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**THE OPERATION OF BIOPOWER AND BIOPOLITICS IN
THE IMPLEMENTATION PROCESS OF REPRODUCTIVE
HEALTH POLICIES IN PERU**

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ABSTRACT

In present-day societies, human life is often an arena of debate within which claims of morality, knowledge, and truth are contested. The meaning of human life, as well as the right to exert control over the bodies that create this life, are constructed by various discourses. In this process, special attention is paid to human bodies with particular capacities and needs, such as women's bodies. The reproductive capacity of women's bodies has long been considered central to defining the meaning of being a woman in Western societies. This gender essentialism related to the maternal role guides some reproductive health policies, which are implemented within a complex architecture of discourses, institutionalized social stratification, biopower and biopolitics. The Peruvian case offers clear examples of this situation.

In Peru, reproductive healthcare policy has been irregularly implemented throughout the last twenty years, mostly due to the strong influence that conservative Catholic groups have been able to exert on the Peruvian Government. The discourse articulated by these groups asserts that human life begins at the moment of conception and is a gift from God; therefore, no one should be permitted to interfere in the processes of human life from conception until death. This sacralisation of human life has been progressively constructed within Catholic doctrine, which today incorporates selective interpretations of scientific knowledge in support of its claims. This discourse about human life directly and adversely affects Peruvian women's bodies and lives. Due to their reproductive capacity, the conservative Catholic discourse considers women as bearers of human life. However, their decision-making power about the creation of this life is not taken into account in this discourse, especially when this decision-making power is linked to the exertion of sexual and reproductive rights. The influence of conservative Catholic discourse on the implementation process of Peru's reproductive health policy is thus the central focus of this thesis.

The analysis offered in this thesis is informed by a feminist critical discourse analysis of Peruvian politics, policy and law relating to three key issues: coercive sterilisation of indigenous Peruvian women during the regime of Fujimori (1996-2000), the ongoing lack of access to safe and legal abortion, and the 2009

Constitutional Court ban on the distribution of free emergency contraception within the public health sector. My analysis reveals that the Catholic interest in, and influence on, reproductive health policy was largely stimulated by Fujimori's policy of coercive sterilization, which was in turn prompted by a eugenic discourse that conservative Catholic groups, among others within Peruvian civil society, actively denounced. This opposition consolidated the influence of conservative Catholic discourse within the political domain. Further, I suggest that the actions of the State, increasingly influenced by Catholic interests, can best be understood in terms of Foucault's concept of biopower, with reproductive health policy being the primary tool used to effect the State's biopolitical agenda. As I illustrate, the influence of Catholic discourse on reproductive policy and practice is most clearly evident in the ongoing impediments placed in the way of women trying to access therapeutic abortions, and the prohibition of the free distribution of the emergency contraceptive pill via the public health system. Even in the face of local and international condemnation, the State persists in its non-compliance with the provisions of international human rights agreements, a failure which I suggest can only be understood by acknowledging the defining influence of Catholic discourse and interests within Peru's political domain.

The significance of this thesis thus lies in its analysis of the discourses and political machinations that restrict the exertion of Peruvian women's sexual and reproductive rights. These constraints are achieved through the operation of biopower enacted through the implementation of various reproductive health policies. This situation, I suggest, confines women via a constructed "naturalness" that reproduces essentialist notions of gender. As the case studies presented in this thesis demonstrate, a vital component of this discursive essentialisation of the maternal role is the identification of women as reproductive bodies that can be regulated and managed in accordance with the interests and discursive affiliations of the State, as opposed to individual citizens with autonomous decision-making power over their bodies and their own lives.

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ABBREVIATIONS

ACIPRENSA	Catholic News Agency
CDA	Critical Discourse Analysis
CEDAW	Committee on the Elimination of Discrimination Against Women
CEPROFARENA	Centre for Promoting Family and Regulation of Fertility
CESCR	Committee on Economic, Social and Cultural Rights
CLADEM	Latin American and Caribbean Committee for the Defence of Women's Rights
CRC	Convention on the Rights of the Child
DFID	United Kingdom Department for International Development
ENDES	Peruvian National Statistics on Population and Family Health
FCDA	Feminist Critical Discourse Analysis
HLI	Human Life International
ICESCR	International Convention on Economic, Social and Cultural Rights
INEI	National Institute of Statistics and Information
MINSA	Ministry of Health
NGO	Non-Governmental Organization
PRI	Program Research Institute
PROMSEX	Centre for the Promotion and Defence of Sexual and Reproductive Rights
UNFPA	United Nations Population Fund
UNHRC	United Nations Human Rights Committee
USA	United States of America
USAID	United States Agency for International Development
WHO	World Health Organization

INTRODUCTION

This thesis examines the gendered relationship between bodies, religion, reproduction and reproductive health policies in Peru. It analyses the operation of biopolitics and biopower in Peru's reproductive health policies, through case studies of coercive sterilisation of indigenous women, denial of access to abortion, and the ban on free distribution of the emergency contraceptive pill. It also seeks to determine to what extent the surveillance and bodily discipline exerted by the State can be considered a form of political intervention in, and control over, women's bodies in particular. Finally, this thesis seeks to gain critical insight into how gender, class, race and power have been taken into account in the implementation processes of reproductive health policies in Peru, especially those related to coercive sterilisation, abortion, and the emergency contraceptive pill.

The analysis that I develop in this thesis is based on research carried out in a socio-political context, in which the human body and what it produces have come to be regulated by politics. Globalisation, communication in real time, new technologies, and the appearance of new discourses such as liberalism and feminism, for instance, have broken down mental and physical borders, allowed the expansion of democratisation processes in Latin American countries (with significant exceptions, of course), and generated blocks of power relationships in which the political management of the human body and the life of the human being have become a focus. It is in this process of democratisation that sexual and reproductive rights began to be recognised and taken into account within Latin American politics (Mujica, 2007). The achievement of these rights would mean that every person could freely express their sexual orientation and enjoy his/her sexuality and sexual intercourse without any negative consequences, such as unwanted pregnancy or sexually transmitted infections. That is to say, sexual and reproductive rights enable people to have decision-making power over their bodies and lives. However, in reality this is not the case, and thousands of people in Latin America have difficulties exerting their sexual and reproductive rights because of their sexual orientation, race, social or economic situation and/or gender, for example (Catholics for Choice, 2011). Likewise, technology now offers safe and relatively accessible mechanisms for separating sexual intercourse

from reproduction through artificial contraception, and also offers a means of assisted reproduction for the infertile. Nevertheless, these technologies have not yet had an important impact in the political realm in Latin America, where ideologies and religious and political interests combine to deny ordinary people the opportunity to make their own decisions about their sexual and reproductive rights, and also deny women in particular the ability to exert control over their own bodies. The obstacles that people, especially women, face in exerting their sexual and reproductive rights as well as their decision-making power are largely created by public reproductive health policies. In the implementation of these policies, standpoints from different groups of society are taken into account, among them the standpoint of conservative Catholic groups.

The Catholic Church has played an important role in the political and social construction of Latin American States ever since representatives of this Church arrived in Latin America along with the Spanish conquerors during the sixteenth century (Cáceres, Cueto, & Palomino, 2008). Among the ideas that are articulated by conservative Catholic groups on issues related to the process of human reproduction is the belief that human life is a gift from God, and that no one should interfere with the process of human life from the moment of its natural conception until its natural death (Mujica, 2007). Therefore, the use of contraceptive methods, including the emergency contraceptive pill and the practice of abortion, are not permitted under Catholic doctrine. These prohibitions are some of the inflection points that conservative Catholic groups develop in their discourse related to the life of the human being, which, since the last century, has been challenged by scientific knowledge and innovation.

The development of new technology contributes to, for example, improvements in the scientific research on issues related to the functioning of the human body and control over the biological functions of the human body (Mujica, 2009). This new knowledge was considered dangerous, according to conservative Catholic doctrine, because new technology offers tools for managing and reorganising biological human reproduction and therefore potentially defies the constitution of the traditional family, which is considered by conservative Catholics as the most important social institution (González Ruiz, 2005). Through the traditional family,

it is possible to give birth to and instruct new generations of Catholic faithful, and to therefore propagate Catholic precepts within society; in other words, through the family it is possible to exert control over the whole society. It is in this context that conservative Catholic groups have begun to be interested in penetrating the formal structures of public political institutions using the tools that a democratic system provides, such as lobbying officials and/or congressmen/congresswomen, and publicly advocating their discourses within the wider society. Furthermore, conservative Catholic groups began to use scientific knowledge so as to give seemingly objective support to their theological discourse (González Ruiz, 2005).

This renovated conservative Catholic discourse has had an important influence on the political agendas of Latin American countries, especially on issues related to sexual and reproductive rights. Therefore, by understanding the conservative Catholic discourse related to the life of the human being, it is possible to glean insight into the nature and operation of biopolitics in Latin American States, as exerted through the implementation of various reproductive health policies. In the specific case of Peru, conservative Catholic groups have significant influence on reproductive health policy because many of their members work in powerful positions in the political sphere and/or have close relationships with members of the Peruvian elite. Likewise, conservative Catholic groups implement social strategies by which they try to disseminate and popularise their view that women's capacity to give birth is a gift from God and that the conceived is an unborn child and therefore has civil rights (Mujica, 2007).

Peru is a country that throughout its history has faced socio-political problems that are largely based on the system of social exclusion that has been implemented against the indigenous and poor populations since the arrival of the Spanish conquerors in 1532. These socio-political problems peaked during the period of political violence, which in twenty years (1980-2000) caused the deaths of almost 170,000 Peruvians, the majority of the victims being indigenous people. However, in the last twenty years, Peru has engaged in a process of building political stability that supports economic growth. This is revealed, for example, in an improvement in people's wellbeing in the larger cities and very low levels of inflation (less than 0%) (PROMSEX, 2011). While the economic situation is

improving, the same is not true of the social realm, or at least change is not happening so quickly in this sphere. Peruvian social and public policies continue to struggle to address the necessities and interests of the most vulnerable populations, such as poor women (Committee on Economic, Social and Cultural Rights, 2012); an example of this situation is Peru's reproductive health policy. This policy is focused on women's reproductive capacity. As I will illustrate in this thesis, this capacity was actively discouraged among indigenous women from 1996-2000, so as to control the growth of the indigenous population; thus, a eugenic plan was carried out by the State through women's bodies. From 2000, Peruvian reproductive health policy began to foster women's reproductive capacity through the promotion of measures that improve the health care of the mother and her child, while discouraging measures to avoid unwanted pregnancies. In this thesis, I will argue that through such policies, a net of biopower is woven around the bodies of women, especially poor women, who are the principal recipients of reproductive health policies, because these women are the principal users of the Peruvian public health system. This biopower, I will suggest, is exerted by the State, whose political programmes are implemented under the influence of the discourses of powerful political groups, and most notably conservative Catholic groups. Thus, I will argue that Peruvian women's bodies are under constant surveillance and are objects of biopolitical interventions that operate to circumscribe women's autonomy and decision-maker power.

Taking into account the context stated above, I decided to conduct research that would allow me to deconstruct and analyse the discourses that are behind the arguments for implementing Peru's reproductive health policies, in order to understand the past and present power relations governing the surveillance and regulation of women's bodies, especially in three cases: coercive sterilisation of indigenous women, the prohibition of abortion, and the ban on the free distribution of the emergency contraceptive pill in the public health system. Thus, three key questions guided how my research was conducted:

- 1) What is the gendered relationship between bodies, religion, reproduction and reproductive policies in Peru?
- 2) In what ways can Peru's reproductive health policies be understood as

exemplifying the operation of biopower and biopolitics in relation to women's bodies?

- 3) In what ways do questions of gender, class, race and power intertwine when women's access to emergency contraception is limited by reproductive health policies?

According to Foucault (1995), biopower seeks to reconstitute the population and transform human life through the use of new techniques and technologies to discipline and survey the body. This kind of power over life itself is reproduced and activated through biopolitics, which are formal control systems and political interventions that contribute to achieving discipline through the regulation of bodies and bodily capacities. Using this framework, I wanted to understand how Peru's reproductive health policies can be considered as exemplifying the operation of biopolitics and biopower, through the analysis of case studies related to coercive sterilisation of indigenous women, abortion, and the emergency contraceptive pill. Also, taking into account social factors such as race, class, religion, and gendered relationships, I sought to explore the extent to which the surveillance and discipline exerted by the State can be understood as a political intervention in the control women exert over their own bodies.

This research focus on coercive sterilisation, criminalisation of abortion, and the ban on the free distribution of the emergency contraceptive pill through the public health system is useful in highlighting the unique influence that the discourse of conservative Catholic groups has on the operation of biopower and biopolitics relating to these issues. As I will illustrate, this influence began in the mid 1990s, when conservative Catholic groups were among various civil society groups that denounced the public policy (1996 – 2000) of coercive sterilisation of indigenous women in rural areas of Peru. Following this, the actions of conservative Catholic groups became more public through their participation in various public forums, in order to have more contact with the community, and the presence of some of their members in key positions in the Ministry of Health (MINSA), who started to introduce their conservative discourse within reproductive health policy. An illustration of this influence is reflected in the fact that the national guidelines for practicing therapeutic abortion have still not been published, despite growing

international pressure, even though this form of abortion has not been criminalised in Peru. In the case of the emergency contraceptive pill, the influence of conservative Catholic groups appears to have been decisive in the ban on its free distribution in the public health system, enacted through a controversial decision of the Constitutional Court in 2009.

Since the concepts of biopower and biopolitics are clearly central to my thesis, in Chapter 1 I outline in greater detail post-structuralist theories related to the social construction of the human body, and how, in terms of Foucault's analysis, discipline is exerted by the State on the social and physical human body so as to create human beings that are useful in fulfilling the interests of modern society. The specific forms of biopower and biopolitics that are exerted over women's bodies are then explored in detail through reference to the implementation process of reproductive health policies in Peru, specifically in the cases of coercive sterilisation, abortion, and the emergency contraceptive pill.

Having made clear the theoretical framework that informed this research, Chapter 2 describes the methodology that I used to collect data. I followed a feminist Foucauldian methodology because it provided me with the theoretical tools to explore the influence of power in the creation and promotion of gender essentialisms that have guided the implementation of reproductive health policies in Peru. Using feminist Foucauldian analysis, I identified, questioned, deconstructed and analysed the discourses that have supported the arguments for implementing reproductive health policies relating to coercive sterilisation, abortion, and contraception. As my research was based principally on the deconstruction of texts such as legal documents, newspaper articles, media representations, and specialised literature related to biopower, biopolitics, coercive sterilisation, abortion and the emergency contraceptive pill, I conducted this analysis using the technique of Feminist critical discourse analysis (FCDA). This technique allowed me to identify the discourses constituting situations, objects of knowledge, social identities and power relationships between social classes, women and men, and ethnic/cultural majorities and minorities in order to uncover hegemonic essentialism and challenge assumptions that affect the development of women in society (Lazar, 2010). In addition, I used qualitative

primary data drawn from seven semi-structured interviews that were conducted by telephone (through Skype) with three activists for women's rights, one political scientist, one representative from a conservative Catholic group and two high level governmental officials.

Chapter 3 outlines the social context in which this study was conducted, and analyses the process of implementation of contemporary Peruvian reproductive health policies. Firstly, it describes the historical and socio-political Peruvian context, from the time of the Spanish conquest until today. Secondly, the implementation process of contemporary reproductive health policy is described. Finally, the conservative Catholic and right-based discourses (from feminist or human rights non-governmental organisations (NGOs)) that influence the formulation of Peruvian reproductive health policy are discussed. This general overview of the process of developing reproductive health policy contributes to an understanding of the specific cases in which biopower and biopolitics have operated to constrain Peruvian women's sexual and reproductive rights.

In Chapter 4, the controversial implementation process of Peru's coercive sterilisation policy is analysed. As I will show, a policy of family planning that included sterilisation surgery was presented by Fujimori's government as an important measure that would contribute to the empowerment of Peruvian women and help reduce Peru's population growth. However, empowerment of Peruvian women did not happen, because this programme was focused only on indigenous women, who were sterilised without their informed consent and against their will in many cases. In order to understand this issue, this chapter explores the structural inequalities experienced by indigenous women in Peruvian society, which began with the emotional/social shock occasioned by the Spanish conquest and reached a breaking point during the period of political violence (1980-2000). The operation of biopower and biopolitics in the implementation process of Peru's coercive sterilisation policy targeting indigenous women is also described. Finally, this chapter explores the influence of the discourse articulated by conservative Catholic groups in denouncing coercive sterilisation, and examines its political and economic effects on the financial support that the United States Agency for International Development (USAID) subsequently gave to the

Peruvian State for implementing reproductive health policies.

Chapter 5 develops an analysis of one of the most controversial issues in Peruvian reproductive health policy: abortion. Therapeutic abortion is the only abortive practice that has not been illegal under Peruvian law since 1924. Nevertheless, this kind of abortion is not practiced in the public health system because the Peruvian government has not implemented the national guidelines on therapeutic abortion that will guide the actions of health care providers when they have to practice this form of abortion. This lack of action from successive Peruvian governments since 1924 has had fatal consequences for poor women, who are the principal users of the public health system. Women who have sufficient money are able to buy the emergency contraceptive pill in pharmacies or go to a private clinic and pay for an “appendectomy” - effectively a safe abortion performed illegally. In order to understand this situation it is important to understand the discourses that have influenced the lack of action by Peruvian authorities. Hence, this chapter explores firstly discursive constructions of the beginning of human life, especially from the point of view of Catholics and the Roman legal system (which is the system that Peruvian law follows). Both discourses draw on a partial interpretation of scientific knowledge in order to give more strength to their contentions. Secondly, the evolving discourse of the Catholic Church related to its prohibition of the practice of abortion is analysed, beginning with the earlier position of the Fathers of the Catholic Church (who did not condemn abortion practiced during the first few months of pregnancy) through to the current encyclicals or official documents. Finally, the influence of conservative Catholic groups on the operation of biopower and biopolitics in relation to Peruvian abortion law is explored.

Chapter 6 discusses the implementation process of Peru’s emergency contraceptive pill policy. This policy is, at the moment, the clearest example of the influence of conservative Catholic discourse on the operation of Peruvian biopower and biopolitics. First of all, I outline the discourse of the Catholic Church related to the use of contraception in general, in order to understand its position on emergency contraception. In this section, special attention is paid to the consistency of Catholic discourse on these issues which, unlike Catholic

discourse on abortion, has remained the same since the first pronouncements of the Fathers of the Catholic Church. The second section describes the implementation process of Peru's emergency contraception policy, focusing on the distribution of the emergency contraceptive pill. Finally, the operation of biopower and biopolitics through the ban on free distribution of the emergency contraceptive pill through the public health system is analysed. The decision of the Constitutional Court in 2009 that ordered this ban is deconstructed, as are the efforts of conservative Catholic groups to influence the decision of the judges and to encourage a wider rejection of this kind of contraceptive within the community.

As the research presented in this thesis demonstrates, the body is not longer a purely organic body but also a symbolic, political, economic and ambiguous body with rights and surrounded by the rights of others. In the specific case of Peruvian women's bodies, their rights as human beings protect their bodies; but at the same time, the regulating devices that are established by politicians restrict the exertion of these rights when these norms constrain the decision-making power of women. Peruvian women's bodies are the battleground in an ongoing struggle between the rights of the subject of law (person), the rights of the conceived (unborn), and political discourses. Thus, Peruvian women's bodies are sites where the modern individual is disciplined according to the interests of the Peruvian State and its major client - the conservative wing of the Catholic Church.

CHAPTER 1: UNDERSTANDING BIOPOWER AND BIOPOLITICS

“Life” is a term endowed with a powerful apparatus of significance. Debates around this term occupy a preponderant place in modern societies. “Life is a fundamental human right and, therefore, nobody can infringe it or go against it” (Mujica, 2007, p. 66). However, the meanings attached to the term ‘life’ in the political framework have changed over time, as the post-structuralist school of thought suggests. This perspective proposes that the identity and subjectivity of life are created through systems of language, which are neither given nor fixed but constantly changing (Hubbard, Kitchin, Bartley, & Fuller, 2005). For instance, the research of Michel Foucault suggests that the body is a source of power. Therefore, the body is a subject of power relations and consequently is an object of multiple disciplinary strategies which come from the State and from the self. These technologies of discipline have changed over time. Thus, during the classical period, the sovereign or the State’s machine was aimed at recreating and building disciplinary techniques, such as the death penalty, torture and chastisement. Nowadays, the techniques used in modern societies seek to control the modes of production of life, so as to contribute to the growth of a capitalist economy (Foucault, 1978).

Human life has become the centre of the articulation of the State, democracy, government and civil life, and is now a means of political penetration into the lives of people. In this process, according to Agamben (1998), the living being becomes both subject and object of political power. This power cannot kill, torture or punish people, but it can regulate human life through the implementation of policies that are focused on the human body and the things that the body generates by itself. It is in this context that the concepts of biopower and biopolitics began to emerge. The power exercised over the social body (including its anatomical and biological aspects) is known as biopower (Foucault, 1978). Biopolitics is understood as the formal control systems of biopower, the political interventions that contribute to the disciplining and monitoring of bodies within a population. The State, through practicing biopolitics, can define and limit bodily identities and discipline them to produce what Foucault terms “docile” bodies (Foucault, 1995). Thus, one key area of action for biopolitics is the regulation of sexuality and

reproduction through reproductive health policies. The State builds regulatory instruments through these policies that govern life itself and attempts to organise and regulate population growth rates in accordance with political or religious discourses. Such processes can be observed in Peru. Drawing on feminist post-structuralist theory, this thesis analyses and deconstructs these discourses to gain greater understanding of the existing power relations governing the surveillance and regulation of Peruvian women's bodies, and to identify areas or strategies for social change (Weedon, 1987). Hence, this chapter will explore firstly the social construction of the body in modern Western societies, before turning to examine the disciplining of the body, especially in the realm of sexuality. Finally, the operation of biopower and biopolitical discourses in relation to women's bodies in particular will be examined.

I. The social construction of the body

As Nettleton and Watson (1998) point out:

If one thing is certain, it is that we all have a body. Everything we do, we do with our bodies - when we think, speak, listen, eat, sleep, walk, relax, work and play - we use our bodies. Every aspect of our lives is therefore embodied. (p.1)

Through their bodies, people live their lives, build their identities and have a place in society. However, this understanding of the body is relatively new in the social sciences. Indeed, in Western thought, since the time of the Greek philosophers such as Plato, an important precept has been the separation between the mind and the body. During the Enlightenment, the mind-body dualism persisted and identified the mind as the basis of human thinking, feeling and acting, whilst the body was defined by its bulk, shape and mass, and was seen to be managed by the mind (Hubbard, Kitchin, Bartley, & Fuller, 2005). One example of this dualistic mode of thought is Descartes' statement, *Cogito ergo sum* (I think, therefore I am). For centuries, this notion guided the analysis of the social sciences. The mind was privileged as the source of truth, knowledge and humanity, whilst the body was disregarded as an explicit theme in social analysis.

One of the consequences of this situation was that human life was reduced to

abstract relationships between humans whose bodies were effaced. As McCormack (1999) points out, this rejection of the body within the social sciences left it to become a matter for the biological, medical and more recently sports sciences (which studies the application of scientific principles and techniques with the aim of improving sporting performance). These disciplines suggest that the body is a natural product whose capabilities are products of its biology. Taking into account this view, the ability of people to do particular things has traditionally been seen as determined by their biology. For example, the physiology of women was long seen to suggest that they are destined for carrying and nurturing children, whereas men, bulkier and more muscular than women, have been considered better providers and protectors (Hubbard, Kitchin, Bartley, & Fuller, 2005). Thus, biological functions collapsed into social characteristics, which are different for men and for women. Following the example above, in a patriarchal society, whereas men traditionally have been thought capable of transcending the level of the biological through the use of their rational faculties, women have tended to be defined in terms of their physical capacities for reproduction and motherhood. These essentialist arguments, over the course of human history, have been used to justify invidious policies such as apartheid and eugenics, including the coercive sterilisation of women.

Nowadays, social scientists have rejected this form of essentialism, and have offered an account of inequalities and differences in the social meanings of the body, which are crucial in shaping the dynamics of identity and difference (Du Gay, Evans, & Redman, 2000). From this perspective, identities are seen to be socially constructed, rather than biologically determined, and the body is the instrument by which identity is expressed and created. However, the body is simultaneously a realm of tensions in the sense that political, economic, religious and scientific arguments give it many complex meanings that can either support or challenge social structures (Hubbard, Kitchin, Bartley, & Fuller, 2005). Nowadays, the body has particular ascribed characteristics that rely on the network of meanings that modern society, dominated by the capitalist economic system, puts on it. The body is no longer a site of torture or pain, but now is a space of social and cultural inscription; it is both a public and private space (Longhurst, 2005).

The body is also sexed and gendered, and power relations play an important role in the performance of these social constructions of the body. The post-structuralist school of thought contributes to an understanding of the relationship between power and the body. One of post-structuralism's principal theorists was the French philosopher Michel Foucault, whose thought was rooted in the work of philosophers such as Kant and especially Nietzsche. Foucault developed a post-structuralist critical history of modernity, knowledge, power and the construction of the body (Deleuze, 1988). Foucault's idea that the body and sexuality are cultural constructs, rather than natural phenomena, has made a significant contribution to the feminist critique of essentialism. In order to understand his theory of the social construction of the body, it is useful to explore the post-structuralist school of thought and its idea of the performance of social identity, as well as the genealogy of power that was suggested by Foucault. Such an understanding will show how this knowledge influences the understanding of the modern body.

Post-structuralism arose from a general dissatisfaction with the deterministic and universalistic nature of structuralist theories. The theorists of structuralism, such as Saussure, Marx and Levi-Strauss, argued that the full significance of any entity or experience cannot be perceived unless, and until, it is integrated into the structure of which it forms a part (Hubbard, Kitchin, Bartley, & Fuller, 2005). Thus, structures are deterministic in that people's position in society is determined primarily by their relationship to various structural arrangements, which are universalistic and in which human agency is limited (Kitchin & Tate, 2000). Post-structuralist theory, on the other hand, accounts for the relationship between the individual and the social, and looks not only at forms of social organisation and the values associated with them but also enables us to theorise the actions of the individual (Longhurst, 2011). According to Deleuze (1988), post-structuralism seeks to explain the emergence, becoming or genesis of structures, or how systems, such as language, come into being, mutate through time, and give meaning to the world. Language is the place in which the sense of oneself and one's subjectivity is defined; therefore, it is also the place of resistance (Weedon, 1987). This means that language is a site of political struggle. For example, the meaning of the word "woman" is not fixed by the natural world but is socially

embedded within language and is subject to change according to the particular culture.

Foucault made use of this theoretical framework when he introduced the concept of discourse as an attempt to understand the relationship between language, society and institutions, subjectivity and power. In *The Archaeology of Knowledge*, Foucault states that “a discursive formation is defined neither in terms of a particular object, nor a style, nor a play of permanent concepts, but must be grasped in the form of a system of regular dispersion of statements” (Gordon, 1980, p. 173). These statements constitute a network of rules that appear at some time and establish what is meaningful. Thus, in order to show the principles of meaning and truth production in various discursive formations, Foucault details how truth claims emerge during various epochs on the basis of what was actually said and written during these periods and what has contributed to shaping modern Western societies (Dreyfus & Rabinow, 1982, as cited in Caputo & Yount, 1993). He developed this argument through the use of historical analysis, or genealogy. “Genealogy is a form of critical history in the sense that it attempts...to investigate the complex and shifting network of relations between power, knowledge and the body; this network of relations produces historically specific forms of subjectivity” (Armstrong, 2005, p. 1). In other words, genealogy can be understood as a form of social analysis that looks for arguments to achieve social change and the ethical transformation of human beings. It does not focus on analysing the truth, but rather on analysing the conditions under which individuals exist and what causes them to follow their style of life. This method for achieving knowledge allowed Foucault to analyse the transformation of the nature and functioning of power in modern societies and how it manipulates the bodies of individuals through the use of discourses (Agamben, 1998).

The genealogy of modern power “challenges the commonly held assumption that power is an essentially negative, repressive force that operates purely through the mechanisms of law, taboo or censorship” (Armstrong, 2005, p. 2). According to Foucault (1978), this juridical meaning that is attached to the understanding of “power” was developed during the period of the classical monarchies, or the first constitutional States. In these societies, he argues, a sovereign exercised absolute

control over the lives of his/her citizens or people, because this sovereign centralised and coordinated power. As Hobbes (as cited in Hindess, 1996) points out, personal power in society had to be ceded to a central authority, who could use this power without question over the people who gave him/her that power. The sovereign exerted this power so as to secure the wellbeing of the population or for their own personal advantage, which appeared as an apparent good for society. This understanding of power allowed the sovereign to discipline the individual bodies of the people to achieve particular interests, without their personal consent, by, for example, taking control over the technologies of chastisement, such as incarceration, torture and death (Mujica, 2007).

During this period, an interesting process started to develop in which the human sciences were fostered, and individuals began to have an anthropocentric view (Mujica, 2007). This means that individuals started to interpret or to understand the world in terms of human values and experiences. At the same time, another developing process was the increase of trade and the emergence of capitalism. Working together, these changes brought about the birth of modern Western societies. As explored in depth by Foucault (1978) in his research, this new economic and social context meant a vital change in the use of power by the State. According to Mujica (2007), there is no longer a sovereign with absolute power over the bodies of people, because modern Western societies foster personal decision-making power in the individual. However, the expansion of the market economy and, as a consequence, extreme consumerism, undermines individual liberty for decision-making through establishing models of bodies and styles of life that are constructed in relation to governmental, institutional, social and administrative structures of power and knowledge. An example of this is the process of dieting in the context of an official obesity epidemic. In this context, the State cannot exert power over the population through the classical mechanism of punishment. The State must create, instead, regulatory mechanisms to guide the personal decision-making of individuals, for instance through the implementation of nutrition policies and health promotion campaigns funded by the State (Mujica, 2007).

Hence, the modern State has started to use new mechanisms of power through the implementation of policies that have as their goal the regulation of all that is generated by the body, including life itself. Thus, Foucault (1978) suggests that power over life evolved in two basic forms: power over the body as a machine (in terms of the optimisation of its capabilities through discipline), and power over the body imbued with the mechanics of life and underlying biological processes. This understanding of power in modern societies suggests power functions as a fundamentally creative rather than repressive force. Now, it is possible to argue that:

Power is less a property than a strategy, its effects cannot be attributed to an appropriation but to dispositions, manoeuvres, tactics, techniques, functioning. It is exercised rather than possessed, it is not a privilege acquired or preserved, of the dominant class, but the overall effect of its strategic position. (Deleuze, 1988, p. 25)

Above all, Foucault claims that modern regimes of power operate to produce a population whose bodies are both the objects and vehicles of power. Hence, the new place of domination is the body, and the State can create policies about it. Consequently, the State can shape bodily identities (Malacrida, 2008). As Bailey (1993) points out, “Foucault’s suggestion that resistance to these specific relations of power might start with a turn to bodies and their pleasures, embraces not only the partiality of identity, but consequently the partial knowledge which produced this identity” (p. 107). Thus, the body is a critical site upon which social and cultural inscriptions are administered through discursive practices that constitute a variety of subject positions (Longhurst, 2011). The construction of the human body as the subject of discourse, within Foucault’s thought, is established by the position of the subject in relation to power in a particular temporal and spatial context. Related to this definition, Grosz (1994) argues that an important contribution from Foucault to the feminist project of exploring the relationship between social power and the understanding of sexuality is that he fosters analysis of the corporeality of the body, which is directly moulded by social and historical forces, avoiding the traditional gendered opposition between the body and culture

II. Disciplining the body

In *Discipline and Punish: The Birth of the Prison*, Foucault shows how discipline is exerted as an apparatus of power within the “Panopticon.” This is a circular structure containing an observation tower in the centre of an open space, which is surrounded by an outer wall containing the cells of prisoners. Each of these prisoners can be observed at any time. Following Bentham’s conceptualisation of the “Panopticon,” Foucault (1995) states that it not only operates to watch the movements of prisoners at all times, but it is also more fundamentally an architecture of social control, which makes possible discipline of the individual through the control of power and knowledge. He suggests that disciplinary power was cultivated firstly in enclosed institutions, such as prisons, hospitals and schools. Then, these practices were gradually developed as techniques of social control. This power is exerted over the body, which is subjected to ongoing monitoring and examination, and it allows a pervasive and constant control of human behaviour (Armstrong, 2005). In the context of a modern Capitalist society in which the development of health sciences has improved life expectancy, it is important to optimise the body’s capacities, skills, and productivity while also fostering its docility, the purpose of which is to produce a population of bodies that are easier to manipulate. Foucault (1995) argues that:

What was then being formed was a policy of coercions that act on the body, a calculated manipulation of its elements, its gestures, its behavior. The human body was entering a machinery of power that explores it, breaks it down and rearranges it.... Thus, discipline produces subjected and practiced bodies, ‘docile’ bodies. (p. 138)

Discipline, according to Deleuze (1988), is “a type of power, a technology, that transverses every kind of apparatus or institution, linking them, prolonging them, and making them converge and function in a new way” (p. 26). It involves a whole range of discourses by which the individual is taught or trained what to think and how to act. Thus, discipline not only has the body as the target of its technology, but it also produces certain types of subjects according to the goals and norms of neo-liberal forms of governance (Richardson, 2004, as cited in Weeks, 2009). This means that modern individuals internalise perpetual self-

surveillance and self-regulation.

According to Foucault (1978), sexuality (which might be understood as the social construction of sex, and not as something that is determined by biology), is the primary technology of power that is endowed with the greatest instrumentality. Sexuality is useful for manoeuvring and capable of serving as a point of support for varied disciplinary strategies. Sexuality comes to be subordinated by the events or thoughts that are present in a specific period. At this point, the question of why this discipline is focused on sexuality should be asked. In Western societies, over the centuries, sex has been linked to the search for truth/knowledge (Foucault, 1988). The “confession” or “right to reconciliation,” which traces back to the first centuries of Christianity, was the mechanism at the centre of this production of truth about sex (Warner, 1990). Through the confessional process truth and sex became integrated, and thus, knowledge of the subject evolved. Foucault desired to trace the thread through so many centuries that has linked sexuality with the search to identify the truth within Western societies. Foucault (1988) argues that:

How is it that in a society like ours, sexuality is not simply a means of reproducing the species, the family and the individual? Not simply a means to obtain pleasure and enjoyment? How has sexuality come to be considered the privileged place where our deepest ‘truth’ is read and expressed? For that is the essential fact: Since Christianity, the Western world has never ceased saying: ‘To know who you are, know what your sexuality is.’ Sex has always been the forum where both the future of our species and our ‘truth’ as human subjects is decided. Confession, the examination of the conscience, all the insistence on the important secrets of the flesh, has not been simply a means of prohibiting sex or of repressing it as far as possible from consciousness, but was a means of placing sexuality at the heart of existence and of connecting salvation with the mastery of these obscure movements. In Christian societies, sex has been the central object of examination, surveillance, avowal and transformation into discourse. (p. 111)

This intersection of the mechanism of the confession with scientific investigation and discourse has constructed the domain of sexuality within modern societies as being problematic and in need of interpretation. Sex has become the privileged locus or secret of the human being - human truth - and the pursuit is now for “the ‘truth of sex’ and of ‘truth in sex’” (Smart, 2002, p. 98).

From the Middle Ages until the Victorian era, sex was the subject of immense verbosity. Likewise, in modern societies sexuality has not been confined to a shadowy existence - it is possible to speak about sexuality ad infinitum whilst at the same time exploiting it as a secret (Foucault, 1978). Thus, during the eighteenth and nineteenth centuries, Western civilisations developed a *scientia sexualis*, whose goal was to produce true discourses on sexuality in the fields of medicine, psychiatry, pedagogy, criminal justice and social work, for example. The analysis of population demographics led governments to focus on investigations into birth rates, legitimate and illegitimate births, age at marriage, frequency of sexual relations, fertility and so on (Mujica, 2007). The effect of these analyses was a grid of observations that related to sexual matters. Sex became a “governmental matter between the State and the individual, a public issue enmeshment in a web of discourses, forms of knowledge and analysis” (Smart, 2002, p. 96).

