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# ETHICAL, RELIGIOUS AND LEGAL ARGUMENTS IN THE CURRENT DEBATE OVER EUTHANASIA IN SPAIN

JUAN CARLOS SIURANA, ISABEL TAMARIT, LIDIA DE TIENDA

**Abstract:** In the last ten years, there have been several cases in Spain (Ramón Sampedro, Leganés, Jorge León that have led to an intense social debate on euthanasia. The recent case of Inmaculada Echevarría, a woman suffering from a serious disease that kept her immobilized in bed, has revived the debate on euthanasia in Spain. On 18 October 2006 she held a press conference and publicly asked to be disconnected from the ventilator that kept her alive. After a long ethical, religious, legal, and social debate, the patient was disconnected on 14 March 2007 after being adequately sedated. As a consequence, the patient died. In our paper we defend the need for a radical and intercultural democracy and present the main ethical, religious and legal arguments on euthanasia that are being posed in Spain and in Europe as a debate that should help to build a radical and intercultural democracy at a European level.

**Keywords:** radical democracy; euthanasia; ethical arguments; religious arguments; legal arguments; Spain; Europe.

## Defending a Radical Democracy

### *The role of volunteer associations in democracy*

Karl-Otto Apel, founder of discourse ethics, states that democracy has its ethical-legislative foundation in the ethics of the ideal community of communication. His defence of dialogue and communication has led to the appearance of the widespread belief among his followers that discourse ethics supports a direct, participatory, non-liberal democracy in the political sphere, which is understood, in sum, as a way of life which is worthy in and of itself. Nevertheless, Apel (1993) and Habermas (1992) believe that this is the identification of spheres, that is to say, communitarianism. According to them, in post-conventional ethics, those who are affected by decisions in the political and economic sphere have only an indirect influence on those decisions.

Habermas' proposal is to promote *free associations* of spontaneous communication which address universally applicable interests and which indirectly influence political decisions, but he does not defend participatory democracy, because he considers it of fundamental importance not to leave the process of deliberative politics in the hands of the citizens, but rather to entrust it to the institutionalisation of the pertinent processes. Habermas leaves space for "participation" only in the election of representatives and the informal opinion processes of free associations. Cortina (1993) understands that individuals must have, therefore, the goodwill to promote this type of association, thereby converting discourse ethics at this point into the ethics of intention. This author feels that the ethics of responsibility should request mechanisms for exercising autonomy.

*Radical democracy: citizens as protagonists*

We agree with Cortina when she defends a model of democracy which she, using an expression also used by Habermas, calls "radical democracy", and which attempts to ensure that social participation by citizens is not reduced to being mere occasional electors. Thus, Cortina understands *radical democracy* to be a democracy that respects the diversity of spheres, fulfilling its commitments in the political sphere, a democracy in which the individuals themselves are the origin and goal of the things that affect them, as "they are valid representatives, and therefore, must be taken into account in the dialogue" (Cortina 1993, 19).

The first task of radical democracy will be to detach itself from dogmas and subject itself to criticism; the second task will be to make use of this criticism within socio-political ideologies which will no longer be pure liberalism nor socialism, but rather a hybridism, for only the best of both ideologies can result in an authentic democracy. In order to attempt to achieve this, we will pay attention to models of democracy drawn both from history as well as from concrete realities. In addressing this, we will discover the need to build ethics for a civil society from the perspective of each sphere of applied ethics.

Man is a being capable of autonomy, of life projects and of a sense of justice. The various social systems must develop these capacities. According to Cortina, *civil society* has a special role here, for "this is where people can and must exercise their autonomy and defend generally applicable interests, and have significant social participation." (Cortina 1993, 144).

In this article, we consider that the demand of euthanasia is one important issue related to the exercise of the autonomy of citizens and insofar related to the development of a radical democracy.

## Towards a Definition of "Euthanasia"

The word "euthanasia" is derived from Greek and means "good death". Currently, the meaning of this concept in the medical field is complex due to the diversity of proposals and the shades of meaning that can be found. Therefore, it is important to make various distinctions concerning the topic (Gafo 1994, 91-135).

We will start by stating the difference between *active euthanasia*, which consists of employing a medical action to accelerate death or to end the life of a terminally ill patient, for example, by administering an elevated dose of morphine to a patient; and *passive euthanasia*, which occurs when an action is omitted that could prolong the life of the patient, for example, disconnecting the respirator that provides life support. By making this distinction, one is stating the difference between "killing" and "allowing to die".

