Acta Bioethica 2022; 28 (1): 67-74

BRAZILIAN LAW OF INCLUSION: AN APPLIED ANALYSIS OF THE CORRELATION OF BIOETHICAL PRINCIPLES

Rosylane Nascimento das Mercês Rocha[1], Josierton Cruz Bezerra[2], Francisco Cortes Fernandes[3], Mónica Correia[4], Rui Nunes[5]

Abstract: Objective: The present study aims to analyse whether bioethical principles are present in the Brazilian Law of Inclusion of the Disabled Person.
Methods: The study is based on a textual analysis of Law No. 13.146, of July 6, 2015 (Brazilian Law of Inclusion) using a content analysis technique regarding the bioethical principles of beneficence, nonmaleficence, justice and autonomy. A qualitative analysis was conducted based on the concepts of these bioethical principles and their expression in the articles laid down in the Statute of the Disabled Person.
Results: The obtained results demonstrate that the primary articles of the Brazilian Law of Inclusion correlate with the aforementioned bioethical principles according to the conceptualisation of each principle.
Conclusion: The articles of the Brazilian Law of Inclusion, published on July 6, 2015, under the provisions of the Federal Constitution of 1988 and the Convention on the Rights of Persons with Disabilities, demonstrate a correlation with the stated bioethical principles.

Keywords: disability, Brazilian Law of Inclusion, bioethics, bioethical principles

Ley brasileña de inclusión: un análisis aplicado de la correlación de los principios de la bioética

Resumen: Objetivo: El presente estudio pretende analizar si los principios bioéticos están presentes en la Ley brasileña de inclusión de personas con discapacidad.
Métodos: El estudio se basa en un análisis textual de la Ley nº 13.146 de 6 de julio de 2015 (Ley brasileña de inclusión) mediante una técnica de análisis de contenido sobre los principios bioéticos de beneficencia, no maleficencia, justicia y autonomía. Se realizó un análisis cualitativo basado en los conceptos de estos principios bioéticos y su expresión en los artículos establecidos en el Estatuto del Discapacitado.
Resultados: Los resultados obtenidos muestran que los artículos primarios de la Ley de Inclusión brasileña se correlacionan con los principios bioéticos mencionados, según la conceptualización de cada principio.
Conclusión: Los artículos de la Ley de Inclusión brasileña, publicada el 6 de julio de 2015, en virtud de las disposiciones de la Constitución Federal de 1988 y de la Convención sobre los Derechos de las Personas con Discapacidad, demuestran una correlación con los principios bioéticos enunciados.

Palabras clave: discapacidad, ley brasileña de inclusión, bioética, principios bioéticos

Lei brasileira de inclusão: uma análise aplicada da correlação dos princípios de bioética

Resumo: Objetivo: O presente estudo tem por objetivo analisar se os princípios bioéticos estão presentes na Lei Brasileira de Inclusão da Pessoa com Deficiência.
Métodos: O estudo é baseado em uma análise textual da Lei nº 13.146, de 6 de julho de 2015 (Lei Brasileira de Inclusão) utilizando uma **técnica de** análise de conteúdo relativa aos princípios bioéticos de beneficência, não maleficência, justiça e autonomia. Uma análise qualitativa foi realizada com base nos conceitos destes princípios bioéticos e sua expressão nos artigos estabelecidos no Estatuto da Pessoa Deficiente.
Resultados: Os resultados obtidos demonstram que os artigos primários da Lei de Inclusão brasileira se correlacionam com os princípios bioéticos acima mencionados, de acordo com a conceituação de cada princípio.
Conclusão: Os artigos da Lei Brasileira de Inclusão, publicados em 6 de julho de 2015, sob as disposições da Constituição Federal de 1988 e da Convenção sobre os Direitos das Pessoas com Deficiência, demonstram uma correlação com os princípios bioéticos declarados.

