

# SIMPOSIO BIOÉTICA EN SALUD SEXUAL Y REPRODUCTIVA

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## Ethical controversies in abortion care, in vitro fertilization and contraception in women

### Controversias éticas en la atención del aborto, fertilización *in vitro* y anticoncepción en la mujer

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#### ABSTRACT

In relation to reproductive processes, the scientific evidence of recent years and the vast and better information available for measuring and estimating morbidity and mortality indicators in reproductive health have led to the definition of new strategies within the framework of women's right to health. For some people these approaches are clear, but for others they are not so clear, generating controversies in the light of ethical principles that need to be raised and, if possible, resolved. In this sense, we have selected for this presentation abortion, assisted reproduction and contraception, current issues that raise different or opposing opinions of individuals or institutions, not always the product of a reflection, fair, honest, non-ideologized, looking for the welfare of people. Sometimes, it is the result of the satisfaction of a personal or institutional interest.

**Key words:** Abortion, In vitro fertilization, Contraception, Principle-based ethics

#### RESUMEN

En relación con los procesos de reproducción, las evidencias científicas de los últimos años y la vasta y mejor información con la que se cuenta para medir y estimar los indicadores de morbilidad y mortalidad en salud reproductiva han llevado a definir nuevas estrategias en el marco del derecho a la salud que tienen las mujeres. Para algunas personas son planteamientos claros, pero para otros no tanto, generando a la luz de los principios de ética controversias que es necesario plantear y, si es posible, resolver. En ese sentido, se ha seleccionado para esta presentación el aborto, la reproducción asistida y la anticoncepción, temas actuales que suscitan opiniones diferentes o contrapuestas de personas o instituciones, no siempre producto de una reflexión, justa, honrada, no ideologizada, buscando el bienestar de las personas. A veces, es el resultado de la satisfacción de un interés personal o institucional.

**Palabras clave.** Aborto, Fertilización *in vitro*, Anticoncepción, Ética basada en principios

#### INTRODUCTION

in the last 50 years there have been advances in assisted reproduction, contraception and the approach to abortion. However, in recent years, these issues have been facing setbacks worldwide, often as a result of ideologies rather than current scientific knowledge.

#### ABORTION

Throughout history it is known that the interruption of pregnancy, abortion, whether spontaneous or induced, is a real fact that has existed in the world since primitive times. What has changed are the social environments that have evolved from absolute patriarchy - where the head of the family could sell and even kill his children even before they were born, regardless of the opinion of women - to environments where human rights, especially those of women, are increasingly recognized and respected. Some States even have laws that protect women when they have an abortion.



In general, ancient legislations did not punish abortion. In Ancient Greece, the fetus was considered to have no soul. Plato stated in his work *The Republic* that abortion should be prescribed in case of incest or when the parents were elderly; while Aristotle and other philosophers recommended it as a formula to limit the dimensions of the family. Here the fetus was considered part of the mother, and it was she who could dispose of her body as she wished<sup>(1)</sup>.

According to the Catholic conception, it is the soul that gives the organism the category of human being, this is what is called the hylemorphic conception of human nature based on the Aristotelian thesis of delayed animation. Its main proponent was St. Thomas Aquinas<sup>(2)</sup>. This hylemorphic conception was adopted by the Council of Oxena, in 1312, so that until then the Church did not consider abortion as murder as long as the soul did not animate the body<sup>(3)</sup>.

For many centuries the Church did not condemn abortion as it does today. It was only in 1869 that the Church changed its position, when Pope Pius IX proclaimed that the embryo acquires the soul, and therefore its status as a human person, from conception<sup>(3)</sup>.

During the 20th century, many countries included in their legislation legal or decriminalized abortion for different reasons. Causes related to the risk of the woman's life or of suffering damage to her health, rape, malformations incompatible with life, social or economic causes have made possible changes in the legislation of the countries.

Recent studies show that 'in contexts of illegality and criminalization, the performance of an abortion does not necessarily imply traumatic psychological effects or problems in women's mental health. However, they do generate high amounts of fear, uncertainty, and distress. The illegality of abortion is associated with feelings of guilt and loneliness, as well as fear of legal action and physical and psychological harm. Prohibition has a deterrent effect on health care providers and endangers women's lives and health<sup>(4)</sup>.

