THE RIGHT TO DIE WITH DIGNITY WITH THE
ASSISTANCE OF A PHYSICIAN: AN ANGLO,
AMERICAN AND AUSTRALIAN INTERNATIONAL
PERSPECTIVE

By Elizabeth Woods

I. INTRODUCTION .......................................................... 818
II. BASIC FRAMEWORK .................................................... 818
   A. DEFINITIONS ...................................................... 818
   B. SLIPPERY SLOPE ARGUMENT ................................... 819
III. THE LAW IN THE UNITED STATES .................................. 820
   A. 1997 SUPREME COURT DECISIONS ......................... 820
   B. OTHER FEDERAL COURT RULINGS ............................ 822
   C. LEGISLATIVE DECISIONS ....................................... 823
IV. THE LAW IN THE BRITISH ISLES ................................. 824
   A. ENGLAND .......................................................... 824
   B. SCOTLAND ........................................................ 826
   C. THE REPUBLIC OF IRELAND .................................... 827
V. THE LAW IN AUSTRALIA ............................................. 828
VI. INTERNATIONAL LAW ................................................ 830
   A. INTERNATION COVENANT ON CIVIL AND
      POLITICAL RIGHTS ............................................. 830
   B. UNIVERSAL DECLARATION OF HUMAN
      RIGHTS .................................................................. 831
   C. UNIVERSAL ETHICAL AND PHILOSOPHICAL
      PRINCIPLES ....................................................... 832
VII. CONCLUSION ............................................................. 833

"No decent human being would allow an animal to suffer without putting it
out of its misery. It is only to human beings that human beings are so

* The author is a graduate of Drew University in Madison, N.J. and candidate for Juris
Doctor, 1999, Nova Southeastern University, Shepard Broad Law Center.
cruel as to allow them to live in pain, in hopelessness, in living death, without moving a muscle to help them.”

I. INTRODUCTION

Individuals should have the right to end their life with dignity at the time of their own choosing, but this right must be carefully balanced with the idea of a right to life. Thus, seeking a balance between the two rights is the crux of the problem and the corresponding solution. Modern medicine has the ability to prolong life far beyond what was once conceived. The question now becomes one of an individual’s right to self-determination versus society’s interest in prolonging life. In ancient China, family members would take elderly, senile people into the woods with a basket of food. After saying their farewells, the elderly people would be left behind, in order for nature to take its course and allow them to die in peace. Today’s society might find this behavior cruel, but where should the line be drawn?

The first part of this Note will discuss recent developments in the law of the United States and the impact on physician assisted suicide controversy. The second part will explain important case and statutory law in the British Isles and Australia. Next, this work will discuss international law as it relates to the law of the aforementioned countries and to the overall issue of death with dignity and the right to life. Finally, the Note will conclude that the global community must take an active role in promoting individual sovereignty and criminal immunity by allowing a terminally ill individual a right to a dignified death, with the help of a physician.

II. BASIC FRAMEWORK

A. Definitions

There are many terms to describe the current controversy over assisted suicide. Often the term euthanasia is used as a synonym. Euthanasia is the intentional act of causing another’s death. There are a

2. Id. at 19.
few sub-categories: passive and active, voluntary and involuntary. Active, which is also referred to as positive or direct, euthanasia is where death is produced deliberately and actively by positive means. Passive, also referred to as negative or indirect, euthanasia is where death is deliberately produced by withholding or withdrawing ordinary means of nutrition or treatment. In the case of voluntary euthanasia, a terminally ill patient, of competent mind, can request an administered death. In involuntary euthanasia, a physician ends the life of a terminally ill patient, without the express request from the patient. Physician assisted suicide occurs where a patient is given medication or other assistance to end the patient’s life.

The right to die does not refer to a constitutionally imposed fundamental right, but rather the right of the patient to request help from a doctor to assist in a dignified death, without the possibility of criminal penalties applying to the physician’s actions. Thus, the idea that people have a right to end their lives is often confused with the idea that man is free to end his life when he so chooses, but that does not translate to an inherent right. What terminally ill people should have is a choice to have a physician help them to die in a dignified manner, and not to have the doctor criminally liable for such action.

