

ABORTION AND REPRODUCTIVE AUTONOMY: SOME IDEAS ABOUT DIFFERENTIATED APPROACHES

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In law, the debate on the voluntary termination of a pregnancy has not been exempt from the influence of extralegal matters: prejudices, moral and religious beliefs, and political and ideological convictions. Although the focus may be purely on legal aspects, it is subject to multiple subjective interpretations. Consequently, the various constitutional clauses relating to the protection of life (dependent or independent) also serve to support permissive and prohibitionist judicial and legal trends. These two contradictory positions prevent the consideration of the multiple facets of the problem; as a result, it is difficult to obtain a concerted response. Through qualitative research, this paper explores some of the problems related to the traditional approach to abortion. This article highlights some of the barriers to the exercise of abortion rights. It outlines some criteria and methodological tools that could help public officials make decisions and define public policy without stereotypes and guaranteeing women's human rights. Although at some point access to abortion is recognized, this does not imply that it is an acquired right. On the contrary, it is a right that faces constant risk and threat owing to the influence of the ideological interests.

Key words: abortion; reproductive rights; intersectionality; punitive populism; human rights

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1. INTRODUCTION

Under human rights law, abortion is considered a complex problem since it can be both a crime and a right at the same time.¹ In light of the rights involved, different countries have adopted different laws that range from total prohibition (abortion punishment) to authorization without restrictions at any point during the pregnancy.² In any case, while in countries such as the El Salvador, Nicaragua, United States or Poland there is a regressive trend in the recognition of the right to abortion, in countries of the global south, such as Colombia³, Ecuador⁴ or Mexico⁵, the limitations on the exercise of this right are progressively reduced.

These extreme choices are influenced by the fact that abortion fluctuates between the “transgressive” and the “acceptable”. “While it is generally condemned *in principle*, it is often tolerated *in practice*”.⁶

However, if the legal debate is freed from prejudice and the authoritarian desires of intervention in relation to the autonomy of women, there are alternative approaches that consider the legal and social implications. In this regard, any definitive answers that do not consider the different variables lead to an undesired polarization and manipulation of the public discussion on abortion.⁷

¹ Cfr. Piekarewicz Sigal, M., *Bioética, aborto y políticas públicas en América Latina*, Revista de Bioética y Derecho, no. 33, 2015, pp. 3 –13. DOI 10.4321/s1886-58872015000100002.

² See Pelegrino De La Vega, D., *Aspectos bioéticos relacionados con el aborto*, Revista Cubana de Enfermería, vol. 22, no. 3, 2006, pp. 1–11. Available at: http://scielo.sld.cu/scielo.php?script=sci_arttext&pid=S0864-03192006000300008&lng=es&nrm=iso&tlng=es.

³ In February 2022, the Constitutional Court, in its ruling C-055/2022, completely decriminalized voluntary abortion during the first 24 weeks of pregnancy. After this period, abortion is possible in the cases allowed in the ruling C-355/2006: a) If the life or health of the mother is endangered. b) If the fetus has a malformation incompatible with life. c) If the pregnancy is the result of abuse, rape, incest, egg transfer or non-consensual insemination.

⁴ In Ecuador, the Constitutional Court decriminalized abortion in cases of rape and ordered the regulation of the procedure in its decision 34-19-IN/21 of 2021.

⁵ In September 2023 (*Amparo en revisión* 267/2023), the First Chamber of the Supreme Court of Justice of the Nation ruled that the legal system that criminalizes abortion in the Federal Criminal Code is unconstitutional because it violates the human rights of women.

⁶ Boltanski, L., *La condición fetal. Una sociología del engendramiento y del aborto*, Akal, Madrid, 2016, p. 41.

⁷ See Pacheco, J.; Maltby, E., *The Role of Public Opinion—Does It Influence the Diffusion of*

From the legal point of view, the global trend shows an increase of the so-called punitive populism⁸, according to which “Public support for more severe criminal justice policies (most specifically incarceration) has become a primary driver of policy making, as well as of political election cycles, with the result of increasingly harsh punishments regardless of their ability to reduce crime or redress its known correlates”.⁹

In practice, through punitive populism, it is suggested that social problems are solved with a progressive increase of acts that are enshrined as criminal offenses or through the increase of existing punishments.¹⁰

This vision ignores the essential characteristic of criminal law as the *ultima ratio*, and it does not take into account the stark penitentiary and jails crisis in several countries.¹¹ In this context, individuals are deprived of their liberty and their families exposed to a systemic violation of human rights, particularly in societies with fragile political systems and deep-seated inequalities.¹²

ACA Decisions?, Journal of Health Politics, Policy and Law, vol. 42, no. 2, 2017, pp. 309–340. DOI 10.1215/03616878-3766737; Rodríguez, J. M.; Bae, B.; Geronimus, A. T.; et al, *The Political Realignment of Health: How Partisan Power Shaped Infant Health in the United States, 1915–2017*, Journal of Health Politics, Policy and Law, vol. 47, no. 2, 2022, pp. 201–224. DOI 10.1215/03616878-9517191.

⁸ Cfr. Bonner, M. D., *Tough on crime: the rise of punitive populism in Latin America*, University of Pittsburgh Press, Pittsburg, 2019.

⁹ Wood, W. R., *Punitive Populism*, The Encyclopedia of Theoretical Criminology [online]. John Wiley & Sons, Ltd, 2014 [consulted 01/05/22], 1. DOI 10.1002/9781118517390.WBETC140.

¹⁰ On Punitive populism trend, see Boshier, R.; Rae, C., *Punishing Criminals: a Study of the Relationship between Conservatism and Punitiveness*, Australian & New Zealand Journal of Criminology, vol. 8, no. 1, 1975, pp. 37–45. DOI 10.1177/000486587500800105; Cook, K. J., *A passion to punish: Abortion opponents who favor the death penalty*, Justice Quarterly, vol. 15, no. 2, 1998, pp. 330–346. DOI 10.1080/07418829800093771; Goelzhauser, G.; Konisky, D. M., *The State of American Federalism 2019–2020: Polarized and Punitive Intergovernmental Relations*, Publius, The Journal of Federalism, vol. 50, no. 3, 2020, pp. 311–343. DOI 10.1093/publius/pjaa021.

¹¹ Cfr. Chará Ordóñez, W. D., *Crisis en los sistemas penitenciarios: derechos humanos, hacinamiento y desafíos de las políticas criminales. Una aproximación desde la producción bibliográfica*, Estudios de Derecho, vol. 78, no. 171, 2020, pp. 119–138. DOI 10.17533/udea.esde.v78n171a05; Rangel Torrijo, H., *Cooperation and education in prison: A policy against the tide in the Latin American penitentiary crisis*, International Review of Education, vol. 65, pp. 785–809. DOI 10.1007/S11159-018-9747-5.

¹² In this sense Arenas, L.; Cerezo, A., *Realidad penitenciaria en Colombia: la necesidad de una nueva política criminal*, Revista Criminalidad, vol. 58, no. 2, 2016, pp. 175–195; CEAS, *Informe Penitenciario. Una mirada al mundo carcelario peruano*, COMISION EPISCOPAL DE ACCION SOCIAL, Programa Justicia Penal y Penitenciaria, 2013; Woods, C., *Confrontando La Superpoblacion Carcelaria en America Latina: Analisis Com-*

Further, punitive populism leads to a situation in which it is difficult to distinguish between different criminal behaviors such that both perpetrating a massacre and having an abortion are comparable. This generalization is discriminatory and could result in the criminalization of poverty, exacerbated by the gender factor.¹³ It also fails to consider the vulnerable conditions of women who are forced to have abortions for many different reasons.

In addition, it is clear that there is a connection between prohibitionist trend and induced abortions: notably, countries with prohibitionist regulations are also those with the highest incidences of induced abortions.¹⁴ Thus, prohibitionism does not reduce abortion rates, but it does increase the risks of death and damage to health due to clandestine abortions, performed in poor hygienic and sanitary conditions.

