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CHAPTER 15
EUTHANASIA AND MUTICULTURALISM

Law, Morals and Religion Within a Pluralist Society

Europe is living a novel experience. Until recently, the call for consensus was generally made within a homogeneous cultural framework, consolidated over centuries. Nowadays however, a genuine search for consensus would oblige us to depart from a completely new, multicultural perspective.

The progressive political reconciliation of the 'two Europes', previously separated by the Cold War, cannot mask the cultural changes that have taken place. Berlin, a city that is still made up of two societies, is a living example of those changes. However, this is a minor problem, compared with the challenge posed by the recent introduction and subsequent settlement of minorities in Western Europe, which supposes a break with the previous racial, religious and cultural homogeneity. This situation has given rise to innumerable problems, for which no solutions have yet to be found.

We will approach the philosophical and legal dimensions of this question from the point of view of anthropological and religious discrepancies, as they have been manifested in recent polemics. The issue of euthanasia will serve as our point of departure.

SEVEN ARGUMENTS IN FAVOUR OF THE DECRIMINALIZATION OF EUTHANASIA

The arguments most frequently brandished in favour of the decriminalization of euthanasia have philosophical and juridical relevance for the emerging multicultural society of Western Europe. The following are some of the most common arguments:

1. The Law, in its function of regulating the public sphere, does not have to incorporate moral demands, however legitimate these may be within the sphere of private self-determination.
2. This is especially true if these moral demands emanate from religious codes, given the requirement of freedom of conscience in a pluralist and secular society.
3. Therefore, we cannot resort to the law to impose our own convictions on others, for instance, by forcing people to suffer beyond endurance. This would be particularly applicable in cases of passive euthanasia, which only aim at alleviating the patients' pain, though they may indirectly shorten their life as well.
4. Rather than repressing freedom by law, we ought to promote those social conditions that would dissuade us from abusing our freedom.

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5. Each person must be free to develop their personality, and ultimately this could even lead to the recognition of a right to die.

6. Although we generally consider the right to life "irrenouncable", the protection of life guaranteed by Article 15 of the Spanish Constitution in fact only applies to those cases where certain minimum levels of quality of life, dictated by human dignity itself, are reached.

7. In all events, the State must exercise a neutral form of restraint in controversial moral debates, to guarantee a greater freedom for its citizens.

By replying to these arguments, we might arrive at some of the responses that this new multicultural society demands.

1. A Law Without Morals? The Law, in particular criminal law, is forced to incorporate certain moral demands. However, this does not mean it has to include them all. The ethical aspirations of the law are limited to guaranteeing a reasonable framework for coexistence, whereas morals encourage us to more fully give meaning to our personal existence. Therefore, we would have to situate the point at which demands, moral as well as other, ought to be incorporated into the law, within this tension between legal boundaries that liberate us from the pressure of minimal ethical principles, and the maximalist tendencies of personal morals. The principle of minimum criminal intervention, representative of the minimalist tendency of the law and reflected in the particular penalising effect of this part of legislation, calls for the penalization of a limited number of behaviours: mainly those that can affect public goods. Therefore – and on moral grounds as well – they should not be left to the discretion of private persons, nor should they be considered sufficiently well-protected by sanctions that do not include the privation of primary goods, such as freedom or, in some countries, even life. Throughout history, people have tried to clarify this close relationship between law and morals; a relationship that is particularly complex when moral imperatives are culturally linked to some religious framework. A happy solution – of misleading simplicity – would be the unrestricted display of moral convictions in the private sphere, combined with their drastic exclusion from the public sphere. This solution would invite people to worship their own gods at home, while desisting from parading them around the streets. However, there will always be people – as any self-respecting inhabitant of Seville will testify – who cannot conceive a public freedom without religious processions. The extrapolation of the model of a multicultural society is perplexing. Each person would live at home in his or her own culture, while the street would be culturally "neutral." We only have to recall the multilingual ups and downs of many culturally homogeneous European societies, to become profoundly sceptical of this proposal. It becomes evident that we cannot determine whether a question is to be regulated by the public mechanisms of law, or ought to be relegated to the private sphere of moral demands – in other words, that we cannot draw the line between law and morals – without the prior and paradoxical adoption of a radically moral judgement. We can only solve this problem by departing from a specific conception of human beings and their relationship with society. For example, from an individualist perspective it would be easy to decide that nobody should be obliged to live even one second

longer than he or she wishes. However, from a solidarity point of view, nobody is more altruistic than the fire-fighter, risking his or her life to try and stop someone from committing suicide. The privatization of life, which would free it from juridical restraints and leave it to mere individual self-determination, would simply imply a public moral choice, as debatable as any other.