B. Slippery Slope Argument

The opponents to any reform in the current assisted suicide battle, often point to disastrous results that will occur if the law is relaxed and criminal sanctions for assisting physicians are eliminated. This is referred to as the “slippery slope.” According to this theory, once the door is opened to some medically assisted suicide patients, there will be an increase in “killing” that will extend to other groups in a compulsory, coercive manner. The experience of Nazi Germany is often cited as proof of this argument’s validity. The basis of the argument is that the total annihilation of groups of people started with the idea that it was acceptable to allow chronically sick people to die. The idea gradually moved to include the socially unproductive and ended with the destruction of all

5. Id.
6. Hall, supra note 3, at 803.
8. Id.
Jews, homosexuals, and non-Germans. However, this argument falls short, because the concept of voluntary euthanasia or assisted suicide was never implemented in Nazi Germany. Additionally, the proposed changes in the current law that include eliminating the criminal penalties for doctors to help a patient to die, are presented in the confines of a democracy, not a dictatorship. Further, the existence of the legislature, as well as the courts, provide checks on the potential for abuse. Any human endeavor or system has the potential for misuse or abuse, but that is not a powerful reason to deny human autonomy and the need for terminally ill people to be able to eliminate their own suffering.

III. THE LAW IN THE UNITED STATES

A. 1997 Supreme Court Decisions

On June 26, 1997, the Supreme Court, in an unanimous decision, held that terminally ill people do not have a constitutional right to physician assisted death. In Washington v. Glucksberg, Chief Justice Rehnquist delivered the opinion, which held that the right to physician assisted suicide was not a fundamental right protected by the Due Process Clause of the Fourteenth Amendment. The Court further held that the state of Washington's ban on physician assisted suicide was rationally related to the government interests of preservation of life, maintaining integrity in the medical profession, and protecting terminally ill people who might be pressured into rash decisions about ending their life. Despite this ruling, the court did not preclude any rulings by states to legalize such assisted suicide. Chief Justice Rehnquist, writing the majority opinion, conceded that an "earnest and profound debate" should ensue on the issue of physician assisted suicide.

Similarly, the Supreme Court also held that there is no fundamental right to die in a case challenging New York’s law prohibiting physician assisted suicide. The Vacco case was based on the Equal Protection Clause of the Fourteenth Amendment. The petitioners said that the equal protection argument applied because the law discriminates against those terminally ill patients who were not on life support. The patients on
life support were able to hasten their deaths, while those not hooked up to any life sustaining machines were not given the same opportunity. The Equal Protection argument failed because the Court said that if the facial value of either the assisted suicide ban or the law permitting patients to refuse medical treatment is considered, neither treats anyone differently. Everyone is entitled, if competent, to refuse medical life-sustaining treatment. Additionally, no one is permitted to assist in a requested suicide.

The recent Supreme Court rulings found that the group of mentally competent, terminally ill patients was not a suspect class, so the scrutiny level could not be increased. As in the Glucksberg case, the rational basis test applied, and the Court found that the state interests of preserving life and prohibiting intentional killing, were legitimate interests.

The Vacco Court did clarify and strengthen the right to refuse medical treatment. In addition, the Court took the cause farther when it said that a doctor may provide palliative, or pain easing care, even if this case might hasten the patient’s death. The Court looked to the intent of the physician. As long as the doctor’s intent was not specifically to kill the patient, the aggressive attack to decrease pain was acceptable.

The “pain easing” argument rests on a tenuous base at best. If a physician’s purpose is to ease a patient’s pain, then aggressive palliative care may be given. Thus, the physician can escape the box by merely restating the intention as one of relief and not death. Under such rationale, a physician may administer several prescriptions or injections that would not individually cause death, but in the aggregate will make death certain. As long as the physician says the medication is intended to alleviate suffering, the lethal dosage is permitted.

