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Saramago's *Death with Interruptions*: A Path to Reconsider Essential Dilemmas Linked to Health Law

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Abstract

What would happen if somewhere people would stop dying? In Saramago's *Death with interruptions*, after the initial joy associated to the possibility of eternal life, anxiety and conflict invade the community. The end of death not only shakes Philosophy and Religion foundations, but it impacts on various legal institutions as well.

In this paper, we consider the notion of Justice from the Right to Health perspective. In particular, we analyse the concept of "euthanasia" and the current role of insurance from the private law viewpoint, taking into account its "constitutionalization" process. We remark the wisdom of the parable built by the author because of the simplicity, sharpness and versatility when addressing dilemmas that Law cannot fully solve.

Key words

Health; Law; Literature; Death with interruptions; José Saramago

Resumen

¿Qué ocurriría si en algún lugar la gente dejara de morir? En *Las intermitencias de la muerte* de Saramago, tras la alegría inicial por la posibilidad de la vida eterna, la ansiedad y el conflicto predominan en la comunidad. El final de la muerte no sólo

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Synopsis: In an unknown place and time, people stop dying. The initial joy of citizens for their immortality dissipates after a short time, when severe problems arise: for example, there is fear for the possible collapse of public health and by the bankruptcy of insurance and funeral companies. A group called "Maphia" takes people across the border where they die instantly, and that group becomes associated with the government that needs its services. Then, death emerges embodied in the figure of a woman, who reports that her experiment has ended and people will die again. But she falls in love with an artist, her plans are altered, and an unexpected twist occurs at the end of the novel.
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sacude los cimientos de la Filosofía y Religión, pero también afecta a diversas instituciones jurídicas.

En este artículo se considera el concepto de Justicia desde la perspectiva de derecho a la salud. En particular, se analiza el concepto de "eutanasia" y el papel actual de los seguros desde el punto de vista del derecho privado, teniendo en cuenta su proceso de "constitucionalización". Se destaca la sensatez de la parábola construida por el autor por su simplicidad, nitidez y versatilidad al abordar los dilemas que la Ley no puede resolver completamente.

Palabras clave

Salud; derecho; literatura; *Las intermitencias de la muerte*; José Saramago

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Being immortal is trivial,
except for men, all creatures are, since they ignore death;
the divine, the terrible, the incomprehensible,
that's to know oneself immortal"

Jorge Luis Borges (1999)

1. Introduction

"The following day no one died. This fact, being absolutely contrary to life's rules, provoked enormous and perfectly justifiable anxiety in people's minds."

This way Saramago begins his novel, which explores the varied implications that the "end of death" might have in the social, family and individual arena. And he describes them poetically, inviting the reader to consider the meaning of philosophy, religion and justice, in this kind of scenario.

Following his own style, the author proposes a hypothesis which seems to be absurd at first, but a careful reading allows us to see it is a patent description of the harsh situation we currently go through.

Indeed, it is clear that death is not over, but today we are witnessing the extension of human life span in a substantive way. This situation not only generates satisfaction in people, as it crystallizes an immemorial human desire, but it also involves considerable difficulties and leads to conflicts which are manifest in the analyzed text and impact on the core of the notion of justice.

We approach the novel from a Private Law perspective, nowadays characterized by a constitutionalization process that demands that areas before governed by provisions on daily, domestic and strictly patrimonial matters, should be tested by fundamental rights.[1] Notwithstanding the fact that concepts such as life and death, and guarantees as the comprehensive and equal protection of human health are important for many legal disciplines, all of them, no doubt, have an immediate impact on the "personal rights" subject specifically studied in the general part of Civil law.

In this presentation we renew certain considerations on the right to life, the right to health and the notion of justice. And we value the parable built by the writer because of the relevant and extensive analysis on the conflicts presented, but also because of the simplicity and sharpness with which he confronts transcendent dilemmas that law cannot fully define.