2. Civil Religion for a Secularized Society The most controversial issues of our post-ideological societies are often attributed to the determination of the "religious element", as to make it felt in the public sphere. Dworkin's approach to "life's dominion" is a good example.

The adoption of a multicultural perspective, which allows us to put religious factors theoretically between brackets, reveals the lack of neutrality in secularization and its scant respect for that freedom of conscience that characterizes the European cultural heritage. No attempt to relegate foreign cultures to the ghetto could avoid being condemned as xenophobic. Any attempt at dismantling the religious elements of each culture, and thus erasing all tension from the public sphere, would be equivalent to converting Tyrians and Trojans to a novel kind of civil religion.

Let us go back to the borderline, where moral and legal concerns overlap. When there are reasons to consider a particular good worthy of legal protection, due to its public importance, the religious significance it has for different social groups should not be taken into account. Otherwise, people might opt for a 'religious' adoption of secularism, which would lead to a generalized war of religions, as a paradoxical tribute to freedom of conscience. Such "neutrality" was put forward by Marx who, in his treatment of the "Jewish Question", lamented the fact that religious freedom was being offered to those who ought to be freed from religion instead (1970 vol.1, 369).The moral judgements that euthanasia requires can be more or less conditioned by religious beliefs. Defending penalization, invoking the argument of authority, would be as absurd as forcing legalization, for the sake of freedom of conscience.

Establishing the limits of the law is still peremptory. Anarchist utopia aside, the boundless manifestation of individual conscience tends to make social coexistence impossible. It is precisely to redress this situation that moral codes and legislation exist. Similarly, an extreme conception of multiculturalism would not work either. The old notion of "public order", or the latest one of "the demands of a democratic society", would hardly be compatible with polygamy and definitely incompatible with human sacrifice.

3. The Moral Defusing of Language As we have already pointed out, criminal law always enforces particular convictions. In fact, it would be inconceivable for criminal law to do otherwise. It would be as absurd, from the point of view of its objective, to impose a penal sanction without being convinced that the protected good deserves protection, as to leave compliance with its norms to the discretion of each subject.

Given this situation, the search for neutrality often takes the form of word games. Thus, the phrases *abortion* and *interruption of pregnancy*, or *euthanasia* and *cooperation in a desired suicide* do not sound the same. In this list of euphemisms

we could include the call for "passive *euthanasia*", responsible for causing important ambiguities. When passive euthanasia is confused with the renunciation of indefensible "therapeutic cruelty", it helps us to take for granted the existence of what is redundantly called "*good euthanasia*", which would stop this term from being considered absolutely rejectable. However, the proper use of this term would signify the "provocation of death by withholding necessary aid". An example can be found in the German practice of "*premature euthanasia*", which means that newborn babies with malformations are not fed.

The use of this type of coded language does not favour multiculturalism; on the contrary, it renders communication difficult by creating an artificial sub-cultural space that silences dissenting voices.

4. The Promotional Function of Penal Rules It is not wise to create a dichotomy between *repressing* certain behaviours and *promoting* the social conditions that would reduce the possibilities of such behaviours actually taking place. Criminal law does not only repress, but also has "pedagogical" relevance, as it acts directly to promote or dissuade certain conducts. Citizens tend to consider those actions forbidden by law as "bad", and those permitted by law as "good", or at least acceptable. Although every act of decriminalization seems to constitute a step towards greater freedom, at the same time it tends to constitute a particularly effective way of promoting social conditions favourable to the multiplication of previously reprehensible behaviours.

However many proposals in favour of decriminalizing euthanasia are only trying to find solutions for exceptional cases, worthy of our compassion, they cannot help but give rise to "normalising" consequences. Thus in our collective consciousness, the heroic fire fighter, ready to prevent an imminent suicide, will make way for the health worker willing to help the potential suicide to succeed in his or her endeavour, as our prototype of an altruistic citizen. No matter what the moral basis for such interventions is, their legal impact on the guidelines for social behaviour is obvious.

Therefore, we would have to consider carefully what type of society we are living in. Do we live in a society characterised by solidarity with and acceptance of others, or rather in a society marked by a possessive individualism that pushes us to get rid of our fellow human being, as soon as they become burdens? This way we would be more likely to get it right, when it comes to foreseeing the kinds of behaviours that are bound to increase.

