

**ABORTION IN CASES OF INTRA UTERINE MALFORMATION INCOMPATIBLE WITH LIFE: ETHICAL DEBATE IN THE LIGHT OF LAIC COMPASSION AND THE BIOETHICS OF PROTECTION**

**Ana Paula Vieira dos Santos Esteves<sup>\*</sup>, Andréia Patrícia Gomes<sup>\*\*</sup>, Fermin Roland Schramm<sup>\*\*\*</sup>, Rodrigo Siqueira-Batista<sup>\*\*\*\*</sup>**

**ABSTRACT:** The Brazilian Supremo Tribunal Federal recent approval of “childbirth anticipation” in cases of anencephalic fetus pregnancy brings important elements to the current debate on morality and legality of abortion, especially in the cases of intra uterine malformation incompatible with life (IMIL). Such is the subject of this article, which proposes to present the main lines of the ethical discussion on abortion in cases of IMIL, emphasizing the sacredness of life, respect for the ( reproductive) autonomy of women, the concept of laic compassion and the assumptions of bioethics of protection.

**KEY WORDS:** abortion; bioethics; protection; compassion.

---

\* Vinculada à maternidade Escola, Universidade Federal do Rio de Janeiro (UFRJ). Programa de Pós-graduação em Bioética, Ética Aplicada e Saúde Coletiva, Universidade Federal do Rio de Janeiro (UFRJ). [serraenf@uol.com.br](mailto:serraenf@uol.com.br) .

\*\* Vinculada ao departamento de Medicina e Enfermagem, Universidade Federal de Viçosa (UFV). [andreiapgomes@gmail.com](mailto:andreiapgomes@gmail.com).

\*\*\* vinculado ao departamento de Ciências Sociais, Escola Nacional de Saúde Pública, Fundação Oswaldo Cruz (DCS-ENSP-FIOCRUZ); Instituto Nacional do Câncer (INCA), Ministério da Saúde – Brasil. [rolandschram@yahoo.com.br](mailto:rolandschram@yahoo.com.br).

\*\*\*\* Departamento de Medicina e Enfermagem, Universidade Federal de Viçosa (UFV); Programa de Pós-graduação em Bioética, Ética Aplicada e Saúde Coletiva, Universidade Federal do Rio de Janeiro (UFRJ). [rsiqueirabatista@yahoo.com.br](mailto:rsiqueirabatista@yahoo.com.br).

## INTRODUCTION

Abortion is considered a crime in Brazil, except in the occurrence of rape or danger to the woman's life (Brasil 1940, articles artigos 124, 125, 126 e 127) — imminent risk of death — in which cases punishment is not provided for. More recently, the Supremo Tribunal Federal (STF) — Brazilian Supreme Federal Court — approved the “anticipation of childbirth” in cases of anencephalic fetus pregnancy, so that in such cases there would be no crime of abortion as typified in the Criminal Code. The feminist movement and other social forces demand decriminalization in a greater number of contexts — in the name of women's reproductive autonomy — but we are still far from minimum consensus. Domains of society related to diverse religions are opposed to the idea and further beyond, they advocate the strengthening of punishments and prohibition of the practice — even in cases of rape — as proposed in the Estatuto do Nascituro (PL 478/07) — a bill that provides for total protection of the unborn since fertilization. Therefore, pursuant to article 13 of the Bill, the victim of sexual violence that becomes pregnant can not get the abortion; furthermore, the Bill 1763/2007 proposes the payment by the Government of a minimum wage for eighteen (18) years to the pregnant woman victim of rape that opts for not having the abortion.

As a result of the Supreme Court (STF) recent decision, the issue of abortion in case of severe malformations — incompatible with life — returns now to the agenda, oscillating between positions related to the fetus right to life and those pertaining to the woman's right to sexual and reproductive autonomy. Multiple are the considerations, encompassing moral and religious values, legal aspects, the operation of the national health system (SUS) and the development of public policies. Actually, abortion — in cases of malformation incompatible with life (IMIL) — has sparked theoretical debate among differing social segments, often however with no room for consistent ethic argument, presenting instead mere rethorical entanglements.

