IS THERE A RIGHT TO DIE?: A COMPARATIVE STUDY OF THREE SOCIETIES (AUSTRALIA, NETHERLANDS, UNITED STATES)

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I. INTRODUCTION

In the 1980s and 1990s, the related phenomena of euthanasia and physician-assisted suicide emerged in several developed Western nations under the umbrella heading of the "right to die." Australia's Northern Territory passed the first legislation in 1996 authorizing euthanasia and its federal Parliament overturned it within a year. Courts in the Netherlands had been gradually recognizing exceptions to the imposition of criminal penalties in cases of euthanasia and their legislative branch recently codified these judicial decisions. In the United States, several states have held referenda to expressly allow or outlaw these practices, resulting in the passage of a law permitting euthanasia in Oregon and a ban in several other states.

Regardless of the country where euthanasia is practiced, from the proponents' point of view, the right to die is seen as a form of mercy killing, usually of a very ill or aged loved one suffering with a painfully debilitating and life-ending medical condition. On the other hand, those opposed to this type of act generally equate it to murder and as such favor punishment of the participants through the criminal justice system. Furthermore, opponents often accuse those complicit in the act of playing God.

This article attempts to outline the societal views in three different countries concerning the right to die. Because the debate about this type of death touches on religion as well as legal and moral attitudes, these facets of the communities are examined. The lack of uniformity between and among communities is part of the reason this topic is so well suited for comparative study. However, most societies are not homogeneous in their religious traditions or views towards morality; there is often no consensus within a society on controversial topics. This article will therefore attempt to highlight the legal and other techniques the societies utilize to address polemic questions of medical ethics and law, such as the right to die.

1 See discussion infra Part IV.A.
2 See discussion infra Part IV.B.
3 See discussion infra Part IV.C.
4 Although this article only addresses three countries in any depth, information concerning the experiences of other countries is included where available and relevant.
5 Other interesting topics that involve the intersection of bioethics and law include the policies and politics of organ harvest, donation and transplantation, the use of stem cells for medical research, cloning of animals and humans, abortion, genetics and advanced reproductive technologies.
II. definitions

One of the many obstacles to discussing the concepts involved in the right to die is the selection and usage of appropriate terminology. Euthanasia's etymology derives from the Greek 'eu' meaning easy and 'thanatos' meaning death. Proponents argue that the right to die should concern an individual's ability to decide when, and if, to pursue such an "easy death." They further argue that the individual should be allowed to hasten her own death, by her own hand or, with the aid of another at her consent. The phrase "right to die" was coined subsequently by advocates, perhaps in an effort to bring this "right" within the panoply of existing human rights.

The term euthanasia is more routinely used by the population at large as a general one to mean any form of hastened death. In common parlance, euthanasia broadly encompasses all methods of ending one's life sooner than nature would, whether by the patient himself, or a friend, spouse, child or health care practitioner. Most frequently, however, the individual requesting death is a person undergoing medical treatment for a life-ending disease and not a person considering death (suicide) due to mental illness. It may be considered euthanasia both when a veterinarian "puts to sleep" a family pet and when a husband suffocates his long-suffering wife at her request.

The right to die includes both the technical meaning of euthanasia, the direct administration by a physician of a lethal injection, and physician-assisted suicide, the prescription of lethal medication for self-administration by the patient. Opponents of the right to die believe that taking one's own life is wrong as is assisting in a premature death of another, even in cases where

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6 Euthanasia may be defined as "the act or practice of killing or permitting the death of hopelessly sick or injured individuals (as persons or domestic animals) in a relatively painless way for reasons of mercy." WEBSTER'S NEW COLLEGIATE DICTIONARY 429 (9th ed. 1988).

7 In an international context, human rights are generally considered those rights recognized in the following: U.N. CHARTER, Dec. 8, 1948, G.A. Res. 217 A(iii), UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948) U.N. Doc. A1011, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, Dec. 16, 1966, 99 U.N.T.S. 171 (includes the right to be free from discrimination, right to liberty and security of person, right to due process, right to freedom of thought, inter alia) and the International Covenant on Economic, Social and Cultural Rights (1976) (includes the right to an adequate standard of living, right to mental and physical health, right to education, inter alia). In the United States, certain rights recognized by the Supreme Court, namely the "new privacy rights," such as the right to birth control, abortion and, arguably, euthanasia are often considered to go beyond these fundamental human rights.