2. Right to health in fundamental rights. Theory and practice

Along the analyzed story, the social impact that living forever would have in the most varied activities is strongly highlighted. Thus, for example, there is a hilarious description of the complaints made by funeral companies' managers who are worried about a possible *"…dismissal of hundreds if not thousands of selfless and courageous workers who have every day of their working lives bravely confronted the terrible face of death…"* (Saramago 2005, p. 33). Besides, insurance companies' managers fear the destruction of their industry after receiving *"…many thousands of letters calling for the immediate cancellation of life insurance policies"* (Saramago 2005, p. 41).

[1] The New Argentine Civil and Commercial Code (enacted on October 7th., 2014), sets forth on its foundations that "*Nowadays, most codes make a strict division between public and private law. This preliminary project, instead, takes treaties into deep consideration, in particular when related to Human Rights, and gives great importance to rights acknowledged in the constitutional block. In this regard, the project is a very innovative one, as it crystallizes the incorporation of private law to the constitution and gives rise to a community of principles between the Constitution and public and private law, highly demanded by the Argentine legal doctrine.*"

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But on a much more real scenario related to matters that concern the viability of modern State itself, some characters worry about pension issues and ask themselves *"… with what money the country, within twenty years, would be able to pay pensions to the millions of people who would find themselves on a permanent disability pension situation … and who would implacably be joined by other millions …"* (Saramago 2005, p. 103) Others describe the collapse of health care as follows: *"…hospital directors and managers … affirmed that the usual rotational process of entered patients, cured patients and dead patients had suffered, to put it on this term, a short circuit, or if you prefer a less technical term, a traffic jam as the one of cars, the reason being the indefinite stay of an ever larger number of patients who, given the seriousness of their illnesses or the accidents of which they had been victims of, under normal circumstances, would have passed away into the next life …"* (Saramago 2005, p. 34, 35).

This leads us to consider the conflict posed by the need to equitably distribute scarce resources so as to satisfy multiple needs in a scenario in which scientific progress has exponentially expanded human material needs and the possibility to meet them, and in which fundamental rules guarantee the enjoyment of the highest level of health.

In this regard, it should be recalled that during the twentieth century and so far this century, humanity has witnessed deep and dizzy changes affecting the most varied fields of knowledge. There are multiple examples in science and health. Advances in organ transplantation, genetics applied to therapeutics, and human conception through assisted fertilization methods, are just some examples of how what not long ago belonged to the realms of fiction is now possible and part of daily life, changing social behavior and becoming part of common knowledge.

In such a context, it is not surprising that the protection of the right to health has begun to occupy a priority place on the fundamental rules, process which is said to have started with social constitutionalism by the middle of the 20th century[2]. And today, it is stated that the right to health, along with the right to life, constitute the newest and most distinctive human rights (Morello 1994).

But, what extent should be given to fundamental rules when they express that the enjoyment of the highest attainable standard of health must be ensured?[3] Does the allocation of financial resources for the care of a particular patient have some limits, or should constitutional provisions be interpreted literally so as not to diminish the importance of such first category right? And how can the rights of other patients be protected, according to the constitutional principle of equality?

It is logical to consider that social rights achievement depends on the existence of available resources to address the obligations that the State must fulfill. Specifically, the State needs an approved-by-law budget in order to meet the expenditures required for population's appropriate health care. It is still debated whether decisions on expenses allocation are a justiciable matter or not (debate that surely exceeds local realities). But, in turn, this economic determinant would somehow impair the universality of the rights at stake, condemning them to be considered as "second-class rights" (Abramovich and Courtis 2002). And from the Constitutional law perspective, it is fair to consider that the financial activity of the State must be adjusted to a systematic and unitary sense that links tax law to

[2] Even when social constitutionalism is said to have begun with the implementation of the 1917 Querétano Constitution (Mexico, 1917), the principles of which were then included in diverse post-war constitutions, such norms, besides the primary duty not to harm third parties, imposed positive duties on the State. For further reference, see Sagües (2001) and Bidart Campos (2000, p. 40).