Therefore, structuring an ethical debate about abortion — in IMIL cases — is of the utmost importance for a clearer understanding of what is at stake, especially at the core of laic, pluralist democratic societies — as it is (hopefully) the case of the Brazilian society — besides allowing the inclusion of new “ingredients” in the debate,

## ABORTION IN CASES OF INTRA UTERINE MALFORMATION INCOMPATIBLE WITH LIFE: ETHICAL DEBATE IN THE LIGHT OF LAIC COMPASSION AND THE BIOETHICS OF PROTECTION

such as the concept of compassion, according to the foundation of moral as proposed by Arthur Schopenhauer and currently discussed by authors in terms of *laic compassion* (Siqueira-Batista 2004,334-340); (Siqueira-Batista e Schramm 2009,14-4); (Schopenhauer 2001,143). Such is the objective of the present article.

### **THE MORALITY OF ABORTION**

The bioethic argument on abortion can be clarified in terms of two basic moral principles: the Principle of the sacredness of life (PSL) and the Principle of respect for autonomy (PRA) — sexual and reproductive — of women, each configuring distinct and, under various aspects, untithetical bioethics.

### **THE SACREDNESS OF LIFE**

According to this principle — of religious, Christian and also philosophical texture, especially in the context of Kant's thought, to whom human beings are ends, not mere means (Kant 1960, 38) — human life has value per se. For that reason *Homo Sapiens Sapiens* life must always be respected and protected against undeserved offensives, because it is unavailable and because it is “safe” from possible calculations of consequences.

It should be emphasized, however, that the SLP can become — from an ideological perspective — the recognition of the biological dimension of the existence alone, in a clearly fragmented and reductionist vision, generating a number of prejudiced attitudes concerning the extremes — beginning and end — of life (Junges 1993, 339-345). Such an interpretation of the sacredness of — human — life lies at the core of a contradiction insofar as social arrangements are recognized where human life is clearly devalued and taken as mere object — motto for instance of the film *Não Me Abandone Jamais* — being successively threatened by death in its various contexts. The ideological inscription of the Principle of Sacredness of Life may frequently lead to contempt concerning people's quality of life, ie, no consideration given for the genuine meaning of a dignified life. One must surely fight for life, but mainly for the right to live with dignity, having the minimal conditions for existence, since defending the perpetuation of intrauterine life in any situation — even those incompatible with life — without interest for the conditions this human being will find after birth is part of a construct at least incoherent.

## **RESPECT FOR SEXUAL AND REPRODUCTIVE AUTONOMY**

Autonomy (αυτονομία) comes from the Greek, referring, ultimately, to the idea of self-government, having been initially used within the scope of the Hellenic póleis (State-cities) to indicate autarchic forms of government. Since Modern Thought, such concept is applied, definitely, to the individual, who acquires a prominence nonexistent in the previous philosophy. In fact, the individual — undivided, autonomous — becomes the setting of ethical and political reflection (Siqueira-Batista 2010, 341-362). Meanwhile, it is with Immanuel Kant — particularly in the *Foundations of the Metaphysics of Morals* — that autonomy acquires a systematic moral formulation (Kant 1960, 75). Therefore, in the core of this tradition one can define as autonomous the individual that “acts freely, in accordance with a plan chosen by himself, the same way an independent government administers its territory and defines its politics” (Beauchamp & Childress 2002, 94).

In order to respect a person’s autonomy, Beauchamp & Childress recognize the need for awareness of the individual’s prerogative to own a personified life project, ponder his/her value judgement, make free choices and act according to his/her values and convictions. To respect autonomy is to preserve the fundamental rights of the human being, accepting the current ethic-cultural pluralism.

Based on this assumption, the authors that defend the woman’s right to the abortion point to the necessity of respecting the woman’s autonomy of choice, ie, her competence in deciding freely what she deems important to live her life, there including the process of exercising her reproductive self determination in accordance with her values and legitimate interests (Diniz e Ribeiro 2004, 42). It may also be argued, that women’s sexual and reproductive autonomy is clearly violated in forbidding social contexts — as can be seen in the film *Porto* by Ingmar Bergman — violating human rights — in cases of abortion — by reinforcing discrimination against more vulnerable groups of women in society and contributing to the perpetuation of social stigma, prejudices and gender stereotypes. Thus, denial of the exercise of sexuality and reproductive autonomy socially legitimates the laws that criminalise both women and health professionals for the practice of abortion.

