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ABORTO: INCONCLUSO DESDE EL PUNTO DE  
VISTA ÉTICO, FACTIBLE DESDE EL PUNTO DE  
VISTA LEGAL Y POLÍTICO

ABORTO: NÃO CONCLUÍDO DESDE O PONTO DE  
VISTA ÉTICO, E FACTÍVEL DESDE O PONTO DE  
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# Abortion: ethically inconclusive, Legally and politically feasible

▶ Fecha Recepción: Mayo 2 de 2009 ▶ Concepto Evaluación: Junio 15 de 2009 ▶ Fecha Aceptación: Junio 25 de 2009

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## RESUMEN

Tradicionalmente el aborto en Colombia ha sido un tema sensible y bastante controvertido en el escenario público. Aunque la Corte Constitucional descriminalizó el aborto en 2006 en tres circunstancias específicas, la sociedad colombiana permanece polarizada alrededor de la moralidad del aborto. Sin embargo, esta decisión de la Corte es una oportunidad para ver como ética, política y derecho pueden ser en verdad combinados. De hecho, diferenciar cada campo y reconocer sus posibilidades puede ser la llave para convivir pacíficamente, incluso aunque en últimas los desacuerdos éticos no puedan resolverse completamente.

## Palabras Clave

Palabras Clave: Aborto, descriminalización, ética, política, derecho, Sentencia C-355/06.

## ABSTRACT

Abortion has traditionally been a deeply controversial and sensitive public issue in Colombia. Although the Constitutional Court decriminalised abortion in 2006 in three specific circumstances, Colombian society is still polarized around the morality of abortion. However, the Court's decision is an opportunity to see how ethics, politics, and law can be rightly combined. Indeed, to differentiate each field and to recognize their possibilities may be the key to coexisting peacefully even if ethical disagreements cannot be completely solved.

## Key Words

Abortion, decriminalisation, ethics, politics, law, Case C-355/06.

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## RESUMO

Tradicionalmente o aborto na Colômbia tem sido um tema sensível e bastante controvertido no cenário público. Ainda que a Corte Constitucional descriminalizou o aborto em 2006 em três circunstâncias específicas, a sociedade colombiana permanece polarizada ao redor da moralidade do aborto. Entretanto, esta decisão da Corte é uma oportunidade para ver como ética, política e direito podem ser em verdade combinados. De fato, diferencia cada campo e reconhece suas possibilidades pode ser a chave para conviver pacificamente, inclusive ainda que nas últimas os desacordos éticos não podem resolver-se completamente.

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## INTRODUCTION

The second half of the 20<sup>th</sup> century was characterized by “the ethics of biotechnology”. In fact, the emergence of biomedicine seems to have given a new life to ethics (Toulmin, 1982). As soon as biomedicine started to intervene in life and the human body by modifying, manipulating, and controlling it, new ethical questions arose. At present, embryonic stem cells, human-animal hybrids, human cloning, and so on are some of the topics that are regarded in both academic and media circles as “ethically debatable”.<sup>1</sup>

However, not only are new technologies challenging to ethics, but old issues continue to be a social concern. Abortion, for example, remains an ethically unsolvable dilemma and it is a “classical” topic of any text of bioethics<sup>2</sup> (Oderberg, 2000). The ethical debate around abortion is important and interesting because it can be taken as a case-model to bring to light the dimensions of current bioethical debates as a whole. It effectively mirrors the extent to which living in a pluralistic and multicultural society has become a central challenge to ethics.

In this paper I shall argue that abortion is fundamentally a “practical” problem, that is, a situation where the question “*what should I do?*” requires a concrete answer. This question emphasises the practical nature of abortion and is intended as a counter balance to the trend that has emerged for papers to discuss the issue in too abstract way and without reference to a particular reality. The rhetoric of the ethical discussion usually lies in the intrinsic logic of the contended arguments. However, abortion is about the making of practical decisions which therefore necessitates more than just building abstract of arguments. While many people spend their time and energies trying to convince others that their arguments are “true,” everyday doctors and women have to make practical decisions regarding abortion that involve not only socio-political institutions but also and legal rules.