[3] For example, Section 12 of the International Covenant on Economic, Social, and Cultural Rights (UN General Assembly Resolution, 2200 A (XXI), of 16 December 1966) sets forth that: *"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."* (United Nations 1966) A similar provision can be found on Section 24 of the Convention of the Rights of the Child (United Nations 1989).

budget law ("collect to spend"), to turn the nominal Constitution into an effective one (Ariza Clerici 2005), and that Budget Law is a mere instrument by which the State carries out its purpose, and whose constitutionality is legally questionable when superior rights, such as the right to health, are infringed.[4]

But from a factual point of view, there are no simple solutions and economic crises affect the heart of sanitary attention in the most varied countries[5].

In Argentina, health care is in charge of different institutional providers. Public hospitals created by the State and generally providing free assistance coexist with private schemes that offer health care to members in return for a periodic fee, and with trade union and professional medical care entities that provide care in exchange of a contribution usually discounted from worker's income. But the Federal Government, as the health policy controlling authority, has the ultimate responsibility to coordinate care services offered by other providers, and also, in a subsidiary form, to supply the services not rendered by others. [6]

In this country, health protection was explicitly recognized in the national Constitution amended in 1994[7] and in international treaties incorporated to it with equal hierarchy. Such protection was renewed this year, with the enactment of our new Civil and Commercial Code[8] and in profuse specific health rules. But the "Compulsory Medical Plan Law" set limits on mandatory basic coverage that all providers must render[9].

And in the context of this tension between ensuring the maximum level of health and applying the limitations imposed on such guarantee by infraconstitutional laws, we witness daily multiple judicial summary actions ("*amparos*") pursued to obtain the coverage of the cost of medicine, treatments and medical devices, not always covered by the Compulsory Health Plan and considered to be related to personal rights[10]. After very rapid procedures, claims are generally successful, as judges fear that their rejection could be considered as a decision against human rights.

This way, Justice takes part of a game that supposes an anarchic distribution of scarce goods but fails to articulate itself inside the public sanitary global policy

[4] Horacio Corti (2005) from his chair "*Bases para una política fiscal*" (Foundations for a fiscal policy), Law Faculty, Universidad de Buenos Aires.

[5] While this essay was written, the Spanish Constitutional Court kept on admitting multiple motions filed by autonomous communities asserting the unconstitutionality of cuts on Health and Education taxes set forth by Royal Decree Law 16/2012. This was so even when the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, of 4/4 /77, applicable in Spain, had a specific chapter concerning the adoption of appropriate measures in view of providing equitable access to healthcare of appropriate quality (Section 3).

[6] This is so pursuant to the Argentine Supreme Court of Justice decision in case "*Campodónico de Beviacqua, Ana C. v. Ministerio de Salud y Acción Social*" notwithstanding the obligations of provincial states.

[7] Health is explicitly referred to in Section 41 (Environment), 42 (Consumers and users) and in some treaties of constitutional hierarchy specified under Section 75 subsection 22 of the Constitution, such as the Pact of San José (American Convention on Human Rights, OAS November 22, 1969), the International Covenant of Civil and Political Rights (UN General Assembly Resolution, 2200 A (XXI), of 16 December 1966), the International Covenant on Economic, Social, and Cultural Rights and the Convention of the Rights of the Child (UN General Assembly Resolution 44/25 of 20 November 1989).

[8] This project sets basic rules concerning experimentation and genetics. It also establishes in very general terms issues related to assisted fertilization, etc.

[9] For further reference on the program concept and scope, see Ministerio de Salud (2012).

[10] These procedures, originally deemed exceptional, are today a usual way through which bad debtors compliance with basic health benefits guaranteed by law is pursued, but on some other cases, they seek superfluous or questionable health care coverage. This last situation can be observed in a case where judges granted the coverage of an experimental treatment based on the "right to have reasons to hope" that the health of plaintiff will improve, pursuant to *Sánchez Rodolfo Juan c/ Programas Médicos S.A.C.M. s/ incidente de apelación de medida cautelar*.

which, though its strengths, remains distant from reaching the aim to provide the highest level of health to the community as whole. [11]

The above-mentioned experience allows us to see the existing gap between the ideal standards of fundamental rules on health and the actual situation, and certainly, it appears as a description of a modern society phenomenon.