Despite its place of prominence in ethics argumentation, respect for autonomy presents a series of problems — and eventual paradoxes — which may constitute obstacles to its implementation. One must stress both the tension between the individual and the collective, made explicit in the need to legislate on behalf of self interests — always in the midst of socioculturally established coordinates — and the existence of an asymmetry in the relationship between professionals and users of SUS — due to undeniable differences in competencies between the one who is asking for help and those able to answer such request, what in countless opportunities can make the application of the PRA impossible (Siqueira-Batista 2009, 148-163).

Such difficulties considered, the great question is *how to provide a context that enables the woman's freedom — the couple's — in the sense of their effective empowerment?* In fact, such questioning presents itself as a major challenge to be faced in the present debate about abortion in cases of intra uterine malformation.

#### **THE WOMAN'S DECISION TO ABORT**

The feminine decision to abort is of significant existential and social impact, being subject to important considerations, mainly by the woman, protagonist of the decision-making process. This observation is even more consistent if we recognise that abortion in the Brazilian society is still seen as a selfish action, when the woman defies a society whose legal and moral codes impose the continuation of the pregnancy in almost any circumstances ( except those already mentioned, established by Law). Thus, the woman appears as a criminal who, alone, decided to commit a criminal offense (Zugaib 1990, 123-127).

We must recognize, however, that the woman who aborts is inserted in a context — in fact the abortion is not an isolated episode — where social inequalities interfere in the whole process of pregnancy, from the access to contraception to the decision of interrupting the undesired pregnancy and the consummation of the fact. While increased access to information plays a role in pregnancy prevention, it does not seem to interfere in the occurrence of abortion. Therefore, it is essential to propose and implement public policies that recognise the reproductive rights of women — which must necessarily include men — as well as services and actions of sexual education and contraceptive care that take into account not only sociopolitic, economic and cultural aspects, but also the level of freedom of those involved.

In this sphere the effort should be undertaken in terms of *redesigning the debates*, trying to understand abortion as a matter of *health care* and *human rights*, not as an act of moral transgression of supposedly frivolous women. Actually, very little is known about (i) the symbolic universe of women that abort, (ii) the decision making process, (iii) the impact of abortion in their reproductive trajectory and well being. For instance, studies in the last twenty years have not shown which are the risks of induced abortion in illegal conditions for women's mental health (Brasil 2009, 39).

Women who abort may experience the most dissimilar sensations, like guilt, helplessness, bitterness and relief. Moreover, they may feel doubt in view of the act performed and, unconsciously, express signs of self destruction as expiation of guilt (Menezes, Lima, e Rolim 2008, 144-150) . It was particularly detected that the feelings influencing the studied women's decision to abort — even unconsciously — oscillated between sadness, fear, confusion, even joy.

Based on these preliminary notes, the decision making process of the woman that aborts is usually profoundly shaded by uncertainty and anguish. It's a decision in quicksand, established in a winding path of emotional fluctuations, with a major psychic suffering usually remaining after the act. Those experiences should be strongly considered by health professionals when engaged in their care actions, offering women the possibility of expressing their existential pain and the feelings of sadness, loss, solitude and guilt — or the fear of being guilty — besides the worries about their body and the resumption of life projects (Boemer e Mariutti 2003, 50-71). Bringing to light perspectives of understanding this experience may provide subsidies to guide the support to that woman who suffers — perhaps as *an act of laic compassion*.

#### **ABORTION AS AN ACT OF LAIC COMPASSION**

RAP and SLP are respectively the pillars of those in favor and against the decriminalization of abortion. Nevertheless, the differing positions are subject to challenge, thus establishing the need to compose — in a complex relation — opposite principles, to allow the decision making. For instance, one of the promising intersections in working the conflicting aspects of abortion — in the cases of IMIL —

is precisely that of taking among the referentials the attitude of those willing to perform the act, opening up the perspective to delimit the question of *compassion*.

