“Silent holocaust: bioethics and morality against the Culture of Death”

¿Women’s freedom of choice or embryo’s right to life?

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Supervised by Professor Theofano Papazzissi
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“Silent holocaust: bioethics and morality against the Culture of Death”

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ABSTRACT

Today the world is witnessing the violation of some human values e.g. the respect of others life. With the scientific and technological progress, international instruments are necessary. For this reason, the Convention on Human Rights and Biomedicine has been ratified for the protection of human rights (HR) and dignity of the human being with regard to the application of biology and medicine to guarantee human rights protection.

The world is becoming scenario of ideologies, promoted by international organizations and governments which are seeking to obtain the biggest slice of the pie, attacking the fundamental principles of the Universal Declaration of Human Rights (UDHR). The social problems we witness every day are accepted by our society: Poverty, lack of education, family breakdown, sexual and domestic violence, they are now part of our culture. It is for this reason that this thesis will seek to promote the values and morality, and thus promote the meaning and value of life and respect for ontological dignity of the human being as a subject and not as an object of society under the mercy of political, economic and social ideologies that destroy humans life’s. Bioethics and morality play an important role to justify through science and reason the value of human beings based on a universal morality of human rights.
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<td>FGM</td>
<td><em>Female genital mutilation</em></td>
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<td><em>Guttmacher Institute</em></td>
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<td>ICESCR</td>
<td><em>International Covenant on Civil and Political Rights.</em></td>
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<td>ICCPR</td>
<td><em>International Covenant on Economic, Social and Cultural Rights</em></td>
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<td>IVF</td>
<td><em>In Vitro Fertilization</em></td>
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INTRODUCTION

Given that the first inalienable right of humanity is the Right to Life, bioethics and morality research are significant to preserve and to promote life and dignity against culture of death. According to this, Silent Holocaust refers to the tendencies of international human rights instruments regarding eugenics in Europe and Latin-America, as the worst silent war that has caused more deaths than the WWII Holocaust.

Eugenics and abortion in 21st century have provoked discussions in the field of HR in order to ensure the protection of all human beings dignity against socio-political and economic interests. Given the lack of consensus in the International Human Rights instruments, bioethics and morality are the basis of this work to study the health consequences of eugenic methods, necessary for the discussion of the legalization/non legalization of these methods due to the implication of other HR. This thesis will look at the family as the basis of society, in order to deal with the controversy of when does life begins, if abortion must be legalized, or if an unborn child should be protected by International Law. For these inquiries, the elemental issue to analyze is: What role International Law of HR must take to support universal principles in order to protect human life against culture of death?

Even though this research will not create a consensus or an agreement inside the social groups about legalizing or not reproductive rights in Europe and Latin-American due to moral relativism, and ideologies in society, it will be a useful tool to educate society including youth society about the risk and consequences of abortion and eugenics methods in health. The research approach is to defend human right to life and dignity of each human being in relation to one universal morality. The approach is to describe the political, economic, social interest behind the culture of death and discriminatory and health implications to women and children lives.
CHAPTER 1: Personhood and Individuality of Human beings

Bioethics has become an increasingly important tool to fight those problems that have emerged through scientific and biological progress. Therefore, it is necessary to study the issues that created the Culture of Death: Eugenics, abortion, etc., to promote the culture of life through HR.

It is for this reason that is essential to understand the development and the Malthusian origin of this holocaustic ideology during centuries promoting abortive methods. Keeping this in mind, eugenics has become a scientific dictatorship used to promote the same principles illustrated in WWII by the Nazi regime, regarding the elimination of those who were considered inferior: Jews, gypsies, disabled, etc.; serving to the same purpose eugenics has been responsible for eliminating the most defenceless, voiceless, unborn children.

Every human being is represented in the international legal framework hence in HR by virtue of their unique humanness and personhood. In conclusion, bioethics is the basis of the following chapters, taking into account the importance of the proper use of all knowledge in the field of science and biology, considering that bioethics is the moral philosophy of biomedicine in order to preserve human life according to moral principles and values.

1. Philosophical Anthropology

It is necessary in order to study man as a human being, to understand the importance of his inherent dignity. For this purpose the ontological approach will be used throughout the whole thesis in order to study man in his capacity as a person.

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1 Anthropology is the systematic study of the man according to the ending causes and essential principles of being and human acts. Lara R., Manual de Bioética, Defensa y Promoción de la Persona, 2011, p. 30.
1.1 Hylomorphic theory- what is the man?

A human being is not "something" that exists in society to satisfy the pleasures of someone else. A man is formed by two intrinsic principles: soul and a body. Aristotle’s said in his Hylomorphic Theory: "All natural body, that has life, must be substance, a compound substance".

Regarding to this, the substance determines the capacity and potentiality to growth and transform and each human being is determined by his essence to develop his potentialities in order to become what he is call to be (actuality). For this reason is not possible to say that someone is not a person by the fact that his capacities or actions of thinking, moving, etc., are just in potentiality and not in actuality level.

Thomas Aquinas in his Summa Teologica used Aristotle's Hylomorphic theory to confirm that man is composed by matter (body) and form (soul) resulting in his substance. The soul is immortal and is attached to the body, forming a substantial relationship not an accidental one. Therefore, the form allows the matter to reach its potential and by this the body is individualized, this means that every human being is unique. Aquinas asserted that the essence is the potentiality which allows man to move and the actuality is the existence of the human person; this existence is the actuality of the essence. According to this every human being (essence) is receiving potential existence.

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5 Every created being is characterized by what he/she is, in actuality, and what he/she can be (potentiality). The radical potentiality that something could become a significant subject is what is called matter. Matter exists in the substance from the moment that there is substance itself, and under the actuality that makes it to exist. This act establishing the substance is the form. Such is the metaphysical constitution of all reality merely corporeal in which existence is impossible the existence of matter without the form, the same must be said from the form respect the matter. Aquinas T., Summa Teologica, at http://biblioteca.campusdominican.org/1.pdf (consulted on 26 February 2013), pp.636.
2. Human’s Dignity

Regarding to human essence is fundamental to accept the importance of human dignity as the base founded on natural law. As we have previously said regarding the scientific and technological progresses, human dignity has been threatened by the so-called Culture of Death, which implies crimes against man. For this reason, this chapter focuses in the origin of the HR established in the UDHR (1948) in order to study later those rights in the framework of the national Constitutions that protect dignity of man from the conception until his natural death.

As discussed above, the human being from his conception has potentially the elements that will lead him to the complete actuality of the person\(^6\). For the same reason, to classify an elder or disabled person who cannot properly exercise all his vital functions or to be completely aware, does not exclude him from being a person (personhood)\(^7\). HR were created in order not to discriminate but to treat all human beings equally, regardless of the stage of their development: embryonic stage, childhood, an adolescent, an adult or elder person, lacking health or not.

2.1. 21st century/issues against dignity

There are so many ways in which man has found to self-destruct, through wars, famine, trafficking of women, children, weapons, drugs etc. Currently a culture that undermines the fundamental principle of life has been developing. This also has led to a disastrous war in which the most defenceless, the unborn child, the ill person, and the elderly have been the most affected; this is the war against population growth and its biggest weapon, eugenics. This has unleashed the Culture of Death, promoting eugenic methods: abortion, embryo manipulation and other practices. It is for this reason that

\(^6\) Lara, R., op.cit.2, p. 65.

\(^7\) The personal ontological conception (with Access to knowledge of the self) in the field of bioethics is relevant, since it allows the man to recognize his transcendence and in the theoretical-applicative in reference to bioethical issues, to defend the respect and protection of human. Lara R., op. cit. 2, p. 65, Palazzini L. 1993, Sgreccia, 1991.
bioethics should keep on mind the essence and value of every person and, remembering that science ends where the dignity of the person is threatened.

3. **Bioethics**

Bioethics, as defined in Art. 1 of the Universal Declaration on Bioethics and HR concerns “ethical issues related to medicine, life sciences and associated technologies as applied to human beings, taking into account their social, legal and environmental dimensions.”

The development and importance of bioethics can be studied since the introduction of Hippocratic medicine, in which the Greek philosophers made the emphasis of living according to nature, natural morality. However, today we live in a world where it is easier to live with a hedonistic ethic, a superposition of the pleasant above of what is morally acceptable.

3.1. **Natural moral law**

*Natural moral law* is a set of rules or standards that man discovered based on their nature. It is one universal law which leads to the recognition of the dignity of the person's *essence*. If moral relativism is practiced, the rational bases that defend the rights of human would disappear, especially from the weak and defenceless; the powerful would be the ones who impose their views to those who have no voice, e.g. the unborn child. This current relativistic wave has been mentioned because of the high impact it has had on the practice of HR, which have been affected from its democratic foundations. Democracy as the basis of all human law has a duty to protect life on the

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10 Is the claim that only pleasure or pain motivates us. It is the most significant form of psychological hedonism. Normative hedonism is the claim that all and only pleasure has worth or value, and all and only pain has disvalue. Jeremy Bentham endorsed both sorts of hedonism in the ringing passage that opens his *An Introduction to the Principles of Morals and Legislation*: “Nature has placed mankind under the governance of two sovereign masters, pain, and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do” (1789). Standford Encyclopedia of philosophy, *Hedonism*, at http://plato.stanford.edu/entries/hedonism/2004 (consulted on 28 March 2013).
basis of a universal morality. The UDHR was not ratified based on relativistic ideas, on the personal ideologies; but instead, it was proclaimed as a common standard for all peoples and nations of the world.

Because of the multidisciplinary aspect of bioethics, a number of international legal instruments have been adopted to deal with the relevant issues related to life protection and biomedicine. These documents have been drafted specially by the UN (UNESCO) and other regional bodies such as the Council of Europe (COE). This thesis first examines international and regional legal instruments on bioethics in general and then in chapter three turns to a consideration of the specific aspects of the unborn child protection under international and regional law in order to determine the legal protection the embryo must have.

a. The Universal Declaration on bioethics and Human rights

The aim of the UDHR is “to provide a universal framework of principles and procedures to guide States in the formulation of their legislation, policies or other instruments in the field of bioethics”; “to promote respect for human dignity and protect human rights … consistent with international human rights law (...) and “to recognize the importance of freedom of scientific research.”\(^{11}\) Art.3 includes the respect for human dignity and HR.

b. Convention on Human Rights and biomedicine/ Oviedo Convention\(^{12}\)

The purpose of the Convention is “to protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine” (Art.1).

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4. Human Rights v. eugenics culture

The Preamble of the UN Charter establishes dignity and worth of the human person as the basis of HR and this is supported in the UDHR in Art.22 that states the importance of freedom and development of personality, required for the recognition and individuality of the human being. While the UDHR has no force as a binding treaty, it has encouraged nonetheless a culture of HR and thereby served as a framework to expand and recreate boundaries of HR.13

a. Human rights

"The Charter of the United Nations14 which you have just signed" said President Truman in addressing the final session" is a solid structure upon which we can build a better world. History will honour you for it. Between the victory in Europe and the final victory, in this most destructive of all wars, you have won a victory against war itself... With this Charter the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people."15

That is how the UN became a reality with the ratification of the Charter in 1945. As a result, the UN General Assembly adopted the UDHR on December 10th 1948. The international community involved in its draft was looking to prevent violations against human dignity.16 The international community committed to preserve HR against any kind of violation or interest.17

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13 Smith, Human rights and biomedicine, pp.8-9.
16 The UDHR is generally agreed to be the foundation of international HR law. UN, The foundation of International human rights law, at http://www.un.org/en/documents/udhr/hr_law.shtml (consulted 02 March 2013).
17 By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill HR. Ibidem.
According to the right to get marry and the right to have a family in Art.16 of the UDHR, does is it possible to say that human rights give the right to practice IVF? Do rights make it allowable or violate person’s dignity? Reproductive rights are guarantees of protection of life and dignity? Is the right to health a right that protects science and biotechnology practices? Or for instance, is the right of Art. 5 which states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment", a law that requires protection of those people without conscience and voice to defend their life, such as the unborn child or disabled patients? Should human’s law protect man against birth control policies? We should be aware that the UDHR, Art. 27 establish the right of all the citizens in common to share the benefits of scientific advancements, and their technological applications but there must be a limit, and that limit is dignity. The Oviedo Convention (1997), states in Art.2 that human being shall prevail over the sole interest of society or science.

Human rights have the obligation to provide protection for those who belong to the human race. During the Conference on Human Rights in Vienna, Austria in 1993 it was stated in its Program of Action that "basic human rights and freedom are the birthright of all human beings”18. It was also claimed the compromise to promote respect for all HR and liberties, according to the provisions of the Charter of the United Nations, Art.1, in accordance with the universal rights of man.

4.1. Human Rights Principles

HR are those that the person possesses by virtue of his/her very humanity according to the UDHR preamble; therefore, the first requirement is to be human. In 1993, during the World Conference on Human Rights it was established that all HR are rooted in the dignity and worth of the human person. This is the central aim of HR and fundamental freedoms; the human person should be the main beneficiary of these rights and freedoms and should actively participate in their realization.19 However, many of

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the current problems with HR in which bioethics plays a decisive role in promoting respect to life and dignity of every person, depend on the answer to be given to the question *what is a person?* The *person* is the primary purpose of all rights.

If we say that *person* is the one who has consciousness, a huge number of men classified as men but not as persons would be excluded such as: children, embryos and mentally ill people. Spaemann said: “None of the qualities is the *person*, because none of them is *substance*, are accidents because they are changing, the *person* is a man, not a quality of man, and the being of the person is the life of man.” Therefore, owning rights is a duty that every human being is required, because we never cease of being. Unborn or disabled, we are what we are because of our humanity; an embryo cannot be an object if it belongs to mankind. Our freedom does not give us the value as human beings but the capacity, the potential to act freely.

The UDHR established the legal concept of *person*. Therefore, the legal assessment of man was fundamental for the creation and ratification of the UDHR, and the respect of dignity of all members of humanity was stated in the preamble. If we deny the legal personality to a human being it would be a violation of his/her rights; men are bearers of HR simply because they are human beings. Art. 6 state that everyone has the right to the recognition of his/her legal personality.

**4.2. First notions of HR?**

In 1689 the *Bill of Rights* appeared and in the same period, John Locke wrote about natural rights, focusing on life, liberty, property and happiness and above all the state's obligation to preserve them. By 1776, the US Bill of Rights (the Virginia Declaration of Rights and the Declaration of Independence) were proclaimed. Thomas Jefferson, author of the American Declaration of Independence, stated that: "The care of

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21 “For the condition for been a person should be one criteria: biological membership to mankind. Hence it cannot be separate the start and end of life of the person from the beginning and the end of life. If there is "someone" has existed as a human organism individually, and will continue to exist as long as the body is alive. The being of the person is the life of a man. Person's rights are HR, and if the universe had other living natural species possessing an interiority who can sense and mature specimens available for rationality and self-consciousness, people should recognize them as members of this species (,,,)”.Ibidem.
Only fourteen years later the Declaration of the Rights of Man and Citizen was proclaimed in France after the Revolution. Yet, the French Declaration is seen as the first document of its character to refer contemporary social, economic, and cultural rights styled originally as the rights to education work, social protection and property ownership.  

The HR through the American Declaration of Independence, the French Declaration of the Rights of Man and Citizen (1789), and the United Nations Proclamation (1948) contain three required principles of what rights must be: natural and inherent in human beings, equal for everyone, and universal for all people everywhere.

Even though, the concept of HR was developed mostly in Europe, Europeans continued to violate HR through invasions and conquests that led to slavery, trafficking of men, women and children, and rape of women forced to have abortions. Furthermore in the 20th century social doctrines began to appear in all continents of the world by promoting ideologies such as fascism and Nazism. Therefore, it took two world wars for the final recognition of the inalienable rights of every HR to be made. With Hitler, HR had never been in danger of disappearing and countries in the world so desperate to protect them; they joined to shape the world into a new world order officially recognizing the dignity and worth of every person, drafting the most important document of HR. But what marked the milestone during the course of these years of war that killed millions of people because of racist ideologies?

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4.3. Holocaust: Dignity, power, and death

After the Nazi atrocities, the international community (the UN, the Nuremberg War Crimes Tribunals and the World Medical Association Organization) issued a clear condemnation of abortion as a crime against humanity. The historical significance of the Holocaust and the Nazi regime demonstrates the baseness in which a state can justify HR violations in name of law and justice. The term Holocaust mostly refers to the horrified genocide and persecution of victims during WWII, including Jews and disabled people, bringing the overall number of victims up to 10 million. The German government provoked these massive murders. As result, more than 200 thousand disabled people died and according to statistics the Nazi Regime established around 20,000 concentration camps to imprison millions of victims with whom Nazi Doctors performed countless medical experiments.