Nevertheless, there is no answer to this question within the legal systems where the abortion debate continues to be a problem of partisan interests.¹⁵ Even Western societies are witnessing a regression in the guarantee of abortion as a fundamental right (i.e., in some U.S. states or in Poland). This shows that although at some point access to abortion is recognized, this does not imply

parativo De Los Precursores Necesarios Para Reformar, ILSA Journal of International and Comparative Law, vol. 22, n. 3, 2016, pp. 618-647.

¹³ For example, punitive populism does not take into consideration the situations of women who are victims of crimes against their sexual integrity. It does not consider the position of women who are deprived of their liberty and have no access to sex and reproductive health education. Consequently, these women are unable to access birth control mechanisms. In this way, an accumulation of vulnerabilities is produced, since the women deprived of liberty are, for the most part, poor women that have a role of care or are heads of households. They have also few opportunities to access the work market and are excluded from education system. Besides, these vulnerabilities are reinforced and reproduced in a more drastic way at the time they are incarcerated. This problem is analyzed by Servon, L.; Esquier, A.; Tiley, G., *Gender and Financialization of the Criminal Justice System*, Social Sciences, Multidisciplinary Digital Publishing Institute, vol. 10, no. 11, 2021, pp. 446. DOI 10.3390/SOCSCII10110446.

¹⁴ Among others, as an example some data can be found in Piekarewicz Sigal, M., *op. cit.*; Sedgh, G., Singh, S.; Shah, I. H. *et al.*, *Induced abortion: Incidence and trends worldwide from 1995 to 2008*, The Lancet, vol. 379, no. 9816, 2021, pp. 625–632. DOI 10.1016/S0140-6736(11)61786-8.

¹⁵ This is shown, for example, by Michener, J.; Lebrón, A. M. W., *Racism, Health, and Politics: Advancing Interdisciplinary Knowledge*, Journal of Health Politics, Policy and Law, vol. 47, no. 2, 2022, pp. 111–130. DOI 10.1215/03616878-9517149; Montez, J. K., *US State Polarization, Policymaking Power, and Population Health*, Milbank Quarterly, vol. 98, no. 4, 2020, pp. 1033–1052. DOI 10.1111/1468-0009.12482; Rodríguez, J. M. *et al.*, *op. cit.*

that it is an acquired right. On the contrary, it is a right that faces constant risk and threat owing to the influence of the so-called pro-life ideologies.

Meanwhile, public policies usually do not consider the specific vulnerabilities of women, thus condemning them to exacerbated inequality, not only in terms of the deepening of gender stereotypes within society but also in relation to the sexist, racist, xenophobic, and adultcentrist shaping of the law.¹⁶ In combination, all these factors weigh disproportionately on the lives and autonomy of vulnerable women and girls because such factors present a series of barriers to access to abortion.¹⁷ In this way, they are more likely to end up marginalized to practice an unsafe abortion. In turn, this implies exposure to risks to life and health, which could be avoided.

To address this issue, it is important to consider differentiated approaches that relate to gender, age, disability, ethnicity, national origin, among others. This could help in the attempt to reduce the disproportionate effect of measures based on biased ideas about the apparent and formal equality of all the people covered by such measures.

However, the implementation of this methodology entails the need to understand the abortion problem as an issue of freedoms and reproductive autonomy. In other words, the universal decriminalization of abortion must be understood as an urgent need to guarantee the protection of human rights.¹⁸

This paper presents abortion as an issue of reproductive autonomy and attempts to establish the importance of differentiated approaches and analyze the failure of punitive populism in the protection of the human rights of vulnerable women. The study proposes a general analysis and does not pretend to examine the specific issues of concrete countries. However, the analysis herein

¹⁶ Among many other examples, besides those shown in note 12, see Lebrón, A. M. W.; Schulz, A. J.; Gamboa, C. *et al.*, *Mexican-Origin Women's Construction and Navigation of Racialized Identities: Implications for Health Amid Restrictive Immigrant Policies*, *Journal of Health Politics, Policy and Law*, vol. 47, no. 2, 2022, pp. 259–291. DOI 10.1215/03616878-9518665; Parker, W. J., *The moral imperative of reproductive rights, health, and justice*, *Best Practice and Research: Clinical Obstetrics and Gynaecology*, vol. 62, 2020, pp. 3–10. DOI 10.1016/j.bpobgyn.2019.07.006.

¹⁷ To know some barriers see Cocomá Ricaurte, A.; Triviño Maldonado, C.; Rosero Arteaga, C. *et al.*, *Barreras de acceso a la interrupción voluntaria del embarazo en el contexto de la pandemia por covid-19*, Bogotá, 2021. Available at: <https://despenalizaciondelaborto.org.co/wp-content/uploads/2021/08/Informe-barreras-covid-version-digital-definitiva.pdf>.

¹⁸ In this sense, Erdman, J. N.; Cook, R. J., *Decriminalization of abortion – A human rights imperative*, *Best Practice and Research: Clinical Obstetrics and Gynaecology*, vol. 62, 2020, pp. 11–24. DOI 10.1016/j.bpobgyn.2019.05.004.

can be referred to, mainly, in contexts where democratic and secular constitutional systems accept the international instruments of the protection of human rights.

2. ABORTION AS AN ISSUE OF REPRODUCTIVE AUTONOMY AND THE OBLIGATIONS OF THE STATE FOR ITS GUARANTEE

The traditional family setup has been profoundly transformed. Social and economic changes and different political, social, and economic crises have led to a new consideration of its function, which is not aimed exclusively at human reproduction. Societies at large are becoming increasingly long-lived, resulting in inverted population pyramids.¹⁹ At the same time, the legal protection of the family as the fundamental core of society implies a recognition of the right for people to decide the number of children that they will have.

In this context, the debate on abortion must move beyond the considerations of the family as a guarantee of the survival of the human species. Rather, it is necessary to regard familial relationships as a stage wherein a life-long project is built and implemented, which tends to fulfill the expectations of each of its members while respecting their freedoms.

In this regard, the decision on whether to have children is an expression of individual autonomy, which is recognized by the law as the central axis of the development of legal relations. Although this is a principle that has traditionally been applied in contract law, nothing prevents its application in family law. This would allow for a recognition of the possibility that the different members of the family must decide the parameters under which they will form a family and the agreements between themselves without state interference.²⁰ Under this understanding, state intervention would be limited to respect for family autonomy and identity.²¹

Applied to the exercise of sexual and reproductive rights, autonomy is a

¹⁹ Cfr. Alvarado García, A. M.; Salazar Maya, Á. M., *Análisis del concepto de envejecimiento*, Gerokomos [online], 2014. DOI 10.4321/s1134-928x2014000200002.

²⁰ About this suggestion, is particularly relevant Bix, B. H., *Family Law: Values Beyond Choice and Autonomy?*, *Law and Philosophy*, vol. 40, no. 2, 2020, pp. 163–183. DOI 10.1007/S10982-020-09394-3.

²¹ In this sense Amagliani, R., *Autonomia privata e diritto di famiglia*, Giappichelli, Torino, 2005, pp. 64-107; Angeloni, F., *Autonomia privata e potere di disposizione nei rapporti familiari*, UTET, Padova, 1997; Rueda, N., *La noción jurídica de la familia en Colombia: una categoría en construcción entre restricción y libertad*, Universidad Externado de Colombia, Bogotá, 2016.

right held by both partners in the couple, and it must be exercised in a free manner. However, this level of autonomy cannot be understood as enabling the woman's partner (or another family subject) to impose restrictions or obligations that are incompatible with the nature of the rights of the woman.

