Abortion: Women's Right?

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Abortion has been a very much discussed topic along the history. From ancient times women have suffered as a result of miscarriages due to natural reasons –whose origin was unknown in many cases-, and they have tried by diverse means to voluntarily interrupt the pregnancy in order to avoid to have children not wished for different reasons. In some circumstances, a miscarriage could be a cause for happiness if the woman did not want to carry out the pregnancy, but in other cases, the possibility of a miscarriage has been lived by women with dread, especially when no one knew the causes and there were no means to avoid them. Abortion, unlike what it's sometimes said, has never been a caprice for the majority of women who have suffered and still suffer it but, on the contrary, a serious decision taken in generally difficult circumstances and that, in many occasions, has come to affect women's health and physical integrity and, even, their own life. Abortion is a risk for the health, the physical integrity and the life of women due to fundamentally two factors: a) the means used for it; and b) the religious consideration of abortion as a sin, the moral condemnation and the juridical treatment of pregnancy voluntary interruption as crime; which, far from avoiding abortions, has made them clandestine –for fear to be revealed- and carried out in often deplorable conditions, putting in danger the health, the physical integrity and life of women who attempt, nonetheless, to put an end to their pregnancies.

The reasons for which women have resorted to the practice of abortions can be of individual nature, affecting only the woman in question, or can be referred to the couple; in most cases, anyway, they are related to social, religious, moral and juridical considerations made –legitimately or not- on the future offspring, and to the economic and familiar situation of the woman or of the couple. Facing a not wished pregnancy, because of a relation considered illegitimate, or facing the inability to bring up the future offspring, many women –altough putting in danger their lives- have decided to interrupt the pregnancy and still continue resorting to it, in spite of the social, economic, scientific, political and juridical transformations.

Scientific advances have carried, nevertheless, notable changes in the practice of abortions and a correlative decrease in the risks for the life, the health and the physical integrity. Scientific and technical advances in reproductive medicine have had a great repercussion also on abortion. They have involved, among others, the following consequences: a) the decrease in the number of miscarriages; b) the manufacture and extension of the use of contraceptive methods; c) the possibility of practising therapeutic abortions when malformation is detected in the fetus or when the pregnancy puts in danger the health or life of the pregnant woman; d) minor risk for the life and the health of the woman who practices an abortion. We must take into account, nevertheless, the necessary conditions that allow women to benefit from the scientific-technical advances in medicine. At least it is necessary to mention the following conditions: a) economic, i.e. that the economic situation of women not prevent them from enjoying a suitable medical attention; b) moral: i.e. that the abortion be not an object of negative valuation, seen as "badly" or, from a religious point of view, be not considered a "sin"; c) social: i.e. that the voluntary interruption of pregnancy be not a factor of social exclusion for women; d) juridical: i.e. that abortion be not penalized as a crime or, at least, that it be legalized in certain suppositions or during a certain time –the first twelve weeks of gestation, for example-; e) symbolic: i.e., that women be not "socialized" in a role that defines them *exclusively* for their mother's and breeding role for the species. As far as these conditions exist women will be able to benefit from the scientific-technical advances in reproductive medicine. If these conditions do not exist, the above mentioned advances will only be able to improve the quality of life of a minority of women –those who can pay - while the majority of women will risk their lives, their health and their physical integrity with clandestine abortions done by people who lack the necessary formation and without the due hygienic and sanitary measures; or they will have to carry on the gestation, give birth and bring up –or give in adoption- a not wished offspring, with the negative consequences – physical, psychic, economic, etc.-that this brings to the woman, the couple, and, likewise, to the offspring born without having been wished.

The scientific and technical advances in medicine have brought important changes in the means for the accomplishment of abortions and in the characteristics of the subjects in charge of it. Along history the social consideration and the juridical-political treatment of the abortion has also changed, but abortions have been carried out –in different hygienic and sanitary conditions, and in spite of the favorable or adverse social consideration, and of the juridical-political treatment as crime- from the antiquity up to the beginning of the 21st century. It is necessary to take into account, nevertheless, that these scientific, social and juridical changes have not occurred simultaneously in all countries and cultures, but in a diachronic way. This work will refer to the so called "developed" countries i.e. Western Europe and the United States. We must emphasize, nevertheless, the fact that at present the situation of women in relation to abortions is by no means homogeneous in all countries, either as question of fact or as question of right. The diverse social, economic and juridical circumstances grealty influence the way women have to face the abortion; some women, for example, can pay for a trip abroad, to a country where the practice of abortions is legal –at least in some suppositions-, and have it in a clinic with a good medical attention, while others risk health or life with a clandestine abortion in a country where this practice constitutes a crime, running the risk, besides, to be judicially prosecuted. In the same way, there are women who can abort –at least in some suppositions appraised by the law-, without economic cost for them, in public institutions, and those who, for lack of economic means, have to give birth and bring up a not wished daughter or son.