Sexuality is not determined by developing modes of production. Rather, the rhythms of economic and social life provide the basic preconditions and ultimate limits for the organisation and political economy of sexual life (Altman, 2001, as cited in Weeks, 2009). Thus, according to Foucault (1978), what distinguishes these last three centuries is the proliferation of devices that have been invented for speaking about sexuality, inducing it to speak of itself, and for listening, reproducing and re-distributing what is said about it. Instead of denunciation, what evolved was a regulated and broad incitement of the discourse about sexuality. In this context, four great strategic unities were developed by this discourse so as to build mechanisms of knowledge and power centring on sex:

- 1) A hysteresis of women’s bodies: a threefold process, whereby the feminine body was analysed as being thoroughly saturated with sexuality, whereby it was integrated into the sphere of medical practices, by reason of

a pathology intrinsic to it, and whereby finally it was placed in organic communication with the social body (whose regulated fecundity it was supposed to ensure), the family space (of which it had to be a substantial and functional element) and the life of children (biologico-moral responsibility). The mother, with her negative image of “nervous women,” constituted the most visible form of this hysterisation. 2) The pedagogisation of children’s sex. 3) The socialisation of procreative behaviour. 4) The psychiatrisation of perverse pleasure. (Foucault, 1978, p. 104)

The construction of “natural sexual behaviour” functions to disguise the operation of power over sexuality. Foucault (1978) points out that:

... the notion of sex brought about a fundamental reversal; it made it possible to invert the representation of the relationship of power to sexuality, causing the latter to appear, not in its essential and positive relation to power, but as being rooted in a specific and irreducible urgency which power tries as best it can to dominate. (p. 155)

Thus, Foucault develops an anti-essentialist account of the sexual body that does not deny its corporeality. According to Armstrong (2005), taking into account Foucault’s idea related to the historical construction of sexuality through the exercise of power relations and the role performed by the category of sex in this construction, feminists rethink gender as the “cultural means by which ‘sexed nature’ or ‘a natural sex’ is produced and established as ... prior to culture” (Butler, 1990, p. 7) and not as the cultural meaning that is given to sex. Following Foucault and Butler’s analysis, gender power relations have been maintained because the notion of a “natural” sex that is prior to culture naturalises the social norm that heterosexuality is “normal” and, thus, reinforces reproductive restrictions on sexuality. The analysis of the use of power for disciplining the body in modern societies is thus useful in understanding the social control of women through their bodies and sexuality (Armstrong, 2005).

Taking this framework into account, it is possible to argue that discipline builds a mechanism of surveillance from the technology of the self. Likewise, this

surveillance is exerted by the State in Western societies through biopower and biopolitics. Firstly, by the technology of the self, individuals create themselves as subjects and objects following the standards established by modern society. This concept was developed in the later work of Foucault and it is understood to mean those forms of knowledge and strategies that:

... permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immortality. (Foucault, 1988, p. 18)

Subjects come to represent to themselves the “truth” of their own thoughts. This “truth” is constructed in relation to governmental, institutional, and social administrative structures of power and knowledge (Smart, 2002). Probyn (1993) and Ramazanoglu (1993) found this theoretical construction useful because it indicates social pressures on women, not only to submit to discipline but also to conform to the norms by producing their own docile bodies in their everyday lives. Thus, female bodies are transformed into feminine bodies. An example of this is the process of dieting or cosmetic surgery. According to Bartky (1988), these disciplinary practices subjugate women, not by taking power away from them, but by generating skills and competencies that depend on the maintenance of a stereotypical form of feminine identity that is constructed by a patriarchal society. Likewise, Bordo (1988) brings Foucauldian insights to bear in her analysis of predominantly female eating disorders such as anorexia and bulimia. Hence, disciplinary technologies are effective tools of social control, due to the fact that “they take hold of individuals at the level of their bodies, gestures, desires and habits to create individuals who are attached to and, thus, the unwitting agents of their own subjection” (Armstrong, 2005, p. 7). This means that disciplinary powers shape the identity and corporeality of individuals who accept being subjects of self-surveillance and self-regulation.

Secondly, apart from the mechanism of the surveillance of the self, in Western societies the State also exerts surveillance. The form of discipline exercised over individual bodies for achieving the subjugation of bodies, the control of

populations, and, thus, the transformation of human life, is known as biopower (Foucault, 1978). This kind of power is reproduced and activated by a biopolitics that, according to Rose (2007) (following Foucault's thought), involves strategies used by the State in the political realm for the purposes of regulating human vitality, morbidity and mortality. Mujica (2007) points out that the operation of biopolitics has at least two areas of action. On the one hand are the issues that have received special attention since the beginning of the twentieth century, such as demography and population control mechanisms. In this way, the government regulates the production and reproduction of the social life of its subjects, as seen in pro-natalist, anti-natalist or eugenic policies, which will be further discussed later. As Foucault (1995) asserts, this kind of regulation and discipline allows for the deployment of the State's power over life. On the other hand are the campaigns to manage the health and the growth of the population, such as campaigns for the use of contraceptives. Through an intervention such as this, the State provides birth control methods. In this framework, the State builds regulatory instruments of life and organises population growth rates. According to Takeshita (2012), "... for governments that regard overpopulation as a primary concern for the future of the State, contraceptives are the technological solution to a national problem" (p. 2). Thus, improving maternal health and curtailing the birth rate of the poor provide the framework for family planning in developing countries (Takeshita, 2012). In one of its most radical forms, biopolitical control has led to coercive sterilisation campaigns, as seen in Peru during the Fujimori administration (1996-2000). This issue will be developed further in the next section.

Hence, from Foucault's perspective, the development and elaboration of the human sciences, politics and its techniques goes hand in hand with the installation of new mechanisms of power which impose distinctively modern fetters on freedom. Bartky (1990, as cited in McNeil, 1993) points out that a finer control over the body's development and its movements cannot be achieved without ceaseless surveillance and a better understanding of the specific person.

III. Women's bodies and the discourses of biopower and biopolitics

The question of what kind of "human life" (biological life or political life) biopolitics and biopower are exerted upon should be asked. According to Agamben (1998), the Greeks used two terms to express what they meant by the word "life":

... although traceable to a common etymological root, they are semantically and morphologically distinct: *zoe*, which expressed the simple fact of living common to all living beings (animal, men or gods), and *bios*, which indicated the form or way of living proper to an individual or group. (p. 1)

In the classical world, however, having a simple natural life (*zoe*) was not enough for being part of the polis. Hence, "political" was not an attribute of the living being as such, but rather a specific difference that determined the participation of the individual in political issues (Agamben, 1998). Foucault (1978) refers to this definition when he states that "... for millennia man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question" (p. 143). In the modern era, as noted above, natural life started to be considered an important instrument for State power, turning politics into biopolitics. Thus, according to Foucault, "... the entry of the *zoe* into the sphere of the polis – the politicisation of bare life as such – constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought" (Foucault, as cited in Agamben, 1998, p. 4). Agamben (1998) supports Foucault's view but he disagrees with Foucault's position stating that modern societies began when bare life started to be managed by politics. Following the archaic Roman law, especially through the figure of *homo sacer* - the sacred man "who may be killed and yet not sacrificed" (Agamben, 1998, p. 83) - bare life for many centuries has been the target of politics. Therefore, the Foucauldian thesis needs to be corrected or completed in the sense that what characterises modern politics is the fact that bare life "...gradually begins to coincide with the political realm ... *bios* and *zoe* enter into a zone of irreducible indistinction" (Agamben, 1998, p. 9). This process has been developed under the influence of culture, religious precepts and discourses of law

and theology, for instance. According to Bourdieu (1992), in order to understand the current meaning of life and humanity, it is necessary to review the structures of Western history. Thus, during the early years of Western modern societies, the meaning of life and of being human was guided by Catholic discourses that were, at the same time, the source for implementing national law.

Nowadays, at least in some countries in Latin America such as Peru, this situation has not changed at all, as the “hegemonic” Catholic theology still rules the lives of its members and society. Hegemony, according to Gramsci (1971, as cited in Boothman, 1995), should not refer to a situation of uncontested supremacy. Rather, it refers to the power that is exerted by a dominant group to persuade other groups to accept its cultural, political and moral values as the “natural” order and desirable, without excluding certain forms of nonviolent pressure and repression. Thus, a particular view of society is accepted as common sense. A clear example of hegemony is the influence that the Catholic Church has in the implementation process of public policies and in the daily lifestyles of people in some Latin American countries, including Peru. This hegemony has been constructed since the arrival of the Spanish conquerors on the American continent in the fifteenth century. So as to exert hegemony over the local cultures, the Spanish assimilated certain cultural aspects of the local people through the practice of syncretism, which can be understood as the combination of different forms of beliefs or practices (“Syncretism,” 2012). By doing this, the Spanish secured the consent of the indigenous people to their rule. This situation shows the political articulation of different identities into a common project that became a social structure. As Laclau and Mouffe (1985) state:

A hegemonic formation also embraces what opposes it, insofar as the opposing force accepts the system of basic articulation of that formation as something it negates, but the place of the negation is defined by the internal parameters of the formation itself. (p. 139)

Thus, the hegemonic group needs the “other” as a constitutive outside to build its own political identity, as well as the articulation of discourses to obtain permanence and dominance (Gramsci, 1971, as cited in Boothman, 1995). Biopolitics is a useful tool for achieving this goal, because through it the

hegemonic group articulates discourses to exert power over the bodies of individuals and to rule them. Some clear examples of the use of biopolitics by a hegemonic group over a subordinated group are compulsory sterilisation/contraceptive programmes targeted at certain groups of women. This was previously the case in the United States of America, where Afro-American and Native-American women were sterilised compulsorily under public eugenic programmes between 1900 and 1980 approximately (Reduce the Burden, 2009). Similar programmes were also developed targeting aboriginal women in Australia and Norway during the twentieth century, until about 1970 (Ibid.). In Nazi Germany, Japan and Sweden up to around 1976, mentally retarded, mentally ill or physically disabled women were sterilised in order to prevent the intergenerational transmission of their disabilities (Ibid). In Sweden, forced sterilisation continues to be carried out if, for example, an individual wants to change his/her legal gender (All Out. Equality Everywhere, 2012). Furthermore, coercive anti-natalist policies to reduce population growth are still being undertaken in China, Singapore (Teng Yap, n.d.), Mongolia (Human Life International, n.d.) and Uzbekistan (Antaleva, 2012).

In Peru, the government developed a programme of coercive sterilisation of indigenous women from 1996 to 2000, so as to reduce the growth of the indigenous population. Although this programme is no longer in place, Peruvian women are now the target of a pro-natalist policy that, based on political and religious discourses, restricts their access to abortion and the emergency contraception pill. This situation in Peru shows how the dominant discourse governing policies can change when governments switch from a liberal ideology to a conservative ideology, which in this case is dominated by conservative Catholic discourse. At this point, the question of why conservative Catholic discourse has such an important influence in Peruvian politics, especially in policies related to women's reproductive health, should be addressed.

The Catholic Church was one of the principal political agents in the construction of the Peruvian State. According to Ayala (1980), this Church constructed a discourse that legitimised the Spanish Conquest, presenting it as necessary for spreading the Word of God and humanising the indigenous people. Thus, during

the colonial period, the Catholic Church had a strong influence on governmental issues and the construction of society through the exaltation of the monarchy and the social stratification of the population, especially in relation to the place of women in society (Manarelli, 2004). This link between the Catholic Church and the powerful strata of the colonial society allowed the Church to influence political issues in the emerging Peruvian State. During this process, the Catholic Church faced the emergence of modernity and its inherent anthropocentrism. However, while in Europe the emerging States started a process of separation from the Catholic Church, in the Spanish colonies of Latin America this process was not developed, because the governments of these colonies relied on political strategies implemented by the hierarchy of the Catholic Church (Catholics for Choice, 2011).

One of the consequences of the arrival of the Republican Period (post 1821) was the increase in political conflict between the hierarchy of the Catholic Church and the Peruvian civil authorities. To overcome this challenge, the Catholic Church developed three discourses about its role in society, which bore a close relationship to its understanding of human rights, and therefore women's rights (Catholics for Choice, 2011). Firstly, the Political Discourse (1821-1955) was focused on promoting the role of the Catholic Church as a political mediator between the government and new social demands emerging from indigenous people, workers and women. Here, the Church supported the status quo of inequality and exclusion, through the construction of discourses that considered these new social demands as transgressing the order established by God (Klaiber, 1988). Secondly, the Social Discourse (1955-1990) was developed as the Peruvian Catholic Church began to become worried about social injustices, paying special attention to the plight of poor people, who were seen as closer to God according to the Bible (Catholics for Choice, 2011). Likewise, during the period of political violence in Peru (1980-2000) the Catholic Church played an important role in supporting the victims and denouncing infringements of human rights. It is in this context that the Peruvian Catholic Church started to develop a discourse for understanding "life" as the supreme value and as the basis of human rights (Catholics for Choice, 2011). Finally, the Natural Discourse has been developed since 1990 and is focused on overcoming the progress of the new movements for

civil freedom that, among other issues, foster women's reproductive and sexual rights. Thus, Pope John Paul II stated that the body is a sacramental reality, which can only be regulated by the natural law of God (Pontifical Council for Justice and Peace, 2005). This "theology of the body" guides the discourse of the Catholic Church about the nature of the human being and its relationship with human rights. Life is sacred because it is a gift from God and therefore is absolute. This means that nobody can take it under any circumstances (Morandé, 1994, as cited in Mujica, 2009). If, in the encyclical *Humanae Vitae* (Of Human Life) (Paul VI, 1968), the Catholic Church re-affirmed its traditional teachings regarding married love, responsible parenthood, and the continuing proscription of most forms of birth control, in the encyclical *Evangelium Vitae* (The Gospel of Life), the Catholic Church developed its discourse about human life, the proper use of sex, and the threats faced by "life," including euthanasia, abortion and contraception (John Paul, 1995). This discourse is embodied in the hierarchy of the Peruvian Catholic Church, which is led by the Cardinal Juan Luis Cipriani. For example, during the last rounds of discussion in Peru about the approval of the protocol for therapeutic abortion, the Cardinal conducted an intensive campaign in the media opposing this document based on the Catholic precept that human life begins at the fertilisation of the egg by the sperm (Miranda, 2011). As a result of this intervention by the Cardinal, approval of the protocol for therapeutic abortion was reconsidered.

Taking into account this context, it is possible to argue that the construction of the hegemonic discourse of the Catholic Church in Peru emerged to fill a fissure that had opened up due to certain historical social contingencies. As Laclau and Mouffe (1985) state, "... hegemony will be not the majestic unfolding of an identity but the response to a crisis" (p. 7). Thus, as sexual and reproductive rights are one of the issues that the Catholic Church must face, its discourse about life pays special attention to women's bodies. In this context, the construction of the dogma of Marianism is useful for achieving a Catholic model of womanhood. This reverence of the Virgin Mary influences the construction of female gender roles through teaching that women are semi-divine, as supposedly was the Virgin Mary (Warner, 1990). Therefore, they are morally superior and spiritually stronger than men, and can give birth and nurture children (Stevens, 1977, as cited

in Mulvaney, 1994). These attributes, imposed by religion, lead to women being constructed as “good” mothers, wives or partners and the main pillars on which to build a heterosexual family. The latter has particular meaning for conservative Catholic groups, such as the Opus Dei (a prelature of the Catholic Church), and the Sodalitium Christianae Vitae (a Peruvian Society of Apostolic Life). Here, the heterosexual family is a space (that is to say a social experience constituted through social relations) in which discourse about what constitutes a traditional Catholic family is encouraged, and the evangelisation of parents and their children is possible (Mujica, 2007). Hence, the heterosexual family and women’s bodies constitute the core of the religious conservative discourse of morality, as well as spaces in which to reproduce the “correct values,” exert surveillance and discipline new individuals.

The analysis of discourses that I develop in this thesis is guided by this theoretical framework. Likewise, this theoretical framework underpins my use of certain methodological tools to gather and examine the information that I drew on for my research. This methodology is based on feminist critical discourse analysis, which will be described in greater detail in Chapter 2.

CHAPTER 2: METHODOLOGY

This research seeks to understand the gendered relationship between bodies, religion, reproduction, and the exercise of biopower and biopolitics in the implementation process of contraceptive policies in Peru. In order to achieve this goal, it was necessary to follow a specific research methodology for data collection and analysis. This chapter outlines the feminist Foucauldian methodology used in this research and addresses its epistemological underpinnings. It describes the process through which information was collected using the methods of Feminist critical discourse analysis and individual telephone (through Skype) interviews. Likewise, the process of conducting the interviews, the procedures for recruiting the interviewees, and procedures in which participants were involved are described here.

I. Feminist research: Feminist Foucauldian analysis

In a world that is dominated by Western and androcentric perspectives, the simple process of direct observing, recording or monitoring the social and natural world is not enough to understand or achieve knowledge about people who are marginalised, such as women. According to Ackerly and True (2010), it is possible to understand feminism as a critical perspective on social and political life that draws attention to the ways in which social, political and economic norms, practices, and structures create injustices and power relations of subordination that are experienced differently or uniquely by women and/or certain groups of women. Taking this view of feminism in research enriches the experience of achieving knowledge and contributes to the translation and interpretation of a given society.

Feminist research is comprised of two aspects: feminist epistemology and feminist methodology. Feminist epistemology critiques the traditional malestream epistemology, which describes and explains the world primarily from the perspective of the lives of the dominant group and is therefore unable to generate a more complete grid of “objective” explanations about nature and society, which in its true sense is a fiction (Harding, 1991). Feminist knowledge continues to develop despite the androcentric tradition in epistemology, which has treated

feminism as political and, therefore, antithetical to ideas of neutrality and impartiality (Bowell, 2011). Refuting the notion that “knowledge” is ever truly disinterested or apolitical, feminist knowledge has as one of its key tenets the notion that the “personal is the political,” a phrase that can be understood as how women’s personal lives are shaped by political forces that come from the government or society (Hanisch, 1969, as cited in Napikoski, n.d.). This notion holds that one’s personal experiences and memories are routes into consciousness-raising about the structures and cultures of oppression (Richardson, 2007). Consequently, feminist thought is multiple, as it starts from the lives of all the different kinds of women and, according to Harding (1991), gender oppression is the master oppression and key to unlocking all others. This means that feminist knowledge is useful for people who are placed in a position of subordination by the dominant groups, because feminist knowledge enables subordinated groups to have more knowledge about their reality and therefore reach their own goals or claims.

Feminist methodology is about the approach taken to research, including conventional aspects of research, such as the design of a project, the mode of data collection, the analysis and circulation of information. But it also includes the less frequently acknowledged aspects of conventional research, such as the relationships between people involved in the research process, the actual conducting of the research, and the process through which the research comes to be undertaken and completed (Moss, 2002). Most feminist researchers take the view that in order to understand social power relationships it is necessary to know the meaning attached to human behaviours by participants themselves (McCarl, 1990). Recognising participants as the experts and authorities on their own experiences is taken as the starting point for research. Thus, feminist research is politically motivated and has a major role in challenging social subordination. Therefore, while the standard within traditional social science research is to see the research as “owned” by the researcher, feminist research seeks to restructure inequality and remove the notion of ownership of knowledge. The restructuring of inequality is possible through the study of the social conditions of women’s lives in a sexist, malestream and patriarchal society, and enlightens people about taken-for-granted sexist practices that have displaced, ignored and silenced women,

leading to an unequal and discriminatory social order. Feminist research also reveals the gender-blindness of government and community practices in its role in the subjugation of women.

As Mies states, “the change of the status quo becomes the starting point for a scientific quest” (Mies 1983, as cited in Brayton, 1997, para. 21). A critical feminist perspective uses critical inquiry and reflection on social injustice by way of gender analysis to transform and not simply explain the social order (Ackerly & True, 2010). As noted by Cook and Fonow (1986, as cited in Brayton, 1997, para. 21), “Feminist research is, thus, not research about women but research for women to be used in transforming their sexist society.” It takes women’s location and standpoint in the world as the basis for research, wherein “research will proceed from a perspective that values women’s experiences, ideas and needs rather than assuming we should be more like men” (Weston, 1988, as cited in Brayton, 1997, para. 23). Thus, it seems clear that if feminist researchers are going to work to influence, change, and create new social policies, it is necessary that they develop some common ground or shared perspectives. As McCarl (1990) explains:

One could argue that there is no need to determine one view as more correct, that plurality of views could prevail. But at some point - such as when important decisions have to be made some view of social reality must be endorsed. To develop a policy about abortion, for example, one would have to take a stance in an area where there are conflicting, seemingly irreconcilable views. (p. 27)

Feminist research is then, by definition, research that utilises feminist concerns and beliefs to ground the research process. It takes women as its starting point in seeking to explore and uncover patriarchal social dynamics and power relationships that affect women’s lives. In order to achieve this objective in the current research, I drew on the framework of feminist Foucauldian analysis.

Even though Foucault made only a few references to women or gender issues in his research, he developed important ideas that have stimulated feminist research, particularly his theory related to the relations among power, the body and sexuality. A feminist Foucauldian methodology was useful for my research as it provided me with theoretical tools to analyse the influence of power in the

creation of gender stereotypes that have guided the implementation of reproductive health policies in Peru. In this research, particular attention is paid to the concepts of biopower and biopolitics as new mechanisms of power that the Peruvian State has used to manage the life of its citizens, especially women, as seen in the examples of the coercive sterilisation of indigenous women, the lack of interest in and support for implementing the national guidelines for practicing therapeutic abortion, and the ban on the distribution of the emergency contraceptive pill in the public health system.

As noted in the previous chapter, biopower is a political technology that began to be developed in modern societies and refers to the knowledge/power that the State has to manage human life. In this framework, the human body is a machine whose function and performance has to be regularised (Foucault, 1978). Biopower expresses how the State has assigned itself the duty of managing collective life and administrating bodies. The regularisation of the human body is possible through the use of biopolitics. In short, biopolitics is the regulatory control that the State exerts over the population, and it is concerned with regulating phenomena such as reproduction and human sexuality, health and illness, and the size and quality of the population (Foucault, 1978). In other words, biopolitics is concerned with the population “as a problem that is at once scientific and political, as a biological problem, and as power’s problem” (Foucault, 1978, p. 25). Thus, since controlling the population became pivotal to the function of the modern State, this situation created a condition by which sexuality, in the last few centuries, has begun to have major symbolic importance as a target of social intervention and organisation (Foucault, 1978). Sex is managed and regulated by the modern State in order to have control over the growth and health of the social body and shape the meaning of personhood, which according to Foucault (1978) is the most powerful form of regulation in modern societies. It is in this way that public politics began to take charge of private life.

These highlights of Foucault’s analysis are some of the arguments that have influenced feminist research on the body, sexuality and gender power relationships in order to determine concrete possibilities for resistance and social change. Thus, drawing on Foucault’s analysis, feminists have examined the

workings of power in women's everyday lives, and the social control that is exerted by modern societies over the bodies and sexualities of women, for example. Intimately connected with this social control over women's bodies is reproductive control. Through this kind of control, it is possible to manage women's sexuality and the make-up of the population. In the specific case of Peru, this control has been exerted through the implementation of reproductive health policies that have allowed coercive sterilisation of indigenous women, made access to safe and legal abortion very difficult - if not impossible for some women - and have banned the free distribution of the emergency contraceptive pill in the public health system. These measures operate in and on women's bodies and prevent women from exerting control over their own sexuality and their own lives. This situation is a clear example of the nature of the relationship between law (through which policies are implemented) and the manifestation of power in modern societies. The legal domain is not only a site for regulating social behaviour, but also a site where subjects and discourses are produced:

It is a question not of imposing laws on men, but of disposing of things: that is to say of employing tactics rather than laws, and even of using laws themselves as tactics to arrange things in such a way that, through a certain number of means, such and such ends may be achieved. (Foucault, 1991, as cited in Tadros, 2008, p. 92)

Hence, the primary objective of law is regulating the conduct of the population so as to make them docile bodies for the proper function of the economy and the State. In the Peruvian case, women's bodies and their decision-making power are shaped and regulated by dominant discourses that are managed by the law. At this point it is pertinent to point out that poor Peruvian women are the principal recipients of reproductive health policy because they are the primary users of the public health system.

Thus, using the methodological framework of feminist research and feminist Foucauldian analysis, I have tried to create knowledge related to the existing power relations governing the surveillance and regulation of Peruvian women's bodies (Weedon, 1987). To achieve this goal I identified, questioned, deconstructed and analysed the discourses that have been behind the arguments for implementing various reproductive health policies, especially relating to the

issues of coercive sterilisation, abortion, and women's access to the emergency contraceptive pill in the public health system.

II. Research methods for data collection

This research was based on the “deconstruction” of public texts, legal documents, newspaper articles and media representations related to coercive sterilisation, abortion and the prohibition of the free distribution of the emergency contraceptive pill. I performed this deconstruction using the method of feminist critical discourse analysis (hereafter, FCDA), which allowed me to uncover and unsettle hegemonic views and challenge assumptions that affect Peruvian women. Also, I used qualitative primary data drawn from seven semi-structured interviews with feminists, high-level governmental officials, a representative of conservative Catholic groups and a political scientist. The information that was gathered from the deconstruction of texts and qualitative interviews was analysed using the framework outlined above.

As noted by Ehrlich (1995), “language, to some extent, shapes or constructs our notions of reality rather than labelling that reality in any transparent and straightforward way” (p. 45). Language shapes the words, concepts, knowledge, and stereotypes of society (Bowell, 2011). In turn, language also shapes actions, behaviours and expectations. As Foucault (1995) points out, power, language, institutions and social practices intersect to create specific ways of thinking, acting, and being. Thus, Foucault introduced the concept of discourse as an attempt to understand the relationship between language, society and institutions, subjectivity and power. It is possible to argue that discourses are a series of messages about the way things should be; therefore, discourses are ways of constituting knowledge. Hence, there are whole ranges of discourse, of competing ways of giving meaning to the world, although not all carry equal weight or power. Some account for the *status quo*, others challenge existing practise. In this sense, discourse is a tactic of a technology of power/knowledge (Foucault, 1978).

Taking into account this understanding of discourse and the importance of power in shaping discourses, I decided to use critical discourse analysis (CDA) as my method of analysis. CDA allowed me to identify the discourses constituting

situations, objects of knowledge, social identities and power relationships between social classes, women and men, and ethnic/cultural majorities and minorities. As Fairclough and Wodak (2010) state, through CDA it is also possible to encourage resistance to, or critiques of, the *status quo*. In the process of analysis that I followed, I deconstructed textual data in the form of public policy documents and legislation related to reproductive health in order to know how women's bodies, and thus their lives, are regulated by the State, what discourse is used by the State in justifying this regulation, and whether this discourse has changed throughout time. Special attention was paid to the judgments of the Constitutional Court (2006, 2009) related to the distribution of the emergency contraceptive pill in the public health system, because in these documents it is possible to understand the discourses that public authorities used in determining whether or not the emergency contraceptive pill should be distributed in the public health system. I also read and analysed feminist and human rights NGOs' reports, as well as articles in Peruvian newspapers that revealed the function of reproductive health policies, especially in relation to coercive sterilisation, abortion and the emergency contraceptive pill. I obtained statistical data from newspapers and NGOs' reports because it was difficult to obtain this information from the web pages of public institutions. Furthermore, official documents from some organs (Committees) and agencies (United Nations Population Fund (UNFPA), World Health Organization (WHO)) of the United Nations were taken into account as evidence of the Peruvian State's failure to fulfil its international commitments related to fostering and protecting women's human rights. Television and radio interviews with officials from the MINSA were also analysed. In addition, due to the Catholic Church being an institution that exerts an important influence on Peruvian politics, I reviewed official ecclesiastical documents and reports from conservative Catholic groups or conservative Catholic researchers to obtain more knowledge about the discourse that this Church articulates on issues related to human reproduction and to see how this discourse influences public policies. Lastly, academic journal articles and books that have analysed Peruvian reproductive health policies using feminist poststructuralist theory were taken into account in my research. The majority of these documents were obtained by downloading them from appropriate institutional websites (from the government,

NGO websites, conservative Catholic groups' websites, journal databases, Peruvian newspapers available on line and websites of Vatican State and the United Nations). A few documents, especially NGO reports, were brought back by me in printed or pdf format when I travelled to Peru in July of 2011.

Following Huckin (1997), my first approach to these texts was uncritical, searching just for information; then, I placed these texts in their genres (journal articles, reports, doctrine, judgements, etc.), and their sources (government documents, NGO reports, ecclesiastical documents, interviews, etc.). I then returned to these texts with a critical eye, raised questions about the content of the texts, and compared them with related texts. It was at this point that I focused on the use of FCDA. Thus, I paid special attention to gendered identities and gendered power relationships. Lazar (2010) states that:

The aim of feminist critical discourse studies, therefore, is to show up the complex, subtle, and sometimes not so subtle, ways in which frequently taken-for-granted gendered assumptions and hegemonic power relations are discursively produced, sustained, negotiated, and challenged in different contexts and communities. (p. 142)

FCDA enabled me to contest the assumptions embedded in dominant discourses, which, in this research, are shaped by the hegemonic power of a Peruvian patriarchal society:

The central concern of feminist critical discourse analysts is with critiquing discourses which sustain a patriarchal social order – relations of power that systematically privilege men as a social group, and disadvantage, exclude, and disempower women as a social group. (Lazar, 2010, p. 145)

Peruvian society establishes social norms and reproductive health policies that regulate the lives of women. However, women have no part in the creation and maintenance of these social norms and reproductive health policies. One of the findings that would reveal this situation is the oppressive system that is exerted over the sexuality of Peruvian women. Eckert (1989, as cited in Lazar, 2010), observes how gender operates in a more pervasive and complex way than other systems of oppression:

Whereas the power relations between men and women are similar to those between dominated and subordinated classes and ethnic groups, the day to day context in which these power relations are played out is quite different.

It is not a cultural norm for each working class individual to be paired up for life with a member of the middle class or for every black person to be so paired up for life with a white person. However, our traditional gender ideology dictates just this kind of relationship between men and women. (p. 143)

Using FCDA allowed me to uncover the discourses that were used in the implementation of social rules about relationships between men and women and reproductive health policies in Peru, because:

The interest of feminist CDA lies in how gender ideology and gendered relations of power get (re)produced, negotiated, and contested in representations of social practices, in social relationships between people, and in people's social and personal identities in texts and talk. Underlying a critical feminist analysis of discourse in these areas is the principle of 'gender relationality,' which may be either explicitly or implicitly at work. (Lazar, 2010, p. 150)

Thus, an analysis of Peruvian discourses of power in reproductive health policies using FDCA enabled me to recognise the "difference and diversity among 'women' (and 'men') ... and the pervasiveness of subtle, discursive workings of modern power" (Lazar, 2010, p. 148) in modern Peruvian society.

Secondly, in order to gain more understanding of power relationships in the process of designing and implementing Peruvian reproductive health policies, I sought to identify "the process of reality construction and the construction of patterns of meanings and actions" (Sarantakos, 1998, p. 51). To achieve this goal, I interviewed three feminists, two high-level governmental officials, a representative of conservative Catholic groups and a political scientist, using qualitative interviewing in addition to analysing of policy documents. According to Lamnek (1988, as cited in Sarantakos, 1998), this method has characteristics that show it to be more appropriate for performing this kind of research, in that it is interpretive, it perceives reality from the standpoint of the interviewees, it is understood and operates in the context of the process of communication, of which it is a part, and it allows for critical reflection on aspects of social reality. In the case of this research, which explores the operation of biopower and biopolitics in the implementation process of reproductive health policies in Peru, the topical interview fitted with the overall purpose of the research, since this kind of interview allows me to have an explanation of social reality through interviewing

different people, each of them with their own understanding of reality (Rubin & Rubin, 2005). In a topical interview, the interviewer plays an active role, not only in asking questions and listening carefully to the answers to learn the perspective of the interviewees but also in choosing the initial topic (Rubin & Rubin, 2005).

In these interviews, I sought the opinions of activists or researchers who had participated in the implementation process of reproductive health policies in Peru. Following Rubin and Rubin (2005), I used in-depth qualitative interviews to find out whether the way in which these policies were implemented took into account women's interests and necessities, especially those of poor women, because they are the principal users of the public health system. Also, the opinions of my "key informants" (including officials from the MINSA, the Ministry of Women and Vulnerable Populations and the Public Ombudsman's Office) gave me insight into the perspective and possible biases of the Peruvian government in the implementation of various reproductive health policies, especially on issues related to abortion and the emergency contraceptive pill.

The experience of doing these interviews made me appreciate the obligations of the interviewer that are generated by the researcher-participant relationship during the interview; that the goal of my research was to generate in-depth understanding rather than superficial knowledge; and that the design of my research had to remain flexible throughout the project, due to my and my interviewees' human nature (Rubin & Rubin, 2005). The interview process is described in the next section.

III. The interview process

Doing interviews had as an objective the study of reality from the standpoint of the people who were directly involved in the implementation process of reproductive health policies. This was possible due to my interviewees being professionals who have worked for a long time on issues related to health policies or the operation of biopower and biopolitics in the implementation of policies; therefore, they provided me with information that was directly useful to my research. In this section, the procedures for recruiting the interviewees and procedures in which participants were involved are described in more detail.

In order to achieve credibility in the results of the research it is important that the interviewer chooses interviewees who firstly have first-hand knowledge about the research problem, secondly, whose views present a balance perspective, and thirdly, who can help the interviewer to delve into his or her theory, modify it, or steer away from a non-productive avenue of inquiry (Rubin & Rubin, 2005). Thus, from the initial planning of the structure of my research, I intended that my interviews would take into account the standpoint of feminist Peruvian women (or men, should this be the case), who are actively participating in the implementation process of reproductive health policy and, therefore, have worked with religious conservative groups and representatives of USAID, whose discourses were influenced by conservative Catholic dogmas such as Marianism. This dogma, in particular, influences the social construction of Peruvian society, through the constitution of social relations and material social practices (Massey, 1999), such as the power relationships around Peruvian women's bodies. Taking into account this cultural framework and its influence on policy makers and, therefore, the implementation of policies, it would be useful to know the standpoint of activists for women's rights with key positions in feminist NGOs. Their standpoint would allow me to achieve a particular kind of knowledge that may differ from that generated by other Western feminist scholars, as these activists have to work in a particular social ambiance and interact with people who construct their identities in a complex social context governed by religious dogmas. Likewise, during the stage of planning my interviews, I thought that obtaining information from officials or former officials from the MINSA would be very useful. These people would be considered "key informants," due to the fact that as they are working in a public institution, and they would have access to information from the government that probably would not be available to NGOs. With this thought, I travelled to Peru in July of 2011 and talked with some potential interviewees in order to find out their availability for an interview. I made contact with these potential interviewees through my professional network of contacts that I had built due to previous research that I had conducted for feminist NGOs as a freelance researcher before I got the opportunity to study in New Zealand.

This first approach was very important, because being *in situ* I realised that some of my potential interviewees had begun to work as high-level governmental

officials for the MINSA and the Ministry of Women and Vulnerable Populations or had achieved the position of general director of a feminist NGO. Furthermore, during my visit to one of the feminist NGOs, I talked with one political scientist who worked on the issue of biopower and biopolitics and asked him about his availability for an interview. Likewise, as I was working in the Public Ombudsman's Office before I arrived in New Zealand, I decided to contact some of my former workmates in the Women's Rights Office of the Public Ombudsman's Office. My interest in having contact with them related to the important research that this public institution developed on issues related to coercive sterilisation and emergency contraception, for example. When I returned to New Zealand, I came back with major expectations about my potential interviews because all my potential interviewees agreed to participate in my research as soon as I let them know the topic of my research project. Moreover, my potential interviewees expressed their interest in reading my research because, according to them, Peruvian feminists need more academic research that provides a theoretical foundation for the activities that they are developing to improve reproductive health policies; in other words, using more feminist theoretical foundations should allow that Peruvian feminists' strategies will have more possibilities to be successful in the political realm. Thus, I thought that I would easily complete the 10 interviews that I had originally planned; however, in the process of recruiting my interviewees, I faced some significant obstacles.

I started to make formal contact with my potential interviewees, using my email address from my university account. In this email I outlined in detail my research project (my goals and the reasons I decided to do this research), and also the reasons that guided me to ask them for their participation. For further information I attached to my email an information sheet about my research and the consent form in which I informed my potential interviewees of their rights as interviewees (such as confidentiality, ensuring the use of pseudonyms, their right to refuse to answer any particular question, and to terminate the interview at any time). Nevertheless, the replies to my messages did not arrived in the next few days; on the contrary, they took 3 days or more and in some cases a week or two. If the response had not arrived after 5 days, I sent the potential interviewees a message to remind them of my interest in having their participation in my research. In the

majority of cases this strategy functioned very well and I was able to fix a date for doing the interview while also getting a consent form signed, which was sent to me scanned via email. But, with two of the potential interviewees, even though they replied to my messages, we could not do the interview due to their work commitments. Luckily, the first interviews that I conducted were with feminist NGO representatives, who were happy to be identified (at the Centre for the Promotion and Defence of Sexual and Reproductive Rights (PROMSEX), and Catholics for Choice – Peru), who gave me the names of two potential interviewees and their email addresses. Both of these potential interviewees were feminist researchers; one of them worked in the Public Ombudsman’s Office and she was one of those responsible for Report No 27: “Voluntary surgical contraception and reproductive rights II,” which was published in 1999 by the Public Ombudsman’s Office. Even though this feminist researcher agreed to participate in my research, it was impossible to set a date with her due to her work commitments. Fortunately, I could conduct an interview with the other feminist researcher. The interviewee was a woman who worked as an independent researcher on issues related to health and gender. Months later, after our interview, this woman was appointed to a high-level government position and for this reason, it was considered appropriate to use a pseudonym for her, which was not planned at the beginning. The use of a pseudonym avoids her being identified, which could potentially lead to some problems for her because of her current high position in the government.

