



The So-Called Right to Die and Its Recent Impact on Latin America

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After the pro-abortion agenda has had great victories in Latin America,² there is still a threat to human life that is gaining more ground in our region, which is euthanasia or the so-called right to die. Veiled by a supposed compassion for people suffering from terminal illnesses, the promotion of this alleged right implicates many interests.

Before delving into the advances of this agenda in four Latin American countries, we will discuss some realities, often silenced, or disguised with euphemisms, that underlie the alleged right to die.

Realities Underlying Euthanasia

Euthanasia Is Not a Right

Common sense indicates that a claim about a right expresses an idea of justice linked to a moral good. Law and regulatory bodies protect all kinds of goods, and life is one of them. That is why there are countries that, in addition to logically prohibiting homicide, also have laws prohibiting suicide.

Life is a personal good and being legally protected means people have the right to life. In contrast, even though there are laws that justify death, they will be unjust.³

The right to die or to take one's own life contains an act of unjust self-determination that must be prohibited. Allowing euthanasia would shake the foundations of the rule of law, and a state that legitimizes the legal demand of those who decide to end their own lives, would dehumanize individuals, who are the basis of a state's existence.

The demand for euthanasia hides a social issue, which is pain. Laws should attack the cause of the evil [*i.e.*, pain] that shadows the clamor for euthanasia. By legitimizing, allowing, or

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² Let us remember: in December 2020, Argentina approved one of the laxest abortion laws in the region; the Constitutional Court of Colombia approved elective abortion up to the 24th week of gestation, the Mexico Supreme Court allowed abortion and in three states abortion is already almost free; Chile extended exceptions to the abortion law. See reports of these cases at: www.aul/latin-america.

³ The letter "Samaritanus Bonus" On the care of people in critical and terminal phases of life. Pope Francisco. P.26

converting euthanasia into legally enforceable conduct, states would be opting for the easy way out, but not in the way that protects the person and the value of human dignity.

Dignified Death

The preamble to the American Declaration of the Rights and Duties of Man states that “All men are born free and equal in dignity and rights.” It is indisputable that dignity is an equal attribute of all human beings. However, in applying dignity, certain inaccuracies are often justified to sustain unjust claims.

Currently, society has blurred this clear idea that every person has human dignity due to his mere condition of being human. On the contrary, some associate human dignity with concepts such as the capacity for self-determination and the ability to produce economically, among others.

Thus, an underlying idea is established: There are citizens or people of a lower category who, as soon as they demand their own death (due to a false conception of themselves), do not find any help in the system that makes them realize that their misconception is false. On the contrary, they find facilitators of suicide that end up further exacerbating the anguish of their last days.

In 2020, 7,595 euthanasias were performed in Canada. People were asked for their reasons for requesting it and the answers were as follows: Loss of ability to participate in meaningful activities (84.9%); loss of ability to perform activities of daily living (81.7%); inadequate pain control (or worry) (57.4%). Loss of dignity (53.9%); inadequate control of symptoms other than pain (or worry) (50.6%). The perceived burden on family, friends, or caregivers (35.9%). Loss of control of bodily functions (33.1%); emotional distress/anxiety/fear/existential suffering (5.6%); poverty/loss of quality of life (3.1%). Loss of control/autonomy/independence (1.9%); other (1.0%).⁴

Euthanasia can never be a dignified death because it implies ignoring the actual needs of the people who request it. Giving that response to a patient who does not value his life is a sign of disinterest in human dignity and his own person. Thus, the very value of human beings, the basis of society and of the rule of law, is undermined.

Break Down of Human Relationships

When a person finds himself going through physical and moral pain, and to this is added the feeling of being a burden for the family, he glimpses, through his death, a supposed relief for the family. However, this idea is wrong because, as we saw earlier, it undermines human dignity and the inherent societal duty of solidarity, which is the basis of the rule of law.