Palavras-chave: deficiência, lei brasileira de inclusão, bioética, princípios bioéticos

[1] Faculty of Medicine of the University of Porto, Portugal; State Department of Economics of the Federal District, Brasilia, Brazil. up201508531@med.up.pt

[2] National Social Security Institute, Natal, Rio Grande do Norte, Brazil josierton@gmail.com

[3] Pontifical Catholic University of Goiânia, Goiás, Brazil. fcfster@gmail.com

[4] Faculty of Medicine of the University of Porto, Portugal. mcorreia@med.up.pt

[5] Faculty of Medicine of the University of Porto, Portugal. ruinunes@med.up.pt

Introduction

When reading the World Report on Disability*(1)*, Stephen Hawking expressed the following in its preface: "I find much of relevance to my own experience. I have benefitted from access to first-class medical care. I rely on a team of personal assistants who make it possible for me to live and work in comfort and dignity. My house and my workplace have been made accessible for me. Computer experts have supported me with an assisted communication system and a speech synthesiser, which allow me to compose lectures and papers and communicate with different audiences. But I know I am fortunate in many ways. My success in theoretical physics has ensured that I am supported to live a worthwhile life. It is obvious that the majority of people with disabilities in the world have a tough time with everyday survival, let alone productive employment and personal fulfilment."

Hawking went even further, pointing out that we have a moral obligation to remove barriers to participation and invest sufficient financial resources and knowledge into unlocking the vast potential of people with disabilities. Moreover, leaders worldwide must no longer neglect the hundreds of millions of people with disabilities whose access to health, rehabilitation, support, education and employment have been denied and who have never been allowed to shine*(1)*.

Brazil's Federal Constitution of 1988 determined that everyone is equal before the Law, without distinction of any nature, guaranteeing the inviolability of the right to life, freedom, equality, security and property. Its constitutional text provides guarantees for disabled people, particularly Articles 7, 23, 24, 37, 40, 201, 203, 208 and 227, which establish rights to non-discrimination, health, complete social protection, work, retirement, welfare benefits, habilitation and rehabilitation, education and accessibility*(2)*.

Evoking the Convention on the Rights of Persons with Disabilities[6], we recall the principles enshrined in the Charter of the United Nations, which recognises the inherent dignity and value and equal and inalienable rights of all as the foundations of freedom, justice and peace in the world; this includes the need to guarantee such rights to people with disabilities, without discrimination and with equal opportunities. General principles of the Convention are respect for inherent dignity, individual autonomy (including the freedom to make one's own choices and personal independence), non-discrimination, total and effective participation and inclusion in society, respect for individual differences and the acceptance of people with disabilities as part of human diversity and humanity, equal opportunities and accessibility.

Disability is an evolving concept resulting from the interaction between the disabled person and the barriers erected by attitudes and the environment that prevent that person's full and effective participation in society with equal opportunities*(3)*. When assessing the disabled person, it is essential to understand that person within their social context without overlooking the functional deficit linked to their disability.

Brazilian legislation underwent years of evolution, from 2000 to 2015, before the Brazilian Law of Inclusion (BLI) was instituted under number 13.146 of July 6, 2015. The BLI originated as a "Special Needs Bearer Statute" in 2003, then as a "Statute of the Disabled Person", and finally as Draft Law no. 7.699/2006. The BLI aims to ensure and promote, on equal terms, the exercise of fundamental rights and freedoms by persons with disabilities, with a view on their social inclusion and citizenship*(4)*. There are also different existing regulations for granting benefits in Brazil. However, some allow broader interpretations to benefit those with mild deformities without significant impairment of functionality ahead of others with severe limitations*(5)*.

The BLI addresses impairments in body functions and structures, socio-environmental, psychological and personal factors, limitations in performing activities, restriction of participation, equality between men and women, respect for the development of the capacities of disabled children and the right of disabled children to preserve their identity.

On a formal principle of justice, in his work Ethics

[6] UN Convention on the Rights of Persons with Disabilities. [Internet]. Available at: https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#Fulltext

to Nicomaco, Book V, Aristotle (384-322 BC) argued that equal individuals should be treated equally, and unequal individuals should be treated unequally, following their inequality*(6)*.

In seeking integration into the labour market or higher education, for example, the disabled person requires access to that which they are legally guaranteed, thus evoking the bioethical principles of justice and equity, as Aristotle exhorted.