Between October 2011 and January 2012 I conducted six interviews via Skype: Rossina Guerrero (General director of PROMSEX), Eliana Cano (General director of Catholics for Choice – Peru), Melissa Bustamante (lawyer for the Women’s Rights Office of the Public Ombudsman’s Office), Pedro (pseudonym of the political scientist), Claudia (pseudonym of the official of the MINSA), and Irene (pseudonym used for the other high-level official). Since all were advocates of women’s reproductive rights, my supervisor suggested it would be interesting to find an interviewee from the Catholic Church, someone who could relate the Catholic discourse on reproductive health or family planning. Through family contacts, I was given the details of the President of the Centre for Family Planning and Natural Regulation of Fertility (CEPROFARENA), Dr. Martin Tantaleán. I

sent an email to Dr. Tantaleán and he agreed to participate in an interview. As this interviewee is a strong representative of the conservative Catholic groups in Peru and at the same time had an important role in the process of the implementation of the relevant reproductive health policies, I decided to finish with the process of recruitment of potential interviewees at this point. Hence, I conducted seven interviews with two representatives of women's rights NGOs, one independent feminist researcher (currently she is a high-level governmental official), two officials from the MINSA and the Public Ombudsman's Office, one political scientist who was an expert on biopower and biopolitics, and one representative of the Catholic conservative groups.

Relating to the structure of the interviews, I followed the "river and channel pattern" because I wanted to "explore an idea, a concept or an issue in great depth, following it wherever it goes" (Rubin & Rubin, 2005, p.146). This model is more open and flexible, whereby the interviewer manages the interview as a conversation with a friend and lets that interviewee express his or her ideas freely but checks that they developed their contributions inside the framework of the interview. Interviews are structured conversations and the interviewer organises the interview by combining main questions and secondary questions (Rubin & Rubin, 2005). The former "ensure that the research problem will be thoroughly examined and that each part of a broad topic will be explored" (Rubin & Rubin, 2005, p. 135). Thus, I wrote three interview guides: one for activists for women's rights, another for officials, and one for the representative of the Catholic conservative groups (See Appendices A, B, and C). Each of these guides has 20 open-ended questions, which were organised into four themes: information about how the interviewees started to be interested in reproductive health issues; their perception of the situation of women in Peruvian society; their opinion about Peru's reproductive health policy; and finally their point of view related to the ban on the free distribution of the emergency contraceptive pill in public health services.

Relating to the interview process, each interview was approximately 30 to 60 minutes in length. The length of timing of the interview was flexible in order to meet the needs of the participants, and they were held at a time convenient to

them, taking place via Skype, due to the participants living in Peru. I conducted the interviews from my home in New Zealand, because I had more privacy there than if I conducted them from any other place. Each interview was recorded by digital voice recorder. The interviewees were free to choose the language (Spanish or English) in which the interview was conducted. As all of them chose to use Spanish, I translated the interview guide as accurately as possible, as I did their responses when I analysed them.

Fluid dialogue was the principal tool in the interviews. This method allowed participants to speak more openly and in-depth about the research topic. Verbal prompts were used to help with the clarification of the questions and answers (Paterson, 2010). Listening skills were also important because they provided information related to the interviewee's attitudes, and therefore contributed to the management of the interview. I made written notes of their answers in case something came up that I wanted to discuss further.

At this point it is important to mention that despite the fact that I had been previously employed by some of the interviewees in this research, such as the directors of feminist NGOs, I did not obtain an unfair, inappropriate, or unethical professional, commercial, or personal advantage through this research, and I am unlikely to do so in future. Furthermore, this professional relationship did not affect my impartiality in the research and/or related activity, because my approach to the possible participants was strictly academic. Also, I assumed a critical position when I had to analyse the arguments made by the interviewees. Therefore, I do not perceive any conflict of interest in this research.

The methodology outlined in this chapter enabled me to conduct my research with an in-depth analysis of the discourses that have shaped past and current Peruvian reproductive health policies, especially in relation to the coercive sterilisation of indigenous women, abortion, and the emergency contraceptive pill. This kind of analysis was possible through using FCDA to analyse the discourses that were articulated by the interviewees and in the numerous primary research materials, such as NGO reports and policy documents. Thus, following this methodology allowed me to achieve critical knowledge about the gendered power relationships exerted in the implementation process of Peru's reproductive health policies.

Likewise, this methodology allowed me to make a contribution to social change through critiquing the currently dominant discourse that, through law and politics, establishes gender identities. This analysis is developed in the next three chapters of this thesis.

CHAPTER 3: AN EXPLORATION OF CONTEMPORARY REPRODUCTIVE HEALTH POLICIES IN PERU

As was stated in Chapter 1, the body is a secure ground for claims of morality, knowledge and truth (Davis, 1997, as cited in Longhurst, 2005). It is a site of cultural inscription where meaning is constructed by the power of discipline in a particular temporal and spatial framework. In the specific case of women's bodies, their attributes (such as their reproductive capacity) and their consequent roles because of this capacity (such as their maternal roles) are considered central to the Western understanding of "being a woman." This essentialism guides some reproductive health policies, which are implemented within a complex architecture of religious and cultural discourses, institutionalised social stratification, biopower and biopolitics. The Peruvian case is a clear example of this situation.

Within the contemporary Peruvian policymaking process, reproductive healthcare for women is one of many policy areas that have been developed in a social context where discrimination against indigenous people is a pervasive practice. As I will discuss, this practice was institutionalised by the Peruvian Government between 1996 and 2000 through the coercive sterilisation of indigenous women. Furthermore, the reproductive healthcare of women has been implemented in an irregular way, especially during the last twenty years, mostly due to the significant influence on the Peruvian government of conservative religious groups led by the Catholic Church. These groups have also been influenced by the policy that the USAID adopted in its dealings with developing countries, such as Peru, under the George W. Bush administration (2000-2008), specifically in relation to sexual and reproductive health issues. In this context, human rights NGOs and some public institutions have had an important role in using the rights-based approach, which focuses on the strategic needs of women, especially poor women.

Control over women's bodies exerted by the State, through the mechanisms of biopolitics, annuls the decision-making abilities of women about their own lives, and as a consequence constructs them as reproductive bodies. This chapter will firstly explore the historical and political context of Peru so as to provide a basis for understanding current events relating to the implementation of reproductive

health policy. Next, this chapter will describe the deployment of contemporary reproductive health policy on issues related to abortion, coercive sterilisation and emergency contraception. Finally, the discourses that have been used by conservative Catholic groups and feminist NGOs during the implementation process of this policy will be analysed.

I. Historical and political context

Throughout Peru's social history it is possible to identify two forces that have shaped the political context: the conservatism of its ruling elites, which are led by the Catholic Church, and popular resistance to authoritarian policies (Cáceres, Cueto, & Palomino, 2008). Catholicism became the nation's official religion in 1532, when the Spaniards conquered the Incas. During the first hundred years of the invasion, the Incas' population plummeted from an estimated nine million to around six hundred thousand people (Starn & Degregory, 1995, as cited in Getgen, 2009). The Conquest created a fragmented society divided between powerful Spanish colonisers, colonised indigenous people and, later, lower-ranked populations of African and Asiatic origins (Cáceres, Cueto, & Palomino, 2008). Shortly after the Conquest, Peru was designated a Spanish viceroyalty, containing an array of religious orders focused on "civilising" the Incas through the eradication of traditional beliefs and practices in the Andes, such as pre-Columbian sexuality. Thus, indigenous people were forced to adopt new practices related to sexual pleasure, motherhood and abortion, amongst others (Marcos, 1989, as cited in Catholics for Choice, 2011). However, many rebellions were carried out by the descendants of the Incas and some "criollos" (descendants of the Spanish who were born in Peru). One of the most famous occurred in 1780, when Túpac Amaru II, an indigenous leader of Cuzco, and his wife Micaela Bastidas, raised an army that defied the Spanish viceroyalty. Their rebellion was unsuccessful, and both were captured and executed by the Spanish authorities (Klaren, 2000).

During the period of the Spanish viceroyalty, the Catholic Church was the owner or administrator of extensive agricultural lands and urban premises. Furthermore, the Catholic Church maintained strict social control of the people living on those lands, including their marriages. For example, "... instead of civil registration

records, baptism certificates, for which the Catholic Church charged a fee, were the main individual identity documents” (Cáceres, Cueto, & Palomino, 2008, p. 130). This social control over the people also included controlling the content of higher education and the prohibition on reading the so-called “forbidden books” through the Inquisition. According to Cáceres, Cueto and Palomino (2008), it is possible to trace the origins of conservatism in Peru back to this period. Even though Peru became an independent Republic in 1821, the Catholic Church maintained its influential position in a fragmented society dominated by urban elites. Thus, during the Republic, ceremonial functions of the State such as the *Te Deum Mass* were integrated into the rites of the Catholic Church. For example, in this ceremony, held each year on the 28th of July (Peru’s Independence Day), the Archbishop of Lima officiates at a ceremony attended by major dignitaries, including the President (Catholics for Choice, 2011).

During the twentieth century, social demands arose from the middle class living in urban centres. However, conservative Catholic groups were successful in undermining social reform, as was noted in the last chapter. For instance, although divorce was recognised, it was restricted until the 1930s, and women did not get the vote until the mid 1950s (Contreras & Cueto, 2000). It is also possible to argue that the principal feature of Peruvian politics in the twentieth century was political instability, as reflected in a weak democratic system and periods of authoritarianism. It was in this period that the Catholic Church started to experience a critique from within, which was led by the priest Gustavo Gutierrez, founder of the “theology of liberation.” This theology is a political movement that interprets the Christian faith through the poor’s suffering and their struggles and hopes. This theology advocates their liberation from unjust economic, political, or social conditions, following the teachings of Jesus (Berryman, 1987). Despite this internal crisis, the Catholic religion continued to exert influence on Peruvian culture. For instance, the rejection of the practice of abortion by the hierarchy of the Catholic Church still influences most Peruvian politicians. As a result, Peruvian law treats this practice as a crime and as a threat to the growth of the population (Cáceres, Cueto, & Palomino, 2008). Thus, while in 1950 the total population of Peru was around seven million, this figure had almost tripled by the early 1980s, when the population reached 20 million (Cáceres, Cueto, &

Palomino, 2008). This rapid population growth also increased social demands on an authoritarian and elitist State, and elicited a new period of political crisis.

From the 1980s to the early 1990s, Peru became a breeding ground for political strife because of hyperinflation, recession, rampant unemployment and grave human rights violations, among other things. This crisis affected health services and access to these services among poor people (Arroyo, 2000). This period of crisis was intensified by the terrorist actions of the Maoist Shining Path, founded by university professor Abimael Guzmán. This group launched an attack against public officials and “neutral” civilians in its so-called “war of liberation” (Degregori, 1990). Another terrorist group, the Túpac Amaru Revolutionary Movement, emerged in Lima and some areas of the Amazon. The civilian government did not succeed in combatting the activities of these terrorist groups and turned to the military, which applied counterinsurgency techniques indiscriminately. According to the Peruvian Truth and Reconciliation Commission (2003), 69,280 people were killed, principally by the Shining Path and the armed forces, between 1980 and 2000. 75% of the victims were indigenous people.

In 1990, Alberto Fujimori won the Presidential elections against Mario Vargas Llosa, a novelist who led a neoliberal coalition. Fujimori embraced neoliberal policies based on radical free market rules and the privatisation of public companies to attract foreign investors. Fujimori also launched an all-out military attack on terrorist forces, and in 1992 the police intelligence unit captured the leader of the Shining Path, Abimael Guzmán. This event marked the beginning of the end of the Shining Path (Cáceres, Cueto, & Palomino, 2008). Fujimori took advantage of this situation to dissolve the National Congress and the courts, so as to facilitate his authoritarian rule (Levitsky, 1999). He won the 1995 Presidential election and relied more heavily on his chief advisor Vladimiro Montesinos, who was later implicated in bribing the owners of TV stations and opposition leaders, and in organising paramilitary death squads (Cáceres, Cueto, & Palomino, 2008). Juan Luis Cipriani, an Opus Dei provincial archbishop and later Cardinal of Peru, supported Fujimori’s autocratic policies. However, human rights NGOs and opposition political parties challenged Fujimori’s arguments in seeking a third

term, accusing the regime of corruption and outrageous control of elections (Crabtree & Thomas, 1999). Thus, at the end of 2000, in the midst of a money laundering scandal involving himself and Montesinos, Fujimori resigned by fax from Japan. Fujimori then invoked his dual Japanese/Peruvian nationality to avoid extradition (Cáceres, Cueto, & Palomino, 2008).

A transitional government was installed, led by the President of the National Congress, Valentín Paniagua, who presided over new elections in April 2001. Alejandro Toledo won the Presidential elections, leading a new centrist political party made up of various coalitions, among which were conservative Catholic groups (Barr, 2003). Hopes for achieving a democratic society, economic recovery, and fighting corruption rose with the election of Toledo. However, he could not fulfil all the expectations that he had raised. During his government (2001-2006), President Toledo maintained an alliance with the conservative Catholic groups Opus Dei and Sodalitium Christianae Vitae, by successively designating two physicians, Luis Solari (2001 – 2002) and Fernando Carbone (2002 - 2003), to the position of Minister of Health. Solari also became Prime Minister from 2002 to late 2003. Both Ministers were consistent in working to impose their religious views on sexual and reproductive health policies. Toledo faced various challenges in his tenure, including the impeachment of his Minister of Internal Order, Fernando Rospigliosi, for the murder of the Mayor of Ilave (a town in the department of Puno in the south of the Peruvian Andes) by his citizens. In addition, Toledo suffered an attempted coup d'état in 2005, led by the retired army Major Antauro Humala (brother of the current president Ollanta Humala), in the city of Andahuaylas (located in the south of the Peruvian Andes). Despite internal weaknesses within Toledo's government, the economy continued to improve and his administration staggered on until elections in 2006 (Taylor, 2005).

Alan García was elected as President in 2006. Garcia's second term was marked by the exploitation of the lands of indigenous people living in the Peruvian Amazon, without their agreement. This exploitation led to a rebellion of indigenous people in Bagua (a province in the Amazon) that ended with the murder of thirty-four people, including indigenous Peruvians and policemen

(Survival, n.d.). Likewise, his neoliberal policy caused discontent among poor and indigenous people, who had expected more investment in social policies (Napa, 2011). During Garcia's administration, conservative groups, especially Opus Dei, had a strong influence in the government and in the national courts. One example of this influence was the banning by the Constitutional Court of the free distribution of emergency contraception in public health centres. This ruling will be discussed further in Chapter 6.

Since the 2011 elections, Ollanta Humala has been the President of Peru. Humala took power with the support of left-wing political parties. His administration started with great hope, focused on the implementation of social changes on behalf of poor people, as well as recognition of the rights of vulnerable sectors of the population, including women. However, over the past year, Humala's government has changed abruptly to the right wing, and therefore conservative groups once again have started to have an important influence in national politics. For example, the Minister of Health, the physician Midori Musme de Habich, has not approved the guidelines for therapeutic abortion, even though Peruvian criminal law has allowed for this practice since 1924. Likewise, in the short period Humala has held power, he has faced social conflicts between indigenous people and mining companies. Furthermore, the resurgence of the Shining Path as an anarcho-terrorist group challenges the current national defence strategy and has uncovered a serious problem of corruption in the armed forces and police (Tafur, 2012).

This brief historical overview provides a general context for understanding the implementation of Peru's reproductive health policy (which in this thesis is focused on coercive sterilisation, abortion and emergency contraception), and the discourses for disciplining women's bodies that are used in this policy, which will be explored in the next few sections.

II. The implementation process of contemporary reproductive health policy

Throughout Peru's history, processes of exclusion have shaped its society. One of these processes is focused on sexuality (Catholics for Choice, 2011). In order to understand why sexuality is the object of constant policy discussion, it is necessary to realise the significant role that the conservative Catholic discourse plays in this policy arena. The important influence of this discourse emerges from the fact that 81.32% of the population practice the Catholic religion (INEI, 2007). The Catholic Church influences the construction of Peruvian subjectivities through which it is possible to implement strategies that promote or undermine social policies (Catholics for Choice, 2011). Subjectivity refers to the individual's understanding of his or her relation to the world, and the unconscious and conscious thoughts and emotions of the individual (Weedon, 1987). Likewise, "... subjectivity is produced in a whole range of discursive practices – economic, social and political – the meanings of which are a constant site of struggle over power" (Weedon, 1987, p. 21). Taking into account the definition stated above, it is possible to argue that the practice of religion as a social phenomenon is developed by the reproduction of official discourses and the interpretations people make of them based on their practices and perceptions. Thus, religion can be implanted in the individual through the continuous practice of religious discourses and becomes coherent when it interacts with other discourses (Catholics for Choice, 2011). It is in this way that the Catholic discourse constructs subjectivities that willingly follow its precepts. As conservative Catholic groups have influence on some Peruvian officials, the construction of a Catholic subjectivity is vital for the implementation or impact of policies. This is because the way in which officials perceive a social situation influences the lives of the people that are the subjects of these policies. Thus, according to Vaggione (2002), as religion operates in politics, it is possible to speak of the religious manifestations of politics.

As noted above, the participation of the Catholic Church in the construction of the Peruvian State has been significant since the arrival of the Spanish conquerors. However, it was only during the social discourse developed by the Peruvian

Catholic Church between 1955 and 1990 that this Church began to pay special attention to the demands of Peruvians who were placed in a situation of vulnerability by the wider society, such as women or poor people. Among these demands was the incorporation of sexual and reproductive rights in the political agenda. However, these demands did not receive sufficient attention from the Catholic Church or from successive governments, which from 1955 to 1968 were led by urban elites closely associated with this Church (Marzal, Romero, & Sanchez, 2004). These governments implemented pro-natalist population policies, supported by the Catholic Church (Catholics for Choice, 2011). The implementation of these policies continued during the period of dictatorship from 1968 to 1975, which was led by General Juan Velasco Alvarado (Clinton, 1983, as cited in Cáceres, Cueto, & Palomino, 2008). During his government, the Catholic Church continued to have an important influence in national politics due to its role as a mediator between new social actors, such as peasants and landowners (Marzal, Romero, & Sanchez, 2004).

In 1975, General Francisco Morales Bermudes took power until 1980. During this military government, Morales Bermudes enacted the D.S. N° 00625-76-S.A. Population Act (1976). According to Catholics for Choice (2011), this policy was adopted following the guidelines of the Family and Population Pastoral Letter of 1974, which stated the principles for building a family and responsible parenthood according to the Catholic mandate. Although the Population Act was established under these Catholic precepts, it recognised the right of individuals to determine family size (Population Act, 1976). However, in 1979 the military government suspended the limited family planning services available at this time, sparking protests from the group “Action for the Freedom of Peruvian Women,” one of Peru’s earliest feminist organisations (Cáceres, Cueto, & Palomino, 2008).

The period of dictatorship ended in 1980, and a civil government began, led by Fernando Belaúnde. During his government (1980-1985), Belaúnde created the National Population Council so as to analyse and propose measures for controlling population growth and achieving economic development. Likewise, Belaúnde reactivated the reproduction regulation services suspended by Morales Bermudes’ government (Cáceres, Cueto, & Palomino, 2008). At this point, it should be noted

that while both Morales Bermudez and Belaúnde followed the guidelines established at the Population Conference of Bucharest (1974) for implementing policies to control the growth of the population, only Belaúnde implemented these guidelines throughout his entire term of government (Cáceres, Cueto, & Palomino, 2008). The plan of action of this conference states, among other principles, that "... the essential aim is the social, economic and cultural development of countries, that population variables and development are interdependent and that population policies and objectives are an integral part (constituent elements) of socio-economic development policies" (United Nations, 2012, para. 5). Thus, in July of 1985, President Belaúnde enacted the National Population Act, which, among its objectives, included the promotion of the right of individuals and couples to make free, informed, and responsible decisions regarding the number and timing of children, with the support of health education centres (National Population Act, 1985). Furthermore, this norm excluded abortion and sterilisation as birth control methods, and established the obligation of the State to provide post-abortion care (National Population Act, 1985).

During the first government of Alan García (1985-1990), the National Population Act started to be developed through the implementation of a Family Planning Programme (1987-1990) in some public health care centres, especially in urban areas. However, the Peruvian economic crisis and the increase in political violence undermined the development of the Family Planning Programme (Aramburú, 2009). Taking this situation into account, it is possible to argue that for most of the 1970s and 1980s the Peruvian government provided scant political or financial support to national family planning services. Therefore, international donors, principally USAID, directed the bulk of their support to NGOs that delivered family planning services. The policy of these international donors was influenced the Malthusian discourse, which aims at the reduction of births to prevent a population explosion. At the same time, the Peruvian Catholic Church criticised the implementation of this population policy because it fostered the use of artificial methods for birth control, and thus in their view undermined the sacred meaning of human life (Catholics for Choice, 2011).

In 1990, Alberto Fujimori assumed power. During the first years of Fujimori's government, he implemented a new Family Planning Programme (1991-1995) under the framework of the National Population Act of 1985. This programme promoted the decentralisation of population policy, reducing the population growth rate to 2% and total fertility rate to 3.3 children per woman, and reducing the morbidity and mortality of children (with unspecified targets) by 1995 (ENDES, 2012). Hence, under the framework of the Family Planning Programme, the MINSA distributed and applied a range of different contraceptive methods with the aim of reducing fertility and improving maternal health simultaneously (ENDES, 2012). Furthermore, during the early 1990s, a process of consultation for reforming the 1924 Penal Code began. In this process, the decriminalisation of abortion in cases of rape was advocated. The Reform Bill proposed decriminalising abortion when the health or life of a pregnant woman was in danger; also, it proposed allowing the termination of pregnancy before 12 weeks in cases of rape (Rosas, 1997, as cited in Cáceres, Cueto, & Palomino, 2008). At this time, Latin American family planners associated with the International Planned Parenthood Federation often used Peru as an illustration of a country that had started to implement measures promoting reproductive health, inasmuch as Peru since the 1970s had been fighting against the hierarchy of the Catholic Church and the pro-natalist military (Cáceres, Cueto, & Palomino, 2008).

However, according to PROMSEX (2006), the Peruvian family planning programme ignored the social and cultural contexts in which women lived, including gender inequality and other forms of discrimination, as well as women's own needs and rights. Likewise, the Peruvian Catholic Church expressed its disagreement with the family planning programme. To address this new challenge, representatives from the Catholic Church (priests and conservative politicians) began an intensive media campaign aimed at discrediting the population policy, criticising the use of contraceptive methods, and fiercely opposing the introduction of proposals to reform the Criminal Code (Catholics for Choice, 2011). According to the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM) (2003), the Peruvian Catholic Church exerted political pressure on the government to prevent the approval of policies contravening Catholic principles. For instance, through effective lobbying

by conservative Catholic groups and the hierarchy of the Catholic Church on members of the National Congress, the Political Constitution (1993) recognises the conceived as holders of all the rights held by other Peruvians. The introduction of a legal status for the conceived in the Constitution challenges any legal initiative for achieving the decriminalisation of abortion.

In 1994, under the framework of the International Conference on Population and Development held in Cairo, USAID's family planning policies, both globally and in Peru, began changing. Sexual and reproductive rights were now recognised as being part of human rights, leading USAID to propose a rights-based approach to public health programmes. It is in this context that Fujimori started to foster access to contraception for Peru's poor population (Aramburú, 2002, as cited in Getgen, 2009). Fujimori's re-election allowed him to continue with the implementation of the family planning programme and also to make some changes to it. Thus, in September 1995, the Peruvian Congress approved the General Population Act, by which surgical sterilisation was considered a contraceptive method, with its application conditioned on the explicit assent of the patient. At the same time, Fujimori participated as a speaker in the Fourth International World Conference on Women in Beijing (1995) and stated that his government would apply the use of birth control in order to reduce poverty. This announcement was welcomed by feminist and human rights NGOs (Getgen, 2009). In 1996, the MINSA approved the National Programme for Family Planning and Reproductive Health 1996-2000, which highlighted free services for consultation on contraceptive methods, and the practice of contraceptive surgeries, including sterilisation surgery. Thus, the MINSA carried out family planning campaigns in the Peruvian Andes, the Amazon, and urban poor areas in order to meet various programme goals. These goals included increasing timely access to reproductive health and family planning services through improving the coverage and quality of healthcare, generating informed demand about reproductive health and family planning services, and making available resources to develop local systems of health and universal access to promotion, prevention, and care in reproductive health and family planning (Valdivia, 2002). Hence, for the first time, public hospitals offered free contraceptive services. Previously, women could access these services only if they had a serious health risk (Cáceres, Cueto,

& Palomino, 2008).

In 1997, a new law recognised domestic violence (usually directed against married women) as a crime. A year later another new law secured the right of pregnant teenagers to finish their secondary schooling, and a discussion on decriminalising abortion in the case of rape and anencephaly of the foetus was fostered (Catholics for Choice, 2011). USAID, UNFPA, and the United Kingdom Department for International Development (DFID) eagerly supported many of these initiatives. These international aid organisations provided generous funds for population control programmes and to strengthen post-abortion care in Peru (Cáceres, Cueto, & Palomino, 2008).

Particular attention should be given to USAID for the important economic support that it gave to the implementation of Peru's reproductive health policy (Baffigo, Neves, & Villa, 2000). For example, in 1998 alone USAID provided US\$21 million to Peru's public health sector, making up approximately one-fourth of the bi- and multilateral financial aid in this area (Baffigo, Neves, & Villa, 2000). Therefore, between 1994 and 1998, USAID's policy contributed significantly to improving the reproductive health and rights of women (PROMSEX, 2006). Its policy was focused, for example, on preventing unwanted pregnancy through access to emergency contraception. However, as will be discussed in greater detail in Chapter 4, between 1996 and 1998 the Fujimori regime, obsessed with reducing poverty, abandoned its population policies and programmes on reproductive health in favour of coercive and focused anti-choice interventions that enticed poor and indigenous women into irreversible sterilisation surgeries (Cáceres, Cueto, & Palomino, 2008). As Ewig (2006) points out, Fujimori used the global feminist discourse on reproductive rights to disguise his coercive population control policy.

Peruvian women's organisations and the Public Ombudsman's Office led efforts to challenge the new government policy (PROMSEX, 2006). Also, fundamentalist groups in Peru — including Catholic Church officials, NGOs affiliated with this Church, and conservative policymakers — began coordinating their activities with like-minded groups in the United States of America (USA), such as the Program

Research Institute (PRI) and Human Life International (HLI). These groups exploited evidence of abuses of this programme in order to advance their own agenda of restricting access to reproductive health services in general (Mujica, 2007). They also carried out aggressive campaigns against USAID's support of Peru's national family planning programme, even though USAID was not supporting or encouraging coercive activities. The pressure from fundamentalist groups undermined USAID's support for reproductive health programmes in Peru, and in 1998 USAID/Peru ended its financial support for post-abortion care and insisted that the MINSA remove emergency contraception from the Peruvian National Family Planning Policy, which had been added in 1992 (PROMSEX, 2006). According to Chavez and Coe (2007), as the American administration had no scientific or public health motivation to carry out such a measure, it appears that USAID officials adopted this action in order to divert future attacks by opponents in the United States of America and Peru. USAID expected that right-wing groups would reduce their pressure if the agency demonstrated that its family planning programme in Peru did not include support for health care interventions like post-abortion care or contraception, including emergency contraception and sterilisation practices (Coe, 2004). Yet despite USAID adopting this strategy, right-wing groups continued their attempts to restrict access to contraceptive methods and limit reproductive choice. In the following years, American groups such as HLI joined PRI in working with conservative Peruvian allies, such as Sodalicio de la Vida Cristiana and CEPROFARENA, to develop an ongoing strategy for discrediting and harassing USAID and other organisations working in support of reproductive health and rights in Peru (Chávez & Coe, 2007).

As previously noted, in 2000 Fujimori's abrupt departure led to the emergence of a transitional government under the leadership of Valentín Paniagua, who took power for nine months. During his administration, Peru's MINSA reincorporated emergency contraception into the national family planning norms through the Ministerial Resolution No. 399-2001-SA/DM, and also mandated its distribution within the public health system. USAID understood the renewed commitment to this measure and provided technical assistance to the MINSA to develop the resolution, despite the ascension to power of the neo-conservative Bush

administration in the USA.

In July 2001, Alejandro Toledo assumed the Presidency. This presented conservative Catholic groups with an important opportunity to participate in political affairs (Catholics for Choice, 2011). Thus, Toledo's government initially followed a different reproductive health policy, as one of the political debts he had to pay to the diverse array of groups that supported his candidacy. He offered key roles within the MINSA to representatives of conservative Catholic groups that were very much against family planning policies (Cáceres, Cueto, & Palomino, 2008). Typical of the indecisiveness characterising Toledo's government, he did not clarify his position with regard to contraceptive services, reproductive health and women's rights (Coe, 2004). Thus, between 2001 and 2003, Dr Luis Solari, followed by Dr Fernando Carbone, led the MINSA in implementing policy measures designed to restrict access to reproductive health information and services (PROMSEX 2006). Furthermore, Dr Solari and Dr Carbone left in place a number of key conservative officials in the MINSA, and both worked in concert with sympathetic American congressmen such as Chris Smith and Henry Hyde, as well as American anti-choice groups such as HLI (Coe, 2004). Both Ministers were also emboldened by the fact that international donors such as USAID were wary of supporting reproductive health activities in Peru because they were under siege in their home countries. As in the case of UNFPA, these agencies relied heavily on American funding and became subject to pressures from conservatives in the American Congress (Cáceres, Cueto, & Palomino, 2008).

In addition, under the Bush administration USA foreign policy regarding Peru began to emphasise the "War on Drugs" over all other development programmes, and to de-emphasise all American-sponsored public health assistance (PROMSEX, 2006). Thus, the Bush administration fostered the "Global Gag Rule" on USAID's population programme. This policy restricts foreign NGOs that receive USAID family planning funds from using their own, non-American funds to provide legal abortion services, lobby their own governments for abortion law reform, or even provide accurate medical counselling for contraception or referrals regarding abortion (Center for Reproductive Rights, 2003). The restriction of USA funds for use in these activities is based on the 1973 Helms

Amendment (Center for Reproductive Rights, 2003). It is in this context that Solari and Carbone moved quickly to apologise for abuses that occurred in the development of the family planning programme during the Fujimori government. In addition, all sterilisation activities in the public health system, as well as the free distribution of modern contraceptives, including the emergency contraceptive pill, were virtually discontinued via the public health system (Cáceres, Cueto, & Palomino, 2008). They also used evidence of past abuses such as coercive sterilisation to justify the incorporation of their interpretations of religion into public policy. This implied the questioning of scientific evidence published in mainstream academic journals and showed little regard for individual choice (Catholics for Choice, 2011). In addition, the media was used to condemn premarital sex and homosexuality and to question the use of condoms, which were portrayed as immoral and unsafe in terms of individual and public health (Lama, 2002). Reproductive technologies and drugs were also discredited (Cáceres, Cueto, & Palomino, 2008). Furthermore, these conservative Ministers discreetly avoided the use of terms such as gender, sexual and reproductive rights, and sexual orientation in all official Ministry documents (Cáceres, Cueto, & Palomino, 2008). Abstinence and natural methods of family planning were promoted as the only safe methods for young and heterosexual married couples. As a result, while the use of modern contraceptive methods had increased from 31% between 1991-1992 to 50% in 2000, by 2004 their use had dropped back to 46.7% (Cáceres, Cueto, & Palomino, 2008). This downturn can be explained by a reduction in public health service contraceptive supplies during Solari's and Carbone's administration. In addition, these Ministers resorted to affirming an entrenched notion in Peruvian society that the role of women in the family is mainly motherhood. These arguments were supported by Cardinal and Opus Dei member Juan Luis Cipriani (Cáceres, Cueto, & Palomino, 2008). Thus, both discourses from the Catholic Church and the government, represented by the MINSA, sought to appeal to the conservative Catholic values of Peruvian society and to the survival strategies of the poor. To the Peruvian poor, the family has long been an important economic resource, as it is a source of cheap labour and social support (Chávez, 2004).

However, this position of the Catholic Church and the government was openly criticised by a number of NGOs working in the field of reproductive rights, as well as by a number of medical doctors. Therefore, responding to public pressure, President Toledo appointed a new Minister of Health in 2003, Dr Alvaro Vidal. Dr Vidal created a high-level multidisciplinary commission, given the task of clarifying whether or not the distribution of emergency contraception by public centres violates the Political Constitution. The final report of this commission recommended the free distribution of the “morning-after pill” within the public health sector (High Level Multidisciplinary Commission, 2003). In 2004, President Toledo appointed Dr Pilar Mazzetti as Minister of Health. During her tenure, Dr Mazzetti quietly moved to reverse the radical practices of the far right. She denounced the misinformation campaign on contraceptives, and was consistently dedicated to improving the quality of and access to contraceptive services and information, including emergency contraception (PROMSEX, 2006).

This reproductive health policy continued during the government of Alan Garcia (2006 – 2011). However, conservative Catholic groups continued to argue against aspects of the reproductive health policy that were seen as contrary to the Catholic mandate. Thus, these groups focused their attention on the “morning-after pill” and started lobbying the relevant officials and judges in order to prevent the free distribution of this contraceptive in public health care centres. In October 2009, conservative groups achieved their goal when the Constitutional Court prohibited the distribution of the emergency contraceptive in public health care centres. The current government, led by Ollanta Humala, has not conceded any compromises regarding women’s reproductive health policy. In addition, the current Minister of Women and Vulnerable Populations, Ms Ana Jara, who openly expresses her conservative religious beliefs, has stated her rejection of the use of emergency contraception in any situation (La República, 2011). Furthermore, at the moment little is known about the implementation of the D.S. N° 005-2010-MIMDES National Policy of Population 2010 – 2014. This document was enacted in 2010, during García’s administration, and it noted the important link between controlling the growth of the population, the achievement of economic development, and adequate access to reproductive health services. This lack of clarity in the development of the national policy on reproductive health could

interfere with the ability of women to make decisions about their own bodies, as will be discussed in Chapters 5 and 6.

III. Discourses for disciplining women's bodies in reproductive health policy

As noted in Chapter 1, according to post-structuralist theory, the identity and subjectivity of the body are created through systems of language that are neither given nor fixed, but are constantly becoming (Hubbard, Kitchin, Bartley, & Fuller, 2005). Through discourse, it is possible to construct knowledge together with social practices, forms of subjectivity, and power relations which are inherent in such knowledge and the relations between them (Foucault, 2002). In Western societies, the dominant discourse seeks to control the modes of production of life so as to contribute to the growth of a capitalist economy. Hence, human life has become the centre of an articulation by the State, democracy, government and civil life (Foucault, 1978). Now, there is a political penetration into the lives of people, whose bodies, and the things those bodies generate by themselves, are regulated by the State through biopolitics in keeping with prevailing discourses.

In this context, it is possible to argue that during the discussions around the implementation of the current reproductive health policy, two discourses have been present: a conservative discourse emanating from the conservative Catholic groups, and a liberal discourse coming from the human rights NGOs. Both of these groups focus their discourse on women's bodies. The conservative groups, such as the HLI and PRI, have represented themselves as pro-women (Human Life International, 2010) and pro-life (Population Research Institute, 2010). The Peruvian representative of HLI is CEPROFARENA (an NGO that was founded in 1981). Here, it is important to point out that these organisations are considered conservative but not fundamentalist. The difference between these two terms lies in the way in which both groups manage their strategies for achieving social change. According to Mujica (2007), fundamentalism seeks to annul the existence of people who do not practice its religious precepts, or who engage in practices that fundamentalist groups consider as diverging from their beliefs.

Fundamentalism does this through paralegal activity or through non-formal mechanisms, such as the use of political violence. On the other hand, conservatism intervenes in the policy field to join the democratic system, and uses the legislature to achieve the changes that it seeks (Mujica, 2007). Thus, conservatives initiated lobbying campaigns, gave advice to Congress members, and founded NGOs to achieve their objectives. The discourse of conservatism is based in Catholic dogma, especially the understanding of life as a divine gift. For this reason, conservatism fosters the value of family and uses science to justify its discourse to society and the government (Mujica, 2007). In this regard, conservatives cultivated an important role for themselves during the Peruvian campaign against the emergency contraceptive pill, which received vital support from the Bush administration between 2001 and 2008.

As noted above, one of the first measures of the Bush government was the reinstatement of the “Global Gag Rule” on USAID’s population programme. The “Global Gag Rule” was a strategy to limit the exercise of reproductive rights by questioning particular contraceptive methods, such as the emergency contraceptive. This was because some USAID officials argued that it is not clear if the emergency contraceptive pill has abortive effects or not. For this reason, it was decided that the morning-after pill must not be included in national reproductive health policies (USAID, institutional letter, November 30, 2005). As will be developed in Chapter 6, the debates related to the possible abortive effects of the emergency contraceptive pill were also evident in the decision of the Constitutional Court to forbid the free distribution of this contraceptive in public health centres.