Now then, what is suggested in *Death with Interruptions* in relation to this transcendent conflict?

First, the story shows the universality and timelessness of the phenomenon. In this sense, if during the course of human history, there were periods in which the broad and equitable distribution of health resources was not a concern, that is an old story. The steady advance of science applied to health and the recognition of the right to enjoy the benefits of such progress seem to have come to settle.

And though it is not easy to set out guidelines in the abstract so as to guarantee the fair and highest level of health to the members of every community, Saramago seems to test his criterion in that regard when he states*: "… the decision, were it to be taken, would have to be neither medical nor administrative*, *but political"*[12], revaluing on this way such a relevant and at the same time slandered discipline.

In addition, the novel has the virtue of presenting the experience of the most varied actors in the same scenario, undressing their needs and interests and showing that all of them somehow are victims of an extraordinary and irresistible situation. And this way, it allows for a less Manichean vision of the conflict at stake.

3. Law and literary fiction towards "euthanasia"

The text also leads us to consider issues related to the end of life of individuals, under circumstances that allow early consideration in this regard. Such issues, although associated with questions that may be common to many different cultures, give rise to multiple and unstable criteria, practices and regulations.

Just for the purpose of this analysis, we will refer to a very extensive category to which we will name "euthanasia", in accordance to the Greek concept of "good death" ("eu" good, "zánatos" death). We clarify that we will be considering a series of realities whose implications are very different.

In effect, understood in this way, "euthanasia" usually involves patients with chronic diseases, referred to as "terminal", "irreversible" or "incurable", usually causing great pain and suffering. But daily situations go beyond this definition and include cases of acute patients that due to religious or other kind of reasons refuse receiving medical treatment and such decision poses an imminent risk to their lives.

On the other hand, patients concerned can be adult and competent persons, or not. In certain circumstances, it might be analyzed whether "competence", defined as a psychophysical aptitude for taking decisions on the own body, is enough or if patient's full legal capacity is required to justify decisions. [13]

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[11] The current state of affairs is encouraged by the fact that Argentina has a diffuse constitutional control, decisions of the Supreme Court of Justice are not mandatory for lower courts, and there is no judicial self-restraint with regard to the declaration of unconstitutionality of norms related to health.

[12] The Royal Academy of Spanish Language (RAE), on its 22nd Edition, defines *euthanasia* as 1. The act or omission intended to speed up death of an ill person in order to avoid pain and suffering, with or without his consent. 2. Death with no physical pain and suffering (Real Academia Española 2012). In the same line of ideas, the Blacks Law Dictionary defines euthanasia as follows: *"The act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition especially a painful one for reasons of mercy"* (Garner 1999, p. 594).

[13] For example, the Law on the Rights of Patients, Medical Records and Informed Consent (*Ley de derechos del paciente, historia clínica y consentimiento informado* 26529/09, Argentina) requires full capacity for executing a "living will", even when for other decisions it seems to merely request physical and psychological competence.

Besides, the decisions mentioned can involve abstentions in sanitary practices, that is, the non implementation of surgical procedures or the non administration of extraordinary or disproportionate means in relation to the perspectives of improvement, or positive direct actions like the administration of lethal substances. Deep sedation, as a usual palliative resource, can be considered as preamble of the latter.

The need of third parties' intervention (physicians or non experts) for the implementation of practices concerning the end of life also demands for consideration.

The above mentioned catalog of circumstances usually appear under the most varied combinations. In Argentina, during the last decade, there were three paradigmatic cases which show such combinations and evidence the discussions that often occur in this area.

In the case Albarracini Nieves[14], the Supreme Court of Justice could assert that every competent adult has the right to refuse a blood transfusion if it does not affect third parties. This decision was preceded by hundreds of other lower court decisions in which conflicts between values and beliefs of patients and their families, the conviction of physicians on their duty to preserve life under all circumstances, and a clear defensive practice of modern medicine were evident.