In spite of this, ethical controversies in the modern world regarding abortion continue to arise and give us many surprises, especially when

they come from a country where we thought that nothing would change. Suffice it to mention what has happened in the United States regarding abortion. On June 24, 2022, the Supreme Court of the United States overturned the Constitutional right to terminate a pregnancy throughout the country, a ruling that eliminated the 1973 *Roe v. Wade* decision<sup>(5)</sup>. This has prompted many U.S. States to begin to revise their legislation regarding abortion and to prohibit it.

In addition, during this ruling, Supreme Justice Clarence Thomas opined that the Court should value other previous rulings such as *Grisworld vs Connecticut* (1965) that guarantees the right to contraception; the *Lawrence vs Texas* (2003) ruling that legalized consensual same-sex sexual relations throughout the country; and the *Obergefell vs Hodges* (2015) ruling that recognizes the constitutional right to equal marriage, putting at risk what has been advanced in relation to sexual and reproductive rights. The Supreme Judge said textually in relation to these resolutions: 'the Supreme Court has the duty to 'correct the error' established by these sentences<sup>(5)</sup>.

We do not understand the position of Supreme Court Justice Clarence Thomas, who is against the right to abortion and who questions the rights gained in relation to contraception, since it is known to prevent unwanted pregnancies, which is the major source of induced abortions.

Abortion deaths in the U.S. had declined significantly, so if this ruling is upheld in most states, we believe it will again put women at risk, as many women with unwanted pregnancies will likely seek clandestine abortions, which are often unsafe abortions. 'Dangerous abortion' occurs when a pregnancy is terminated by an untrained person, or in an environment that does not meet minimum medical standards, or when both circumstances are combined<sup>(6)</sup>.

What happens in Latin America? While Argentina, Colombia and Cuba have very open policies regarding abortion, there are countries where abortion is totally criminalized, at least in six countries: Honduras, Nicaragua, Dominican Republic, Haiti, Jamaica, and El Salvador. In the latter, the laws are so strict that they have penalties of 30 and 50 years in prison that are also applied when the woman suffers a voluntary interrup-



tion or an obstetric emergency, since it is classified as aggravated homicide<sup>(7)</sup>.

In Peru, there have been attempts to eliminate therapeutic abortion<sup>(8)</sup>, which has been decriminalized since 1924. On March 7, 2023, the Supreme Court of the Judiciary ratified the validity of the protocol for therapeutic abortion that regulates the right of women to abortion in case of risk to the pregnant woman's life or serious damage to her health. The lawsuit against therapeutic abortion had been filed in 2018 by the Centro de Estudios Jurídicos Santo Tomás Moro, in a new attempt to ban it<sup>(9)</sup>. Previously, the Asociación Acción de Lucha Anticorrupción (ALA sin Compenenda) had filed its lawsuit that was rejected in 2020 by the Superior Court of Justice of Lima<sup>(10)</sup>.

In which cases is the decision to terminate a pregnancy an ethical decision? Why have many states in the world legalized abortion in recent times? Do women get pregnant to have an abortion? Do countries that have legalized abortion have the highest abortion rates among women? Are those in favor of abortion legalization in favor of abortion? Do abortions performed under legal conditions cause more maternal deaths? In a weighing of values, does the life of the woman prevail over that of the fetus or not? Is the decision to have an abortion in the case of a pregnancy that puts her life or health at risk, or if it presents malformations such as anencephaly or has been the product of rape, the same when one is not the person affected? These are questions that we must resolve when we want to face the ethical controversies that arise from the decision to have an abortion.

There are individual or institutional decisions based on ideological positions that are taken against abortion when it does not directly affect them, that do not consider the decisions of those affected, the possibility of risk to their health, the level of access or the availability of quality services. This is when women are faced with the decision to have an abortion done clandestinely, outside the legal framework. Controversies will continue to exist as long as the ideological positions, called 'Pro-Life'<sup>(11)</sup>, are contrary to the rights of women to have a free sexuality, with adequate contraceptive protection to prevent unwanted pregnancies; and as long as the value of women's lives is not recognized.

## IN VITRO FERTILIZATION (IVF)

Since the existence of man thousands of years ago, human fertility has had different visions, with great concern for the survival of the human species. Infertility could be interpreted as a divine punishment; it was always attributed to women and male infertility was not recognized<sup>(12)</sup>.