Another important concept is that of *assisted suicide*, which consists of placing at the patient's disposal the means by which they can end their own life. If the assistance is provided by a health worker, it is called *medically assisted suicide.*

Javier Gafo reserves "the word euthanasia as the medical action that has as its first and foremost consequence the suppression of life in a patient close to death and who has thus requested it" (Gafo 1994, 100).

Javier Sábada says that, in order to talk about euthanasia, the following three notes must be applied: "the patient's free will in applying it, irreversible disease and the terrible situation that the subject suffers due to the disease" (Sádaba 2004, 98). Sádaba has reminded us, in this respect, of the difficulty in establishing an ethically relevant distinction between "killing" and "allowing to die". The current debates over euthanasia will reflect in general the shades expressed by these definitions.

## The Ethical-Religious Debate on Euthanasia in Europe

*Two very different orientations: quality of life vs. sacredness of life*

The term "quality of life" expresses concern for the external and internal conditions of human life. Gracia understands that "the concept of 'quality of life' is not incompatible with the sacredness of human life, but rather—quite to the contrary—part and parcel of it" (Gracia 1991, 57).

Other authors, nonetheless, continue to see the concepts of "sacredness of life" and "quality of life" as being opposed to each other, as is the case of Maurizio Mori. According to this author—who has a utilitarianist perspective—while "the traditional ethic is an ethic of the sacredness of life; a move is now being made toward an ethic of the quality of life—that is to say, an ethic that allows for the possibility of changing and transforming the processes of life, with the goal of increasing the quality of life: that is, well-being, autonomy, the freedom of interested individuals" (Mori 1997, 185). According to Mori, in the traditional view, attempts were made to prolong life as much as possible, while nowadays it is understood that life is worth living as long as there is an adequate level of quality. This author understands quality of life to be "the individual's own autonomous choice to continue living and/or a minimal level of well-being, or at least the absence of continual and constant suffering" (Mori 1997, 185).

Elio Sgreccia believes that utilitarian authors are using quality of life ideologically when they put it in opposition to the sacredness of life. For utilitarians, suffering is absurd and immoral, just as it is immoral to keep alive a terminally ill person who is suffering. According to Sgreccia, the sense of the transcendence of human life—a factor which is the basis of the respect for life and its sacredness—is absent from this theory. In utilitarianism, it is not possible to lend meaning to suffering, but this is indeed possible in the personalist view of life defended by Sgreccia. This author considers that it is important not to transgress the ethical principal of respect towards physical life, because "without an ethic of life, there can be no quality of life." (Sgreccia 1996, 32).

For António Vaz Pinto, quality of life consists of being true to oneself, and for that reason "quality of life can in no way be separated from human freedom, from the freedom of choice" (Vaz Pinto 1992, 24).

*Kill or let die: ethics of conviction and ethics of responsibility*

We consider that the arguments on whether there is a difference or not between killing and letting someone die depend, principally, on the ethical point of departure. In particular, we can differentiate between a) arguments based on the *ethics of conviction*, ethics which adopt unshakable principles without taking the consequences into consideration, and b) arguments based on *consequentialist ethics*, which do take into consideration the consequences that result from actions.

*Ethics of conviction: Killing is ethically unacceptable, but allowing someone to die is not*

a) *Unconditional respect for human life.* Killing is worse than allowing to die. Cartwright gives us an example (Cartwright 1996, 354): we cannot kill someone to obtain one of their organs and thereby prevent someone else from dying. Killing implies a negative duty towards a person, while allowing someone to die implies a positive duty. The obligations to do no harm are stronger than those to do what is right.

According to Giovanni Scattone, it is necessary to consider that doctors have certain duties toward patients, among which is that of providing treatment as best they can. According to this author, all things being equal, doctors have an obligation to keep the patient alive before allowing him to die. Scattone fears the consequences of accepting that killing and letting die are the same thing, because he believes that to equate active euthanasia and passive euthanasia would lead to a strain in the doctor-patient relationship. He finishes by saying that "one can, and one must, continue to distinguish between active euthanasia and passive euthanasia, with the latter being easier to justify from the ethical point of view" (Scattone 1995, 97).

Hans-Bernhard Wuermeling tells us that the debate on euthanasia has arrived in Germany from other countries, especially as a result of the impact caused by the thoughts of Peter Singer, a defender of active euthanasia. For Wuermeling, the right to not be killed is absolute, while the right to have the necessary means to stay alive available is relative and is valid as long as resources exist. He feels that it is necessary to make it clear that all human life is equally valuable. According to him, "there cannot be, and there must not be, any discussion on the value, or lack of value, of life" (Wuermeling 1991, 101).