The arguments used by conservative groups, USAID and the Constitutional Court reflect more than an attempt to benefit or protect the conceived. They also reveal a cultural ideology dominated by Catholic dogma. For example, Catholic discourse related to the understanding of womanhood is particularly focused on motherhood. According to Warner (1990), “... the fertility ascribed to woman reinforces the mythology that motherhood is the central point of a women’s life, where all the streams of her nature converge and prosper” (p. 284). From this perspective, in the natural order the female sex relies on motherhood and, through

motherhood, domestic dominion (Warner, 1990). The Virgin Mary represents the idealisation of womanhood that should be replicated. This understanding of the relation between oneself and the world is reflected in the implementation of policies by officials whose perspective on social order influences the policy making process.

Clear examples of the views of officials influencing policy can be seen in relation to the implementation process governing Peruvian reproductive health policies over the last twenty years. Specific examples of this include the coercive sterilisation campaigns targeted at indigenous women, and the prohibition of free distribution of emergency contraception in the public health system. In the first case, the campaign of coercive surgical sterilisation was developed following Malthusian discourse, which also reflected a eugenic discourse, since the nationalist project of population control was focused on improving the “quality” of the Peruvian nation by reducing the growth of the indigenous population (Yuval-Davis, 2004, as cited in Verástegui, 2009). In this case, the Catholic Church was one of the actors who denounced this practice because it contravened its discourse about the preservation of human life. In the second case, the free distribution of the emergency contraceptive pill in the public health system was allowed until October 2009, when it was prohibited by the Constitutional Court. Regarding this issue, conservative Catholic groups, led by CEPROFARENA, stated that it is not clear if emergency contraception has abortive effects or not; for this reason it should not be distributed in the public health system (Constitutional Court, 2009). The Constitutional Court agreed with this point of view. Thus, the adoption of both measures, one being a policy of coercive anti-natalist and the other reflecting pro-natalist perspective, which are themselves quite contradictory, reveals how policies can change according to the dominant discourse of the time. As Irene (feminist and high-level governmental official) stated, the changes that occur in reproductive health policy every time a new Minister of Health is appointed reveal a lack of clear and consistent governmental policy on this situation, which most immediately affects the reproductive health of poor Peruvian women (Irene, personal communication, November 13, 2011).

Firstly, in the case of coercive surgical sterilisation, as I will illustrate in Chapter 4, the dominant discourse advocated control over the growth of the indigenous population. The government wanted to achieve this goal using surgical sterilisation, regardless of women's consent. In the case of the emergency contraceptive pill, conservative Catholic precepts and the influential position of conservative Catholics in government prevented women from exercising their right to decide whether or not to take the "morning-after pill." However, something common to both policies is that each is focused on women's bodies. According to Mujica (2007), this control over women's bodies has two effects on their decision-making. On the one hand, it reduces women to their reproductive maternal role, determined by the nature of their bodies. On the other hand, it perpetuates their reproductive role as a centre of social relations. Reproduction is then the centre of activities: biological reproduction, reproduction habits, reproduction of the family, reproductive patterns - all of these tasks are developed around women's bodies. As Weedon (1987) points out, in Europe from the eighteenth century onwards "... the discursive production of the nature of women's bodies was central to the reconstitution of social norms of femininity, the patriarchal subjection of women and their exclusion from most aspects of public life" (pp. 108-109). The two examples of biopolitics outlined above are parallel situations to that described by Weedon, because these policies were implemented taking into account a discourse that "naturalises" women's bodies. Through this discourse, it is possible to achieve the goals of the dominant discourse, which are to restrict the autonomy and independence that women have over their bodies, such that they cannot make decisions and act upon them. Likewise, the sacralisation of life supported by the law is used as a tool for controlling and disciplining the individual. We are not only, in Foucault's words, "... animals whose lives as living beings is at issue in their politics, but also inversely citizens whose very politics is at issue in their natural body" (Foucault, as cited in Agamben, 1998, p. 188).

Meanwhile, the discourse of the feminist NGOs, who support the implementation of reproductive health policies, has focused on the rights-based approach. This approach is about "... promoting human dignity through the development of

claims that seek to empower excluded groups and that seek to create socially guaranteed improvements in policy (including but not limited to legal frameworks)” (Uvin, 2004, as cited in Gready, 2008, p. 277). Following this approach, the use of regional and international norms and jurisprudence in human rights allows feminist NGOs to work for the identification and preservation of rights and duties to respect women’s decision-making ability by the State and society. This involves creating strategies to redress injustice and to promote institutional change, rather than just relying on charity, for example (Tsikata, 2007). In the right-based approach, people are seen as having agency. Therefore, they are encouraged to drive change, and are not the passive recipients of development aid. Thus, the demands of feminist organisations revolve around issues such as the right to self-determination, sexuality, and reproduction. These are linked with demands for social justice and women’s participation in the public debate on policies that affect their bodies and lives. They reject all methods of birth control that violate individual liberties and foster the decriminalisation of abortion. They also promote sex education and free access for men and women to contraception within the public health service, including surgical sterilisation. In addition, these organisations call for improvements in living conditions and changes in the status of women in society (Cáceres, Cueto, & Palomino, 2008), such as the right to participate in public policy decision-making processes. In the specific case of access to contraceptive methods, feminist NGOs argue that “... there is sufficient evidence of the population’s needs, especially those of poor women, to access a wide range of contraceptive methods, and emergency contraception must be considered within this range because it meets needs that no other contraceptive can” (Citizens Monitoring Group on Sexual and Reproductive Rights, institutional letter, February 10, 2006). Indeed, regarding the emergency contraceptive pill for example, the dissenting opinion of two of the judges of the Constitutional Court, Cesar Landa and Fernando Calle, followed the arguments of feminist organisations. Landa and Calle stated that prohibition of the free distribution of the morning-after pill is a discriminatory measure that affects only poor women who do not have enough money to get a medical prescription and purchase this contraceptive from a pharmacy (Constitutional Court, 2009).

As this discussion highlights, Peruvian women's bodies are the sites of ongoing discursive struggles to define the nature and scope of reproductive health policies. This is not the case in relation to men's bodies in Peruvian society. Women, especially poor women, are not considered individuals with rights and duties but docile bodies over which it is possible to exert control, discipline and surveillance. These female bodies have the capacity of giving birth and building families and society. Therefore, in order to either promote or undermine this role, powerful groups decide how women's bodies must be disciplined, but without the active participation or consent of women. In this way, it is possible to regulate the birth of new individuals, and consequently new consumers, new Catholics, and new Peruvian citizens. In what follows, I will analyse in greater detail the discursive and political struggles that have occurred in Peru in relation to the policies and practices of coercive sterilisation, abortion and the emergency contraceptive pill.

CHAPTER 4: COERCIVE SURGICAL STERILIZATION OF INDIGENOUS WOMEN

As was shown in the previous chapter, in a country such as Peru with an unstable democratic system, there is an ambiguous separation between religion and the State. In addition, the recognition and exercise of citizenship has at times been reserved for an urban privileged minority led by men. Being a citizen means, for example, that the individual is recognised as a member of a State, that he/she is enabled to engage in social participation, and therefore he/she can contribute to political debate. However, this understanding of the meaning of citizenship relies on theoretical traditions which have been developed in a particular political context. In the case of women, it is possible to argue that in the current Western patriarchal welfare State women can achieve citizenship if they have the ability to participate in the workforce, which is stratified in line with gendered assumptions about gender roles, spaces and the “natural” attributes of men and women (Pateman, 1992). These gender assumptions rest on the capacity of women to give birth, which contributes to essentialist Western ideas related to the meaning of being a woman. According to Mouffe (1992), this Western essentialism covers the multiplicity of social positions of women. Therefore, it is necessary to construct a different conception of what it is to be a citizen, which excludes Western biases around sexual differences.

In the contemporary policymaking process, the implementation of policies ideally fosters the participation of people who will benefit from them. This practice seeks to empower the beneficiaries so that they can influence political decisions that are made about them. In other words, this practice fosters the building of a new understanding of citizenship (Bardach, 2004). Reproductive healthcare policy is an example of this. Through this policy, reproductive and sexual rights are respected and promoted as upholding the right of self-determination. In the case of women this is vital, especially in a society such as Peru where the social position of women is determined by their reproductive capacity. However, between 1996 and 2000 Peruvian reproductive health policy was implemented in a controversial way, due to political interventions and regulatory controls that the Peruvian Government, led by President Alberto Fujimori, used to slow the rapid

growth of the indigenous population. To achieve this goal, Fujimori implemented political measures that sought to rapidly increase modern contraceptive use, particularly sterilisation, among the most marginalised women in the country. The permanent birth control method (tubal ligation) was not only targeted towards poor and indigenous women but also applied against their will. Seeking to understand the operation of biopower and biopolitics in this controversial policy, this chapter will firstly explore the structural inequalities faced by indigenous women in Peruvian society. Then, it examines the development of biopower and biopolitics in the implementation of Peru's coercive sterilisation policy. Finally, it delineates the discourse articulated by the Catholic Church regarding coercive sterilisation and shows how this discourse had political effects on the economic support that USAID gave to the implementation of reproductive health policies in Peru.

I. Structural inequalities faced by indigenous women in Peruvian society

As noted in Chapter 3, in the Andean region, the Spanish Conquistadores disrupted the pre-existing indigenous society in the area that was to become Peru, destroyed rural communities, and installed institutions like the Catholic Church. In addition, they imposed a different language and set of moral values that was not present before. This near-destruction of the Andean indigenous society led to the emergence of the myth of the “vanquished race,” which stated that the Incas and their descendants did not possess the power of self-determination, or individual initiative. For this reason, they “... could or should be exterminated, civilized, instructed or saved” (Starn, 1995, as cited in Getgen, 2009, p. 5). This myth ruled the Spanish colonial process and caused the fragmentation of Peruvian society into different social and ethnic groups, which continues today (Americas Watch, 1992, as cited in Getgen, 2009). The division of societal structures is reflected in the geographical borders between the urban coastal region (which are mainly Spanish-speaking) and the rural highlands region (which are mainly Quechua-speaking). This geographical division shows also in the concentration of the nation's wealth, political and economic power, and consequently the concentration of policy programmes in the coastal region. This situation illustrates how the interests and needs of the indigenous people, clustered in the Andean

highlands and Amazonian rainforest regions, have largely been ignored by successive Peruvian governments (Americas Watch, 1992, as cited in Getgen, 2009). Today, indigenous people, who according to the National Institute of Statistics and Information (INEI) (2007) represent 30% of the Peruvian population, are beginning to organise politically to achieve the fulfilment of their individual and collective demands. However, discrimination against them persists in Peruvian society. Additionally, further disparity is evident between the country's rural and urban poor, with 50.3% of Peru's rural poor living in extreme poverty, compared with only 9.7% of the urban population (Amnesty International, 2009). This inequality is also manifested in the country's health system, which was ranked 119/191 in 2000 by the WHO for equitable health systems, and 184/191 in fairness of financial distribution (Amnesty International, 2009).

According to Vasquez del Aguila (2006), prejudice against indigenous people, and consequently institutionalised discrimination against them, creates a hierarchy of bodies based on a symbolic division that implies the subordination of indigenous people and also "mestizos" (those of mixed Spanish and indigenous heritage). However, the differences between indigenous people and "mestizos" are not clear, are difficult to define, and make explicit how race and ethnicity are constructed in the context of social interactions. As De la Cadena (1996) argues, ethnicity is a dynamic concept based on social relationships rather than on fixed biological features. For instance, in a rural community a man could be regarded as "mestizo" but becomes indigenous, a "cholo" (a nickname for indigenous people) or a "peasant" in the city. "Peasant" was another classic term used by sociologists during the 1970s in the context of the agrarian reform. During these years the concept of class stratification (evoked in the term "peasant") was eclipsed by other factors such as ethnicity and gender, which became important in understanding the management of power in Peruvian society. According to Vasquez del Aguila (2006), these academics had the intention of building citizenship and eliminating hierarchical racial differences through the elimination of economic categories. However, "peasant" makes no reference to ethnicity and remains an externally imposed category for the majority of indigenous and

“mestizo”¹ people (Storaker, 2001). From this perspective, the categories “mestizo/a,” “peasant,” and indigenous are not sufficient to express the complexity of the notion of ethnicity in Peru. As De la Cadena (1996) states, ethnicity is performed through historical processes at two levels: personal interactions and socio-political processes. At these two levels people challenge the stereotypes of their ethnicities, their classes and their genders. Thus, ethnic differences are created, transformed and reproduced throughout history. According to De la Cadena (1996), the differences within the relationships of indigenous married couples are perceived as interethnic differences. For instance, in research conducted by De la Cadena (1996) in the indigenous community of Chitapampa (Cusco), all women are born indigenous, and they can “improve” their status and in turn become “mestizas” if their partners are “mestizos.” In the case of men, they do not need to get married to become “mestizos.” At this point, questions related to the cultural understanding of “women” and the meaning of being indigenous among indigenous people themselves should be examined.

First of all, the structure of Peruvian indigenous society relies on a system of patriarchal families, where women are at the bottom of the chain of subordination, and the capacity to engage in physical labour increases social and personal power (De la Cadena, 1996). In these indigenous societies, it is believed that women do not work. If they do participate in physical labour, it is believed that they will get sick and their reproductive capacity, which is their essential role, will be damaged (De la Cadena, 1996). Regarding women’s reproductive capacity, it is necessary to understand that Andean people see the universe as working in cycles - day follows night, the harvest follows planting, and life follows death, for example (Special Commission of the National Parliament, 2002). In this view of the cosmos, everything is repeated and returns to its starting point eventually. Hence, there is no understanding of what it means for something to be irreversible or permanent, and as I will demonstrate, this has particular bearing on indigenous (mis)understandings of a permanent procedure such as tubal ligation. Their vision of the world goes from the “*hananpacha*” (above ground), to the “*kaypacha*”

¹ In Spanish, “mestizo” refers to a man of mixed descent, and “mestiza” refers to a woman of mixed descent

(underground) or “*ukupacha*” that is reborn through the “*mamapacha*” or Mother Earth (Special Commission of the National Parliament, 2002). In this context, family has an important meaning as a creator of life, and children are a source of life, rebirth and prosperity (Apffel-Marglin & Sánchez, 2002). Motherhood and “being for others” is an ideal opportunity for social recognition. Women are thus very sensitive to maternal roles because they know they are a source of security and affection (Special Commission of the National Parliament, 2002). Giving birth to, raising and educating children gives women a social identity.

As was stated above, the understanding of reproductive capacity among indigenous people is closely related to the indigenous understanding of the relation between women and work. Thus, indigenous women’s work in the home or even in the markets selling vegetables is not considered “real” work by indigenous men, because it does not involve physical labour. The women are seated while they sell the products of men’s physical labour. This conception of work as only being physical labour is evident when indigenous men look for work in the cities, as they only value jobs which involve the use of their physical strength. This contact with Western civilisation makes indigenous men more “civilised” and less underdeveloped than the myth of the “vanquished race” stated (De la Cadena, 1996). This understanding of indigenous people by Western societies influences the indigenous perception of indigenous womanhood, which is closely related to defeat and ethnic abasement (Harvey, 1989). Thus, while indigenous women wear traditional clothes, speak Quechua or Aymara, and do not migrate to the cities, indigenous men wear Western clothes, speak Spanish, and constantly migrate to other Spanish speaking urban areas. Men are identified as “mestizos,” while their sisters, mothers and wives remain indigenous. Hence, gender differences are taken into account in ethnic stratifications and in relationships of subordination within indigenous societies.

Ethnicity is thus inscribed on the female body more than on the male body. De la Cadena (1996, p. 11) summarises this situation in an illuminating phrase: “women are more indigenous than men.” This suggests that women experience structural subordination at different levels of Peruvian society. A clear example of this situation occurred during the period of political violence (1980 to 2000), where

the principal victims were indigenous people, as outlined in Chapter 3. During these 20 years of violence the gender gaps deepened (Truth and Reconciliation Commission, 2003) and women were affected by the violence in different ways to indigenous men. These women were subjected to ridicule, abuse and humiliation for being indigenous in a social context where the colonial legacy of discrimination still remained. According to the Truth and Reconciliation Commission (2003), women represented 20% of the dead and missing persons. However, even though women were not the majority of the victims, they were severely affected by gender-based violence from the armed forces and terrorist groups. Thus, sexual abuse, rape, and the murder of women were commonly perpetrated by the armed forces. Forced unions, sexual slavery, forced abortions, the shaving of women's hair, and forced labour were perpetrated on women by the terrorist groups. Torture as a tool to obtain information about relatives, sexual mutilation, the displacement of families, and the "disappearance" of women were some of the crimes that were perpetrated by the armed forces and terrorist groups (Truth and Reconciliation Commission, 2003).

Taking into account the testimonies gathered by the Truth and Reconciliation Commission (2003), it is clear that sexual violence was focused on women's bodies. Of 538 cases reported, 527 were against women and 11 against men. However, these figures do not show the real magnitude of the problem, because, for example, a lot of women were raped before or after they were killed or tortured. Sexual violence is an exercise of power, which has long-term consequences. In the testimonies of members of the armed forces, words like "damaging and defacing" were constantly used, and reveal the intention that the consequences of this violence be lasting and severe (Truth and Reconciliation Commission, 2003). Such sexual violence leaves visible and invisible traces on the body, the emotions, the mind and the social standing of the victim (Truth and Reconciliation Commission, 2003). The female body becomes a scene of violence and conflict - it becomes a disputed territory. It is a booty of war for combatants who seek personal pleasure and the defeat of the enemy. Control of the female body becomes an instrument of male domination and a visible symbol of power. Thus, during the period of political violence, women were in the crossfire and they lived with daily violence. Women were ordered by both the pro- and the anti-

government forces to cook for, tend the sick among, and house their combatants (Truth and Reconciliation Commission, 2003). They had no choice and had to obey without protest in order to preserve their safety and that of their families. Women were not heard, and their protests were not taken into account by the terrorists or the armed forces. While this invisibility and marginalisation of women previously existed among indigenous Peruvians, it was significantly aggravated by the internal conflict (Truth and Reconciliation Commission, 2003).

Thus, two elements have to be considered in the analysis of these processes of extreme gender-based violence, especially sexual violence. Firstly, the relationship between war, masculinity and violence, and secondly, racism. First of all, various studies of war and armed conflict have identified a common strategy of denigrating the opponent through feminisation, using gender stereotypes as tools of power (Castellanos, 2001, as cited in Truth and Reconciliation Commission, 2003). Examples of these feminisation practices in the Peruvian context included sodomising the enemy, raping women so as to humiliate the opponent (women are considered to be the symbol of the nation, due to their reproductive capacity), and cutting the nipples and pubic hair of indigenous women to denigrate their femininity and image (Truth and Reconciliation Commission, 2003). Upon the bodies of women, hatreds and resentments were avenged. Women were seen not only as terrorists or agents from the armed forces but also as mothers, sisters, or daughters of terrorists or members of the armed forces, and were therefore subjected to violence and barbarism. Finally, racism is another element, which, together with the gender system, allows us to understand the crimes and human rights violations suffered by women. The most affected women were part of the Andean culture, and were Quechua speakers. The fact that these women were most affected reveals their inferior social position and the lack of consideration that highland indigenous people are given in Peruvian society today (Truth and Reconciliation Commission, 2003). The situation of indigenous people was not considered to be of national concern, since it primarily affected those who live in the Andean highlands, away from “progress” and “civilisation.” For example, the following testimony from a man describes one instance (during the years of political violence from 1980 to 2000) where an indigenous woman went to the police station to seek help in finding her child. However, she was

ignored by the policemen for an extended period of time:

Era una madre que venía pues solita ... que era muy humilde, no tenía ... no conocía como desenvolverse tanto en estos ambientes ... le hacían esperar, la relegaban ... y la señora estuvo así ... años de años.

She was a mother who came alone ... she was poor, she did not have any possessions ... she did not know how to act in this environment ... they made her wait, they left her until the end ... and the lady was in this situation ... year after year (Truth and Reconciliation Commission, 2003, p. 72; translated by the author)

The armed forces and police especially linked being of indigenous heritage with membership of terrorist groups. They joined two words into one – “Indian” (understood as meaning indigenous people from the highlands of Peru) and “terrorist” became “Indian terrorist” – a term that was then used to describe the rural population as a whole (Truth and Reconciliation Commission, 2003). Using this strategy, a false association was made between the indigenous people and the terrorists. Therefore, every Indian was defined as a terrorist. This image of the “Indian terrorist” worked in the same manner as the stereotypes of “Indian pig,” “lazy Indian,” and “Indian traitor” - labels that were generated by the dominant groups within Peruvian society (Truth and Reconciliation Commission, 2003). In the case of terrorism, the Shining Path kidnapped indigenous women from the Andean highlands and the Amazonian jungle to use as sexual slaves, or for performing forced labour, especially as cooks (Truth and Reconciliation Commission, 2003).

As has been shown in this section, stereotypes underpinned by racist ideas were present during the period of political violence from both sides – the armed forces and the terrorist groups. It is in this context that a programme of coercive sterilisation of indigenous women was developed, as will be outlined below.

II. Biopower and biopolitics in the policy of coercive sterilisation

Alberto Fujimori was elected President of Peru in 1990 in the context of the collapse of Peru’s traditional parties and a spiralling economic crisis due to political terrorism. During the earliest years of his government, Fujimori re-inserted the Peruvian economy into the international financial community and re-negotiated Peru’s international debt. However, declining inflation did not improve

the standard of living of poor people, and Fujimori stated that poverty was still present in Peruvian society due to, among other things, the National Congress (the Peruvian equivalent of New Zealand's Parliament) avoiding the implementation of policies that would benefit the poorest (Podestá, 2012). In 1992, Fujimori suspended the Constitution, closed the National Congress, and began to rule by decree. This seizure of power was called an "auto coup d'état" (Lopez, 1993). It was in this way that a period of increasing authoritarianism began, which was called "dictablanda" (soft-dictatorship) and then "democradura" (hard-democracy) (Lopez, 1993). Strong economic growth from 1993 to 1995 and the capture of the most important leaders of the Shining Path in 1992 encouraged a government discourse of progress and stability. This was supported by the media, the National Congress (the majority of whom were from Fujimori's party), the Supreme Court, and many other institutions under Fujimori's control. In 1995, Fujimori again won the Presidential elections, with 64.6% of the popular vote. He used this large majority to legitimise his subsequent authoritarian regime, and to grant amnesty to military personnel involved in human rights abuses (University of British Columbia, 2004).

In terms of reproductive health policies, the first Fujimori government affirmed the tenets outlined at the United Nations International Conference on Population and Development in Cairo (1994). At this conference, the United Nations proposed that family planning policies begin recognising sexual and reproductive rights as part of the full bundle of human rights. In addition, the United Nations suggested a rights-based approach to public health programmes (United Nations, 1994). Thus, during the Fourth World Conference on Women in Beijing (1995), Fujimori vigorously defended women's access to information, the provision of contraceptive methods, gender equity, and women's reproductive rights. Fujimori also emphasised sex education and family planning as tools to fight against poverty and social injustice (Barrig, 2002). Moreover, Fujimori's speech decried the Catholic Church as an obstacle to progress, and described religious leaders as people with an ultraconservative mentality (Barrig, 2002). Hence, an apparently favourable environment for women's sexual and reproductive health, and even a positive window for attaining sexual and reproductive rights, was evident in the

mid 1990s in Peru. However, at the base of the Fujimori regime's discourse was an explicit association between reproduction and poverty, focused on indigenous women. Fujimori argued in national and international speeches that Peru had to reduce the size of its families in order to eliminate poverty (Fujimori, 1999). Thus, to Fujimori, population control was synonymous with progress and modernisation.

The relationship between economic progress and control of the population was developed in a confidential government document called "*Plan Verde*," which was uncovered by the sociologist Fernando Rospigliosi in 2000. This document was developed by a group of high-ranking members of the armed forces and aimed to reduce and end the hyperinflation in Peru after the economic crisis of Alan Garcia's government. This goal was originally to be carried out through a coup d'état, but the close relationship between Fujimori and members of the armed forces made such action unnecessary (Rospigliosi, 2000). The "*Plan Verde*" identified measures that the Peruvian Government was supposed to implement. In the specific case of health, this document argued that stopping the growth of the population was urgent; therefore, it was necessary to apply special treatment to the "excess" population (Rospigliosi, 2000). Thus, in the framework of the "*Plan Verde*," control over this "excess" was held to be possible through the use of coercive sterilisation surgery in poor people and "certain sectors" of the population. Likewise, it argued that this procedure must be understood as a norm in all public reproductive health care centres, except when the patient proved his/her financial solvency (Rospigliosi, 2000). Terrorists and their families were part of the "certain sectors" of the population that must be sterilised, according to the guidelines of the "*Plan Verde*" (Rospigliosi, 2000).

It is in this political and social context that the sterilisation campaign began to be developed through the "*ferias de salud*" (health festivals/campaigns). These "*ferias*" were organised by the regional public health care centres. They were carried out in the form of massive interventions, especially in rural and poor communities where people experienced economic, geographical and cultural barriers to accessing public health services. Thus, these "*ferias de salud*" were

developed in the poorest Departments (the Peruvian equivalent of Provinces) of Peru, such as Junín, Cusco, San Martín and Puno. These Departments were also the most affected by the political violence. Hence, in 1991 Fujimori declared the “Year of Austerity and Family Planning” and announced the National Programme of Population Control 1991-1995. The main goal of this Programme was the reduction of population growth to no more than 2% per year by 1995, and an expected global fertility rate of 3.3 children per woman (Vasquez del Aguila, 2006). Likewise, after the auto coup d’état, Fujimori declared the decade 1992 – 2002 to be the “Decade of Family Planning,” which was approved by Ministerial Resolution No 0738-92-SA/DM (Special Commission of the National Parliament, 2002). Thus, in 1992 the Health Ministry established as a public measure the practice of surgical interventions in cases of reproductive risk. This practice was understood as an antecedent for sterilisations in public clinics in urban and rural areas (Vasquez del Aguila, 2006).

In 1995, Peruvian health policy was modified by the General Population Act so as to include sterilisation as part of the contraceptive methods that were provided by the State, and conditioned its application on the consent of the patient. Within this normative framework, in 1996 the MINSA approved the National Programme for Family Planning and Reproductive Health 1996-2000, which highlighted Peru’s free services for consultation on and provision of contraceptive methods, including sterilisation surgery. The discourse of the right to health and the importance of the human being over institutions is the framework within which sterilisation became legitimised in Peru. Thus, the MINSA and the Peruvian Institute of Social Insurance carried out family planning campaigns in the Andean highland, Amazonian jungles and poor urban areas in order to meet various programme goals. These included increasing timely access to reproductive health and family planning services through the improvement of coverage and quality of healthcare; generating informed demand about reproductive healthcare, and family planning services; and making available resources to develop local systems of health and universal access to promotion, prevention and care in reproductive health and family planning (Valdivia, 2002).

However, according to the testimonies and reports gathered by CLADEM (1998, 1999), the Public Ombudsman's Office (1998, 1999), and the Special Commission of the National Parliament (2002), this programme was in practice focused on coercive surgical sterilisation of poor and indigenous women. Only a few cases of vasectomy for men were reported. Furthermore, these reports pointed out that the government offered financial incentives to health professionals to encourage them to sterilise a greater number of people and imposed financial penalties on those who did not meet the established goals. In addition, healthcare providers tended to use persuasion, deception and verbal abuse to gain the agreement of both women and their partners to surgical sterilisation. Healthcare providers also failed to provide adequate information to women and their partners on the risks of the operation and what would be required in terms of post-operative care. Finally, surgical sterilisations were practiced without the consent of the patients.

Thus, CLADEM (1999) notes in its report quantitative goals for the implementation of surgical contraception under the supervision of the Health Ministry, including figures identifying the number of women who should be sterilised, and incentives for health workers, in the form of bonuses of US\$4 to \$10 for every woman brought in for sterilisation. In addition, "good" practitioners were promoted, while those who did not fulfil the set goals were threatened with the loss of their positions and incentives (Special Commission of the National Parliament, 2002). To obtain these incentives, health care providers organised "*ferias de salud*" as described above. The majority of the sterilisations were performed after the agreement of the women was deceitfully obtained through coercion or serious threats. The following testimony documents this mistreatment of indigenous women:

Me buscaron muchas veces para convencerme de operarme. A mi esposo le hicieron firmar un papel y le dijeron que me van hacer curar, pero como era analfabeto no sabía lo que decía el documento, además amenazaron a mi esposo que si no me presentaba en la posta, la policía lo llevaría preso a él, Mi esposo de miedo me obligó ir.

They sought me many times to convince me to have the surgery. They forced my husband to sign a paper and they told him that they will heal me,

but as he is an illiterate he did not know what was written in the document; besides, they told my husband that if I would not go to the health centre, the police would take him to prison. My husband was scared so he forced me to go. (Verástegui, 2009, p. 3; translated by the author)

Likewise, the testimony of a nurse from the health care centre of Pomata (a town in the Department of Puno) states that indigenous women were sterilised systematically, without any consideration for their humanity. These women were treated like guinea pigs in an experiment:

Bueno yo como ser humano, yo he visto como que de repente, hasta cierto punto, muy atrevida voy a ser, han hecho un operativo, como quien dice no, como conejillos de indias, eso es lo que han hecho y eso es lo que no me gustó, no.

Well, I am a human like them, I saw how hastily and rudely [nurses] systematically operated on them [indigenous women]. [Indigenous women] were treated like guinea pigs. I saw it, and I did not like it. (Special Commission of the National Parliament, 2002, p. 55; translated by the author)

Medical negligence resulted in numerous infections and deaths, as in the case of one indigenous woman, named Magna, who died in the emergency room of the rural hospital in Tocache (a town in the Peruvian Amazon). The health providers did not provide her with adequate medical attention because the *feria* had concluded (Special Commission of the National Parliament, 2002). Her husband stated that:

Entonces mi hijo corrió y llamó a los enfermeros, varios entraron y dijeron: Hay que echarle aire, hay que quitarle el suero. Le pusieron una mascara de oxígeno que tuvo hasta que murió.

So my son looked for the nurses, a lot of them entered the room and said: 'We have to give her air, we have to take off the saline drip.' They put her on an oxygen mask until she died. (Verástegui, 2009, p. 3; translated by the author)

Tubal ligations were carried out mostly when women were being treated for other health issues, such as flu, childbirth, vaccination, and even when women were soliciting information about contraceptives from the public clinics. According to CLADEM (1998, 1999), the Public Ombudsman's Office (1998, 1999), and the Special Commission of the National Parliament (2002), the majority of women

were sterilised against their will.

Number of women's sterilisations

Year	Armed forces	Health care providers
1993	269	18,992
1994	519	17,732
1995	826	32,057
1996	757	81,005
1997	517	109,172
1998	438	25,557
1999	756	26,008
Total	4,082	310,523

Source: Adapted from a report of the Public Ombudsman's Office, 2002.

From 1993 to 1999, 16,000 vasectomies were performed in Peru (Ministry of Health, 2001), while the number of female sterilisations was 314,605. Furthermore, up until 2000, for every 100,000 sterilisations, 7 ended in the woman dying (Public Ombudsman's Office, 1999). An emblematic case of this kind of violence against indigenous women was the coercive sterilisation of Ms Mamerita Mestanza. She was a poor indigenous woman who, in 1996, was coerced into having a surgical sterilisation by government officials. When complications arose after her surgery, the healthcare professionals repeatedly denied her medical attention. She died of post-operative medical complications seven days after surgery. Her family reported this incident to the Peruvian National Court but did not receive any response. In 1999, NGOs that work for women's rights sued the Peruvian State before the Inter-American Commission on Human Rights for the death of Ms. Mestanza. In 2003 the Peruvian State acknowledged its responsibility for violating the human rights of Ms. Mestanza. These rights included, among others, the right to life, to integrity, to equal protection under the law, and the right to be free from gender-based violence. As part of the settlement, the Peruvian State agreed not only to compensate Ms. Mestanza's husband and seven sons and daughters, but also to make significant improvements in reproductive health and family planning policies (Inter-American Commission on Human Rights, 2003). After this lawsuit the Peruvian

Government, led at the time by Alejandro Toledo (2001-2006), banned campaigns of surgical sterilisation.

While this policy is now defunct, questions about the operation of biopower and biopolitics in this particular context should be asked. As was stated in the previous chapters, human life has become the centre of the articulation of the State, democracy, government and civil life. There is, therefore, a political penetration into the lives of people. The new target of State policy implementation is the body as the embodiment of life. As was stated in Chapter 1, one of the action areas of Peruvian biopolitics is the campaign to use contraceptive methods (Mujica, 2007) to regulate the growth of the population, which in its most radical form led to the coercive sterilisation campaign. During this period the Peruvian Government had total control over the lives of the most marginalised group of women, who also were victims of psychological violence by healthcare providers. This violence was evident also in slogans and radio propaganda that implicitly articulated a Neo-Malthusian discourse (CLADEM, 1999): “Solo debes tener los hijos que puedes mantener” / “You must have children that you can maintain” (CLADEM, 1999, p. 71; translated by the author); “Gratiso, gratiso! Ven a tu centro de salud y amárrate para no tener más hijos y ser inteligente!” / “Free of charge, free of charge! Be smart and come to your health centre. Get yourself sorted so you do not have more children!” (Special Commission of the National Parliament, 2002, p. 82; translated by the author).

The focus on sterilising the bodies of indigenous women showed that women were considered solely as biological reproducers of children by the health authorities (Verastegui, 2009). Furthermore, the treatment that indigenous women received from these authorities revealed racism, as health officials routinely referred to indigenous women as guinea pigs, dirty, or lazy (Paez, 2006). Likewise, a lack of consideration for women was present when health care providers objectified the reproductive systems of women and did not give them the care that they deserve (Yuval-Davis, 1997):

Cuando denunciarnos en Lima que muchas mujeres sufrían dolores por las intervenciones quirúrgicas, las autoridades nos decían que eso no se debía a la ligadura de trompas sino porque éramos sucias, ignorantes y flojas.

When we [indigenous women] protested in Lima that many women suffered pain due to the surgeries, the authorities told us that this pain was not because of the tubal ligation, but because we were dirty, ignorant and lazy (Paez, 2006, p. 5; translated by the author).

The official State discourse emphasised the health and welfare of the poor. This discourse, according to Takeshita (2012), adopted the idea that interventions aimed at small families and the management of fertility were key economic interventions that would lead to normative gender relationships in the twentieth century. Contraceptive practices are focused on women's bodies, as they have the "natural" capacity of giving birth. However, this Neo-Malthusian discourse is not free of the influence of eugenics discourse, especially when Neo-Malthusian discourse is used to underpin efforts to control the birth rate of a nation (Takeshita, 2012). In the specific case of Peru, it is possible to argue that the nationalist project of population control, led by Fujimori and outlined in the "*Plan Verde*," was focused on improving the "quality" of the Peruvian nation through the reduction of the fertility of specific groups. Thus, the growth of the indigenous population was seen as undesirable, due to perceived links between indigeneity and political terrorism. Therefore, Fujimori's government adopted a policy of targeted coercive sterilisation of indigenous women. Ehrlich (1968, as cited in Verastegui, 2009) points out that population policies in the Third World combine the pretext of lifting "people out of poverty" with the racist fear of being overwhelmed by "other" non-Westerners. The testimonies quoted above should be read in terms of eugenics and Neo Malthusian discourse, as these underlie the power of the narratives that identify poverty, misery and famine as part of the life of indigenous populations. This narrative is also evident in the slogans of the "*ferias de salud*."

For example, the final report of the Special Commission of the National Parliament (2002) states that one of the posters used in the surgical sterilisation campaign referred to a family that is poor because it has many children, and suggested that parents with many children (most commonly indigenous people) are to blame for their poverty. It should be noted that linked to the eugenics and the Neo-Malthusian discourse was the discourse of "people as power," which,

according to Yuval-Davis (1997), states that the maintenance and expansion of the population are vital to national interests. Thus, population quantity and quality were both variables taken into account in the national project of population control between 1996-2000.