Therefore, it is necessary for both partners to understand abortion as "reproductive autonomy" and acknowledge that the reproductive autonomy of women cannot be subjected to interference or impositions by the state or any other individual, either as a means of unlawful coercion to abort or as a constraint to go ahead with the pregnancy and, hence, with maternity.²²

Accordingly, reproductive autonomy must be understood as a freedom that should be exercised in a responsible manner and in line with reproductive self-determination, such as the possibility of choosing freely whether to embark on the parenting project.

However, said freedom can only be guaranteed by means of awarding real options to choose from. This then implies that where abortion is regulated, states are obliged to eliminate access barriers. To this end, it is necessary to eradicate the (re)victimization of women who decide to have an abortion and guarantee their access to reproductive and sexual health education as well as to family planning methods in equal conditions.

Hence, any legislation that provides for the formal recognition of women's rights is useful but not sufficient because legal acknowledgment does not necessarily entail respect in practice. In other words, it is a failure of the law to not recognize the right to abortion, but also to not establish practical controls that prevent third parties from interfering in its execution.

Some examples of the barriers that women face occur when the institutions responsible for facilitating abortions design bureaucratic mechanisms that tend to delay the approval thereof, for instance, when no obligation exists (or its fulfillment is not evident) to have a health professional that can be counted on and who is not a conscientious objector or when no support on the part of the health system is planned for, which creates specific inequalities in relation to the financial possibilities of women.²³

²² Cfr. Erdman, J. N.; Cook, R. J., *op. cit.*; Parker, W. J. *op. cit.*; Singh, S.; Sedgh, G.; Hussain, R., *Unintended Pregnancy: Worldwide Levels, Trends, and Outcomes*, Studies in Family Planning, vol. 41, no. 4, 2010, pp. 241–250. DOI 10.1111/j.1728-4465.2010.00250.x.

²³ For example, the Association Luca Coscioni have denounced that in Italy "There are 72 hospitals that have between 80 and 100 percent conscientious objectors. There are 22 hospitals and 4 counseling centers with 100% objection among OB/GYNs, anesthesiologists, nursing staff and OSS. There are 18 hospitals with 100% objector

All these behaviors can be interpreted as an indirect interference in women's decisions by entities that provide public services. Thus, these entities assume a role that does not correspond to their practices, legally or constitutionally. Moreover, these practices ignore the procreational responsibility of women with the capacity to decide. Therefore, the state or health institutions seem to take on the role of women's "tutors", ignoring the fact that parents are the ideal subjects to determine their skills in relation to their children's upbringing, their financial possibilities, and their freedom to configure a family and personal life project.

3. DAMAGES CAUSED BY THE POLITICIZATION AND POLARIZATION OF THE PUBLIC DEBATE

On this point, it is easy for the public discourse to fall into a kind of double standard. For issues that require a decisive intervention on the part of the state, the state is limited in its consideration of an allegedly unrestrained respect of the harmony and intimacy of families. Thus, when the possibility of recognizing rights, freedoms, and fundamental guarantees is debated, the family is ultimately turned into an excuse to prevent the execution of the same.

Some examples of this limited interest of the state in everyday problems include domestic violence, immunity for domestic torts, the lack of recognition of care work, and the adultcentrism, sexism, ableism, and xenophobia present in the law and jurisprudence.²⁴

gynecologists. There are 46 facilities with more than 80% objectors. There are 11 regions where there is at least one hospital with 100% objectors": Lalli, C.; Montegiove, S., *Legge 194 Mai dati. Perché la relazione del Ministero sulla 194 non basta e servono i dati aperti e per singola struttura degli obiettori di coscienza* [online], 2022 [consulted June 24, 2022]. Available at: <https://www.associazionelucacoscioni.it/cosa-facciamo/aborto-e-contraccezione/legge-194-mai-dati>.

²⁴ Cfr. Duarte Quapper, C., *El adultocentrismo como paradigma y sistema de dominio. Análisis de la reproducción de imaginarios en la investigación social chilena sobre lo juvenil*, Universitat Autònoma de Barcelona, Barcelona, 2015; Nussbaum, M. C.; Levmore, S., *Envejecer con sentido. Conversaciones sobre el amor, las arrugas y otros pesares*, Paidós, Bogotá, 2020; Feldman, A., *Cross-Border Domestic Violence: The Global Pandemic and The Call for Uniform Enforcement of Civil Protection Orders*, *Suffolk Transnational Law Review*, vol. 40, no. 1, 2017, p. 35; Lebrón, A. M. W. *et al.*, *op. cit.*; Michener, J.; Lebrón, A. M. W., *op. cit.*; Oberlander, J., *Implementing the Affordable Care Act: The Promise and Limits of Health Care Reform*, *Journal of Health Politics, Policy and Law*, vol. 41, no. 4, 2016, pp. 803–826. DOI 10.1215/03616878-3620953; Pearlman, J.; Robinson, D. E., *State Policies, Racial Disparities, and Income Support: A Way to Address Infant Outcomes and the Persistent Black-White Gap?*, *Journal of Health Politics, Policy*

Moreover, the absence of serious public policies in relation to the family as well as sex and reproductive health education generate an insurmountable protection shortfall. In an entirely ideal scenario, abortion should be the last resort for any woman or couple. However, the aforementioned shortfall, together with an amalgamation of vulnerable conditions (e.g., age, disability, ethnicity, migratory status, poverty, sex, sexual orientation, and the deprivation of liberty) prevents the state from guaranteeing the equal provision of reproductive health for all women.²⁵

All the aforementioned factors influence women's decisions to procure abortion, with an aggravating factor being that it is a punishable action, but with selectivity based on stereotypes.²⁶ This creates a public health problem in the form of the execution of illegal abortions in appalling conditions that pose extremely serious health risks for women.²⁷

Therefore, the criminalization of abortion is a form of (re)victimization that subjects women to a criminal process because of the exercise of a right. This represents a disproportionate burden on women, their families, and their social circles as well as on the state. In this context, it is important to consider the dreadful situation of the female detainees in several countries²⁸, which is contrary to human dignity and international human rights standards.²⁹ To overcome the aforementioned state of affairs and to respect the case of a person that commits

and Law, vol. 47, no. 2, 2022, pp. 225–258. DOI 10.1215/03616878-9517205.

²⁵ See Ostrach, B., “yo no sabía.”-immigrant women's use of national health systems for reproductive and abortion care, *Journal of Immigrant and Minority Health*, vol. 15, no. 2, 2013, pp. 262–272. DOI 10.1007/S10903-012-9680-9689; Ostrach, B.; Cheyney, M., *Navigating Social and Institutional Obstacles: Low-Income Women Seeking Abortion*, *Qualitative health research*, vol. 24, no. 7, 2014, pp. 1006–1017. DOI 10.1177/1049732314540218.

²⁶ Cfr. Anitha, S.; Gill, A. K., *Making Politics Visible: Discourses on Gender and Race in the Problematisation of Sex-Selective Abortion*. *Feminist Review*, vol. 120, no. 1, 2018, pp. 1–19. DOI 10.1057/S41305-018-0137-4.

²⁷ This is shown, for example, by Cook, K. J., *op. cit.*; Grimes, D. A.; Benson, J.; Singh, S. *et al.*, *Unsafe abortion: the preventable pandemic*, *Lancet*, vol. 368, no. 9550, 2006, pp. 1908–1919. DOI 10.1016/S0140-6736(06)69481-6; Jones, R. K.; Lindberg, L.; Witwer, E., *COVID-19 Abortion Bans and Their Implications for Public Health*, *Perspectives on Sexual and Reproductive Health*, vol. 52, no. 2, 2020, pp. 65–68. DOI 10.1363/psrh.12139; Kost, K., *Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends Since 2002*, Guttmacher Institute, New York, 2015.

²⁸ Sánchez-Mejía, A. L.; Rodríguez, C. L.; Fondevila, G. *et al.*, *Mujeres y prisión en Colombia: desafíos para la política criminal desde un enfoque de género*, Pontificia Universidad Javeriana, Bogotá, 2018. Available at: <https://repository.javeriana.edu.co/handle/10554/41010>.