It was only seven years ago, that the Court permitted the patient’s right to refuse life-sustaining treatment. Justice O’Connor, in a concurring opinion, recognized that allowing a patient to endure unwanted medical assistance was an intrusion of personal liberty and dignity. However, in the recent Supreme Court cases, the Court found a substantial difference between “letting a patient die and making a patient die.” The

15. Id. at 2297.
16. Id. at 2298.
17. Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990). The United States Supreme Court recognized that the right to refuse unwanted medical care is a liberty interest, and is subject to Constitutional protection. Id.
18. Id. at 288.
19. All Things Considered (NPR radio broadcast, June 26, 1997) (transcript #97062611-212).
Court relied on the principals of causation and intent. Thus, when medical treatment is withdrawn, the patient dies from the underlying condition. Whereas with physician assisted suicide, the patient is actually "killed" by the medication.

Lawrence Tribe, a Harvard Law Professor, who represents patients wishing to utilize physicians' assistance to end their life, feels the recent decisions amount to a victory. Although, the recent decisions do not preclude a federal Constitutional claim, the issue is now left primarily to the states. Tribe feels that a dying patient might have a better chance of relief in the lower courts.20

B. Other Federal Court Rulings

Previous rulings in the federal appeals courts, in both the Second and Ninth Circuits have presented favorable outcomes for proponents of physician assisted dying. In *Compassion in Dying v. Washington,*21 the Court held that physician assisted suicide is an intimate personal decision that is protected by the 14th Amendment's Due Process Clause. The Court recognized a liberty interest in choosing the time and manner of one's own death. Judge Reinhardt stated that it was a personal choice and those people who chose not to implement the choice were free to do so, but they were "not free, however, to force their views, their religious convictions, or their philosophies on all the other members of a democratic society."22 Similarly, the Second Circuit struck down New York's law banning assisted suicide, but this time an equal protection argument was used.23 Thus, there was no rational basis for distinguishing between unwanted medical treatment and assisted suicide.

The United States was founded on the idea that individual liberty and autonomy are integral to the strength of the nation. Justice William Brennan said, "Our Constitution is a charter of human rights, dignity and self-determination."24 In 1976, the courts took the right of self-determination into the privacy spectrum.25 In this case the New Jersey Supreme Court held that when an individual has a terminal illness that is

20. *Id.*
22. *Id.* at 839.
medically impossible to reverse, that person has a right to die. Additionally, the New Jersey Court held that criminal law could not punish the doctor for the free exercise of the right to privacy.

The irony of criminal sanctions for physicians assisting in a patient's death, is that often there is very little probability that doctors will actually be prosecuted. In 1990, Dr. Jack Kevorkian assisted his first patient, Janet Adkins in allowing her to self administer a lethal dose of drugs. Dr. Kervorkian was subsequently charged with first-degree murder. However, the charges were dropped because Michigan did not have a law prohibiting assisted suicide. Despite many subsequent lawsuits, no court to date, has been able to successfully prosecute Dr. Kevorkian.

C. Legislative Decisions

The courts are not the only branch of government prone to apparent contradiction. President Clinton recently signed into law a federal ban on money for physician assisted suicide. In April, 1996, the White House issued a statement where the President expressed his opposition to assisted suicide. Additionally, in 1992, President Clinton spoke out against doctor-assisted suicide. At a town meeting he said, "I don't support it. I just don't agree with it." However, President and Mrs. Clinton have each signed living wills.

The language of the Cruzan case in the United States, which stated that "although a patient had a Constitutional right to refuse medical care, a state could require clear and convincing evidence" that the patient wished to terminate their life. A living will would satisfy that prong of the requirement. By mid-1992, forty-nine states passed some kind of Living Will legislation. Currently, all fifty states now have provisions for advance medical directives or living wills.