In the first part, I will show that abortion has been a *fact* in history and the current ethical discussion is completely polarized. Then, following an Aristotelian/Kantian approach, I suggest that we need to “remember” that practical problems have to be solved not only by appealing to ethical arguments, but also by implementing political actions and stating legal boundaries. All of this is according to the requirements and nature of a pluralistic society. Ethics, Politics and Law constitute one field, a *continuum*, the *practical philosophy* (Kant, 1996). Ethics is not the only criterion to orientate human action in a society, it is also necessary to include

politics and law. By using ethical, political and legal criteria we might be in a better position to manage those inexorable situations in human life when decisions about what should be done are unavoidable. However, admitting the useful role that politics and law can play in dealing with ethical disagreements requires prior understanding of the *aporia*<sup>3</sup> that contemporary ethical discussion represents. In the last part, I shall comment that the recent process of decriminalisation of abortion in Colombia illustrates how politics and law effectively mediate between endless ethical “arguments” about abortion and the practical solution that it requires.

## BRIEF HISTORY OF ABORTION

There is no space here to give a complete history of abortion, but it is worth outlining the key developments in order to give background to the current ethical debates. Abortion is as old as the history of humankind. There are reports of induced abortions in China dating back -5000 years. In the Hippocratic Oath, 4<sup>th</sup> century BC, there is a clause prohibiting physicians from giving pessaries to women who wanted to abort (Hippocrates, 1995). Some have interpreted this passage as a ban on abortion, while others underline that what was really forbidden were pessaries themselves as they could produce vaginal ulcers (Riddle, 1991). In fact, physicians were “free to employ contraceptives, oral abortifacients, and the various surgical and manipulative procedures available” (Riddle, 1997: 9).

For centuries –in particular, before the 17<sup>th</sup> century- abortion was mainly a “woman’s issue” rather than a medical or a political one. Because of the limited development of medical knowledge and techniques, it is possible that finding an effective method was a greater concern to women than the ethical implications of ending pregnancy. However, in the public arena ethics has occupied a prominent place and it is here where hostile positions to abortion usually collide with the sympathetic ones. Nonetheless, there has always been room for some degree of ethical debate about its acceptability. The Augustinian doctrine, for example, was for long time a criterion to decide when an abortion could be allowed. According to this doctrine, abortion practised before the “quickening” time<sup>4</sup>, which was identified as the moment of *ensoulment*, was not forbidden. The strong opposition to abortion started when the Catholic Church declared in the sixteenth century that abortion was a crime (Rothman, 1997: 104f).

During the nineteenth century abortion began to be criminalized in several European countries and in the United States. In 1869 Pope Pius IX declared that under any circumstances



abortion was a *mortal sin*. As it was considered that there were no dramatic qualitative changes throughout foetal development, “the focus of discussion became the gravity of the offense of killing a [foetus], whatever its developmental period” (Riddle, 1997: 213). Also in this century, the meaning of pregnancy shifted; having been traditionally a “woman’s issue,” it became a matter of medical intervention.

By 1818 the French physician Théophile-René-Hyacinthe Laennec introduced the *stethoscope*, a medical device that eventually gave doctors the possibility of hearing the foetal cardiac beats. Today, doctors have come to be seen as the “natural and indisputable” advocates of pregnancy. No sooner was pregnancy medicalised than abortion also became medicalised. This has been an important circumstance since the concept of *medically indicated procedure* works as a widely accepted *ethical* argument to justify abortion (Hull, & Hoffer, 2001: 57)

By contrast, during the second half of the 20<sup>th</sup> century there was a wave of legalisation in several countries. It was not until the 1960’s that legal rights to access safe and qualified medical services for abortion were truly real in Britain and the United States. In the former it was in 1967, through the Abortion Act, and in the latter in 1973, as a result of *Roe v. Wade*. Nowadays, abortion is legal in many countries, although the degree to which a country permits it can widely vary<sup>5</sup>. In Latin America one of the most recent cases of legalization of abortion is Colombia in 2006, which epitomizes an interesting case where ethics, law and politics overlapped.

### THE CURRENT ETHICAL DEBATE ABOUT ABORTION

The moral concern about abortion has been so huge in the United States, that some have argued it is “the prime contemporary problem of public morals” (Reagan, 1986: 100). R. Dworkin has said that the abortion debate is “America’s new version of the terrible seventeenth-century European civil wars of religion” (quoted in Boyle, 1997: 1). Despite its legalization in the 1970s, the ethical debate shows no signs of abating. In the United Kingdom, where abortion was legalized in 1967, a parliamentary project to reform the Abortion Act recently failed.<sup>6</sup> In the official doctrine of major religions, for example, the Catholic Church and Islam, abortion is still condemned as a form of crime against human life and, frequently, against a human person (Pope John Paul II, 1995; Hedayat, 2006)<sup>7</sup>.