Fujimori's government exerted its biopower over indigenous women's bodies in the implementation of its policy of coercive sterilisation. As Palomino (2003, as cited in Vasquez del Aguila, 2006) points out, men's fear of lacking virility or losing their masculinity by not being capable of reproduction are the main reasons for men's rejection of definitive contraceptive methods. This illustrates the patriarchal structure that dominates Peruvian society. For this reason, it is not surprising that women were considered the targets of the sterilisation campaign. Furthermore, indigenous women feared their husbands' reactions, especially when men discovered that they would not have more children. They felt angry, sad and deluded because men linked the idea of contraception with a greater potential for infidelity by women (Verastegui, 2009). In the report of CLADEM (1999), there is reported another example of this patriarchal structure, where male partners consented to and "authorised" health practitioners to sterilise their wives or partners after an initial female refusal. Likewise, another testimony in the same report states that the health workers always looked for the poorest women, especially those who did not understand Spanish. They made them put their fingerprint on a sterilisation authorisation form they did not understand, because they could not read. If the women refused, they threatened to cut off their access to food and milk programmes. An important aspect in this example is how health workers have traditionally marginalised poor indigenous and rural women (CLADEM, 1998; 1999). In this sense, during the sterilisation campaign many health workers, whether the white male doctor or the "mestizo" female nurse, participated according to their existing discriminatory scripts of total disrespect for indigenous women's subjectivities and needs. In many cases, these health workers publicly humiliated poor and indigenous women for their "irresponsibility," for having "too many" children, or for not agreeing voluntarily to sterilisation (CLADEM, 1998; 1999). The following testimonies reveal the racist metaphors used by healthcare providers that compared women to animals:

Nos decían que eramos animales, ignorantes si no aceptábamos ligarnos.

They told us that we would be ignorant animals if we did not accept the tubal ligation. (CLADEM, 1998, p. 66; translated by the author)

Yo me quería ir corriendo pero de pronto me pincharon y me morí – morí, refiriéndose a que fue anestesiada- entonces cuando me desperté me dijeron que ya no iba a ser mas un chancho y que ya no iba a traer mas hijos como si fuera un cuy.

I wanted to run away but they [the nurses] injected me [with anaesthetic] and I passed out. When I woke up they [the nurses] told me that I would not be like a pig anymore and I would not give birth to more children like a guinea pig. (Special Commission of the National Parliament, 2002, p. 67; translated by the author)

In this context women's voices were absent and women were not subjects, but only uteruses subjected to control. As Yuval-Davis (1997) argues, women, due to their natural capacity to give birth, are not considered human beings, workers or wives but as members of national communities. Women produce children, therefore they “give birth” to the community. The testimony of the former lieutenant Telmo Hurtado supports this argument. During the period of political violence, Telmo Hurtado led the massacre of Accomarca (14th August, 1985), where 69 Andean peasants from this area were killed by the armed forces. Thirty women and twenty-three children were among the victims, and most of the women were pregnant (Truth and Reconciliation Commission, 2003). When Hurtado was asked about the massacre of women and children, he stated that he could not trust anyone, much less women and children. He said that this was because the indoctrination of terrorists practically began in the wombs of their mothers (Truth and Reconciliation Commission, 2003).

Returning to the theme of coercive sterilisation, when women were sterilised against their will, their husbands/partners subsequently refused to stay with them because, as was stated above, men thought that their wives would be unfaithful to them. In addition, not having a family is not an option in the Andean understanding of the world. Therefore, these women were forced to live alone, which has a special meaning in the case of Andean women (Special Commission of the National Parliament, 2002). For Andean women, it is hard to socialise in a

culture where relationships of mutual aid, reciprocity and the work of the couple are the basis of community life and are the axis of prestige and social recognition. In the Andean world, “being two” is part of being part of the community. In this context, being alone has a different meaning to what it may have in other socio-cultural contexts.

According to Foucault (1969, as cited in Fuller et al., 2006), sex, knowledge and power became linked in the nationalist projects of the twentieth century, much as women’s sexuality and arguments about poverty were used as instruments to control the birth rates of indigenous and poor people. Sex, knowledge and power combine to create biopower. Biopower is exercised through medical knowledge, for example, to create arguments supporting population-restricting policies (Mujica, 2007). The eugenics-informed reproductive policy of Fujimori’s government is a clear example of biopower and biopolitics in action, aiming official health policy at the perceived threat posed by indigenous people. In this context, the body of women was the vehicle to achieve this goal. Their bodies were regulated, subverted and enclosed. They faced a social and, in some cases, biological death. The exercise of biopower and biopolitics in this particular context deprived the most marginalised group of women of their humanity and transformed them into a docile corporality.

It is in this context that the discourse of conservative groups, especially the Catholic Church, began to operate, firstly as protestors against the coercive sterilisation of indigenous women, and later as ferocious opponents of American economic support for the implementation of reproductive health policies.

III. The discourse of the Catholic Church and its political and economic effects on Peruvian reproductive health policy

Voluntary access to definitive methods of contraception, such as permanent sterilisation as part of a wide range of contraceptive alternatives for women and men, is a reproductive right that should not be denied by any person or institution. In the Latin American context, due to the ambiguous division between the State and the Church, it is necessary to always be alert to the activities of the

conservative movements that try to impose their agenda in public health policy. In this sense, it is important to emphasise that permanent sterilisation is not by itself a human rights violation. Rather, only coerced or involuntary participation in such procedures constitutes an abuse or violation.

During the period of the implementation of the coercive sterilisation policy, the Catholic Church was one of the first voices to denounce this practice. Analysing the discourse that this Church used, it is possible to observe how the Catholic Church integrated into its discourse some notions that threaten human rights. For example, with regard to the coercive sterilisation policy, religious leaders denounced every family planning programme as infringing on people's freedom (Vasquez del Aguila, 2006). However, in the context of Peruvian structural inequalities, the behaviour of some representatives of the Catholic Church hierarchy showed no consideration for human rights. For example, during the period of political violence in Peru (1980-2000), indigenous people and "mestizos" from Ayacucho, the epicenter of the political violence in the Peruvian Andes, once knocked on the Catholic Church door of Humanga (the capital of the region of Ayacucho), seeking protection from the Shining Path and the armed forces. In response, Bishop Cipriani put a warning on the door of the Church stating that the Catholic Church would not accept requests for assistance based on human rights violations. Cipriani explained that this was because terrorists usually claimed that members of the armed forces had violated their human rights. Cipriani argued that the terrorists said this in order to avoid the justice system (Truth and Reconciliation Commission, 2003).

The Catholic Church used two strong metaphors to condemn sterilisation, describing both as a form of mutilation and of genocide. Catholic leaders accused Fujimori of promoting mutilation among indigenous people (Vasquez del Aguila, 2006). For example, Bermudez (2003) stated that health authorities manipulated needy indigenous people using material rewards. Such methods led to indigenous women or their partners accepting sterilisation and taking the risk of being "mutilated" (Bermudez, 2003). At this point, the question should be asked whether it was the woman that Catholic leaders saw as the mutilated subject, or was it the foetus as a human being. Who was the subject of Catholic claims?

Catholic Church leaders vigorously opposed the family-planning campaign because it promoted “artificial” forms of birth control, which are contrary to the Church’s moral values. Furthermore, sterilisation ruined women’s reproductive capacity, which is considered by the Church as women’s natural role and a gift of God. Therefore, Peruvian Catholics were warned that they would be committing a “grave sin” if they chose sterilisation (Vasquez del Aguila, 2006). Sin, guilt, and shame are the main tools that the Catholic Church has used to discourage their congregations from planning and controlling their reproduction. From this perspective, the close relationship between sterilisation and abortion, and the threat it poses to women’s reproductive capacity, are considered “sins.” As “sinners,” women who had undergone sterilisation surgery (voluntarily or not) would face divine punishment (Tantalean, personal communication, February 27, 2012).

Genocide was the other metaphor used by religious leaders. The Catholic Church used the notion that life starts at conception, meaning that life begins with the fertilisation of the egg by an individual sperm. Following this thought, the surgical sterilisation of indigenous women was condemned as a form of abortion due to the possibility that these women may have been in the early stages of pregnancy, and that these potential pregnancies would be terminated (Vasquez del Aguila, 2006). Again, the question of whom the subject is that the Catholic Church wants to protect should be asked.

While the Catholic Church was one of the first voices to denounce coercive sterilisation, Catholic leaders had a very different agenda to that of the human rights organisations that also opposed coercive sterilisation. Conservative groups in Peru, including Catholic Church officials, NGOs affiliated to the Church, and conservative policymakers, exploited evidence of abuses to advance their own agenda of restricting access to reproductive health services in general. They demanded that the national family planning programme be ended immediately and that sterilisation be removed from the list of State-approved contraceptive methods (PROMSEX, 2006). Mobilising around this agenda, several right-wing leaders in Peru linked to the Catholic Church began coordinating their activities with like-minded groups in USA, such as PRI and HLI. These groups carried out

aggressive campaigns against USAID's support of Peru's national family planning programme, even though USAID was not supporting or encouraging coercive activities. For instance, at the beginning of 1998, a PRI representative travelled to Peru to meet with the conservative Catholic physician and future congressman, Hector Chávez Chuchón. Upon returning to the United States of America, PRI contacted Representative Chris Smith, a conservative ally and member of the American Congress, claiming that USAID had financed human rights violations in Peru and therefore its programme should be shut down immediately. In response, Smith ordered a congressional hearing on forced sterilisation in Peru with four witnesses: a representative from USAID, Chávez Chuchón, and two Peruvian women who had been sterilised against their will (PROMSEX, 2006). In order to ensure that no funds were being used to force sterilisations, an investigation into the programme was initiated. At this point it is important to point out that USAID had been conducting activities in Peru since 1960. During the 1970s and 1980s, several million US dollars were provided by USAID for the establishment of family planning centres in Peru, and, by the 1990s, project funding amounts had increased to the tens of millions of US dollars (Vasquez del Aguila, 2006). Funding from the USA Government supported sexual and reproductive health programmes run by both NGOs and the Peruvian Government. The Family Planning Programme developed by Fujimori was part of these agreements.

The investigation carried out by the American government did not find any evidence that USAID had financed the abuses committed by the Peruvian Government. Nonetheless, conservative political leaders and conservative media in Peru and America implicated both UNFPA and USAID in the practices of coercive sterilisation in Peru (Population Research Institute, 2003). For example, a leader of the PRI argued that UNFPA brought not only special financing but also demographic goals for the focalised reduction of the Peruvian population (Vasquez del Aguila, 2006). This "evidence" prompted the withholding of funding by the Bush administration from any other kind of family planning programme in Peru. As a further consequence, USA funding of sexual and reproductive health services in other regions of the world was also threatened. Furthermore, members of the George W. Bush administration compared "forced

abortion” and “forced sterilisation” in Peru and China and in 2002 used these arguments to cut all funding to UNFPA and USAID programmes that were contrary to its policy and ideology of “Abstinence Only” (Vasquez del Aguila, 2006). Conservative American politicians passed the Tiahrt Amendment that prohibited American funds from going to NGOs that support coercive contraceptive programmes (Population Research Institute, 2000). Under this political umbrella, any other kind of family planning programme or sexual and reproductive health service linked to coercive contraceptive programmes was not granted USA economic support. Thus, the strategic alliance between conservative Catholic groups in Peru and the USA exerted political pressure that undermined USAID’s support for reproductive health programmes in Peru. This especially affected post-abortion care, and the free distribution of the emergency contraceptive pill in the public health service, as will be discussed in Chapter 6.

In the framework of the policy of coercive surgical sterilisation of marginalised Peruvian women, their bodies were sentenced, through the ideology of gender essentialism and the technology of tubal ligation, to serve as a space for the practice of biopower by the State over its citizens. Thus, external surveillance and the annulment of women’s decision-making sentenced women to confinement in a constructed “naturalness” that reproduces essentialist notions of gender. According to Mujica (2007), this control over women implies two discourses. On the one hand, it constrains women to their reproductive maternal role determined by the nature of their bodies. On the other hand, it is the perpetuation of their reproductive role as a centre of social relations. Reproduction is then the centre of activities: biological reproduction, reproductive habits, reproduction of the family, and reproduction patterns.

CHAPTER 5: THE DENIAL OF ACCESS TO ABORTION

The analysis of biopower developed by Foucault and Agamben creates a new understanding of the relationship between power and knowledge. Before the modern age, the focus of biopower was on the management of death. Nowadays, biopower is focused on taking control over the mechanisms of “life-production.” The proliferation of scientific research related to the beginning of human life is an example of this (Mujica, 2009). The human being is no longer understood as a rational individual, but rather as a biological subject who has decision-making power about herself/himself within a constrained context. The individual constrains his/her self-development within the mandates of the law and biology (Mujica, 2007). The limited decision-making power of women in relation to abortion, in many contexts, is an example of these constraints.

The practice of abortion generates far more controversy than other issues in reproductive health policy. Its practice is widespread globally, and abortion was probably the first method used for regulating the birth rate in societies (Rao & Faundes, 2006). Every society has found its own way to address abortion, by either permitting it as an acceptable practice, opposing it, or ignoring it. According to the Centre for Reproductive Rights (2011), the practice of abortion is prohibited or permitted only to save a woman’s life in 25.4% of countries. The practice of abortion is not criminalised in 13.8% of countries when it is necessary to preserve women’s health. Meanwhile, 21.6% of countries permit abortion, both to preserve women’s life and health and on socio economic grounds. In 39.2% of countries, abortion is practiced without restriction.

In the case of Peru, the practice of abortion is not penalised when the life or health of the women is threatened. Yet, despite it not being criminalised on these grounds, structural failures result in the denial of women’s access to the procedure. There is neither regulation of standards of care, nor recourse to access abortion when necessary. In addition, Peru’s restrictive interpretation of the law criminalises abortion even in cases of rape or when serious physical or mental defects are identified in the foetus (characterised in the Penal Code as *eugenic abortion*). Furthermore, in an unequal society such as Peru, where almost a quarter of the population lives in extreme poverty (Amnesty International, 2009),

access to contraception for Peruvian women varies according to socio-economic status. The Peruvian National Statistics on Population and Family Health (ENDES) (2000, 2004, 2009) reflect a progressive increase in the use of traditional methods of contraception, due to the lack of availability of modern contraceptives (PROMSEX, 2010). Thus, according to ENDES, in urban areas 74.5% of women use some type of contraceptive method. Of these women, 53.2% use modern methods and 21.3% use traditional methods. In rural areas, 70% of women use some type of contraceptive, of which 42.2% use modern methods and 27.8% use traditional methods (PROMSEX, 2010). This limited access to contraceptive methods means that women often practice abortion when faced with an unwanted pregnancy. Hence, according to the MINSA, more than one thousand abortions are practiced per day in clandestine medical centres (“Advierten que hay mas de mil abortos al dia,” 2012).

Abortions are typically obtained through private means, but as a matter of public debate they trigger passion and controversy. This chapter will begin by exploring discussions around the beginning of life, showing that these discussions have not yet arrived at an agreement about when exactly life begins. This chapter will then examine the discourse of the Catholic Church on abortion, demonstrating that the stance of the Catholic Church s on abortion has changed over time. Finally, this chapter will analyse biopower and biopolitics in Peru’s abortion law.

I. Discursive struggles to define the beginning of human life

There is no single understanding of the meaning of “life” - the question of when it begins is an issue that is constantly under debate. In the case of human life, while there is a consensus on the natural human reproduction process, there is no agreement about the moment at which human life begins. In the process of knowledge acquisition, the invention of the microscope made an important contribution. At this point, questions related to the context in which the use of the microscope contributes to scientific knowledge about bodies, or to when this instrument started to be considered valuable for determining the moment at which “life” begins, should be asked. Scientists started to use the microscope when the biological disciplines began to develop a particular interest in the internal structures of the body (Mujica, 2009). Also, the scientific use of the microscope

was fostered when theological discourses were not sufficient to explain how the body functioned and what it produced (Mujica, 2009). However, the use of the microscope does not necessarily imply objective knowledge. Although this instrument enlarges the size of objects, the microscope does not necessarily change the perspective of those who observe these objects. The understanding of the objects under the microscope by the observer depends on the historical context in which the observation happens (Mujica, 2009). Thus, the importance of the microscope as a tool for studying bodies emerged when the process of “life” began to be legitimated by scientific discourse. “Life” has not been understood in the same way throughout history:

Historians want to write histories of biology in the eighteenth century; but they do not realize that biology did not exist then, and that the pattern of knowledge that has been familiar to us for a hundred and fifty years is not valid for a previous period. And that, if biology was unknown, there was a very simple reason for it: that life itself did not exist. All that existed was living beings, which were viewed through a grid of knowledge continued by natural history. (Foucault, 2001, p. 139)

Before the nineteenth century, the study of “life” was focused on external processes, such as physical movements, but not on cellular or embryonic “life.” Related to this issue, Foucault (2001) argues that during the Classical Period, “life” did not exist except in the form of living beings:

This, no doubt, is why natural history, in the Classical period, cannot be established as biology. Up to the end of the eighteenth century, in fact, life does not exist: only living beings. These beings from one class, or rather several classes, in the series of all the things in the world; and if it is possible to speak of life it is only as of one character – in the taxonomic sense of that word – in the universal distribution of beings. (Foucault, 2001, p. 175)

However, the necessity of knowing how the organs of the body functioned fostered the development of modern science, and the microscope was the perfect tool for achieving this knowledge. Thus, “life” left the body and turned into an abstract element. “Life” was removed from its spiritual conception and turned into an object of scientific knowledge (Mujica, 2009). It is in this context that biology began to be developed as a science in the middle of the nineteenth century. At this moment a new academic understanding of “life” began. Biology is the “science” of “life,” it is the science of a “new life” which started to create connections with

power in the political realm:

Since the 1950s biology began to dominate scientific knowledge, putting physics in second place. Molecular biology and its technology, called genetic, are the new leaders in scientific knowledge. ... As Mainetti said, 'there are two forms of technology: biology and cybernetics'. These outlines are taken into account by human beings so as to construct their own understanding of themselves, biologically and artificially, reproducing their intelligence, their reason, their achievements and their language. (Videla, 1999, p. 83; translated by the author)

However, a deep study of molecular biology does not settle the debates related to the beginning of human life. The cultural context determines the terminology and the understanding of this terminology that is taken into account by biology. For example, in the Andean culture, sexual intercourse is linked to reproduction; likewise, the understanding of biological functions is different from Western knowledge:

The Andean countryman understands that the woman is pregnant when, after having sexual intercourse, the menstruation of the woman is suspended and certain secondary symptoms start to appear.... A common idea is that the man, through continuous intercourse, 'fills' the woman until the new human being is 'completed'.... In some villages at the centre of Ayacucho, people believe that the woman is responsible for the construction of some parts of the body - the flesh, blood - and man contributes to the formation of other parts of the body, such as bones. (Ortiz, 2001, p. 164; translated by the author)

The indications that a human being is alive thus rely on local beliefs, which are more related to the spiritual world than to the sciences. However, since the 1950s, the use of the microscope has contributed to the understanding of the beginning of human life. But, as Foucault (2001) notes, the microscope does more to reveal prejudices at a molecular level, than it does to reveal truths at this level.

As noted above, despite the fact that in the scientific community there exists broad agreement about the reproduction process, there are conflicting definitions and discussions regarding the beginning of human life. This situation appears not because scientific information is limited but because of different cultural understandings of human life. As Gonzales Mantilla (1996) states:

The beginning of life appears in different moments - it relies on the perception of the individual. An evolutionist would argue that human life starts with the accumulation of chemical substances that originate from the first life forms. A theologian would argue that the beginning of life is a gift from God, therefore it is a mystery. Thus, the unique agreement about the beginning of life is that it is difficult to find agreement on when it occurs.... Life as a process does not start at a specified or ascertainable moment. (pp. 24-26; translated by the author)

According to Mujica (2009), it is possible to identify at least three different positions related to the beginning of life and its legal protection: a) life begins when the sperm fertilises the egg (Boné, 2000, as cited in Mujica, 2009); b) life begins on the fourteenth day after the fertilisation of the egg, as this is the moment at which cellular division finishes and implantation of the embryo occurs; and c) life begins when the central nervous system of the foetus is formed - it is at this moment that the foetus can feel sensations (this is approximately in the third month) (Vazquez, 2007, as cited in Mujica, 2009). It should be noted that these three positions use terminologies drawn from the biological sciences to justify their arguments.

The biological existence of “life” *per se* is not a determinant for its legal protection, because “life” needs to have certain biological indicators, as was stated above. However, this is not the only issue that generates discussion related to the existence of human life. Another theme that is also discussed is the use of the legal status of “person,” as if personhood was determined solely by biology. Trying to define the category of “person” in biological terms is a common practice of conservative Catholic groups. For example, Tapia (2009) states that “... neurobiological knowledge related to the anatomical development of the nervous systems of human beings shows us that it is not possible to talk about the existence of a ‘person’ until the third month of pregnancy” (p. 24; translated by the author). The understanding of “person” and human being as synonyms is also accepted by international law. For instance, article 6.1 of the International Covenant on Civil and Political Rights states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” In English, this article does not use the words “person” and human being as synonyms. However, the Spanish version of the same article differs. “El derecho a la vida es inherente a la *persona humana*. Este

derecho estará protegido por la ley. Nadie podrá ser privado de la vida arbitrariamente” / “Every *person* as a *human being* has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life” (Translated by the author) [emphasis added]. This assertion unifies human biological life with human legal life. In other words, it is possible to argue that the above statement gives the legal category of “person” to the human being that is in the process of development (the foetus). This conflation of biological and legal life was not present in Classical societies, which made a distinction between the life of a human being and the life of a “person.” However, this kind of distinction is no longer present in modern societies, or at least is not sufficiently acknowledged. The legal code is not a realm immune to social change. On the contrary, the law represents the customs of the time. The legal understanding of a “person” is influenced by social changes. Therefore, this understanding is influenced by theological debates, scientific and biological knowledge, and mechanisms of power such as biopower and biopolitics (Mujica, 2009).

As the Peruvian legal system is rooted in the Roman tradition of law, it would be useful to understand how the category of “person” was understood in the Roman tradition. According to González de Cansino (1986), for the Romans the notion of “person” was not constructed to take account of differences between slaves and citizens, as some researchers argue. These differentiations were focused on issues related to citizenship and liberty, and so were not relevant when developing the attributes that constitute a “person.” While researching Roman legal understandings of what makes a “person,” de Cansino realised that although this understanding had been discussed extensively by Roman legal scholars, they had not arrived at an agreement on it. In the specific case of Peruvian law, article One of the Civil Code distinguishes three legal categories: the “person,” the conceived, and the legal subject:

Artículo 1. La persona humana es sujeto de derecho desde su nacimiento. La vida humana comienza con la concepción. El concebido es sujeto de derecho para todo cuanto le favorece. La atribución de derechos patrimoniales está condicionado a que nazca vivo.

Article 1: The person is a legal subject from the time he/she is born. The life of a human being begins with their conception. The conceived is a legal subject for all that benefits him/her. The conceived will have patrimonial

rights when he/she is born alive. (Código Civil, 1984; translated by the author)

Here, both the conceived and the “person” are legal subjects, which means that they have both rights and obligations. In terms of the Peruvian law, the life of a human being begins with their conception. That human being becomes a “person” under Peruvian law after having been born. The conceived human being is a subject of Peruvian law for all situations that benefit him/her. After birth, the “person” has both rights and duties under Peruvian law. However, the understanding of a “person” as an individual who is born is still an issue of debate among Peruvian legal scholars. For instance, Rubio (1992) notes that a “person” is a legal subject from the time he/she is born. Before birth, the individual is only in the process of conception. On the other hand, Espinoza (2004) states that an individual is always a legal subject, whether they are merely a conceived embryo, a foetus, or whether he/she is born alive. The understanding of “the conceived” performs a vital role in the Peruvian legal debate related to the constitution of a “person” and the legal subject. Thus, the legal discussion about the status of the conceived seeks to determine if any damage to the status of the conceived implies damage to the potential life of the “person” (Diaz, 2006). Nevertheless, the most important thing is to recognise the context in which the debate is developed, rather than to clarify the debate. Hence, while some legal scholars argue that a “person” exists from conception, others suggest that a “person” exists only from the time the individual is born (Mujica, 2009). This debate shows that the legal status of “person” is discussed from the biological understanding of the existence of human life. However, determining when “human life” begins is more a political decision than a scientific truth. Thus, for instance, through historical political decisions, non-Christians, indigenous people and women began to be considered human beings rather than merely things. However, despite this rise in their status, they were still not “persons,” because they did not have the legal protection of the State that its citizens had (Mujica, 2009). Nowadays in modern societies, distinctions between the life of a human being and the life of a “person” are disappearing in legal debates. Thus, the initiation rituals that once signified being considered a “person,” such as baptism, are no longer taken into account. Rather, the biological determination of the moment when human life exists is now more important. It is

pertinent to point out that Catholic theology also participates in the debate related to the beginning of life. Catholic theology tries to merge their discourse with current scientific knowledge so as to influence the implementation of public policies. Thus, the Catholic Church, instead of opposing scientific knowledge (as happened during the Middle Ages and most of the Contemporary Age), now implements a conciliatory discourse, which will be described in the next section of this chapter.

II. The Catholic Church and abortion

In contemporary Western societies, the notion of “personhood” is constructed through discourses that determine when a “person” exists, or what his/her position in society is. While for a long time it was a general understanding that the law determines who can be considered a “person,” nowadays it is well known that the law is regarded as just one of the knowledges that constructs notions of personhood and defined when human life begins. Theology is another knowledge that also has its own understanding of the category of “person.” This knowledge, when it becomes hegemonic, also influences the law and moral discourses (Mujica, 2009). This is the case in Western societies where the Catholic Church has had an important influence in shaping the understanding of the category of “person.” Thus, according to Mauss (1971, as cited in Mujica, 2009), the modern notion of being a “person” comes from Christian theology, where a “person” is considered to be a unit of spirit and body, conscience and facts, substance and form, a son/daughter of God. However, this modern position was different during the first six centuries, when the Fathers of the Catholic Church stated that the life of the “person” was not determined by biology but by the spiritual realm (Mujica, 2009). During the first six centuries of the existence of the Catholic Church, the Fathers of the Catholic Church began to develop their own ideas related to the moment that a human being should be considered as a “person,” in order to be able to argue against the rival religious philosophy of Gnosticism (Hurst, 2002). The Gnostic interpretation of Christianity considered the body and saw the soul as two different entities, and the soul as a captive of the body. Therefore, reproduction was not understood as valuable to Gnostics, because it perpetuated the domination of the body over the soul (Noonan, 1965). This body of thought

challenged the Christian precepts related to the sacred importance of marriage and procreation as instruments for giving life. It is in this context that the discussion about abortion and contraception emerged in the Catholic Church. While this chapter looks at the Catholic understanding of abortion, the analysis of Catholic understandings of contraception will be developed in Chapter 6.

Two discussions related to abortion were present during these early centuries. Firstly, there was debate around whether abortion was used to hide fornication and adultery. Secondly, debate revolved around whether or not the foetus had a rational soul from the moment of conception, or whether he/she was a human being in development (Hurst, 2002). St. Jerome noted that when women realised that they were pregnant after committing fornication (the sin of having sex outside of marriage), they decided to abort. If these women died for practicing an abortion, they had committed two important sins: suicide and adultery (St. Jerome, 384, as cited in Hurst, 2002). Abortion was considered a sin if through abortion women hid fornication or adultery. However, if abortions were not carried out to hide such acts, they were not considered to be sinful, if done during the first stages of pregnancy. St. Augustine, in the *Enchiridion* (a Catholic catechism written in approximately 420 AD), stated that the category of “person” began at some stage of the pregnancy. Before this stage, women did not commit homicide if they decided to abort. Therefore, when abortion was practiced in early pregnancies women had only to fulfil a penance for having committed a sexual sin (St. Augustine, 420, as cited in Hurst, 2002). This argument was based on the theory of “delayed hominisation” proposed by St. Augustine. This theory noted that the process for being a “person” implied having a soul, and that this process did not happen in the body of an embryo that lacked sensation (St. Augustine, n.d., as cited in Hurst, 2002). St. Augustine did not identify the specific moment at which the foetus began to feel sensations. Nevertheless, it is clear that for St. Augustine the practice of abortion did not imply a homicide in every case.

St. Thomas Aquinas supported the idea of “delayed hominisation” developed by St. Augustine. St. Aquinas’ position relating to abortion was based also on the theory of hylomorphism (derived from Aristotle), which stated that in any given substance, matter and form were united, and each was a necessary aspect of that

substance (Hurst, 2002). Thus, St. Aquinas, in the *Summa contra Gentiles*, noted that the human body was only partly composed of matter. In other words, the material body was only potentially a human being because the soul is what actualises that potential into an existing human being (St. Thomas Aquinas, n.d., as cited in Hurst, 2002). The body was seen to be made sacred by the presence of the spirit, which was considered a gift of God. Hence, for a long time, Western Christian theology noted that a human being could be considered a “person” if they had a soul, or a spirit. Thus, being a human being did not automatically mean being a “person.” Only having a soul gave a human being the status of “personhood,” and therefore rights and civil capabilities.

In terms of this framework, it is possible to argue that early Christian theology held that a rational “person” was made in the image and likeness of God, and that the basis of rationality was spirituality (Mujica, 2009). That is to say, a human being was held to be a “person” if he/she was rational. An individual was rational if he/she had a spirit, and an individual had a spirit if he/she had the grace of God. In this context, for a long time, some human beings were considered to be merely living beings, but not rational - therefore they did not have a spirit (Marzal, 1989). This included non-Europeans, women, and non-Christians. For instance, in the middle of the sixteenth century, Fray Bartolomé De las Casas and Ginés de Sepúlveda discussed in broad terms whether or not the indigenous people from the New World (North and South America) could be considered to be human beings. This meant they were debating whether or not they had souls (Marzal, 1989). In conclusion, Fray Bartolomé De las Casas and Ginés de Sepúlveda stated that indigenous people were developing human beings. Therefore, their souls were also developing (Marzal, 1989). Human beings who have souls are “persons.” Without souls, they are merely living beings.

Returning to the specific theme of abortion, in 1588 Pope Sixtus V wrote the apostolic constitution *Effraenatum*, in order to establish an official Catholic Church position on controversial issues such as abortion. Pope Sixtus V argued in this work that abortion was homicide in every stage of pregnancy. Therefore, the penitence for women who had undergone an abortion was excommunication (Hurst, 2002). This severe stance caused many problems, because it contravened

the postulates of the Fathers of the Catholic Church. Thus, in 1591, Pope Gregory XIV wrote the apostolic constitution *Apostolicae Sedis*, in which he suggested that that the penalty for abortion did not apply until the foetus became animated (Pope Gregory XIV, 1591, as cited in Hurst, 2002). “Delayed hominisation” was accepted again within the doctrine of the Catholic Church until 1869, when Pope Pius IX wrote the apostolic constitution *Actae Sanctae Sedis*, in which abortion was once again designated a sin in every stage of pregnancy, and the penalty for women who had undergone an abortion was excommunication (Pope Pius IX, 1869, as cited in Hurst, 2002). Thus, killing a potential human being was defined as killing a potential “person.” This definition is known as “immediate hominisation” (Hurst, 2002, p. 15).

Modern Christian theology, taking into account “immediate hominisation,” has noted that the status of “person” is defined by the spirituality and the freedom that guides his/her moral actions (John Paul II, 1979). An individual shows himself/herself as a “person” through their actions, because it is in these actions that the spirit that governs the “person” is revealed:

For we now see man as the person, and we see him first of all in his acting, in the action. He then appears in the field of our integral experience as somebody material, as corporeal, but at the same time we know the personal unity of this material somebody to be determined by the spirit, by his spiritual nature and spiritual life.... We owe the knowledge of the human soul as the principle underlying the unity of the being and the life of a concrete person. We infer the existence of the soul and its spiritual nature from effects that demand a sufficient reason, that is to say, a commensurate cause. In this perspective it is evident that there can be no such thing as a direct experience of the soul. Man has only the experience of the effects which he seeks to relate with an adequate cause in his being. Nevertheless, people often think and speak of the soul as something of which they have had an experience. But in fact the content of what is meant as the ‘experience of the soul’ consists of everything that in our previous analysis was attributed to the person’s transcendence in the action, namely, obligation, responsibility, truthfulness, self-determination, and consciousness. (John Paul II, 1979, pp. 185-186)

Traditionally the means by which a human being achieved public recognition as “person” in the Catholic realm (rationality, freedom, morality and spirituality) were publicly performed through rituals such as baptism, first communion and marriage. With the passage of time, these beliefs have changed, and spiritual

knowledge has been influenced by the biological sciences. It is in this context that contemporary theologies, which follow the official mandate of the Catholic Church, began to consider that an individual is a “person” from the moment of conception (the union of the egg and the sperm), because spirit and body form an indissoluble unit. Conception produces a human being with potential spirit and rationality, who will also develop a sense of morality to guide his/her actions (John Paul II, 1979). Thus, this theology ascribes to the zygote a personhood:

In philosophical terms the zygote or embryo is a potential human being with feelings and intelligence. Therefore, the zygote can be considered as a human individual and ‘person,’ with a potential personality. Personhood is always the same, it forms the ‘identity’ of the person, as a nucleus from which personality develops as a psycho-organic process. (Manzanera, 1996, p. 114; translated by the author)

In privileging the potentiality to be a “person” (as a biological and spiritual reality), Christian theology moved away from the Boecciana definition that stated that a “person” is a human being with a rational nature (Souffez, 1987). Through this change, Canonical Law adopted as a norm the idea that the status of “person” is not acquired through rituals. Rather, a human being is conceived as a “person.” Although “it contemplates a division of the ages ... the canonical law understands the unity of person, from birth to death” (Souffez, 1987, p. 48). This unity would involve the theoretical penetration of the spirit into the biological structures of subject formation from the moment of its conception. Taking into account this understanding of human life, Pope Paul VI (1968) stated that the beginning of human life happens in an unquestionable moment, that is, during the union of the sperm and the egg. Following this idea, Pope John Paul II also stated in the encyclical *Evangelium Vitae* that abortion has an illicit and unethical nature (John Paul II, 1995). Likewise, the Congregation for the Doctrine of the Faith (the oldest of the nine congregations of the Roman Curia, which oversees Catholic Church doctrine), through the instruction *Dignitas Personae*, reaffirmed the inviolable character of human life (Congregation for the Doctrine of the Faith, 2008). The President of the Pontifical Council for the Family, Cardinal Ennio Antonelli, also stated that the Catholic Church is opposed to abortion because there is no reason to believe that the human embryo is not a person (ACIPRENSA, 2009). It is in this way that the Catholic Church has constructed a theological-biological

standpoint that is different from classical theology, which stated that the life of a human being was different from the life of a “person” (Mujica, 2009). At this point, the question of why the Catholic Church decided to take into account scientific knowledge (the process of conception that leads to the development of a human being) with its doctrine should be examined. A possible answer would be that the importance of biopolitics in modern society encourages the Catholic Church to incorporate scientific discourse, especially from biology, so as to give more weight to its discourse (Mujica, 2009). Furthermore, this approach was adopted to challenge the sexual revolution that started in the 1960s, through which the “person” and his/her body was objectified (Mujica, 2009).

Peruvian conservative Catholic groups from the Catholic Church, such as Opus Dei and Sodalicio de la Vida Cristiana (Sodalicio), follow this official position about the life of a human being. Thus, Opus Dei and the Sodalicio take a strong position related to the beginning of human life, asserting that life starts with conception, specifically from the moment of fertilisation:

How and when human does life begin? Human life begins when an egg is fertilised by a sperm. From this moment, the embryo (the cell resulting from the binding of the sex cells of a man and a woman) acquires an identity. This individual has a genetic structure different from those of their parents. Therefore, he/she can develop himself/herself as a different being with capabilities in constant improvement (CEPROFARENA, n.d.; translated by the author).

For this reason, and using scientific support such as from CEPROFARENA, conservative Catholic groups call themselves “pro-life” and use this nomination to influence public policy, as noted above. In the specific case of Opus Dei, Moncada (2004) states that:

The Vatican Curia ... has redoubled its efforts in the condemnation of private freedoms, which are now given more consideration in civil law, especially on issues related to regulating abortion and homosexual unions. Furthermore, recently it has been proclaimed from Rome that the role of women is primarily domestic.... Privileging sexual morality is an old Catholic tradition and a favourite hobby of Opus apostolates. The prohibitions, recommendations, and cautions on the subject that the Opus Dei imposes on its members are an important part of their moral education. (para. 18; translated by the author)

On several occasions, Cardinal Cipriani has expressed his own conservative position and its relationship to “pro-life” ideas. For instance, in the case of marriage between homosexuals, Cipriani stated that “homosexuals are not covered by the plan of God” (Valdez, 2011, para. 3; translated by the author). Moreover, like other bishops, Cipriani has been directly involved in pro-life activism. Thus, the Catholic News Agency (ACIPRENSA) states that “Archbishop Cipriani always addressed with firmness and conviction the defence of life from conception, the defence of the family as an institution and marriage as a pillar of society, and respect for human life” (ACIPRENSA, n.d., para. 22; translated by the author). ACIPRENSA also reported Cipriani arguing that the spread of “natural” methods would be more effective than “controlist strategies” of the government to reduce the population (González Ruiz, 2007, as cited in Mujica, 2007). This statement demarcates a clearly “pro-life” position and it follows the patterns of HLI, as seen below:

For his ‘pro-life’ activism, Cipriani has been warmly praised by Thomas Euteneuer, a member of the HLI, who described Cipriani as an important ‘pro-life’ prelate. Euteneuer reported that Cipriani officiated a mass at the Cathedral of Lima in November 2002 to close the Fourth National Conference on Family Planning Methods ... where Euteneuer opposed any exception to the criminalisation of abortion (González Ruiz, 2007, as cited in Mujica, 2007, p. 248; translated by the author).