When the suffering person is offered the possibility of euthanasia, it ends up breaking and poisoning family ties. For the person who suffers and is suffering the last days of his life, the family should be where he finds accompaniment, comfort for his ailments, and appreciation

⁴ Information pulled from the organization Observatorio de la Dignidad.

of himself and everything he has done in his life. Instead, with the offer of euthanasia, he finds the opposite there. Thus, the person becomes more anguished by verifying his supposed disvalue, and his end becomes even more tortuous. On top of this, if we add legislation that allows and promotes euthanasia, it does nothing more than promote an unfair and ungrateful action towards that person and cooperates with evil.

Human relationships and solidarity promote and sustain society. If the law, instead of enabling this solidarity, facilitates everything to promote absolute individualism, it will generate the appropriate conditions for the law's own elimination.

Economic Aspect

Another reality, which is the least visualized in the promotion of euthanasia laws, is the economic aspect. The expense associated with maintaining a terminally ill patient or with palliative care implies for the public or private system, compared to the costs of euthanasia, is unmatched. Yet, no bill or enacted law explicitly states this fact because would undermine the supposedly humanitarian basis supporting euthanasia's promotion.

In this context, some also maintain that euthanasia laws protect the patient from supposed therapeutic cruelty. But in countries like Argentina, where access to the health system is so unequal and often lacks the most basic supplies, for the health system to say that it uses euthanasia against a supposed and non-existent therapeutic cruelty is illogical because it does not exist. This reality is similar in all Latin American countries.

The Legalization of Euthanasia Increases Suicide Rates

A recent study published by The Anscombe Bioethics Centre⁵ demonstrates with empirical evidence that the legalization of euthanasia or assisted suicide could encourage unassisted suicide.

There are certain proponents of the legalization of euthanasia or assisted suicide who argue that the legalization of euthanasia or assisted suicide could help the terminally ill who die by unassisted suicide. Also, they propose that terminally ill people, having the security of "knowing that they had the option of resorting to euthanasia," could help them live with more peace of mind until their natural death.

However, several studies have found that the legalization of these practices concurs in the following:

- Rates of euthanasia or assisted suicide (EAS) increase significantly.
- Rates of self-initiated deaths increase significantly.
- The increase in self-initiated death is disproportionately high in women.

⁵ Suicide Prevention: Does Legalising Assisted Suicide Make Things Better Or Worse? Professor David Albert Jones. Available at: <https://bioethics.org.uk/media/mhrka5f3/suicide-prevention-does-legalising-assisted-suicide-make-things-better-or-worse-prof-david-albert-jones.pdf>.

- Unassisted suicide rates are also increasing, in some cases significantly.⁶

No study has found a reduction in unassisted suicide. The available evidence points in the same direction. Legalizing euthanasia or assisted suicide does more harm than good and threatens suicide prevention.

Recent Impact on Latin America

Colombia

In July 2021, the Colombian Constitutional Court expanded the requirements to access and practice euthanasia.⁷ With six votes in favor and three against, the right to a dignified death was extended to those who suffer “intense physical or mental suffering” due to an incurable injury or illness. Until then, euthanasia had only been applied to terminally ill patients since 1997.

The argument mentions that this barrier for non-terminal patients violates not only their right to a dignified death but also to physical integrity, dignity, and equality: *“The fact of preventing certain people from accessing the fundamental right to a dignified death, given that they live in extreme circumstances, without real possibilities of relief . . . it could be classified as cruel, inhuman and/or degrading treatment by the Colombian State.”*⁸

The Court decided that a person does not commit the crime of mercy killing when he performs euthanasia on a suffering patient with intense physical or mental pain as long as the procedure is carried out by a doctor and with the free and informed consent of the patient. With the new provision, *“the suffering person can exercise his right to die with dignity without . . . penalties being imposed on the doctor who comes to support the patient to protect him from suffering and preserve his dignity.”*⁹ The judges urged Congress to pass euthanasia legislation to remove the remaining barriers.