Before the oncologist Van Rensselaer Potter even published his book on bioethics, *Bridge to the future*, Fritz Jahr, a Protestant pastor and ethics specialist, carried out studies on bioethics from 1927 to 1934, providing four lines of argument: (1) bioethics is a new and necessary academic discipline; (2) bioethics is a necessary moral attitude, conviction and mode of conduct; (3) bioethics recognises and respects all life and living interactions in nature and culture; e (4) bioethics has legitimate obligations in professional environments, in the public sphere and education, consultancy, public morality and culture*(7)*.

The principles of bioethics were proposed in the Belmont Report (1978) to guide human subject research, and Beauchamp and Childress published *Principles of Biomedical Ethics* in 1979 to extend the application of these principles to medical practice*(8)*.

According to Beauchamp and Childress, the principles of biomedical ethics—autonomy, beneficence, nonmaleficence and justice—reflect the characteristic secularisation of the West. They comprise societies that confer some equidistance between individual self-determination and other human values, such as social responsibility or human solidarity*(9)*. Suppose we characterise a disabled person according to public tender quotas; for example, the principles of beneficence and justice are met when an expert doctor assesses to describe the disability and its legal framing, which will give the candidate access to the rights due to him, in this case, assuming the office to which they were appointed*(10)*.

Beneficence: benefiting the patient and society, doing good, is the primary purpose of these professions. It recognises the patient's dignity in all its dimensions: physical, psychological, social and spiritual.

Nonmaleficence: no harm and, in effect, do what is good.

Autonomy: capacity for self-determination, to exercise one's own will, to make independent choices free from the influence of other people. To exercise autonomy, two institutions are indispensable: freedom and information.

Justice: meaning equity is a concept that ensures that people are given what is due to them according to their needs.

The objective of the present study is to analyse whether bioethical principles are present in the Brazilian Law of Inclusion of the Disabled Person.

Methodology

The study is based on a textual analysis of Law No. 13.146, of July 6, 2015, using a content analysis technique focusing on the bioethical principles of beneficence, nonmaleficence, justice and autonomy. A qualitative analysis was carried out based on the concepts of these bioethical principles and their expression in the articles laid down in the Statute of the Disabled Person.

Discussion and Results

The constitutional guarantees of equal opportunity and non-discrimination are supported by the Convention on the Rights of Persons with Disabilities, which recognises the inherent dignity, value, equal and inalienable rights of all as the foundations of freedom, justice and peace in the world; this includes the need to guarantee such rights to people with disabilities, without discrimination and with equal opportunities.

In its primary articles, the BLI brought regulations in line with the text of the constitution and the Convention on the Rights of Persons with Disabilities, making changes to articles from other existing legal devices to avoid contradictions.

Divided into titles, chapters and sections, the legal text addressed: equality and non-discrimination; the right to life, habilitation and rehabilitation,

health, education, housing, work, social assistance, social welfare, culture, sport and leisure, transportation and mobility; accessibility; access to information and communication; assistive technology; the right to participate in public and political life; science and technology; access to justice; equal recognition under the Law; crimes and administrative offences; protection, guardianship and supported decision-making. As shall be seen, the articles followed the general principles of the Convention: respect for inherent dignity; individual autonomy (including the freedom to make one's own choices and personal independence); non-discrimination; full and effective participation and inclusion in society; respect for individual differences and the acceptance of people with disabilities as elements of human diversity and humanity; equal opportunities and accessibility. The corresponding tables demonstrate the applied analysis of the correlation of bioethical principles that was performed.

The articles that guarantee consecrated rights are correlated with the principle of justice. In contrast, affirmative actions benefit the person with the disability relates to beneficence, whereas articles that prevent harm apply to nonmaleficence.

Whenever independence and freedom of choice are articulated, the principle of autonomy applies.

More than one principle could be applied to an article in some instances. However, we attempted to analyse the bioethical principle that was conceptually closer to the objectives of the Convention on the Rights of Persons with Disabilities from the perspective of the Brazilian constitution.