The means to achieve an abortion have changed from ancient times to the present day as new discoveries and knowledges on human reproduction make women's life, health and physical integrity safer now. Years ago slightly trustworthy methods were used to have an abortion and they risked women's life. Means such as potions, blows, introduction of sharp objects, that could manage to provoke an abortion were used, but were also high risk for the life and the health of women. Advances such as asepsis and anesthesia were fundamental in general, but applied to the practice of abortions and to childbirth they helped to radically transform the life of women who could benefit by them[1].

The discoveries and the new knowledges on human reproduction meant also a better training of the persons in charge of childbirths and abortions, though this caused the substitution of women with men. Traditionally women were in charge of abortions and also of attending or helping women during childbirth, more on the basis of their experience than for their "academic" knowledges. As a matter of fact, this same situation goes on at present in the developing countries. But as the doctors (males) were having more knowledges in this matter they began to exercise certain control and supervision on the activities and the knowledges of the midwives. Nevertheless, up to the 20th century the presence of males doctors was not generalized during childbirth and abortions in the case of women of popular and average classes of Western Europe. Up to very late 20th century, in fact, there were few women who could exercise this profession, because they could not accomplish the above mentioned studies.

The social consideration and the juridical-political treatment of the abortion has also changed along history. Abortive practices with artificial means were frequent in the Greco-Roman world and were not regarded a crime[2]. It was considered a private lawful practice for the birthrate control and because it affected directly the size of the population in a territory, it was also an important political matter. Aristotle, for example, repeatedly mentions the topic of abortion at the moment of defining the ideal "polis" in the *Politics*. Nevertheless, this situation was changing gradually as Christianity began to exercise influence and to extend its conception of abortion as an homicide. Between II century and III century the first intervention of the public power against abortion took place by means of a rule of the emperors Septimio Severo and Caracalla. According to this regulation, which has reached us through the testimony of some jurists, the woman who was aborting with the assent of her husband was sanctioned with divorce (her fault) and, as a consequence, had to pay a fine of one sixth of the dowry, and suffer a temporary exile imposed by the province governor. In this way, "abortion stopped being a private act that was the exclusively family responsability to be converted in a "crime" judicially prosecuted by the public organization"[3].

The comparison between abortions and homicides, maintained by the catholic Church, passed to the Visigothic and medieval legislation, sanctioning the woman who had practiced it even with the capital punishment. The scientific-technical and medical discoveries - fundamentally related to the asepsis and the anesthesia - and the new knowledge about human reproduction led penal legislation, at the time of the first modern codes, to punish also the sanitary professionals who had

participated in the abortion. This it is the case, for example, of the Spanish Penal Code, 1822, that, in article 639 punished the doctor, surgeon, druggist, midwife or midwife-male (sic), that, knowingly, administered, provided or facilitated the means for the abortion. If the abortion did not have effect it imposed them the punishment of five to nine years of public works and if it had effect it imposed the same penalty but for a period of eight to fourteen years and, in both cases, the *perpetual* incapacitation in the exercise of the profession.

In the last three decades of the 20th century the abortion practiced with the consent of the pregnant woman has been legalized in most of the countries of Western Europe, except for Ireland, and also in the United States, although in this case it was not by legislative but jurisprudencial route (*Roe vs. Wade*). The legislations of the countries members of the European Union in the matter of non-punishable abortion consider two elements in their regulations: the period of the gestation in which it takes place and the reason that justifies it. The basic assumptions they contemplate are: a) legalization in the first twelve weeks of the pregnancy whenever it is practiced by a doctor (Greece); b) legalization in the first twelve weeks of the pregnancy whenever, in addition to being practiced by a doctor, it is previously asked for (Austria, Germany, Denmark, Finland, Holland, Sweden, France); c) in these countries, after the first twelve weeks of gestation, and in others, whose laws provide for different terms, abortion is authorized only in certain cases that vary from country to country but that are fundamentally bound to the risk for the life, the physical or psychic health of the mother, the malformation or incurable affection of the fetus, rape or incest, and the cases of very young pregnant women.

The case of Ireland is different, since it prohibits abortion constitutionally. The Irish Constitution was reformed, after the referendum of September 7th, 1983 (art. 403,3), so that it recognized the right to life of *nascirutus*. Later, in 1992, a sentence of the Supreme Court authorized abortion when the life of the mother is in danger, even if that danger consists of the risk that the mother commit suicide if her pregnancy is not interrupted. This decision caused the call of a new referendum, the 25th of November 1992, by means of which the majority of voters rejected a constitutional amendment that declared abortion legal in case it was necessary to save the mother's life. Nevertheless, an amendment was approved so that the Constitution allowed women to go abroad to abort[4] and allowed information on foreign services in the matter of abortion to be freely distributed in Ireland. The 6th of March 2002 a new referendum was summoned to allow the government to eliminate the risk of suicide of the mother as justifying reason for the abortion, but the citizenship –by a short margin (49.6% in favor, as opposed to 50.4%)- voted against it and, consequently, the danger of suicide of the mother continues to be a justifying reason for abortion in Ireland.