26. Id. The Supreme Court of New Jersey developed a widespread definition of a permanent vegetative state: "if there is no reasonable possibility of [a person] ever emerging from [a] comatose condition, to a cognitive, sapient state, life-preserving systems may be withdrawn." Id. at 671.
27. Id.
28. Hall, supra note 3, at 818 n.85.
31. Id.
33. Cox, supra note 1, at 141.
Federal law has recently expanded the power of a living will. The Patient's Self-Determination Act (PSDA) passed the United States legislature in November 1990. The act requires that all federally funded health care institutions inform patients of their right to prepare a Living Will, and compels the hospitals to respect the patient's wishes. The passage of the PSDA, means that there is a federal law allowing Living Wills to be considered as "evidence" in order to pass the Cruzan test.

In addition to the courts, various State legislatures have attempted to pass assisted suicide laws. The Oregon Death With Dignity Act was the first law of its kind in the United States. On November 5, 1997, for the second time in three years, the citizens of Oregon voted in favor of doctor-assisted death. The legislation requires that many steps be followed before allowing anyone to receive medical assistance to allow individuals to end their life. Among the controls are the requirements that a second physician's opinion would be required; a full psychiatric examination; and documentation showing the patient is not being coerced.

IV. THE LAW IN THE BRITISH ISLES

A. ENGLAND

In the United Kingdom, voluntary assisted suicide is treated somewhat differently than in the United States. The Courts in England look to common law for precedent. In an early case, a doctor was acquitted of murder charges after he injected a massive dose of phenobarbitone into a patient with inoperable lung cancer. The doctor wished to ease the patient's pain. Thus, the law looks to the intention of the physician, not his motive in terminating a patient's life. "If a doctor intends to kill, he is as liable to prosecution as is the layman." The High Court, in an October 1997 hearing, held that Annie Linsell will be able to...
receive diamorphine to achieve a pain-free death, once she reaches the point where she is unable to swallow. Even though the diamorphine would inevitably shorten her life, Annie's doctor will not be prosecuted for her death because the drug was mainly to relieve her pain. The idea of looking to the intention of the physician is comparable to the recent United States Supreme Court rationale where palliative care could be withdrawn if it would ease the patient's suffering.

Public opinion seems to be moving towards the idea that assistance is oftentimes acceptable in the case of terminally ill patients. A 1986 survey of the British public reported that seventy-five percent of the public agreed that the law should allow adults to receive help towards an immediate and peaceful death, if they were terminally ill. Even though the tide seems to be in favor of relaxed assisted suicide laws, the House of Lord Select Committee on Medical Ethics reported in 1994, that they opposed any change in the law.

The first monumental right to die case in the United Kingdom was that of Airedale Health Authority v. Bland. After a stadium disaster, Tony Bland was left in a “persistent vegetative state.” United States Supreme Court Chief Justice Rehnquist defined persistent vegetative state as a condition “in which a person exhibits motor reflexes but evinces no indications of significant cognitive function.” The Bland case set out a number of tests to be applied in right to die cases. First, the requirement that those who are seeking to have treatment terminated need to apply to the court for a declaration. Secondly, the applications must be preceded by a full investigation where independent medical opinions are sought and explored. “No one, including the court, is entitled to consent to, or refuse, medical treatment on behalf of mentally incompetent patients.” The courts then, act as a check because physicians must come to court before

41. SMITH, supra note 7, at 233.
44. Id.
45. Cruzan v. Missouri Department of Health, 497 U.S. 261, 226 (1990). In the 5-4 decision, the court, for the first time, endorsed the idea that the 14th Amendment guarantees the right to avoid unwanted medical treatment. The court applied this idea to all patients providing they had made their wishes known. The ruling was similar to Supreme Court decisions in the 1997 term, as it basically passed the decision to end life back to the States because the States could allow removal of life-sustaining mechanisms.
initiating any death actions, in order to prevent doctors from making life ending decisions arbitrarily.