Compassion is the foundation of Buddhist ethics, appropriated by western philosophy in the thought of Arthur Schopenhauer ( in fact, his main “oriental influence” were the Hindu *Upanishads*). Differently from the Christian tradition, Buddhism — in what concerns *karuna* (compassion in Sanskrit) — conceives compassion as unconditional acceptance of other’s suffering (Brandon 1976, 51). Under such inspiration, Schopenhauer considers compassion as identification with the other’s suffering(not with the suffering *in* the other, because in fact his suffering is also mine), once the one who suffers and I are the same. The initial assumption is that compassion is only possible inasmuch as there is identification “with the other person and, in consequence, the barrier between self and non-self [is] momentarily abolished”. Thereby, Schopenhauer takes quite literally the idea — contained in “compassion” or “sympathy” (in german *mitleid*) — that a person “suffers with” the other, thus constituting the effective basis for all free justice and genuine charity (Janaway 2003, 121):

That demands, however, that I *identify with him*, ie, that the total difference between self and the other, on which precisely rests my selfishness be suppressed at least to some degree (...). The process analysed here (...) is the daily phenomenon of *compassion*, meaning the totally immediate participation, regardless of any other consideration, in the suffering of the other (Schopenhauer 2011, 223).

Based on these conjectures the concept of *laic compassion* (LC) has been proposed, which is premised on the recognition of the essential equality between the forms of existence subject to the *coming-into-being* and the *ceasing-to-be* (Siqueira-Batista 2008, 1013-1015). Therefore, laic compassion implies a genuine deference to the insertion of the other in the world, what justifies an attitude of unconditional acceptance, grounded in *nonjudgment* — in other words, in the acceptance of the other, in the decision to support its existing condition and in the movement to receive him both without prejudice and with deep responsibility.

In these terms, in accordance with Siqueira-Batista & Schramm proposal (Siqueira-Batista e Schramm 2009,14-4), being compassionate does not mean to adopt a paternalistic position — that is, deciding deliberately what’s best for others — based on a mere feeling of pity or commiseration, but to develop and practice broad respect for the existence, inasmuch as one receives the sufferer actively. Indeed, the

perspective of understanding LC as pity is incorrect, once the latter is understood as passive beneficence of someone in a position of “superiority” towards another in absolute powerlessness and penury. Genuine compassion is established between *equals*, to the extent that existence is understood as the manifestation of an ambiguous world — pleasures and pains; happiness and suffering; flavors and hardship — marked by the impermanence and intransience of all things, to which all living beings are invariably submitted (Siqueira-Batista 2010, 341-362).

To consider both happiness and unhappiness as part of the non-permanence will awaken in us, at the same time, a quality of compassion and a quality of presence towards the suffering of others [...] (Leloup 2002, 54)

In synthesis, this is precisely the scope of the concept of LC, which harbors the attitude of not remaining indifferent to the suffering of the other, inscribed in the plane of existence — coming-into-being and ceasing-to-be — and in need of support. For that, *compassion* should be *laic*, not requiring approval or disapproval of religious character, being actually founded in an egalitarian attitude of respect for the other.

Care, at the core of LC — in view of the present discussion, aiming to look at this woman and accept her — requires to consider the abortion, in the cases of IMIL, from the reality in which women live, and not from the values and assumptions of certain sectors of society.

Such positioning will be translated mainly in the acceptance, the nonjudgment and in the promotion of these women’s quality of life. From such perspective it is necessary to foster a broad debate and operationalize actions of care to the woman in situations of abortion, in cases of IMIL, within the scope of LC; that is, not to remain oblivious in face of the suffering of those who find themselves in different contexts of vulnerability, unable to reflect about such situations, therefore becoming vulnerable people. It is with respect for those women that *bioethics of protection* may guide positionings, protecting and promoting the integrality of their health, and using for such all available means of support. Indeed, to act out of *laic compassion* is a means of *protecting* those involved, aspect that articulates the present debate with bioethics of protection, since its nuclear concern is towards the risks that vulnerable people run — women in cases of IMIL fetuses abortion — due to consequences for instance of health professionals’ actions. That becomes more evident when one recovers the

## ABORTION IN CASES OF INTRA UTERINE MALFORMATION INCOMPATIBLE WITH LIFE: ETHICAL DEBATE IN THE LIGHT OF LAIC COMPASSION AND THE BIOETHICS OF PROTECTION

original meaning of the word *ethos* (ἦθος), in the Homeric world, that of “giving shelter” to animals, without forgetting the other meanings, *character* (ἦθος) and *mores* (ἔθος) what exposes the intrinsic caring, protective — and compassionate — perspective of *ethics* (Schramm et al 2009, 125).