In the United States the legalization of abortion did not arrive by legislative but by jurisprudential route. The sentence of the Supreme Court *Roe vs. Wade*, declared inconstitucional, in 1973, by seven votes in favor and two against, any law that with the purpose of protecting the fetus prohibits the abortion during the two first trimesters of the pregnancy. The argument used by the Supreme Court was the general right of women to *privacy*, and has been widely criticized by outstanding North American feminists, like Catharine MacKinnon. The fundamental reasons for these critics are two: a) that the right to privacy of women is a dangerous illusion in contemporary societies, where we find sexual inequality as much in the private sphere as in the public one; and b) that to base the legality of abortion on the right to privacy assimilates pregnancy to other very different situations, darkens the special meaning of pregnancy for women and ignores its peculiar character[5].

In the three last decades of the 20th century most of the Western countries have legalized the abortion during the first weeks of the pregnancy and, in certain suppositions, without establishing a term as, for example, Spanish legislation in the case that a risk for the physical or psychic health of the mother exists. We could wonder which have been the reasons why, within the framework of democratic States, different legislators -or courts- have legalize the abortion caused and allowed by the woman, during the first weeks of pregnancy and/or in some cases. In order to give an answer to this question it is necessary to consider, at least, two factors: on the one hand, the pressure of the feminist movements in those countries, claiming women's right on their own bodies and, consequently, the right to freely decide in every moment if being or not a mother; and, on the other hand, the request of material for the biogenetic investigation by scientists and the pharmaceutical industry. The spatial-temporary coincidence of these two factors threw a new light in the long history of moral, social and legal sentences of abortion caused and allowed by women.

After the legalization of abortion in most of the Eastern countries, debates on the right to

voluntarily interrupt the pregnancy have not stopped. The existing positions on the matter shade off between two ends: the free and gratuitous abortion for women who decide to have it and the absolute prohibition of the abortion, being the voluntary interruption of pregnancy equivalent to homicide. The presence of different opinions about a subject so controverted as the abortion is legitimate in pluralistic societies, since human life conceptions are also different. Nevertheless, more frequently intermediate positions on abortions emerge: they affirm that although to put an end to pregnancy is not a morally indifferent act, since the embryo is human life, however, that intervention can be legitimized in some assumptions, since women are also human beings whose life has, therefore, value, dignity and rights that have to be respected. The problem is placed, then, in the question of which are those assumptions that legitimate the interruption of a pregnancy. The answers vary, as much at the theoretical level as at the practical level, between those who affirm that during the first weeks of gestation woman can freely decide to abort since the embryo still has few possibilities of being viable and those who think that, even in those first weeks, the consent of woman to put an end to a pregnancy is not enough but other causes must exist that justify it. The causes more frequently mentioned are: the risk for the life, the physical or psychic health of the mother, the malformation or incurable affection of the fetus, and the criminal origin of the conception. So, there is a certain consent in not considering legitimized the practice of abortions for frivolous reasons, and this derives from the consideration of the embryo as a life form whose existence is not morally indifferent and for whose artificial interruption, consequently, good reasons must exist. A special case is, for example, adolescents who can see jeopardize their whole life if they are forced to carry out a nonwished pregnancy. In any case, given the present development of the contraceptive methods, abortion does not have to become just another method of birth control; for that reason, it is necessary that this specially vulnerable group of young women has sufficient information and resources to accede easily to contraceptive methods, that will avoid the increase of the number of nonwished pregnancies and, therefore, will reduce the possibilities of having to resort to an abortion.

The case of developing countries is different, since in most of them abortion still constitutes a crime. This is what it happens in most of the countries of Latin America and the Caribbean. Considering, in addition, that penal repression does not avoid the practice of abortions but that it just causes its clandestine accomplishment -in deplorable hygienic and sanitary conditions and made by people without qualification-, it is no wonder that the groups of women of those countries consider health and reproductive rights as one of their high-priority claim. It is not strange that feminist groups pose these demands to the State, since this has among its functions the important responsibility of guarding the life, physical integrity and health of its citizens and, therefore, must also guard the life, physical integrity and health of women, avoiding their massive death because of clandestine abortions[6]. We could wonder, also, why in these countries, with a high index of population growth and poverty, abortion has still not been legalized. To answer this question is necessary to see the combination of several factors like: a smaller economic and scientific-technical development, a heavy influence of the Catholic Church and its doctrine on abortion as an act equivalent to homicide, and the smaller pressure of the feminist groups and their claim on women rights on their own bodies.