*Consequentialist ethics: Both killing as well as letting die may be ethically acceptable, depending on the circumstances*

a) *Respect for the wishes of the patient.* Pamela R. Ferguson comments on the importance of patients not perceiving doctors as people who can harm them; nevertheless, she understands that, in some circumstances, a person's quality of life is so reduced that they should not be kept alive. This author says that "it may be, in fact, more humane for a doctor to administer a lethal injection that leads to a quick death, than to stop feeding that person" (Ferguson 1997, 371).

b) *Utilitarian arguments.* Matthew Hanser believes that although there are cases in which it would be wrong to kill but permissible to allow someone to die, the truth is that in both cases the agent has control over another person's fate: whether the person lives or dies depends on the agent. This author offers us a utilitarian argument in order to defend the position that, in some cases, it is preferable to kill than to allow a person to die. He puts before us a dilemma in which we must choose between allowing five people to die or killing one person, and he states that "we must choose the course of action that minimises the number of premature deaths" (Hanser 1995, 200).

c) *The loss of naturalness in the process of dying.* According to Patrick D. Hopkins, the distinction between "what is natural" and technology is not relevant in deciding between killing and allowing to die. If a machine is carrying out the function of a human organ, then removing that machine is the same as removing the vital organ that it is substituting. What is relevant for Hopkins is the pain and unnecessary suffering that we are trying to avoid. He considers the distinction between killing and allowing to die—understood, for example, as the distinction between applying a lethal injection or removing life-giving treatment—to be irrelevant. In fact, he considers that "to remove a machine is, in reality, a kind of euthanasia which is more active than passive" (Hopkins 1997, 37).

d) *Circumstances for accepting euthanasia.* Some feel that euthanasia—whether active or passive—is justified if three circumstances are present: a) the patient is suffering greatly, b) he is incurably ill and c) he constantly repeats his request. Other authors do not accept that these circumstances legitimise euthanasia. Bettina Schöne-Seifert, for example, believes that the three circumstances may, in practice, be manipulated and open up a dangerous space

to interpretation regarding whether these circumstances actually exist (Schöne-Seifert 1997, 205-226).

## The Legal Situation of Euthanasia in Europe

*Countries where active euthanasia is legal (BBC News Website, 2008)*

In 2002 the Netherlands was the first country in the world to legalise euthanasia, although it had been widely tolerated since the early 1970s. The rules are strict and cover only patients with an incurable condition who face unbearable suffering. The patient has to be in full possession of mental faculties and each case has to have a second medical opinion before euthanasia is carried out in a medically appropriate way. After the event, it is referred to a regional review committee including a doctor, a legal expert and a medical ethicist.

Belgium legalised euthanasia in 2002, the second EU country to do so after the Netherlands. A Belgian doctor, Professor Pete Hoebeke, revealed that five foreigners "in great suffering" had already come to Belgium to die, taking advantage of EU rules allowing patients to seek care in another member state if it was unavailable at home.

Luxembourg has also legalised euthanasia, after a passionate public debate. It is a predominantly Catholic country and the medical profession was broadly against the legislation.

Assisted suicide is not illegal in Switzerland and can have the involvement of non-physicians. Hundreds of Europeans have travelled to Zurich to end their lives because of Dignitas, an organisation set up in 1998 to help people with terminal illnesses.

*Countries where active euthanasia is not legal (BBC News Website, 2008)*

Under the "end of life" law in France, doctors are advised to avoid taking extreme measures to keep dying patients alive. Active euthanasia, even at a patient's request, remains illegal.

Euthanasia is also illegal in Italy but the law upholds a patient's right to refuse care. The Italian senate has begun discussing proposals to allow "Living Wills", documents detailing what treatment a person wants if they become unable to decide for themselves. But the Roman Catholic Church is completely opposed to the step.

Passive euthanasia is now possible in Sweden because of new medical guidelines which allow doctors to halt life-extending treatment if a patient asks. But Swedish doctors are not generally in favour of euthanasia. A recent survey suggested that 84% of them would never consider helping a patient die, even if the patient asked for it and it was legal.

Euthanasia has long been a taboo subject in Germany because of the Nazi programme of so-called euthanasia, which targeted thousands of men, women and children considered handicapped or mentally ill. The law on assisted suicide is not clear. While no longer illegal, it cannot involve a doctor because that would violate the code of professional medical conduct and might contravene a doctor's legal duty to save life.

In 2007, the House of Lords in the United Kingdom rejected a proposal to give doctors the right to prescribe drugs that terminally ill patients in severe pain could use to end their own lives.