4.3.1. Nazi doctors

Currently, medicine and scientific progress in genetics have had a high impact, and in many cases opening way to eugenics. Eugenics has been used to argument about the world health, prevention of human suffering, and the improvement of human genes. They are used in ordinary hospitals through prenatal diagnosis, birth control and IVF. Some practices violate HR, based on discrimination such as sex selection, violating; Art. 3 of the UDHR protect the right to life, liberty and personal security of individuals.

Nazi Eugenics focused on those considered inferior lives unworthy to be lived. They approved the racial hygiene method through eugenics, based on social Darwinist ideas. The idea of racial hygiene became a policy through the Nuremberg Laws (1935) to protect pure German blood. These same policies developed programs such as Program AktionT4 or mercy killing, in order to eliminate people with disabilities because they represented a high economic burden. Therefore, health became the value of every person; and racial hygiene pretended to nourish selectively bioethics-elitist, a

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23 In the Pohl case, count one charged the commission of crimes against humanity which included abortion as Count. Mazal, Trial of war Criminals before the Nuremberg Military Tribunals, Vol. V, , at http://www.mazal.org/archive/nmt/05/NMT05/T008.htm (consulted on 23 March 2013) pp.88-9.

24 The Hebrew term is Shoah –destruction or desolation.
hygiene that would constitute the basis for a political bioethics, at the mercy of the Nazi worldview.\textsuperscript{25}

Experiments were carried out but neither respect bioethical principles nor medical principles based on the Hippocratic Oath. \textit{Nazi Doctors} were looking for cures to diseases and by 1941, 70,000 people with a disability or illness has died exposed to surgeries, toxic gases, and mortal virus vaccines such as pneumonia. Others were exposed to physiological experiments, such as extreme temperatures, while others were forced to ingest seawater to test the survival of the armed force and therapeutic experiments in which they were exposed to diseases such as hepatitis and malaria. Transplants and removal of organs were performed for experiments on tissue regeneration in order to investigate how to heal the wounds of war on soldiers.

Joseph Mengele, \textit{the Angel of Death}, another \textit{Nazi Doctor}, specialized in research of twins; tortured thousands of children in order to duplicate the Aryan race, these experiments were performed without anaesthesia. Moreover in the 1942 a boom of experiments in women took place. Herta Oberheuser, \textit{Nazi Doctor} performed abortions to women without anaesthesia. Those who practiced abortions were found guilty at the Nuremberg trials (1947) of encouraging and compelling abortions, and were sentenced to 25 years in prison: “...protection of the law was denied to the unborn children”.\textsuperscript{26} The Nazis saw abortion as an act of killing and that Nuremberg condemned both the violations of liberty and the violations of life as far as abortion was concerned: “Like the kidnapping of children and the seizing of newborns also prosecuted at this trial, abortions were seen as wrong at any time, not just when done for racial genocidal reasons.”\textsuperscript{27}

\textsuperscript{25} Rubio, A., \textit{The Nazis and Evil: The Destruction of Human}, P.33.
\textsuperscript{26} Nuremberg Trials Record: \textit{“The RuSHA Case”}, March 1948, Vol. IV, p.1077. Available at http://www.mazal.org/archive/nmt04a/NMT04-T1076.htm.
Doctors became government policies servants and their main way of healing was the Holocaust. "National Socialism is nothing but applied biology"; this is one of the expressions used by Nazi medical ideology during the war.

The Nazis established factories known as Lebensborn (Fountain of Life), in which women with certain characteristics were recruited to have children with Nazi officers. These centres eliminated children who were born with some kind of physical or mentally ill. The "Final Solution" killed more than six million Jews by gas, shooting, and other measures. However, these eugenic programs did not emerge and were not developed exclusively in Germany, countries around the world like US, Australia, UK, France and others, practiced methods that become part of the culture of death. There were even unethical medical practices that were used on human beings in other parts of the world, i.e. the Tuskegee Experiment in America.

5. **Eugenics today**

WWII medical atrocities and the Nuremberg trials principles led to the enactment of medical ethics policies. During the final General Assembly debate on the UDHR in 1948, against to the barbarous doctrines of Nazism and Fascism trials were recognized as the primary inspiration for the UDHR.

Since 1950, UNESCO drafted the Statements of Race, formulating that there is no superior or inferior races. Torture, discrimination, forced abortions and sterilizations are unfortunately silenced and practiced in ordinary people who die every day; there is no difference with Nazi medical practices and the current methods. HR are not history lesson, speeches campaigns, or words on paper, are the choices we make as human beings responsible of respecting and protecting each other.

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The culture of death is nothing but the result of eugenic practices violating the right to life. This is the purpose of the next chapter, to determine the origins of these practices that have led to the practices of abortion in modern times and the violation of the right to life. This will be done with the purpose to finally determine the role that international human rights law should have in this field and the interest behind government policies related to this.


CHATER#2: The problem and the issues rose: The Culture of Death

The *Culture of Death* is the current war against human life promoted through abortion, sterilizations, and embryos manipulation. It has been hidden with euphemisms such as *safe abortion, birth control*, and *planned parenthood*. Culture of death has been fighting against what was discussed in the previous chapter, to see the human person as an end in himself/herself. Human life is threaten, not with a war of guns but with a war of ideas beneath a silent holocaust covered by laws which at first glance are seen as life defenders. While the freedom goes against the person, it goes against his/her HR. There is no justification to support acts that contradict the respect of the person’s dignity.

The UDHR was established with a purpose, to reaffirm the inalienable rights to protect dignity and life of every person. The law was not implemented in order to provide freedom of doing whatever men wants to do, but in order to make them responsible for their acts. The same stands for our rights, our liberty ends when the right of others begin. Without health, it seems that life has lost its meaning to be lived; it is again proclaimed the Nazi words “*A life unworthy of living*”. Regarding to this, individual decision in which parents decide on the life of their baby are often taken.

Consequently, parents who decide to abort become the arbiters of the life of a human being because they think that is a burden or because the child will suffer after birth. In 2010, Argentina congress presented the project of law 8516-D-2010[^30], “*Integral protection for the human rights of the pregnant woman and the unborn child*” to guarantee the right to life. This law represents facilities for women victim of rape, women with risky pregnancies, and unemployment women able to receive financial aid from the state. It is not about the protection of the unborn child over the life of the woman, but about the protection of life in order to save the life of the mother and the life of the child as an alternative for abortion. This law is an initiative to guarantee the protection of women and unborn child to prevent abortions and maternal mortality.


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There are 22 more initiatives of law in Argentina that protects women; this shows the huge interest to solve motherhood problems through methods that aim.

To say that a sick child is an economic burden to the parents and the society resembles the Nazi practices that spread the Aktion 4. The only difference nowadays, is that during the Nazi regime it was forced while today the same practices are legitimized.

The population control theory was very successful in promoting the culture of death; the precursor of population control was Thomas Robert Malthus in England 1798.\textsuperscript{31} The Malthusian theory of population underlines that humanity is growing faster than available resources. Thus, with his book \textit{An Essay on the Principle of Population} (1798), Malthus became the precursor of the scientific dictatorship that is currently leading the \textit{Culture of Death}. The use of eugenics was supported by Malthusian fundamentals ideas, e.g. argued that: "The amount of supplies consumed in asylums, a sector of society that generally cannot be considered the most valuable, reduces the rations from those industrious and deserving members"\textsuperscript{32}; eugenic features are illustrated in Malthusian theory stating that the elders do not have the same value of life that other members of society have.

Based on this, eugenics emerge in the 18\textsuperscript{th} century by Francis Galton, Darwin’s cousin who supported his idea and said: “the study of the agencies under social control that improve or impair the racial qualities of future generations either physically or mentally”. Galton wanted to improve the human species, a refinement of the man through the Darwinian theory of evolution, by replacing natural selection for artificial selection under selective breeding. Eugenics started to be the tool used to increase the physical and intellectual standard of nations, in which the most capable would be able to survive.

\textsuperscript{31} Malthus, T., \textit{An Essay on the Principle of Population}.
\textsuperscript{32} Ibidem, p.95.
In the 20th century the boom of eugenic ideology took place and technological advances helped to promote it. In England in 1907, the *Foundation Eugenics Education Society* (EES) appeared, nowadays named *Galton Institute (GI)*, with the purpose of promoting the propaganda of eugenic ideas. In 1908 the first *Eugenics Review* was published, which for decades until the WWII will be one of the basic references for demographers.\(^{33}\) As a result, the *GI* currently is responsible for birth control methods, a method normally used to justify million of abortions each day.

Other precursor of eugenics ideas was Julian Huxley, pioneer of the concept of transhumanism, believed that high physical and mental level was necessary for reproduction. Transhumanism is not more than just another name for eugenics. Fukuyama in his *Transhumanism Foreign Policy* said: "The human race, after all, is a pretty sorry mess, with our stubborn diseases, physical limitations, and short lives. Throw in humanity's jealousies, violence, and constant anxieties, and the transhumanist project begins to look downright reasonable. If it were technologically possible, why wouldn't we want to transcend our current species? The seeming reasonableness of the project, particularly when considered in small increments, is part of its danger. Society is unlikely to fall suddenly under the spell of the transhumanist worldview. But it is very possible that we will nibble at biotechnology's tempting offerings without realizing that they come at a frightful moral cost".\(^{34}\) Currently, there are not forced sterilizations, but propaganda strategies used by eugenicists to avoid reproduction is used.

### 1. Population growth and birth control methods

It is true that population has increased, but never in history has overpopulation been documented. What is really happening is a *demographic implosion*, due that governments have struggled and invested millions to promote birth control methods in

\(^{33}\) Galton Institute, at http://www.galtoninstitute.org.uk/about.htm (consulted on 02 April 2013).

undeveloped countries such as Central America and Africa; this could cause an increase in elderly greater than youth, such as what is happening in some European countries.

Malthus since the 18\textsuperscript{th} century said that humanity is heading for a catastrophe in which the population grows geometrically while resources grow arithmetically. In international meetings of the UN issues of population and development are discussed as the way on how to stop the "phenomenon" of overpopulation. However, population has increased almost six times since the 18\textsuperscript{th} century, and it has been shown that population increase is the result of a greater rate of life expectancy, in which the essential resource is human capital; This has proved that there is no correlation between population and development.\textsuperscript{35}

\textbf{1.1. Neomalthusianism}

The idea of population control emerged from ancient period; Plato (\textit{Laws}) and Aristotle (\textit{Politic}) spoke about overpopulation. However, Malthus, fellow of the Royal Society, was the one who unleashed the idea; later Herbert Spencer spoke about human society as a body in which its members are different in terms of their usefulness, value and dignity. Furthermore, the neo-Malthusianism was stated in feminist ideas of Margaret Sanger who coined the term \textit{birth control}.

Sanger played a key role in the distribution of population control methods; she was a leading activist of the feminist movement and initiated eugenicist propaganda in the US in 1923. Thus, neo-Malthusianism grew up based on individualistic utilitarian doctrines. During these years, Sanger opposed to \textit{Comstock law}\textsuperscript{36}, a moral law whose functionality was based on the prohibition of selling contraception’s; by then American

\textsuperscript{35} Schooyans, M., \textit{Control de nacimientos e implosión demográfica}, at http://www.staffcatholic.net/archivos/lexicon/controldenacimiento.pdf (consulted on 05 April 2013).

\textsuperscript{36}In 1873, it all information about birth control and contraceptive use was considered obscene. Comstock himself was Special Agent Post Office Department of the United States. In just few years, more than 6 tons of porn plates, more than 60 tons of pornographic books, 200,000 photos and pictures, 31,500 boxes of pills and potions, and more than 60,000 were destroyed. Historia de la Medicina, \textit{Margaret H. Sanger (1879-1966) y el control de la natalidad}, at http://historiadelamedicina.org/blog/2006/09/06/margaret-h-sanger-1879-1966-y-el-control-de-la-natalidad/ (consulted on 05 April 2013).
society thought that promoting promiscuity was obscene and immoral. One of the most rigid laws about it was the one of Connecticut. These laws remained intact until the feminist M. Sanger fight against it. She believed that feminist’s laws were needed to ensure that women would be able to feel in control of their own body. Therefore, US became a country open to birth control, after the case *U.S. v. One Package of Japanese Pessaries* (1936). Judge Augustus of the U.S. District Court of Appeals in New York exempted birth control devices from restriction under the Comstock Law that had been absorbed into the Tariff Act of 1930. This became the first step to make birth control methods legal with the suppression of the law by the Supreme Court of Connecticut.

The historian Leslie Reagan recognizes that the works of Comstock greatly reduced abortion in the US until 1960 simply because "for about a full century abortion was considered a crime and no social movement suggested otherwise." This was until the case *Crane v. Commissioner*\(^37\) of the US Supreme Court (1916). Through this, Sanger was able to instruct poor and illness women on how to prevent pregnancies by using the term *birth control*, the *American Birth Control League* (ABCL) named International Planned Parenthood Federation (1952) after WWII. A few years later, Sanger began publishing the *Birth Control Review* (1917) in which she said: "More children for the fit, less for the unfit." By unfit, Sanger was referring to those who are physically or mentally disable. She died few months after the 1965 Supreme Court decision of *Griswold v. Connecticut*\(^38\) which made birth control legal. Sanger’s plan for the *silent holocaust* gained fellows. She published an edition only about eugenics with the support of Stoddard and Harry Laughlin, director in the ABCL\(^39\). While this was happening, Hitler in Germany began one of the most horrific massacres of history.

\(^{39}\) Stoddard's books were blatantly racist. In 1924, he had testified before Congress as an expert witness on America's immigration policies, warning that Jewish money and Jewish guile were inflicting on this continent a race of low types who had no legal right to be admitted even by the existing legal standards. Senander, M., *Eugenics part of Sanger legacy*, in *Star Tribune*, 1993 at http://search.proquest.com/docview/418461258 (consulted on 05 April 2013).
through the use of eugenic methods, learned from his admiration of American eugenicists such as Madison Grant 40.

1.1.1. Malthusianism v. International Context

After the Earth Summit in Rio (1992) 41 many people came to have better conditions of life, but although natural environment was still degraded. 42 According to the Human Development Report 2012 43, now people are healthier, live longer, are better educated and have more access to goods and services. But there are important regional differences and also pronounced inequalities within the countries. The panel on global sustainability UN Funds for Population (UNFPA) established in 2012 that governments should respect, protect and fulfil HR as recognized in the UDHR and the ICCPR (1966).

In the case of China with its one-child policy, which unleashed a high degree of discrimination policies against women, even today continues to be a country whose population has not declined. Family planning is a tool to decrease the population and therefore to stabilize sustainable development. However, China remains to be the country with the largest population on earth and currently has a low rate of productive youth because of to the extreme measures implemented by the government. China is concerned about the high percentage of men in the country and the low number of women that has been caused by a high percentage of abortions as a result of women’s discrimination. China has been degenerating in a country for sex-trafficking since the ratification of their one-child policy 33 years ago. The US Department 44 acknowledges

40 See The passing of the great race.
41 Since 1994, Central America had enacted its ”Partnership for Sustainable Development” (ALIDES) relying on the support of Vice President Al Gore. George Bush proposed Agenda 21 developed by his predecessor Bill Clinton on sustainable development as a population control measure.
that birth limitation creates a skewed sex ratio of 118 boys to 100 girls, which served as a key source of demand for the trafficking and for forced prostitution.

In the report on *Human Development Index*, was mentioned that *discrimination begins before life begins*, using tests to determine the sex of the foetus and if the foetus is female, is aborted. But the real causes for the family planning policies of this country, namely the one-child policy are not mentioned. Furthermore, it should be noted that it is not possible to talk about the sex of a foetus, i.e. to talk about discrimination on the grounds of being a woman and not talk about defending the life of any foetus regardless of his/her sex. They mention the words: "*discrimination begins before life begins*" but if the foetus is not a human being as they consider it, how it would be possible to speak about sex discrimination?

According to the Population reference Bureau, the 2012 *World Population Data Sheet* shows clear contrasts between less developed and more developed countries. E.g. Tanzania and Spain have about the same population size today: Tanzania at 48 million and Spain at 46 million. Tanzania has a youthful population, with 45 percent, but Spain has only 15 percent of youth population. By 2050 statistics show Tanzania’s older population will change only from 3 percent now to 4 percent but Spain's population ages 65+ will nearly double, from 17 percent to 33 percent.