While the Bland case was not decided on the basis of a written constitution, there are still elements from common law that can be extracted that are similar to a right to self-determination and bodily integrity. The right to "self determination" was recognized by Lord Scarman in 1985. The case involved a patient’s right to be informed of inherent risks in recommended surgery. While English law did not recognize the doctrine of informed consent, the Court acknowledged the right of the patient to make her own mind based on relevant facts.

The Bland case closely parallels the American case of Nancy Cruzan, a road accident victim. Nancy Cruzan was a thirty-two year old woman who was comatose for seven years after a car accident. Cruzan’s parents provided the United States Supreme Court with evidence that passed the "clear and convincing" test; showing that Nancy would not want to live by artificial means. The Supreme Court ruled that Nancy, who was in a permanent vegetative state, could be removed from all feeding and hydration pumps.

The first English case to interpret the holding in Bland was Frenchay Healthcare NHS Trust v. S. The Court of Appeal held that it would be lawful for doctors to refuse to reinsert a feeding tube into a patient who had suffered acute brain damage. After the request of the patient’s mother, the tube was not reinserted and S died shortly after the Court of Appeal Hearing of January 14, 1994. The Court used the “best interests” test, to decide what treatment if any, was best for the patient. This case differs from Bland because it was presented as an emergency, and therefore, was not subject to the required court approved authorization to have life sustaining mechanisms removed.

B. Scotland

Janet Johnstone, who entered a permanent vegetative state after an unsuccessful bid with suicide, became one of the most famous “right to die” cases in Scotland. The Court set up a determinative balancing test to

48. Id.
49. Cruzan, 497 U.S. at 261.
51. Stone, supra note 46, at 205.
finalize a decision to discontinue medical treatment. The test is to decide whether it is in the patient’s best interests that any medical treatment be discontinued. The Court held that after weighing the physicians diagnoses and the fact that Ms. Johnstone had been in a vegetative state for over four years with no hope of recovery, it would not be unlawful to remove the feeding apparatus. The rationale the Court used was similar to the Frenchay case, as the best interests test was applied to determine the outcome.

C. The Republic of Ireland

Often the argument against physician assisted right to die claims is that euthanasia is an easy way out of a bad situation. An Irish case portrays a different view of the issue. A mother who requested her daughter’s right to die with dignity, while watching hopelessly as her daughter remained comatose for twenty three years, was certainly not looking for an easy way out. Thus, In re Ward of Court, the Irish Supreme Court looked at the right to die issue of the forty-five year old woman, whose condition remained unchanged for twenty three years. The woman was kept alive by a naso-gastric feeding tube. The Irish Supreme Court upheld the cessation of treatment for the woman, after her parents petitioned the court. Although it was reported that the woman could track things with her eyes, her mother said, “In 23 years of constant and regular visiting, I got no response from her.” The Irish Court, in contrast to the English Bland decision, had to consider the requirements of the Irish Constitution, and not just common law.

The Irish Constitution sets out several provisions that are applicable to the right to die cases. Some of those, but not limited to, are

53. Id.
55. After a long battle with both the hospitals and the courts, the woman’s mother was allowed to bring her daughter home to die. “Once we had my daughter in my house it seemed as though a great calm descended on us. There was great sadness too but it was accompanied by peace we felt that, at last, we were in control.” Her mother also stated that, “I can say, without fear of contradiction, that her eight days of dying were more peaceful than the previous 23 years of so called living.” The Mother of the Wom[en] in the ‘Right to Die’ case Tells Her Story, THE IRISH TIMES, Feb. 24, 1996, at 10. Similarly, the husband of a woman who remained in a permanent vegetative state for over four years in Scotland, battled for the right to allow his wife to die in peace. “It has been very hard for everyone over the past four years. It’s better for me now to remember the past, not the present. I didn’t want Janet to die, but her life ended more than four years ago.” Stuart McCartney, Family’s Tears for Brave Gran Janet, SCOT. SUNDAY MAIL, June 2, 1996, at 2.
the right to life, the right to bodily integrity and the right to equality. In *Re a Ward of Court*, Chief Justice Hamilton says, “As the process of dying is part, and an ultimate consequence of life, the right to life necessarily implies the right to have nature take its course and to die a natural death.”