8 A person who ends her own life due to mental illness is characterized as committing suicide and is not contemplated by this article. Opponents of euthanasia, however, argue that mental conditions such as depression are often experienced by very ill patients and thus mental illness is inextricably interwoven with euthanasia.
the "victim" consents or requests the assistance. Proponents further distinguish among and between different forms of "self-deliverance."9 This range of definitions is further complicated by the practice of adding the modifying terms "voluntary" or "involuntary" and "passive" or "active."

Within the "right to die" movement, these more specific terms are utilized to identify gradations of the act. For example, voluntary euthanasia is the death of an individual, at his request, by a doctor's lethal injection. Physician-assisted suicide is a form of voluntary euthanasia in which the physician prescribes a lethal dosage of medication for the patient to administer to himself.10 The former practice is "passive euthanasia" (from the patient's point of view) while the latter is "active euthanasia." Similarly, since both of these actions were done at the request of the patient, they are voluntary. Involuntary euthanasia occurs when the procedure is done without the consent of the patient, because the patient is incapable of expressing his will, or because it is done against the patient's will.11 While these variations may be considered the preferred definitions of the terms, it should be noted that lay people tend to use the terms euthanasia and physician-assisted suicide rather imprecisely. Regardless of definition, in most societies, from the law's viewpoint, virtually all acts that result in a person's untimely death are considered suicide, manslaughter or even homicide, no matter what the motivation.12

III. SOCIETIES SELECTED

The Commonwealth of Australia, the Kingdom of the Netherlands and the United States of America were chosen to be compared in this article due to their relative high level of activity on the issue of the right to die. In all three countries, there have been legislative enactments, popular and grass roots

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10 Id.

11 Involuntary euthanasia is described for purposes of complete and thorough definition. Involuntary euthanasia is not the subject of this article, although opponents of the right to die believe that most hastened deaths are coerced in some way and hence involuntary. For example, individuals may not want to burden their families with caring for them during an extended illness or health care insurers may be motivated by monetary considerations in providing treatment options.

12 For a discussion of the Netherlands and the American state of Oregon see infra Parts IV.B and IV.C.
initiatives and judicial decisions on this matter and therefore a great deal of information is available for study. One obvious similarity, and perhaps drawback, among these societies is that they are all industrialized nations with a high per capita income and gross domestic product. However, due to the nature of the right to die, the issue has been faced most recently by societies like these three precisely because they are wealthy enough to allow access to medical care for many of their citizens throughout life. Access to lifelong health care raises life expectancy and hence the likelihood of confronting issues related to the right to die.

Many societies, especially those among or within developing countries, are not able to boast of long life expectancies because of a lack of sufficient medical facilities, adequate nutrition, potable water and perhaps ongoing armed conflict or civil war. It is specifically for these reasons that there is a dearth of information directly concerning these societies' views towards the right to die. Even though these communities likely have views towards suicide, perhaps even in the cases of the very ill or elderly, their views have not been as widely reported as attitudes from the three countries that are featured in this article. Absent explicit information about the beliefs and practices of these societies regarding the right to die, their views may be extrapolated from their religious influences and other attitudes.

The role of religion is of paramount importance to many individuals who are confronted with death or an individual contemplating euthanasia. Therefore the teachings of several major religious traditions will be examined in this article. Interestingly, although religions were developed in discrete locales, over time they have influenced people around the world and even other belief systems. The doctrine of Christianity was spread far and wide during the Crusades and Western colonization and still maintains a strong influence over many of its adherents throughout Europe, the Americas, Africa, Asia and Australia. Other religions, such as Islam, have similarly spread over

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13 The per capita gross domestic product (2000 est.) in terms of purchasing power parity for Australia is $23,200, for the Netherlands is $24,400 and the United States is $36,200. The United States has the highest of all countries. WORLD FACTBOOK (2001), available at http://www.cia.gov/cia/publications/factbook/index.html.