**a. Overpopulation**

Amartya Sen, Nobel Prize in Economics said in his book, *The demographic bougie*, that what is really happening is a demographic shift in the Third World countries similar to what happened in Europe and North America during the industrialization when there was a temporary population growth. Al Gore in *The Population Bomb* warned that in the 70’s hundreds of millions of people will starve.

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Nevertheless, this never happened; he also said that the only measure to avoid famine was birth control measures before he supported the one-child policy of the Chinese government. These ideas have only provoked more famine and gender discrimination.

As a result of the great efforts that have made pro-abortion supporters throughout history, the population has declined, i.e. fertility rate (-40%) since 1950, and aging has increased; abortion is one of the reasons; 55 million are performed annually worldwide. The average age of the population is 40 years in most developed countries and is projected to be 50 for 2050, e.g. the average German in 2050 will be a person of 51.2 years with no siblings. Germans fertility rate in 2000 was 1.33 children / woman. But claims about overpopulation continue, blaming the lack of education of women as one of the main causes for population organizations. However, high illiteracy countries have reduced their fertility rate as it is shown in the case of Spain. The 1994 Nobel Prize, Gary Becker said that population growth has been a key factor for economic development as it is an important factor of economic growth. This statement supports the notion that there really is no relationship between poverty and population density.

1.1.1.1. Sustainable Development

Professor Commoner, from Washington University of St. Louis and Director of the Centre for Biology of Natural Systems, demonstrated in his study, "The environmental costs of economic growth" that increased pollution is not directly proportional to the population, but to the use of cleaner technology. Related to that, Agriculture Organization of the UN (FAO) in its World Food Programme (WFP) said that there is enough food for the entire world population without deteriorating the ecosystem, but the problem remains on the lack of accesses to them by some

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49 UN Department of Social and Economic Affairs, World Population Prospects: The 2010 Revision at [http://esa.un.org/unpd/wpp/Excel-Data/DB01_Period_Indicators/WPP2010_DB1_F01_TOTAL_FERTILITY.XLS (consulted on 06 April 2013).]
communities; and even the WFP\textsuperscript{50} mentions the key causes of hunger are such as poverty, war and natural disasters, but overpopulation is not in the list. Blaming the population only prevents governments from fighting against poverty. What is really needed is a good administered and a good rational use of resources. \textsuperscript{51} The western population aging has been induced artificially by family planning policies through abortion and sterilization.

1.1.2. Family

As Viladrich said in his Agony of legal marriage: "the degree in which citizens do not do everything in their power to help the home to be the natural habitat for the full realization of individuals (...) required by the dignity of the human person, the family becomes a terribly critical mirror regarding to the depersonalized and dehumanized society".\textsuperscript{52} Therefore, family is the natural habitat in which a child can be developed fully as a person. Nevertheless, the ideologies which influence this "habitat" are in reality domestic violence, divorce, and abortion. The morally ethical sustainable development should come first and a model of economic, political and ecological development comes later in order to prevent any violation to the right to life of the unborn child.

\textsuperscript{50} Population Research Institute, Putting people first for 20 years, at http://es.catholic.net/ligas/ligasframe.phtml?liga=http://www.pop.org (downloaded on 04 April 2013).
\textsuperscript{51} "Man is the greatest resource of all natural resources is not only its great user but also its great discoverer and operator. The man has found, even in times of technical development much lower than ours, dignified solutions to his problems. Thus progress was constructed". Clark, C., El aumento de la población.
\textsuperscript{52} D’Entremont, A., Familia y desarrollo sostenible, at http://www.staffcatholic.net/archivos/lexicon/familiaydesarrollosostenible.pdf (consulted on 06 April 2013).
2. Malthusianism strategies

Since the 60’s, the birth control Pill has been widely accepted, even though, half of American pregnancies remained unintentional, according to the Guttmacher Institute (GI)\(^53\). Media have focused on spreading this method of contraception as a means of reproductive rights for women, not mentioning the consequences on health by the use of hormones that could eventually block ovulation. Moreover, nearly four of ten women using the pill and other reversible birth control methods are not happy with them according to GI\(^54\). The pill did not meet the purposes of its proponents (Margaret Sanger & George Pincus): to reduce illnesses, overpopulation, and poverty. However, Sanger's true intentions were to prevent the birth of defective babies: "Birth control is nothing more or less than the facilitation of the process of weeding out the unfit, of preventing the birth of defectives or of those who will become defectives and criminals."

Recently contraceptive pills are responsible for the deaths of 20 women on average per year in France and thromboembolism 2529, according to a study released in 2013 by the National Security Agency of medicines (MSNA)\(^56\).

Nowadays, eugenics agenda is practiced through sterilization and abortive methods by organizations such as PPF that work to conceal those methods via population control. Agronomist Nobel Peace Prize (1970), Norman Borlaug, indicated as principal causes of hunger the bad policies and those natural resources as such, do not exist and the human capital is the only limited resource capable of disappearing. Gary Becker stated that this capital is formed within the family. It is very interesting to

\(^{53}\) The Institute’s overarching goal is to ensure the highest standard of sexual and reproductive health for all people worldwide. Guttmacher Institute at http://www.guttmacher.org/about/index.html (downloaded on 06 April 2013).


see the population growth as a result of life expectancy improvement and not as a fertility problem, because that goes according to the natural law of procreation of man instead of the arbitrariness and scientific dictatorship of birth control.

In 1970, U.S. Congress passed the *Family Planning Services Act*, in which Nixon authorized the provision of $382 million for family planning programs. The main argument was that birth rates that are above the population replacement threaten the vitality of enterprises.\(^57\) Since then, these initiatives have resulted in the fall of birth rate below replacement population. They said that major efforts should be made to improve the opportunity for individuals to control their own fertility, aiming toward the development of a basic ethical principle that only wanted children are brought into the world. But what they said about the millions of babies that must be aborted, *where is the basic ethical principle of preserving life above all?*

In 1973 the Senator, Jeremiah Denton, introduced to the Congressional Record the *White House Project*, prompting criticism from the GI, the Planned Parenthood partner.\(^58\) He said that the federal government had provided too much funding to Planned Parenthood and other family planning providers and that a new program was needed to counter this spending. Danton stated that more people do not necessarily means lower economic growth and that governments continue population control measures instead of better economic policies to increased living standards historically associated with declines of fertility.

3. **Freedom**

Amartya Sen raised the development in a way that when poverty is not perceived as a lack of material goods, but as deprivation of human capabilities, and development appears as the increase of opportunities offered to individuals with a view of achieving their choices. Therefore, freedom becomes the ultimate goal of development, based not

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on utilitarian consumerism. This view questions birth policies, like those regarding the reproductive rights of women, because undermines the concept of family.

As Amartya Sen, wrote in his book “Development as Freedom” poverty should be measured not only by income but also by education, health, housing, welfare policies etc. A welfare state is required, whose policies are focused to prevail human freedom. How is it possible to speak about development, if we do not recognize the rights of every individual and there is no democracy? Policies focused on birth control, prove that the government has different priorities than those from family. According to Sen, development is not an end in itself but a means for men to achieve his full realization; this is happiness and for that reason freedom and HR play an important role. Keeping that in mind, it would be possible to talk about a State in which it is feasible to have social opportunities, security, economic freedom for development. Sen argues that a government should not intend to achieve happiness for their citizens, but instead to create the conditions for each individual to have better access to its realization and liberty. Sen underlined that the fatalism of overpopulation and famine unlike what Malthus said about a declining production and an increasing population growth did not focus enough on what really matters, namely welfare and social justice and not just the economic income. However, currently, democratic values and especially the protection of HR are questioned, due to the restrictions on natural human procreation that has led to the elimination of the life of unborn child by the quest for freedom.

CHAPTER#3: Fundamental Human Rights and Biomedicine in the Context

1. International human rights instruments

As a result of the progress of bioscience, the respect of human dignity through HR features in a huge number of International human rights legal instruments such as the UN Declaration on the Human Genome and Human Rights (1997) and, the Convention in the human rights and Biomedicine of the Council of Europe (1996) which have stated the limits of modern science and medicine practices. These practices have raised concerns about human rights protection, due that in a culture committed to human rights, scientific progress requires more than new discoveries, the formulation of new theories, new techniques, or the invention of new biotechnological products and processes. Bioscience is more compatible with the respect for fundamental rights such as the right not to be discriminated against unfairly or genetic grounds.60

Bioscientific revolution has provoked a parallel demand for human dignity to be respected. Philippe Seguin, president of the National Assembly of the French Republic, remarked in the 1990s, that not only there is a trend towards the enactment of bioethics laws but this trend illustrates a growing awareness around the world that legislators must (...) ensure that science develops with respect for human dignity and fundamental human rights, and in line with national democratic traditions.61

The Biomedicine Convention Preamble states that it is essential to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring his/her dignity. Similarly, the Preamble of UNESCO’s Universal Declaration on the Human Genome and Human Rights62 states that while research in the human genome and the resulting applications open up vast prospects for progress in improving the health of individuals and humankind, that

62 The Declaration adopted unanimously at the 29th session of the General Conference in 11 Nov. 1997, was the result of more than four years work carried out by the International Bioethics Committee of UNESCO. On 9 Dec. 998 the UN General Assembly adopted Resolution A/RES/53/152 endorsing Declaration. Ibidem.
research should also fully respect human dignity, freedom and human rights. After the vast violations against humanity during WWII, the international legal instruments were drafted to establish a culture of human rights in which human dignity played the most important role as a justification for the recognition of those rights in the normative context.

In the case of European Convention on Human Rights (ECHR) (1950), the role of human dignity is so muted that its drafters make no explicit reference to the idea, leaving others to tease out the principle of respect the human dignity as immanent in the Convention. However, in the Preamble of the International Bill of Rights, human dignity is recognized as inherent in every human being that can be protected through the equal and inalienable rights of all members of the human family: freedom, justice and peace. Another International instrument of human rights, the ICESCR (1976) and ICCPR (1976) recognize the human rights as a derivation from the inherent dignity of every person. In the other hand, the UDHR states the importance of human dignity as well, in Art.22, Art.23 (3) and in Art.10. We cannot forget that is this inherent dignity the reason of the existence of human rights, enjoyed equally by every human being, as the authors of Human dignity in bioethics and biolaw, D. Beyleveld and R. Brownsword, stated: "human dignity is the rock on which the superstructure of human rights is built".

The phrase that the human being should always remain an end to himself is of unlimited validity in all areas of law; for the dignity of the human being as a person

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63 Ibidem, p.11.
64 As David Fieldman (1999) has printed out the preamble reference in the ECHR to the UN UDHR does indirectly connect the Convention to human dignity and in practice the Strasbourg organs have frequently referred to human dignity as one of the values underpinning the rights
65 UDHR, ICESCR (1966), and ICCPR (1966).
67 Concerning the right of social security and the economic, social and cultural rights indispensable for dignity and the free development of personality.
68 Concerning the right to just and favourable remuneration such as to ensure an existence worthy of human dignity.
69 To the effect that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
which cannot be lost consists exactly because of the maintenance of his recognition as an autonomous personality (German life imprisonment case, Federal Constitutional Court). According to the Court, from the principle of human dignity follows that cruel, inhuman and degrading punishment is strictly prohibited. For this reason, it is obvious that dignity of any being that belong to the human race should be respected. It is a (negative) right against unwilled interventions by others that are damaging to the circumstances or conditions that are essential if one is to flourish as a human. A (positive) right to support and secure the circumstances or conditions that are essential if one is to flourish as a human.

For this reason, it is important to know that bioethics started to be introduced in the international context in the Nuremberg Code (1947). It states that the experiment should be such as to promise to provide beneficial results for the welfare of society, and that could not be obtained by other means of study. This means that biomedicine should be practiced not based in selfish aims, but based on a shared vision of human dignity that reaches beyond individuals.

2. Personhood and individuality of unborn human life

Since the introduction of bioethics at the international context, the problems became more evident. When does human life begins? This is a question that through embryology and biology can be answered. It has to be studied from a scientific point of view to prove that human life begins from conception either by natural method or manufactured (IVF) by biotechnology. However, discussions about the ethical statute of the embryo have been taking place in order to prove its personhood. While it is essential

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72 Ibidem, p.15.
73 Advances in the study of genetic biology, and the molecular reality confirm the existence of this new life from the moment of conception. From conception, the embryo begins to develop into a unit process, coordinated, continuous and autonomous, in which there are no levels to separate varying stages of vitality. There is no previous stage in which the embryo has not been alive. The only, the first and most valuable qualitative leap in the existential reality of the embryo, is when the two cells unite, egg and sperm, become by their union a single substance, which is precisely, so life begins. From here all are stages of evolution. It is a mistake to think that life begins at day 14 of pregnancy, requiring for example, that have shaped the nervous system, because the question is then what was before day 14: a animal? Tumor? Ordoqui, C., G., Derecho Médico, 2002, p. 52.
from anthropological and ethical judgment to ensure that the dignity of the embryo should be respected as a member of the human species and therefore as a person, should be studied from the philosophical view, but also biological evidence is necessary to support the life of the embryo as well.

Regarding to this, in 1978 Louise Brown was born, the first baby conceived by IVF. This caused much debate in the scientific, philosophical, legal and social field. For this, a committee by the English government was established to clarify the issue of embryo experimentation, the Warnock Committee\textsuperscript{74}, which approved a bill that accepted the testing of embryos until the fourteenth day of fertilization. Thus, the embryologist A. McLaren\textsuperscript{75} introduced the term pre-embryo to differentiate the period that goes from the zygote period until the 15\textsuperscript{th} day when implantation occurs into the womb. The intention was to indicate a nonhuman period, to be able to experiment freely with the embryo until the 14\textsuperscript{th} day, as a strategy to define the embryo as something not human and alive.

The embryonic period in humans lasts from fertilization until the 9\textsuperscript{th} week. Consequently, there is no need to establish a subdivision called pre-embryo because nothing is pre-embryo in the stage preceding the embryo just a sperm and an egg. When the egg is fertilized by sperm, this turns into a zygote and when the zygote is divided it becomes an embryo. According to this, the Dr. Jeróme Leujene stated: “Hippocratic medicine tells me to respect him not because he is strong, free or because he has good health. I respect him because he is a human”.\textsuperscript{76} Joseph Raz (1979) stated: “An action enslaves another if it practically denies him all options through the manipulation of the

\textsuperscript{74} See Warnock Report, England 1984.
\textsuperscript{75} Was a member of the Warnock Committee of the Human Fertilisation and Embryology of the UK Government, worked for the Voluntary Licensing Agency of in vitro fertilization and human embryology, and currently a member of the Agency of Human Fertilisation and Embryology in the UK, governing the investigation of in vitro fertilization and human embryos. She chaired the scientific and technical Advisory Group of the Human Reproduction Programme of WHO and has been a member of the Council on Bioethics Nuffield Foundation. She is a member of the European Group of Ethics which advises the European Commission on the ethical and social implications of new technologies. From 1991 to 1996 she was Secretary and Vice abroad of the Royal Society. McLaren, A., Comité temporal de genética humana y otras nuevas tecnologías de medicina moderna, at http://www.europarl.europa.eu/meetdocs/committees/gene/20010426/436906es.pdf. (consulted on 02 May 2013).
\textsuperscript{76} Lara R., Manual de Bioetica, Defensa y Promoción de la Persona, 2011, p. 79.
environment. Manipulation in other words is manipulation of the person, of those factors relevant to his autonomy. Enslavement is the elimination of control by changing factors external to the person”; regarding to this, abortion, embryo manipulation and IVF apply. According to embryology, a zygote or embryo already has a full genetic of his own; different from the father and the mother and as result is a new human being. 

But at what point the human embryo becomes a person? In order to answer to this question we will briefly define the biological and anthropological status of the embryo in order to defend the point that concerns us in this thesis, the legal status of the embryo.

2.1. Biological Statute

From the medical point of view, human life begins at the moment of fertilization when a sperm (male germ cell with 23 chromosomes) penetrates into the egg (germ cell of the woman with 23 chromosomes). This modifies the fertilized being and reconstitutes the full number of chromosomes, in order to form a new cell with different genetic information, the one that defines a person as unique and unrepeatable being. At the fusion of the gametes, a new human cell, equipped with a new information structure, begins operating like an individual unit tending towards the complete expression of its genome, which manifests itself in a totality, which constantly and autonomously organizes itself until it forms a complete human organism. A new human individual which initiates its own vital cycle and given the sufficient and necessary internal and external conditions, gradually develops and achieves its immense potential according to an intrinsic ontogenetic law.

