

**O DIREITO DE MORRER COMO EXPRESSÃO DA DIGNIDADE HUMANA:
PERSPECTIVAS JURÍDICAS E BIOÉTICAS NO BRASIL**

**THE RIGHT TO DIE AS NA EXPRESSION OF HUMAN DIGNITY: LEGAL AND
BIOETHICAL PERSPECTIVES IN BRAZIL**

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RESUMO

Resumo.

Palavras-chave: Dignidade Humana. Direito de morrer. Cuidados do final da vida. Bioética.

ABSTRACT

Abstract.

Keywords: Human dignity. Right to die. End-of-life care. Bioethics.

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1. Introdução

In Brazilian legal doctrine, the right to life has traditionally been equated with the preservation of mere biological existence. Contemporary bioethical perspectives, however, stress that legal and moral protection should prioritize the quality of life, giving rise to the concept of dying with dignity and questioning the persistence of legal conservatism and medical paternalism.

Although enshrined in the 1988 Constitution, the principle of human dignity in Brazil is scarcely applied to end-of-life situations, as the legal and ethical discourse remains largely religious and moralistic, limiting patient autonomy. This article argues that dignity requires a qualitative understanding of life, affirming the right to control one's body, pain, and manner of dying. Using a qualitative, deductive methodology, it draws on Brazilian doctrine, bioethical scholarship, and international experiences to explore models that reconcile autonomy, compassion, and the inherent value of life.

2. The Principle of Human Dignity in International and Brazilian Legal Framework

The Principle of Human Dignity possesses a universal foundation. It was initially recognized in the Charter of the United Nations (1945) and subsequently reaffirmed in The Universal Declaration of Human Rights (1948), whose preamble emphasizes that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” This principle was further consolidated in the International Covenant on Civil and Political Rights (1966), which affirms human dignity as the central pillar underpinning the protection of human rights.

In Brazil, the 1988 Constitution, also known as “Social Carta”, elevated human dignity to the rank of a foundational principle of the State (Art. 1, III), granting it normative and axiological supremacy. From this constitutional standpoint, the right to life must be read through the lens of dignity — that is, as a guarantee of a life with meaning, autonomy and integrity. FALCÃO² emphasizes that the “Principle of Dignity bridges the gap between ethics and law, converting moral recognition into legal duty”.

In the context of end-of-life decision-making, this principle requires that legal frameworks do not compel individuals to endure disproportionate suffering solely to maintain biological functions. Accordingly, the State's duty to protect life cannot supersede the individual's right to self-determination. Forcing survival against a person's will, particularly in

² FALCÃO, Eliane. **Direitos fundamentais: princípio e fundamento da dignidade da pessoa humana**. Revista de Direito, Salvador, v.13, n. 1, pg. 23-40, 2013.

terminal or irreversible conditions, undermines the very essence of the constitutional order, which prioritizes the human person — rather than abstract life — as its central concern.

3. Ethical and Biolegal Dimensions of Dying with Dignity

Bioethics constitutes a critical theoretical framework for articulating the intersections of medicine, law, and moral philosophy in deliberations concerning the limits of human life. According to BEAUCHAMP and CHILDRESS³, four cardinal principles — (i) autonomy, (ii) beneficence, (iii) non-maleficence, and (iv) justice — underpin the ethical evaluation of biomedical practices and should inform decision-making at the end of life. Among these, autonomy occupies a preeminent position, affirming the patient’s fundamental right to make informed and deliberate choices regarding their treatment, including the rejection of interventions that are disproportionate, futile, or solely aimed at prolonging suffering without meaningful benefit.

In Brazil, the Federal Council of Medicine has made significant contributions to this discussion. Resolution CFM No. 1.995 of 2012 and, more recently, Resolution CFM No. 2.443 of 2025, recognize the patient’s right to issue *advance directives of will*, ensuring that their choices about medical treatment and palliative care are respected even when they are no longer capable of expressing them. These instruments reflect an ethical understanding that the practitioner’s duty is not to preserve biological life at all costs, but to alleviate suffering and respect the patient’s dignity.

Nonetheless, the absence of comprehensive statutory regulation creates a climate of legal uncertainty for both patients and healthcare professionals. In the absence of clear legislative guidelines, clinical decisions often fluctuate between medical paternalism and the apprehension of potential criminal liability, thereby impeding the adoption of humane practices such as orthothanasia — the deliberate non-prolongation of the dying process.

In contrast, several international jurisdictions have advanced more robust legal frameworks. Countries such as the Netherlands⁴, Belgium⁵, and Canada⁶ have enacted legislation governing assisted dying under stringent criteria of voluntariness, terminal prognosis, and professional oversight. These frameworks recognize that, in certain contexts, permitting a dignified death may be ethically preferable to enforcing mere biological survival. As CAMPBELL⁷ contends, “medical assistance in dying does not compromise respect for life;

³ BEAUCHAMP, Tom L.; CHILDRESS, James F. **Principles of Biomedical Ethics**. 8th ed. Oxford: Oxford University Press, 2019.

⁴ According to Termination of Life on Request and Assisted Suicide (Review Procedures) Act.

⁵ According to The 2002 Euthanasia Law of May 28, 2002.

⁶ According to Canada’s Medical Assistance in Dying Law.