The main strands of this moral debate consist of two incompatible and completely opposed positions. On the one hand, there is the *Pro-life* position which underlines

that abortion is morally wrong because it is simply murder. On the other hand, the *Pro-choice* position emphasises that abortion is “optional” for women. Between these two extreme positions there is middle ground which advocates that abortion can be morally justified in some cases. In fact, for some, the very problem of this moral debate about abortion is that it is necessary to be aligned with one extreme or the other. The major problem of extreme positions is that their activism has contributed to a state of “warfare” in the debate over abortion (Solinger, 1998). On the whole, while the pro-life position appeals to the *moral status* of the foetus to account for why abortion is murder, the pro-choice position stresses women’s rights and the freedom to justify terminating the pregnancy.<sup>8</sup>

If an entity has a moral status, it means that it is morally considerable or it has moral standing. Once this is established, moral agents have moral obligations to such an entity (Warren, M. A., 1997: 3). Thus, the pro-life position puts emphasis on the *humanity* of the embryo/foetus to derive from it an obligation to respect its life in the same way that we would do with any adult human being. The anti-abortion argument has shifted its focus, from the woman to the product of conception. Our society seems to have a *cultural fascination* with the foetus (Rothman, 1997: 106f). In contrast, the pro-choice position shortens the scope of moral status to include morally considerable entities. Thus, for the pro-choice view, the moral status of the embryo/foetus should be derived from *personhood* which implies the presence of mental features such as self-consciousness or a minimum level of ability to have human feelings (Engelhardt, 1995: 170). In this way, even during the first months of extra-uterine life, human beings might not be considered fully *persons*. The lack of personhood would make abortion permissible in the pro-choicers’ view.

Moreover, the moral debate about abortion can also be understood in terms of the ethical theories which are used to support or condemn it. In this debate, there are four kinds of ethical approaches: consequentialism, deontology, virtue ethics and the American bioethics with its four principles<sup>9</sup>. While consequentialist –or utilitarian– theories require that our actions promote the best consequences (Baron, 2006: 213), deontological theories would consider an action as right if it is in accordance with a moral rule or principle, for example, by treating every human being “always as an end and never as a means only to an end” (Kant, 2005). In the virtue ethics the question is to behave virtuously, defining virtue as “a character trait a human being needs to flourish

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or live well" (Hursthouse, 1991: 224). In the case of the American bioethics the ethically right action is the result of both *specifying* and *balancing* the four *prima facie* principles (Beauchamp & Childress, 2001: 15).

Giving arguments either for or against abortion seems to be something that depends less on the rightness or wrongness of a theory than on the purposes, intentions or beliefs of the people involved in the discussion. Interestingly, arguments for or against abortion might be suitably derived from a single theory. The only difference would be the ideological commitments of those who provide either one argument or another. For example, we might imagine a consequentialist pro-life argument as well as a pro-choice one. In the first case, one may argue that if to live is a positive value and to die is a negative one, therefore the best consequence is to promote the birth of human beings and to avoid their death. In the second case, the pro-choice position, it can be argued that the fundamental value of human life is freedom. Therefore, promoting life at the expense of the woman's freedom could be seen as a worse consequence than losing an "incipient" life which we do not recognize as having such a property.

Notice that in both cases there are pre-assumptions: in the first position, the premise is that life is the most important value while in the second it is freedom. Participants in an ethical discussion might at the same time be members of particular moral communities that express different world-views. Then, if participants belong to different moral worlds, to achieve an agreement on fundamental rules, principles, consequences or virtues would be almost impossible. Unless people take into account the opportunities offered by politics and law to regulate social life, ethical disagreements will remain as an *aporia*. There is a contention between the alleged universalism of many ethical arguments and the inescapable contextual situation where decisions about abortion take place. This situation leads us to examine more carefully the nature of contemporary ethics arena.