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79 See article at [http://www.priestsforlife.org/magisterium/centrodibioetica.htm](http://www.priestsforlife.org/magisterium/centrodibioetica.htm).
a. Pre-implantation Period

Once the zygote\textsuperscript{80} (unicellular embryo) is formed, its life turns different from the gametes. Two nuclei in the fertilized egg (ovum and sperm) appear, each containing half of the genetic information of a normal cell (46 chromosomes) and forming the human genome which is capable of directing the formation of a whole new organism. Thirty hours after fertilization occurs and the first cell division after the third day constitutes the embryo of twelve to sixteen cells (blastomeres). By the fifth day the embryo has travelled the fallopian tube and reaches the uterus and blastocyst reaches the state, its wall is the inner cell mass (place where the stem cells are).

b. Implantation Period

The embryo enters the uterine wall of the mother to be fed. Later, the mother and embryo built the placenta, the one who permits the nutritional exchange between both. From this period of morphogenesis the cell mass takes place to form the body of the baby. On the 14\textsuperscript{th} day, the central nervous system appears. And the heart starts beating between 18-25 days.

c. Foetal Period

The embryo from the 9\textsuperscript{th} week reaches three centimetres. In this period the maturation of the vital organs of the body takes place, this development shows the individuality of the embryo (biological individuality) i.e. has an existence of its own and cannot be divided without being destroyed. In the 10\textsuperscript{th} week the embryo has fingerprints, brain and all the organs are already present; two weeks later the body is fully formed.

Throughout this process of the embryo, the existence of an individual of the human species developing can be witnessed. We can see his characteristics of \textit{individuality}: as a unique and unrepeatable and independent genetic code from the mother. \textit{Coordination}: by his coordinated process and unity. \textit{Continuity}: from the union of

\textsuperscript{80} Unicellular body begins to operate as a single system, a living being ontologically unit, at time zero. Overlooking a defined development.
gametes a new life begins without interruption. Gradualness: showing the shape of a human being is thus gradually reached.  

81 Therefore, the embryo from the fusion of gametes is no longer a potential human, but an actual human.  

82 The embryo is potentially a child, or adult, or potentially an old man, but it is not potentially a human being; that is what already is. The ovule, like the spermatozoon, is "potentially" a human being, but the ovule only remains an ovule and the spermatozoon only remains a spermatozoon if they do not unite. On the other hand, the zygote is already a human being, developing his own internal program. This program is already complete, sufficient, individualized and activates itself only when the necessary conditions for development exist. The zygote, however, is an individual with his own life and identity given to him by a single unifying substantial principle. The oneness which exists during all of an individual human being’s development, from fertilization to death, is not simply biological continuity. It is a unity of the whole being, both the body and the spirit, even if the expansion and the maturation of the individual, both somatically and spiritually, take place progressively. No beginning of this maturation and of the relationship that exists between the unique subject’s body and spirit can be traced different from that which marks the beginning of a biologically individualized life.  

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2.2. Philosophical Statute  

The ontological status of the embryo is the central issue of bioethics and determines the actual universality of rights. As it was discussed in chapter one, man is a person because he has inalienable dignity. In the case of the embryo, the embodiment is the identity of an individual human, a human being by nature and therefore with an identity of person. The soul and body together form the absolute value of the man and

82 It is easy to appreciate how wrong it is to say that an embryo is not a person, or even a human being, when the right thing would be to say that an embryo is not a human being of two, twenty or forty years which is absolutely true, as well it is that this man of forty began as a three-day embryo. None of this affects the respective membership of the human species. In this approach is not entirely correct to say that the embryo is a potential human being. what it is, is a potential born human being, or the potential man of forty, but his membership in the human species, its nature, it is not potential but actual. Aguirre, M., Comentarios al Código Civil II, 2000, pp. 238-353.  
consequently his rights. The biological essence of the new being is human. Recalling the discussion in the first chapter, we can say that the embryo is a human being; a person who has rights including the fundamental right to life. Thus, as Aristotle and Thomas Aquinas said, subsistence, the act of being, is what defines man as a person. And the essence is what makes the embryo being what he is (his personal status) an individual living being. From the moment of conception the embryo acquires the being and that being is human and if a human is a person from the moment of his act of being, is reasonable to state that an embryo has rights and dignity (with his own individuality and genetic endowment).

Therefore the personification (being a person) is a metaphysical process that is received from conception. The essence in the initial act will be the same in the course of his/her life, from foetus to elderly, sick or healthy, always he/she will be a person; what changes are the accidents. There has been never existed a human being that is not a person and there is not a person that is not a human being.

2.3. Juridical Statute

The biological status research follows the ontological research and both complement the legal research. The rules of positive law recognize human beings right to life, and the physical and moral integrity from which the right to personal identity is derived. The importance of juridical protection of the embryo is essential to defend humanity, the embryo (first stage of human development) as part of the human species deserves protection. There is no human being who has not begun to live without being an embryo before. We cannot provide protection to a human being depending on the stage of development or the circumstance in which he/she exists. As C. Lara said: "The right is therefore a mere instrument of the person created by and for the person (...). The law does not establish but recognizes the legal personality on the basis of the existence of the natural human person (...) the right is not the one who creates the person because

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personality is an essential attribute of every human being, for his condition of being rational and spiritual."

The state and international organizations should ensure the legal protection of all human beings. Human life is the reason of existence of the other duties and rights, and endangering life is not justifiable under any circumstance. Many Constitutions protect the unborn child, as the Chilean Constitution (Art. 19) and the Guatemalan Constitution (Art. 3).

3. The morality of induced Abortion?
According to the etymological origin of the word abortion, it comes from the Latin *abortus* or *aborsus*, derived from ab-orior, i.e. the opposite of orior, reborn; it is therefore a deprivation of birth. Abortion has been the subject of study in the social, political, cultural and economic scenario, but it has been a mistake of forgetting that it is a moral issue rather than any other; a life or death decision. Some abortions are performed by the aspiration of the foetus or abortive pills. Other techniques are: *salt poisoning*: when amniotic fluid is removed with a needle and inject a saline solution which causes the baby to die from poisoning and brain haemorrhage. *Suction*: a hollow tube is inserted into the uterus with a sharp edge which tears the nasciturus body with forceps and extracts the baby's brain. *Dilation and curettage*: the baby is cut into pieces to facilitate its removal through the cervix. *D & X (partial birth)*. Tweezers are introduced to remove partially the baby's body. *RU-486*: abortifacient drug that kills the baby from hunger depriving him from the progesterone hormone.

RU486 was first manufactured by the french Roussel Uclaf; during WWII, Nazi Germany used gas chambers to kill 6,000 millions of Jews through a gas called Zyklon-B. Zyklon-B was produced by the IG Farben called Hoechst AG after WWII. The same company and the same product that was used to kill millions of jews is now used an abortive pill, as a subsidiary company of Hoechst AG is the manufacturer and main producer of RU-486.
4. Facing the Arguments

Currently there is not a universal consensus on the protection of the unborn child. This thesis intends to briefly describe the treatment of the right to life under international and national system of HR protection and also to review some of the most challenged arguments used to promote the legalization of abortion.

The main argument in legal discussions regarding abortion is about the right of women to make decisions regarding her body and the right of the unborn child. In response, pro-choice position has prevailed regardless of the baby's life. The lack of legal protection for unborn child in the world is incompatible with the international system of HR. Thus, the protective legislation of life in countries such as Ireland and Chile are a world reference that needs to be not only preserved and strengthened.

4.1. Right to abortion?

The argument for reducing unsafe abortions, birth control, children with disabilities, unwanted pregnancies and rape are used as justifications to legalize abortion. The pro-choice recommendations to UN bodies are safe legal abortion. However, those bodies should promote pregnancy to support with safe outcomes for mother and child rather than legalize abortion.\(^{86}\) The higher the numbers of maternal deaths from abortion more pressure is brought to bear in support of what appears to be their highest priority, to decriminalize and legalize abortion. However, pregnancies should be made safe, not ‘safely terminated social conditions that pressure women towards abortion need to be addressed by ‘remedies’ other than ‘legal’ abortion, remedies other than those which destroy their children.\(^{87}\) There is no treaty based right for pro abortion advocates. The mother’s right to abortion” undermines child’s right to life. Psychologist Dr. Sydney Callahan states that the anti-abortion argument rests on accepting the basic democratic claim that all

\(^{86}\) UFPA Report State of the World’s Population 2005: “Every woman, rich or poor, faces a 15 per cent risk of complications around the time of delivery, but maternal death is practically nonexistent in developed regions”.

\(^{87}\) Joseph, R., The Human Rights of the Unborn Child, pp.307-308
members of the human community are equal in intrinsic worth, and discerning that the human community must include all members of the human species.  

a. Commission of population and American future

The Commission was established by Nixon since women right to abort was given by the U.S. Supreme Court in Roe v. Wade (1973). Since then, more than 55 million babies have been aborted in the US. The commission referred to abortion saying that the various prohibitions against abortion throughout the US stand as obstacles for the exercise of individual freedom: the freedom of women to make difficult moral choices based on their personal values, the freedom of women to control their own fertility, and freedom from the burdens of unwanted childbearing. Abortion has become an exception to the right to life.

Since 1970 approximately 1720 millions of nasciturus have been aborted around the world. The GI stated that in 2008, six million abortions were performed in developed countries and 38 million in developing countries, a disparity that largely reflects population distribution. However, in the case of Europe where most of the countries are developed and abortion is legalized, this percentage has increased (1 abortion every 25 seconds in the last ten years, 13 millions of children). Spain for example, a 126% of abortions have increased in the last ten years. They emphasize the dignity of women and the prevention of unwanted children. In democracy the power of the state to legalize abortion due that it is not a fundamental value in itself should not exist. The value of democracy comes and goes along with the values it expresses and protects. The dignity

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of every human being and the respect for their inalienable rights belong to the fundamental values.  

4.1.1. Arguments

Sometimes it seems that abortion should be done for the benefit of the child or as answers to personal and social problems, but who guarantees that aborting a nasciturus brings rights to women, more health, peace and economic growth? Who can prove all these with real evidence?

The first country that approved the therapeutic abortion was England in 1929, followed by US in 1967. They both have enacted laws that acknowledged that what is worth protecting is not the unborn but the health of the mother and as a result only the legal protection of the right to abortion is guaranteed. In the case of an ethical abortion, the odds that a woman becomes pregnant following a rape are minimal. A study by the University of Minnesota in Czechoslovakia record 86,000 induced abortions and only 22 were for rape (1 per 4,000).  

Now in the case that abortion is justified for maternal health, we must take into account that the life of the mother is endangered by the condition of her health for the disease not by the child in her womb. If we do not take into account the ethical and moral aspect of abortion, it falls into a simple discussion of decisions and procedures according to personal interests.

4.1.1.1. Strategies to legalize abortion

a. Therapeutic Abortion

This term intends to relate abortion with healing. Today, the scientific advances have shown that the situations in which someone must opt for the mother or child are extremely slim. Since 1951, the Congress of the American College of Surgeons stated:

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93 Something very different is that a pregnant woman suffering from a disease receive medical treatment necessary to save her life and, because such treatment may occur as a side effect the abortion. Such treatment is not seeking the death of the baby in her womb. Her loss is a misfortune but not on purpose.

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“Everyone who makes a therapeutic abortion or ignores modern methods to treat complications of pregnancy or is unwilling to take the time to use them.” E.g. ectopic pregnancy (outside the womb) is being managed medically with greater success. On the other hand, the code of medical ethics states that in the case of pregnancy complications should be provided efforts to save mother and child and never have as output the premeditated death of one of them.⁹⁴

b. By rape

It has been scientifically proven that pregnancies by rape are minimal because rapist dysfunction, infertility in women or contraceptives, among others. Enforce legislation of abortion in case of rape when pregnancy is an exception to the rule has no solid arguments. Abortion is not justifiable as a solution, “to correct a wrong with another worse”. An abortion does nothing but add physical and psychological problems for women. Upon approval of an abortion by rape would be difficult to determine the difference between a woman's whim and a real case of rape.

c. Eugenic Abortion

This abortion strategy is based on similar Hitler arguments, to kill a defenceless for his/her lack of health. It is leaving aside the absolute value of every human being and acts contrary to his/her dignity as a person. Prenatal tests are not 100% reliable in determining malformations or defects of the nasciturus. Dr. Paul Cameron from the Academy of American Psychologists asserts that there is no difference between normal and abnormal persons with respect to life satisfaction, attitude toward the future and vulnerability to frustration. "To say that these children would enjoy less to live is an opinion that lacks empirical theoretical support".⁹⁵

⁹⁵ Ibidem
In 2012 was drafted the Dublin Declaration on Maternal Health, it states:

“As experienced practitioners and researchers in obstetrics and gynaecology, we affirm that direct abortion – the purposeful destruction of the unborn child – is not medically necessary to save the life of a woman. We uphold that there is a fundamental difference between abortion, and necessary medical treatments that are carried out to save the life of the mother, even if such treatment results in the loss of life of her unborn child. We confirm that the prohibition of abortion does not affect, in any way, the availability of optimal care to pregnant women.”  

**d. Children must be desired**

The "wish" or "not desire" does nothing to the dignity and intrinsic value of a person. The child is not a "thing" whose value can be decided by another according to the emotional or sentimental moment of that person. Even in countries where abortion is legal, that has not stopped the violence from the mother over the child even when the child has been desired.

**e. Unsafe abortions**

The argument about unsafe abortion is a strategy to legalize abortion under the justification that will decrease maternal mortality caused by illegal abortions. However, the legalization of abortion transforms the act of eliminating a being into something morally correct, without considering other viable options before, such as adoption. E.g., a research in 1978 in the US found that in Illinois clinics, there were 12 deaths from legal abortions.

**f. Other arguments: Maternal Foetal Conflict**

Currently the debate on the legalization of abortion has been developing with the help of genetics knowledge and technological advances, presenting as the only alternative abortion; this is eugenics. What is being developed in the womb of a pregnant woman is seen not as a human but as single group of cells. Naming the human

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child *embryo* or *foetus*, and referring to the child as *it* does not alter his human nature, dignity and inalienable rights as member of the human family.\(^98\)

Another argument is that the woman owns her own body; that statement automatically discards the role of the father. Women are entitled to make decisions regarding their own body, but during abortion woman is not deciding on her own body, but on the existence of a new life. Other arguments talk about defending the dignity of women. They use words like pregnancy interruption, therapeutic abortion, liberalization law of women, and reproductive rights.\(^99\) It has been shown qualitatively and quantitatively that in those countries where abortion is legal, mortality has not diminished; the same with maternal health has not been improved.

5. **NGO’s case**

Currently, the political and economic interests has led international organizations to financial programs of NGO's, such as Population Council, IPPF and Marie Stopes International, whose objective is the promotion of abortifacients methods and maternity "health", access to abortion for teenagers.\(^100\) The Working Group Inter-Agency on Reproductive Health in Crises (IAWG)\(^101\) developed the manual inter-agency "*Reproductive Health in Refugee Situations*"\(^102\) in the 90's with the one that global organizations have promoted manuals for workers in refugee camps, as the "*Interagency Manual on Reproductive Health in Refugee Camps*" (1995) which supports the need to

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\(^98\) Hanauske-Abel, Hartmut, M., “Not a slippery slope or sudden subversion: German medicine and National Socialism in 1933, British Medical Journal, op.cit., pp.281-2, also p.190

\(^99\) See IPPF Glosary.


\(^101\) In 2004, the IAWG conducted a global evaluation of reproductive health during 10 years in conflict-affected environments. The study goal was to identify gaps and limitations for UN agencies, government and NGOs to direct resources and interventions better. In 2010, the IAWG released the revised inter-agency handbook on reproductive health operations in humanitarian situation and continues to serve as the guidance on reproductive health programs in humanitarian situations. IAWG, at. http://www.iawg.net/IAWG%20One%20Pager%20Spanish.pdf (consulted on 07 May 2013).

\(^102\) See http://iawg.net/
distribute the "morning after pill" (an abortifacient that UN agencies called "emergency contraception").

For that reason, organizations like Save the Children withdrew their support to this project because of the negative consequences that the methods would bring to refugees. Unhygienic leads to infections and therefore many women deaths. In 1999, before the conflict in Kosovo, emergency kits for the reproductive health were sent to Albania including abortion equipment ‘to help’ victims of rape. The UNFPA Executive Director, Dr. Nafis Sadik stated that they expected a high rate of rapes as it occurs among displaced persons situation. Pro-life advocates reacted opposing the project and were accused by the United Nations High Commissioner for Refugees (UNHCR) for failing in protecting the dignity of women after the 350,000 reproductive equipments were delivered from Holland. These equipments consisted on tools to cause abortions by suction (vacuum cleaners for uterine evacuation).