This leads us to a new difference that must be added to the previously mentioned tension between minimalist and maximalist tendencies, when we are considering the internal logic of morals and law.

From the moral perspective, on the one hand, each action takes on a particular relevance, of which we try to make sense. The individual case demands that justice be done, whatever the cost. This is why "*consequentialism*" – which transforms the calculation of practical consequences into a principle of action-, has as little moral prestige as the conviction that the end justifies the means.

On the other hand, from the legal point of view, practical results always have to be analysed responsibly. This does not mean subscribing to pragmatism without principles; – on the contrary, principles usually end up determining the real dynamics of rules. It would mean departing from purely testimonial attitudes, in order to consider the practical consequences of the realization of those principles and their effective social cost. This converts law into a useful instrument to encourage responsibility, rather than an instrument for compassion. Faced with certain "moralising" but understandable longings, we should remember something fundamental: the law cannot solve everything. Its minimalism implies a renunciation of the ambition to answer all human problems or satisfy all needs.

For example, it is not difficult to foresee theoretically – and to have our prediction backed up by practice – that the decriminalization of euthanasia would seriously affect the respectful attitude towards life, professed by health workers. At the same time, the patient's confidence in these health workers would undergo an ambivalent deterioration. The transition from a death that is the result of explicit and repeated personal requests, to a death that is the outcome of an alleged request or one expressed by a third party – or the simple elimination of a life on the grounds that its precarious situation has stripped it of all its value – is a sad reality that must guide us in the strictly legal resolution of this polemic.

Multiculturalism, often rooted in dissenting religious convictions, must come together in this internal logic of legal reality. The same Europe that overcame religious conflicts, thanks to a shared "*ius gentium*", will need to resort to this right once again, in order to bridge intra-national cultural divides.

5. A Renunciation of Life, or the Right to Die? The existence of un-renounceable rights reminds us that the foundations of law go beyond pure individual will.

We are not entitled to everything we want. We do not even have the right to satisfy all our moral aspirations, if they cannot be reconciled with the equally legitimate claims of others. Indeed, in certain circumstances the law – far from being the blind instrument of individual will – even protects individuals from their own shortcomings, giving rise to a controversial "*paternalism*".

The right to education is a perfect example. In Spain, schooling is mandatory up to 16 years of age. This is a right that cannot be renounced, not by the alleged beneficiary in his longing for more enjoyable pastimes, or by his short-sighted compliant parents. Likewise, it would not be acceptable for someone to renounce their own freedom and sell themselves into slavery. The retired professor of Roman law, protagonist of the Spanish film "Stico , who wanted to sell himself as a slave, is a case in point (1984).

Could the right to life be considered un-renounceable as well? Many people would defend this statement, for they believe that life is the most valuable legal good, which conditions the possibilities of exercising any other right. There is also ample scope for "paternalist" arguments, which emphasise that many people who wanted to die, or even tried to commit suicide, were eternally grateful to those who prevented them from doing so.

However, the presence of incurable and irreversible pain represents an exceptional situation. Arguments of solidarity, which are especially effective when questioning individual judgments, lose their strength of conviction in these cases. The argument that we need to live for the sake of others, regardless of our suffering, no longer holds up when we have become burdens and the pain we inflict on others is as oppressive as the physical pain we are feeling, or even more so.

If we take religious arguments into account, the panorama changes radically. If we accept that God is the only Lord of both life and death, that pain falls under his providence as well and may even have beneficial effects, it is easier to argue that nobody has the right to take their own life. Life thus becomes morally "compulsory" and irrenouncable. Would it be the same in the legal sphere?

The situation is paradoxical. If the terminal patient agreed with these religious arguments, they would determine his attitude and thus, the problem would not arise. However, if the patient does not hold these convictions, it does not seem logical, within a pluralist and secularized society, to force him or her to adopt them by law. Non-confessional moral reasons do not provide a foundation that justifies a clear legal response.

However, the acceptance of the existence of a "right to die" is a very different matter. The range of qualifications that can describe our conduct goes beyond the dilemma of "crime or right". There is some criminal behavior that is forbidden and punished by law. However, even if it were no longer classified as criminal, this would not automatically convert it into rights. Even though we are free to do all that is not forbidden, this does not mean that we should flout this mere possibility and hold it up as a right.