14 Compare the average life expectancies for the following countries: Afghanistan, 46.24; Australia, 79.87; Bolivia, 64.06; Eritrea, 56.18; Ethiopia, 44.68; Indonesia, 68.27; Japan, 80.8; Jordan, 77.53; Nepal, 58.22; Netherlands, 78.43; Nigeria, 51.07; Sierra Leone, 45.6; Turkey, 71.24; Ukraine, 66.15; United States, 77.26; Zambia, 37.29; and Zimbabwe, 37.13. Id.

15 While this may be an interesting academic exercise, it is outside the scope of the present article. For an interesting article on the relationship between Buddhism and euthanasia, see generally Damien Keown, Suicide, Assisted Suicide and Euthanasia: A Buddhist Perspective, 13 J.L. & RELIGION 385 (1998-1999).
vast continents throughout the ages due to exploration, expansion and conquest. While at least one major religion, Hinduism, does not permit proselytization or conversion, the global increase in the movement of peoples worldwide helps to explain the appearance of faiths far from their traditional birthplace. Although the various belief systems possess significant differences in their theologies and traditions, almost all share a respect for human life and the feeling that determination of human life is within the sole provenance of the Almighty.

Australia, the Netherlands and the United States are Western, developed nations and predominantly Christian. As secular states, all three countries respect the right to freedom of religion and contain pockets of major and

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16 “Almighty” is meant to include any and all interpretations of a Supreme Being or Higher Power.

17 In Australia, 11% of the population is non-Christian and the remainder is divided among the following Christian denominations: 26.1%-Anglican, 26%-Roman Catholic and 24.3%-other Christian. In the Netherlands, about half of the population is Christian (Roman Catholic-31% and Protestant-21%) while the rest divides as follows: Muslim-4.4%, other-3.6% and unaffiliated-40%. More than three-quarters of Americans are Christians (Protestant-56% and Roman Catholic-28%), while the remainder are Jewish-2%, other-4% and none-10%. WORLD FACTBOOK, supra note 13. At least one scholar emphasizes the limitations of comparative review of attitudes towards euthanasia and assisted suicide of only Western, mainly Christian countries. “A notable feature of the present debate is that is [sic] has been conducted virtually entirely within the framework of the Western religious, cultural and philosophical tradition. The views of other cultures—particularly those of the East—have been little heard. In the face of the sharp polarity which has opened up in the West between those who support and oppose the ‘right to die,’ perhaps it is now time to broaden legal horizons and take note of the arguments advanced within other religious traditions, including Buddhism.” Keown, supra note 15, at 386. For an interesting study on the relationship between Japanese religions and the right to die, see Noritoshi Tanida, M.D., Japanese Religious Organizations' View on Terminal Care, at http://www.biol.tsukuba.ac.jp/~macer/EJ102/ej102b.html. The study surveyed 388 religious corporations (143 Shinto, 157 Buddhist, 58 Christian) and 30 miscellaneous religious groups. “Respondents were asked to answer questions based on their religious faith regarding a living will, and the introduction or withdrawal of life-sustaining treatment at the terminal stage. Results showed that Japanese religions accepted the concept of a living will and ‘being natural at terminal care.’” Id.


The Constitution of the Netherlands provides that “[e]veryone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.” NETH. CONST., ch.1, art. 6, available at http://www.eur.nl/frg/iacl/armenia/constit/nethrlnrd/holland-e.htm.

The United States Constitution provides that “Congress shall make no law respecting an
minor world religions.  Their socio-economic status and religious traditions notwithstanding, differences exist among these societies with regard to their political culture and form of governance. These components will be explored in relation to their citizens' attitudes towards the right to die.

IV. SOCIETY SURVEY

A. Commonwealth of Australia

Australia, a former colony of England and member of the Commonwealth of the British Empire since 1901, is an island continent located between the Southern Pacific and Indian Oceans. It is a federal-state system with a centralized national government consisting of six states and two territories. The Constitution provides for the separation of powers between the legislative (Parliament), executive (Commonwealth Executive) and judicial branches (Federal Judicature).