In the case M., a lucid young woman who was suffering from a pathology considered incurable that imposed her severe suffering, asked the medical staff to "sleep her forever", asserting that she had the right not to be present at her own death.[15] And in the case C., the parents of a child who was suffering from a vegetative persistent condition since her birth -*considered irreversible by three Bioethics Committees*-, asked "to let her go". In other words they asked health professionals to limit the therapeutic effort by withdrawing the breathing machine from her. Both cases were highly publicized[16] and promoted the enactment of the so-called "Death with Dignity Act".[17] Although this rule did not imply an essential legislative amendment, since the right to refusal of health care was already contemplated, it did ease the resolution of certain common conflicts in hospital practice, in a society that is characterized by being particularly contentious[18].

But every country seems to have its own leading case on the subject. Sampedro's case in Spain, Purdy in the United Kingdom, Quinlan, Cruzan and Kevorkian in the USA, among many others, confirm the importance that global society has given to

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[14] Argentine Supreme Court of Justice, "*Albarracini Nieves, Jorge Washington /s medidas precautorias*", Court decision 335:799. The case involved a witness of Jehovah patient who had been shot and needed, according to the intervening medical staff, a blood transfusion to save his life. The patient had already expressed, in an advance directive executed when joining the religious congregation, his denial to receive this kind of therapy. His wife practised the same religion and they had no children. His father brought a judicial action requiring the implementation of the practice, which was denied. The patient survived.

[15] For further reference on the debates surrounding this precedent see Ciruzzi (2012).

[16] The young lady M. died on January 3rd, 2011, after her request for profound sedation was granted. See Carbajal (2011) In the same regard, the little girl Camila died within the first month as of the enactment of the so called "*Ley de Muerte Digna*" (Death with Dignity Act), after life support devices were removed by medical staff and after new debates on the viability of such practice in case of un incompetent patient had emerged. For further reference, see Iglesias (2012).

[17] Law No. 26742, Official Gazette 05/24/2012, incorporated to Law No. 26529/09, concerning the Rights of Patients, Medical Records and Informed Consent (Argentina).

[18] The aforementioned norm sets forth on Section 5 ss. g and h that every patient, in case of suffering from an illness deemed to be fatal and incurable, or when undergoing a terminal status or if having severe injuries that place him on an equal situation, has the right to refuse surgical treatment, hydration, feeding, artificial resuscitation or to request the withdrawal of life support devices in case such measures are extraordinary or disproportionate with regard to the prospects of improvement or produce excessive suffering. The norm also provides for the right to refuse hydration and nutrition procedures only intended to prolong such terminal, fatal and incurable status, and the right to receive, in any case, "comprehensive palliative care for treating the illness or suffering".

this type of conflicts, the complexity of their solution, and some common features on its elements.

In law, the term "euthanasia" is usually defined as a positive, direct and intentional action leading to the termination of the life of a person, practiced by a physician, at the voluntary and express request of the patient. Within such scope, euthanasia is currently only accepted in Belgium[19], the Netherlands[20] and Luxembourg[21], countries which also allow the assisted suicide by non-professional people.

Instead, what is more widely accepted in comparative law is the right to refuse medical treatment, the execution of living wills and the regulation of "death with dignity".[22] Additionally, "active euthanasia", even when forbidden, receives light punishment in some countries (Díaz y García Conlledo and Barber Burusco 2012, Niño 2012).

Death with Interruptions describes the individual and collective distress deriving from the fact that further care must be given to people who would have died under normal circumstances. That situation makes life really difficult for relatives and cohabitants. The author also describes decisions concerning the end of life of ill people, and relatives opinions on such decisions, all of which is well explained in the following passage: "*...My father-in-law and my nephew died last night, we took them to the other side of the border, where death is still active; you killed them, exclaimed the neighbor, in a way yes, given that they could not go there under their own steam, but in a way, not, because we did it at the request of my father-in-law and, as for the child, poor thing, he had no voice in the matter and no life worth living."* (Saramago 2005, p. 60).