Avant & Saretz recall that beneficence is the central objective of medicine, originating with Esculapius and Hippocrates and referencing Aristotle's search for a good life and the fundamental teachings of Christianity. The concept of beneficence evokes connotations of charity, mercy, compassion and goodness*(11)*.

Drafting a law to promote the social inclusion of people with disabilities by guaranteeing the exercise of their fundamental rights and freedoms with equal opportunities and without discrimination is, therefore, doing good, for example, protecting the person from acts of neglect and violence and establishing structures and spaces with accessibility, health, education, and employment to exercise their citizenship, as shown in Table 1 fully.

According to Aristotle, his follower, the man may possess two distinct provisions for the same definition of justice: legal justice and private justice. Legal justice refers to everything that Law defines, and private justice is related to equality, such that each individual receives what they are due. According to the "Aristotelian notion of corrective justice, this is a translation of equity, which rectifies failures that generate injustices to meet each one's needs*(12)*.

Ensuring the free exercise of constitutional rights without discrimination of any nature is provided for in the 1988 Federal Constitution. Accordingly, it is understood that what is provided for in other legal rules in force should, in principle, be correlated with the principle of justice, which ensures each disabled person can achieve the benefits of the Law, according to their needs, Table 2.

Autonomy is, in a sense, the stem cell of bioethics because all other principles would lack a foundation in its absence. The Universal Declaration on Bioethics and Human Rights dictates that the autonomy of the individual must be respected. Principles of the Universal Declaration on Bioethics and Human Rights include human dignity and human rights; benefits and damages; autonomy and individual responsibility; consent; persons unable to consent; respect for human vulnerability and personal integrity; privacy and confidentiality; equality, justice and equity; non-discrimination and non-stigmatisation; respect for cultural diversity and pluralism; solidarity and cooperation; social responsibility and health; benefit-sharing; protection of future generations; protection of the environment, the biosphere and biodiversity*(13)*.

The articles of the BLI safeguard autonomy, as shown in Table 3.

In addition to beneficence, there is the obligation of nonmaleficence, the duty not to inflict harm or damage, which takes precedence over obligations of beneficence: to eliminate and prevent harm or damage and to do or promote good*(14)*. In this

sense, the BLI has retained the principle of non-maleficence, as shown in Table 4.

Conclusion

The Brazilian Law of Inclusion articles, published on July 6, 2015, following the Federal Constitution of 1988 and the Convention on the Rights of Persons with Disabilities, demonstrate a correlation with the bioethical principles of autonomy,

Table 1. Applied analysis of correlation to the principle of beneficence

BENEFICENCE	
Article	Legal text
Article 1	The Brazilian Law of Inclusion of the Disabled Person (Statute of the Disabled Person) is established to ensure and promote, on equal terms, the exercise of fundamental rights and freedoms by persons with disabilities, with a view to their social inclusion and citizenship.
Article 5	The disabled person shall be protected in all manner from negligence, discrimination, exploitation, violence, torture, cruelty, oppression and inhuman or degrading treatment. Single paragraph. For the protection mentioned in the caption of this Article, children, adolescents, women and older people with disabilities are considered especially vulnerable.
Article 25	Health service spaces, both public and private, must ensure access for the disabled according to current legislation. Barriers must be removed using architectural, interior design and communication projects that meet people with physical, sensory, intellectual and mental disabilities.
Article 31	The person with a disability has the right to a dignified dwelling shared with their natural or surrogate family, with their spouse or partner or as a single person, whether in a housing adapted to the independent life of the person with a disability or in an inclusive residence.
Article 32	In housing programmes, public or subsidised with public resources, the disabled person or the person responsible for them has priority in acquiring property for the person's own home, observing the following: I – a reserve of at least 3% (three per cent) of housing units for people with disabilities; (...)
Article 35	The primary purpose of public work and employment policies is to promote and ensure access and longevity for disabled persons in their field of work.
Article 39	The services, programmes, projects and benefits under the public policy of social assistance to persons with disabilities and their families are aimed at guaranteeing income security, shelter, habilitation and rehabilitation, as well as the development of autonomy and family and community interaction, all to promote access to their rights and full social participation.
Article 40	The disabled person who does not have the means to provide for their livelihood or to have it delivered by their family is assured a monthly benefit of 1 (one) minimum wage, according to Law No. 8.742 of December 7, 1993.
Article 41	The person with an insured disability under the General Social Security System (RGPS) is entitled to retirement under Complementary Law No 142 of May 8, 2013.
Article 43	Public authorities must promote the participation of persons with disabilities in artistic, intellectual, cultural, sporting and recreational activities, with a view to their leadership, and must (...)
Article 44	Accessible spaces and seats will be reserved for the disabled in theatres, cinemas, auditoriums, stadiums, sports gyms, venues for shows, conferences and so on according to the structure's capacity, observing the provisions of the regulation.
Article 45	Hotels, inns, and other such establishments should be constructed to observe universal design principles and adopt all means of accessibility under current legislation.
Article 47	In all areas of parking open to the public, for public or collective private use, and on public roads, parking spaces near pedestrian walkways should be reserved and duly marked for vehicles carrying people with disabilities with impaired mobility, provided that they are appropriately identified.
Article 48	Land, air and water transport vehicles, facilities, stations, ports and terminals operating in Brazil must be accessible to ensure all persons use them.
Article 52	Vehicle rental companies are required to offer one (1) vehicle adapted for use by a disabled person for every twenty (20) cars in their fleet.