It was not until the 19th century, in 1884, in Philadelphia (USA) that the first confirmed case of artificial insemination by donor (AID) was performed by William Pancoast at Jefferson Medical College. In 1891, Walter Heape (1855-1929) (74 years old) was the first scientist to recover a preimplantation embryo by flushing the oviduct of a rabbit, which was then transferred to a recipient in which it continued its normal development<sup>(13)</sup>.

Patrick Steptoe and Robert Edwards, in 1976 reported the first human pregnancy resulting in ectopic pregnancy. Then, on July 26, 1978, Louise Brown was born, the first child conceived by IVF (in vitro fertilization)<sup>(13)</sup>. Thousands of years of human existence have passed before in vitro reproduction has finally been achieved, which has generated and continues to generate a great deal of scientific knowledge and changes in concepts related to reproduction, which should be incorporated into ethical discussions.

Nowadays, beyond the concern for the survival of the human species, infertility is an issue that worries millions of women. And with globalization, the information that women of all levels have about the existence of assisted reproduction techniques that can make their maternity a reality makes these techniques highly sought after, within the framework of the right to health that all women have. In spite of this, there are aspects of reproduction on which not everyone agrees, which also gives rise to ethical controversies regarding their universal application.

It is worth knowing what happened in Costa Rica. In 1996, the Costa Rican government prohibited the use of IVF to treat women who could not become pregnant, arguing that it violated the right to life, since in vitro-formed embryos were used. In 2001, a group of women sued the Costa Rican government before the International Court of Human Rights (ICHR). This case is known as the Artavia Murillo lawsuit. It took



nearly 10 years for the ICHR, after reviewing the opinion of experts, to finally recognize the right of women who could not get pregnant naturally to have IVF, thus indicating that the Costa Rican government was at fault.

The ICHR's substantive analysis of the interpretation of Article 4.1 of the American Convention, which states: 'Right to Life. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life'<sup>(14)</sup>. It points out that the concept of 'person' is a legal term that is discussed in many of the domestic legal systems of the States Parties. However, for the purposes of interpreting Article 4.1, the definition of person is anchored to the treaty's references to 'conception' and 'human being', terms whose scope must be assessed on the basis of current scientific advances. The Court notes that the evidence in the record shows 'how the current concept of in vitro fertilization has transformed the discussion on the modern understanding of the phenomenon of 'conception'. Indeed, IVF reflects that some time may pass between the union of the egg and the sperm and implantation. For this reason, the definition of 'conception' used by the drafters of the American Convention in 1969, more than 40 years ago, has changed. Before IVF, the possibility of fertilization outside the woman's body was not scientifically contemplated.

After an exhaustive analysis of the scientific evidence presented, the Court considers that it is appropriate to define, in accordance with the American Convention, how the term 'conception' should be interpreted. In this regard, the Court emphasizes that the scientific evidence agrees in differentiating two complementary and essential moments in embryonic development: fertilization and implantation. The Court observes that only when the second moment is fulfilled, the cycle that allows understanding that conception exists is closed. Considering the scientific evidence presented by the parties in the present case, the Court notes that, although the fertilization of the ovum gives way to a different cell with sufficient genetic information for the possible development of a 'human being', the fact is that if the embryo is not implanted in the woman's body, its possibilities of development

are null. If an embryo never managed to implant in the uterus, it could not develop because it would not receive the necessary nutrients, nor would it be in an adequate environment for its development (...)'.

Article 187 of the Court's analysis states that 'the term 'conception' cannot be understood as a moment or process that excludes the woman's body, given that an embryo has no possibility of survival if implantation does not occur. Proof of the above is that it is only possible to establish whether or not a pregnancy has occurred once the fertilized ovum has been implanted in the uterus, when the hormone called 'chorionic gonadotropin' is produced, which is only detectable in the woman who has an embryo attached to her. Before this, it is impossible to determine whether the union between the ovum and a spermatozoon occurred inside the body and whether this union was lost before implantation (...)'.

Considering the above, the Court understands the term 'conception' from the moment implantation occurs, which is why it considers that before this event Article 4 of the American Convention does not apply. Likewise, the expression 'in general' allows inferring exceptions to a rule, but the interpretation according to the ordinary meaning does not allow specifying the scope of such exceptions.