At present, although in the Western countries abortion has been legalized, the pressure of the antiabortionist groups continues, as well as the feminist claim for getting a free abortion for women during the first weeks of gestation -normally the first twelve-. But to have a complete view it is also necessary to put it in relation to the new moral, social and legal questions provoked by the new scientific advances in genetics. Nowadays there exist thousands of redundant embryos, resulted by practices of medically assisted procreation, and it has not yet decided what end to give them. One of the possibilities that has been considered is that of using them as material for the scientific research. In these circumstances, it is strange that there still exist opposite positions on the abortion freely decided by women. Taking this in account it seems that the pressures of scientists' lobby and the pharmaceutical industry have a greater weight than the claim of the feminist movements. If in the moral, social and legal consideration of abortions the economic and scientific-technical development, the demographic factor and, to a lesser extent, the demands of women have had a great influence, it is necessary to be conscious that depending on how these elements interact they can give rise to modifications in the moral, social and legal consideration of the abortion in a favorable or unfavorable sense.

Considering the present scientific-technical

development in genetics and reproductive medicine everything seems to indicate that the tendency will be to maintain abortion legal in certain cases or during a period of time. In fact, in the Western countries, the presence in the government of conservative parties has not modified the legal treatment of the abortion, usually established by initiative of more progressive parties. In addition, the number of abortions practiced in these countries increase[7] in spite of having the lower birth rates of the planet. With this situation of low natality in the first world countries, and given the level of scientific-technical development reached in genetics and the pressure of the groups which holds the scientific research, it is highly probable than an expansion of the techniques of medically assisted procreation take place before returning to treat the abortion as a crime in all case. In this way the requests of two important groups of pressure, although of unequal weight, of the 20th century are satisfied: that of the feminist movements, and that of the groups of scientific research and the pharmaceutical industry -more and more interconnected. This will surely contribute to increase genetic material on which investigating in order to improve life and health conditions of people and at the same time to increase the benefits of the companies of this sector.

KEYWORDS Contraception. Legalisation. Reproductive Medicine.

ABSTRACT The aim of this work is to think about the little weight that women (their bodies, their insterests) have had on the long history of abortion and its social, moral and legal consideration.

NOTES

1. Shorter, E., Storia del corpo femminile. Milano, Giangiacomo Feltrinelli Editore (1988).
2. The stoics considered the fetus to be a report of the counterfoil of the woman
3. MONTANOS FERRÍN, E; SÁNCHEZ-ARCILLA, J., Estudios de historia del derecho criminal. Madrid, Dykinson, p. 159 (1990)
4. Every year 6,000 Irish travel to Great Britain to abort. El País, of 6 of March of 2002.
5. Ronald Dworkin gathers the feminists critics to the argument of the right to privacy, invoked by the Supreme Court in the sentence Roe vs. Wade, and he has dialogued with them in Life's dominion [El dominio de la vida. Una discusión acerca del aborto, la eutanasia y la libertad. Barcelona, Ariel, spanish translation of Ricardo Caracciolo and Víctor Ferreres, pp. 71-78] (1994)
6. According to data offered by RIMA (Informative Network of Women of Argentina), in Argentina every day a woman dies because of clandestine abortions. In all Latin America this number reaches the 6,000 women dead per year, as a result of more than 4 million abortions clandestinely made. These data constitute a good sample that the consideration of abortion as a crime does not avoid its practice, but increases the risk for the health, the physical integrity and the life of women. The same happens also when the law establish a heavy penalty or the incapacitation in the profession if the abortion is made by medical professionals (article 86 of the Penal Code of Argentina, for example): it increases the number of clandestine abortions. In Argentina and most of the Latin American countries abortion is considered a crime in almost all the assumptions.
7. According to data offered by the Ministry of Health, in Spain the number of abortions has increased in the last decade of the 20th century: 41,910, in 1991, to 63,756, in 2000. From a rate of 4.79 abortions practiced by each thousand women in ages between the 15 and 44 years, in 1991, to one of 7.14 in the 2000. The immense majority of these abortions is made in private centers authorized (97.63% as opposed to only a 2.37% of abortions practiced in public centers, in the 2000) during the first twelve weeks of gestation -in 2000 a 65.03% of the abortions was practiced during the eight first weeks of gestation, and a 25.68% between the ninth and twelfth-. By age groups, the sector between 20 and 24 years are the one that practices the greater number of abortions (11.88 by thousands), followed by those between 25 to 29 years (8.66 by thousands) and, next, those from 15 to 19 years (7.49 by thousands). MINISTERIO DE SANIDAD Y CONSUMO, Interrupción voluntaria del embarazo. Datos definitivos correspondientes al año 2000. Madrid, Ministerio de Sanidad y Consumo (2001).

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