Poland is a predominantly Catholic country and has strongly condemned euthanasia. In 2007, Poland's then conservative government argued that plans for a Europe-wide day of protest against the death penalty should be met with parallel condemnation of abortion and euthanasia.

## Various Cases Related to Euthanasia in Spain

*The cases of Ramón Sampedro and Leganés*

Over the last few years cases have occurred in Spain that have created an intense social debate over euthanasia (Simón Lorda 2007, 1-18). The controversy clearly started with the case of Ramón Sampedro, a man who, in 1968, was left tetraplegic at the age of 25. In 1995 Sampedro initiated a court battle to be allowed to voluntarily die. His requests were always refused. In 1998 he committed suicide by ingesting cyanide with the help of an anonymous individual. The case was stayed due to the inability to find the person responsible. The death of Sampedro was videotaped and the tape was delivered to television outlets causing great impact. In 2004, the case had wide international repercussions with Alejandro Amenábar's film "The Sea Inside" which received an Oscar for the best foreign film.

The debate heightened in Spain at the start of 2005 with an anonymous report that accused emergency doctors of the Hospital Severo Ochoa de Leganés (Madrid) of improperly administering sedatives to terminal patients and practicing "euthanasias". In June of 2007, the accused were acquitted by the courts.

*The case of Inmaculada Echevarría*

The latest case that has captured attention and provoked the euthanasia debate in Spain is that of Inmaculada Echevarría.

In 1995, when Inmaculada Echevarría was 40 years old, she was diagnosed with progressive muscular dystrophy. Two years later, she developed spinal atrophy, which produced flaccid tetraparesis and total dependence on mechanical ventilation.

Between 1997 and 2006 Echevarría lived in Hospital San Rafael. Her illness kept her permanently bed-ridden. The only movement she had was in her fingers. She could not feed herself and had a reduced vocal capacity. On the 18th of October 2006, she requested permission from the Director of Hospital San Rafael to give a press conference and publicly solicit disconnection of the respirator. As a result, an intense debate was opened up in the media.

The Advisory Council of Andalucía, responsible for clarifying the judicial implications of the case, released a favorable report on 28th February 2007.

Hospital San Rafael, where Echevarría was being treated, is Catholic. Faced with the imminent disconnection of Echevarría, the hierarchy of the Catholic Church increased their pressure.

At the last moment, the patient was transferred to Hospital de San Juan de Dios, a public hospital next door, with the intent of not performing the disconnection on the physical grounds of the Catholic hospital. Nevertheless, the patient was attended there by Hospital San Rafael's medical team who remained with her until the last moment.

On the 14th of March 2007, the disconnection of Echevarría was performed after she was adequately sedated. Echevarría's disconnection has not produced court cases against those who participated in the process.

## Ethical Arguments Concerning Euthanasia

*Arguments in favor or against*

The majority of the arguments *in favor of euthanasia* are logical and reasonable; for example, they affirm that there is no difference between killing and allowing to die, but there are also emotional arguments such as, for example, that we have an obligation to relieve suffering.

On the other hand, the arguments *against euthanasia* can also be logical - for example, the slippery slope argument—and emotional; for example, the sanctity of human life.

In Spain, one of the most complete books in which the main questions that surround this debate about euthanasia are collected was edited by Salvador Urraca (Urraca 1996). This book includes the participation of authors such as Diego Gracia, Marcos Gómez Sancho, Azucena Couceiro, Miguel Sánchez González, Pablo Simón, Manuel de los Reyes, and Carlos María Romeo Casabona, among others.

As a synopsis of the principal arguments wielded by these authors, as understood by its editor, we can highlight the following (Urraca 1996, 31-37):

a) *Arguments in favor: Liberty and quality of life*. Those who are party to the decriminalization of euthanasia support their position with the following arguments:

1. The right to a person's liberty and that their personal decisions be respected is inalienable and increases in limited-life situations.
2. The patient's quality of life must come before the quantity of life. Living in deplorable conditions is more horrifying than dying.
3. Guarantees must be made that people will not suffer horribly and that agony will not be prolonged.
4. Pointless medical interventions must be rationally controlled since an exaggerated prolongation of the process of death can provoke unbearable emotional consequences.
5. The terminal patient must express repeatedly and unshakably their desire to put an end to their suffering.
6. The situation creates a psychological, economic and social burden for the patient and those around them.
7. Allow for the protection of the doctors and the family before the law.
8. Passive euthanasia (allowing to die) is, in many cases, more inhumane, unjust and hypocritical than active voluntary euthanasia.
9. Doctors must not coerce the patient into altering the model of death that the patient yearns for, to resemble the one that they propose.

b) *Arguments against: Inviolability and sanctity of life.* Those that are opposed to the decriminalization of active voluntary euthanasia believe that it is a profound violation of the intent of the medical profession. As defense for this point of view, they offer the following arguments:

1. Doctors must not kill, even if voluntarily and freely requested by the patients. It would go against the principal of non-malfeasance, that is, do no harm to the patient.
2. Biotechnology and medical advances can prolong life in a bearable fashion for many terminal patients.
3. The high psychological, economic and social cost that terminally or irreversibly ill patients incur is not a sufficient reason for ending their lives.
4. The argument of unbearable suffering could lead to the indiscriminate use of active euthanasia.