### V. The Law in Australia

Both in Australia and the United States, suicide itself is not a criminal act, yet physicians who assist a suicide can often be prosecuted and/or lose their licenses. In 1961, England decriminalized suicide and attempted suicide, but left assisted suicide a crime punishable by fourteen years in prison. The laws affecting physician assisted suicide differ from State to State in Australia. Similarly, criminal law is mainly administered by the States and Territories, rather than the Commonwealth. In 1995, Australia’s Northern Territory became the first legislature in the post-war world to legalize a choice for terminally ill patients to have a physician assist them in their death. In 1995 the Legislative Assembly of the Northern Territory passed the Rights of the Terminally Ill Act 1995 (ROTTI).

---

56. **BUNREACHT NA HEIREANN** [Constitution] art. 40, § 3, cl. 2 (Ir.). “The State shall, in particular by its laws protect the best it may from unjust attack and, in the case of injustice done, vindicate the life...of every citizen.” Additionally, the Constitution appears to guaranty a degree of personal bodily integrity. “The State guarantees in its law to respect, and, as far as practical, by its laws to defend and vindicate the personal rights of the citizen.” *Id.* art. 40, § 3, cl 1. Lastly, the Constitution sets forth a right to equality. “All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to the differences of capacity, physical and moral, and of social function.” *Id.* art. 40, § 1.


58. *Cox*, supra note 1 at 62.

59. Rights of the Terminally Ill Act (NT), No. 12 (1995) (Austl.) [hereinafter ROTTI]. The provisions of the Act relating to the assistance in terminating a person's life are: “[a] patient who, in the course of a terminal illness, is experiencing pain, suffering and/or distress to an extent unacceptable to the patient, may request the patient's medical practitioner to assist the patient to terminate the patient's life.” *See id.* § 4. Further, terminal illness is defined as “an illness which, in reasonable medical judgment will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient.” *See id.* § 3. There are considerable standards that must be met before a physician can assist a patient. Some of the conditions include:

(a) the patient has attained the age of 18 years;

(b) the medical practitioner is satisfied, on reasonable grounds, that –

(i) the patient is suffering from an illness that will, in the normal course and without the application of extraordinary measures, result in the death of the patient;
The legality of the Act was challenged in *Wake and Gondarra v. The Northern Territory of Australia*.60 The Supreme Court upheld the validity of the Act.61 The plaintiffs challenged the Act arguing that the Northern Territory's legislative power is subject to a fundamental principle underlying the common law that there is an undeniable right to life, and thus, the "fundamental right" of a patient would be denied. No member of the Court wanted to state specifically that there was a principle of law in Australia that supported an inalienable right to life.62 Justice Angel said he did not believe there was a 'right' to life. "It seems to me to speak of a 'right' to life is essentially meaningless if by that expression is meant a legal right."63

The Federal Government in Australia has the Constitutional power to override laws of Australian Territories, much as the system in the United States where the Supremacy Clause64 of the United States Constitution grants the federal government authority to trump individual States' legislation. In an effort to repeal the ROTTI Act, Federal Liberal MP Kevin Andrews introduced A Private Member's Bill (PMB) into the

(ii) in reasonable medical judgment, there is no medical measure acceptable to the patient that can reasonably be undertaken in the hope of effecting a cure; and

(iii) any medical treatment reasonably available to the patient is confined to the relief of pain, suffering and/or distress with the object of allowing the patient to die a comfortable death;

(c) two other persons, neither of whom is a relative or employee of, or a member of the same medical practice as, the first medical practitioner or each other –

(i) one of whom is a medical practitioner who holds prescribed qualifications, or has

(ii) prescribed experience, in the treatment of the terminal illness from which the patient is suffering; and

(iii) the other who is a qualified psychiatrist, have examined the patient . . .