Almost a year later, in May 2022, the Constitutional Court upheld the constitutionality of physician-assisted suicide. Although this is very similar to euthanasia, consider its differences. First, the ruling¹⁰ declared the unconstitutionality of article 107 of Law 599 of 2000, known as the Penal Code, but upheld the constitutionality of the second paragraph of that article, declaring it effective.

Article 107 established:

⁶ Ibid.

⁷ Sentence C-233/21. Full text is available at the following link: <https://www.corteconstitucional.gov.co/Relatoria/2021/C-233-21.htm>.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ruling C-164/22. Full text is available at the following link: <https://www.corteconstitucional.gov.co/Relatoria/2022/C-164-22.htm>.

“Whomever effectively induces another to commit suicide, or provides effective help for its realization, will incur a prison sentence from thirty-two (32) to one hundred and eight (108) months.

<Subsection *CONDITIONALLY effective*> *When the inducement or help is aimed at putting an end to intense suffering from bodily injury or serious and incurable illness, a prison sentence of sixteen (16) to thirty-six (36) months will be incurred.”* (emphasis added)

The fact that the Court has declared this last paragraph effective or enforceable means that it eliminates the penalty when assisted suicide occurs under the following conditions:

- (i) it is performed by a physician,
- (ii) with the free, voluntary and informed consent, before or after the diagnosis, of the passive subject of the act [*i.e.*, the patient]
- (iii) the patient suffers from intense physical or mental suffering arising from bodily injury or severe and incurable illness

In addition, the Court asked Congress to conclude the debates to protect a dignified death, eliminating the existing barriers to carryout said procedures.

Another controversial point in Colombia is the euthanasia of minors. By mandate of the Colombian Constitutional Court through ruling T-544 of 2017¹¹, the Ministry of Health became responsible for establishing a protocol for practicing euthanasia on children. Therefore, the Ministry of Health through Resolution 825 of 2018¹², determined the procedure for children and adolescents’ right to a dignified death. This is how Colombia became the third country in the world after Belgium and the Netherlands to allow this practice on children.

The Constitutional Court’s mandate to the Ministry of Health has caused discontent because the right to life is a fundamental right, and the National Congress regulates it through a particular procedure. That is why the voting process has begun in commissions for regulating euthanasia of minors.

In the first week of October, the First Commission of the Chamber of Deputies approved, in its first debate, a bill that aims to regulate the euthanasia procedure of minors. This bill, among other provisions, would oblige private health institutions to provide euthanasia services for children, ignoring institutional conscientious objections.

¹¹ The Court’s holding. “FOURTH POINT: TO ORDER the Ministry of Health and Social Protection within four (4) months, to provide everything necessary for health service providers to have interdisciplinary committees, such as those regulated in Resolution 1216 of 2015, to guarantee the right to a dignified death of children and adolescents...” (emphasis added). The full text of the judgment is available at the following link: <https://www.corteconstitucional.gov.co/relatoria/2017/t-544-17.htm>.

¹² The full text of resolution 825 of 2018 is available at the following link: <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/resolucion-825-de-2018.pdf>.

It remains to be seen how the legal regulation voted by the Colombian Congress on this matter will turn out.

Uruguay

Uruguay is close to becoming the second country in Latin America, after Colombia, to regulate euthanasia. This past October, the Health Commission¹³ presented a bill which was approved with half sanction in the Chamber of Deputies, with 57 votes in favor and 39 against. Now the bill must be discussed in the Senate chamber.

The request for euthanasia would be permitted for people of legal age, who are mentally fit and suffer from *“one or more pathologies or chronic, incurable and irreversible health conditions that seriously impair their quality of life, causing them unbearable suffering,”*¹⁴ says the bill. During discussions, however, it was agreed to add that applicants must be in the “terminal stage” of a disease, with the sole exception for people with quadriplegia. Until now, according to the bill, all health institutions would be obliged to offer the service, but doctors can assert their conscientious objections to refuse, in which case the assistance center must appoint another professional.