Australia follows the common law system and has a parliamentary form of government that recognizes the British monarch (currently, Queen Elizabeth II).
II) as sovereign. The monarch appoints a representative in Australia, the Governor-General, who in turn selects the Cabinet from among the members of the Federal Parliament, on the advice of the Australian Prime Minister. The Governor-General in Council also appoints the Chief Justice and the six other Justices of the High Court of Australia.

The Prime Minister, currently John Howard, is appointed by virtue of being the leader of the majority party or coalition in Parliament. The Federal Parliament consists of the Queen, the Senate’s seventy-six members, twelve from each state and two from each territory and the House of Representatives’ 148 members, allocated on a proportional representation arrangement. State Senators and Representatives are elected by popular vote and serve six-year and three-year terms, respectively. Territory Senators are elected for three-year terms.

Australia was originally inhabited by a hunting-gathering people, now referred to as Aborigines, who lived in tribal groups. Today, their descendants represent less than 2% of the total population due to their near elimination by foreign colonization. European settlement began in the late eighteenth century, perhaps most infamously by Great Britain, which populated Australia partly by using it as a penal colony. Since the end of World War II, however, the majority of immigrants have come through a planned immigration scheme,

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27 AUSTL. CONST. ch. II, §§ 62-64.

28 Id. at ch. III, § 72.


30 See generally AUSTL. CONST. ch. I, §§ 1 to 60.

31 Id. The Australian Constitution allows this difference between State and Territory Senators. Specifically, the Constitution provides that “[t]he Parliament may admit to the Commonwealth or establish new States, and may upon such admission The Parliament or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.” AUSTL. CONST. ch. VI, § 121.

mostly from the Middle East, East Asia and Latin America.\textsuperscript{33}

Traditionally, Australia has had a strong social welfare safety net program. This legislation, enacted mainly when the Australian Labor Party was in control during the late 1980s, has continued on a lesser scale under the more conservative coalition led by John Howard. This conservative coalition government was in power when the right to die emerged as an issue in domestic politics.\textsuperscript{34}

The Northern Territory of Australia legalized the right to die in 1996 by enacting "Rights of the Terminally Ill Act" (RTI), permitting doctors to assist patients who sought to end their lives.\textsuperscript{35} The RTI was amended in February 1996 to increase the number of doctors required for certification and also imposed more provisions regarding criteria for physicians, enforcement and reporting of euthanasia.\textsuperscript{36}

In June of 1996, the President of the Australian Medical Association for the Northern Territory, Dr. Chris Wake, and an influential Aboriginal leader Rev. Djiniyini Gondarra, filed a constitutional challenge to the RTI claiming that it violated fundamental rights guaranteed by the Constitution, sanctioned the infliction of death without judicial involvement, violated the separation of powers and was an ultra vires act by the Northern Territory Parliament.\textsuperscript{37} The case was dismissed by the Supreme Court of Northern Territory on two grounds.\textsuperscript{38} The dismissal was appealed to the High Court of Australia\textsuperscript{39} and


\textsuperscript{36} The amended legislation was entitled the “Rights of the Terminally Ill Amended Act 1996.” \textit{See id.}


\textsuperscript{38} The Supreme Court ruled that the Northern Territory Legislative Assembly had competence to legislate on an issue affecting fundamental rights and that the Northern Territory
special leave was granted to hear the matter. Rather than wait for an opinion from the High Court, the Federal Parliament decided to address the matter itself. The court case was therefore stayed, pending action of Parliament. The Parliament overrode the RTI by enacting a federal law outlawing euthanasia throughout the territories.\textsuperscript{40} The Euthanasia Laws Act 1997 amended the self-government acts of the Northern Territory, Australian Capital Territory and Norfolk Island to proscribe the enactment of any law permitting euthanasia, mercy killing or assistance in terminating one’s own life.\textsuperscript{41}

With the passage of this federal law in 1997, the short-lived experiment with the right to die in Australia abruptly came to an end. All that remained were two individuals, previously certified as eligible under the RTI, prohibited from utilizing the procedure and therefore left in limbo.\textsuperscript{42}