5. Passive euthanasia is morally acceptable but active is not.
6. The Constitution and the Laws guarantee the right to life but not the right to death. Criminal and procedural laws can never offer guarantees to actions that aid in killing.
7. Patients would lose the faith and respect that medical workers deserve.
8. If euthanasia is decriminalized we could find ourselves on a slippery slope that facilitates improper decisions.
9. In extreme cases of great suffering on the part of near-death terminal patients, the doctor should concentrate on pain relief and the care of the dying patient and their family.

c) *Arguments in favor in exceptional cases.* Some authors only accept active euthanasia in extreme cases in which the terminal patient endures tremendous and unbearable pain and suffering and the medical team cannot control nor alleviate them in a conventional way. Their arguments are the following:

1. In the medical profession there has been the propensity to prolong the life of patients without hope in an artificial and disproportionate fashion.
2. There are terminal states in which prolonging the irreversible situation produces intense and tremendous pain despite the application of the most sophisticated treatments.
3. Preservation and biological survival is not an absolute value for many human beings; rather it is the person's well-being.
4. For extremely serious cases, the wishes and will of the patients must be considered to avoid pointless and undesirable suffering.
5. The attitude of the doctors should not be focused solely on their unconditional ethical duty (deontological ethic), but also on the ethics of the ends (teleological) and of the consequences (consequentialist), whose primary function is the pursuit of happiness and the person's well being.
6. The passing of laws decriminalizing euthanasia will provide doctors and patients with the tools needed to relate to each other in a more humane and dignified manner in such tragic and devastating situations.
7. It is paradoxical to accept passive euthanasia but not active euthanasia, which could provide a more dignified liberation.
8. When a patient freely and repeatedly requests that they be helped to die, the doctors must study the reasons and motive of the said request very carefully.
9. According to the CIS Survey of 1992, 63% of those surveyed (from a sample of 2492 Spaniards) were in favor of the fact that the laws should allow doctors to put an end to terminally ill patients' lives when asked to by the same.

*Starting from common ground*

In Spain, Adela Cortina has defended the need to start from common ground on these issues. This author reminds us that life is not an absolute value. An absolute value is that which, when it enters into conflict with others in a concrete situation, always has to be defined in terms of priority with respect to the others, whatever the circumstances or predicted consequences may be.

Christian ethics themselves have placed the value of life below that of others in certain circumstances. One of the examples is the prohibition of relentless treatment, based on respect for the patient's quality and dignity of life and the consideration that the elevated costs caused by the use of "extraordinary means" prejudices others. Cortina considers this a very sensible

position and uses it to support the idea that "biological life is not considered as an absolute value, as a value that should always be placed in front of others, because in the prohibition of relentless treatment other values such as quality of life, dignity and justice will be given preference"(Cortina 1995, 102).

These days, euthanasia is presented as a moral problem with roots in two modern facts: technical progress and the growth in the public consciousness of the *autonomy* of the patient, who has privileged access to their ideal of self-actualization, "by which they have a particular prominence when the time comes to decide what is meant by quality of life" (Cortina 1995, 247).

The problem stems from knowing if the recognition of a person's autonomy can lead, given that life is not only measured by quantity but also by quality, to the right of the patient to ask others, especially a doctor, to take away their life.

When someone asks for help to die, they place a lower value on the quantity of life than on the quality of life. According to this author, the most relevant aspects in dealing with the end of life from an ethical point of view are the following: the palliative treatment, the quality of life and the anticipated wishes (Cortina 2000, 19-31). There is widespread agreement in that we have to enable palliative treatments, improve the patients' quality of life, and make the effort to know and respect their anticipated wishes (Siurana 2005).

## Religious Arguments Concerning Euthanasia

*The religious arguments originate mainly from the Catholic Church*

Even though Spain is a non-denominational country, where in practice there coexists a plurality of religious denominations, none of them, except for the Catholic, have spoken out publicly about this issue. Even if they have, their perspective has not noticeably transferred into the public sphere in a manner that mobilizes part of civil society, in part because they are minority groups, and also due to the fact that they do not add anything new to the discussion.