The manual of the UNHCR, advises the use of chemical or mechanical contraceptives to prevent pregnancy and to perform abortion. It also advises the use of Manual vacuum aspirator, to perform abortions and to end the "incomplete abortions", produced by chemical agents, which are not always effective. In response, Dr. Carole Collins of Oxfam, expert on refugee issues in camps, said that the manual procedures indicated that damage the health of refugees, as intrauterine devices (IUDs), implants such as Norplant contraceptives and performed abortions. Collins said that the implementation of IUD’s must be under adequate sanitary measures, but in refugee camps this causes bleeding and infection especially in women with sexually transmitted diseases. Margaret Fyfe, a health worker, sent by the British government as an observer to these meetings, refuted this argument by saying that in her 15 years of experience, working in refugee camps, she found that those camps were highly dangerous places for health. She added that women who had approached her had ever requested an abortion.
Women came to the camps in a severe state of malnutrition, no menstruation and hence a very low fertility rate.

6. Health consequences of Abortion

Statistics show that legal abortion increases sterility by 10%, also spontaneous abortions by 10%, and emotional problems rise from 9 to 59%. Other physical complications may occur, such as extra-uterine pregnancies that increase from 0.5% to 3.5%, and preterm births from 5% to 15%, uterus perforation, blood clots in the lungs, infection, and hepatitis produced by transfusions, which could be fatal. Scientifically it has been proven that the chances of cancer are higher after an abortion. The consequences are high in the reproductive system and maternal mortality due to abortion. The post abortion syndrome is common in teenagers as well as the psychological traumas that lead to drug and alcohol abuse (50%); unfortunately more than 50% are pressured to realize an abortion.

7. ¿Is the Embryo a human being?

Arguments for the legalization of abortion of the unborn child are that unborn child is not a human being, not a person, and that the right of the woman to choice is first.

The individuality of the embryo. As previously explained, the ultimate criterion of individuality is a matter of philosophy. The Aristotelian anthropology says there is a form (morphe) that constitutes beings in their fundamental elements. In human beings is the soul the vital principle. Aristotle had less scientific information and therefore he favoured the "epigenesis", i.e. before the human form was acquire, the embryo had a vegetative and animal soul before receiving the human soul. He thought this because he believed that there was no organic lesion in the early stages of the embryo, but now it has been scientifically proven (from fertilization the zygote behaves as one with immanent movement) and therefore has a human soul.

103 VHI, Sobre el trato a los refugiados, por parte de las Naciones Unidas, at http://vidahumana.org/news/londres_mayo98.html (consulted on 07 May 2013).
a. ¿the embryo does not deserve protection?

The fundamental rights belong to us, just for the fact we belong to the human species and we do not have to meet any merit to acquire or deserve them. The UDHR Art. 6: recognizes the legal personality of every human being, and the American Convention on Human Rights in Art. 1.2 states: "For the purposes of this Convention, is every human person." HR are specially designed to protect those who are in a vulnerable situation against arbitrary acts, therefore they have been developed new areas or subjects of HR protection to the extent that we find a set of vulnerable people from some point of view: children, women, ethnic minorities, disabled, etc. To establish a general criterion of exclusion by the quality of a person, despite being an individual of the human species, would means a regression in HR protection. HR cannot be violated by transient or permanent majorities like what happened in the Nazi Holocaust and slavery in the colonies. It seems that the exclusion of the unborn child, responds to a generalized discrimination that affects groups of people who are vulnerable and which might be given similar exclusion criteria. The challenge is posed for abortion supporters, because they are the ones who must convince the legal consciousness of humanity that the exclusion of certain human beings can be justified.

b. Reproductive rights?

Humans are social beings and therefore we need the implementation of legal rights and obligations that allow us to live fully for the good of all mankind, e.g. taxes and not to act arbitrarily with another person. For this reason, we can claim rights as the right to education, clothing etc. In this way to talk about the woman's duty to protect their children becomes an obligation of the mothers and not a discrimination against them. However, because it is women who have the privilege to be mothers and to carry a child in their womb, the state should be the one to prevent injustice over them or misunderstandings and arguments that speak of injustice toward women and their right to decide. To avoid this, the State must respond, not by giving them more rights than necessary and that any human being, man or woman, mother or not mother could have. Rather the state should provide the means for a responsible parenthood in the sense that
the parents response to their duty regarding their child, instead of creating a fictitious right to decide on the woman's body. The nasciturus is formed inside her mother’s womb but has an independent body; parents are not the arbiters of the life of a child.

The state should help a fair sharing of burdens: distributive justice, but without prejudice from the most vulnerable. It should provide facilities to support and help women tackle pregnancies risk, unwanted pregnancies and to find a feasible solution and not the final solution. This does not mean the loss of sexual freedom and a denial of reproductive rights. But if a woman has used her sexual abilities and this act resulted in a new being, that woman cannot decide on this new human being. It is not about the unborn child life over the woman’s life, it is about a medical ethic of doing everything to save the life of both.

7.1. A being of moral worth

The human person is a being of moral worth, a spiritual being that is different in kind from all other material being. For this reason a person is a being of transcendent value, because it is the only free moral agent in the material world; is a free agent by the fact that person’s moral decisions are not determined by any extrinsic forces; is also a moral individual by the fact that person’s moral identity is determined by the sorts of moral choices made by himself/herself. The human person alone is concerned with issues of justice, truth, religion, aesthetics, recreation, freedom, community and love, and are those concerns that marks the human person as unique and distinctive. As Robert L. Barry said: “these choices are freely made and when consent is given, the value of the action chosen by the person is integrated by the person, who forms his/her moral character”.

105 Catholic.net, Derechos humanos y derecho a la vida, at http://www.es.catholic.net/abogadoscatolicos/759/2712/articulo.php?id=55328
An interesting study can be made from the comparison of arguments between Robert Barry in his book *Medical Ethics*, arguing against the statements (analogies) made in the book, *Defence of Abortion*, by Judith Jarvis Thomas, a pro-abortion philosopher. This will help us to understand and to prove our thesis that abortion is a violation of the right to life highlighting the cases of Chile and Ireland that disarticulate the population growth control and reproductive rights statements that abortion is the best solution for mother’s health and economic burdens.

Firstly, for Thomson, the right to life consist not in the right not to be killed, but rather in the right not to be killed unjustly\(^{108}\), but if we rethink this argument, then the law won’t be able to protect no one because, *who will decide what is or what is not just?* This will transform any society into a battle field, everyone against everyone, trying to impose their own argument of what is or what is not fair. *How can be permissible to exterminate someone in some cases?* Her arguments said that the foetus can be killed when is product of rape and when the health of the mother is at risk.

Thomson argues that the womb in which the child lives is like a house that belongs to the mother and therefore the mother has the right to drive out the baby. But then the womb is not a jointly owned house Barry said. The womb is the temporary home for the unborn child, is not only a possession from the mother as Thomson stated. As the mother has the capability to provide shelter to the child this implies that he has some claim to the womb.\(^ {109}\)

In the other hand, Thomson claims that if a baby is a threat for the mother’s health, this means that an abortion is morally correct and the child has no claim to the mother’s womb; the child could be indirectly removed by direct removal of the tubes.\(^ {110}\)

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\(^{109}\) Ibidem, p.9.

\(^{110}\) This is admittedly a peculiar way of justifying indirect abortion to save the life if the mother, but the employment of the terminology and arguments of Thomson’s suggests a justification for limited indirect abortion when it alone will save the life of an innocent human being.
Barry highlighted the scientific results to confirm that the child is not connected to the heart, brain or any organ of the mother which can be directly affected by the pregnancy. The child has a claim to the womb because its presence there ordinarily causes no grave threat to the health of the mother in the absence of maternal defects and also because the uterus is ordered naturally to sustain the child. \(^\text{111}\) The baby is isolated and therefore do not represent any threat to the mother even if he is ill-formed. In other situations in which the abortion of a baby is justified as a burden, Barry said that it would also seem to be the critical factor in infanticide because there is no significant difference between unborn and newly born children. \(^\text{112}\)

According to Thomson arguments, the unborn child can be a formal or a material aggressor for the mother. As a formal aggressor the child can be murdered without any moral repercussions according to her. But if the child is neither a formal aggressor at all, or is only a material aggressor, it would be difficult to justify directly killing him. However, it is hard to see how the unborn child is even a material aggressor, for the normal threats to maternal health come from any action or condition of the unborn child. \(^\text{113}\) Barry states that in case the foetus represents a threat for the mother, this threat is material not formal because the foetus is unable to perform a knowing and intentional action, and as result it will be not permissible to kill him as a material aggressor. To cause his death would be as an immoral means to achieve a morally good end.

*Thomson made a comparison between the relationships of the unborn child and the mother to that of Smith having Jones coat which Jones need to survive. Thomson claims that Jones could take the coat away by force, and implicitly holds that smith has no right to the coat, which is a doubtful analogy to the relationship of the mother and child. But in doing this, she reduces the mother/child relationship to a purely

\(^\text{112}\) See: *What if arguments for abortion were applied to infants?*, at http://www.lifesitenews.com/news/what-if-arguments-for-abortion-were-applied-to-infants/
consensual one and this denies that the child has any natural right to his or her parents.\textsuperscript{114}

To this, Barry refutes saying that this example has no argumentation in the sense that it would be a better analogy in the case that Smith and Jones jointly owned the coat and both need it in a equal way. Here is what Barry stated:

\begin{quote}
It would be a closer analogy to compare it to a situation where two men needed a life raft to survive, for in this case neither could push the other off to save their lives because both have an equal right to the raft. These cases do not justify direct abortion and they only suggest that neither the mother nor the unborn child can be directly killed if their lives are threatened. Even though using such hypothetical or science fiction cases is a weak way to argue for a point. But granting that this is true, the adult could be killed if the child was the one who was being threatened? An unborn child found itself being threatened because of a pathology in the mother, Thompsons logic would be to admit that the mother world then have to be killed rather than the child.\textsuperscript{115}
\end{quote}

In the case of an abortion, the child is not the real threat, and it cannot be justifiable to kill him intentionally for an action he did not intentionally perform. If we study Thomson arguments we can clearly notice that the burdens she talks about in order to protect the mother are not caused directly by the unborn child or a deliberate action from him but from the pregnancy that is product of the actions of the mother, and the baby just the result from that.

Thomson justifies abortion because of the burden imposed on the mother. But because there are lower levels of medical care available to poorer women, this principle would give them a stronger right to abortion than would be had by women of greater means, which would be discriminatory. This is a justifiable conclusion to be drawn from her principles even though it is discriminatory and eugenic because it justifies and facilitates eliminating the poorer classes in society.

\textsuperscript{115} Ibidem, pp. 43-44.
Thomson argues that the mother is permitted to withdraw maternal support from an unborn child if this support proves to be unduly burdensome for her. (...) The mother provides shelter and nourishment for the unborn child, and if she could be permitted to withhold that from an unborn child she could then withdraw this from newly born infants and starve, dehydrate and expose them after birth. This could be justified because there is often more burden for the mother in caring for children after birth than in gestating them before birth.\footnote{Ibifem, p.45, op.cit. 52, pp.17-21.}

According to Thomson, withdrawing maternal support is a form of direct killing by omission because the burdens of pregnancy can be so great that pregnancy cannot be required in justice.\footnote{Ibifem, p.45, op.cit. 52, pp.17-21.} For this, Barry said that her principle would permit infanticide or euthanasia because the burden of postnatal care is often greater than that of prenatal care. Also, it would be justified in her view because the rights of a newly born child are not significantly greater than those of a late term unborn baby, and the mother would have stronger right to withdraw her support from him than from the unborn child.\footnote{Ibidem.}

If caring for the child is so radically burdensome that it could not be required by justice, it would be hard to require caring for infants, incompetent handicapped individuals or elderly persons as well. If pregnancy presents life threatening burdens, justice would not be violated if the pregnancy was ended, even if this meant that the life of the child would be indirectly ended. A basic problem with her argument from burdensomeness is that it is hard to see how supporting the disabled and incompetent could be required in justice as a matter of duty or obligation, Barry said.\footnote{Ibidem, P. 48}

Both Barry and Thomson discussed pregnancy as result of rape. According to our thesis and Barry’s argument, the action by which the child is conceived cannot influence the immoral act of killing the baby. In the case of rape both mother and child are victims from the rapist and if the mother can justify an abortion this means that killing the child means that mother could be as well.

She argues that abortion is morally equivalent to withdrawal of maternal support. She has mischaracterized abortion as an omission or withdrawal of support, for
it rather seems to be a positive and deliberate physical act taken to destroy the unborn child. When an abortion is performed, the child does not die from some underlying pathological condition, but from the new and independent lethal treat posed by abortive actions.  

Another argument for Thomson is that a woman can voluntarily put an end to what she has voluntarily brought into existence for the child is not the product solely of the mother, but is also the product of the father and society as well.

*In the case of rape, Thomson argues that the child has no right to use the mother’s womb as the mother did not invite the child into the womb. By this the mother’s womb should have an effect on the rights or duties of the child. It is also interesting because it suggests that people who swim for life boats could be deliberately killed by those in the boats to save their lives. On the other hand, the child is, at worst, a material aggressor who does not formally intend harm. For this reason, is unfair to prohibit abortion when the child is not desired or is product of a violation.*

Thomson arguments suggest that pregnancy occurs as an unintended side effect of an action that was oriented toward another end but through Barry’s argumentation we can highlight the importance and principal aim of sexual relations.

*However, the very orientation and dynamism of sexual relation is both to unity of the partners and to the generation of a child. To say that pregnancy is a totally unintended and unforeseen consequence of sex relations is like saying that when one deliberately points a loaded pistol at another person and fires a point blank range the injury or death resulting is unforeseen and unintended, Barry stated.*

Pregnancy was not by rape, was the result of a voluntarily action from the mother, in which her actions brought the child into existence from the moment she acceded to have sexual relations. For instance, the child is not violating any right by being in her womb, but the cases in which the child comes into existence and enters into

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120 Ibifem, p.46, op.cit. 52, p.5.
121 Ibidem, p.49.
122 Ibidem, p. 51.
the womb by his own deliberate act do not exist. The child could never violate the mother’s right, because the child is placed in the womb by the deliberate act of other person not by his own consent. In this way, according to Thomson’s arguments, it will be more adequate to said that the one who would have more right in the decision to abort or not to abort the child would correspond to the rapist (we are not saying that this should be the decision in rape cases, but following and contradicting Thomson arguments, the latter response will be more accurate than hers) as he committed the act to implant the child in the woman’s womb. In those cases the rapist has an obligation in the decision of abortion stronger than the mother’s.123

Admitting that the unborn child can be killed unintentionally as a foreseen side effect of a therapeutic act to save the life of the mother affirms that in some cases the unborn child is a quasi/aggressor. But this is not to admit that direct and deliberate killing of the child in isolation from the therapeutic actions taken to save her life is morally permissible. This prohibition denies the mother the right to directly kill the child by an action that had no immediate therapeutic values an unintended consequence of the therapeutic action. Not because there was minimal burden involved in his aid, but because care, comfort and nurture are to be accorded to all as a simple matter of basic and natural justice.124

Doctors should always opt to save the life of both, the mother and the child. According to Thomson infanticide and mercy killing would be justify in case the baby has high probabilities to born handicapped. As Barry said: If a mother can withdraw life support from an unborn baby because it is excessive and heroic, why cannot she withdraw even more troubling forms of care from newly born babies? If a woman is treated and the medicine or therapy is intended to kill directly the child it will be immoral, but if instead of that, the mother begins a therapy and the baby dies, and her intentions were not to kill the baby, this will be an indirect form in which the child dies and will be permissible because the death was not intentional.

123 Ibidem, p. 53.
124 Ibidem, p. 54.
For this, the controversial ethicist Peter Singer said long ago: “The location of the baby inside or outside the womb cannot make such a crucial moral difference” and, to be consistent, there are “only two possibilities,” namely, “oppose abortion, or allow infanticide.”