Likewise, in 2002, Cipriani inaugurated in Lima the International Congress of Bioethics. At this event issues related to the epistemological status of bioethics, such as the identity of the human embryo and ethical considerations relating to cloning, were discussed (González Ruiz, 2007, as cited in Mujica, 2007). Relating to abortion, Cipriani stated that “the Church does not accept abortion under any conditions” (Perú, noticias sobre religion y sociedad, 2002, para. 4; translated by the author). Furthermore, Cipriani expressed concern about the decision of some sectors of the Peruvian government to apply a gender perspective in public policies (González Ruiz, 2005). Additionally, the Cardinal stated that attempts to promote in Peru ideologies that seek to eliminate all differences between men and women are totally alien to Peruvian culture (González Ruiz, 2005). The Opus Dei position on abortion has an important influence inside the Catholic Church and the Peruvian government, because many of its members are positioned in the higher levels of government or among the powerful economic elite.

The other conservative group with a strong position on the beginning of life is Sodalicio, which is linked to “pro-life” ideas. These ideas are stated in the positioning documents of Sodalicio about family, life and tradition (such as its emphasis on the heterosexual family). Sodalicio states that their movement was constituted as an attempt to combat the rupture between faith and life, and presumably the threat posed by secularism and ideologies like Marxism, liberalism and feminism (González Ruiz, 2005). The guidelines of the activities of Sodalicio are marked by two main ideas clearly linked to “pro-life” discourse: the promotion of life and human dignity, and the promotion of the family (González Ruiz, 2005). For example, according to González Ruiz (2005), Luis Fernando Figari (the founder of Sodalicio) expressed pro-life ideas about the “sanctity of marriage” and opposition to the exercise of sexuality outside of this, as well as other factors that threaten human life. Sodalicio also enjoys the support of several important secular public figures in Peru linked to the “pro-life” movement, among them various physicians (Mujica, 2007). Likewise, institutions founded by Sodalicio have a clearly “pro-life” discourse, such as the Institute for Marriage and the Family of the Catholic University of San Pablo. This Institute has as an objective the promotion of interdisciplinary research and reflections on faith in marriage and the family, with the aim of proposing academic initiatives and social actions to strengthen marriage and the family (Catholic University of San Pablo, n.d.). In the specific case of abortion, the founder of Sodalicio, Mr. Figari, stated that:

For some strange reason, the horror of abortion has been stripped of its meaning. A premeditated murder of the most vulnerable - the unborn whose lives have been removed from the womb - is designated with euphemisms, trying to hide what abortion really is. Thus, legislation decriminalising abortion is moral evidence of the serious decline of many sectors of humanity in this century. If in the last years the finger of accusation pointed to Hitler, Stalin, Pol Pot and their followers, nowadays the truthful finger of humanity has to point to the killers of babies (people who support abortion) and their accomplices. (Movimiento de Vida Cristiana, n.d., para. 6-7; translated by the author)

Likewise, Sodalicio de Vida Cristiana has among its sympathetic groups the group For Life, an interdisciplinary Catholic association whose purpose is the defence and promotion of a culture of life, and the articulation of the work of “pro-life” groups (Movimiento de Vida Cristiana, n.d.). This group is part of the

Movimiento de Vida Cristiana (Movement of Christian Life) and therefore Sodalicio de Vida Cristiana:

The members of the Movement of Christian Life involved in this initiative promote, encourage and defend respect for human life from conception to natural death. In particular, they pay attention to the defence of the life, dignity and human rights that the conceived holds as a person. Many physicians, health professionals and students are members of For Life. They disseminate these principles and instruct couples in a Catholic sexuality according to the plan of God. The members of For Life also promote natural methods for responsible parenthood, according to the teachings of the Catholic Church (Movimiento de Vida Cristiana, n.d., para. 7).

Thus, Sodalicio is a conservative group whose centre of action is the traditional family. Therefore, protecting this kind of family is its primary objective. Sodalicio has in the traditional family a “pro-life” understanding (meaning that the heterosexual family must be fostered). Sodalicio also understands that it is necessary to evangelise families and make them part of the network of the Sodalicio family (Sodalicio de Vida Cristiana, n.d.). The traditional family, therefore, constitutes the core institution for preserving morality - a space for reproducing the “right moral values,” and for disciplining new Catholic subjects (Sodalicio de Vida Cristiana, n.d.). Hence, one of the five fundamental items that contribute to achieving the protection and evangelisation of the traditional family is the protection of children:

When there are children, the couple has to understand that they are an expression of their love. God gives to the couple the responsibility to love their children and raise them as free human beings.... Not understanding that children belong to God is a bad beginning (Camino hacia Dios, n.d., para. 7; translated by the author).

The idea expressed above is very important, because it shows how the conservative groups understand the meaning of human life - it is something that does not belong to the individual. In this context, the traditional family appears as the articulator of the defence of human life. Defending “human life” from the moment of its conception ensures the reproduction of children who will follow the precepts of the Catholic Church. For this reason, having control over schools is vital for the Catholic Church, because through education it is possible to continue the teaching and disciplining, which started within the family, of future Catholic worshipers. According to Eliana Cano (General Director of Catholics for Choice –

Peru), the National Office of Catholic Education is a special office of the Ministry of Education that is managed by the Catholic Church (Cano, personal communication, October 31, 2011). This Office controls the educational programme of Catholic schools, while at the same time influencing the implementation of the Education National Plans, such as the National Plan of Sexual Education (Cano, personal communication, October 31, 2011). Sodalicio thus monitors individuals and children through institutions like the school and the traditional family. This is an example of the machinery of panoptical control used by the representatives of the Catholic Church to govern its adherents.

Thus, Opus Dei and Sodalicio de Vida Cristiana understand the traditional family and the school as central articulators of their doctrine, which has as a starting point the defence of human life from conception. As Mujica (2009) points out, the human life that conservatives defend is closely related to reproductive discourse: biological reproduction through the heterosexual monogamous family, reproduction of Catholic morality through education and the Church, and reproduction of social divisions through the use of politics. It is a complex system of social reproduction that will be analysed in the following section and the next chapter of this thesis.

III. Biopower and biopolitics in Peruvian abortion law

As was stated above, one's understanding of human life relies on one's personal standpoint. For some people, the meaning of life is closely related to a concept of dignified life. For others, human life exists when a "person" exists. For some people, human life is constrained by the biological body that is controlled by a "Divine" power. This last understanding sacralises human life and restricts the decision-making power of the "person." This kind of thinking influences the management of problems related to reproductive health issues, such as abortion and its various causes. In this case, the debate is focused on the understanding of the life of the "person" (the woman) and the life of the human being (the conceived embryo), and how the life of the conceived embryo is privileged over and above the autonomy of the woman.

In Peru the debate about abortion has intensified in the last few years. However, this practice has been regulated by Peruvian law since the 1860s. In Peru, the regulation of abortion began with the first Criminal Code (1863):

In this legal Code abortion was not criminalised when it had to be practiced to save the honour of the woman; in other words to protect the reputation of the woman, but especially to protect the reputation of her family.... Furthermore, abortion was not penalised if the woman gave her consent to this practice.... The Criminal Code of 1924 penalised all kinds of abortion, with the exception of therapeutic abortion. Four years later, in 1928, two lawyers unsuccessfully proposed decriminalising eugenic abortion and for ethical reasons, that is in cases of rape. (Tavara, Dador, & Jacay, 2007, p. 35; translated by the author)

The prohibition of abortion did not prevent growing numbers of women from resorting to this procedure, as was demonstrated by research conducted by Singh and Wulf in the late 1980s (Singh & Wulf, 1991, as cited in Cáceres, Cueto, & Palomino, 2008). During the early 1990s, a campaign to decriminalise abortion in cases of rape was initiated in the context of consultations leading to the reform of the Criminal Code of 1924. The reform bill proposed the decriminalisation of abortion when the health or life of the pregnant woman was in immediate danger and, before twelve weeks of pregnancy, when it was the consequence of rape or if the pregnant woman expressed her consent to the abortion (Cáceres, Cueto, & Palomino, 2008). Conservatives and the Catholic Church fought hard to prevent this reform of the Criminal Code (Quintanilla, 1997). On the other hand, feminist organisations supported the reforms, stating that the criminalisation of abortion affects principally poor women and fosters their poverty (Cáceres, Cueto, & Palomino, 2008). These organisations also formulated an ethical approach based on true freedom from a human rights standpoint, and called into question the meaning of motherhood imposed by violence (Cladem, 1990, as cited in Cáceres, Cueto, & Palomino, 2008). Furthermore, representatives of these organisations demanded observance of the Constitutional Act so as to separate the interests of the Catholic Church from those of the State. They argued in favour of a secular State, where public policies respond to the needs of individuals and not to religious beliefs. The Peruvian College of Physicians, leading intellectuals and artists supported the decriminalisation of abortion, and after more than a year of public debate, public opinion was also mainly in favour of decriminalisation

(Cáceres, Cueto, & Palomino, 2008). However, the final outcome of the debate was a disappointment for those committed to this cause, as political pressure from the Catholic Church and conservative leaders of professional associations such as the Lima College of Lawyers succeeded in preventing the approval of the decriminalisation of abortion in cases of rape, or when a woman gives her consent for an abortion to be carried out (Palomino, 2004).

Thus, the current Criminal Code, from 1991, states that:

Artículo 119.- No es punible el aborto practicado por un medico con el consentimiento de la mujer embarazada o de su representante legal, si lo tuviera, cuando es el unico medio para salvar la vida de la gestante o para evitar en su salud un mal grave y permanente

Article 119.- An abortion practiced by a physician with the consent of the pregnant woman or her legal representative, if she had one, is not punishable when it is the only means to save the life of the woman, or to avoid serious and permanent damage to her health. (translated by the author)

Thus therapeutic abortion is not criminalised. However, in article 120 of the Criminal Code, abortion for eugenic reasons, in cases of rape, or artificial insemination without the consent of the married women, are all sanctioned with three months in jail (Criminal Code, 1991). In both cases where abortion is permitted, it is necessary to have a medical certificate or a police statement.

An important setback in the campaign for the decriminalisation of abortion was the approach taken by the Political Constitution of 1993. Some years before, conservative groups had proposed a constitutional reform to classify unborn children as “persons” and to treat abortion as homicide. This proposal was rejected, but, as an alternative measure, recognition of the conceived was introduced into the Political Constitution, which stated that:

Artículo 2.- Toda persona tiene derecho: ... 2. A la vida, a su identidad, a su integridad moral, psíquica y física y a su libre desarrollo y bienestar. El concebido es sujeto de derecho en todo cuanto le favorece.

Article 2.- Every person has the right to: ... 2. Life, his/her identity, his/her moral integrity, and his/her physical and mental development and wellbeing. The conceived is a subject in law for all matters that benefit him/her. (translated by the author)

The ascription of legal status to the foetus in the Political Constitution placed at risk any legal initiative for relaxing the law regarding abortion. This legal framework has not prevented the practice of abortion, however. In 1994, the estimated national figure for clandestine abortions was 271,000; for the year 2000 it was 350,000 (Ferrando, 2006). The fact that these figures remain high despite the law indicates that women have continued to resort to abortion. Lack of clarity around women's rights and access to abortion services frequently leads women to seek clandestine, illegal, and unsafe abortions. Thus, according to Ferrando (2006, p. 29), in 2006 approximately 371,420 unsafe abortions were performed in Peru. In the same year, MINSA reported that 40,794 incomplete abortions were treated in public health centres. However, they also reported a 10% rate of under- or inaccurate reporting. In this light, it seems likely that more women were hospitalised and unnecessarily endangered (Amnesty International, 2009). As stated above, current statistics from MINSA suggest that more than 1000 abortions are conducted per day in clandestine medical centres (“Advierten que hay mas de mil abortos al dia,” 2012).

The practice of unsafe abortion is closely related to the high rate of maternal mortality in Peru. According to MINSA, Peru has the second highest maternal mortality rate in South America after Bolivia (PROMSEX, 2011). According to the WHO (2010) in 2010, 240 women died for every 100,000 live births in Peru, while the average in South America was 99. It is important to note here that from 2004 to 2009, MINSA (2009) reported that the third leading cause of pregnancy-related death in Peru was abortion (6%). Moreover, MINSA stated that 71% of maternal deaths stemmed from direct causes and 29% from indirect causes (MINSA, 2010, as cited in PROMSEX, 2011). Indirect causes of maternal death are linked to the lack of access to therapeutic abortion services in Peru, because they are based on previous illnesses that get worse with pregnancy or reappear with pregnancy (PROMSEX, 2011).

The high rate of maternal mortality principally affects poor women. Ferrando (2006) states that a higher percentage of poor women who undergo an abortion are at risk of complications than women who are not poor. Thus, according to the ENDES of 2000, the principal risks of maternal mortality are concentrated among

women younger than 18 years, and women older than 35 years who have more than three children and more than two years between pregnancies (Ministry of Health, 2004). Furthermore, between 1999 and 2001, 50% of the maternal deaths registered in Peru were concentrated in the poor population (Ministry of Health, 2004). While the INEI collected information regarding maternal mortality rates in 2000 and 2009, neither of these surveys took into account statistical information related to the socio-economic status or the educational levels of the women. It is likely that these factors would contribute to maternal mortality (PROMSEX, 2011). Relating to this issue, it is relevant to note that Peru is a signatory to the Millennium Development Goals. Through this agreement, Peru has expressed a commitment to reducing maternal mortality to 66 deaths per 100,000 live births by 2015. It is within this framework that MINSA has developed a Multisectoral Strategic Plan for the Reduction of Maternal Mortality. However, this plan does not oblige the regional governments to act, and it does not have sufficient funding to formulate or implement a sustainable advocacy plan (PROMSEX, 2011).

The right to non-discrimination in the context of maternal healthcare requires individual States to guarantee access to quality healthcare to the most vulnerable populations, including ethnic minorities and those living in rural and low-income areas. Article 2.2 of the International Convention on Economic, Social and Cultural Rights (ICESCR) (1966) demands that State parties ensure that the right to health may be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. When States do not ensure the availability of specific health care services, such as obstetric, contraceptive, gynaecological, and antenatal care to all women, States threaten women's rights to health (Committee on Economic, Social and Cultural Rights, 2000) and to non-discrimination (Committee on Economic, Social and Cultural Rights, 2005). Thus, Peru has an international legal obligation to provide accessible and quality reproductive healthcare services. These enable women to exercise their right to the highest attainable standard of health as defined in article 12 of the ICESCR. As stated above, this obligation is not fulfilled by the Peruvian State in the case of providing therapeutic abortion services. On various occasions, the Committee on Economic, Social and Cultural Rights (CESCR) (1994, 1999, 2000, 2003, 2008) has linked

illegal and unsafe abortions to high rates of maternal mortality. Concerning Peru, the Committee on the Elimination of Discrimination Against Women (CEDAW) (2007) has noted “with concern that illegal abortion remains one of the leading causes of the high maternal mortality rate and that the State party’s restrictive interpretation of therapeutic abortion, which is legal, may further lead women to seek unsafe and illegal abortions” (para. 24). Two cases were submitted to the United Nations Human Rights Committee (UNHRC) and to CEDAW. These cases revealed the urgency of adopting a national guideline for attending to cases where abortion is not criminalised.

The first case was *K.L. v. Peru* (United Nations Human Rights Committee, 2005). K.L. was a pregnant 17 year old who originally wanted to carry to full term, in 2001. However, her foetus was diagnosed with anencephaly, a fatal abnormality. The condition of K.L.’s foetus caused her severe depression, nausea and other physical symptoms. K.L., encouraged by her doctors, who considered her pregnancy a “life-threatening risk” for her age, sought a therapeutic abortion. It was denied by Peruvian health officials, who argued that abortion for anencephaly of the foetus was not decriminalised. K.L. was forced to continue her pregnancy and she gave birth to a baby who died several days later. This case was submitted before the UNHRC in 2002, and in 2005, this Committee issued a decision recognising K.L.’s forced pregnancy as constituting cruel, inhuman and degrading treatment, and a violation of articles 2, 7, 17, and 24 of the International Covenant on Civil and Political Rights (ICCPR). The UNHRC also recommended that the Peruvian State implement various measures and provisions to prevent such cases in future. To date the Peruvian government still has not complied with these recommendations.

The second case was *L.C. v. Peru* (Center for Reproductive Rights & PROMSEX, 2009). L.C. was a 13-year-old girl. This case was submitted to CEDAW because L.C. was denied a therapeutic abortion, despite it being necessary to save her from quadriplegia. L.C., who lived in an impoverished region near Lima, fell pregnant after being raped repeatedly. Desperate, L.C. attempted suicide by jumping off a two-storey building. She was taken to the hospital, where doctors concluded that she needed an emergency intervention to realign her spine. Despite this medical

consensus, and despite Peru's law permitting therapeutic abortion, doctors refused to operate on L.C. once they realised that she was pregnant. The physicians argued that they could not practice any surgery because it would be dangerous for the foetus. L.C. and her mother requested a therapeutic abortion from the hospital authorities repeatedly, but they were denied. L.C. eventually had a miscarriage and received the corrective spinal surgery four months later. However, it was too late and L.C. is now a quadriplegic.

Failing to guarantee legal access to therapeutic abortion, the Peruvian State directly threatens the health and lives of women who need it and also "denies women their dignity and right to self-determination" (United Nations Commission on Human Rights, 1999, para. 48). Likewise, the Peruvian government's systematic refusal to comply with international conventions, and its restrictive interpretation of the law authorising therapeutic abortion, contravene the fundamental rights of women as stated in the Peruvian Constitution, as well as rights promoted and upheld by international law.

In October 2009, the Special Revision Commission for the Penal Code approved a draft of a new Penal Code that decriminalised abortion in cases of rape, non-consented artificial insemination or egg transference, and foetal abnormality, as diagnosed by a physician (PROMSEX, 2009). As stated above, article 120 of the Peruvian Criminal Code establishes a criminal sanction for cases of abortion when the woman has been raped. The same article stipulates a lower sanction for cases of abortion when the pregnancy is a result of rape outside of marriage, while it does not contemplate such attenuation when the rape happens within the marriage. Therefore, abortion is criminalised for cases of sexual violence. This situation is worrying, as 12.4% of Peruvian women who have ever been in a relationship have (at least once) been forced to engage in a sexual act (ENDES, 2009). Likewise, PROMSEX (2007) found that 5% of women who have been raped have borne an unwanted pregnancy, which represents 35,000 unwanted pregnancies as a product of sexual violence. The UNHRC (2000) has recognised the connection between the promotion of equal rights between men and women and the denial of access to abortions in cases of rape, or where women are compelled to undergo life-threatening clandestine abortions. Denying access to abortion services,

particularly in cases of rape, deprives women of their ability to fully enjoy fundamental rights. Recently, during the 28th meeting of CESCR (held on 18 May 2012), which analysed information submitted by State parties related to their fulfilment of the commitments with the ICESCR, the Committee recommended that the Peruvian State:

... intensify its efforts to ... ensure the accessibility and availability of sexual and reproductive health services ... particularly in rural areas. It recommends that the Criminal Code be amended so ... that abortion in case of pregnancy as a result of rape is not penalised. It also recommends that the State party establish a domestic protocol for the performance of therapeutic abortions. (Committee on Economic, Social and Cultural Rights, 2012, para. 21)

The revision of the Criminal Code has been pending for more than three years. Moreover, there is uncertainty as to whether such a proposal will be approved by the National Congress when it is eventually considered, because of the strong influence that conservative Catholic groups have among the Peruvian elite. Thus, as noted above, for conservative Catholic groups, abortion is not a legitimate medical practice, much less a woman's decision. On the contrary, abortion threatens human life. In the specific case of therapeutic abortion, Morales and Castañeda (2009) state that:

‘Therapeutic’ abortion is a direct abortion because it kills directly the unborn child so as to ‘save’ the life of the mother. In fact there are other alternatives to save her life and her unborn baby. Therefore, ‘therapeutic’ abortion, direct or induced, is gravely immoral because it constitutes the direct destruction of an innocent human being, and therefore it is not justified under any circumstances. Actually, the phrase ‘therapeutic abortion’ is a contradiction in terms since no kind of abortion saves or cures anyone. (para. 1; translated by the author)

The debate over therapeutic abortion is an example of the discussion that the potential decriminalisation of abortion (in cases of rape or for eugenic reasons) generates in Peru. Pregnancies that threaten the life of a woman should be terminated, because they make impossible the self-development of the woman. However, from the point of view of conservative Catholic groups, life does not belong to anyone but God. Therefore, if the pregnant woman dies this is because God has revealed his plan:

The considerations that summarize the structural sin that characterizes the culture of death, as stated by Pope John Paul II, have a double order. First, we are witnesses to a false autonomy of the self that is expressed in the control over the body of another. Second, the origin of this false autonomy is based on the lack of reference to God's wise plan. Living as if God did not exist leads to man losing not only the mystery of God, but also the meaning and the mystery of his being. ... The defenders of the sacred character of human life base their arguments on the spiritual character of man's nature: the fact that man has power over the animals is a strong and sufficient proof of the sacredness of human life. (Schindler, 1999, as cited in Mujica, 2009, pp. 276-285; translated by the author)

This radical understanding of the process of making life sacred does not need a legal construction of the subject. Nowadays, conservative groups try to produce mechanisms to exert control over life and over life's production. This would be possible through control over the body. In that process, it is possible to suspend certain rights that affect the autonomy of the subject. Examples of these mechanisms to exert control over the bodies of women are two public campaigns that are taking place in Latin America: the "moratorium on abortion," and the "books for life." Firstly, the "moratorium on abortion" began in the early months of 2008, when an Italian journalist and political commentator, Giuliano Ferrara, suggested conducting an international petition to support global sanctions on abortion, through the amendment of the third article of the Universal Declaration of Human Rights (1948). This article states that "everyone has the right to life, liberty and security of person" (para. 11). The amendment proposes that the protection of human life should be from the moment of conception to natural death (Aceprensa, 2008).

The "moratorium on abortion" is seeking the global criminalisation of all forms of abortion. At the beginning, the moratorium was conceived as a political strategy by religious conservatives against the United Nations, so as to change the third article of the Universal Declaration of Human Rights. However, according to Mujica (2009), with the death of the President of the Pontifical Council for the Family, Cardinal Lopez Trujillo (the leader of this initiative), religious conservatives decided to use the networks of secular conservative groups, to foster the protection of human life from the moment of conception in the national law of every country in the world. It is in this way that conservative groups penetrate the power structures of Latin American States. Thus, the campaign to collect

signatures for the “books for life” began.

The “books for life” are documents that contain the signatures of political authorities and citizens who are against abortion, whose objective is to prohibit all forms of abortion (Mujica, 2009). The initiative to carry out this action came from a conservative group from El Salvador called “Yes to Life” (a subsidiary in that country of Human Life International) (Zenit, 2008). On June 5th 2008, this organisation persuaded all the deputies of the Legislative Assembly of El Salvador to sign the book “Yes to Life” so as to start a campaign against abortion (Zenit, 2008). In Peru, conservative Catholic groups, including a group of parliamentarians, began collecting signatures in mid 2008. The current parliamentarians Yonhy Lescano and Michael Urtecho handed to the former Health Minister, Hernán Garrido Lecca, a book containing forty thousand signatures against therapeutic abortion (Mujica, 2009). Even though this initiative was not successful, it at least reveals the process of transformation within conservative Catholic groups, and their attempts to penetrate public policy.

As Mujica (2007) states, these groups have moved the debate around the beginning of life from the ethical, moral, theological and religious fields to a political field where rights, laws, and legal instruments are the principal tools for achieving their purpose. Consequently, measures such as the “moratorium on abortion” and “the books for life” have had some influence on the decision of the Peruvian government to not approve the national guidelines for therapeutic abortion. At the beginning of August 2012, the Minister of Women and Vulnerable Populations approved the National Plan of Gender Equality 2012 – 2017 (2012). In this national policy it is pointed out that by 2017 MINSA should have implemented the national guideline for therapeutic abortion. This lengthy period for the implementation of this guideline compromises the right to health of women. The Peruvian State thereby neglects its duty to take positive measures to guarantee such rights. A similar situation is happening with the ban on the free distribution of the emergency contraceptive pill, as will be examined in the next chapter.

CHAPTER 6: DISCOURSES SURROUNDING THE IMPLEMENTATION OF THE POLICY RELATED TO EMERGENCY CONTRACEPTION

The life of the human being reveals a porous body without any protection under the law, while the life of the “person” reveals a body that is protected by law. However, the close relationship between them sometimes produces confusion in the understanding of each term. From the mid-twentieth century, specifically following the Universal Declaration of Human Rights (1948), an intense debate started about the exact moment in the biological process of human life at which the law can protect the human being. This debate is not yet resolved, and has extended to various fields. It is in this context that conservative Catholic groups assert a strong position on issues related to the “origin of human life” or “control over human life,” as was noted in the previous chapter. Thus, nowadays, discussions on topics such as abortion, cloning, in-vitro fertilisation and contraception reveal a wider debate related to the legal protection of human life. All this discussion is developed around women’s bodies because of their reproductive capacity and consequent maternal role. This Western understanding of being a woman guides the implementation of some reproductive health policies, as can be seen in Peru.

In the previous chapters I discussed examples of the irregular implementation of reproductive health policies during the last twenty years in Peru. But it is in the specific case of policy shifts relating to the free distribution of the emergency contraceptive pill in the public health system that this uneven process can be observed most clearly. Due to the strong influence that conservative groups started to have in reproductive health policy, especially since the controversial issue of the coercive sterilisation of indigenous women was uncovered, the State has begun to implement reproductive health policies that constrain the exertion of sexual and reproductive rights by Peruvian women.

In 2006, the Peruvian government complied with the decision of the Constitutional Court, which ordered that the emergency contraceptive pill (in the form of two pills – Levonorgestrel) had to be distributed freely in all public hospitals. Through the adoption of this measure, the Peruvian Government sought to fulfil Goal Three (to promote gender equality and women’s empowerment) of

the Millennium Development Goals identified by the United Nations. Also, the government sought to reduce the high proportion, almost 60%, of women whose pregnancies were not desired (Ferrando, 2006) and, therefore, reduce the rate of unsafe abortions. Thus, the free distribution of the “morning-after pill” reduced the number of annual abortions from 400,000 in 2002 to 370,000 in 2006 (Ferrando, 2006). According to the former Minister of Health, the physician Oscar Ugarte (2009), the main beneficiaries of this measure were poor women who live in rural areas. However, lobbying by conservative groups within the higher spheres of Peruvian political power appears to have led to the Constitutional Court changing its initial decision through its most recent judgement, in October of 2009. The most recent decision of the Constitutional Court prohibited the free distribution of the emergency contraceptive pill in the public health system. This measure was a serious setback in the promotion of reproductive rights for Peruvian women and especially poor women. Hence, this chapter will first explore the discourse of the Catholic Church related to the use of contraception, in order to understand its position on the emergency contraception pill. Then, I will outline the implementation process of the emergency contraceptive policy, and finally address the operation of biopower and biopolitics in the political and juridical response to this issue.

I. The Catholic Church and the use of contraception

The rejection of the use of the “morning-after pill” by the Catholic Church has its roots in the position of the Catholic Church on the use of contraception. Unlike abortion, birth control by artificial means has been banned since the first centuries of Christianity. Before this religion emerged, contraceptive methods such as the “wool pessary” (a kind of diaphragm) or *coitus interruptus* were accepted during the classical Roman period (Noonan, 1965). However, when Christianity began to be more widely accepted, the use of contraception started to be understood as a moral sin. Apparently, this rejection of artificial means of controlling birth was formally based on the Holy Bible. For example, the use of contraception was understood as a threat to marriage and monogamous sexuality, because it was seen to conceal sexual infidelity, and thus infringe the 6th Commandment that states “you shall not commit adultery” (Kippley, n.d.). Furthermore, according to

Noonan (1965), a condemnation of contraception is also provided by Genesis 38:8-10:

Then Juda said to Onan, 'Go to your brother's wife, perform your duty as brother-in-law, and raise up seed for your brother'. Onan knew that the descendants would not be his own, so whenever he had relations with his brother's wife, he let (the seed) be lost on the ground, in order not to raise up seed for his brother. What he did displeased Yahweh, who killed him also. (Holy Bible, as cited in Noonan, 1965)

However, these teachings from the Holy Bible, dated to approximately the second century A.D., were not considered sufficient to support the rejection of the use of contraception according to the Gnostic Christians. This branch of Christianity considered the body and the soul to be two different entities, and the soul as a captive of the body. Therefore, reproduction was not understood as valuable because it perpetuated the domination of the body over the soul (Noonan, 1965). So, to overcome this challenge, the Fathers of the Catholic Church adopted non-Biblical ideas in order to increase Church membership and influence. For example, the Church borrowed a Stoic doctrine which considered intercourse unlawful except for the purpose of creating children (Noonan, 1965). This Stoic doctrine also condemned intercourse for pleasure because of the belief that during intercourse the female emitted a seed containing a soul (Noonan, 1965). Thus, taking into account this doctrine, St. Jerome stated that women who drink beverages to sterilise themselves are guilty of killing a human being who is not conceived yet (St. Jerome, 384, as cited in Hurst, 2002). Furthermore, in the fifth century A.D. St. Augustine, and in the thirteenth century A.D. St. Thomas Aquinas pointed out that contraception was a sin because it was a threat to marriage, which was understood as a sacred institution through which God creates life and, most importantly, future Catholics (Hurst, 2002). Years later, in 1558, the Apostolic Constitution *Effraenatum*, written by Pope Sixtus V, started to consider contraception as a mortal sin due to it being seen as a form of homicide (Hurst, 2002).

The Catholic Church's view on the use of contraception did not change substantially for a long time until the middle of the twentieth century. During these years, with the development of technology, there started to appear artificial contraceptives, which were widely used as a reliable tool to control birth rates

(Noonan, 1965). Thus, in July 1968, Pope Paul VI expressed concern about the decline of natality, and about how people had started to express their sexuality openly. It is in this context that Paul VI published *Humanae Vitae* (Of Human Life). This encyclical sought to establish notions of sexual morality and human reproduction that should be followed by Catholics, so as to ensure that within the sacrament of marriage, sexual intercourse is only intended for the purpose of childbearing. Thus, this encyclical defined the use of contraceptives as morally illicit and stated that it is a sin when people engage in sexual behaviour without the purpose of reproduction (Paul VI, 1968). *Humanae Vitae* established the conservative Catholic understanding of sexual morality and reaffirmed the classical notion of the family: monogamous, heterosexual marriage with a reproductive mandate. Thus, according to Mujica (2009), *Humanae Vitae* is the encyclical that structures the development of Catholic discourse on issues related to: a) birth control; b) heterosexual marriage; c) sexuality and reproduction; and d) natural family planning. It is possible to argue that *Humanae Vitae* is a document that stands as the articulation of the scientific, theological, legal and policy discourse of conservative Catholic groups (Mujica, 2009). However, concern for the proper constitution of the traditional family was stated previously by Paul VI (1965), through the pastoral constitution *Gaudium Et Spes* (Joy and Hope). In this document, the Pope pointed out that the family and marriage are the pillars of social welfare, but are in a state of crisis because of “polygamy, the plague of divorce, so-called free love and other disfigurements” (Paul VI, 1965, para. 47). Likewise, in the dogmatic constitution *Lumen Gentium* (Light of the Nations), Paul VI stipulated that the participation of Catholics in their society should constitute an active position to disseminate the “saving mission of the Church” (Paul VI, 1964, para. 30). Thus, in a difficult context for the Catholic Church, in which the constitution of traditional family was defined by ideas related to practicing sexuality without the goal of reproduction, the *Lumen Gentium* and *Gaudium Et Spes* were documents by which the position of the Catholic Church started to be built in order to face this context.

Returning to the encyclical *Humanae Vitae*, it is organised into three sections: a) problems and competency of the magisterium; b) doctrinal principles and pastoral directives built to generate concepts and guidelines oriented to defending natural

law; and c) divine law and the inseparability of the marital union and procreation (Paul VI, 1968). It should be noted that for the conservative wing of the Catholic Church, natural law means that sexual intercourse must have the intended consequence of reproduction. Furthermore, natural law refers to fertilisation as a biologically determined reality through which is also revealed the mystery of God's love (Mujica, 2009). In the first section of *Humanae Vitae* it is stated that spouses, joined in marriage, transmit life in collaboration with God. In this section it is also stated that the transmission of life and the marriage institution are threatened by birth control. Likewise, they are threatened by the exercise of sexuality outside and within marriage when it is practiced as a means of physical pleasure and not with an explicit reproductive purpose (which means breaking the natural law). In the second section it is established that the ultimate purpose of marriage is procreation, and marriage and procreation are two inseparable aspects of married life (Paul VI, 1968). Taking into account this understanding, this section defines methods that are allowed and forbidden for family planning. Hence, a forbidden means of controlling birth, and one that is morally opposed to natural law, is any method that involves human intervention to alter the process of conception of human life (Paul VI, 1968). Alternatively, it is morally licit to use any practice that does not involve human intervention in the process of the transmission of life (Paul VI, 1968). Finally, the third section of the *Humane Vitae* appeals to public authorities, scientists, priests, bishops, spouses and medical and health personnel to commit themselves to the defence of the natural transmission of human life following the mandate of God.

The publication of the encyclical *Humanae Vitae* was welcomed among the most conservative Catholic groups (M. Tantalean, personal communication, March 3, 2012). However, it was not exempt from adjustments by later Episcopal Conferences. For example, the French episcopate states that while *Humanae Vitae* understands that the interruption of fertility (through the use of contraceptives or *coitus interruptus*) is an evil act, anyone who makes a considered decision about the use of contraceptives or *coitus interruptus*, taking into account moral theology, does not commit sin (Rahner, 1968, as cited in Mujica, 2009). Beyond the adaptations, *Humanae Vitae* appeals to the Catholic community to promote the defence of sexual morality. Indeed, through this encyclical the Catholic Church

made a request to physicians, officials, health care professionals and scientists to contribute to the creation of an environment that fosters a return to chastity and sexual practices with a reproductive mandate.