#### **THE CONTEMPORARY ETHICS SCENARIO: AN APORIA?**

Since Aristotle we have noticed that ethics is neither the only source of knowledge nor the only tool to lead our lives. In his *Nichomachean Ethics*, Aristotle claimed that achieving a good life went hand in hand with the correct administration of the *polis'* life (Reeve, 1992). Exercising virtues is something that depends on the existence of a just society. Indeed, he bridges the gap between Ethics and Politics since it might be said that politics works as the

“ethics of the collective” (Fernandez, 2002). Additionally, the concept of *practical philosophy* was coined after Kant to name a field which embraces ethics, politics, and law (Kant, 1996). By appealing to practical philosophy one can argue that any solution to a normative question requires not only ethics but also politics and law. This claim is not merely rhetoric. It is, hopefully, the turning point that will let us find a *practical* solution to the theoretically endless moral debate about abortion. As soon as we deal with human problems related to the question *what should I do?*, this question is, in principle, a practical one and has to be solved by working on ethics, politics, and law. Pure ethical dilemmas exist only as abstractions.

When substantial matters of ethics are debated, people usually listen to God or argue in different ways (Engelhardt, 1995: 21). For every argument supporting one ethical position there is another to attack it; for every “true” god there is another one. Thus, ethical positions are usually incompatible and incommensurable (MacIntyre, 1990). Abortion is an excellent example of this situation, “the stridency of the abortion debate marks the strength of such disagreements. Some regard abortion as profoundly morally evil [...], while others see it as at most a physical evil. The abortion debate is only one of a number of issues where the controversies are both impassioned and reflect well-entrenched and conflicting moral visions” (Engelhardt, 1996: 8). As already mentioned, particular kinds of ethics work well in particular communities. Those who share a similar ethical perspective –similar ideas about what rightness/wrongness and worthwhile/worthless mean– can be seen as *moral friends*. Moral controversies are easier to solve among moral friends than among *moral strangers*, those who belong to different moral worlds<sup>10</sup>. Our societies in the Western world are made up of diverse moral communities, that is, they are *plural and multicultural* societies where moral strangeness is sometimes more common than moral familiarity.

As it is easy to see, the main challenge is to resolve ethical conflicts among moral strangers rather than among moral friends. For this, contemporary ethics has stressed two aspects: firstly, the consent of the individual<sup>11</sup> as the source of moral authority and, secondly, the emphasis on a *just procedure* rather than on *true content*. In other words, contemporary society is more concerned about how individuals make agreements rather than what kinds of truths they believe in. The challenge in a pluralistic society is to find a common source of moral authority but, as it has been shown, this is difficult in the context of diverse rational arguments and different faiths. Thus, the possibility of solving

ethical differences between moral strangers seems to rest on making basic rules which assure nonviolent coexistence despite those substantive ethical differences.

These basic rules are expressed in terms of political solutions and legal commitments. Here, the central issue will not be the content of any of those particular ethical perspectives in dispute, but the procedure used by the participants (moral strangers) to agree the rules of living. This procedure has to be just, that is, each ethical position will be expressed and as respected as any other. After this act of “listening,” ethical disagreements will be manageable through a political and legal *consensus*, which implies that individuals have agreed some rules of living while ethical differences are respected (Habermas, 1990). At the macrolevel, a fundamental agreement about those rules of living is usually expressed in terms of *political constitutions* enacted by each country. At the microlevel, we find the example of ethical committees, which are political bodies created in health care institutions and whose aim is to achieve a consensus around an ethical dilemma. In these committees ethical disagreements are solved through two strategies: first, by implementing a dialogue based on the moral use of the practical reason<sup>12</sup> and, second, by seeking to make agreements on what should be done. The striving ethical perspectives are discussed in terms of having an agreement, not exclusively in terms of examining the internal consistency of the arguments.

If ethics is a polysemantic world that leads to disagreements, then politics and law would represent the common language which can be spoken among moral strangers to solve their differences. Some might argue that the moral permissibility of abortion is not a synonym with its legal permissibility, but there are legal tools that can be helpful when the discussion is bogged down in ethical issues. This paper is not concerned with finding the best ethical argument or theory to resolve the abortion debate. It is not about a meta-ethical perspective. Instead, it is about a normative question, *what should I do?* This fundamental question requires a practical answer. It means that we are not only moral members of society but also political ones. Although people might belong to different moral communities, they share common politico-legal ties because of citizenship<sup>13</sup>. The recent case of decriminalisation of abortion in Colombia can be understood as an attempt to appeal to this politico-legal shared condition so that citizens with different ethical perspectives can peacefully live together in the same society.

