair sacrifice for the other children of the adopter and it is reasonable to suppose that between the adopter and the adoptee a bond similar to that of the affiliation will be established"[6].

Having in mind the concepts explained we are of the understanding that the concept of adoption is much more rigorous and adequate than the concept of donation. In fact, we

would even say that the concept of donation is misused. It is not appropriate to the fate of the surplus embryo. Assuming that the embryo is life [7], which it is effectively, it can not be welcomed through giving but through adoption. It is not just a question of semantics. It is not. It is much more than that. It is the possibility of embracing the origin of the embryo of an adequate terminology and, therefore, embracing it with the terms that are adequate to it, accepting it conceptually by always realizing that it was already living, in an embryonic state, before having determined your destiny. The vulnerability of the surplus embryo is already vertiginous enough that one more of semantic nature is added. Attention. The vulnerability of the semantics covering the embryo can dictate how the embryo is treated. As a thing, it is not. It is not a thing. It is life[8].

Issues related to surplus embryos are immense; however, the vulnerability they present seems to effectively begin with the terminology used in defining their future. It will even be an ethical question. It is an ethical question as well.

Such a discussion is not unique. In France the terminology to be used in relation to surplus embryos is also discussed. The discussion is essentially between the concept of reception and adoption of the embryo. At first glance, the gap between these two concepts seems to be less than that between the concepts of donation and adoption. Nevertheless, the concept of adoption is accepted in the doctrine, which shows that the conceptual instrumentalization involved in the embryo is more sensible and even less offensive, developing this concept more than any other [9].

In Spain, in 2004, an unusual essay took place. The Marquès Institute in Barcelona has developed the first embryo adoption program in the world. The terminology used, notably through the concept of "adoption program", seems to be a mass movement, however the truth is that surplus embryos have been adopted and not donated. The regime used here is distinct from conventional adoption, with the provision of informed consent where the adopter effectively recognizes that it is aware of the whole process of adopting the embryo, with the assignment of these by a computer system with particularities, namely to prevent that, in the future, consanguinities may be obtained [10].

Within Spanish doctrine, there seems to be more consensus about the adoption of embryos, although there are some embryo donation reviews.

Europe is made up of very different countries. Ethically different. It seems to us too utopian to equate in different jurisdictions a coherent terminology [11] with the same "referent." However, effective efforts are needed to reduce the vulnerability of surplus embryos [12]. Of course, the efforts that prove urgent are not only presented in terms of the terminology used when the subject is the future of surplus embryos [13].

Nevertheless, the concepts used in the theme that holds us, do and always will do the difference for who, through these techniques, to be born. Vulnerability already hugs surplus embryos [14]. It would be disastrous to allow and not discuss the terminology that should be used when it is the destiny of these lives that it is intended to safeguard. Legal terminology is averse to polysemy. To allow and accept the use of the concept of "donation" of surplus embryos seems to allow us to instrumentalize human life when it is highly vulnerable.

Prenatal adoption may have its own regime distinct from conventional adoption.

It is necessary to take into account the legal status of the embryo and define the proper rules for its adoption. As expressed by the European Court of Human Rights, in the case

"Parrillo v. Italy" ((27 August 2015), at any moment an embryo can be considered as a good, as a thing. However, using the concept of "donation," the embryo is closer to the definition of thing than of life. Which cannot be accepted. And it is not accepted, under penalty of the vulnerability that reaches the surplus embryos to begin in the terminology that, instead of embracing them, strip them of any protection and any humanization. Not accepted. Adopt Life. Embryos are used. Prenatal adoption. This is the solution we propose [15]

Finally, we will say that this is the solution we propose so that, in terms of semantics, the embryos are protected and treated as life, in an embryonic state. And not like things. Which are not.

#### CONCLUSION

Conceptual terminology defines the reality that we propose to address. Considering the legal-terminological rigor that is constantly pursued, it is not conceived that the concept of "donation" is used around the future of surplus embryos. Having already a free will on the fate of surplus embryos, it would be disastrous to join hands with conceptualism that dehumanizes its condition. It's life. When the destination of the surplus embryo is medical research it is understood as a set of cells, and thus closer to the concept of a thing. The confusion of the concepts is not single, being this patent in several jurisdictions, although some are indistinct than others. Law is averse to polysemy, precisely because its primacy is the conceptual rigor. Having said this, we conclude that terminology is of paramount importance, despite the fact that its rigor is, many times, despised. Do not let the embryo dehumanize.

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