The conclusion of the IACHR is that (textual): 'The Court has used various methods of interpretation, which have led to coinciding results in the sense that "the embryo cannot be understood as a person" for the purposes of Article 4.1 of the American Convention. Likewise, after an analysis of the available scientific bases, the Court concluded that 'conception' in the sense of Article 4.1 takes place from the moment the embryo is implanted in the uterus', reason for which prior to this event there would be no place for the application of Article 4 of the Convention. Furthermore, it is possible to conclude from the words 'in general' that the protection of the right to life under this provision is not absolute, but is gradual and incremental according to its development, due to the fact that it does not constitute an absolute and unconditional duty but implies understanding the applicability of exceptions to the general rule.



Despite the fact that the conclusion on the concepts of person and the conceived have been clearly understood more than 10 years ago by the Inter-American Court of Human Rights (IA-CHR), the interpretation that many people in our country continue to give to our Political Constitution<sup>(15)</sup> and within them many legislators, is that the concept of 'conceived' would be from the union of the ovum and the sperm and not from the implantation in the maternal uterus. Decisions continue to be made based on empirical knowledge of past times and not on current scientific knowledge.

It is a woman's right to ask the State to help her become pregnant when she is infertile. Sexual and reproductive rights are part of women's right to health. Ideological considerations regarding the definitions of fertilization, conception, zygote, person, which do not consider the evidence of current scientific knowledge, should not be a barrier to allow women access to assisted reproductive techniques in each of our countries. There is nothing more ethical than respecting women's decisions regarding their fertility.

Ethical controversies in the case of fertilization techniques should be more related to resolving one of the principles of bioethics, that of equity or the justice of making it possible for these techniques to reach the least favored women, and that the State, respecting the Right to Health of all women, makes it possible for these techniques to reach this population; and not that the controversy is related to deciding that the fertilized egg, wrongly called 'conceived', should be considered a person.

## CONTRACEPTION

The contraceptive methodology is not new. For many years, since the human being realized the direct relationship between sexual intercourse and the presence of pregnancy, he began to look for ways to prevent pregnancy after intercourse. Thus, the history of contraception shows that all ancient cultures used different ways to prevent pregnancy. However, this position has often caused controversies related to the value that societies place on motherhood as the invaluable purpose that women would have, and then consider sexual relations as an opening to life, beyond considering sexuality as related to sexual pleasure. The WHO considers sexuality as 'a cen-

tral aspect of the human being, present throughout his or her life. It encompasses sex, gender identities and roles, eroticism, pleasure, intimacy, reproduction, and sexual orientation<sup>(16)</sup>.

Likewise, statistics have shown the relationship between unwanted pregnancies and induced abortions; and the possibility of harm to women's health, which can even lead to their death if the induced abortion is a dangerous abortion, as it is performed in an unsafe manner. For this reason, global public health has incorporated into its strategies to prevent maternal deaths the prevention of unplanned pregnancies, through different contraceptive methodologies. In the light of current knowledge, it can be said that contraception does not seek to produce abortions, but to prevent unplanned pregnancies that may be unwanted and lead to induced abortions.

In history there is ample bibliography regarding the prohibitions of the use of contraceptives, prioritizing sexual relations for reproductive purposes. One of the most important exponents of the opposition to contraception was Augustine, using the following arguments<sup>(17)</sup>: 1) the affirmation of the Manichaeans, according to which they praise chastity and tolerate marriage; 2) the reality that they are opposed to marriage rather than to sex; 3) the Manichaean opposition to conception is due to the fact that it traps the divine substance; 4) the consequent encouragement of counter-conceptive acts among Manichaean listeners; 5) the apostolic directive, considered as a prediction of Manichaeism, when it speaks of those who promote marriage; 6) the permission that Manichaean listeners enjoy to marry, but avoiding conception; 7) the assertion that in Manichaeism marriage exists to satisfy the libido, not to procreate; 8) marriage as the only authentic context of marital exchange; 9) procreation as the true purpose of marriage; 10) the fact that the affidavit of marriage so establishes; 11) the statement that the Manichaeans end up turning their wives into prostitutes.