On the other hand, as Francesc Abel states (Abel 2007, 11), we can find a joining of common anthropological, psychological and spiritual elements of the three main monotheistic religions and their respective theological traditions: Judaism, Christianity, Islam. In their practical application, these elements can be shared with the beliefs and principals of people that are driven by the parameters of a civil ethic.

To understand in what way the Catholic religion approaches subjects related to the end of life, it is fundamental that we consider the value applied to human life. This is understood to be a fundamental property of a person. It is a prerequisite for enjoying the other properties, therefore, it is a value that cannot be subordinated to any other property. The believer considers it to be a gift from God, a blessing that must be respected from beginning to a natural end. To this is also added the belief that God is the only Lord of life and death and therefore a person cannot interfere with it according to their own free will.

*The value of life as something sacred*

Although there have been some constants throughout the history of the Judeo-Christian tradition, it must be noted that the value of human life has not always been understood in the same way. According to the socio-historic context, there have been various nuances. For example, the hostile environment of the first communities of believers caused the development

of an initial attitude towards life that was maintained until the *Pax Constantina* (Gafo 2000, 27). Not only was homicide condemned, as it appeared in the Old Testament (Exodus and Deuteronomy; remember that the sixth commandment preaches *"thou shalt not kill"*), but also the death penalty and some forms of suicide were criticized. Nevertheless, other accelerations of the hour of death, such as the attitude of some martyrs who voluntarily presented themselves before judges knowing that they would lose their lives, were justified and received the approval of the majority, precisely for the reason and the spirit with which they faced certain death. This changed with Constantine's Edict. By then the church had the support and power of the State. The violence and war against the heretics, now the non-Catholics, not only counted on institutional but also on spiritual approval.

The Catholic moral has defended the value of the human life and has always condemned homicide and suicide (Gafo 2000, 30-31).

Life as something sacred and as a gift from God is a constant in the Old Testament. Nevertheless, the topics of suicide and euthanasia do not receive special attention in the Old and New Testaments and are not explicitly valued, neither negatively nor positively.

Not until the teachings of Pius XII (González Morán 2006, 917-918) is there an explicit or decisive treatment of the subjects. It is there, in the context in which National Socialism applied euthanasia in an indiscriminate manner, where direct mention of euthanasia is made in order to reject and condemn it by branding it as homicide. Nevertheless, Pius XII does accept the administration of narcotics even when two distinct effects are produced: pain relief and the abbreviation of life. Therefore it is lawful, as long as a reasonable proportion exists between the effects, and the advantages of one compensates for the drawbacks of the other. Likewise, one would need to evaluate beforehand if some type of medical alternative exists that would obtain the same result but without the negative effect of shortening of life.

In this way, although in different terminology, indirect euthanasia is being accepted, in which by the means of one action two effects are produced: one desirable and direct and the other indirect and undesirable. The second effect is a consequence of the first and even though it is indirect it does not invalidate the first.

On the other hand, relentless treatment or its equivalent is rejected: the use of treatments which exceed the common means that must be used. Therefore euthanasia is not produced because death came as a result of the ceasing of or lack of administration of an extraordinary treatment, and not because the life of that person was directly disposed of. Luís González Morán insists that this type of assumption by Pius XII puts before us a case of passive euthanasia (González Morán 2006, 918).

### *The position of the Catholic Church concerning euthanasia*

In 1980 the Sacred Congregation for the Doctrine of the Faith published a Declaration on Euthanasia ("Iura et Bona") in which the Church puts forth their position on the subject and clears up essentials points. To wit:

a) Condemns euthanasia: Reasons: it commits a crime against the life of an innocent, violating a fundamental right.
b) Legitimacy in the use of painkillers, even though they can indirectly cause the shortening of life. Pain can have a Christian value. The believer can volunteer to accept it.
c) The terminology of ordinary/extraordinary means is brought into question and instead a different and more adequate terminology that distinguishes between proportionate/

disproportionate means is recommended. Means are valued according to the circumstances that occur in each specific case and do not only relate to the medical aspect.

d) Rejection of relentless treatment: in favor of the cessation of the use of disproportionate means, which does not imply suicide. Reclaims the right to die in peace and with human and Christian dignity.
e) Patient autonomy and advocacy of orthothanasia. The consciousness of the patient or of those qualified to speak in their name when they cannot: they are the ones who, in the last moments, can decide on treatments and medical interventions. The rejection of disproportionate means is not the same as suicide. It can be understood as an acceptance of the human condition.
f) Finally, the meaning of the request for euthanasia on the part of the patient is interpreted as an anguished request for assistance and sympathy, and not as a real wish for euthanasia.

