THE RIGHT TO DIE WITH DIGNITY: SOCIO-LEGAL IMPLICATIONS OF THE RIGHT TO A DIGNIFIED LIFE AND DEATH IN THE BRAZILIAN EXPERIENCE

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I. INTRODUCTION

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Humanity is more essential to the people than water and fire. I saw men lose their lives by submitting themselves to water and fire; never saw someone lose life by surrendering to humanity. (Art. 15.36, Confucius)

The subject of death and dying with dignity is treated in this article as a matter of Sanitary Law, for health rules the way we live and die. The approach of dying with dignity means living under the same conditions. Today’s society surrenders with ease to the various fires and waters, but it surrenders little to humanity. Paradoxically a process of universal inclusion like the one we live in nowadays has never happened before. It is not difficult to identify that, in this society, we all have more rights than we can effectively enjoy. In this era of universal fundamental rights, we notice that the possibility of access to the right for life and death does not often occur through the health system, but through the legal system. The realization of the right to have rights is still far from being achieved, although it is crucial to recognize that progress is already being carried on. In this sense we note that the health system cannot provide answers, thus it constantly requests the legal system to decide on issues that it is not always prepared to face; law and health are not always willing to surrender to humanity.

In this article we will present some reflections and concerns on the subject of dying with dignity. We have come across many difficulties due to the lack of permission to choose a dignified death. There is a limited understanding of the possibility of dying with dignity as a right of every individual, or of his family in its inability to decide how and when he wants to
die—considering life as sovereign to all other goods, makes this subject vulnerable to interferences of all orders, from religious aspects to criminalization. Due to the complexity of the subject we initially ponder the possibility to live and die with dignity; at this point we will present data that will help us consider the question: to whom does the body belong? Next we will discuss the relationship between the legal and the health systems, showing that dying with dignity requires contributions from both systems, and we will highlight the need to speak with healthcare teams and not only with the physician as the one in charge. Then while considering the legal system we will highlight the role of the judge, but also acknowledge that all systems of law are involved in this issue. We will cover the social right debate, where we will see the importance of the public prosecutor. In addition to the role of the law we will address the issue of social politics, showing how many draft bills have already been submitted and the difficulty of approval of these projects, to such an extent that Brazil remains in a limbo. Within the text we will focus on the difficulties of defining the terms: dignified death, dying with dignity, right to die. To substantiate our position we met with a group of families that faced the difficulties that arise in letting a family member legally die with dignity.

II. Living Worthily to Die with Dignity: Is it Possible?

A. The Possibility of Living a Life Worthy of a Dignified Death

Whoever I am, sadness is expected from me, but not this state of absence. Seeing me so lonely doesn’t tranquilize them, so away from me. In Africa, the deads do not die ever except those who die bad, those so-called abortions. Yes, the same name that is given to the born dead. After all, death is another birth. (Mia Couto)

It is necessary to characterize the current society to illustrate the size of the inequalities that currently exist, as presented by Niklas Luhmann: the world society [...] hard to deny the entangles in the environment of all the functional systems. It is this society of approximately 7 billion people, where at least 1.2 million suffer from severe malnutrition (FAO), 2.5 million do not have basic sanitation (UN), 18 million die annually due to poverty (WHO), 2 billion have no access to medication (WHO), and 218 million children and young people work under a regime of slavery (ILO).

1 Mia Couto, Um rio chamado tempo, uma casa chamada terra (São Paulo, 2003), p. 30.