## THE CASE OF COLOMBIA

In April 2006 the Colombian Constitutional Court decriminalised abortion in three specific cases: 1) the pregnancy constitutes a serious threat to the pregnant woman's life or health; 2) the foetus has severe malformations; and 3) the pregnancy is the result of rape or incest (Corte Constitucional, 2006). It was an historical decision since at least five bills for enacting a law that guarantees legal and safe abortion services had been presented but rejected in the Parliament since the 1970s (Romero, 2006). This permanent debate about lifting the ban on abortion mirrors a complex, multi-faceted, and sensitive issue for Colombian society.

Abortion statistics in Colombia have always been seen as inaccurate and debatable. The system of information is not reliable. Yet, there are estimations of around 450,000 abortions performed per year in Colombia despite its legal ban (Human Rights Watch, 2006). Some consider this number as an exaggeration promoted by abortion supporters to get the practice legalised in Colombia (Catholics News Agency, 2005). Nevertheless, illegal and unsafe abortions bring about a high rate of complications and deaths every year (Zamudio, 1999). From the perspective of member of the Ministry of Health member, "the absolute [criminalisation] of abortion turns it into a public health matter and produces social inequality" and it is a serious threat to women's health (González, 2005). Thus, a strong argument for legalisation is to protect women's health and to avoid their exploitation in the practice of illegal abortions.

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The shift in the legal status of abortion in Colombia occurred as a new constitutional spirit came to the country after 1991. While the Constitution of 1886 was more *paternalistic*, for example, by giving to the Colombians the idea of good that one religion held, in the Constitution of 1991 Colombia was defined as a "social state of rights [...] democratic, participatory and pluralistic, founded on the respect for human dignity [...]"<sup>14</sup> (Constitución Política, 1991). The Constitution's Title II, which includes five chapters, is devoted to the topic of rights. In fact, this has been called *the constitution of the rights*. Particularly important are the *fundamental rights* (Title II, Chapter 1), which were defined following the Universal Declaration of Human Rights. Two creations of the Constitution of 1991 are worth mentioning. First the *tutelage action*, an innovative legal tool through which any citizen can demand from the state that his/her fundamental rights are guaranteed and respected. Second, the *Constitutional Court* which has played an important role in assuring those fundamental rights to all the citizens. This Court decriminalised abortion in the cases aforementioned after considering the arguments of a Colombian female lawyer in 2005 (Romero, 2006).

The claimant's allegation was that a total ban on abortion was unconstitutional since it violated constitutional fundamental rights. Her main arguments were as follows: 1) women have the right to decide what can be done with/in their bodies, and this includes pregnancy; 2) if abortion is a medical procedure only practicable in women, its prohibition violates the right to equality; 3) human dignity is violated when the legislator imposes the pregnancy and it becomes a duty (e.g. cases of rape), constituting an

unconstitutional, cruel and degrading treatment for women; and 4) the right to life and health was also invoked for cases in which woman's life is in danger because of pregnancy (Universidad Nacional, 2007: 47).

In its decision, the Constitutional Court declared "the country's blanket criminalization of abortion in violation of women's constitutional rights" (Human Rights Watch, 2006). Apart from considering the claimant's arguments, the Court balanced constitutional rights against social goods in its *ratio decidendi*<sup>15</sup>. Although the foetus has the status of being a "human life" to be constitutionally protected, this right to protection is not absolute. The total ban of abortion, argued the Court, imposed a *disproportionate burden* on women since they were obliged to complete the process of pregnancy. Furthermore, the Court took into account what was expressed in international treaties signed by Colombia. For example, CEDAW<sup>16</sup>, 1979 (no discrimination against women); the World Conference on Women, Cairo, 1995 (sexual and reproductive rights as human rights); and the Inter-American Convention of Human Rights, 1969. All of these treaties advocate safe abortion services as part of the sexual and reproductive rights of women. Finally, the Constitutional Court also admitted the limits of the jurisprudence to decide on moral matters. Individuals can have different ethical viewpoints and it would be inadmissible that a particular ethical vision was imposed by the state.