⁷ CAMPBELL, Courtney S. **Medical assistance in dying: The moral and legal landscape**. The Yale Journal of Biology and Medicine, v. 92, n. 4, p. 733–740, 2019.

rather, it affirms the individual's moral agency in determining the conditions of their own mortality".

4. Dignity The Brazilian Paradox: Conservatism and Legal Inertia

Despite the constitutional centrality of human dignity, Brazilian society remains deeply influenced by conservative religious traditions that perceive the intentional acceleration of death as morally unacceptable. This cultural background, combined with political reluctance, has resulted in a legislative vacuum that prevents the debate on euthanasia and medical assistance in dying from advancing beyond ethical and academic spheres.

Brazilian Supreme Court Justice Luis Roberto BARROSO⁸ notes that:

"Brazilian legal culture tends to confuse moral with legal arguments, which hinders the development of a truly pluralist and secular framework for individual autonomy. The absence of regulation on euthanasia does not reflect a consensus, but rather an institutional avoidance of a socially uncomfortable subject."

Meanwhile, the judiciary has gradually taken small but significant steps. In Public Civil Action No. 2007.34.00.014809-3⁹, the Federal Public Prosecutor's Office initiated proceedings against the Federal Council of Medicine, contesting the legal validity of Resolution No. 1.805 of 2006. This resolution authorized physicians to limit or suspend medical interventions that merely prolonged the lives of terminally ill patients, contingent upon the patient's expressed wishes and the provision of palliative care. The Prosecutor argued that the Council had exceeded its regulatory mandate by addressing matters intrinsically linked to the constitutional right to life, further suggesting that such conduct could potentially constitute criminal offenses, including homicide or culpable omission.

The case was approved by the 14th Federal Court of the Federal District, under the jurisdiction of Judge Roberto Luis Luchi Demo. The court dismissed the action as unfounded, affirming both the legality and constitutionality of the contested resolution. In his ruling, Judge Demo emphasized that orthothanasia—the withdrawal of disproportionate medical measures that serve only to prolong the dying process—does not constitute a criminal offense when performed with informed patient consent and in accordance with established ethical and technical standards.

The judgment underscored a pivotal interpretative approach to the right to life, asserting that it must be reconciled with the principles of human dignity and patient autonomy. This legal reasoning effectively legitimized the practice of orthothanasia within the Brazilian

⁸ BARROSO, Luís Roberto. **A dignidade da pessoa humana no direito constitucional contemporâneo: natureza jurídica, conteúdos mínimos e critérios de aplicação**. Revista de Direito Administrativo, Rio de Janeiro, n. 240, p. 11–48, 2012.

⁹ BRAZIL. Federal Public Prosecutor's Office Vs. Federal Council of Medicine. Public Civil Action No. 2007.34.00.014809-3. 14th Federal Court. Dec., 1st 2010.

legal healthcare framework, marking a significant development in the intersection of medical ethics, constitutional law, and end-of-life care.

Still, the paradox remains: a constitution that enshrines dignity as a supreme value coexists with practices that prolong pain and deny individuals autonomy at the end of life. This contradiction exposes the need for a more coherent interpretation of the right to life, one that harmonizes legal protection with existential quality.

5. Building a Legal Framework focused on Human Dignity

A human-centered framework for end-of-life regulation necessitates reconciling two foundational premises: (1) life possesses intrinsic value, and (2) such value is meaningful only insofar as it is compatible with the preservation of dignity, autonomy, and protection from degrading suffering. The ethical and legal challenge, therefore, is not a binary choice between life and death, but the delineation of the normative boundaries of care and the permissible scope of medical intervention.

From a constitutional perspective, the right to die with dignity derives from the interaction of the principles of human dignity, autonomy, and freedom. As SARLET¹⁰ observes, fundamental rights have a relational dimension: they protect individuals from state interference while simultaneously obliging the state to create conditions that enable self-determination. Within this framework, the regulation of assisted dying should not be understood as a negation of life, but as an affirmation of the human person as the central subject of rights.

From a public policy standpoint, Brazil could advance gradually by consolidating the legal recognition of advance directives of will, expanding access to palliative care within the Unified Health System (SUS), establishing hospital bioethics committees to assist decision-making in terminal cases, and promoting an informed public debate free from moral stigmas.

Collectively, these measures would align Brazilian law with international best practices, reinforcing the humanist ethos enshrined in the Constitution and ensuring that end-of-life regulation respects both ethical and legal principles.

6. Conclusion

When viewed through the lens of human dignity, the right to life surpasses mere biological survival. It encompasses the right to a life — and a death — that honors the individual's autonomy, moral integrity, and sense of personal worth. Extending life under conditions of irreversible suffering, devoid of meaning, does not safeguard life; it diminishes it.

Although the topic remains contentious in Brazil, particularly within a conservative and religious context, constitutional interpretation must evolve toward a more compassionate and rational understanding of human existence. The principle of human dignity, enshrined in

¹⁰ SARLET, Ingo Wolfgang. **A eficácia dos direitos fundamentais**. Porto Alegre: Livraria do Advogado, 2023.

both the United Nations Charter and the 1988 Constitution, requires that the protection of life be carried out without inflicting greater physical or emotional suffering on the individual.

Incorporating the concept of dying with dignity into Brazilian law does not constitute a denial of life; rather, it affirms its highest value — freedom. Guided by human dignity, the State's role is to ensure that every person can live and die according to their own understanding of meaning and worth.

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