Barry’s arguments compare the abortion with infanticide, saying that if the grisly bloody affair of abortion is a medical treatment that can be withdrawn when too burdensome, why not a mother could push her newborn child’s head under the bath water because other forms or care were too burdensome? After all, a newborn can impose more demands on a mother’s time and energies than can an unborn baby in many circumstances. If mothers can forego these forms of care for unborn children, what is to stop children from withdrawing similar forms of medical treatment from their aging patients when it becomes too burdensome?

On March 2013, Cherlie Lafleur, a teenager from Pennsylvania was arrested after she tried to flush her baby into the toilet and put it into a trash can. Many abortion clinics suggest flushing the babies into the toilet in case they born at home and alive after having taken the abortive solution. It is very interest to see the advises that the abortion clinics gives to women, telling them that the “termination” should be inside the womb due that in 2002 the Born-Alive Infants Protection Act, protects infants that born alive after an attempt of abortion, in order to prevent infanticide. In 2007, the Partial Birth Abortion Ban by the Supreme Court was drafted but none of those acts helped to diminish the dangerous tension created by allowing children to be aborted at certain stages of their development for rationales that do not apply at later stages.

Another recent case is the Gosnell and the horrific house case, a man who is charged of killing a 41 year-old woman patient as well as three babies who were born alive after their abortion attempt, using scissors to cut their neck and spinal cord. The inspectors found death babies and part of their bodies inside jars in Gosnell clinic. But then, what would be the line which differentiates abortion from homicide, if it is

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125 Pavone, F., There are only two possibilities: oppose abortion, or allow infanticide, in Lifesitenews, at http://www.lifesitenews.com/news/there-are-only-two-possibilities-oppose-abortion-or-allow-infanticide (consulted on 07 May 2013).

permitted to cut babies inside but not outside the womb? After 1993, the Pennsylvania Department of Health abruptly decided, for political reasons, to stop inspecting abortion clinics at all. They concluded that inspections would be "putting a barrier up to women" seeking abortions. Better to leave clinics to do as they pleased, even though Gosnell proved that both, women and babies would pay the price.

As Bryan Kemper said: The Kermit Gosnell trial is not about abortion because abortion is just a whitewashing word used to deflect from what is really happening in those clinics: the death of human beings. This trial is a light that is illuminating the gruesome, bloody and deadly reality that is abortion. In fact the Defence attorney himself, during closing arguments, declared abortion to be bloody and not pretty. Just as Sophie Scholl shined a light on the reality of what the Nazi Holocaust was doing to human beings because of their nationality and their religion, and just as William Wilberforce shined a light on the reality of what the slave trade was doing to human beings, simply because of the colour of their skin, we must take the light of what the Gosnell trial has exposed and show the world the reality of what abortion is doing to human beings, simply because of their age.  

According to those arguments in favour of abortion and Gosnell practices, how is possible to agree at what point in foetal development does abortion become unacceptable? In the case *Planned Parenthood v. Casey* (1992), the court US Supreme Court decided to restrict abortion until the 24 weeks. However, in cases of rape that abortion is permissible it would be equally conflictive; it would become an open road to those women looking for an abortion even if they are not victims of rape. A clear example of this is the case *Roe v. Wade*, the one who unleash the abortion legalization, Norma McCorvey lie about how her baby was conceived and testify a false rape. In Gosnell trial, the attorneys have been using euphemism to differentiate a baby

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form a foetus, to state that Gosnell did not killed a baby, “the foetus born dead after the 
drugs he gave to the woman” they argue.

In March 2013, Alisa LaPolt Snow, a lobbyist for the Florida Alliance of Planned 
Parenthood Affiliates, made declarations in favour of infanticide during a committee 
hearing with members of the Florida House, saying that in the case a baby born alive 
after an attempt of abortion, the decision should be between the patient and the health 
care provider she argue. However she could not response after she was asked that the 
patient at that moment would be the child struggling for his life. Even when the Infants 
Born Alive Act sates that: 'An infant born alive during or immediately after attempted 
abortion is entitled to the same rights, powers, and privileges as any other child’

8. The right to life

The right to life does not means that everyone can do whatever he/she wants implies 
not only rights but also duties to limit us from any harmful act against an innocent 
human life. The unborn child has the right to life because is procreated by a direct 
action of the mother. Abortive acts are unjust when they deliberately, freely, and 
directly consent aim at destroying the child by either act or omission Barry sated. 
And even when the justification is the rape, it would be unjust to abort, as the baby and 
the mother would be victims from the rapist. The only direct aggressor to the mother in 
those cases is the rapist. As Barry said: A homicidal act is not immoral because it 
destroys personal life but rather because human life is destroyed.

a. Abortion and FGM

Pro-abortion advocates claim for abortion legalization in order to make it safe. 
However, the same groups disagree to the legalization of Female Genital Mutilation 
(FGM) to make it safe. Both are harmful for the woman health, one is genital mutilation 
and the other one is foetal mutilation. Is not possible to reduce FGM by performing it 
safely with training doctors, the same happens with abortion. FGM which is damage to

129 See: video http://www.dailymail.co.uk/news/article-2301374/In-Florida-Legislature-Planned- 
Parenthood-lobbyist-defends-doctor-assisted-infanticide-babies-born-alive-botched-abortions.html 
130 Barry, O.P., Medical Ethics: Essays on abortion and euthanasia, p. 62. 
organs for non-therapeutic reasons—is unethical.\textsuperscript{132} The WHO has declared its opposition to the medicalization of FGM, and has advised that it should not be performed by health professionals. FGM violates the basic HR of women and is a violation of the ethical code governing health practice”\textsuperscript{133}

8.1. International Law and embryo life

The UN Charter (1945), and the UDHR, established HR that became norms of the customary international law binding to all States. The UDHR urges that "both, individuals and institutions" promote respect for HR and ensure their recognition and application. However, all nations should always defend their sovereignty and for this, countries that defended the nasciturus stand against international pressure in name of their right to sovereignty.

8.1.1. Life above the law: Natural law as promoter of right to life

HR protect and recognize but do not create the natural and fundamental rights that belong to all human beings by the simple fact of being humans. As Cicero said: "Certainly there is a true law: reason, it is according to nature, is found in all men, and is immutable and eternal; its precepts call to duty, its prohibitions turn away the error (...) is an offense to substitute it by a contrary law. Is prohibited not to practice any of its provisions, no one has the possibility to completely abrogate it "\textsuperscript{134} It is this law that allows respect for another person, a universal and inalienable law for all mankind. There is not a superior right than the right to life. Without the right to life there would not be solid foundation for the respect for others, society would become a moral anarchy in which everyone would have a justification of why not to respect others lives.

\textsuperscript{132} The consequences of genital mutilation are unacceptable anywhere, anytime, and by any moral and ethical standard...If we can come together for a sustained push, female genital mutilation can vanish within a generation”. UN Deputy Secretary-General Asha-Rose Migiro, Commission on the Status of Women, Fifty-second-Session, 27 February 2008.


Positive laws that protect life, internationally and nationally, only recognize something that already exists and from which no human authority can dispose. The right to life is not determined by the consensus of the majority or the existence of the statements. The right to life exists simply by virtue of being rational beings endowed with bodily and spiritual dimension and therefore an intrinsic dignity that no one can ignore. This supports our analysis of the legal responsibility to protect the right to life. This way of supporting the right to life facilitates the interpretation of legal norms that protect it as we will see in the next section.

8.1.2. Applying international law

Thus it is necessary to ask whether the legalization of abortion is compatible with the international legal order, with instruments of International human rights law, which seek to promote life. For this, the legal analysis of the norms within the instruments of International Human Rights Law should be done. In the case of international law of human rights without prejudice to the consideration of all sources referred in Art. 38 of the Statute of the International Court of Justice, is needed to consider two additional elements; the regional universal mandatory rule that constrains the states to respect and ensure HR in accordance with the UN Charter and the character of *ius cogens* that has that rule.  

8.1.2.1. Human Person

The UN Charter sates: "We the peoples of the UN determined: to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, to reaffirm faith in fundamental HR, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small(...)". Although not explicitly protection of the unborn from the moment he is conceived, he becomes part of humanity as a being of the human species and therefore respect for his life must be guarantee.

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The UDHR recognizes the dignity of every person: "Considering that freedom, justice and peace in the world are based on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family". Art. 3, the UDHR states: "Everyone has the right to life, liberty and security of person", and Art. 6 state that every single human being has the right to recognition of their legal personality and therefore ownership of all rights. This article along with Art. 25 ("Motherhood and childhood are entitled to special care and assistance) recognize the obligation to protect and provide care to the mother and the child. As well as Art.30, "Nothing in the present Declaration may be interpreted as implying for any State, group or person to (...) perform any act aimed at the destruction of any of the rights and freedoms set forth herein”.

The UDHR preamble states equal and inalienable rights to All members of the human family, this means all members of the human species. Art. 3 along with Art.6 refer to Everyone, this means every human being i.e. every living member of the human species. Art.7 states that All (human being of human species) are equal without discrimination before the law. These rights are not limited to the born and would be difficult to understand them as rights that do not include the living but not yet born.

In the same year in which the UDHR was ratified the American Declaration of the Rights and Duties of Man was drafted. It stated in Art I that every human being has the right to life, liberty and security of person and in Art. XVII stated the right to recognition of juridical personality and civil rights. Additionally, the ECHR in Art.2 stated the protection of the right of every person to their life. Paragraph 1of the article contains an exception for lawful executions, although this exception has largely been superseded by Protocols 6 (no death penalty in peacetime) and 13 (no death penalty at all). Furthermore, Oviedo Convention states: Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.
In America 1969, it was Ratified the American Convention on Human Rights (Pact of San José, Costa Rica). Art. 1 states that “States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination (...”). For the purposes of this Convention, person is every human being. Art. 4 state the right to life: “Everyone has the right to have his life respected”. This right shall be protected by law and from the moment of conception. The unborn child is a member of the human species whose life must be respected.

9. **International Law: legal issues of abortion**

How could be the abortion a legitimate right if it goes against the right to life? To suppress the right to life is equal to suppress the rest of fundamental rights, as the right to life is the fundamental right from which the other rights derived. There is neither scientific and juridical, nor anthropological and moral justification to violate the rights of the unborn. UNICEF Convention on the Rights of the Child adopted by the General Assembly of the UN (1989) states in Art. 2, that is not allowable any kind of discrimination regardless of their condition; the difference between the wanted and unwanted children should not be an obstacle that transforms the right to life in a relative right that concerns to the baby's mother.

**a. The International Covenant on Civil and Political Rights (1966)**

It is a binding legal document that recognises the inalienable dignity of the human person; it recognizes the obligation to promote universal respect and observance of HR and human freedoms. *But what would happen if we make distinctions among human beings, the ones who deserve and the ones who do not deserve protection?*, it opens up to arbitraries and discrimination of few humans groups. The preamble recognizes that everyone has duties regarding to other individuals and the community to which he/she belongs.
The Covenant states in Art. 6 (1) that under the principles of the UN Charter: “Every human being has the inherent right to life and no one shall be arbitrarily deprived of his life.” The words *every human being* are not defined but neither limited to one group of human beings. As well as the words no one means that no human being must be deprived of life. Furthermore, Paragraph 5 states that death penalty should not be carried out on pregnant women, not even in time of public emergency the state should derogate Art.6 as Art.4 states. The ban for death penalty on pregnant women gives direct rights to the innocent life of the *nasciturus* as member of the human species. Otherwise that provision would have no sense.

With Art.6 and Art.16 (right to the recognition of his/her legal status) we concluded that the right to life of the unborn child is protected, because there would not be another possible justification for Article 6.5. In this way Art.9 and Art. 16, ensure humane treatment and respect for human dignity, and the recognition of juridical personality; Art. 24 protect the child against any kind of discrimination along with Art.26 that states that all persons are equal by law and therefore deserve equal protection.

Dictionaries define child as a young human being below the age of full physical development or below the legal age of majority, for instance a foetus and a child are synonymous due that a foetus is a child below the age of full physical development. The CCPR does, however, protect the unborn child, something that is completely compatible with provisions in the ICESCR.136 The ICESCR (1966) stated in the Art. 10:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children(...) 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures

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136 Art.10 (2): “special protection should be accorded to mothers during a reasonable period before and after childbirth,” Art. 12 (2) (a) calls upon States Parties to take steps necessary for “the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child.” Schabas, W., *Penalty in International Law*, p.36.
of protection and assistance should be taken on behalf of all children and young people without any discrimination for reasons of parentage or other conditions.

This International Pact refers to the rights of the child in Art.12:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child (...).

This article proves the inefficiency that the approval of abortion has had throughout history. Currently, there is a high rate of infanticide, and due that when abortion is legalized, infanticide is promoted consequently. Who will prevent those cases as the Gosnell case does not occur in all abortion clinics, in which they kill children who survive an abortion? Or who will prove that after the legalization of abortion by rape this won’t provoke hundreds of abortions under the justification of a false rape?


The lack of juridical protection of the unborn child is not compatible with many national constitutional laws, according to the international human rights protection. The Declaration of the Rights of the Child, adopted by UN General Assembly Resolution 1386 (XIV) in 1959, preceded the CRC stated: “Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, and whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children”.

In the same line the CRC adopted thirty years later states: "Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child
adopted by the General Assembly on 20 November 1959 and recognized in the UDHR, in the ICCPR (in particular in articles 23 and 24), in the ICESCR (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.

In the Preamble, it is “the child” that needs “appropriate legal protection before as well as after birth.” In Art.1, defines a child as “every human being below the age of eighteen years”; every human being does not exclude the unborn as it does excludes human beings older than eighteen. Art. 6 recognize that every child has the inherent right to life and States Parties shall ensure to the maximum extent possible the survival and development of the child.” Does this do not include the unborn as well as the born child? Thus, Patrick Flood J. said in his essay “Does International Law Protect the Unborn Child?”: “while Articles 1 and 6 do not explicitly endorse a right to life for the unborn child and state’s obligation to protect that right, the weight of these articles taken together with the Preamble provides solid ground for a claim that the unborn child is entitled to legal protection under the Convention”. A clearer indication of the inherent right to life to the nasciturus is given in Art. 24: “To ensure appropriate pre-natal and post-natal health care for mothers”. There is no evidence in the Convention of a right to abort. Several states attached reservations or understandings regarding the status of the unborn when signing or ratifying the Convention.

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137 The UN Legal Counsel gave an opinion that the insertion was problematic and most unusual, since under the Vienna Convention rules for interpretation the travaux preparatoires are merely supplementary sources of interpretation, not to be used to detract from the object and purpose of the document as stated in the Preamble, which this particular insertion appears to do. Thus any statement in the travaux could be ignored if found to be in conflict with the Preamble, as was likely in this instance, in which case the insertion would have no legal effect. E/CN.4/1989/48, March 2, 1989, cited in Ibegbu, p. 145.

138 Argentina, Guatemala, and the Holy See ratified the Convention with reservation affirming that it applies from the moment of conception. By contrast, France, Tunisia and China, when ratifying the Convention said that their national laws relating to abortion would not be affected.
Philip G. Alston grants that “there is no basis for asserting that the unborn child has been authoritatively rejected by international human rights law” as a subject of the law, but he asserts that “there has been a consistent pattern of avoiding any explicit recognition of such rights, thereby leaving the matter to be dealt with outside the international legal framework.”

For instance, the CRC Committee favored disabled unborn children by prohibiting discriminatory laws based on abortions to disabled children which lead to female infanticide and selective abortions." The CRC Committee recommended that the State party strengthen its implementation of existing laws against selective abortions and infanticide and take all necessary measures to eliminate any negative consequences arising from family planning policies, including abandonment and non-registration of children as well as imbalanced sex ratios at birth.

c. The universal declaration on the human genome and human rights

According to Art.1 the human genome underlines the fundamental unity of all members of the human family, as well as the recognition of their inherent dignity and diversity. As we stated before, the foetus contains all the genetic system that characterize him as a member of the human family, the heritage of humanity. Art.1 of UNESCO’s Declaration on Race and Racial Prejudice (1978), stated that all human beings belong to a single species and that they are born equal in dignity and rights and, forms an integral part of humanity. As D. Beylew and R. Brownsword stated in their book, Human Dignity in Bioethics and Biolaw: “whatever the superficial differences between members of the human species, whatever the diversity of human projects, there is an underlying unity: quite simply, all humans belong to the same family and as such

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139 In January 2006 Alston was listed by the Center for Reproductive Rights (CRR) as a member of its International Litigation Advisory Committee, which “supports the Center’s work to enforce internationally recognized reproductive rights in courts and other human rights for a (...)”. Flood, P.J., Does International Law Protect the Unborn Child?, at www.crlp.org/ww_litigation (consulted on May 03).