Thus, we do not have the right to do everything that is not prohibited. We can simply do it, without necessarily receiving a reply in the form of legislation. Behaviours that are generally seen as permitted or tolerated – as they are not criminalised – only become rights when the person carrying out this behaviour has a legitimate title to it that enables him or her to seek legal protection. That is why the Spanish Constitutional Court claims that for a mere possibility to be converted to a legal demand, it is necessary to analyse the objective of that particular exercise of freedom (STC 137/1990, F.5; STC 11/1991, F.2).

Although it is true – at least in theory – that the decriminalization of certain behaviours, or the recognition that they do not call for criminal sanctions in certain cases, does not convert crimes into rights, experience has shown us that – in practice – this can nevertheless happen. This is another graphic example of the pedagogical and promotional function of rules that we mentioned before.

From a legal point of view, a legitimate title to demand that another human being put an end to our life – or to demand that they eliminate the life of another who is determining ours – would paradoxically entail a degree of "solidarity", which exceeds the minimalism of the law. The decriminalization of euthanasia – as has already happened with abortion – would lead to a demand for legally determined conduct, instead of a mere appeal to moral altruism. This has been illustrated by the experience of doctors in the public health system who were obliged to allege *conscientious objection* if they did not want to participate in abortions that, as they did not constitute a right, did not imply a duty either.

6. A Good Death, Rather Than A Bad Life It is obvious that we will have great difficulty finding moral arguments against euthanasia when it is clearly and repeatedly requested by the patient, unless we subscribe to some transcendental point of view, capable of playing down our capacity for self-determination of our own lives. Arguments of solidarity cannot help us much either. They are problematic in circumstances that are so painful, that regarding our own life as a burden to others could be seen as a manifestation of "solidarity", while the wish to free them from this burden could be deemed "altruistic".

Even if we do not recognise that terminal patients have a right to die, their moral choice to do so may be legitimate. The alleged solidarity of the person who facilitates this death could be considered legitimate as well, although not in the same degree. If we want to express our solidarity with patients, we would do better trying to help them make some sense out of their situation. These moral arguments might be sufficient to back up decriminalization, but only in the absence of strictly legal reasons like the ones described earlier.

These strictly legal arguments are even stronger when pitted against the moral approach that, though rejecting the idea of a right that can be renounced, nevertheless bases its recognition of life as a right on the existence of some minimum levels of quality of life. This introduces a new and particularly disturbing element in the debate.

The subjective free self-determination of the terminal patient now makes way for the evaluation of certain, supposedly objective, conditions by a third party. These conditions alone can then justify the elimination of a life that is no longer seen as a right. We should rule out the possibility that the will to survive might be enough for such conditions to be met. That would be equivalent to admitting that life has the quality that each person subjectively decides to confer upon it. This in turn would imply a defence of the renouncable character of the right to life, a position that we had rejected up until now.

Once again, we have come across legal arguments, as opposed to moral arguments, that make the decriminalization of euthanasia inadvisable. Nevertheless, the social consequences of such a decision should not be ignored either: high treatment costs for terminal patients, the pressure on public hospitals for more beds, the need for organs for possible transplants, and the personal and economic deterioration of the patient's family life....

7. Rights Against the Majority Recently, the ill-considered topic that automatically links democracy with axiological relativism has gained ground. The will of the majority represents the only valid public policy criteria. However, the Rule of Law is based upon completely different foundations.

So far, in Spanish legislation, there has been no constitutional pronouncement on the decriminalization of euthanasia, or on cooperation in suicide, as it is euphemistically referred to in the Penal Code. However, there are some criteria that may be used as a reference point. There are some societal goods (such as the life of an unborn baby) that the state must defend, even though there is no one to claim that particular right. Furthermore, the state must protect any life, even against the will of

the person who holds the right to that life, as is the case for example of prisoners commended to the charge of the penitentiary authorities who are engaged in a hunger strike (*Spanish Constitutional Court*. STC 120/1990, F.7).

The state cannot be neutral when it comes to the protection of public goods, and its defence must be especially rigorous when dealing with the demands of the majority. Historically, the fight for human rights has always been based on utopia, rather than clichés. Legally, this fight has been translated to the protection of minorities, through formulas that enable us to control the constitutionality of those laws that reflect the majority consensus.

It is also relevant that when it comes to the regulation of fundamental rights, popular legislative initiatives, which according to the Spanish Constitution require the support of half a million voters, are excluded.