**B. Kingdom of the Netherlands**

The Kingdom of the Netherlands is a constitutional monarchy\textsuperscript{43} located in Europe between Germany and Belgium and bordering the North Sea. It follows a parliamentary system of government with the monarch, currently Queen Beatrix, as the Chief of State and Wim Kok as the current Prime Minister. The monarch appoints the Council of Ministers,\textsuperscript{44} or Cabinet, as well

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\textsuperscript{40} The “Euthanasia Laws Bill 1996” was enacted in 1997 and overruled the Northern Territory’s RTI law. The Federal Parliament was able to overrule the Northern Territory’s legislation because it has the power to make laws for its territories (but not for its states). “The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth . . . .” \textsc{Austl. Const.} ch. VI, § 122.


\textsuperscript{42} \textsc{11 International Anti-Euthanasia Task Force Update} 2 (March-May 1997), \textit{available at} http://www.iaetf.org/iua8.htm#1. The ultimate fate of these individuals is unclear.

\textsuperscript{43} See generally GRW. NED ch. 2, § 1, arts. 24 et seq., \textit{available at} http://www.uni-wuerzburg.de/law/n100000_.html.

\textsuperscript{44} See \textit{id.} at Ch. 2 § 2.
as the Justices on the Supreme Court (*Hoge Raad*). The Netherlands follows the civil law system and incorporates the French criminal code. The country is divided into twelve provinces for administrative purposes but does not follow a federated system. The Constitution, adopted in 1814, and amended many times (most recently 1983), does not permit judicial review of acts of the legislative branch, known as the States General (*Staten Generaal*).

The States General consists of the First Chamber (*Eerste Kamer*), with 75 members elected by the twelve provincial councils for four-year terms, and the Second Chamber (*Tweede Kamer*), with 150 members directly elected by popular vote for four-year terms. The Labour Party, a social democratic party without formal ties to any trade unions, is the largest political party currently represented in the Second Chamber and espouses views that are left of center. The Labour Party works in coalition with other parties, including others to its political left, to pass legislative measures. This collaboration results in some of the most liberal laws in the world. For example, the Netherlands is well-known for its liberal attitudes toward the decriminalization and government regulation of cannabis and prostitution.

While the practice of hastening one’s death with the aid of a physician is technically illegal in the Netherlands, doctors have generally not been prosecuted for providing such assistance since 1973. In 1995, the Dutch Parliament codified this decision, granting doctors immunity from prosecution.

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45 See id. at Ch. 6, art. 117.
47 The twelve provinces are: Drenthe, Flevoland, Friesland, Gelderland, Groningen, Limburg, Noord-Brabant, Noord-Holland, Overijssel, Utrecht, Zeeland and Zuid-Holland.
48 “The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.” GRW. NED. ch. 6, art. 120.
49 Id. at ch. 3, § 1, arts. 50-56.
50 The “Democrats 66” and the Green Party are either equal to or further left than the Labour Party. World factbook, Netherlands, at http://www.cia.gu/cia/publications/factbook/geos/nl.html.
51 Under the Narcotics Act (1976), a distinction is made between hard drugs (heroin and cocaine) and soft drugs (hashish and marijuana) and sale of 5 grams per person of the latter is allowed in “coffee shops” under strict criteria. See The Netherlands National Drug Monitor, *Cannabis Policy Update 2000*, available at http://www.trimbos.nl/ukfssheet/cannabis-uk.html.
53 In 1973, a doctor was arrested and tried for administering a lethal dose of morphine to her terminally ill mother. The Court gave her a suspended sentence of one week in jail and a year’s probation. See Derek Humphry, *Lawful Exist* (1993) Ch. 2, available at http://www.rights.org/deathnet/Chapter2.html.
for assisting in suicides, provided that doctors adhered to government-prescribed protocol.\(^\text{54}\) In 2000, the Dutch Parliament further exempted doctors from criminal prosecution for both euthanasia and physician-assisted suicide.\(^\text{55}\) The exemption was created under a bill sponsored by Dutch government agencies that required doctors to satisfy certain due care criteria and notify the appropriate officials of their actions.\(^\text{56}\) The Netherlands is currently the only national government to not prosecute doctors for participation in physician-assisted suicide.