(iv) in the case of the qualified psychiatrist referred to in subpar

(ii) - that the patient is not suffering from a treatable clinical depression in respect of the illness; . . .

(f) the medical practitioner is satisfied, on reasonable grounds, that the patient is of sound mind and that the patient's decision to end his or her life has been made freely, voluntarily and after due consideration.


61. Id.


63. Wake, No 112, slip op. at 62.

64. U.S. CONST. art. IV, § 1.
House of Representatives. The Bill passed both the House, by a vote of 88 to 35, and the Senate by a vote of 38 to 33. The effect of this law is that the ROTTI Act is overruled.

As an illustration of how quickly the world is changing, books that explained options about euthanasia were banned in Australia just a few years ago. Derek Humphry, founder of the Hemlock Society, and author of Final Exit, had his book banned. However, by August 1992, the Euthanasia Society in Australia made a plea to the government and in less than a year, the ban was lifted.

VI. INTERNATIONAL LAW

Human rights and self-determination have been established as important goals in international law. These principles have been established by the Charter of the United Nations. Additionally, international treaties and customary law acknowledge universal respect for life which is coupled with regard for individual autonomy.

A. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is an international treaty, that was adopted by the UN General Assembly in 1966. Australia ratified the ICCPR on August 13, 1980. Both Great Britain and the United States are also parties to the treaty. The ICCPR is binding on all those countries that have been a party to it. The ICCPR requires State parties to adopt legislative or other measures to support the rights recognized in the treaty. The Australian Parliament has not enacted the ICCPR as part of Australian law. However, the ICCPR is attached as a schedule to the Human Rights and Equal Opportunity Commission Act 1986.

Article 1 provides that "all peoples have the right of self-determination. By virtue of that right they freely determine their political
status and freely pursue their economic, social and cultural development.°° It is not clear if the provision advocates a blanket right to self-determination in every area of life or if it is limited to political, economic and social arenas. Even if self-determination was so limited, certainly making provisions for one's own death would fall into one, if not all, of the above categories. Additionally, the use of the term "self-determination" followed by a period to end the sentence, indicates a lack of restrictions on free choice in personal matters. Thus, the second sentence in Article 1 does not provide a finite list, but rather gives examples of ways in which individuals are free to make determinations for themselves.

The right to self-determination is often balanced with a right to life. Article 6 provides: "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Even if the right to life is an inherent right, it may be possible to waive this right. Thus, as with other rights, an individual may decide that there is an appropriate time not to assert the right, and to choose a peaceful death.

The final sentence of Article 6 limits the scope of the right. The use of the word "arbitrary" is crucial to the analysis of the scope as only deprivations that are "arbitrary" are in violation. The right to life is apparently not absolute. A number of delegates to the Human Rights Commission suggested that arbitrarily was equivalent to an Anglo-American phrase, such as "without due process of law." Due Process implies a right of the person affected to be heard and to be able to make an informed choice. At a minimum then, passive euthanasia would appear to be permissible under the treaty, because legal controls are currently recognized to allow refusal of medical treatment.

B. Universal Declaration of Human Rights

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights on December 19, 1948.°° The Universal Declaration is not absolutely binding on United Nation members, but its provisions have been accepted all over the world. Article 3 provides that "[e]veryone has a right to life, liberty and security

70. ICCPR, supra note 68, art. 1.
71. Id. art. 6.
72. Australasian Legal Information Institute, supra note 62, at 8.
The application of Article 3 of the Universal Declaration's right to life protection is not clear in the realm of assisted suicide. As in other treaties, it is possible that a victim's consent may negate any illegal implications of the Universal Declaration. Additionally, Article 5 protects persons from inhuman and degrading treatment, and so one can make an argument that the quality of life is relevant. Thus, assisted suicide does not per se conflict with the Universal Declaration. The protection of life should be considered in light of the provisions protecting degrading actions. An individual who experiences a debilitating medical illness should not only be able to refuse additional medical treatment, but should also be granted permission to end their life when further treatment is both futile and debasing.