²⁹ Chará Ordóñez, W. D., *op. cit.*

a supposed crime as a matter of human rights, strong political will as well as creative responses on the part of the states are required.³⁰

Hence, the law cannot pretend to define the “beginning of human life” (which is a question of metaphysical, rather than legal, order) from a legal perspective but, instead, in legal terms, the beginning of a person’s existence. In other words, the law should focus strictly on the legal aspects, such as the definition of the legal status as a necessary premise for the granting of rights and obligations. The determination of the beginning of human life can occur in an extralegal manner, and it has been defined by the Inter-American Court of Human Rights as “a valued question of different forms from a biological, medical, ethical, moral, philosophical[,] and religious perspective”.³¹ In the *Artavia Murillo vs. Costa Rica* case, the court ruled that protection of life from conception is gradual and incremental, depending on its development to strike an appropriate balance with potentially conflicting rights, rather than absolute.

Therefore, even in light of the politicization of the abortion debate, the strict legal competences of public powers cannot be ignored. To assume that legal systems can claim the function of defining a question such as the beginning of human life can only give credence to the increasingly damaging trend of punitive populism, which does not have a legal basis within the different constitutional systems. Punitive populism, as an alternative means to address problems connected to the protection of the family in the bioethical context, has proven to be inefficient. In addition, when criminal law does not respect the principle of *ultima ratio*, it cannot be an effective deterrent.³²

Finally, a further problem is the inaction of lawmakers, who choose not to legislate on problematic issues. It is common for issues such as abortion, surrogacy, same-sex unions, and assisted human reproduction techniques to be resolved first in the courts.³³ This may be due to one of the flaws of representative democracy; the rights of underrepresented groups or minorities (notwithstanding women not falling within this group but being treated as such) are not a

³⁰ In this sense, could be interesting see Burbano Herrera, C.; y Haeck, Y., *The Innovative Potential of Provisional Measures Resolutions for Detainee Rights in Latin America Through Dialogue Between the Inter-American Court and Other Courts*, Urgency and Human Rights, 2021, pp. 223–244. DOI 10.1007/978-94-6265-415-0_10.

³¹ Interamerican Court of Human Rights, *Artavia Murillo y otros (Fertilización in Vitro) Vs. Costa Rica*, 2012.

³² See Bonner, M. D., *op. cit.*; Goelzhauser, G.; Konisky, D. M., *op. cit.*; Wood, W. R., *op. cit.*

³³ Cfr. Erdman, J. N.; Cook, R. J., *op. cit.*; Goelzhauser, G.; Konisky, D. M., *op. cit.*; Murray, M., *The Symbiosis of Abortion and Precedent*, Harvard Law Review, vol. 134, 2020, pp. 308–351.

concern or priority for parliamentary majorities. Accordingly, parliamentary majorities do not endeavor to provide legislation to establish mechanisms for the restoration of balance or of equality in relation to such issues.

In addition, despite the disinterest of the legislators, a parallel attempt is being made to delegitimize national courts, which, by complying with their jurisdictional functions, eventually fulfill the legislator's competences. Although it is true that there is a balance of powers that cannot be disregarded in democratic states governed by the rule of law, it is also true that respect for international law on human rights cannot be left to the neglect of ideological partisan interests.³⁴

In this regard, the report on "*A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*" by the Special Rapporteur on violence against women recommends that states abolish laws that criminalize abortion directly and refrain from punitive actions against women who undergo abortion. It also proposes that the legalization of abortion should be extended to cases of sexual assault, rape, incest, and when continued pregnancy poses a risk to the physical and emotional well-being or life of the woman. Furthermore, it calls for enhanced care access. The report notes that making a woman carry her pregnancy to term under such circumstances could be regarded as a type of torture, specifically a form of gender-based violence.³⁵

In fact, in the case of *L. C. vs. Peru* (CEDAW/C/50/D/22/2009), the CEDAW Committee examines a similar situation where a 13-year-old teenager was forced to continue with her pregnancy, resulting in irreparable damage to her health. As a result, the Committee reiterated the need for States parties to establish a legal framework that allows women to enjoy the right to terminate their pregnancy in conditions of legal safety. According to the committee, states should enable swift and motivated decision-making to limit potential harm to women's physical and mental health due to possible delays in practice.³⁶

In this respect, it would be useful to understand that offering a legal gua-

³⁴ *Ibid.*

³⁵ Report of the Special Rapporteur on violence against women, its causes and consequences on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence A/74/137, 2017. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/213/27/PDF/N1921327.pdf?OpenElement>.

³⁶ Committee on the Elimination of Discrimination against Women, CEDAW/C/50/D/22/2009, *L.C. v. Peru*. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/473/69/PDF/G1147369.pdf?OpenElement>.

rantee to voluntarily terminate a pregnancy does not represent an invitation to have an abortion or an obligation to perform it. Given this line of reasoning, the legal debate must be oriented toward the obligations of the state to protect the rights of the subjects, particularly if these subjects suffer from different types of vulnerability.

Hence, differentiated approaches and intersectionality can enrich the debate to overcome the traditional and apparent dichotomy between the rights of the pregnant woman and the rights of the fetus. Proper comprehension and implementation at all the applicable levels could fill the gap created by the monolithic and homogenizing structure of the legislative bodies.

At the Inter-American level, both the Inter-American Court of Human Rights and the Inter-American Commission of Human Rights have recognized the detrimental consequences of absolute criminalization of abortion. This approach exposes women to hazardous and often life-threatening practices that jeopardize their health and well-being.³⁷

Moreover, in alignment with the growing recognition of significant disparities and unique circumstances faced by marginalized individuals, the Commission has acknowledged that this effect is particularly exacerbated in relation to abortion among young girls. These vulnerable groups are more susceptible to sexual violence, and pregnancy poses a significant risk to their physical well-being. For this reason, it may be useful to analyze how differentiated approaches can be considered in all stages of abortion access.

4. DIFFERENTIATED APPROACHES AND THEIR APPLICATION DURING THE DIFFERENT STAGES OF ABORTION ACCESS

Differentiated approaches constitute a methodological tool that imposes, in virtue of the principle of equality, the removal of the barriers to access to abortion by virtue of identity conditions for exercising rights because such barriers disproportionately affect vulnerable populations. Based on this premise, the most effective solutions to achieve a greater level of equality are those that incorporate differentiated approaches, with an intersectionality perspective, as an alternative to overcome the aggregation of vulnerabilities.³⁸

³⁷ For the Court, refer to the *Artavia Murillo v. Costa Rica* case. Regarding the Commission see the press release “*CIDH llama a avanzar en el reconocimiento y protección de los derechos reproductivos en la región*”, January 31, 2023. Available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/011.asp>.

³⁸ Cfr. Bambra, C., *Placing intersectional inequalities in health*, *Health & Place*, vol. 75, 2022, Article 102761. DOI 10.1016/J.HEALTHPLACE.2022.102761; Batastini,

Therefore, differentiated approaches can include as many approaches as the identity conditions that underlie discrimination. The basic consideration is that these are conditions that determine a disadvantage in access to legal assets and resources. These disadvantages are objective and impossible to overcome on their own because they are part of a context of structural and systematic discrimination.

Differentiated approaches are considered an additional tool in the fight against discrimination because by precisely highlighting the objective differences between subjects, it is possible to determine methods of guaranteeing equality. Promoting equality does not involve granting advantages for the sake of it; rather, it entails verifying scenarios in which structural discrimination is presented in the form of an apparent neutrality of law and state measures.

Such apparent neutrality can lead to a greater imbalance, as formal equality does not necessarily entail material equality. In this sense, applying the law and making judicial, administrative, or public policy decisions under the idea that all persons are effectively equal ignores structural discrimination. Therefore, the failure to consider the differences may worsen inequalities.