Four final things deserve to be mentioned about this legal decision. Firstly, the Court did not state "abortion-on-demand" as the Colombian constitutional doctrine does not consider pregnancy a private issue. Indeed, all the decisions that a woman takes regarding her pregnancy have a social importance and, because of it, those decisions are of interest to the state (Corte Constitucional, 2006). Secondly, the plurality of ethical visions coexisting in Colombian society

was recognized and protected. In this way, doctors have the right to conscientious objection. Thirdly, the Court made clear that although abortion was a right and nobody could be obliged to perform it. And, fourthly, health care providers have the legal obligation to give their members, if requested, safe, efficient and easily accessible abortion services.

In this process, ethical arguments about abortion were taken into account by the Court not only by assessing their internal consistency, but also by their relationship with the golden rule, in this case, the Constitution. In the contemporary world, human rights and constitutions have come to work as a *moral pattern*. Whether this reality is acceptable or not is another debate. Meanwhile, in the pluralistic society, politics and law solve those disagreements which were unsolvable in the moral field. If the target is that everyone is able to live his/her life in accordance with his/her particular ethical values, then politics and law are fulfilling that target. In the case of Colombia, in the same way that it has happened in other countries, what was guaranteed is a *right* to safe abortion. However, although this compromise exists it is necessary to ask, why some groups insist on making their particular ethical commitments a moral rule for everyone. It seems clear that this is because they do not understand the differences and possibilities of the distinction between ethics, politics and law.

Three years have passed since the historical decision to legalise abortion by the Colombian Court but abortion is still an endlessly debated moral issue. While some continue insisting on the humanity of the foetus, others persist in advocating for women's rights. Meanwhile, new challenges have arisen due to difficulties implementing the new law. The Ministry of Social Protection have provided clear norms for implementing abortion services (Universidad Nacional, 2007). Yet, there are growing criticisms because

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of non-compliance with the law. Non-governmental organizations and the editorials of the main newspapers have expressed concerns about the persistence of illegal abortions in Colombia since there are still several obstacles to access the service which women have to surmount<sup>17</sup>.

## CONCLUSIONS

The practice of abortion and the moral debates that surround it has existed for thousands of years. The development of biomedicine during the second half of the twentieth century and the new ethical dilemmas it created meant that ethics has experienced a "re-flourishing." Although abortion was an old topic, it began to be discussed widely as an important part of the new discipline of bioethics. New reflections on the power of biotechnology to intervene in life and new socio-political and cultural movements have contributed to increase the debate about abortion. In the battle for its decriminalisation the differences between various ethical conceptions around abortion revealed radical and irreconcilable opinions: the pro-life position and the pro-choice position.

This situation is expressed in academia as a continuous and endless production of ethical arguments, either for or against abortion. However, no one has demonstrated an argument that is purely conclusive.

Nevertheless, to live in pluralistic and multicultural societies requires a suitable solution to ethical disagreements. This solution sometimes should be sought beyond those ethical theories in contest. Thus, I have argued for situating ethics as a part of the wider field of practical philosophy. In this way we can count on politics and law to manage ethical disagreements. As soon as we understand abortion as an ethical-political-legal problem, solutions coming from any part of this "symbiosis" can be conceived. The narrower idea which stipulates that ethical problems can only be solved by appealing to ethical theories is replaced by a broader conception in which ethical dilemmas admit political and legal solutions. As the main source of moral authority in the contemporary world seems to be the individual, this means that beyond good arguments or appeals to a particular idea of God we have to look for the *consent* of individuals. Therefore, the ethical rightness/wrongness of abortion has to be stated by the individuals in accordance to their particular values while politics and law specify limits to individual actions. The process of decriminalisation carried out in several countries in the last 40 years shows that the decision of abortion has been left in the individual's hands.

Even countries with a traditional opposition to abortion have adopted a pluralistic point of view via constitutional rights. This is the case of Colombia where a law that decriminalised abortion in three cases was stated after several parliamentary attempts in the last few decades. This shift can be seen as a result of both the new political constitution of 1991 and international pressures. Unlike the former constitution of 1886, the new Constitution sees Colombian society as multicultural, emphasising individuals' rights, for example, about sexuality, conception and uses of the body. However, the Colombian constitutional court did not state abortion-on-demand since such an individual decision regarding abortion should be balanced against a defence of certain social goods. Thus, while the foetus is recognised as a "human life," its rights cannot outweigh those of the woman, especially when her life is in danger, she did not consent the pregnancy (e.g. rape) or the pregnancy implies an "excessive" burden for her (e.g. the foetus is severely malformed). By and large, the position of the Colombian constitutional court can be seen as a middle position.