C. Universal Ethical and Philosophical Principles

Perhaps the best way to synthesize principles in international law with the concepts in Anglo-American law is to consider universal ethics. The ethical principle of double effect is relevant to the discussion on physician assisted death. This principle was formulated in western thought in the 17th Century by Roman Catholic theologians. Double effect set out a test in which the good effect must be greater than the bad effect, provided the intention behind the action was a good one. If a proposed action satisfied the test, then it was ethically permissible. Both the British custom of looking to the intention of the physician, as well as United States Supreme court test where the physician’s intent is considered, support the concept of double effect.

In addition to the “double effect” principle, John Stuart Mill’s concept of individual sovereignty points to the answer in the physician assisted dying debate. The idea that man is the supreme decision maker for himself supports an individual’s power to terminate their life, should they choose to do so. Thus, as long as man’s decision is made in an uncoerced manner, and the physician’s intent was to help the patient, then the greater good of the individual’s free choice, outweighs the bad effect of the death.

74. Id. art. 3.

75. “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Id. art. 5.

76. Wilkinson, supra note 4, at 245.

77. Id.

78. “Over himself, over his own body and mind, the individual is sovereign.” JOHN STUART MILL, ON LIBERTY AND OTHER WRITING 13 (Cambridge Univ. Press 1989).
International societies express an interest in the sanctity of life. In Anglo-American law, murder is proscribed, and abortion is available with limited application. Ironically, the United States still imposes the death penalty as a criminal sanction. The death penalty in Great Britain is accepted, but only in extreme situations. Australia has formally abolished the death penalty. The sanctity of life; therefore, has an exception in many countries. If a state or government can make the decision to end a person’s life, then an individual should also be granted control over the decision to end his own life in exigent circumstances.

VII. CONCLUSION

Australia, Great Britain, Ireland and the United States recognize a common law right of individuals to refuse medical treatment. Additionally, the right to self-determination extends to members of each of these nations through national, as well as international law. If members of these societies that are physically well are to benefit from these concepts, it follows that the rights extend to those who are terminally ill or unable to speak for themselves.

Just as Australian Courts have found no fundamental right to life, American courts have held there is no fundamental right to die. 7 International law consistently recognizes a right to life balanced with an individual’s sovereignty over personal decisions. Even though there is no right to die in the United States Constitution, the states or individual countries could create such a right, just as the Australian Northern Territory did. The international community should follow Australia’s lead in formulating strict guidelines to accommodate an individual’s choice to die with dignity.

The advances in medical technology give the physician great opportunities to share in the decision making process to aid a terminally ill patient in a dignified death. However, without a legal framework and with fears that such a decision could result in criminal sanctions, these decisions are made behind closed doors, where neither the patient or the physician’s rights are protected.

Legislation such as the Australian Act and laws upheld by American, Irish and English Courts, show that the world is ready for change. Although change ebbs and flows, it is nevertheless evident that society is on the brink of a major move toward respecting the autonomy of

79. In an address to Catholic University’s School of Philosophy, Justice Scalia said it is “absolutely plain that there is no right to die. There were laws against suicide” in the states at the time the Constitution was enacted. Scalia’s Right to Die Remarks Criticized, L.A. TIMES, Oct. 29, 1996, at 15.
the individual in matters of intimate concern. While the idea of a blanket approval of assisted suicide is not advocated, assisted suicide carried out within strict guidelines must become a right that every human being is granted.
ARGENTINA

Judiciary
Federal courts include the Supreme Court, 17 appellate courts, and district and territorial courts on the local levels. The provincial court systems are similarly organized, comprising supreme, appellate, and lower courts.

Magistratura
Las cortes federales incluyen la Corte Suprema, 17 cortes de apelación, y cortes de distrito y territoriales en los niveles locales. Los sistemas judiciales provincianos son similarmente organizados, comprendiendo supremo, apelación, y las cortes más bajas.