Fortunately, Uruguay already has laws that contemplate the suffering of terminal patients. In 2013, the advance directive law was regulated, which allows a patient with an incurable disease to stop receiving treatment that prolongs his life to the detriment of its quality if he so wishes. It should be clarified that this is not euthanasia, but rather the patient chooses to avoid the so-called “therapeutic cruelty,” which involves practices that, to extend his life, cause more suffering than relief. In turn, another current law considers euthanasia to be contrary to medical ethics and punishes any health professional who performs euthanasia with up to 10 years of suspension.

The debates held in Congress have been arduous, and despite the favorable result of the approval of the bill, the arguments presented against the bill have been solid and consistent. Among the most striking conclusions are those of Dr. Ana Guedes, an oncologist and palliative care specialist who, supporting the numbers, stated that:

*“If euthanasia were legalized, these **9,500 lives would risk** being pushed towards it, they would never be able to receive the attention they deserve, and their wish for early death would not be reversed. If the law on euthanasia and medically assisted suicide is approved, we would **also be putting at risk 22,740 people a year** who make suicide attempts, who could benefit from the law for unbearable suffering.”*¹⁵ (emphasis added)

¹³ Full text of the Chamber of Deputies’ approved bill is available at the following link: <https://legislativo.parlamento.gub.uy/temporales/2372662.PDF>.

¹⁴ Ibid. Art. 2 of the bill.

¹⁵ MINORITY REPORT OF THE PUBLIC HEALTH AND WELFARE COMMISSION OF THE HOUSE OF REPRESENTATIVES. Page 15. Full text available at: <http://www.diputados.gub.uy/data/docs/LegActual/Repartid/R0691-A01.pdf>.

These figures show the number of Uruguayan citizens who could easily die if they don't receive support and assistance to reverse a fatal decision. After doing the math, it isn't easy to maintain that such regulations respect human dignity and value all lives equally. For the challenge raised in Uruguay, it remains to be seen if its representatives will uphold the values of solidarity and equality, which are pillars of the rule of law.

Argentina

At the end of 2021, three bills to regulate euthanasia in the country entered Congress in just ten days. However, the difference between them is not substantial, and it is expected that they will come together in a single bill.

The three bills seek to regulate the right of all people to ask for and receive help in dying. It is for serious, disabling, chronic, irreversible illnesses with unbearable physical or mental suffering. They do not include acute depression. The main differences would be the following:

- Senator Alfredo Cornejo's bill regulates the right of every person to request the necessary help to die when suffering from severe and incurable illnesses or a severe, chronic, and disabling condition.
- Estévez's bill proposes two modalities for providing help to die with dignity. The first is a competent medical professional's direct administration of a substance to the patient. The second is from the physician's prescription or supply of a substance to the patient so that he can self-administer it.
- Jimena Latorre's bill is the only one that establishes the minimum age as 16 years old.

In all the bills, it is expected that a patient's consent can be expressed in writing or verbally, and the doctor's conscientious objections will be respected. Still, a doctor must guarantee the process with another professional.

Lastly, in July this year, Argentina enacted Law No. 27678 on Palliative Care¹⁶. In article 10, the Provinces and the City of Buenos Aires are invited to adhere to the law. Until the end of October 2022, there have already been two provinces that have adhered to said law, not to mention that several have provincial laws on palliative care.¹⁷

Peru

¹⁶ Law 27678 on Palliative Care. Full text of the law is available at the following link: <https://www.argentina.gob.ar/normativa/nacional/ley-27678-368373>.