140 The Genocide Convention, adopted by the General Assembly one day earlier, incorporates in the definition of genocide (Article II) “imposing measures intended to prevent births within the group.” The Nazi practice of forced sterilization is certainly part of what is covered here, although Nazi policy also included abortion in regard to certain religious and ethnic groups.

141 See Committee on the rights of the child 40th session (Geneva, 12 to 30 September 2005).
have dignity and rights”. In the same line, Art.2 states that everyone has the right to respect for their dignity and for their rights regardless of their genetic characteristics. But then, Why it have been so many abortions as consequence of prenatal diagnosis that detect Down Syndrome or why in China more than the half of population are man because parents decide to abort girls as they prefer a boy as progenitor?

The dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness (foetus have uniqueness because they possess a complete genetic system essential to form a new human being) and diversity. Commenting on this, Hector Gros Espiell, the chairman of the Legal Commission of UNESCO’s International Bioethics’ Committee said that Art.2 of the Declaration asserts that the genetic characteristics of the person cannot justify limits on the recognition of his/her dignity or the exercise of his/her rights. This is a fundamental principle whose corollary is the prohibition of all discrimination based on genetic characteristics (Art.6); this article is derived from Art. 2 of the UDHR. In this way, dignity permits bioethics to promote freedom and responsibility in order to protect human life; to be free means that we have duties as well and to have human dignity means that we have duties in relation to others, with ourselves and with our community.

In the case R v. Brown the EcHR said that family right of Art.8 was not applicable and private life should not be stretched indefinitely, the judge said: “not every aspect of private life automatically qualifies for protection under the Convention. The fact that the behaviour concerned takes place in private premises does not suffice to ensure complete immunity and impunity...the protection of private life means the protection of a person intimacy and dignity, not the protection of his baseness or the protection of criminal immoralism”. Regarding to this, human dignity is first than anything else. We mention this to refute the arguments that support the private life of

women to decide about the life of their nasciturus. Hector Gros Espiell said: “The technologies derived from genetic engineering and biology could lead to practices, contrary to human dignity, that should not be permitted as stated in Art. 11 (...) but other technologies are concerned, and some of them are already in use as sex based embryo selection or in the more distant future, the creation of chimera’s baby transgenesis”.146 The new pre-natal medical testing for disabilities such as Down syndrome cannot be said to be genuine scientific advancement when any benefits in which the children being tested may share are so often withheld. Indeed, a systematic literature review found that some 92% of these children detected with the disability are aborted.147 The right to life of the Down Syndrome child at risk of abortion because of improved pre-natal foetal abnormality diagnostic test and the right to life of the girl child are risk of abortion because of more advanced pre-natal sex-selection technology are victims of the use of scientific and technical progress for purposes that are contrary to the enjoyment of all HR, including the rights to life, and health.148

9.1. Abortion policies - Regional HR instruments

9.1.1. European System

Patrick Flood J. stated how the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) do not said anything about the right to life of the nasciturus or about abortion. Art. 2 of the Convention provide that “Everyone’s right to life shall be protected by law. However, the Commission ruled in 1977 that a West German statute banning abortion after twelve weeks did not violate a woman’s right to privacy under Article 8 of the ECHR.149 In other recent case, Vo. v. France (2004), by vote of 14-2 with one abstention, the court deferred to national primacy,
holding that “the issue of the protection of the fetus under the Convention has not been resolved within the majority of the Contracting States themselves.”


The Convention of the Council of Europe report in Paragraph 9, states that human dignity constitutes the essential value to be upheld and is at the basis of the most of the values emphasised in the convention; states that all articles must be interpreted in the light of the aim of the Convention to protect human rights and the principle of respect for human dignity as well as it is stated in the general rule of Art. 1. According to Art. 1, “the parties shall protect the dignity and identity of all human beings and guarantee everyone without discrimination, respect of their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine”. Beyleveld and Brownsword argue that a distinction is drawn between everyone and all human beings. Thus, “everyone” (toute personne) refers to the potentially contested concept of a bearer of human rights. This is to be contrasted with “all human beings”, this term apparently signalling a generally accepted principle that human dignity and the identity of the human being must be respected as soon as life begins (paragraph 19). This was established because of the lack of unanimous agreement on the definition of these terms among the member states and therefore it was decided to let the domestic law to define them.

If we start with the restrictive view that the possession and protection of HR extends only to developed human who have their faculties, then everyone will not include “every living one” (embryos elderly, etc.). We (...) hold that “everyone” includes every instance of human life, biologically defined. In this view the possession and protection of human rights applies from conception onwards. (...) while some of the signatories adhered to a restrictive conception of “everyone” as a bearer of human rights, the general view was that human life should be protected from the point of conception onwards. The category

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151 Art.15: Scientific research in the field of biology and medicine shall be carried out freely, subject to the provisions of this Convention and the other legal provisions ensuring the protection of the human being. Nevertheless, such freedom is not absolute. In medical research it is limited by the fundamental rights of individuals expressed, in particular, by the provisions of the Convention and by other legal provisions which protect the human being.
152 Ibidem, p.31.
of "all human beings" being introduced in order to signal that the value of human dignity kicks in from the point of conception.  

Peter Kemp explains that: “If one transforms the idea of dignity a as virtue of the other into a universal principle for understanding the worth of human being as such, then dignity can be ascribed not only to men or women as rational beings, but also to the human being who has not yet, or has no longer, an autonomous will, and who is therefore unable to be master of his own life”. For this, Beyleveld and Brownsword argue that in Art.1 brokers a clear compromise: while those signatories who cannot agree that the conceptus is a bearer of human rights are to be allowed to persist with this belief, all signatories are required to accept that, in the name of human dignity, the conceptus is a protected entity.

If the embryo and foetus are protected under the respect for human dignity, then the autonomous choices of researchers (to create/manipulate embryos) and of women (to terminate pregnancies) must be measured for their legitimacy against, not only the general regime of HR, but also against the special dignity based regime protecting such early human life. We should not overstate the impact of recognizing that, by reference to respect for human dignity, embryonic and potential human life forms have a protected moral status. What a human dignity does is to offer direct justification for protection rather that the indirect justification that must be constructed alongside a restrictive human rights theory.

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153 Ibidem.
155 Ibidem

The Inter-American human rights system was adopted by the OAS in 1948, seven months before the UNDHR and two years before the Council of Europe’s European Convention for the Protection of Human Rights (1950).

The American Convention (known as the Pact of San José) do not allows discrimination between children born and unborn because it believes that every human being is a person and therefore owner of the rights recognized in this Convention. Art.1 states the respect of rights and freedoms of every person who is every human being. In Art. 4 is stated that respect for life begins at conception and no one can be deprived of life arbitrarily. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. Accordingly to this, we may assume that international law protects the unborn child, since it grants a fundamental right for those that already left the womb could lead to discrimination for those that are still in the womb.

The Preamble to the American Convention recognizes that essential rights of man are not derived from being a citizen but form the human personality attributes. In conclusion, as we already argue, the population growth control has been taken as a solution for the poorest and the hungry nations and in the other hand women reproductive rights (liberation of women) and gender equality are promoted. However none of them have real justifications, as it has been proven that along with population growth the food production has grown as well. As a logical criterion, the best solution would not be to limit the birth rate but to work for a better distribution of resources. And instead of appealing to women liberation and free-choice firstly we need to promote not abortion as the only option for those women that ignore the psychological consequences of the abortion, in which not only the baby but also the women are victims of that unsafe method. How can this be called health reproductive rights, when it carries a lot of risk and the bad consequences of limiting births, such as the current low rates of active population in several European countries as well as the negative repercussions in the family institution?
Studies of the WHO shown that the more restrictive laws do not reduce the number of abortions and, but rather raise the risk for women increasing clandestine interventions with limited health monitoring. However, as we saw in the Gosnell case, since the legalization of abortion there has not been an effective sanitary control in clinics that can really help to reduce maternal mortality rates. Legalization does not mean less maternal deaths, but more deaths of babies. If we believe that abortion and contraceptives solve the problem of maternal mortality, let’s study one of thousands cases in which proves that is not true. In 1972 a young Philadelphia doctor "offered to perform abortions on 15 poor women in Chicago on Mother's Day, in their second trimester of pregnancy. The doctor used an experimental device called a ‘super coil’ developed by a California man named Harvey Karman. Nine of the 15 women suffered serious complications as hysterectomy. The following year, the Supreme Court decided Roe v. Wade under a justification that cases as the Mothers day massacre would never happen again. It would be 37 more years before the Philadelphia doctor who carried out the Mother's Day Massacre would go out of business his name is Kermit Gosnell. Back-alley abortions were indisputably a problem before 1973. Nazi medicine was not primitive and did not lacked scientific foundation and was not preventive for disease, was only a poor use of scientific knowledge. Currently the same is happening, the scientific advances as prenatal diagnoses are not bad but when the ultimate goal is to remove the unborn child with physical defect-not worth living.

9.1.1.2. The case of Chile and Ireland

The case of Chile and Ireland, are two of the examples of the ineffectiveness of the legalization of abortions through population growth control methods and women health, sexual and reproductive rights. However, international organizations claim that restrictive abortion laws condemn to unwanted pregnancies to women with fewer resources. Both Chile and Ireland are two of the safest countries in America and Europe

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157 See: http://www.chileb.cl/perspectiva/chile-irlanda-y-el-aborto/.
to become a mother. According to statistics, in 2010 there were 30 maternal deaths (11.9 per 100,000 births) thus Chile is the American country with less motherhood mortality after Canada. Similarly, in Ireland there were 3 maternal deaths with 74,976 born alive and a child mortality of 4 per 100,000 alive, which puts Ireland in the top five European countries with lower mortality. According to WHO every day about 800 women die from preventable causes related to pregnancy and birth. A 99% of maternal mortality corresponds to developed countries. Maternal mortality is higher in rural areas and in the poorest communities the WHO states. But the above figures show that the problem is not the lack of legalization of abortion causing maternal mortality. Both Chile and Ireland have a minimum rate of death from abortion.

a. Chile: Latin America law and ethics

In the case of Chile abortion rates have declined (only between 10 and 19 percent of hospitalizations for abortion are associated with induced abortions) in the past ten years. Moreover, some induced abortions are caused by drugs known as RU 486 (Mifepristone). For example, in Spain where abortion is legal, rates have increased rather than decreased since the abortion legalization in 1986. According to Spanish government statistics, in 2011 there were a total of 118,359 abortions, representing an increase of 4.7% from 2010. Of these, 65.56% occurred before eight weeks, and 89.58% of them were carried out without the woman justification to abort, as permitted by Sexual and Reproductive Health and Voluntary Interruption of Pregnancy Law (2010), which the current government plans to change in 2013. In total, 14,586 abortions under the age of 20 occurred in Spain (11.8% of the total, almost half the largest age group of 20 to 24 years that represents the 21.34%). In the case of Chile, where the law restricts abortion the estimated confidence interval falls between 8,270 and 20,675 induced abortions per year in the last decade.

International and government agencies fight in favour of abortion legalization using euphemisms as therapeutic abortion. In an article published by The Clinic (The Chilean
road to abortion" published in 2003) documented the case of Hannibal Faúndes a Chilean physician and his team at the Hospital Barros Luco Trudeau in 1973. By "therapeutic abortion" meant any reason, from socio-economic reasons to simple choice. In the case of Spain, only 7% of abortions are for health reasons, the others are because of personal reasons. If the goal of nations like Chile and Ireland is to maintain a high standard of maternal health, protecting simultaneously the health of women, unborn life, while maintaining a low rate of abortions, the road certainly is not going to modify the legal status of abortion in these countries.  

**a. a. Life protection in the Chilenean law**

The Chilean Civil Code, protects the life of the unborn. Thus, Art. 55 states that "all persons are individuals of the human species, regardless of their age, sex, race or status"; in consequence, the unborn, as an individual of the human species, is recognized as a person by the system. Art. 75 of the Code provides that the law protects the life of the unborn. It reaffirms the legal protection of life from conception through the Law No. 20,120, enacted in 2006, which regulates scientific research in the human genome and prohibits human cloning. In Art. 1: "This law is designed to protect the life of human beings from the moment of conception, their physical and mental integrity and diversity and, genetic identity in relation to biomedical research and clinical applications. This legislation protects the criminalization of abortion in the Criminal Code in Title VII: "Crimes and misdemeanours against family order, against public morality and against sexual integrity".  


159 Koch, E., Chile Irlanda y el aborto, in Chile realidades en perspectiva, available on http://www.chileb.cl/perspectiva/chile-irlanda-y-el-aborto/ (consulted on 09 May 2013).

b. Ireland: European law and ethics

The abortion statistics of the British Department of Health for England and Wales for 2010\textsuperscript{161}, showed that 4,402 women from the Republic of Ireland travelled to Britain for abortions, down slightly from 4,422 for the previous year. This is the 9\textsuperscript{th} consecutive year that Irish abortions have declined, after more than a decade of upward trends. It marks a 34\% decline since the high of 6,673 Irish abortions in 2001. “It has been suggested that the reduction in abortions may be as a result of more Irish women travelling to countries other than England for abortions as in the case of \textit{A, B, C v Ireland}. However, as Dr. Cullen observed. “This is purely anecdotal as there is no statistical evidence to back up these claims”. In fact, the official figures for countries like Holland have shown a drop in recent years of abortions on foreign nationals. According to Bernadette Smyth, director of Precious Life, abortions by women from Northern Ireland have dropped by 30\% from 1997 while in England and Wales has risen again, by 447. \textit{According to the British Department} statistics in Ireland’s the rate is now 4.4 per 1,000 female aged 15-44 a country whose legislation prohibits abortion. Meanwhile in England, where the abortion rate is 17.5, the statistics reveal a continuing increase in abortions, with the number of abortions in England and Wales having risen by eight percent over the past decade.\textsuperscript{162} This refutes the theory about the abortion tourism.

\textit{b.b. The life protection in the Irish law}\textsuperscript{163}

The Irish Constitution, established by a referendum in 1983, states: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.” It requires that doctors give equal consideration to

\textsuperscript{163} ECHR. \textit{A, B and C v. Ireland}, op. cit., par. 237.
the life of the unborn child with the life of the mother and do everything possible to save both lives.

The current debate on abortion law in Ireland was reopened in November 2012 when a 31-year-old pregnant woman, Savita Halappanavar, died of septicemia. However, it was proven that the cause of her death was not the prohibition to have an abortion. In April of the same year, the Conference of the Irish Medical Organisation rejected three proposals to approve the legalization of abortion in Ireland.

Art. 40.3.3 of the Irish Constitution, approved by referendum in 1983, guarantees the right to life of the unborn child and the right to life of the mother. The Irish law is one of the most restrictive around Europe: the practice of abortion contemplates only if includes real and substantial risk to the life of the mother that cannot be avoided except for the interruption of pregnancy.164 Moreover, abortion is severely punished with imprisonment.165

In the case A, B, C v Ireland166, it was reaffirmed that the abortion ban by the Irish constitution does not violate the ECHR, which highlights the “right to respect for private and family life”. The European Court of Human Rights (EcHR) in Strasbourg ruled this on December 16, 2010. The judges were faced with three different cases known as A, B and C, three women that said that the clause in the pro-life Irish constitution, in which abortion is prohibited except in a few circumstances, violates their human rights. They said that had been "forced" to go abroad to have an abortion - specifically to Britain, and that the Irish Constitution, that protects the life of the unborn, endangered their health. Of the three cases considered by the High Court, Ireland has been acquitted of two and charged from one.

The A case, was not able to contravene Irish pro-life legislation noting that the country's constitutional prohibition of abortion does not violate the European Convention on Human Rights. Even the court noted the "right to respect for private and family life" that celebrates Ireland and praised the "right to life of the unborn". The Court held that, under the legislation of abortion, European countries enjoy "a wide margin of appreciation", as there is no "legal consensus on the scientific and legal definition of the beginning of life." Although the prohibition of abortion is an interference of privacy, interference is justified, stated the Court, by the legitimate aim of protecting public morals as understood in Ireland.

The European Centre for Law and Justice, the other party to the case, praised the court's recognition of the "right to life of the unborn". The centre’s director, Gregor Puppinck, clarified that "the court does not recognize the right to life of the unborn as an absolute right, but a right that must be assessed with other interests, such as maternal health or other social interests (...) a State is free to provide a very high degree of protection of the right to life of the unborn child. The right to life of the unborn child may lawfully supersede other rights guaranteed in conflict (...) as such, there is no independent right to have an abortion based on the Convention (...) the natural target and State's duty is to protect the lives of its citizens; therefore, people, retain the right to make their lives protected by the State (...) the reciprocity between the rights of individuals and the duty of the State in the field of life and security is traditionally considered as the foundation of the public society, it is also the foundation authority and legitimacy of state ".