From our point of view, the mentioned paragraph summarizes decades of juridical and bioethical discussion on the legality of the practices associated with euthanasia, and on the multiplicity of circumstances that it may involve. In turn, it reflects how the questions we ask ourselves in different cultures regarding those subjects, are essentially the same.

And to that extent, the reference constitutes a clear example of how literature can act as the deepest and most comprehensive way to explore the human condition and to illustrate the thoughts that ordinary people have in respect of big dilemmas that legal systems cannot still solve.

4. Decision on the end of life or death diagnosis?

The story also refers to "... people admitted in a status of suspended life that will remain that way indefinitely, without any possibility of a cure or even of improvement ..." (Saramago 2005, p. 35). This passage is a clear opportunity to distinguish between issues related to the final stage of human life, on the one hand, and the concept of "death" and the current diagnosis requisites, on the other.

Defining death is not an easy task as there is not an unequivocal answer. But from the forensic viewpoint, it is necessary to establish criteria for this purpose. [23]

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[19] *Belgian Act on Euthanasia, May 28th 2002, unofficial translation.*

[20] Termination of Life on Request and Assisted Suicide (Review Procedures) Act, Parliamentary year 2000-2001 No. 137 26 691, 28 November 2000.

[21] *Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide.*

[22] For further reference on this topic see, among others, the Public Health Law No. 14/1986 (Ley 14/1986, de 25 de abril, General de Sanidad) and Law No. 41/2002 (Ley 41/2002, de 14 de noviembre, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica*)*, from Spain, and the European Council Convention for the Protection of Human Rights of 04/04/1997.

[23] For an interesting analysis on this issue we suggest reading the *Guidelines for the Determination of Death* (Medical Consultants on the Diagnosis of Death 1981). In such work, it was determined that "An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards".

The irreversible cardiac arrest with a specific duration is the criterion by which the absolute majority of deaths were, are and will be diagnosed. However, in the last century, when by the middle of the 50s hospital intensive care units and organ transplant procedures were developed almost simultaneously, the need to have new criteria for death diagnosis emerged. In fact, it is currently possible to preserve certain vital functions in corpses -as breathing and circulation with modern medical devices-, and there is an interest in doing so in order to save lives by transplantological therapy.[24]

But the idea that an individual lying in a hospital bed, breathing and with a beating heart, is no longer the person we have loved but his mortal remains, is usually incomprehensible, not only for ordinary people.[25] The explanation in the sense that science allows to preserve certain vital functions in dead bodies for a limited time turns out to be too abstract and humanly difficult to understand, towards the image of a sleeping person.

Besides, the popularization of the concept "brain death", formula that experts describe as inappropriate and unfortunate[26], resulted into a considerable conceptual confusion still present nowadays, between people living in persistent vegetative status and corpses that are held artificially in an intensive care unit. Such confusion even led to consider the existence of two kinds of death, namely, one aimed at getting organs for transplantation, and the other, usually affecting most human beings.[27] This situation not only causes confusion in the general population, but also in legal practitioners and judges, sometimes responsible for authorizing the procurement of those organs.

Today medical experts agree that the phenomenon of death is unique, and that what varies is the criterion for its diagnosis. Formerly, only the cardiovascular and respiratory criteria were recognized. Nowadays, also the neurological criterion is considered and in the future, perhaps others will be incorporated. This consensus is clearly reflected in the specific comparative legislation.

In addition, once a person has died, the possibility to exercise the right to dispose of his own body disappears, and various law issues emerge. This way, for example, it should be determined if his will would be respected or if the opinion of his family

[24] This was so because on transplantation of cadaveric organs, organ procurement as kidney, heart or liver for subsequent implant is not possible if the person died outside an intensive care unit, not having held the cited vital functions. See Ravioli (2012, p. 217-225).

[25] For further reference, see Ravioli (2012, p. 216-217). Here, the author refers to a study made by the Department of Legal Medicine, Faculty of Medicine, University of Buenos Aires, in 1988, through which 277 people were surveyed (50% of them were last year´ students of medicine and the others were undergraduates). More than 90% of the surveyed persons could not distinguish between the neurological criteria of death and the neurological criteria for persistent vegetative state, among other issues.