## Legal Aspects Concerning Euthanasia

*The reference in the Spanish Constitution*

In the Spanish legal system, the Constitution of 1978 states as Supreme Standard and, in turn, article 15 of the same, titled "right to life", of fundamental importance in our entire System. This circumstance provides the first obstacle at the moment in developing a law that guarantees the "right to die", since it could lead to a so-called law of euthanasia before the Constitutional Court, with the object of declaring it unconstitutional and having it repealed (Rodríguez Mourullo 1982).

The aforementioned article 15 has been interpreted as "a right to life" in a positive sense by the doctrine of the Constitutional Court, which has been against considering it from the negative viewpoint, that is to say, as a "right to dispose of one's own life", that is, as a right to die (STC 1985; STC 1990). Although this is the currently held position of the Constitutional Court, the said article does not preclude the possibility of a regulation on the subject of euthanasia, given that in the same article it states that "everyone has a right to life and to physical and moral integrity without, in any case, being subjected to torture nor inhumane or degrading punishments or treatments". Along with other constitutionally ranked articles such as 1.1 which advocates "liberty as a superior value in the legal system" or 10.1, which establishes that the right to human dignity constitutes one of the foundations for political order, the article could be interpreted so as to develop a law on the matter of euthanasia which would have constitutional protections. In fact, diverse positions on the doctrine interpret the collection of the indicated articles as an open road for understanding that, in fact, there exists a right to dispose of one's own life and a right to die with dignity (Toledano 1999; Carbonell Mateu 1993).

*Article 143.4 of the Penal Code*

Despite these points, or perhaps because of them, as we have stated, in Spain there is no regulation on the subject of euthanasia, except for a ruling recorded in the Penal Code. Article 143.4 of the PC of 1995 represents a complete innovation with respect to the prior code, today repealed, given that it explicitly includes the assumption of cooperation in euthanasia-based suicide, that although it does not decriminalize, it does assume a lessening of the penalty with respect to cooperation with "out-of-the-ordinary" suicide.

In the following we will move on to analyze in a detailed manner art. 143.4, which outlines typical conduct in cooperation with suicide, when it is performed in the context of euthanasia.

The rule which we are interested in states it in this fashion: "He who actively causes or cooperates with the necessary and direct actions that lead directly to the death of another, by express, serious and unequivocal request of the same, in the case in which the victim suffers from a grave illness which leads necessarily to their death, or that produces grave permanent sufferings that are difficult to endure, will be punished with a lesser sentence by one or two degrees than that indicated in numbers 2 and 3 of this article."

As one can see, there are many points to take into consideration, and the problems imbedded in the interpretations to follow create great complexity as well. With the aim of showing these difficulties at the moment this article is applied, we will proceed by clearing up and analyzing each one of the components of typical conduct.

1) *The active execution or cooperation with the necessary and direct actions leading to the unnatural death.* This characteristic possesses a special complexity given that conceptually it possesses many implications which underlie a large variety of assumptions. Firstly, with the aim of describing the complexity that we are faced with, we must distinguish what would be an "omissive" conduct from what is referred to as "passive" euthanasia. These two terms cannot be confused, given that we have noticed that the legislator has deliberately excluded from the proposals acts typified by "omissive" conducts, referring exclusively to "active" actions. However, "passive" euthanasia cannot be considered as a mere omissive conduct but as one that constitutes an actual active behavior (Muñoz-Conde, 1999).

Special relevance is given, in this sense, to behaviors related to the disconnection of artificial, mechanical life support systems since the different positions do not find common ground in agreeing whether we are faced with actual passive euthanasia conduct or simply omissive conduct. The debate was reopened in Spain stemming from the recent case of Inmaculada Echeverría and in light of article 2 of Law 41/2002, of the Autonomy of the Patient and Rights and Responsibilities on the subject of Medical Information and Documentation, by which the patient is granted the right to refuse medical treatments, except under those required by law.

2) *The express, serious, and unequivocal request of the passive subject.* The act by which the passive subject requests death must be an active action of the same, not based on mere consent, but on "an exclusive individual reflection". Additionally, it must be expressed, orally or in writing, but never in any case tacitly or alleged. The request must be "serious" and "unequivocal" and allude to the necessity that there exists an effective will to die, that can be evidently deduced and that it is the fruit of an individual reflexive process, not induced, free of any intimidation and not affected by alternative moods.