167 Opino, El Tribunal de Estrasburgo niega que haya "un derecho humano al aborto, at http://www.opino.org/seccion/BioeticaCiencia/pub/1342/v/12 (consulted on 09 May 2013).
c. **Other cases: Resolution 1829 (2011)**\(^{168}\)

In 2011, the Parliamentary Assembly of the Council of Europe/PACE\(^{169}\), approved the resolution 1189 (2011), Prenatal Sex Selection. The resolution states Recalling the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210), the Assembly believes that the social and family pressure placed on women not to pursue their pregnancy because of the sex of the embryo is to be considered as a form of psychological violence and that the practice of forced abortions is to be criminalised. The Assembly wishes to warn Council of Europe member states against the social consequences of prenatal sex selection, namely population imbalances which are likely to create difficulties for men to find spouses, lead to serious human rights violations such as forced prostitution, trafficking for the purposes of marriage or sexual exploitation, and contribute to a rise in criminality and social unrest. The resolution also states: Sex selection is a huge problem in some Asian countries, where the selective abortion of females, together with the killing of female newborns has been practiced for decades. Prenatal sex selection is indicated by a “skewed sex ratio”, meaning a departure from the natural average sex ratio at birth of 105 boys for 100 girls. This tends to increase as the number of children goes up in a family, or when there are legal or economic restrictions to the size of the family.\(^{170}\)

Despite this, the British NGO Society for the Protection of Unborn Children / SPUC said that the resolution contains eugenics articles, denying the right to life of children with disabilities. Section 7 of the resolution states: "could resort to sex selection only to avoid serious hereditary diseases linked to one sex", while Section 8.5 states that sex selection should be avoided "if it is justified for the preventing of serious sex-linked genetic diseases." With that, a greater support for abortion than for the basic human

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\(^{168}\) Text adopted by the Assembly on 3 October 2011.

\(^{169}\) The PACE is a fully independent agency of the European Union / EU, founded in 1949, and unlike the EU, it does not have the power to establish international rights. Resolutions adopted by it are not binding on Member States but are highly influential in the development of binding international law.

rights was given. Instead of discussing gender discrimination it allows aborting a baby with physical disabilities when it does not solve the problem from the root, to defend the rights of the unborn child regardless of his health and sex.

10. Reasons to prevent abortion

Firstly, there are differences between women rights and abortion due that the promotion of women rights is not synonymous of the right to decide over the life of others. Thus, abortion cannot be included among health and reproductive rights of women; any abortion is reason for high risks in the health of the women and may be cause of serious damages for the rights of health, not only physical, but also physiological and moral. Secondly the embryo is not part of the women body due that possesses all qualities of a human being including his own heart and body. Third, abortion is not a way to resolve social problems such as poverty. It is the State who has to deal with those problems not the womb of women. If it is not possible to sustain families, the best solution from the State is not to disintegrate families and limit their number of children. Fourth, to justify unsafe abortions is not the solution to eliminate motherhood mortality since the risk of abortion cannot be prevented by a simple statute that legalizes it. To legalize abortion does not mean better public health.

On the other hand, both abortion by rape and therapeutic abortion, hurt an innocent. How the baby was conceived do not justify the means to exterminate him. Scientific studies show greater psychological and physical harm for the mother that abort than those that do not abort. E.g. the contraceptive pill produces sterilization in women as it blocks any hormonal activity and in some cases causes foetal malformations. The discoverer of Down Syndrome origin, Jerome Lejeune, said:” With contraceptive about 10% of women get pregnant after one year of use. If it is not an insurmountable barrier to the sperm, it would less effective for the AIDS virus transmission, which is 500 times smaller. As might be expected, saying that condoms are effective in preventing AIDS is absurd.”
On the other hand, the RU-486 abortion was legalized in the US by the Food and Drug Administration in 2000, and since then at least six American women have died from complications of medically induced abortion. The Italian Journal of Obstetrics and Gynaecology reported in 2008, 16 maternal deaths associated with RU-486, which led the Italian Senate to delay the sale of chemical abortion regimen. Scientifically it has been proven a relationship between breast cancer and the use of abortifacients.

The researcher Bayle said that in France are between 120,000 and 400,000 abortions each year by indirect effect of taking the combined pill, because the endometrial is affected and cannot receive the conceived embryo. The morning after pill increases the risk of ectopic pregnancy risking baby and mother lives. According to Michael McManus since 1960 the pill began to be sell, wedlock births rose from 224,000 to 1.2000.000 in USA, abortions have doubled. The French geneticist Jerome Lejeune called the abortion pill RU-486, the first human pesticide; used in the world especially in China, where there have been 20 million abortions by this way.

10.1. Culture of life v culture of death

Despite the millions of abortions performed each year, there are babies that have survived the culture of death. An example of this is Gianna Jessen, a Californian woman who after the attempted saline abortion at the clinic of PPFA survived. She said: “you did not get me, the silent holocaust did not won over me (..) if abortion is merely about HR, then what I am?” She refers to the abortions when the baby is disable saying: “What absolute arrogant arguments (...) that the stronger should dominate the weaker, who determines who should live or die”.

Another example is Bernard Nathanson, the king of abortion in US. He was one of the founders of the League of National Action for the right to abortion (1968). He justified abortion in his book "Aborting America". After leaving the business of abortion

he said that: “the person in the womb is a living human being and we could not continue making war on defenceless human beings. After looking at the ultrasound, I could no longer continue as before. Now I know that terminating the pregnancy or abort a life is intolerable, it is a crime. I have no qualms in using this word: abortion is a crime. All the genetic code (of the embryo) and all features are indisputably human. There is no doubt he is alive, is self-directed and not the same being with the mother”. Nathanson is the author of the video "The Silent Scream" (1985) which shows an ultrasound during an abortion on a twelve weeks foetus in uterus, ripped with a combination of suction and crushing instruments used by the abortionist.

Even the Nobel Prize of medicine 2012, Shinya Yamanaka, who achieved to rejuvenated adult skin cells to transform them into stem embryonic cells without destroying human embryos, stated that he did not saw any difference between the embryos and her daughters while he was doing his researches.

**10.2. Dakota case: heartbeat abortion ban**

North Dakota has adopted the most restrictive abortion law in the US, as the governor Jack Dalrymple signed a bill that bans the procedure in most cases once a foetus heartbeat can be detected. He also signed a bill that bans abortions based on genetic abnormalities, or based on the gender of the foetus. North Dakota is the latest state to pass measures to restrict abortions. Several states ban most abortions after 20 weeks of pregnancy but Arkansas approved the law that prohibits any abortion after the 12 weeks of pregnancy. The "heartbeat" bill provides exceptions if an abortion would prevent the death of a pregnant woman, but provides no exception for rape. It sets up a

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175 See: http://www.kslegislature.org/li/b2013_14/measures/hb2253/
direct challenge to the Supreme Court's decision in *Roe v. Wade* that legalized abortion in 1973.\textsuperscript{176}

Republican representative Bette Grande, one of the primary backers of North Dakota’s new unconstitutional abortion ban, spearheaded the state’s forced ultrasound law. Since then, women have told her they decided not to go through an abortion after seeing an ultrasound image of the foetus. She believes the intense national publicity surrounding the foetal heartbeat abortion ban has brought new awareness and understanding for women about what abortion is. “It does give people the opportunity to realize that there is a beating heart,” even in a foetus as young as six weeks, Grande said.\textsuperscript{177} The state of Dakota is also working to prohibit funding for abortion services; amending late-term abortion and woman's-right-to-know statutes. It amends the *Woman’s Right to Know Act* to prescribe new language for signage to be posted in an abortion clinic and is required in certain printed materials to inform pregnant women about the development of an unborn child, legal responsibilities for the unborn child, and a link to the KDHE\textsuperscript{178} website materials and organizations to assist the pregnant woman.\textsuperscript{179}

Following a Supreme Court ruling in 1973, abortion is a right guaranteed in the U.S. during the first trimester of pregnancy, although states may impose regulations from the second quarter or even prohibit abortion in the last trimester, when the foetus is viable outside the womb. The Supreme Court ruled in the case known as *Roe v. Wade* brought on behalf of Norma McCorvey, who used the pseudonym "Jane Roe" and

\textsuperscript{176} Thomson, D., *North Dakota governor signs "heartbeat" abortion ban*, in Reuters, at http://www.reuters.com/article/2013/03/26/us-usa-abortion-northdakota-idUSBRE9P0UA20130326 (consulted on 09 May 2013).


\textsuperscript{178} Kansas Department of Health & Environment: Home. Is a site for information Kansas birth, death and marriage records, as well as air quality, waste management, water quality, lab information. See: www.kdheks.gov/

challenged the state standard that allowed abortion only to save a woman's life. By then, 30 of the 50 states had similar laws as Texas. The Supreme Court ruling determined that a woman's decision to abort is protected by the right to privacy. Nevertheless in January 2013, the House of Representatives of the state passed the SC4009 bill which states: "the inalienable right to life of every human being must be protected and defended at any stage of its development". If it is ratified in November elections of 2014, the amendment that protects life will guarantee protection to embryos and foetuses. Therefore their embryonic stem cell research and IVF would be forbidden. The abortion is not a decision that competence only to the mother or the parents of the unborn child; it also involves the life of a new, unique, and different being, who must be defended more strongly, precisely because of his status of innocence. Other states are making efforts to restrict abortion, as the case of Alabama abortion where a law raises safety requirements for abortion clinics and the Virginia government State Board of Health who adopted stricter codes of operation for those centres, many of whom fear be to close.

Regarding to this, on June 2013, Wisconsin Senate Passes Bill to Allow Women Ultrasound Before Abortion. The Senate bill 206 (Sonya’s Law) is a legislation that allows women considering an abortion a chance to see an ultrasound before his mother make an abortion. Another step to restrict abortion nationwide to the first 20 weeks of pregnancy in US was made in the same month. The “Pain-Capable Unborn Child Protection Act” (H.R. 1797), introduced by Arizona Republican Trent Franks, to end abortion after the point when scientists agree unborn children can feel pain. With six Democrats whom voted yes, is the first time in history, in chamber of the U.S. Congress that affirmative protection has been extended to unborn children. The legislation would affect an estimated 140 abortion providers who are willing to perform abortions at 24 weeks or later, according to a 2008 report from the GI.

CONCLUSIONS

What role International Law of Human Rights must take to support universal principles in order to protect human life against culture of death? Since the WWII the nations unite in order to recognize natural law rights after the human rights violations by Nazis; As Morsink J. Stated: “They did not need a philosophical argument in addition to the experience of the holocaust”.

The child must be protected before and after birth. However, even though the Geneva Declaration (1948), known as the Physicians Oath, was a principled response by the World Medical Association of National medical bodies to the atrocities committed by Nazi doctors, including the use of knowledge contrary to the laws of humanity to abort humans lives. The Nazi doctors used justifications based on ideology or culture to demonstrate the necessity to violate the most human rights of some vulnerable groups, and for them it was morally correct to exterminate Jews, disabled people and elderly only because it was legal. Today, those groups support abortion under the justification of women’s right to choice or freedom. Although, the UDHR already includes the principles of liberty, equality and fraternity (art. 1) for everyone, abortion advocates state that women right to abortion demand an inclusion for everyone, but that exclude the interpretation when it comes to the respect of the human rights of the unborn child. In the same way, this thesis aimed to compare Hitler’s dehumanization of Jews in order to justify their exterminations, with abortion advocates whom in the same way claim the baby is a tissue, a group of cells, a nonhuman thing, a choice, to prevent the birth of the baby in order to justify his/her extermination.

Along history have been always groups of people that exclude some human beings from the right of personnalité juridique. A comparison between slaves from the colonialism specifically in America where they were consider non human beings

lacking juridical personality by a racist ideology and some groups as Jews during WWII whom were consider non human beings by the Nazi ideology of Arian pure race was already made. In the same way, today the unborn child is consider a non human beings and his/her juridical personality is denied by ideologies that empower mothers to abort their own children.

The Geneva Declaration states in contrast of what some groups state that the unborn child has only one right contingent on the mother’s choice. Trying to respect the autonomy of women and their plan of life does not make abortion permissible.

Abortion has been compared to the Nazi holocaust due that the Nazi atrocities were condemned as crimes against humanity during the Nuremberg Trials (1947), and among those atrocities, abortion was included. James McHaney, prosecutor of the RuSHA/Greifelt Case, called abortion an inhumane act and an act of extermination and stated that even if a woman’s request was voluntary, abortion was still a crime against humanity. The men doing abortions were found guilty of encouraging and compelling abortions at this trial.

The crime of encouraging abortions was widely condemned by the international community. The British Medical Association's (1947) submission War Crimes and Medicine reaffirmed, under the Ethics heading, the duty of curing the greatest crime being co-operation in the destruction of life by murder, suicide and abortion. Abortion was one of the Nazi Doctors tools for exterminating the ideologically and socially unwanted.

The UDHR was drafted on the principle of a universal inclusion of the human race, as result of the atrocities of Nazism. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide included measures intended to prevent births within a group. The first draft of this convention referred to biological genocide in which abortion was used as a tool for this. The draft states that holocaust is the intentional destruction of a group of human beings, defies universal conscience, inflicts irreparable loss, and in contradiction to the spirit of the UN. Is interesting to see how
this applies to our world today. The voluntary abortions performed each year reaches 55 million children called unwanted. Art.3 of the UDHR states that everyone has the right to life, liberty and security of person. By the Convention on the Prevention and Punishment of the Crime of Genocide, the children are to be protected by law against any threat to their lives. The prenatal diagnosis for the detection of disability in children is not a justification to violate the right to security of person by doctor’s offers of terminating their lives. With new pre-natal medical a systematic literature review found that some 92% of these children detected with the disability are routinely aborted. The right to life of the Down Syndrome child at risk of abortion and the right to life of the girl child at risk of abortion because of more advanced pre-natal sex-selection technology are victims of the use of scientific and technical progress for purposes that are contrary to the enjoyment of all human rights, including the rights to life and to health.

Some people said that is justifiable to abort disable unborn children. Should we exterminate those disabled, elderly and Down syndrome because they are in pain, and based on the previous a life of worth living does not include pain?

Hitler believed that rights only belong to those strong enough to defend them. He insisted in Mein Kampf that the weaker had "no inalienable right to life" (Lebensrecht), pro-choice advocates insist that the embryo do not deserves to live if the mother’s decide so. Those physicians who support Hitler's program of abortion were call friends of women. Until this time, abortion had been illegal in Poland; however, the Nazis introduced safe and legal abortion for the first time for the purpose of limiting the future Polish population, and their slogan was "Freedom of Choice" (Auswahlfreiheit).

Every country is supposed to promote its democratic institutions along with the rule of law and effective legal systems in order to protect HR without discrimination

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among human beings. Today, pro-abortionists call for the decriminalization of abortion, this would mean abortion permissible, something “morally” correct for those who believe that if something is legal is because is right. Regarding to this, Nazis saw a tool of killing but Nuremberg trials condemned both, the violations of liberty and the violations of life as far as abortions was concerned- abortions were considered as wrong for any reason. Nazis used abortion for their genocide program in order to prevent the birth of those that were considered unworthy of living.

There has arisen in present times the despicable modern practice, a genocide endorsed by a significant part of the current membership of the international medical profession, to commend expectant mothers of children with disabilities such as Down syndrome, measures intended to prevent births within the group.

Pro-abortionists claim for a legalization of abortion as a health reproductive right under State support. However, it is not a health right for the mother if it carries out a high rate of risks for her health and a lethal right for her child. If States legalize abortion of selected human beings, they fail to protect HR of a class of human beings that has been separated out from the human family in a most discriminatory way. Legalizing abortion would authorize discrimination against children at risk of abortion. Mothers and abortionists would be authorized to discriminate between those children who are deemed wanted, to whom benign medical treatment and care will be accorded, and those children who are deemed unwanted to whom lethal treatments are to be applied. In short, legalization effectively authorizes and licenses abortionists to violate the unborn child’s human right to be protected by law without discrimination. Abortion is a transgression against humanity; it does not matter whether a Nazi forces women or because women decide that a baby is a burden for her or for society.¹⁸³

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“As the family goes, so goes the nation and so goes the whole world in which we live”. (JP II)