[26] The term became popular as a consequence of the works carried out by Mollaret and Goulon (1959), and for a Harvard report known as "A Definition of Irreversible Coma" (Ad Hoc Committee of the Harvard, Medical School 1968); as expressed by Ravioli (2012, p. 216-217) it should be noted that laws such as the Spanish transplant Act 30/1979 (Section 1, Additional provisions) provide that the government will establish "The process and verification required for the diagnosis of brain death." The regulations further clarified this issue by stating that: "Death diagnosis and certification is based on the verification of the irreversible cessation of cardiorespiratory (death from cardiac arrest) or brain functions (brain death) …" (pursuant to Royal Decree 2070 of 12/30/99, Annex I, Section 1).

[27] Such confusion exists in different legal instruments. In fact, the first Argentine law on organ transplantation (Law No. 21.541/77) set forth on Section 21 that "for the sole purposes of this law…", it was possible to certify death, taking into account the complete and irreversible cessation of brain function. The confusion is also present in criminal case law, as evidenced in the following summary: "In view of the shot fired by the accused to the victim, that caused him brain death, INCUCAI (National Institute Coordinator Center for Organ Procurement of Argentina) doctors acted in accordance with law. They committed murder but the action was justified under a special law, namely, the ablation and transplantation of organs …". For further reference see *Fiscal c/Ahumada Núñez, Oscar A. p/Homicidio agravado por el uso de arma de fuego.*

or the social interest should prevail for determining the feasibility of procuring organs for transplantation.[28]

In addition, considering "person" to a dead body supported by mechanical respiratory assistance, can imply administering unnecessary and expensive treatment to somebody who no longer needs it, wasting financial resources that should in fact, for a sense of fairness, be assigned to other purposes.

5. Conclusion

This novel has allowed us to explore certain key aspects of the Right to Health, referred to the tension resulting from its incorporation as a priority right within the fundamental rules and the limits arising from its practical application. We have also been able to approach particular issues associated with deep philosophical, moral and religious dilemmas, linked to complex legal matters.

And even when we made an analysis from the personal rights viewpoint, we could also make an approach from the Constitutional, Criminal and Tax Law, noticing how they all commingle together when analyzing said conflicts. That is because literary fiction has proved its great power to act as a communication line between different disciplines which, on this case, go beyond the strictly legal field. This point is of growing importance in today's societies, where there is a trend towards a knowledge that looks parceled, specific and disconnected from others and even from everyday reality.

Furthermore, it is remarkable to note how the nonsense and the exaggeration on which the author relies on, allow explaining with great simplicity and keenness the scope of highly technical questions and dilemmas. This is also a clear example of how the lyrical language makes it possible to analyze topics such as death which usually cause rejection for its vital implications and for the complexity of its scientific aspects.

Finally, it should be emphasized that the novel inspires the imagination of the readers and calls them to revalue current life central questions, which proper resolution will ultimately impact on the construction of future societies, adjusted to constitutional values and to the idea of Justice.

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[28] There is a heated debate surrounding this topic and it should be highlighted that local laws differ considerably. In Argentina, many legal texts required consent for cadaveric organ donation but nowadays the "presumed consent" criterion is applicable. This means that cadaveric organ ablation is feasible if the donor did not express his opposition thereto during his lifetime, but relatives' testimony on his last wishes is required (Section 19 [two] et seq., Law No. 24193, as amended by Law 26066 of 22/12/2005). In Spain, the criterion of presumed consent is effective as of the enactment of Law 30/1979 (Section 5 subsections 2 and 3), published in the Official Gazette on 06/11/1999. The law does not assign a role to families in relation to consent for cadaveric organ ablation. Finnish law (101/2001), as amended by Law 653/2010, not only follows the presumed consent criterion but also provides that next of kin cannot deny organ donation if the deceased person earlier on had declared willingness to donate organs.

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