Table 2. Applied analysis of correlation to the principle of justice

JUSTICE	
Article	Legal text
Article 4	Every disabled person has the right to opportunities equal to those of others and shall not suffer discrimination of any kind. § 1 Discrimination on the grounds of disability shall mean any form of distinction, restriction or exclusion, by action or omission, which has the purpose or effect of harming, preventing or nullifying the recognition or exercise of the rights and fundamental freedoms of a disabled person, including the refusal of appropriate adaptations and the provision of assistive technologies.
Article 8	It shall be a priority of State, society and family disabled people can exercise their rights related to life, health, sexuality, paternity and maternity, food, housing, education, professional development, work, social security, habilitation and rehabilitation. Also, transportation, accessibility, culture, sports, tourism, leisure, information, communication, scientific and technological advances, dignity, respect, freedom, family and community life, among others arising from the Federal Constitution, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the laws and other norms that ensure their personal, social, and economic well-being.
Article 14	The process of habilitation and rehabilitation is a right of the disabled person. Single paragraph. The process of habilitation and rehabilitation aims to develop the potential, talents, physical, cognitive, sensory, psychosocial, attitudinal, professional and artistic skills and abilities that contribute to achieving autonomy of the disabled person and their social participation under conditions and opportunities equal to those of other people.
Article 17	NHS and social security (SUAS) services should promote articulated actions to ensure the disabled person and their family acquire information, guidelines and means of access to available public policies to foster their full social participation.
Article 18	Complete health care is ensured for the disabled person, at all levels of complexity, through the NHS, with guaranteed universal and equal access.
Article 24	The disabled person is guaranteed access to healthcare services, both public and private, and to the information provided and received using assistive technology resources and all forms of communication provided for in section V of Article 3 of this Law.
Article 26	Cases of suspected or confirmed violence against a disabled person shall be subject to compulsory notification by public and private health services to the police authority and the Public Prosecutor, in addition to the Disability Rights Councils. Single paragraph. For the purposes of this Law, violence against a disabled person shall be considered any action or omission carried out in a public or private place, which causes death, damage or physical or psychological suffering.
Article 27	Education is a right of the disabled person, guaranteed by an inclusive educational system at all levels and lifelong learning, to achieve maximum development of their physical, sensory, intellectual and social talents and abilities, according to their characteristics, interests and learning needs.
Article 30	The following measures should be adopted in the selective processes for entry and admission to higher education institutions and professional and technological education courses, public and private (...)
Article 34	The disabled person has the right to do free choice and acceptance in an accessible and inclusive environment and equal opportunities.
Article 42	The disabled person has the right to culture, sport, tourism and leisure with equal opportunities to other people, guaranteeing access (...)
Article 46	The right to transport and mobility of persons with disabilities or reduced mobility shall be ensured with equal opportunities to other persons by identifying and removing all obstacles and barriers to their access.
Article 79	The public authority must ensure access of the disabled to justice, with equal opportunities to other people, guaranteeing, where required, adaptations and assistive technology resources.
Article 81	The rights of the disabled shall be guaranteed in the event criminal sanctions are applied.
Article 84	The disabled person is guaranteed the right to exercise their legal capacity on equal terms to other people.
Article 92	The National Register of Inclusion of the Disabled Person (Inclusion-Register) is an electronic public registry created to collect, processing, systematising and disseminate georeferenced information that allows for the identification and socio-economic characterisation of the disabled person, as well as the barriers that prevent them from exercising their rights.