C. United States of America

The United States of America became independent from England in 1776 and adopted its Constitution in 1789. The United States elects a national president every four years and is comprised of fifty states\(^\text{57}\) joined in a federal-state system. In addition to the national government, each state has its own separate tri-partite governmental structure. The great majority of the states,\(^\text{58}\) as well as the federal government, follows the English common law and also provides for judicial review of legislative acts.

The President of the United States, currently George W. Bush, is elected by the electoral college for a four-year term.\(^\text{59}\) The President appoints the nine Justices of the Supreme Court, for life, and the members of the Cabinet, with the approval of the Senate.\(^\text{60}\) The Senate is comprised of 100 members, two from each state, elected by popular vote for a term of six years.\(^\text{61}\) The 435 members of the House of Representatives are also elected directly by the voters, albeit for two-year terms, in proportion to population.\(^\text{62}\)

\(^{54}\) Id.


\(^{56}\) The bill entitled "Review of Cases of Termination of Life on Request and Assistance with Suicide" was sponsored by the Minister of Justice, Benk Korthals, and the Minister of Health, Dr. Els Borst, available at http://www.minjust.nl:8080/c_actual/persber/pb0715.htm.

\(^{57}\) The United States also includes the District of Columbia and dependent territories which are not relevant to the subject matter of this article.

\(^{58}\) The State of Louisiana is a civil law jurisdiction, due in large part to its history as a colony of France. Stephanie M. Possa & Richard P. Bullock, The Source of Louisiana Law, at http://www.lna.org/l_espirit/lawsourc.htm

\(^{59}\) U.S. CONST. art. II, § 1, cl. 1.

\(^{60}\) Id. at art. II, § 2, cl. 2.

\(^{61}\) Id. at art. I, § 3, cl. 1.

\(^{62}\) Id. at art. I, § 2, cl. 1.
Assisted suicide is currently legal only in the state of Oregon. It is criminalized under the state common law in ten states and criminalized under state statute in 36 states and the District of Columbia. There is no law prohibiting physician-assisted suicide in North Carolina, Utah and Wyoming and the common law criminal language in these jurisdictions has been abolished. Opponents of euthanasia and physician-assisted suicide in the United States argue the practices are prohibited by the Americans with Disabilities Act, but to date, no such judicial rulings exist.

The Oregon law was implemented in 1997, the result of a voter initiative called Measure 16. The State of California attempted to pass such a law many times since 1988, but was not successful. Fearing the spread of an

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Implementation of the Oregon law was complicated. The first initiative, called Measure 16 or the “Oregon Death with Dignity Act,” passed by a margin of 51% to 49%. The law subsequently faced a constitutional court challenge and although the Ninth Circuit Court of Appeals dismissed the case, it issued a declaratory judgment and permanent injunction preventing implementation of the initiative. A second referendum was held in 1997 and Measure 16 was again passed by the voters by a margin of 60% to 40%. The Oregon Death with Dignity Act was finally implemented on October 27, 1997 but is currently facing another court challenge by the Attorney General and Department of Justice. See infra note 81 and accompanying text.

In 1988, a euthanasia initiative called the “Humane and Dignified Death Act” did not receive enough signatures to put on the ballot. In 1992, the “Death with Dignity Act,” also known as Proposition 161, was defeated by the voters. In 1995, two assisted suicide bills were introduced in the state assembly, but neither made it out of committee. See International Anti-Euthanasia Task Force (IAETF) Newsletter (visited Apr. 22, 2002), available at http://www.iaetf.org/iua17.htm#16. Another version of the assisted suicide bill was re-introduced in 1999 and survived the Judiciary and Appropriations Committees but was allowed to expire on January 31, 2000 in the face of opposition by a “broad-based, grass roots coalition consisting of advocates for the poor, migrant worker advocates, medical and hospice professionals, disability rights activists, ethnic minority groups, pro-life supporters, and religious organizations.” IAETF Newsletter, available at http://www.iaetf.org/iua20.htm#44.
Oregon-type euthanasia law, many states promptly responded to the “Death with Dignity Act” by initiating bans on physician-assisted suicide. The national government also took a pre-emptive position by banning federal funding of assisted suicide.\textsuperscript{70}