Thus, in accordance with the pair *bioethics of protection/laic compassion*, the attitude towards women in cases of IMIL abortion, marked by abandonment, discrimination, poverty — women who become increasingly dependent on the public health system, with few resources to regulate their fertility, because, once more, the State does not fulfill its role towards the people in need — must necessarily be of support. Thereby, responsibility for the practice of abortion in cases of IMIL, beyond the judicial decision — already normatized in cases of anencephaly (Brasil STF, 2005); (Brasil CFM 2012, 308-309); (Brasil, PL 4403) — should concern SUS, ensuring, in fact, what is already recommended by *Política Nacional de Saúde Integral à Mulher*. Protection from the State and the attitude of *laic compassion* from the professional who receives her in the health care service are two critical assumptions to this woman’s integral care.

### CLOSING CONSIDERATIONS

Abortion in Brazil — as previously discussed — brings a series of negative consequences for women. It is up to the professional who receives them — within the context of reproductive autonomy — the respect for this moment, welcoming them and making itself available to answer their right to choose, without judging them or arbitrarily making such important decision in their place. Therefore such vulnerable women who come to institutions — usually weakened, devoid of their rights, frail, when not emotionally destroyed by the decision they intend to make — deserve support and should find health professionals to welcome them in a true act of *laic compassion*, protecting them from a society that points out abortion as a crime — or a heinous act — even when judicially legitimized.

The ethical debate structured throughout this article sought to contribute to the dimension of abortion in the context of IMIL, distinguishing as significant points the recognition of women’s right to choose — *sexual and reproductive autonomy* — in a perspective of free will in their decision, in which the ethical stance to be adopted must be that of support and *protection* of those involved, based on *laic compassion*.

Beyond judgment, we propose welcoming the woman in a vulnerable situation. It seems clear that the current position of the STF — the Supreme Court — on abortion in cases of anencephaly, even if essential to the exercise of reproductive autonomy — in terms of a democratic, pluralist society — is no absolute guarantee that the right of women to terminate pregnancy will be respected. As a result, ethical reflections on the theme become extremely necessary, in order to propose new lines of reasoning, bringing the possibility of weaving new wefts in the dimension of *sexual and reproductive rights/ protection/ laic compassion*.

That one is quite truly a brief consideration about an element of possible significance in the ethical debate and about the beginning of life: *laic compassion*, which is being built in the field of contemporary bioethics reflections. To integrate it to the remaining threads that weave the great fabric of ethical debate about abortion — in cases of IMIL — is a way to look and welcome the woman in a genuine act of fraternity, allowing her perhaps the restitution of the prerogative to dream of better days, a new pregnancy, the undrawing of this situation of uterine sepulcher – if that’s her understanding.

## REFERENCES

- Beauchamp, Tom L. e Childress, James Franklin. *Princípios da ética biomédica*. Loyola, São Paulo, 2002.
- Boemer, Magali Roseira e Mariutti, Mariana Gondim. A mulher em situação de abortamento: um enfoque existencial. *Revista da Escola de Enfermagem da USP*, v. 37, n.2, p. 50-71, 2003.
- Brasil. Decreto Lei nº 2.848 de 07 de Dezembro de 1940. *Código Penal*. Brasília: Senado Federal, 1940.
- Brasil. Projeto de Lei nº 4403, de 2004, acrescenta inciso ao art. 128 do decreto-lei nº 2.848, de 07 de dezembro de 1940 - código penal.
- Brasil. Projeto de Lei nº 478/07. Estatuto do nascituro. Disponível em: <[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra?codteor=443584&filename=PL+478/2007](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=443584&filename=PL+478/2007)>. Acesso em: 16/10/2012.
- Brasil. Projeto de Lei nº 1763/2007. Bolsa Estupro. Disponível em: <[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra?codteor=490988&filename=PL+1763/2007](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=490988&filename=PL+1763/2007)>. Acesso em: 16/10/2012.