Ultimately, the aim is to verify the impact of vulnerabilities on (in)equality. To this end, it is necessary to consider how the different vulnerabilities interact. The theory of intersectionality has already demonstrated that the discrimination suffered by women can vary in its forms and intensity, depending on factors such as race, disability, sexual orientation, and migratory status.³⁹ The same considerations also apply to other discriminatory factors.

Regarding procreational self-determination, public policies and government action cannot be solely reduced to the consideration of the gender-differentiated approach, which is, undoubtedly, of great benefit. This is because in the case of abortion, there are certain conditions, such as age, sexual orientation, national origin (or immigrant status), conditions of poverty, disability, ethnicity, and the deprivation of liberty, that represent risk factors for the implementation of safe conditions.⁴⁰

A.B.; Jones, A.C.T.; Patel, M. *et al.*, *Why Correctional Service Providers and Researchers Should Focus on Intersectionality and Recommendations to Get Started*, *Criminal Justice and Behavior*, vol. 49, no. 6, 2022, pp. 930–946. DOI 10.1177/00938548221074369; Crenshaw, K.W., *On Intersectionality: Essential Writings*, The New Press, New York, 2017; Mccall, L., *The Complexity of Intersectionality*. *Signs*, vol. 30, no. 3, 2015, pp. 1771–1800. DOI 10.1086/426800; Nash, J. C., *Re-Thinking Intersectionality*, *Feminist Review*, vol. 89, no. 2008, pp. 1, 1–15. DOI 10.1057/FR.2008.4.

³⁹ See Crenshaw, K. W., *op. cit.*; Mccall, L., *op. cit.*; Nash, J. C., *op. cit.*

⁴⁰ See Lebrón, A. M. W. *et al.*, *op. cit.*; Ostrach, B., *op. cit.*; Wandschneider, L.; Miani, C.; Razum, O., *Decomposing intersectional inequalities in subjective physical and mental*

All these conditions represent a disadvantage in terms of the inequality of access to information on reproductive and sexual health, whether because of the possibility to access legal or economic resources or the lack of access to education based on the barriers of discrimination. The case of migrant women is particularly significant given the increase in worldwide migration as well as the increase in human and sexual exploitation practices, the existence of organized crime structures, and the increase in hate and exclusion speech.⁴¹

For this reason, it is imperative to recognize the differentiated capacities of the subjects and address the regulatory heteronormative imposition of behavior models.⁴² In other words, the state must recognize and respect the autonomy of the subjects and their freedoms to choose their personal and familial projects “freely and responsibly” under the notion of difference and diversity.

Therefore, the state should not reproduce an institutionally traditional and patriarchal model of the family in their relations with the subjects.⁴³ The state must not act as the *pater familias* with broad decision-making powers and the imposition of lifestyles, ways of organization, and affection settings that are based on a biased notion of “normality” in relation to the subject and the family.

health by sex, gendered practices and immigration status in a representative panel study from Germany, BMC Public Health, vol. 22, no. 1, 2022, p. 683. DOI 10.1186/S12889-022-13022-1.

- ⁴¹ Cfr. Fontana, I., *Migration Crisis, Organised Crime and Domestic Politics in Italy: Unfolding the Interplay*, South European Society and Politics, vol. 25, no. 1, 2020, pp. 49–74. DOI 10.1080/13608746.2020.1738092; Slominski, P.; Trauner, F., *Reforming me softly—how soft law has changed EU return policy since the migration crisis*, West European Politics, vol. 44, no. 1, 2021, pp. 93–113. DOI 10.1080/01402382.2020.1745500; Wallaschek, S., *Contested solidarity in the Euro crisis and Europe’s migration crisis: a discourse network analysis*, Journal of European Public Policy, vol. 27, no. 7, 2020, pp. 1034–1053. DOI 10.1080/13501763.2019.1659844; Wallaschek, S., *The Discursive Construction of Solidarity: Analysing Public Claims in Europe’s Migration Crisis*, Political Studies, vol. 68, no. 1, 2020, pp. 74–92. DOI 10.1177/0032321719831585.
- ⁴² Cfr. Crenshaw, K. W., *op. cit.*; Nussbaum, M. C., *Crear capacidades. Propuesta para el desarrollo humano*. 6a ed., Paidós, Bogotá, 2020; Rodotà, S., *La vita e le regole: tra diritto e non diritto*, Feltrinelli, Milano, 2009; Rodotà, S., *Il diritto di avere diritti*, Laterza, Roma, 2012; Rodotà, S., *Diritto d’amore*, Laterza, Roma, 2015.
- ⁴³ See Eichler, M., *Cambios familiares: Del modelo patriarcal al modelo de responsabilidad individual en la familia*, in: Ávila Santamaría, R.; Salgado, J.; Valladares, L. (dir.), *El género en el derecho. Ensayos críticos*, Ministerio de Justicia y Derechos Humanos, ONU, UNIFEM, Quito, 2009, pp. 465–513; Gavigan, S., *Something Old, Something New? Re-theorizing Patriarchal Relations and Privatization from the Outskirts of Family Law*, Theoretical Inquiries in Law, vol. 13, no. 1, 2012, pp. 271–301. DOI 10.1515/1565-3404.1292; Saller, R. P., *Patriarchy, Property and Death in the Roman Family*, Cambridge University Press, Cambridge, 1997, pp. 233–244.

On the contrary, states must adopt serious policies on abortion and should support their most vulnerable subjects, imposing an obligation on the general public and legal and administrative officials, in particular, to consider the differences and vulnerabilities of the subjects before decision-making. This would involve assessing the impact of their decisions to determine whether these decisions lead to an aggravation of the inequalities experienced.

For example, if it is a question of authorizing or forbidding abortion based on the specific provisions of the law, officials must abstain from stipulating unnecessary requirements that delay an abortion and endanger the safety of the woman.⁴⁴ Conversely, in countries where abortion is only permitted in exceptional cases, for example, when a pregnancy results from sexual assault, officials should allow access to abortion to protect the condition of the victim of a crime, particularly when vulnerable women are involved (e.g., girls, young women, migrant women, disabled women). Regarding the latter, the investigation of the occurrence of a crime should occur after the abortion and must not serve as a premise for delaying the procedure as further delays might pose greater health risks for the women involved and result in complex ethical challenges.

Considering the aggregation of vulnerabilities results in a differentiated assessment of the cases in which it is more difficult for women to access information and family planning methods. Therefore, in the framework of a judicial process, it would be relevant to consider these difficulties while accessing evidence when a crime has been committed, such as if the concerned entities refuse to account for the legal medical opinion or if, for example, the abuser uses a condom and refrains from hitting the victim so that there are no bruises.

The differentiated approach may also exhibit the need to identify the incidence of stereotypical narratives on the part of sex offenders, witnesses, and public and institutional officials. In this manner, the intersectionality of differentiated approaches could require officials, at the decision-making point, to assess whether their decision is contributing to the perpetuation of deep-seated stereotypes, which are settled and reproduced in a culture that tends to, for example, normalize violence and the (re)victimization of anyone who undergoes the abortion or has been a victim of a crime.

⁴⁴ In contrast, authors show some obstacles in access to an abortion: Finer, L. B.; Frohwirth, L. F.; Dauphinee, L. A. *et al.*, *Timing of steps and reasons for delays in obtaining abortions in the United States*, *Contraception*, vol. 74, no. 4, 2006, pp. 334–344. DOI 10.1016/J.CONTRACEPTION.2006.04.010; Foster, D. G.; Jackson, R. A.; Cosby, K. *et al.*, *Predictors of delay in each step leading to an abortion*, *Contraception*, vol. 77, no. 4, 2008, pp. 289–293. DOI 10.1016/J.CONTRACEPTION.2007.10.010; Ostrach, B.; Cheyney, M., *op. cit.*

One interesting alternative might be to consider ordering the publication of model court rulings that address the protection of women's rights, with the parties' identities withheld so that lower-level judges and tribunals can have clear constitutional parameters for their decisions. In addition, another useful instrument could be the development and publication of manuals with guidelines on the application of differentiated approaches and intersectionality. Such tools could be provided to all public officials (including administrative and judicial officials) to help them better understand how certain vulnerabilities can impede access to health and education systems.