3) Illness with death and severe suffering as a result. So that the suicide can be properly considered euthanasia, this requisite is essential. This characteristic also possesses definite complexities, given that the legislator has stated it in broad terms, giving a wide margin of interpretation. In this sense, although the proposals for illness so grave that they necessarily lead to death as a result, by cause of the actual illness, nothing is stated as to whether this illness must be in its final phase or at the start of the same, in which case it would not be completely clear to affirm with total security the resulting death. On the other hand, the legislator has also contemplated the case in which the passive subject, although not burdened with an illness that can cause death, has an illness that creates "severe suffering that is difficult to endure". The legislator does not explain more profusely the tone of this affirmation and

although in the case of essentially physical illness, such as tetraplegia, it seems that there would not be an objection to fitting these in the proposal. It is not clear for cases with grave mental illnesses, given that only with much difficulty can the previously studied pre-requisite of the "serious and unequivocal will" be applied to these cases.

Once the characteristics and difficulties related to the subject of euthanasia that we face in our Spanish legal system have been studied, we will be in a position to elucidate the direction we will have to take to regulate this subject. The decisions in this field do not by any means seem simple, since multiple factors with diverse characteristics are involved, but that does not mean it can remain outside the political agenda, being that it is a subject upon which society demands decisions be made and that it be seriously debated and thought through.

## Conclusions

We think that it is necessary to develop a radical democracy at the European level. This means putting mechanisms into place which allow citizens to participate in all of the areas in which they act or which affect them. The debate on euthanasia has been encouraged within civil society by different associations, but we think that we need radical democracies in the different countries of Europe to solve this problem more correctly.

When debating euthanasia, the greatest problem is the lack of clarity. Many of those who believe they are opposed to it are, in fact, thinking the same thing but using different concepts.

The notions of quality of life and sacredness of life are not incompatible. We believe that an appropriate response to the topic of euthanasia at the European level must put into place solutions that are capable of recognising the importance of each of these notions.

The distinction between killing and letting die has generated a large international debate but, in practice, this distinction is not useful in presenting a solution to the problem of euthanasia. "Letting die" may be more inhumane than "killing", depending on the circumstances. Moreover, many actions which count as "letting die" in reality could be interpreted as "killing".

Some countries in Europe, such as Holland and Belgium, have legislation favourable to euthanasia. Others, such as Switzerland, are permissive; but in others, such as in Sweden and the United Kingdom, the doctors and the laws are categorically opposed. In countries such as Italy—but above all in Poland—the influence of the Roman Catholic Church prevents euthanasia from being regulated, while the tendency is more permissive to euthanasia in a secular country such as France.

European legislation on euthanasia should take this wide range of positions on euthanasia into account in order to integrate these diverse points of view.

Currently, a complex debate is taking place in Spain between proponents of a strictly ethical standpoint, who argue in favour of quality of life and defenders of a religious stance who argue in favour of the sanctity of life.

We also detect a difficult debate between the authors who believe that euthanasia means "killing" and those who believe that it means "letting die".

The Sacred Congregation for the Doctrine of Faith explicitly condemns euthanasia in its declaration "Iura et bona", which refers to what we know as active euthanasia. The argument behind this condemnation is that euthanasia wholly contradicts the Christian principle of God being the only Lord of life, according to which nobody can arbitrarily intervene. However, the Catholic Church rejects futile life support, as do authors writing from a philosophical or

medical perspective, because it is considered to be a prolongation of life by disproportionate means.

From the field of religion and philosophy, there are arguments in favour of palliative care, even when the relief from pain can sometimes limit the patient's consciousness or even shorten his or her life.

Currently, euthanasia is considered a crime in Spain, although the penalty is not as strict as for other methods of cooperation in or instigation of another person's death.

In recent times, different social movements and political groups have emerged in Spain advocating the legalization of euthanasia and its express regulation.

We have shown the points of agreement that are appearing on the ethical, religious and legal spheres, to formulate a common answer to the problem of euthanasia in Spain and for the whole of Europe.

We believe that there are many important points on which there is general agreement in Europe with regards to taking decisions at the end of life, for example, the right of patients to refuse treatment, or the right to be administrated suitable pain relief, even though it may shorten life. It is important to concentrate on those shared points to begin new debates on the subject. And it is also important to discuss euthanasia in the context of a radical democracy.

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Department of Philosophy of Law, Morals and Politics
Faculty of Philosophy and Education Sciences
University of Valencia
Avda. Blasco Ibá ez, 30
E-46010 Valencia
Spain
Tel.: (+34) 963864431
Fax: (+34) 963864831
E-mails: Juan.C.Siurana@uv.es, Isabel.Tamarit@uv.es, Lydia.Tienda@uv.es