Thus, the principles outlined in *Humanae Vitae* established the theological position of the Vatican on contraception. For this reason, the proposals and subsequent documents produced by the Pontifical Council for the Family and the Congregation for the Doctrine of the Faith had as their central objective the maintenance of the theological and political arguments outlined by Pope Paul VI in *Humanae Vitae* (Mujica, 2009). For example, in the post-synodal apostolic exhortation *Familiaris Consortio* (Family Partnership or On the role of the Christian Family in the Modern World), Pope John Paul II restated the Church's opposition to artificial birth control, as stated earlier in *Humanae Vitae*:

When couples, by means of recourse to contraception, separate these two meanings that God the creator has inscribed in the being of man and woman, and in the dynamism of their sexual communion they act as 'arbiters' of the divine plan, they 'manipulate' and degrade human sexuality, and with it themselves and their married partner, by altering its value of 'total' self-giving. (John Paul II, 1981, para. 32)

For the reason stated above, in *Familiaris Consortio*, the Pope condemned the use of contraception and also its promotion through international economic cooperation:

Thus the church condemns as a grave offence against human dignity and justice all those activities of governments or other public authorities which attempt to limit in any way the freedom of couples in deciding about children. Consequently, any violence applied by such authorities in favour of contraception or, still worse, of sterilization and procured abortion must be altogether condemned and forcefully rejected. Likewise to be denounced as gravely unjust are cases where in international relations economic help given for the advancement of peoples is made conditional on programs of contraception, sterilisation and procured abortion. (John Paul II, 1981, para. 30)

Likewise, the encyclical *Veritatis Splendor* (The Splendor of Truth), also written by Pope John Paul II, noted the need to restore the relationship between human freedom and God's law from a principle of obedience and acceptance by God's creation (John Paul II, 1993). From this understanding, something that is not natural must be questioned. Thus the use of contraception is forbidden (John Paul

II, 1993). Likewise, giving life becomes not only a lawful act, but also a laudable and even mandatory act:

Man's genuine moral autonomy in no way means the rejection, but rather the acceptance of the moral law, of God's command: 'The Lord God gave this command to the man ...'; (Gen 2:16). Human freedom and God's law meet and are called to intersect, in the sense of man's free obedience to God and of God's completely gratuitous benevolence towards man. Hence obedience to God is not, as some would believe, a heteronomy, as if the moral life were subject to the will of something all-powerful, absolute, extraneous to man and intolerant of his freedom. If in fact a heteronomy of morality were to mean a denial of man's self-determination or the imposition of norms unrelated to his good, this would be in contradiction to the Revelation of the Covenant and of the redemptive Incarnation. Such a heteronomy would be nothing but a form of alienation, contrary to divine wisdom and to the dignity of the human person. (John Paul II, 1993, para. 41)

Any doctrine that does not accept the divine mandate of the human being and his/her freedom rejects the Catholic understanding of the unity between body and soul:

A doctrine which dissociates the moral act from the bodily dimensions of its exercise is contrary to the teaching of Scripture and Tradition. Such a doctrine revives, in new forms, certain ancient errors which have always been opposed by the Church, inasmuch as they reduce the human person to a 'spiritual' and purely formal freedom. This reduction misunderstands the moral meaning of the body and of kinds of behaviour involving it (cf. 1 Cor 6:19). Saint Paul declares that 'the immoral, idolaters, adulterers, sexual perverts, thieves, the greedy, drunkards, revilers, robbers' are excluded from the Kingdom of God (cf. 1 Cor 6:9). This condemnation — repeated by the Council of Trent — lists as 'mortal sins' or 'immoral practices' certain specific kinds of behaviour, the wilful acceptance of which prevents believers from sharing in the inheritance promised to them. In fact, body and soul are inseparable: in the person, in the willing agent and in the deliberate act, they stand or fall together. (John Paul II, 1993, para. 49)

After defending the natural law in *Veritatis Splendor*, Pope John Paul II wrote a pontifical letter celebrating the Year of the Family in 1994. In this document, named "Letter to Families," the Pope made a call to families to not pay attention to media that tries to convince them to give up their fertility and/or to adulterate their love by immoral techniques that reject the creative will of God:

And so, both in the conception and in the birth of a new child, parents find themselves face to face with a 'great mystery' (cf. Eph 5:32). Like his parents, the new human being is also called to live as a person; he is called

to a life ‘in truth and love’.... Man’s coming into being does not conform to the laws of biology alone, but also, and directly, to God’s creative will, which is concerned with the genealogy of the sons and daughters of human families. God ‘willed’ man from the very beginning, and God ‘wills’ him in every act of conception and every human birth. God ‘wills’ man as a being similar to himself, as a person. This man, every man, is created by God ‘for his own sake’. That is true of all persons, including those born with sicknesses or disabilities. Inscribed in the personal constitution of every human being is the will of God, who wills that man should be, in a certain sense, an end unto himself. God hands man over to himself, entrusting him both to his family and to society as their responsibility. Parents, in contemplating a new human being, are, or ought to be, fully aware of the fact that God ‘wills’ this individual ‘for his own sake.’ (John Paul II, 1994, para. 9)

Later, in the encyclical *Evangelium Vitae*, John Paul II reaffirmed the inviolability of human life. This document stated that, among other things, contraception is unlawful and immoral (John Paul II, 1995). This argument was reaffirmed by the Congregation for the Doctrine of the Faith (2008) in the instruction *Dignitas Personae*:

The Church recognizes the legitimacy of the desire for a child and understands the suffering of couples struggling with problems of fertility. Such a desire, however, should not override the dignity of every human life to the point of absolute supremacy. The desire for a child cannot justify the ‘production’ of offspring, just as the desire not to have a child cannot justify the abandonment or destruction of a child once he or she has been conceived. (Congregation for the Doctrine of the Faith, 2008, p. 9)

Hence, the only method for controlling birth or “family planning” that is allowed by the Catholic Church is the “rhythm method” (M. Tantalean, personal communication, March 3, 2012). The other contraceptive methods are considered instruments that go against God’s moral and natural law, which states that the sexual act is aimed at creating a new life to allow God to reveal his love through a heterosexual couple united in marriage (Mujica, 2009). Moreover, Martin Tantalean (President of CEPROFARENA) argues that the manufacture, sale and distribution of contraceptives corresponds to an international conspiracy against the life and health of women from developing countries, and against the establishment and stability of the heterosexual family (M. Tantalean, personal communication, March 3, 2012):

Population controllers are constantly talking about ‘reproductive health,’ and their burning desire to reduce maternal mortality worldwide. This is the

excuse that they use for pushing contraception, legalized abortion, and sterilization on developing countries all over the world. However, this is simply a ploy to make their real purpose more palatable: controlling the world's 'booming' population. Babies and children are not the only ones who suffer from this misguided mission. Mothers and families, whose lives would have been bettered by actual relief work and health care, suffer as well.... Most so-called 'modern' contraceptives have been tested in field trials on healthy women of the developed world. Their indiscriminate use on women in the developing world who are malnourished, anaemic, or suffer from other health problems can have a devastating effect on women there. (Mosher & Mason, 2008, paras. 1, 2, 9)

Here, it is important to highlight the hybridity of the discourse that conservative Catholic groups use for supporting their position against the use of contraception. This hybridised discourse draws on other discourses that critique global reproductive healthcare practices, arguing that double standards are applied on a global scale (C. Michelle, personal communication, October 7, 2012). On the one hand there is the improvement of contraceptive methods for regulating the reproductive capacity of women. Therefore, women through their own decision-making power can have more options for choosing what contraceptive method is suitable for them. On the other hand, these improved contraceptive methods are tested by companies from developed countries on relatively powerless women from developing countries. If these new methods prove to work well on these women, they also serve to control the size of the population of their developing countries, to the advantage of the developed world. Thus, it is possible to suggest that conservative Catholic groups draw on ideas and arguments related to reproductive health from other rival discourses, to bolster their own position.

Likewise, the conservative Catholic groups state that contraceptive methods have various side effects, such as cervical cancer or breast cancer (M. Tantalean, personal communication, March 3, 2012). Also, they suggest that the use of contraceptives can cause psychological problems (like depression), bleeding and infertility (ACIPRENSA, n.d.). But the primary effect of the use of contraception emphasised by such groups is that it interferes with the processes of life. A potential human life could be eliminated by contraceptives, and therefore people should not be entitled to use them (ACIPRENSA, n.d.).

Thus, from the late 1960s the conservative wing of the Catholic Church began to build the theological basis underpinning their opposition to birth control, sexual rights and reproductive rights, beginning from the mandates of *Humanae Vitae*. Likewise, marriage between persons of the same sex, the use of contraceptives, the separation between sexuality and reproduction, and abortion started to be understood (from the conservative theological standpoint) as ruptures of the natural law, because these practices suspend the transmission of life. Thus, the *Humanae Vitae*, and subsequent documents following its mandates continue to seek to regulate human sexuality in a context that is characterised by the decline of human morality and sexuality. According to conservative Catholic groups, in this situation new policy tools are necessary. The request to implement these new policies is made from the Vatican not only to members of the Catholic Church, but also to those who participate in the political and scientific fields. Hence, *Humanae Vitae* not only establishes religious commands but also outlines a political agenda for conservative groups, giving them their foundation and their mechanisms of action.

In the next section I will outline the implementation process of the emergency contraception policy, in which conservative Catholic groups developed an important role in order to prevent the free distribution of the emergency contraceptive pill in the public health system.

II. Implementation process of the emergency contraception policy

The inclusion of emergency contraception in Peruvian reproductive health policy began in 1992. However, since then the implementation process of the emergency contraception policy has been irregular. The economic support of USAID and the lobbying of conservative Catholic groups in the areas of political decision-making have played an important role in this process, as will be discussed in this section.

During the 1970s and 1980s, the Peruvian Government provided scant political or financial support to national family planning services. It is in this context that international donors, principally USAID, started to direct the bulk of their support to private NGOs that delivered family planning services, basically through clinic-based programmes. According to Coe (2001), the amount of funding donated

during this period relied on the number of years of protection that contraceptives achieved; therefore, long-term methods, such as the intrauterine device, were encouraged. Nonetheless, this USAID policy ignored the social and cultural contexts in which Peruvian women lived, including the realities of gender inequality and other forms of discrimination, as well as women's own needs and rights (PROMSEX, 2006). However, in the framework of the International Conference on Population and Development (Cairo, 1994), USAID's family planning policies, both globally and in Peru, began changing to accommodate agreements that recognised sexual and reproductive rights as part of human rights. They began to propose a rights-based approach to reproductive health policies. Thus, USAID/Peru included in its programmes the prevention of unwanted pregnancy, the improvement of women's health, and the fostering of informed choice-making in contraceptive use (Chávez & Coe, 2007). Likewise, the Peruvian government began to improve access to contraceptive services among marginalised women who lived in rural and peri-urban areas in the Andean region and the Amazon Basin. Contraception was offered free of charge, and tubal ligation and vasectomy were legalised (Ministry of Health, 2001, as cited in Chávez & Coe, 2007). It was in 1992 that emergency contraception began to be included within the national family planning programme, but the MINSA did not make any effort to provide this contraception (Coe, 2004).

As was stated in Chapter 4, between 1994 and 1998 USAID's policy contributed significantly to improving the family planning assistance offered by the public health sector, because it had become the main provider of health services, specifically contraception (PROMSEX, 2006). However, during the second Fujimori government (1995-2000), MINSA arranged the National Family Planning Programme aimed at reducing the growth of the Peruvian population. As I have shown, in the process of achieving this demographic goal, abuses related to the practice of surgical sterilisation among indigenous women without adequate quality of care or voluntary and informed choice started to be reported. These problems were uncovered by Peruvian women's rights organisations and the Public Ombudsman's Office. The situation resulting from the coercive sterilisation policy prompted Catholic Church officials, conservative Catholic groups and far-right policy-makers to demand that the National Family Planning

Programme be shut down (Barrig, 2002).

This demand was supported by the PRI, whose representative, David Morrison, travelled in January 1998 from America to Peru to collect information about coercive sterilisation abuses, and to find out if USAID was involved in funding these abuses (Chávez & Coe, 2007). The information collected by Mr. Morrison was sent to conservative USA congressman Chris Smith, requesting that USAID's financial support of the National Family Planning Programme in Peru be suspended (Lifesitenews, 2000). In February 1998, the Latin American Alliance for the Family, another USA conservative group, sent its director to Peru to investigate these abuses (Catholic Culture, n.d.) and also shared this information with conservative Republican representatives from the American House of Congress. In Peru, the strategies used by these American conservative groups included harassing USAID/Peru, UNFPA, American cooperating agencies and Peruvian NGOs. At the same time, these conservative groups lent support to ultraconservative Peruvian policy-makers, NGOs and Catholic Church officials.

Nonetheless, in 1998, the USA Congressional investigation of USAID's programme in Peru concluded that its funding had not supported the abuses committed by the Peruvian government (Chávez & Coe, 2007). USAID/Peru intensified its commitment to reproductive health services, designed to improve the quality of care and safeguard informed and voluntary choice in government contraceptive services. For example, it accelerated the distribution of, and training on, new family planning norms for health care providers (Chávez & Coe, 2007). However, the position of USAID/Peru related to the distribution of the emergency contraceptive pill was "neutral," as stated in the letter that USAID/Peru sent to its partner organisations:

Our work in public health frequently entails confronting diverse issues, some of which generate controversy. USAID considers that, in Peru, the issue of emergency contraceptive pills is one of those; thus, since 1997, it has established a policy of neutrality on this issue. (USAID, institutional letter, November 30, 2005 as cited in PROMSEX, 2006)

as a consequence of this USAID/Peru policy, MINSA removed emergency contraception from the National Family Planning Programme (Chávez & Coe, 2007). Nonetheless, in 1999 USAID/Peru hired new staff who were concerned

with improving access to emergency contraception (USAID, institutional letter, June 15, 2001, as cited in Chávez & Coe, 2007). This position was shared by the transitional government under the leadership of Valentín Paniagua in 2000. During that time, Peruvian reproductive rights organisations advocated in favour of emergency contraception. In response to this request, the government re-evaluated the possibility of reincorporating the “morning-after pill” into the National Family Planning Programme. Thus, on 13 July 2001, MINSA approved the Ministerial Resolution No 399-2001-SA/DM, which ordered the distribution of the emergency contraceptive pill through the public health system. According to Chávez and Coe (2007), USAID/Peru supported this policy by funding JHPIEGO (an American health and family planning organisation affiliated to Johns Hopkins University) so as to provide technical assistance to MINSA during the implementation of this measure. This support from USAID/Peru was questioned by the ultra-conservative wing of the American House of Congress, and in 2000 and 2001 two official audits were conducted into the family planning assistance of USAID/Peru (PROMSEX, 2006). These audits found that the mission’s programmes fully complied with US law (Chávez & Coe, 2007).

In 2001, the ultra-conservative Bush administration took office in the United States of America. As noted in Chapter 3, during the Bush administration ultra-conservative groups brought about the reinstatement of the Global Gag Rule, which forbade the use of American funds to support legal abortions or the decriminalisation of abortion. Some conservative groups used an amplified interpretation of what constitutes abortion, which included emergency contraception, for example (Center for Health and Gender Equity, institutional letter, February 2004, as cited in Chávez & Coe, 2007). In Peru, the newly elected President Alejandro Toledo took office in July 2001, and appointed two conservative Catholic physicians in succession as Ministers of Health: Dr. Luis Solari, and then Dr. Fernando Carbone. As noted above, both officials implemented policies to limit access to reproductive health information, methods and services. Among these measures, they refused to fulfil the Ministerial Resolution that ordered the distribution of the emergency contraceptive pill in the public health system. However, in December 2001, they approved the commercial sale of Postinor 2 (a brand of emergency contraception that contains

levonorgestrel) in pharmacies and private medical services (Chávez, 2004). The Public Ombudsman's Office and some human rights NGOs demanded the implementation of the Ministerial Resolution on emergency contraception. To block this demand, Dr. Solari and Dr. Carbone used their ties with ultra-conservative groups in America, who put pressure on USAID/Peru to limit its support of family planning programmes that included the emergency contraceptive pill (Coe, 2001, as cited in Chávez & Coe, 2007). Likewise, in March 2002, the former Minister of Health, now a Congressman, Dr. Solari, pushed through the Peruvian National Congress the celebration of the "Day of the Unborn Child." For the first celebration of this day, Dr. Solari invited Mr. Chris Smith as a keynote speaker (Chávez, 2004). According to Chávez and Coe (2007), during the visit of Mr. Smith he had meetings with USAID/Peru and pressured its officials to not support emergency contraception. During the meeting with Mr. Smith, USAID officials argued that "their hands were tied because the method constituted a 'grey area' under the Global Gag Rule" (Chávez & Coe, 2007, p. 142).

In July 2003, President Toledo announced that his government would implement family planning programmes in line with WHO guidelines and replaced Dr. Carbone with Dr. Alvaro Vidal as Minister of Health. Despite the fact that Dr. Vidal supported reproductive health policies, he had to face the pressure of conservative members of Peru's National Congress, such as Dr. Hector Chávez Chuchón (at the time President of the Congressional Commission on Health) and Dr. Solari. Additionally, Dr. Vidal faced strong resistance within MINSA because of the conservative officials appointed by Dr. Solari and Dr. Carbone to key posts (Chávez, 2004). In this context, Dr. Vidal established a high level multidisciplinary Commission which had among its members representatives of the Ministry of Justice, MINSA, the Ministry of Women and Vulnerable Populations, the Public Ombudsman's Office, the Catholic Church, the National Law College and the Medical National College. The goal of this Commission was to determine whether the distribution of the emergency contraceptive pill in the public health system was consistent with the human rights included in the Political Constitution (Public Ombudsman Office, 2003).

The final report of this high level multidisciplinary Commission (2003) recognised the emergency contraceptive pill as a contraceptive method, and supported its free distribution within public health programmes. Likewise, the Public Ombudsman's Office (2003) stated that denying access to the emergency contraceptive pill in the public health system constituted an infringement of anti-discrimination articles in the Political Constitution. The UNFPA, WHO and the Pan-American Health Organization also expressed their public support for the availability of the emergency contraceptive pill in the public health system in Peru (Chávez & Coe, 2007). Additionally, the Peruvian population had expressed widespread support for emergency contraception. In one opinion poll, 47% of women respondents said they would use emergency contraception if needed (Universidad de Lima, 2005).

This broad-based consensus in favour of the use of the “morning-after pill” was implemented in 2004 when President Toledo appointed a new Minister of Health, Dr. Pilar Mazzetti. During her tenure until the end of Toledo's administration, MINSA improved the quality of and access to contraceptive methods, including the emergency contraceptive pill. This effort was continued by Alan Garcia's administration (from July 2006) through the Ministers of Health, Dr. Carlos Vallejos, Mr. Hernán Garrido-Lecca, and Dr. Oscar Ugarte, despite the fact that USAID/Peru restricted the use of its funds for the emergency contraceptive pill from 2005 onwards.

Following the decision of the Peruvian government related to incorporating the emergency contraceptive pill in the public health system, some stakeholders expected that USAID/Peru would continue with its efforts to support family planning programmes. However, this did not happen, because of the fierce attacks that USAID suffered from American conservative groups. For instance, the PRI condemned USAID for supporting the provision of emergency contraception, as well as the Peruvian Government's measure to make the emergency contraceptive pill available in the public sector (Polo, 2004). In 2005, the PRI sent a letter to USAID in Washington D.C. accusing the Public Ombudsman's Office and the feminist NGO Manuela Ramos of using funds from USAID to support the distribution of the emergency contraceptive pill in the public health system, and

thus infringing the Global Gag Rule (PRI, institutional letter, November, 2005, as cited in Chávez & Coe, 2007). USAID replied that “because emergency contraceptives are contraceptives and they do not have abortive effects, they are not prohibited by any abortion related laws or policies that affect USAID’s family planning or other development assistance” (USAID, institutional letter, December 13, 2005, as cited in Chávez & Coe, 2007). However, USAID added that the USAID/Peru office adopted a neutral position on this issue, and in this regard USAID/Peru had “not knowingly made, financed or authorized its implementers to make or finance any public statements or publications regarding emergency contraceptives with USAID funds” (USAID, institutional letter, December 13, 2005, as cited in Chávez & Coe, 2007). Likewise, on 30 November 2005, USAID/Peru’s partners stated in a letter that:

We believe that it is up to Peruvian institutions, organizations, citizens and public officials to address this issue in its entirety. USAID/Peru continues to have a neutral position regarding emergency contraceptive pills. Neutrality implies maintaining a high-level civic debate on this important public policy issue. Therefore, through this letter, we reiterate once again, our request to our grantees, that in using our funds, you maintain a neutral position, not giving preference to any position in any circumstances that involves USAID financing, for example, information materials or planned events, among others. (USAID, institutional letter, November 30, 2005, as cited in Chávez & Coe, 2007)

In January 2006, feminist NGOs had a meeting with officials of USAID/Peru in which the latter said that its policy “did not consider emergency contraception a priority for improving health and reducing poverty in Peru” (Chávez & Coe, 2007, p. 144). In February 2006, a letter from USAID clarified that the USAID/Peru policy of neutrality referred only to participating in public debate and not to supporting emergency contraception in service delivery (USAID, institutional letter, February 3, 2006, as cited in Chávez & Coe, 2007). Nevertheless, according to the Mesa de Vigilancia de Derechos Sexuales y Reproductivos (Supervisory Bureau on Sexual and Reproductive Rights) (2006, as cited in Chávez & Coe, 2007), USAID/Peru has consistently blocked the inclusion of emergency contraception in the reproductive health service programmes implemented by its grantees. At the time of writing, the policy of USAID and, therefore, USAID/Peru, has not changed, despite the fact that President Obama has taken office in the USA government (Goldberg, 2011).

At this point it is pertinent to note that from 2004 to 2009, during which period the emergency contraceptive pill was distributed via the public health system, several court cases were heard on the emergency contraceptive pill. In these cases, conservative Catholic groups questioned the contraceptive effect of the “morning-after pill” and claimed that it has an abortive effect. The first controversy was a lawsuit submitted to the judiciary in 2002 by a group of feminist women who were concerned about the lack of access to the “morning-after pill” because the Ministerial Resolution No 399-2001-SA/DM was not being implemented. On 13 November 2006, the Constitutional Court declared the demand valid, and compelled MINSA to distribute the emergency contraceptive pill free of charge in the public health system and to give adequate information to the users of the service about this contraceptive and other contraceptive methods (Constitutional Court, 2006). Also, the judgement of the Constitutional Court emphasised the contraceptive effect of emergency contraception based on the various *amicus curiae* (someone, not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it) received during the process of deliberation (Constitutional Court, 2006). With this statement, the Constitutional Court resolved the controversy with a position that guaranteed and respected the fundamental rights of women. This judgement had a great impact in the international system of human rights protection (known as the United Nations System of Human Rights and Inter-American Court of Human Rights). With this judgement there was no doubt that the emergency contraceptive pill should be distributed free in the public health system. But, despite this formal recognition, there was a lack of distribution of the “morning-after pill.” The Public Ombudsman’s Office (2008) noted that in 6 of the 11 health care centres, shortages of the emergency contraceptive pill lasted for 6 months.

The second dispute which generated much controversy was the “writ of *amparo*” (a legal remedy for the protection of Constitutional rights), filed in 2004 by the Catholic conservative NGO “Accion de Lucha Anticorrupcion - Alas sin Componenda” (Action for Combating Corruption - Without Compromise) against MINSA. This lawsuit stated that MINSA should abstain from the distribution of the emergency contraceptive pill because of the abortive properties of this form of contraception, which infringed the constitutional rights of the conceived

(Constitutional Court, 2009). Nearly three years after the first judgement of the Constitutional Court, this Court declared valid the claim of the conservative NGO and ordered MINSA to suspend the free distribution of the “morning-after pill” in the public health system (Constitutional Court, 2009). This Court also ordered the laboratories that produced, sold and distributed emergency contraception to include a warning in each package that this product may inhibit the implantation of the fertilised egg, although this effect has not been proven scientifically (Constitutional Court, 2009). It is important to mention that while the sale of the emergency contraceptive pill has been allowed since December 2001, none of the conservative Catholic groups (who fiercely oppose this method of contraception) have questioned the sale of this contraceptive in pharmacies through the judicial process.

After the ban of the Constitutional Court on the free distribution of the “morning-after pill,” MINSA issued in March 2010 the Ministerial Resolution No. 167-2010/MINSA, which sought to reincorporate the emergency contraceptive pill into the public health system. This resolution stated that it is certain that the use of levonorgestrel, as an emergency oral contraceptive, has no abortive or deadly side effects and is not harmful to health. MINSA reached this conclusion based on technical reports issued by the WHO, the Pan-American Health Organization, and the National Institute of Health, among others (Marin, 2010). These reports concluded that there is no current scientific evidence that supports the claim that the use of levonorgestrel as an emergency contraceptive has abortive effects. Also, it indicated that the process does not affect the implantation of the fertilised egg once fertilisation has occurred. MINSA submitted this new evidence taking into account one of the arguments of the decision of the Constitutional Court, which stated that the health authorities should have a degree of certainty that the drug has beneficial properties for women’s health and does not produce harmful or deadly side effects (Constitutional Court, 2009).

This resolution has brought MINSA into conflict with the Constitutional Court. The judges of the Constitutional Court pointed out that the Ministerial Resolution of MINSA transgressed its decision (Marin, 2010). This situation was analysed by the Civil Court of Lima, so as to clarify whether or not the resolution of MINSA

infringed the decision of the Constitutional Court. In May of 2011, MINSA published the Ministerial Resolution No. 652-2010/MINSA, which ordered the public health system to not distribute the emergency contraception pill. This resolution was adopted following the decision of the Civil Court and the Constitutional Court. Thus, the last statement of the Constitutional Court is considered contrary to the current Peruvian legal framework. Likewise, the Constitutional Court has exceeded the limits of its function. Several aspects of the judgement are questioned, and some of them will be developed in the following section of this chapter.

Nowadays, because the free distribution of the emergency contraceptive pill is forbidden in the public health system, MINSA, supported by feminist NGOs such as PROMSEX, is distributing a kind of emergency contraception named “Yuzpe regimen” (a combination of estrogen and progestogen hormones, which has to be used within 72 hours of sexual intercourse) (Rossina, personal communication, October 4, 2011). At the same time, according to Rossina Guerrero (General director of PROMSEX), feminist NGOs will sue the Peruvian State before the Inter-American Commission of Human Rights in order to determine the international responsibility of the State in not complying with its human rights commitments (Rossina, personal communication, October 4, 2011).

III. Biopower and biopolitics in the emergency contraception policy

In the previous sections of this chapter I analysed the doctrine of the Catholic Church related to the use of artificial contraception, and the implementation process of the emergency contraception policy. Taking into account this framework, it is possible to understand how biopower and biopolitics developed, particularly since the first decision of the Constitutional Court in 2006. Before this decision, the influence of conservative Catholic groups was important in terms of delaying or blocking the distribution of contraceptives, including the emergency contraceptive pill, in the public health system. But it is from 2006 to 2009 when the power of conservative groups in the higher spheres of political decision-making becomes very clear. Thus, the 2009 decision of the Constitutional court failed to address the change in the government’s position during those three years, and disregarded all the expert medical opinions that supported the conclusions of

the Constitutional Court's decision in 2006. In this section, some important points relating to the Constitutional Court decision in 2006 will be discussed in order to compare the arguments made to defend this decision with those used to arrive at the decision of 2009. At this point, it is useful to address the actions of conservative groups in seeking to influence the latter decision of the Constitutional Court.

Firstly, the decision of 2006 was unanimously adopted by the judges of the Constitutional Court. At this time, the President of the Court was Judge César Landa. Thus, the judgement of 2006 ordered MINSA to fulfil its obligation to inform women about and distribute the emergency contraceptive pill. This Court assumed as fully constitutional the distribution of this contraceptive method. Likewise, this Court recalled that this obligation also had to be fulfilled by the Regional Directorates of Health, and in the public health system, including within the Armed Forces and the National Police of Peru (Constitutional Court, 2009). In this case, the Constitutional Court took into account the *amicus curiae* of different institutions, among them feminist NGOs, the Public Ombudsman's Office, the Catholic conservative NGO "Accion de Lucha Anticorrupcion - Alas sin Componenda," UNFPA and WHO. The Court, recognising the secular character of the Peruvian State (Political Constitution of Peru, article 50), nonetheless considered it appropriate to request the institutional positions of the churches, such as the Catholic Church, the Church of Jesus Christ of Latter-Day Saints, and Jehovah's Witnesses. Taking into account the information gathered by the Constitutional Court, it determined that in the current situation, the effects of the emergency contraceptive pill were only contraceptive and not abortive (Constitutional Court, 2006). Moreover, the Court stated that MINSA was not fulfilling the Family Planning Technical Standard because the act of distributing the National Guidelines on the emergency contraceptive pill did not satisfy the requirement of mass information dissemination. Furthermore, starting the distribution of the emergency contraceptive pill but later stopping it was considered an act of omission (Constitutional Court, 2009). Therefore, this Court determined that MINSA must make available information about the "morning-after pill" to citizens as well as permanently distribute this contraceptive method, along with other methods (Constitutional Court, 2009).

While this judgement did not emphasise the rights of women who were affected by the non-distribution of the “morning-after pill,” as was stated in the concordant vote of Judge Mesía, this decision was important to protect the rights of women to have access to the widest range of contraceptive methods. Thus, this right was linked to various constitutional rights, among which are the free development of personality (article 2(1)), health (article 7) and the freedom to decide when and how many children to have (article 6). These rights are also recognised by the CEDAW and the Convention on the Rights of the Child (CRC). These international human rights treaties have a constitutional status according to the Political Constitution of Peru (IV final disposition), which means that national law has to be implemented following the standards established by human rights treaties. For example, CEDAW points out in article 16(1) that States should take all appropriate measures to ensure “the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” Also, article 12 of this treaty points out that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

In article 14(2) CEDAW refers specifically to the right of women in rural areas to “have access to adequate health care facilities, including information, counselling and services in family planning.” In that sense, the CEDAW Committee, through its General Comment No 24, established the obligation of States “to refrain from obstructing action taken by women in pursuit of their health” (para.14) and considers that a State infringes its obligations when “large numbers of couples who would like to limit their family size lack access to or do not use any form of contraception” (para. 17). Following this argument, in January 2007, the CEDAW Committee noted in its final observation about Peru that “the Committee urges the State party to step up the provision of family planning information and services to women and girls, including emergency contraception” (para. 25). Meanwhile, the Convention on the Rights of the Child stated in its article 24(2f) that States shall “develop preventive health care, guidance for parents and family planning education and services.” This commitment of States is highlighted by the CRC in

its General Comment No. 4. In this document, this committee “urges State parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling” (para. 31). Finally, the Committee on Economic, Social and Cultural Rights, in its General Comment No 14, established that is necessary to adopt “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning” (2000, para.14). For this reason, this committee urges States to remove “all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health” (para. 21). Thus, according to the international system for the protection of human rights it is clear that having family planning services that facilitate the use of contraception, including the emergency contraceptive pill, is a human right that has to be fostered and protected by signatory States. In that sense, the judgement adopted by the Constitutional Court in 2006 contributed significantly to the effective exercise of women’s reproductive rights.

However, the judgement of the Constitutional Court adopted in 2009 ordered MINSA to stop the distribution of the emergency contraceptive pill in the public health system because of the supposed abortive effects of this form of contraception and, therefore, the consequent infringement of the right to life of the conceived. Thus, this decision developed, among others, two interesting points: the right to life and the legal principle of reasonable doubt. Regarding the right to life, the Court analysed the theories about the beginning of life (fertilisation and implantation) and how it is understood by legal scholars and under Peruvian law. This legal institution concluded that no Peruvian law regulates the moment when human conception begins; furthermore, the Court recognised that there is no scientific or legal consensus about the beginning of human life. In order to have a position about the protection of the human rights of the conceived, the Court used the legal principle of reasonable doubt (if there is reasonable evidence about the existence of a risk, it is necessary to adopt measures so as to avoid the risk). Based on this principle, the Constitutional Court noted that there were enough elements leading to a reasonable doubt about the action of the emergency contraceptive pill

on the endometrium and its possible anti-implantation effect, which would have a fatal effect on the conceived (Constitutional Court, 2009).

This judgement is considered by legal scholars to be highly controversial. For instance, the Constitutional Court chose the theory of fertilisation as their basis for determining the beginning of life. This decision contrasts with the technical opinion of the WHO, which chose the theory that life begins with the implantation of the fertilised egg in the womb (Alvites, 2009). In this sense it would be difficult to indicate the existence of an abortion when implantation has not yet occurred. Another questionable aspect of the judgement is undoubtedly related to the principle of reasonable doubt. The adoption of this principle by the Court reveals that the judges gave a greater weight to reports by conservative NGOs (such as PRI, the National Association of Catholic Peruvian physicians, the Latin American Alliance for the Family) than to technical reports from WHO, which reflect a global consensus.

Likewise, legal scholars questioned the justification that the Constitutional Court gave for changing its position from that taken in the judgement of 2006. This authority has indicated that both judgements (2006 and 2009) have different purposes. The judgement of 2006 sought to fulfil administrative Acts, while the judgement of 2009 sought to restore the legal protection of the conceived, which was placed in danger by the free distribution of the emergency contraceptive pill in the public health system. Therefore, the Constitutional Court did not change any position. However, legal scholars have challenged this argument because in 2006 the process was analysed taking into account the information related to emergency contraception that was available at that time (Llaja, 2009). At that time, the Constitutional Court stated that the “morning-after pill” had contraceptive effects and its use was therefore constitutional. Furthermore, in the judgement of 2006, Judge Mesía was the only judge who noted the possible infringement of women’s rights if the distribution of the emergency contraceptive pill in the public health system was forbidden (Constitutional Court, 2006).

In 2009, the majority of the judges of the Constitutional Court, led by Judge Carlos Mesía, adopted the controversial judgement. According to Rossina Guerrero (Rossina, personal communication, October 4, 2011), the change of

position by Judge Mesía from the judgement of 2006 to 2009 could be explained through the close relationship that this judge has with conservative Catholic groups. For example, in September 2012 Judge Mesía had a meeting in a public restaurant with Mr. Natale Amprimo, who is a member of Opus Dei, and who served as lawyer for Cardinal Cipriani in a judicial case in which the Cardinal challenged the administration of the Pontifical Catholic University of Peru (IDL-Justicia Viva, 2012). As the Constitutional Court will give judgement on this case during the last months of this year (2012), this meeting was considered controversial at the very least, as according to article 8 of the Rules of Procedures of the Constitutional Court, judges of this Court cannot have any relationship with the parties involved in a judicial case (Landa, 2012, as cited in IDL-Justicia Viva, 2012).

Returning to the analysis of the judgement of the Constitutional Court in 2009, Judges César Landa and Fernando Calle expressed dissenting views. Among the points on which these two judges based their dissenting judgement were the right to life, the State as a promoter of human rights, the principle of reasonable doubt, and the discriminatory effect of the judgement adopted by the majority of the judges. Firstly, they argued that the right to life means more than the existence of the human being. This right implies a life with dignity with a social dimension, in which the life should satisfy basic necessities that contribute to the development of the human being (Landa & Calle, 2009). The Political Constitution of Peru has regulated and guaranteed the fundamental right to life with dignity, but this right should be analysed along with other fundamental rights, values and constitutional principles in each case (Landa & Calle, 2009). Following this analysis the judges would solve as reasonably as possible any conflicting circumstances that involve the life of the “person” and the life of the conceived. Furthermore, in the specific case of the legal protection of the right to life of the conceived, Landa and Calle (2009) noted that Peruvian law does not state at what moment conception begins (fertilisation or implantation). Therefore, they suggested developing a legal debate in order to legislate how the embryo should be understood in Peruvian law (Landa & Calle, 2009). Secondly, the principal role of the State is to promote and guarantee human rights, rather than watch over the fulfilment of the law. Consequently, the State should not intrude in the decision-making process of the

individual, but should provide the necessary tools to the individual in order that he/she can make his/her decision (Landa & Calle, 2009). Relating to the use of the principle of reasonable doubt, Landa and Calle (2009) stated that it is not possible to ban the distribution of the emergency contraceptive pill in the public health system based on the use of this legal principle:

The use of the principle of reasonable doubt has to be based not only on a reasonable doubt about the supposed infringement of constitutional rights, but also the use of this principle requires a minimum test of reasonableness or proportionality embodied in constitutional jurisprudence. (Landa & Calle, 2009, p. 52; translated by the author)

Thus, in their view the analysis of the legality of distribution of the emergency contraceptive pill in the public health system under the principle of reasonable doubt should have followed these steps:

- Verifying whether the measure to restrict the free provision of the “morning after pill” in the public health system does not infringe the sexual and reproductive rights of the users;
- Evaluating whether it is necessary to prohibit the right of women, who use the public health system, to have access to the “morning after pill,” taking into account that there are other contraceptives that are not controversial;
- Choosing reasonable and proportionate measures that protect in the best way the constitutional rights in conflict, through the gradual limitation of access to the “morning after pill”, moreover, when the sale of this contraceptive in pharmacies and private health services is constitutional. (Landa & Calle, 2009, p. 53; translated by the author)

Finally, taking into account the arguments stated previously, Landa and Calle (2009) argued that the decision adopted by the majority of the judges of the Constitutional Court most directly affected poor women, because they were the main users of public health services.

The legal arguments presented by Landa and Calle are supported by the available statistics on poverty amongst Peruvian women. When a woman faces an unwanted pregnancy she often chooses to have an abortion that can be performed in safe and hygienic conditions if she has money; otherwise, this woman has to resort to abortion practices that put her health and life in danger. According to Ferrando (2006), only 17% of Peruvian women who require abortion services have it performed by a medical professional, 39% use a midwife, while a higher

percentage, 44%, resort to unqualified persons. This situation worsens for women living in rural areas: only 3% of them are able to go to a doctor, 32% go to midwives, and 65% go to untrained persons (Ferrando, 2006). The consequences for the poorest women are evident, since there is a 72% chance of complications of abortion when women try it by themselves or when they go to an unqualified person (Ferrando, 2006). The percentage of risk declines to 24% when midwives or nurses perform the abortion, and it has only a 4% risk if it is performed by a physician (Ferrando, 2006). Once the emergency contraception pill began to be distributed in the public health system, poor women started to use this form of contraception more regularly, not only because they are the predominant users of this free service but also because they are the principal victims of rape (Landa & Calle, 2009). Thus, from 2007 to 2009 95,880 tablets of emergency contraception were distributed: 22,549 in Lima and 73,331 in the provinces (Ugarte, 2009). According to the former Minister of Health, Dr. Ugarte (2009), the main beneficiaries of this measure were poor women who lived in the provinces. However, the 2009 decision of the Constitutional Court entailed a serious setback in the promotion of reproductive rights for women, but especially affected the empowerment process of poor women. According to the Minister of Women and Vulnerable Populations (2009), while general poverty levels in Peru declined between 2006 and 2009, poverty among women has been gradually increasing. For example, in 2006 17.2% of women lived in poverty; in 2007 this figure increased to 18.3%, and by 2009 it had risen to 18.7%. This shows that the level of women's poverty has not been declining, and now sits at close to 19%. The lack of statistics from the government on this issue and poverty's possible link to access to contraception or legal abortion, for example, prevents a clearer comprehension of the effects of reproductive health policy on poor women. The NGOs have based their work on highlighting the reproductive rights of women, but after the decision of the Constitutional Court they have had to focus their work on showing via statistics how the prohibition on free distribution of the emergency contraceptive pill disempower poor women. Some feminist leaders, such as Rossina Guerrero, Eliana Cano and Irene, state that the non-exertion of reproductive rights has as a consequence the impoverishment of women (R. Guerrero, personal communication, October 4, 2011; E. Cano, personal

communication, October 31, 2011; Irene, personal communication, November 13, 2011). Thus, the prohibition on free distribution of this contraceptive creates two types of women: those who can buy the emergency contraceptive pill in pharmacies, and those who cannot afford the cost of this form of contraceptive, and who will probably have to face an unsafe abortion if they are unwilling to carry that pregnancy (R. Guerrero, personal communication, October 4, 2011; E. Cano, personal communication, October 31, 2011). Taking into account this framework, it is possible to argue that access to reproductive health services can be considered a clear indicator of social justice (R. Guerrero, personal communication, October 4, 2011).