- ABORTION IN CASES OF INTRA UTERINE MALFORMATION INCOMPATIBLE WITH LIFE: ETHICAL DEBATE IN THE LIGHT OF LAIC COMPASSION AND THE BIOETHICS OF PROTECTION
- Brasil. Supremo Tribunal Federal. 2005 *ADPF n° 54-8/DF*. Confederação Nacional dos Trabalhadores na Saúde (CNTS). Rel. Min. Marco Aurélio. Disponível em:
- <<http://www.stf.jus.br/portal/peticaoInicial/verPeticaoInicial.aspbase=ADPF&s1=54&processo=54>>. Acesso em: 02 nov. 2011.
- Brasil, Ministério da Saúde. Secretaria de Ciência, Tecnologia e Insumos Estratégicos. Departamento de Ciência e Tecnologia. *20 anos de pesquisas sobre aborto no Brasil*. Série B. Textos Básicos de Saúde. Brasília: Ministério da Saúde, 2009. 72p.
- Brasil, Resolução Conselho Federal de Medicina n° 1.989, de 10 de maio de 2012 publicada no DOU, 14/05/2012, seção i, p.308-309.
- Brandon, David. *Ajuda pelo Zen-Budismo*. São Paulo: Pensamento; 1976, p. 51.
- Diniz, Débora e Ribeiro, Diaulas Costa. *Aborto por anomalia fetal*. 1ª reimpr. - Brasília: Letras Livres, 2004. Coleção Radar - 152p.
- Janaway, Christopher. *Schopenhauer*. São Paulo: Loyola; 2003.
- Junges, José Roque. A vida como bem fundamental do homem. Notas e Comentários. *Persp. Teol.* 25 – 1993, 339- 345
- Kant, Immanuel. *Fundamentação da Metafísica dos Costumes*. Lisboa: Edições 70; 1960.
- Leloup, Jean-Yves. *A montanha no oceano: meditação e compaixão no budismo e no cristianismo*. Petrópolis: Vozes; 2002. p. 54
- Menezes, Tereza Cristina Vidal; Lima, Francisca Elisângela Teixeira e Rolim, Karla Maria Carneiro. Conhecimentos e sentimentos de mulheres que vivenciaram um processo de aborto. *Revista Brasileira em Promoção da Saúde*, 21 (2): 144-150; 2008
- Schramm, Fermin Roland et al. *Bioética: riscos e proteção – 2ª ed*. Rio de Janeiro: Editora UFRJ/Editora Fiocruz; 2009, 256p.
- Schopenhauer, Arthur. *Sobre o Fundamento da Moral*. 2ª Ed. – São Paulo: Martins Fontes, 2001.
- Shopenhauer, Arthur. *O mundo como vontade e representação*. Tradução de M.F. Sá Correia. 4ª reimpressão. Rio de Janeiro: Contraponto; 2011.
- Siqueira-Batista, Rodrigo. Eutanásia e Compaixão. *Revista Brasileira de Cancerologia*, v. 50, n. 4, 2004, p. 334-340.

- Siqueira-Batista, Rodrigo. Quantum bioethics: ethics for all beings. *Ciência e Saúde Coletiva*, v.13, n.3, p. 1013-1015, 2008.
- Siqueira-Batista, Rodrigo e Schramm, Fermin Roland. A bioética da proteção e a compaixão laica: o debate moral sobre a eutanásia. *Ciênc. Saúde Coletiva*, v. 14, n. 4, p.1241-1250, 2009.
- Siqueira-Batista, Rodrigo. *A ressurreição de Frankenstein: uma metáfora das unidades de terapia intensiva contemporâneas*. In: Schramm FR, Rego S, Braz M, Palácios M. Bioética, riscos e proteção. 2<sup>a</sup> ed. Rio de Janeiro: Editora UFRJ; Editora FIOCRUZ, 2009, p. 148-163.
- Siqueira-Batista, Rodrigo. A boa morte à luz da ética para todos os seres: o lugar da compaixão laica. In: Pereira TS, Menezes RA, Barboza HH. Vida, morte e dignidade humana. Rio de Janeiro: GZ, 2010, p. 341-362.
- Zugaib, Marcelo. Paradoxos do aborto. *Revista de Ginecologia e Obstetrícia*, 1: Editorial; 1990.