Among the parameters that should be taken into account is the need to admit that women have autonomy and are, therefore, capable of self-determination. These parameters can be created starting from the formulation of the questions to be asked by officials before deciding whether to conduct an abortion. The questions should be aimed at establishing whether the conditions of disability, poverty, sexual orientation, national origin, and migratory status could have conditioned an imbalance. The objective is to reveal differences in facts to establish differences in rights.

In addition, this implies breaking with the stereotyped patterns of family models in which women are seen as incapable of making decisions such that motherhood becomes an imposition with serious social consequences. Other stereotypical narratives that relevant actors should distance themselves from include those that promote the feminization of care, which are culturally rooted and perpetrated by public policies as well as legal and administrative decisions. Such narratives ultimately result in the *a priori* exclusion of men from duties and responsibilities in relation to the upbringing of a child.⁴⁵

Nor can the problems associated with unwanted teenage pregnancy be forgotten in this panorama. The incidence rate thereof is strongly connected to factors such as poverty, and issues related to unwanted teenage pregnancies present the same problems as those previously mentioned.⁴⁶

⁴⁵ See UNIFEM, *Tiempo de cuidados: las cifras de la desigualdad* [online], 2020. Available at: https://www2.unwomen.org/-/media/field%20office%20colombia/documentos/publicaciones/2020/01/tiempo_de_cuidados.pdf?la=es&vs=5228; Criado Perez, C., *Invisible Women: Exposing Data Bias in a World Designed for Men*, Harry N. Abrams Inc., New York, 2019.

⁴⁶ Cfr. Álvarez Nieto, C.; Pastor Moreno, G.; Linares Abad, M. *et al.*, *Motivaciones para el embarazo adolescente*, *Gaceta Sanitaria*, vol. 26, no. 6, 2012, pp. 497–503. DOI 10.1016/j.gaceta.2011.12.013; Kost, K., *op. cit.*; Rodríguez Gázquez, M. A., *Factores de riesgo para embarazo adolescente*, *Medicina U.P.B.*, vol. 27, no. 1, 2008, pp. 47–58; Singh, S.; Sedgh, G.; Hussain, R., *op. cit.*; Sedgh, G. *et al.*, *op. cit.*; Stern, C., *Vulnerabilidad social y embarazo adolescente en México*, *Papeles de Población*, vol. 10, no.

The objective is to consider the disproportionate burden on women who cannot access abortions legally and are forced to assume unwanted pregnancies. Similarly, the identifying prejudiced identity stereotypes can create a path toward epistemic justice.⁴⁷

Here, it is appropriate to draw attention to the expectation of joint responsibility between the family, society, and the state. Namely, it would be detrimental to maintain restrictions on abortion without guaranteeing access to sexual reproductive health and without promoting a culture of parental responsibility.

This is an issue of self-responsibility; all parties should take responsibility for the consequences of their personal choices in relation to procreation and be held accountable for other related obligations.⁴⁸

However, it should be noted that obstacles to the exercise of the right to decide the number of children will likely result in irresponsible parenting, entailing a threat in terms of the infringement of the rights of children. Therefore, given the additional responsibilities of the state in such cases, the state should consider consolidating public health problems in instances where intervention is necessary to avoid the undesirable result of the institutionalization of children.

6. CONCLUSION

To effectively guarantee equality, autonomy, liberty, and reproductive self-determination, it is important for states to concretize the right for an individual to decide their desired number of children freely and responsibly. The criminalization of abortion is incompatible with constitutional law systems (to the extent that the guarantee of the protection of human rights is disregarded) because it involves the imposition of an unreasonable and unjustifiable burden on vulnerable women. Simultaneously, it favors the creation of a set of risks in the exercise and guarantee of the rights of children and young people.

39, 2004, pp. 129–158; Stern, C., *Estereotipos de género, relaciones sexuales y embarazo adolescente en las vidas de jóvenes de diferentes contextos socioculturales en México*, Estudios Sociológicos, vol. 25, no. 73, 2007, pp. 105–129.

⁴⁷ Fricker, M., *Epistemic Injustice: Power and the Ethics of Knowing*, Oxford University Press, Oxford, 2007.

⁴⁸ In this sense, Cordiano, A., *Il principio di autoreponsabilità nei rapporti familiari*, Giapichelli, Torino 2018; Rueda, N., *La responsabilidad civil en el ejercicio de la parentalidad: Un estudio comparado entre Italia y Colombia*, Universidad Externado de Colombia, Bogota, 2020.

Accordingly, the legal system should focus on facilitating the decriminalization of abortion and promoting equal access to sexual and reproductive health. The expectation for equality entails the consideration of specific differences in terms of vulnerabilities. Legal and administrative officials must implement differentiated approaches that value the differentiated impact of decisions that involve vulnerable groups, particularly girls, young people, migrants, disabled women, ethnic minorities, poor and indigenous women.

The aforementioned approaches should adopt protection measures that account for these differences and secure the exercise of rights without any discrimination-based obstacles.

REFERENCES

- Alvarado García, A. M.; Salazar Maya, Á. M., *Análisis del concepto de envejecimiento*, Gerokomos [online], 2014. DOI 10.4321/s1134-928x2014000200002
- Álvarez Nieto, C.; Pastor Moreno, G.; Linares Abad, M. *et al.*, *Motivaciones para el embarazo adolescente*, Gaceta Sanitaria, vol. 26, no. 6, 2012, pp. 497–503. DOI 10.1016/j.gaceta.2011.12.013
- Amagliani, R., *Autonomia privata e diritto di famiglia*, Giappichelli, Torino, 2005.
- Angeloni, F., *Autonomia privata e potere di disposizione nei rapporti familiari*, UTET, Padova, 1997.
- Anitha, S.; Gill, A. K., *Making Politics Visible: Discourses on Gender and Race in the Problematisation of Sex-Selective Abortion*, Feminist Review, vol. 120, no. 1, 2018, pp. 1–19. DOI 10.1057/S41305-018-0137-4.
- Arenas, L.; Cerezo, A., *Realidad penitenciaria en Colombia: la necesidad de una nueva política criminal*, Revista Criminalidad, vol. 58, no. 2, 2016, pp. 175–195.
- Bambra, C., *Placing intersectional inequalities in health*, Health & Place, vol. 75, 2022, Article 102761. DOI 10.1016/J.HEALTHPLACE.2022.102761.
- Batastini, A.B.; Jones, A.C.T.; Patel, M. *et al.*, *Why Correctional Service Providers and Researchers Should Focus on Intersectionality and Recommendations to Get Started*, Criminal Justice and Behavior, vol. 49, no. 6, 2022, pp. 930–946. DOI 10.1177/00938548221074369.
- Bix, B. H., *Family Law: Values Beyond Choice and Autonomy?*, Law and Philosophy, vol. 40, no. 2, 2020, pp. 163–183. DOI 10.1007/S10982-020-09394-3.
- Boltanski, L., *La condición fetal. Una sociología del engendramiento y del aborto*, Akal, Madrid, 2016.