Augustine's ideas on human sexuality have been disastrous for Western Christianity and are still valid today. Catholic morality insists today on points such as abortion and the non-use of contraceptives, which have not been condemned or even cited in the biblical revelation; on priestly celibacy, against the opinion of Paul in the quot-





ed text which affirms having the right to have a Christian wife like the apostles, the brothers of the Lord and Peter; neither did he receive any commandment from Christ on virginity (1 Cor., 7, 25) in the prohibition of the priesthood to women, when the New Testament only knows the priesthood of Christ and of the believers, according to the great theologian Congar<sup>(18)</sup>.

In this sense, one of the most controversial ethical methodologies is emergency oral contraception (EOC), which has been a point of debate for many years in our country. Although its use was approved in the Family Planning Norms of MINSA (Ministerio de Salud, for its acronym in Spanish) in 2001, in 2004 it was included in the National Guidelines for Comprehensive Sexual and Reproductive Health Care and in 2005 the Technical Norm for Family Planning was approved with RM N°536/2005 MINSA. In 2006, conservative sectors tried to have EOC withdrawn, assuming that it was an abortive method because it had a third effect that prevented the nidation of the zygote (union of the egg and the sperm) in the endometrium. On that occasion, the Peruvian Constitutional Court rejected the claim. However, three years later, in 2009, the same Constitutional Court prohibited its distribution in public sector health facilities, due to doubts about the abortifacient effect of EOC. In 2016, the Specialized Constitutional Court of Lima ordered MINSA to distribute EOC in public health facilities, in response to a citizen's lawsuit, which was again challenged by conservative sectors and had to be resolved by the Constitutional Court this year 2023.

Thus, after an exhaustive review of the documentation presented by MINSA, Sociedad Peruana de Obstetricia y Ginecología (SPOG), Federación Latinoamericana de Sociedades de Obstetricia y Ginecología (FLASOG), WHO, PAHO, FDA, on March 21, 2023, the Peruvian Constitutional Tribunal's Decision 197/2023 ordered the Ministry of Health to develop as public policy the free national distribution of the emergency oral contraceptive [EOC] -levonorgestrel, since it is not abortive and ratifies the constitutionality of its recognition as a family planning method that is part of the State's public policy. In this order of ideas, this Constitutional Court makes it clear that the defense of the human person and respect for his dignity are the supreme purpose of society and the State, and therefore the right to life must be the legal right protected par excellence<sup>(19)</sup>.

When one submits the use of contraception in general and EOC in particular to ethical analysis, one must review what is the intention or the interest we have in applying this methodology, what result we can obtain, if we agree with the woman's wishes, if she has the right to receive this care or not. There is no doubt that its use in emergency cases, such as rape, does not seek to interrupt a pregnancy that has not yet occurred, nor does it seek to harm the aggrieved woman. On the contrary, it seeks to prevent the sperm from reaching the ovum, which we do not know if it has already been expelled from the ovary or not, and can produce a fertilization, thus preventing a pregnancy, which would also prevent a possible abortion if the pregnancy occurs.

The immediate use of EOC also seeks to be timely and to respect a woman's right to good health. So, what would be the reason for anyone to oppose the use of EOC at this time? One answer may be that there is an intention that as a result of the rape a pregnancy will result. If that were the intent, we would have to conclude that it is intended that the aggrieved woman will have a pregnancy that she did not seek. This would be a behavior that violates the ethical principles of autonomy, beneficence, do no harm and fairness. Therefore, we consider that it would not be an ethical conduct since it would not be based on any value. The same occurs when there is opposition to the use of contraceptive methods, whether long-acting or short-acting contraceptives.

## CONCLUSION

Ethical controversies confront ethical principles that clash with others that sometimes make it difficult to decide. In this article, which reviews abortion, assisted reproduction and contraception, it is important to be able to evaluate whether these controversies respond more to a value or to an individual or collective interest related to ideological thinking, and not to respect for the rights of persons. In many cases, there are not ethical controversies, there are ideological controversies. In this case, we consider that beliefs and ideologies should be respected, but these beliefs should not be subordinated to the rights of people, of women, of public health. Apart from ideologies, many of which are based on past empirical knowledge, every day there is new scientific evidence that will evaluate the application or not of certain medical conduct within the framework of ethical principles.



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