The conflict between opposing positions, founded on religious or moral convictions related to the predominant culture, can hardly be resolved by declarations of peace. The exclusion of religion, and its cultural expressions, from the public sphere, does not necessarily liberate social coexistence from all tensions. The idea that the level of state inhibition with respect to a particular problem, must be proportional to the level of public tension it generates, is surely paradoxical.

This level of political concern, raised by a particular social debate, should instead be treated as a symptom of the need for state intervention, given its relevance to citizens. When legal restraint is chosen under these circumstances, some latent moral prejudice must have influenced that choice.

Behind the expression of the "neutrality" of the public power, there lies an unspoken faith in the pre-established harmony of individual morals. The conviction that each person can organise his or her own life as it suits them seems harmless enough, as long as no third party attempts to claim our solidarity. In this respect, the possessive individualism that plays an important part in the polemic surrounding abortion – claiming the right to the ownership of one's own body – is an eloquent example.

However, in a multicultural context, secular prejudices can sneak in as well. According to these, the controversy is not unclenched by the importance of the goods involved, but by fanaticism, introduced into the neutral public sphere by religious fundamentalists. Furthermore, a person can be accused of fundamentalism, simply because he or she dares to defend certain principles. Therefore, neutrality demands that we opt for more imaginative and relaxed alternatives.

However, fundamentalism can really take over when arguments and debates are abandoned in favour of violence. This can also happen when any distinction between moral and social demands is rejected, as it is understood – in the fundamentalist way – that the law should deal with both.

Trying to exclude from the public sphere all that is associated with fundamental beliefs, or all issues whose defence could generate controversy, would lead to the imposition of a trivial kind of monoculturalism, without any debate. This would lead to a devaluation of democratic debate, which would be relegated to the discussion of largely unfounded proposals, formulated without conviction and deemed unworthy of serious consideration.

We can hardly expect to reach a multicultural dimension if we let previously insurmountable difficulties stop us from accepting certain meaningful aspects from the cultural sphere. This is particularly so when these are aspects that could facilitate cross-cultural understanding.

Going back to the relationship between democracy – so representative of our culture – and relativism, we are confronted with a paradox. The negation of certain objective foundations underlying humanity converts cultures into mere accidental outcomes that are mutually incompatible. If we are not allowed to consider anything as more true or false, more legitimate or illegitimate than its contrary, we can only proceed to the imposition of a hegemonic culture, embellished by the few exotic cultural features it is capable of assimilating. Only if we view cultures as historical and plural expressions of a common human nature will we be able to find the necessary basis for such a multicultural dimension.

The existence of legal demands based on objective principles becomes a requisite for the creation of compulsory rules that go beyond the mere imposition of a kind of cultural colonialism by a culture that, backed by relativism, proclaims itself unquestionable.

Only if we are guided by objective elements, when tracing the line where moral and legal demands overlap, can we put a stop to fundamentalist attempts at subjecting public life to an all-encompassing religious code. Paradoxically, the current negation of natural law works in favour of such fundamentalist beliefs.

Only if we base ourselves on objective principles when deciding which culturally alien elements to include in an ethical minimum to be enforced by law, will we be able to avoid the exclusion which may underlie multicultural coexistence.

RELIGIOUS BELIEFS WITHIN A PLURAL SOCIETY

As its title announced, this analysis would not be complete without further reference to the issue of religion in a pluralist society.

We touched upon religion when we saw how a moral response to the question of euthanasia would be much easier if we recognised the supremacy of God over all human life. However, it would be virtually impossible, departing only from moral beliefs, to legally impose this solution upon a society where believers, unbelievers and people radically opposed to religion all coexist.

However, religion has not lost its relevance. My experience has convinced me that a solution that does not respect its creed would stray from the path of truth. Although this has not given me the authority to transform this conviction into an argument capable of finding a legal solution for this problem, it has encouraged me to keep on looking for other arguments that would convince my fellow-citizens that the decriminalization of euthanasia ought to be rejected.

On the one hand, spreading this conviction among my fellow-citizens through the methods available in a pluralist democracy would help to achieve the necessary consensus on this issue. On the other hand, it might be the most effective formula to transform those behaviours that push the sick to consider themselves a burden and stop us from making any sense out of pain by or simply suggesting that putting an end to human life might be the most effective way of preventing pain from ruining our social environment.

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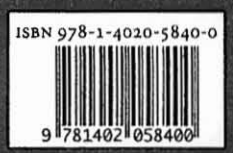

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