Likewise, the policy adopted by the Peruvian State banning the free distribution of emergency contraception violates the right to the highest attainable standard of health and imposes an unequal regime that is regressive in relation to the policies once adopted by the State. Relating to this issue, the Committee on Economic, Social and Cultural Rights (2012) noted that:

The Committee recommends that the State party intensify its efforts to address the high rate of teenage pregnancies and ensure the accessibility and availability of sexual and reproductive health services, including delivery attendance, institutional birth services and emergency contraceptives, particularly in rural areas. (para. 21)

At this point the question of how the emergency contraception policy changed in three years (from 2006 to 2009) should be asked. According to some experts on reproductive health policies, the influence of Catholic conservative groups is important. For example, Rossina states that “one of the current challenges for feminist organizations is how to face the strategies of public advocacy of conservative groups as well as the work that they are doing to stop reproductive health and sexual health policies” (R. Guerrero, personal communication, October 10, 2011). Among the tactics that these groups are developing to stop these policies is influencing international cooperative organizations:

As some members of conservative groups are Peruvian aristocrats, who have decision-making power in policy areas, they influence the decisions of international cooperative organizations related to supporting reproductive and sexual health policies. Thus, some of the arguments that these groups

present to the international cooperative organizations are that ‘Peru has a stable economy and political system, so international funds are not necessary any more, especially for issues related to reproductive health policies.’ (R. Guerrero, personal communication, October 10, 2011)

Furthermore, Eliana points out that “as the policies of reproductive health and sexual health are focused on the relationship between mother and child, conservative Catholic groups have influenced the strengthening of this link taking into account Christian precepts” (E. Cano, personal communication, October 31, 2011).

As was stated above, the hierarchy of the Catholic Church issued ecclesiastical documents about the use of artificial contraception. In the specific case of the emergency contraceptive pill, the conservative Catholic NGOs have developed documents that support the ban on the use of the emergency contraceptive pill, taking into account the tenets of the Catholic Church related to contraception more generally. Thus, conservative Catholic groups, such as CEPROFARENA, construct a scientific discourse that links the beginning of human life with abortion. Using the medical point of view, CEPROFARENA states its understanding of the emergency contraceptive pill:

What is the morning-after pill? This drug, called levonorgestrel and administered at a concentration of 0.75 mg, is a synthetic hormone that has from five to fifteen times more hormones than common contraceptives, which increases the side effects. We clarify that it is not a drug or vaccine, it does not prevent or cure any disease. Taking two pills of this contraceptive is like taking fifty contraceptives together. (CEPROFARENA, n.d., para. 6; translated by the author)

Conservative Catholic groups also highlight the apparent side effects of the emergency contraceptive pill from a medical standpoint, which they claim are detrimental to women’s health (M. Tantalean, personal communication, March 3, 2012). Thus, the first reference to when human life begins, which is the basic argument, is accompanied by an argument showing negative consequences for women’s bodies if they decide to take the morning-after pill. This is complemented by a direct reference to abortion, because for CEPROFARENA, as for all conservative Catholic groups, the emergency contraceptive pill is abortive. The abortive effects of this contraception, according to conservative Catholic

groups, is constructed taking into account their understanding of the beginning of human life, a scientific standpoint, a legal standpoint, and the drug's formal regulation in the United States of America:

How does the morning-after pill function? It has three purposes: it disrupts ovulation, thickens cervical mucus [contraception] or it prevents the implantation of the fertilized egg [abortive]. These mechanisms are informed by the Food and Drug Administration [FDA] of the United States of America, and by the same laboratories that produce it: Grünenthal, Schering, Richter Gedeon and Recalcine. (CEPROFARENA, n.d., paras. 8-9; translated by the author)

This leads to the final argument of conservative groups and CEPROFARENA's formal position as an organization. They seek to link these discourses in order to build a social subject whose life starts with the fertilisation of the egg. To CEPROFARENA, human life begins from the fertilisation of the egg; in other words, from the moment of conception:

Is it possible to stop a pregnancy that has just begun? Yes it is possible. Pregnancy begins with the fertilization of the egg but the resulting embryo implants in the uterus after a period of five days. Interfering with the implantation of a new human being, the 'morning-after pill' stops an existing pregnancy and causes the death of the individual conceived. (CEPROFARENA, n.d., paras. 10-11; translated by the author)

Thus, the controversial point about the use of the morning-after pill is not only its artificial nature, but also the anti-implantation effect of this form of contraception:

The emergency contraception, levonorgestrel 0.75 mg., has been presented as a product developed to prevent pregnancy when the regular use of birth control failed or it is suspected to have failed, or after unprotected sex. This drug can act by: Inhibiting ovulation, inhibiting sperm motility, or inhibiting the implantation of the embryo through disrupting its transportation to the uterus and the embryo's implantation in the endometrium [although the latter is not mentioned or is minimised in its real meaning]. However, the latter mechanism is the sticking point in the discussion on the mode of action of the emergency contraceptive pill as it involves the removal of a newly conceived embryo, immediately prior to its implantation in the endometrium. In other words, it produces an early abortion, suppressing a newly conceived human being. (Garcia Trovatto, 2009, paras. 1-3; translated by the author)

Conservative Catholic groups seek to regulate the existence of the life of the individual through the regulation of biological life. Therefore, women cannot use the emergency contraceptive pill, because it is considered abortive and threatens

the life of another human being. The need to protect the life of the conceived is used to control the life of the person:

The Bioethics Committee of the Episcopal Commission for the Family issued a strong statement, which criticizes the defence of the emergency contraceptive pill by certain sectors that promote abortion. This commission clarifies that the ‘morning-after pill’ has abortive effects.... Furthermore, the experts from the Bioethics Committee addressed two statements published in the major media in the country. These statements defend the emergency contraceptive pill ‘in which the defence makes a joke of the new human life and the status and dignity of the conceived.’ The Bioethics Committee remember that human life begins at conception ‘with the fusion of egg and sperm’ and ‘the product of this union is a conceived, a new human life.’ (ACIPRENSA, 2003; translated by the author)

In order to support the claim of the abortive effects of the emergency contraception pill, conservative Catholic groups developed political and legal strategies that sought to accord the status of a “person” to the conceived. In addition to giving life in legal or medical terms to the conceived, conservative Catholic groups also sought to create a new cultural understanding of the beginnings of life. Thus, these groups agreed with the hierarchy of the Catholic Church to establish a special day marking political opposition to abortion and the emergency contraceptive pill in each country of Latin America. Here is an example of this campaign in Peru:

On this special day, the Family Commission of the Peruvian Episcopal Conference urges all Christians to become aware of their responsibility to defend life at all ages, assuming the commitment to denounce and fight any hazards that threaten the existence of the most fragile beings: human embryos, which are our unborn children. The Birth of Jesus, December 25, is the most celebrated birthday in the world by Catholics and non-Catholics. The celebration of his conception, March 25, marks the commitment to defend life from its beginning at conception to natural death. (ACIPRENSA, 2009, para. 8-9; translated by the author)

Thus, the celebration of the Day of the Unborn Child is the result of a series of political and media strategies that conservative groups have deployed since 1993, as part of an initiative by former Argentinian President Carlos Menem (Mujica, 2009). The Day of the Unborn Child was institutionalised and celebrated on March 25, because that day is remembered as the conception of the Immaculate Heart. In Peru and in other countries, conservative groups have expressed their rejection of abortion, sexual and reproductive health policies through statements

in favour of the unborn child. Likewise, conservative Catholic groups have organised talks and protests. During the Day of the Unborn Child conservative Catholic groups make a public defence of Catholic precepts related to the life of the conceived. This is a day on which these groups publicly state their rejection of the policies and proposals that promote abortion in its many forms, as well as the use of the emergency contraceptive pill. This day is also used to highlight a perceived clash between “good” and the “absolute” truth, and a so-called “culture of death.” Therefore, the protests in favour of the unborn child have, for conservative Catholic groups, historical meanings that symbolise global and local efforts to restrict the decision-making power of the people. In Peru, as was stated in the second section, the Day of the Unborn Child was institutionalised in March 2002 by the Peruvian National Congress (Chavez, 2004). This was possibly due to the proposal of the former Minister of Health and congressman, Dr. Solari (Chavez, 2004). Hence, this campaign for celebrating the Day of the Unborn Child in Peru supports initiatives against the use of contraception, the practice of abortion and, in recent years, has focused on supporting campaigns against the use of the emergency contraceptive pill.

CEPROFARENA developed an important role in supporting the “Day of the Unborn Child.” One of the most important programmes of this institution is the “Spiritual Adoption of an Unborn Child Programme.” This programme aims to build awareness of the conceived as a child and thus give him/her civil rights. The idea is to create a symbolic link between the conceived (an embryo) and a social actor (girls, boys, schools, teenagers, mothers, students, etc.) who is responsible for symbolically protecting gestation (ACIPRENSA, n.d.). While this programme might seem harmless, it reflects a powerful mode of bodily control and regulation of life. It is a form of biopower that uses an imaginary construction of the life of a subject to demarcate the possibilities of development of another (Mujica, 2007). Consequently, this constant surveillance by symbolic adoptees prevents abortion and regulates the process of pregnancy. Also, this programme guides and constrains the actions of the pregnant woman: an imaginary subject is created and he/she is constituted as having a real life and related rights.

Along the same lines of the argument related to the emergency contraceptive pill, the “Spiritual Adoption of an Unborn Child Programme” uses a particular definition of the origin of life. If the argument against the use of the “morning-after pill” made by conservative Catholic groups, like CEPROFARENA, is a strategy that seeks to ban abortion and defines the moment at which human life begins (using legal and medical arguments), the “Spiritual Adoption of an Unborn Child Programme” is a tool that addresses the same goals but at the local micro level. This programme has clear objectives: fight abortion in order to reproduce Catholic values:

In the entire world over fifty million babies are aborted per year. One of four pregnancies ends in abortion. In order to face this genocide the Archbishop Fulton J. Sheen (USA) promoted the programme: spiritual adoption of an unborn child in danger of abortion ... CEPROFARENA, whose mission is to promote the individual and the family following Christian values and the defence of life, and promotes applying this programme that has undoubted positive results in the spiritual and moral field. (ACIPRENSA, n.d., paras. 1, 2; translated by the author)

This programme gives also emotional meaning to its objectives, through the use of religious and personal symbolic contact with each of the participants. The religious content is central in this scenario because it shows the connection that individuals develop with the meaning of life and the imaginary figure of the conceived. Both figures are divine symbols for the Catholic Church:

The participants in the programme ‘Spiritual Adoption of an Unborn Child’ commit to praying daily for nine months for a baby who would have a name. This brief prayer says: ‘Jesus, Mary and Joseph I love you very much, for this reason I urge you to save the life of the unborn baby that I have adopted as he/she is in danger of abortion.’ During this earthly life, the adopted baby is known only by God, but in the future and for eternity both the person who adopted the child and the baby will find happiness in each other’s company. (ACIPRENSA, n.d., paras. 3-5; translated by the author)

In this symbolic game it is very important that the imaginary children are named and are endowed with personality. These imaginary children are constituted as subjects in the social context and, therefore, they are also ascribed symbolic rights. This is very interesting, because just as there are religious campaigns that seek to depersonalise and/or dehumanise subjects and exclude them (as in the case of gays, lesbians, women who have had abortions, etc.), there is also a symbolic personalisation system that generates strategies for regulating and controlling

women's bodies. Constructing a symbolic personality for an imaginary child gives to this imaginary subject rights per se, but also detracts from the rights of the mother of this subject. This programme is constructed as a third entity that monitors the pregnancy and woman's body.

As part of the programme, CEPROFARENA distributes pamphlets which explain the development of the embryo and foetus during pregnancy, and which according to CEPROFARENA "try to restore in the minds and hearts of people the humanity of the child in the womb of his/her mother" (ACIPRENSA, n.d., para. 12; translated by the author). The programme also involves the delivery of:

A picture of the Virgin of Guadalupe, Patroness of the unborn child; prayers for the baby; a certificate of spiritual adoption which records the name that you give to your baby and its date of birth; and a pull-out card of the spiritual adoption programme with the participant's commitment and personal data. In a prime location, a panel should be placed in which you will display sheets about the development of the embryo and foetus during the pregnancy. (ACIPRENSA, n.d., paras. 15-18; translated by the author)

The programme should finish with the symbolic birth of the child, for whom it is planned to organise "a baby shower" to which participants bring diapers, socks, gowns, and the like, and donate all these items to a shelter or to institutions that host pregnant women (ACIPRENSA, n.d.). CEPROFARENA also suggests to groups or schools that participate in the programme that during the period of waiting and praying they should organise drawing or writing contests about the value of life or make crafts such as gowns, socks, mittens, and blankets (ACIPRENSA, n.d.). At the end of the programme, adoption certificates will be given to the participants.

Thus, the programme displays a biopower dispersed to the lowest micro level of individual relationships, with family, friends, and neighbours all being agents of surveillance and regulation in service of the recognition of the conceived as a human being with rights. Through this programme human life is invented, built and shaped as the core of political activity. This programme redefines a human life and creates relationships between the participants and the image of what should be life itself. The actors are responsible for the protection and care of these lives and create new areas of protection and shelter. Both strategies, the denouncing of the emergency contraceptive pill, and the "Spiritual Adoption of an

Unborn Child Programme,” seek to reconstruct human life and generate a field of control over and surveillance of the social and political body.

The “morning-after pill” is, from this point of view, an abortive pill and therefore a threat to human life. The central problem lies, once again, in the fact that in this same assessment about the beginning of life and the protection of the embryo or fertilised egg, the ability of women to autonomously determine what they will and will not do with their own bodies is undermined. That is, women as social subjects are constrained by the rights of embryos that are redefined as subjects with rights. However, as an embryo is not capable of making decisions by himself/ herself, he/she is subjected to an external mandate (in this case conservative Catholic groups) that manages a discourse that generates control over him/her and over the woman who hosts the embryo.

Overall, in this thesis I have tried to demonstrate how discourses play an important role in the operation of biopower and biopolitics in the implementation of reproductive health policy in Peru. Specifically, I have tried to show this in the case of the coercive sterilization of indigenous women, and the lack of provision of access for Peruvian women to abortion facilities and emergency contraception. Institutions such as the Catholic Church, and especially its conservative wing, try to gain influence in the implementation of Peruvian reproductive health policy through controlling the discourse around reproductive health policies. The Catholic Church has also rebuilt its own discourse, using elements of scientific and legal discourses, for example, to foster one of the major Catholic goals, which is to shape through its discourse citizens that aid the spread of conservative Catholic discourse in the community. As Foucault (1971) points out, “ discourse is not simply that which translates struggles or systems of domination, but is the thing for which and by which there is struggle, discourse is the power which is to be seized” (p. 53).

CONCLUSION

In this thesis I have examined the operation of biopower and biopolitics in the implementation of reproductive health policies in Peru, especially those related to coercive sterilisation of indigenous women, abortion, and the ban on the free distribution of the emergency contraceptive pill in the public health system. I have also argued that the discourse of conservative Catholic groups has been taken into account in the implementation processes of Peru's reproductive health policies.

This thesis has paid attention to Foucault's analysis of the disciplining of the social and human body by the State. This discipline is practiced by the State in order to fulfil its interests through the operation of biopower and biopolitics. I have argued that women's bodies are battlegrounds, an arena of dispute or tension in modern societies. However, these tensions do not refer only to the discourses of biology that establish women's bodily capacities and the function of their organs, but also refer to the way that women's bodies are part of a complex web of significances that embodies in them certain political, economic, religious and scientific meanings. Thus, women's bodies are not simply biological organisms, but are also bodies charged with contested social meanings. Therefore, women's bodies are penetrated by social structures and vice versa; women's bodies challenge social structures when women have decision-making power over their reproductive capacity, for example. Women's anatomical bodies are the target of social, political and legal practices that locate them in a specific place in the social structure.

To conduct my research I used methods of feminist analysis, specifically FCDA, because it allowed me to deconstruct the discourses that were articulated in the interviews that I conducted and in the wealth of materials that I reviewed. Through FCDA, I paid special attention to the construction of gendered identities and gendered power relationships in the implementation of reproductive health policies in Peru, especially in the cases of the coercive sterilisation of indigenous women, the denial of access to abortion, and the ban on free distribution of the emergency contraceptive pill. Taking into account this methodological framework, I pointed out that the social fragmentation of Peruvian society continues to the present day. This fragmentation works through an invisible

system of discrimination and baseless differentiation, which is exerted in some cases through the implementation of reproductive health policies.

As my analysis reveals, the Catholic Church has had an important role in the constitution of the Peruvian State since the arrival of the Spanish conquerors, because of its close relationship with public authorities and the Peruvian elite. However, it is in the last twenty years that the Catholic Church, especially its conservative wing, has begun to play an active role in the political realm. An example of this situation is the Catholic Church's participation in the implementation of reproductive health policies. My exploration of the implementation process of these policies revealed that the Peruvian government has not been capable of maintaining a regular policy related to the improvement of the protection of sexual and reproductive rights. Further, this irregular implementation can be seen within single governments, as well as between successive governments. In other words, successive Peruvian governments have not had a defined reproductive health policy. An example of this is that during Toledo's administration, two conservative Catholic Ministers of Health were appointed, and then replaced by Ministers of Health that promoted sexual and reproductive rights. Thus, two discourses are clearly present in the implementation process of reproductive health policy: a rights-based standpoint, and a conservative Catholic standpoint. However, the latter discourse is increasingly gaining greater importance. The prominent role of this conservative Catholic discourse began when conservative Catholic groups denounced the coercive sterilisation of indigenous women. But it is in the policy on abortion and emergency contraception where conservative Catholic discourse started to play a decisive role in the public reproductive health realm. At this point, the question of whether it is necessary to establish in the political Constitution that Peru is a secular State should be asked. A secular State implies that political institutions are legitimated by popular sovereignty and not by religious precepts (Blancarte, 2000). It is possible that stating in the political Constitution that Peru is a secular State will give the legal grounding to challenge the influence of religious discourses in the implementation of policies that should be guided by technical research. However, having a secular State does not guarantee that religious discourses will not be taken into account in the policy realm if the society is not

secular but rather religious. As 81.32% of the Peruvian population practice the Catholic religion (INEI, 2007), it would be interesting to know how many Catholic Peruvians would support a secular State, and whether they expect that the Catholic Church participates in the implementation process of policies.

My analysis also suggests that Peruvian women are the principal victims of underlying structural problems. Poor and indigenous women especially are not recognised as Peruvian citizens, but as the mothers of citizens or future citizens. This situation has its roots in the understanding of the meaning of being a woman in Peruvian society. While it is very problematic to state that there is one kind of Peruvian women (due to multiculturalism and the socio-economic gaps that exist in Peru), it is possible to argue that gendered essentialism guides the understanding of being a woman in Peru. As I illustrated, Andean societies believe that women cannot engage in physical work that allows them to ascend in the social structure; therefore, they are considered to be indigenous, a word that is carries associations of being “people with less valour,” even in indigenous communities. This association of meanings has its roots in the myth of the “vanquished race” that was introduced during the Spanish conquest. Thus, social recognition of Andean women is only possible through their reproductive capacity. Likewise, Peruvian society encourages women to follow the Marian ideal. This ideal relies on Catholic precepts that, among other things, link being a woman with women’s reproductive capacity and ascribe to this capacity a divine meaning. This essentialised relationship between women and reproduction has as its consequence, for example, that during the period of political violence, indigenous women were killed because members of the armed forces believed that these women would give birth to future terrorists. Likewise, the programme of sterilisation that was implemented during Fujimori’s government was focused on indigenous women, who were sterilised coercively in order to control the growth of the indigenous population. Taking into account this context, it is possible to argue that a eugenic discourse informed the operation of biopower and the exertion of biopolitical control over indigenous women’s bodies. This instance of state biopolitics was actively denounced by conservative Catholic groups, among other civil organisations, which used a pro-life discourse privileging the potential embryo. The actions of these groups in this context clearly revealed that their

principal aim was stopping the international funding of USAID for implementing reproductive health policies. Thus, the damage that was inflicted by the State on the bodies and lives of indigenous women was ignored by conservative Catholic groups. This *modus operandi* was strengthened with the political influence that conservative Catholic groups began to have on issues related to abortion and emergency contraception.

Taking into account this context, I deconstructed competing discourses related to the beginning of life, which helped me understand the important roles played by these discourses in the operation of biopolitics related to abortion and emergency contraception. As I argued, there is no agreement about the beginning of human life (fertilisation or implantation of the fertilised egg), but what is clear is the scientific knowledge about the biological development of human life. In the Peruvian legal system the law gives rights to the conceived if he/she is born alive; however, again it is not clear when exactly the conceived comes into existence. Some legal scholars note that conception begins with fertilisation, while others state that conception begins with the implantation of the fertilised egg. The lack of clarity on this issue is taken into account by conservative Catholic groups who draw on a pseudo-scientific discourse to build their understanding about the beginning of life. This understanding, which refers to human life starting with fertilisation, is used to defend the conservative Catholic position against the practice of abortion. Nevertheless, the rejection of the practice of abortion in any circumstances by the conservative wing of the Catholic Church has changed over time. The Fathers of the Catholic Church did not condemn abortion during the first stages of pregnancy, because the soul (which conveys the status of “human being”) was only seen to exist in a developed human body. Consequently, abortion practiced during the first stages of pregnancy was only considered a sin because it concealed adultery, and not because through this practice a human being was killed. In the nineteenth century, this discourse of the Catholic Church changed and abortion began to be condemned as a sin at any stage of the pregnancy. Later, this discourse was strengthened by the official documents of the Catholic Church. It is important to highlight how the Catholic discourse has not been the same throughout time. Its meaning relies on power relationships and changes according to the particular interests and needs of the institution, which is

lead by the conservative wing of the Catholic Church. Discourse does not only create struggles or systems of domination, but also creates struggles (Foucault, 1971). Discourse is the power to be seized (Foucault, 1971), and in the Peruvian experience power is exerted through the discourse of the conservative Catholic Church that leads the implementation process of reproductive health policies.

In the case of abortion, even though therapeutic abortion has not been illegal under Peruvian law since 1924, it is not possible for women to request this practice through the public health system because the government has not published national guidelines for practicing therapeutic abortion. After talking with Peruvian experts on gender issues, I formed the view that the influence of conservative Catholic groups within the political and legal realms plays an important role in the continued delay in publishing these guidelines. Hence, due to the influence of conservative Catholic discourse, the right to life is understood by policy-makers as the most principled right that should be taken into account in cases of conflict with other rights; likewise, the protection and promotion of the right to life is seen to begin from the moment of the fertilisation of the egg. This understanding of the right to life is based on the particular relationship that policy-makers assert between biological life, or the life of the human being, and the life of a “person” or a subject of law. Nowadays, both kinds of life are unfailingly united, without separation. This issue generates complex situations because policies must safeguard the life of a “person” and the integrity of his/her biological body and at the same time the dignity of the individual, his/her rights, and his/her decision-making power. Human life becomes political, and biopolitics rules the human body through the tools provided by a democratic system. Thus, the discourse that conservative Catholic groups articulate is so powerful that it dissuades the Peruvian State from fulfilling its international commitments related to making reproductive health accessible for every Peruvian woman.

As I have argued, a similar situation happens with the restriction of free access to the emergency contraceptive pill in the public health system. The Catholic Church states that the use of contraception is not allowed because it threatens the sacred institution of marriage, through which God creates life and, most importantly, future Catholics. In the specific case of emergency contraception, the Catholic

discourse related to contraception was taken into account during the implementation process of policy on the emergency contraceptive pill. Conservative Catholic groups played an important role during the implementation process because of their close relationships with official policy-makers and also with some of the judges of the Constitutional Court, whose judgement banned the free distribution of the emergency contraceptive pill in the public health system. Likewise, conservative Catholic groups enact a kind of biopower at the micro level within Peruvian society through their initiation of programmes such as the “Spiritual Adoption of an Unborn Child Programme.” In this programme, the protection of the potential life of an embryo is fostered through its adoption by families or students, for example, until the imaginary subject is born after nine months. In this way the idea that the emergency contraceptive pill threatens a potential human life is emphasised, and a localised system of surveillance of individual women’s bodies and also of the participants in this programme is developed.

Thus, in the cases of abortion and emergency contraception, what conservative Catholic groups develop is a particular way of implementing biopower through controlling the discourse. Instead of exerting direct control over the body and the human life of a person through contraceptive techniques, for example, these groups build “natural” mechanisms of control, such as prohibiting contraception and unregulated sexual intercourse, and encouraging abstinence. The first form of biopolitics builds mechanisms for controlling the bodies and lives of people through, for example, family planning programmes that seek to reduce the growth of the population in order to provide better social public systems to the population. The second form of biopolitics, influenced by conservative Catholic discourses, involves control over the lives of human subjects through constricting their actions and decision-making power following religious mandates related to biological reproduction. Legal and political instruments are used by conservative Catholic groups to exert these constraints on women’s bodies. Thus, when conservative Catholic groups, through the Peruvian State, have control over the mechanisms of the production of life, Peruvian women are forced to continue an unwanted pregnancy. This situation creates a powerful form of control over women through their bodies and lives. This control over women’s bodies is

demarcated not by the decisions of individuals but by the mandate of a sacred biological life constructed within Catholic discourse.

As this thesis has shown, these kinds of measures are especially detrimental for poor women, who are the principal users of the public health system. These women have lost control over situations that affect them directly, especially regarding decisions about their own sexual and reproductive health, and when they cannot make choices to use contraception or practice legal abortion they face unwanted pregnancies that can end in unsafe and illegal abortions. This situation is the starting point for gender inequalities and perpetuates the subordination of poor women, not only in relation to men, but also in relation to rich women. Furthermore, this situation reveals essentialist notions about gender identities supported by Catholic dogma and by the Peruvian government.

Thus, the biopower exerted by the Peruvian State over women bodies, in relation to reproductive health issues specifically, operates on the everyday aspects of women's lives. This regulation and control not only involves penalties or dynamics of punishment for practicing an abortion or taking emergency contraception but also uses the tools of law, of science, and religion to exert its ends. The female body is constrained by sociocultural mandates expressed within discourse. Often, these constraints are related to cultural traditions. At other times they are established by legal systems. In the case of Peru, both situations are present. The discourse of conservative Catholic groups related to reproductive rights informs a system of biopower that regulates women's bodies through forms of discipline, and also controls the life that women can generate.

The discourse of life that the conservative wing of the Catholic Church uses constrains women's bodies to their reproductive capacity, leading to the consequence that women are not allowed to exert their decision-making power. It is at this point that the biopower operated by the Peruvian State challenges the understanding of freedom and decision-making power. Thus, women's bodies are reinvented by modern societies, because their bodies are the objects of biopower, the spaces over which policies are discussed, where the State finds its limits and individuals claim their freedoms. But women's bodies are also the bodies through which women exert their decision-making power, and at the same time they are

the bodies that are governed by State policies. The bodies of women are the centre of a tension that, far from being over, re-emerges in this new century.

Women's bodies are the focus of a discursive battle that has just begun. In this process, Peruvian civil society must play an important role by demanding public statistics about the situation of sexual and reproductive rights of Peruvian women; the number of Peruvian women who demand a therapeutic abortion; the number of Peruvian women that demand emergency contraception in the public health system; the number of Peruvian women who live in poverty, and so on. Furthermore, civil society needs to elaborate a strategy to demand the implementation of the guidelines for the practice of therapeutic abortion that is not focused only on legal foundations, but also uses other tools that are provided by other disciplines, such as the social sciences. Taking into account the knowledge of other disciplines will also contribute to the implementation of strategies by civil society in the case of the emergency contraceptive pill. Likewise, it is necessary to implement a strategy to demand justice for those women who were victims of coercive sterilisation, because at the moment they are still waiting for an answer from the State. And again, this strategy should not just focus on legal arguments, because these are not sufficient to achieve social justice.

As my research reveals, there is a strong and close relationship between discourse, biopower and biopolitics. Discourse is both the instrument of biopolitical control and the means of formulating resistance. Discourse is the power that is to be seized, and in modern society this power is related to having control over human life, the human body and what it produces. Biopower is nourished by dominant discourses and these discourses are instruments of biopolitical control and of resistance. In the specific case of Peru's reproductive health policy, discourse, biopower and biopolitics are exerted over women's bodies and lives in ways that undermine their decision-making authority, curtail their freedom, impede their health, and at times threaten their lives.

In Peru, for a long time the protection and promotion of women's rights has focused on legal discourses. But now these are not sufficient to achieve social change and prevent discrimination against women. It is necessary to construct political strategies that are informed by feminist critical discourse analysis of the

documents that the State issues, as well as the documents that NGOs and conservative Catholic groups produce. Additionally, using feminist critical discourse analysis, it may be possible to construct an alternative discourse that, while also taking into account legal arguments, can challenge the disadvantaged situation of Peruvian women in relation to their denial of reproductive rights, and in this way achieve meaningful social change. In this process, respect for the decision-making power of women from society and the State is vital, because through this respect it is possible to challenge the idea that women need to be tutored by the State, by the Church, and by society.

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**APPENDIX 1: INTERVIEW GUIDE FOR ACTIVISTS
FOR WOMEN'S RIGHTS**

UNIVERSITY OF WAIKATO

Faculty of Arts and Social Sciences

Women's and Gender Studies Programme

**Interview Topic: Women's reproductive health policy in Peru: A case study
of access to emergency contraception**

Student: Sheilah Jacay

Supervisor: Dr. Carolyn Michelle

INTERVIEW GUIDE FOR ACTIVISTS FOR WOMEN'S RIGHTS

This guide outlines some of the topics that I would like to discuss during our interview. You do not have to answer every question and you are welcome to bring up other issues not covered on this guide. I am interested to know your thoughts about the reproductive health policy in Peru and the limited access to emergency contraception.

1. How long have you been working on reproductive health issues?
2. Why did you decide to work on an issue related to reproductive health policy?
3. What are you doing to improving the reproductive health policy? What kinds of challenges do you face in trying to achieve this improvement?
4. From your point of view, what is the situation of women's reproductive health in Peru?
5. What are the challenges that the new government faces in relation to reproductive health issues?
6. From your experience, what do you think is the meaning of being a woman in Peru?

7. What do you think are the social or cultural factors that contribute to the definition of being a Peruvian woman? Why? / How?
8. How has this understanding of being a Peruvian woman influenced the implementation of reproductive health policy? Why?
9. What do you think about the way in which reproductive health policy has been implemented?
10. What information do you have about the implementation process of reproductive health policy under the rights-based approach?
11. How do you know if this implementation process takes into account women's standpoint?
12. What other standpoints may be involved in the implementation process of this policy? Why? / How?
13. According to some research, religion has an important influence on the way in which reproductive health issues are treated in Peru's national policy. What is your opinion about religion's influence on policy?
14. Why does religion may influence in reproductive health issues?
15. What do you think are the consequences for women when religion influences reproductive health policies?
16. Do you think that the reproductive health policy has been applied in the same way for all women? Why? Would you give me some examples, please?
17. Nowadays, there is discussion about the limitation of access to emergency contraception in public health care centres. What is your opinion about the limited access to this contraception?
18. What information do you have about how religion groups influenced the enforcement of this measure?
19. According to César Landa, the limitation on access to the morning after pill may be considered as a discriminatory measure that affects especially poor women. What is your opinion about this claim?
20. Taking into account the information stated above, What do you think will happen with the implementation process of reproductive health policy, especially the limitation of the access to emergency contraception, if a future reform of the Peruvian Constitution establishes that Peru is a secular State?

APPENDIX 2: INTERVIEW GUIDE FOR OFFICIALS

UNIVERSITY OF WAIKATO

Faculty of Arts and Social Sciences

Women's and Gender Studies Programme

**Interview Topic: Women's reproductive health policy in Peru: A case study
of access to emergency contraception**

Student: Sheilah Jacay

Supervisor: Dr. Carolyn Michelle

INTERVIEW GUIDE FOR OFFICIALS

This guide outlines some of the topics that I would like to discuss during our interview. You do not have to answer every question and you are welcome to bring up other issues not covered on this guide. I am interested to know your thoughts about the reproductive health policy in Peru and the limited access to emergency contraception.

1. How long have you been working on reproductive health issues?
2. Why did you decide to work on an issue related to reproductive health policy?
3. From your point of view, what is the situation of women's reproductive health in Peru?
4. What do you think about the way in which reproductive health policy was implemented in the past?
5. What are you doing to improve the reproductive health policy?
6. What are the challenges that the new government faces in relation to reproductive health issues?

7. From your experience, what do you think is the meaning of being a woman in Peru?
8. What do you think are the social or cultural factors that contribute to the definition of being a Peruvian woman? Why? / How?
9. How has this understanding of being a Peruvian woman influenced the implementation of reproductive health policy? Why?
10. What information do you have about the implementation process of reproductive health policy under the rights-based approach?
11. How do you know if this implementation process takes into account women's standpoint?
12. What standpoints have been influential in the implementation of reproductive health policy?
13. What other standpoints should be taken into account in the implementation process of this policy? Why? / How?
14. According to some research, religion has an important influence on the way in which reproductive health issues are treated in Peru's national policy. What is your opinion about religion's influence on policy?
15. Do you think that the reproductive health policy has been applied in the same way for all women? Why? Would you give me some examples, please?
16. Nowadays, there is discussion about the limitation of access to emergency contraception in public health care centres. What is your opinion about the limited access to this contraception?
17. What information do you have about how religion groups influenced the enforcement of this measure?
18. According to César Landa, the limitation on access to the morning after pill may be considered as a discriminatory measure that affects especially poor women. What is your opinion about this claim?
19. What should the government do to manage the claims of feminist organizations related to the limitation of the access to the emergency contraceptive?
20. Taking into account the information stated above, how do you think will be developed the implementation process of reproductive health policy, especially related to the limitation of the access to emergency contraception?

APPENDIX 3: INTERVIEW GUIDE FOR RELIGIOUS REPRESENTATIVES

UNIVERSITY OF WAIKATO

Faculty of Arts and Social Sciences

Women's and Gender Studies Programme

Interview Topic: Women's reproductive health policy in Peru: A case study of access to emergency contraception

Student: Sheilah Jacay

Supervisor: Dr. Carolyn Michelle

INTERVIEW GUIDE FOR RELIGIOUS REPRESENTATIVES

This guide outlines some of the topics that I would like to discuss during our interview. You do not have to answer every question and you are welcome to bring up other issues not covered on this guide. I am interested to know your thoughts about the reproductive health policy in Peru and the access to emergency contraception.

1. How long have you been professing the Christian religion?
2. Why did you decide to follow this religion?
3. What do you think are the principal contributions of the Christian religion to Peruvian society?
4. From your point of view, what is the situation of women in Peru?
5. From your Christian perspective, what do you think is the meaning of being a woman in Peru?
6. What do you think are the social or cultural factors that contribute to the definition of being a Peruvian woman? Why? / How?

7. Taking into account this understanding of 'being a Peruvian woman', how do you think policies that have as their principal target women, should be designed or implemented?
8. As you know, the government fosters the implementation of reproductive health policy, especially directed to women. What is your opinion about the current reproductive health policy?
9. What is the discourse that Christian religion has about human reproduction?
10. What is the role of women in the process of human reproduction?
11. What is your opinion about family planning?
12. What are your views on contraception, sterilization and abortion?
13. According to some research, religion has an important influence on the way in which reproductive health issues are treated in Peru's national policy. What is your opinion about religion's influence on policy?
14. Nowadays, there is discussion about the limitation of access on emergency contraception in public health care centres. What is your opinion about the limited access to this form of contraception?
15. What information do you have about how religious groups have influenced the enforcement of this measure?
16. Have you or your institution / organization have ever been involved in this issue? How? / Why?
17. According to César Landa, the limitation on access to the morning after pill may be considered a discriminatory measure that affects negatively especially poor women. What is your opinion about this claim?
18. What should the government do to manage the claims of feminist organizations that considered as an infringement of women's reproductive rights the limitation of the access to the emergency contraceptive?
19. Taking into account the information stated above, how should the process of health policy related to the control of women's fertility be implemented, especially related to the limitation of the access to emergency contraception?