¹⁷ The Center for Bioethics, Person and Family; In a recent article, he makes a timely observation on an aspect that the provinces should consider when adhering to the aforementioned national law. That is, "that, along with adherence, it would be desirable for the local Legislature to provide mandatory coverage of palliative care by the Provincial Social and all similar agents, as well as by the provincial public sector." See full text of the aforementioned commentary: 'Provincial adherence to the national law on palliative care and health coverage' available at: <https://centrodebioetica.org/la-adhesion-provincial-a-la-ley-nacional-de-hospice-care-and-health-coverage/>.

Even though this country prohibits the practice of euthanasia, for the first time, the Supreme Court permitted euthanasia for Ana Estrada, a 43-year-old woman with a degenerative and incurable disease, even though the disease wasn't terminal. This decision only applied to this specific case and did not recognize a euthanasia right for all citizens.

This decision reflects that discussions regarding euthanasia or assisted suicide legalization could be coming. Even though up until now, bills have not been filed in Congress, we expect such a bill would create negative results. It's time to step up and propose a law and regulations, along with public policies, that strengthen palliative care.

Conclusion

The progress the discussion on euthanasia has had in Latin America is undeniable. Colombia has been the spearhead that has paved the way for this practice's laxest and permissive cases, followed by Uruguay, which already has a half-sanctioned bill, and Argentina, which seems to be going down the same path. Finally, Peru is at the dawn of beginning the discussion due to the judicial approval of the first case of euthanasia in the country.

In conclusion, it is worth emphasizing the importance that countries that prohibit euthanasia do not compromise with such permissive laws. As Ecuador has done,¹⁸ it is essential to advance rules and public policies reinforcing palliative care. Not only in a formal way by having a law; but in a real and effective way. It is crucial because although it might be thought that a palliative care law does not exclude euthanasia from being legal, under the argument that the will and decision-making power lies with the patient, this is not the case.

When a country already has a euthanasia law, doctors are pressured by the private and public health systems to end a life that generates, as we explained before, expenses and does not produce anything. Thus, human dignity and equal respect for the right to life of all citizens is ignored, and the fundamental foundations of the rule of law are undermined, irreversibly silencing the weakest.

As stated by Dr. Ana Guedes, in the minority report of the Uruguayan health commission:

"The promoters of euthanasia maintain that they also want to offer palliative care but not impose it as the only option. Instead, they want to provide palliative care and euthanasia without bearing in mind that this second option harms the purpose of ending life in peace and without pain, achieved with palliative care.

[It is not] true that both options are offered. As long as palliative care is not universal, those who do not have it will only be offered death with suffering that, although it could be alleviated, is not offered this option because it would not be 'available.'

They are two paradigms with conflicting purposes, which cannot complement each other: euthanasia attacks the integrity and realization of palliative

¹⁸ Report on Ecuador available at: www.aul.org/latin-america.

*medicine's goals by eliminating the patient. Palliative care is the application of a delicate and progressive construction of a care network guided by consensus and expert recommendations through the hand of professional effort, which is paralyzed when any person in the patient's environment invokes the euthanasia law. The end of palliative care is not compatible with the euthanasia process, nor with its harshness, nor with the loneliness and isolation in which many of the people who choose the path of assisted death die. In addition to not being compatible in substance, they are not compatible in practice either."*¹⁹

We can affirm that the true protection of human dignity and all the rights derived from it, such as the right to life and freedom of self-determination, are only protected with laws that comprehensively protect the person, as well as public policies that ensure the actual interest of the sick, which is to spend the last days accompanied, and without pain.

Euthanasia is the fast and most effortless path. Still, it destroys the human dignity of suffering people and the duty of solidarity, and therefore destroys the essential bases for the existence of the rule of law.

¹⁹ MINORITY REPORT OF THE PUBLIC HEALTH AND WELFARE COMMISSION OF THE HOUSE OF REPRESENTATIVES. Page 13 et seq. Full text available at: <http://www.diputados.gub.uy/data/docs/LegActual/Repartid/R0691-A01.pdf>.