- Bonner, M. D., *Tough on crime: the rise of punitive populism in Latin America*, University of Pittsburgh Press, Pittsburgh, 2019.
- Boshier, R.; Rae, C., *Punishing Criminals: a Study of the Relationship between Conservatism and Punitiveness*, Australian & New Zealand Journal of Criminology, vol. 8, no. 1, 1975, pp. 37–45. DOI 10.1177/000486587500800105.
- Burbano Herrera, C.; y Haeck, Y., *The Innovative Potential of Provisional Measures Resolutions for Detainee Rights in Latin America Through Dialogue Between the Inter-American Court and Other Courts*, Urgency and Human Rights, 2021, pp. 223–244. DOI 10.1007/978-94-6265-415-0_10.
- CEAS, *Informe Penitenciario. Una mirada al mundo carcelario peruano*, Comision Episcopal De Accion Social, Programa Justicia Penal y Penitenciaria, 2013.
- Chará Ordóñez, W. D., *Crisis en los sistemas penitenciarios: derechos humanos, hacinamiento y desafíos de las políticas criminales. Una aproximación desde la producción bibliográfica*, Estudios de Derecho, vol. 78, no. 171, 2020, pp. 119–138. DOI 10.17533/udea.esde.v78n171a05.
- Cocomá Ricaurte, A.; Triviño Maldonado, C.; Rosero Arteaga, C. et al., *Barreras de acceso a la interrupción voluntaria del embarazo en el contexto de la pandemia por covid-19*, Bogotá, 2021. Available at: <https://despenalizaciondelaborto.org.co/wp-content/uploads/2021/08/Informe-barreras-covid-version-digital-definitiva.pdf>.
- Cook, K. J., *A passion to punish: Abortion opponents who favor the death penalty*, Justice Quarterly, vol. 15, no. 2, 1998, pp. 330–346. DOI 10.1080/07418829800093771.
- Cook, K. J.; Grimes, D. A.; Benson, J.; Singh, S. et al., *Unsafe abortion: the preventable pandemic*, Lancet, vol. 368, no. 9550, 2006, pp. 1908–1919. DOI 10.1016/S0140-6736(06)69481-6.
- Crenshaw, K.W., *On Intersectionality: Essential Writings*, The New Press, New York, 2017.
- Criado Perez, C., *Invisible Women: Exposing Data Bias in a World Designed for Men*, Harry N. Abrams Inc., New York, 2019.
- Duarte Quapper, C., *El adultocentrismo como paradigma y sistema de dominio. Análisis de la reproducción de imaginarios en la investigación social chilena sobre lo juvenil*, Universitat Autònoma de Barcelona, Barcelona, 2015.
- Eichler, M., *Cambios familiares: Del modelo patriarcal al modelo de responsabilidad individual en la familia*, in: Ávila Santamaría, R.; Salgado, J.; Valladares, L. (dir.), *El género en el derecho. Ensayos críticos*, Ministerio de Justicia y Derechos Humanos, ONU, UNIFEM, Quito, 2009, pp. 465–513.

- Erdman, J. N.; Cook, R. J., *Decriminalization of abortion – A human rights imperative*, *Best Practice and Research: Clinical Obstetrics and Gynaecology*, vol. 62, 2020, pp. 11–24. DOI 10.1016/j.bpobgyn.2019.05.004.
- Feldman, A., *Cross-Border Domestic Violence: The Global Pandemic and The Call for Uniform Enforcement of Civil Protection Orders*, *Suffolk Transnational Law Review*, vol. 40, no. 1, 2017, p. 35.
- Finer, L. B.; Frohwirth, L. F.; Dauphinee, L. A. *et al.*, *Timing of steps and reasons for delays in obtaining abortions in the United States*, *Contraception*, vol. 74, no. 4, 2006, pp. 334–344. DOI 10.1016/J.CONTRACEPTION.2006.04.010.
- Fontana, I., *Migration Crisis, Organised Crime and Domestic Politics in Italy: Unfolding the Interplay*, *South European Society and Politics*, vol. 25, no. 1, 2020, pp. 49–74. DOI 10.1080/13608746.2020.1738092.
- Foster, D. G.; Jackson, R. A.; Cosby, K.; *et al.*, *Predictors of delay in each step leading to an abortion*, *Contraception*, vol. 77, no. 4, 2008, pp. 289–293. DOI 10.1016/J.CONTRACEPTION.2007.10.010.
- Fricker, M., *Epistemic Injustice: Power and the Ethics of Knowing*, Oxford University Press, Oxford, 2007.
- Gavigan, S., *Something Old, Something New? Re-theorizing Patriarchal Relations and Privatization from the Outskirts of Family Law*, *Theoretical Inquiries in Law*, vol. 13, no. 1, 2012, pp. 271–301. DOI 10.1515/1565-3404.1292.
- Goelzhauser, G.; Konisky, D. M., *The State of American Federalism 2019–2020: Polarized and Punitive Intergovernmental Relations*, *Publius, The Journal of Federalism*, vol. 50, no. 3, 2020, pp. 311–343. DOI 10.1093/publius/pjaa021.
- Jones, R. K.; Lindberg, L.; Witwer, E., *COVID-19 Abortion Bans and Their Implications for Public Health*, *Perspectives on Sexual and Reproductive Health*, vol. 52, no. 2, 2020, pp. 65–68. DOI 10.1363/psrh.12139.
- Kost, K., *Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends Since 2002*, *Guttmacher Institute*, New York, 2015.
- Lalli, C.; Montegiove, S., *Legge 194 Mai dati. Perché la relazione del Ministero sulla 194 non basta e servono i dati aperti e per singola struttura degli obiettori di coscienza* [online], 2022 [consulted June 24, 2022]. Available at: <https://www.associazionelucacoscioni.it/cosa-facciamo/aborto-e-contraccezione/legge-194-mai-dati>.
- Lebrón, A. M. W.; Schulz, A. J.; Gamboa, C. *et al.*, *Mexican-Origin Women’s Construction and Navigation of Racialized Identities: Implications for Health Amid Restrictive Immigrant Policies*, *Journal of Health Politics, Policy and Law*, vol. 47, no. 2, 2022, pp. 259–291. DOI 10.1215/03616878-9518665.

- Mccall, L., *The Complexity of Intersectionality*. Signs, vol. 30, no. 3, 2015, pp. 1771–1800. DOI 10.1086/426800.
- Michener, J.; Lebrón, A. M. W., *Racism, Health, and Politics: Advancing Interdisciplinary Knowledge*, Journal of Health Politics, Policy and Law, vol. 47, no. 2, 2022, pp. 111–130. DOI 10.1215/03616878-9517149.
- Montez, J. K., *US State Polarization, Policymaking Power, and Population Health*, Milbank Quarterly, vol. 98, no. 4, 2020, pp. 1033–1052. DOI 10.1111/1468-0009.12482.
- Murray, M., *The Symbiosis of Abortion and Precedent*, Harvard Law Review, vol. 134, 2020, pp. 308–351.
- Nash, J. C., *Re-Thinking Intersectionality*, Feminist Review, vol. 89, no. 2008, pp. 1, 1–15. DOI 10.1057/FR.2008.4.
- Nussbaum, M. C., *Crear capacidades. Propuesta para el desarrollo humano*. 6a ed., Paidós, Bogotá, 2020.
- Nussbaum, M. C.; Levmore, S., *Envejecer con sentido. Conversaciones sobre el amor, las arrugas y otros pesares*, Paidós, Bogotá, 2020.
- Oberlander, J., *Implementing the Affordable Care Act: The Promise and Limits of Health Care Reform*, Journal of Health Politics, Policy and Law, vol. 41, no. 4, 2016, pp. 803–826. DOI 10.1215/03616878-362095.
- Ostrach, B., “yo no sabía.”-immigrant women’s use of national health systems for reproductive and abortion care, Journal of Immigrant and Minority Health, vol. 15, no. 2, 2013, pp. 262–272. DOI 10.1007/S10903-012-9680-9.
- Ostrach, B.; Cheyney, M., *Navigating Social and Institutional Obstacles: Low-Income Women Seeking Abortion*, Qualitative health research, , vol. 24, no. 7, 2014, pp. 1006–1017. DOI 10.1177/1049732314540218.
- Pacheco, J.; Maltby, E., *The Role of Public Opinion—Does It Influence the Diffusion of ACA Decisions?*, Journal of Health Politics, Policy and Law, vol. 42, no. 2, 2017, pp. 309–340. DOI 10.1215/03616878-3766737.
- Parker, W. J., *The moral imperative of reproductive rights, health, and justice*, Best Practice and Research: Clinical Obstetrics and Gynaecology, vol. 62, 2020, pp. 3–10. DOI 10.1016/j.bpobgyn.2019.07.006.
- Pelegrino De La Vega, D., *Aspectos bioéticos relacionados con el aborto*, Revista Cubana de Enfermería. Editorial Ciencias Médicas, 2006, vol. 22, no. 3, 2006, pp. 1–11. Available at: http://scielo.sld.cu/scielo.php?script=sci_arttext&pid=S0864-03192006000300008&lng=es&nrm=iso&tlng=es
- Pearlman, J.; Robinson, D. E., *State Policies, Racial Disparities, and Income Support: A Way to Address Infant Outcomes and the Persistent Black-White Gap?*