Table 3. Applied analysis of correlation to the principle of autonomy

AUTONOMY	
Article	Legal text
Article 11	The disabled person cannot be forced to undergo clinical or surgical intervention, treatment or forced institutionalisation. Single paragraph. The consent of the disabled person in a situation of guardianship may be provided in the Law.
Article 12	The prior, free and informed consent of the disabled person is indispensable to performing treatments, procedures, hospitalisations and scientific research. § 1 In the case of a person with a disability in a situation of guardianship, their participation must be ensured to the greatest extent possible to obtain consent. § 2 Scientific research involving a person with a disability in a situation of tutelage or guardianship must be carried out, on an exceptional basis, only when there is evidence of direct benefit to their health or the health of other people with disabilities and provided that there is no other research option of comparable efficacy with participants not in a situation of tutelage or guardianship.
Article 36	The public authority must implement complete professional habilitation and rehabilitation programmes and services so that the disabled person can enter, continue or return to a field of work according to their free choice, vocation and interest.
Article 37	Competitive placement, with equal opportunities to other people and following labour and social security legislation, in which accessibility rules, the provision of assistive technology resources and appropriate adaptation of the work environment must be complied with, is a means to include disabled persons at work.
Article 53	Accessibility is the right that guarantees the person with a disability or reduced mobility to live independently and exercise their rights of citizenship and social participation.
Article 62	Upon request, the disabled person has the right to receive bills, service payment slips, receipts, bank statements and tax collections in an accessible format.
Article 63	Accessibility is mandatory on government websites and websites maintained by companies with headquarters or commercial representation in Brazil for use by disabled persons, guaranteeing access to the available information following internationally adopted best practices and accessibility guidelines.
Article 65	Telecommunications service providers shall ensure full access to the disabled person following specific regulations.
Article 68	Public authorities shall adopt mechanisms to encourage the production, publication, dissemination, distribution and marketing of books in accessible formats, including public administration or publicly funded publications, to guarantee the right of the disabled person to access literature, information and communication.
Article 74	The disabled person is ensured access to assistive technology products, resources, strategies, practices, processes, methods and services that maximise their autonomy, personal mobility and quality of life.
Article 85	Guardianship shall only affect acts related to property and trade rights. § 1 The definition of guardianship does not extend to rights over the body itself, sexuality, marriage, privacy, education, health, work and voting. (...)

Table 4. Applied analysis of correlation to the principle of nonmaleficence

NONMALEFICENCE	
Article	Legal text
Article 13	Without their prior, free and informed consent, the disabled person shall only receive care in life-threatening or health emergency circumstances, where their best interests are protected and the appropriate legal safeguards are adopted.
Article 19	The NHS is responsible for developing actions aimed at preventing deficiencies due to avoidable causes (...)
Article 23	All forms of discrimination against persons with disabilities are forbidden, including charging different premiums for private health insurance and plans due to their condition.
Article 90	Abandoning disabled persons in hospitals, nursing homes, shelters or similar entities (...)
Article 95	It is forbidden to require persons with disabilities to appear before public bodies when doing so, due to their functional limitations and conditions of accessibility, would impose a disproportionate and undue hardship on them, in which case the following procedures will be observed.

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Received: November 14, 2021
Accepted: January 8, 2022