In this context, bioethics can be a place to facilitate the dialogue that allows a wide social agreement to be reached. This position entails the distinction between ethics, politics and law. Moreover, it fundamentally requires that all the participants in the debate are able to understand and accept that it is possible to live peacefully despite their ethical divergences.

## NOTES

- 1 See, for example, the special edition of *The Times* on stem cell research. It includes: Wright, J. "Rift grows as embryo laws nudge ethical boundaries" and Murcott, T. "Status afforded to embryos is misplaced, says professor." *The Times. Focus Report* (10 May 2008).
- 2 I shall use the term *bioethics* in the sense of the contemporary field where normative dimensions of biomedicine are discussed.
- 3 A simple definition of *aporia* is: "a difficulty, as in a philosophical or literary text, caused by an indeterminacy of meaning for which no resolution seems possible." In: *YourDictionary.com*. (<http://www.yourdictionary.com/aporia>) Accessed 22 May 2008.
- 4 It means the moment when foetal movements are felt by a woman, usually between 20 and 22 weeks in a primipara and around 16 weeks in a multipara.
- 5 See: Center for Reproductive Rights (2007) *The World's Abortions Laws*. ([http://www.reproductiverights.org/pub\\_fac\\_abortion\\_laws.html](http://www.reproductiverights.org/pub_fac_abortion_laws.html)) Accessed 4 May 2008.
- 6 See: Coates, S. & Bennett, R. (2008) "Tories signal new battleground as 24-week abortion limit survives." *The Times On Line*, May 21 (<http://www.timesonline.co.uk/tol/news/politics/article3971930.ece>). Accessed 25 May 2008.
- 7 In general, religions tend to disapprove of abortion. For a brief summary of the attitudes and beliefs of the leading religious groups in the United Kingdom to contraception see "Religion, contraception and abortion." Pp. 1 – 3 in *The abortion debate*, vol. 126, edited by Craig Donellan. Cambridge: Independence, 2006.

8 For a good overview of the different positions in the debate  
 9 about abortion see: Sommerville, A. (1993) *Medical Ethics*  
 10 *Today: its practice and philosophy*. Plymouth: British Medical  
 11 Association, p. 103 – 109.  
 12 Respect for autonomy, beneficence, non-maleficence and justice.  
 13 “Moral friends are those who share enough of a content-full  
 14 morality so that they can resolve moral controversies by sound  
 15 moral argument or by an appeal to a jointly recognized moral au-  
 16 thority whose jurisdiction they acknowledge as derived from a  
 17 source other than common agreement. Moral strangers must re-  
 solve moral disagreements by common agreement, for they do  
 not share enough of a moral vision so as to be able to discover  
 content-full resolutions to their moral controversies, either by an  
 appeal to commonly held moral premises (along with rules of evi-  
 dence and inference) and/or to individuals or institutions common-  
 ly recognize to be in authority to resolve moral controversies and  
 to give content-full moral guidance” (Engelhardt, 1996, p. 7).  
 “If in secular circumstances one cannot derive moral authority  
 from God or reason, authority can only be derived from the con-  
 currence of individuals” (Engelhardt, 1996, p. x)  
 The moral use of practical reason implies at least four character-  
 istics: moral disagreements are to be solved rationally, equal par-  
 ticipation of all who are affected, impartiality, and universality. See:  
 Díaz, E. (2002) “Morality and Ethics. Two Dimensions for Bioethics.” Pp. 9-19, in *Acta Bioethica*, vol. VIII, No. 1.  
 The citizenship is the basis for the minimalist/maximalist ethics,  
 which has also been proposed as a model for bioethics in Colombia.  
 My translation  
 “[Latin, The ground or reason of decision.] *The legal principle upon*  
*which the decision in a specific case is founded. The ratio decidendi*  
 is also known as the rationale for a decision’. See (<http://legal-dictionary.thefreedictionary.com/Ratio+decidendi>) Accessed 15 May 2008.  
 Convention on the Elimination of All Forms of Discrimination.  
 This is a human rights treaty for women.  
 See: ElTiempo (2008) “Abortion, two years after” —my translation—  
 (10 de mayo); El Espectador (2009) “Tales and accounts of abortion”  
 —my translation— (12 de marzo); Moloney, A. (2009) “Unsafe abor-  
 tions common in Colombia despite law change” Pp. 534, in *The*  
*Lancet*, vol. 373, February 14.

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