- Journal of Health Politics, Policy and Law, vol. 47, no. 2, 2022, pp. 225–258. DOI 10.1215/03616878-9517205.
- Piekarewicz Sigal, M., *Bioética, aborto y políticas públicas en América Latina*, Revista de Bioética y Derecho, no. 33, 2015, pp. 3–13. DOI 10.4321/s1886-58872015000100002.
- Rangel Torrijo, H., *Cooperation and education in prison: A policy against the tide in the Latin American penitentiary crisis*, International Review of Education, vol. 65, pp. 785–809. DOI 10.1007/S11159-018-9747-5.
- Rodotà, S., *La vita e le regole: tra diritto e non diritto*, Feltrinelli, Milano, 2009.
- Rodotà, S., *Diritto d'amore*, Laterza, Roma, 2015.
- Rodríguez Gázquez, M. A., *Factores de riesgo para embarazo adolescente*, Medicina U.P.B., vol. 27, no. 1, 2008, pp. 47–58.
- Rodríguez, J. M.; Bae, B.; Geronimus, A. T. et al., *The Political Realignment of Health: How Partisan Power Shaped Infant Health in the United States, 1915–2017*, Journal of Health Politics, Policy and Law, vol. 47, no. 2, 2022, pp. 201–224. DOI 10.1215/03616878-9517191.
- Rueda, N., *La noción jurídica de la familia en Colombia: una categoría en construcción entre restricción y libertad*, Universidad Externado de Colombia, Bogotá, 2016.
- Rueda, N., *La responsabilidad civil en el ejercicio de la parentalidad: Un estudio comparado entre Italia y Colombia*, Bogotá, Universidad Externado de Colombia, 2020.
- Saller, R. P., *Patriarchy, Property and Death in the Roman Family*, Cambridge University Press, Cambridge, 1997.
- Sánchez-Mejía, A. L.; Rodríguez, C. L.; Fondevila, G. et al., *Mujeres y prisión en Colombia: desafíos para la política criminal desde un enfoque de género*, Pontificia Universidad Javeriana, Bogotá, 2018. Available at: <https://repository.javeriana.edu.co/handle/10554/41010>.
- Singh, S.; Sedgh, G.; Hussain, R., *Unintended Pregnancy: Worldwide Levels, Trends, and Outcomes*, Studies in Family Planning, vol. 41, no. 4, 2010, pp. 241–250. DOI 10.1111/j.1728-4465.2010.00250.x.
- Sedgh, G.; Singh, S.; Shah, I. H. et al., *Induced abortion: Incidence and trends worldwide from 1995 to 2008*, The Lancet, vol. 379, no. 9816, 2021, pp. 625–632. DOI 10.1016/S0140-6736(11)61786-8.
- Servon, L.; Esquier, A.; Tiley, G., *Gender and Financialization of the Criminal Justice System*, Social Sciences, Multidisciplinary Digital Publishing Institute, vol. 10, no. 11, 2021, pp. 446. DOI 10.3390/SOCSCI10110446.

- Slominski, P.; Trauner, F., *Reforming me softly—how soft law has changed EU return policy since the migration crisis*, *West European Politics*, vol. 44, no. 1, 2021, pp. 93–113. DOI 10.1080/01402382.2020.1745500.
- Stern, C., *Vulnerabilidad social y embarazo adolescente en México*, *Papeles de Población*, vol. 10, no. 39, 2004, pp. 129–158.
- Stern, C., *Estereotipos de género, relaciones sexuales y embarazo adolescente en las vidas de jóvenes de diferentes contextos socioculturales en México*, *Estudios Sociológicos*, vol. 25, no. 73, 2007, pp. 105–129.
- UNIFEM, *Tiempo de cuidados: las cifras de la desigualdad* [online], 2020. Available at: <https://www2.unwomen.org/>
- Wallaschek, S., *The Discursive Construction of Solidarity: Analysing Public Claims in Europe's Migration Crisis*, *Political Studies*, 2020, vol. 68, no. 1, pp. 74–92. DOI 10.1177/0032321719831585.
- Wallaschek, S., *Contested solidarity in the Euro crisis and Europe's migration crisis: a discourse network analysis*, *Journal of European Public Policy*, vol. 27, no. 7, 2020, pp. 1034–1053. DOI 10.1080/13501763.2019.1659844.
- Wallaschek, S., *The Discursive Construction of Solidarity: Analysing Public Claims in Europe's Migration Crisis*, *Political Studies*, vol. 68, no. 1, 2020, pp. 74–92. DOI 10.1177/0032321719831585.
- Wandschneider, L.; Miani, C.; Razum, O., *Decomposing intersectional inequalities in subjective physical and mental health by sex, gendered practices and immigration status in a representative panel study from Germany*, *BMC Public Health*, vol. 22, no. 1, 2022, p. 683. DOI 10.1186/S12889-022-13022-1.
- Wood, W. R., *Punitive Populism*. *The Encyclopedia of Theoretical Criminology* [online]. John Wiley & Sons, Ltd, 2014 [consulted 01/05/22], 1. DOI 10.1002/9781118517390.WBETC140.
- Woods, C., *Confrontando La Superpoblacion Carcelaria en America Latina: Analisis Comparativo De Los Precursores Necesarios Para Reformar*, *ILSA Journal of International and Comparative Law*, vol. 22, n. 3, 2016, pp. 618-647.

Sažetak

Natalia Rueda*

POBAČAJ I REPRODUKTIVNA AUTONOMIJA – NEKE IDEJE O DIFERENCIRANIM PRISTUPIMA

Rasprava o namjernom prekidu trudnoće u pravu nije lišena utjecaja izvanpravnih elemenata kao što su predrasude, moralna, vjerska, politička i ideološka uvjerenja. Iako je fokus rasprave na pravnim pitanjima, teško je izbjeći razne subjektivne interpretacije. Slijedom toga, razne ustavne odredbe o zaštiti života (bilo ovisnog ili neovisnog) isto tako služe za podupiranje permisivnih i prohibicionističkih sudskih i zakonodavnih trendova. Objke ove kontradiktorne pozicije onemogućuju sagledavanje raznih aspekata tog problema pa je time i nemoguće doći do zajedničkog odgovora. Uz kvalitativno istraživanje, ovaj rad bavi se problemima koje postavlja tradicionalni pristup pobačaju. U radu se ističu neke od prepreka ostvarivanju prava na pobačaj. Također se predlažu kriteriji i metodološki alati koji bi mogli pomoći javnim dužnosnicima u odlučivanju i definiranju javne politike kojom bi ženama jamčili njihova ljudska prava, a da ne pribjegavaju stereotipima. Iako se pravo na pobačaj u nekom trenutku priznaje, to ne znači da je riječ o stečenom pravu. Naprotiv, riječ je o pravu izloženom konstantnom riziku i opasnosti zbog djelovanja ideoloških interesa.

Ključne riječi: pobačaj, reproduktivna prava, intersekcionalnost, penalni populizam, ljudska prava.

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