Throughout the nation there have been numerous legislative attempts to both strengthen and challenge laws banning physician-assisted suicide. For example, in 1999, the “Arizona Aid in Dying Bill,” which resembled Oregon’s bill, was introduced by a legislator but never heard in committee.\textsuperscript{71} Many similar bills, modeled on the Oregon law, were introduced in other state legislatures, but none have been adopted.\textsuperscript{72} There have been more successes with legislation restricting the use of physician-assisted suicide.\textsuperscript{73}

There have also been attempts to reject bans on physician-assisted suicide by voter initiative. In 1998, an initiative was introduced in Michigan that would have legalized physician-assisted suicide and overturned the recently enacted ban. The measure, called Proposal B, was defeated by a vote of 71% to 29%.\textsuperscript{74} Similarly, in 2000, in Maine, the assisted-suicide measure called the

\textsuperscript{70} See 42 U.S.C.A. § 14401. The bill, “Assisted Suicide Funding Restriction Act of 1997” (H.R. 1003: Public Law 105-12) was passed in the House of Representatives by a vote of 398 to 6 and unanimously in the Senate (99 to 0). President Clinton signed the bill into law on April 30, 1997, stating “This is appropriate legislation. Over the years, I have clearly expressed my personal opposition to assisted suicide, and I continue to believe that assisted suicide is wrong. While I have deep sympathy for those who suffer greatly from incurable illness, I believe that to endorse assisted suicide would set us on a disturbing and perhaps dangerous path. This legislation will ensure that taxpayer dollars will not be used to subsidize or promote assisted suicide.” Press Release, White House, Statement by the President (Apr. 30, 1997) (visited Apr. 22, 2002), available at http://www.iaetf.org/iua8.htm#4.


\textsuperscript{72} In 2000, the New Hampshire Senate defeated a bill (SB 44) aimed at legalizing physician-assisted suicide. IAETF State Legislative Digest (visited Apr. 22, 2002), available at http://www.iaetf.org/iua20.htm#50. In Wisconsin, a bill was introduced in 1999 that would have allowed active euthanasia. See IAETF State Legislative Digest (visited Apr. 22, 2002), available at http://www.iaetf.org/iua18.htm#44.

\textsuperscript{73} Two bills were introduced in Missouri in 1999 (HB 1559 and HB 1668) to ban the use of state funds for euthanasia and would automatically revoke the license of a physician found guilty of assisting a suicide. See IAETF State Legislative Digest (visited Apr. 22, 2002), available at http://www.iaetf.org/iua20.htm#51. Arkansas passed a bill strengthening the state’s assisted-suicide ban. (Act 394 § 1 (2)) State Legislative Digest, available at http://www.iaetf.org/iua18.htm#34. North Dakota passed a law (1999 SB 2362) providing for compensatory and punitive damages to be recovered against any person who assists a suicide and for the revocation of a health care professional’s license. IAETF State Legislative Digest, available at http://www.iaetf.org/iua18.htm#34.

\textsuperscript{74} Michigan Department of State, Bureau of Elections, Election Results Nov. 03, 1998, Yes:
"Death with Dignity Act" was rejected by a vote of 51% to 49%. Several state courts have addressed components of the right to die issue, as has the United States Supreme Court. In 1990, the Supreme Court held that states have the right to ban, legalize and regulate who is allowed to make decisions concerning life-sustaining medical treatment as a matter of privacy. In 1997, after the implementation of Oregon's law, the Supreme Court further decided that a legislative ban on physician-assisted suicide was constitutional.

In November 2001, the Attorney General of the United States, John Ashcroft, directed federal drug agents to revoke the licenses of physicians who prescribe lethal medication for terminally ill patients in Oregon. He issued this directive even though Oregon's voters passed two citizen initiatives

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75 Maine's "Death with Dignity Act" referendum asked the voters "Should a terminally ill adult who is of sound mind be allowed to ask for and receive a doctor's help to die?" IAETF Update 2000, Number 2, available at http://www.iaetf.org/iua21.htm#42.
77 In 2001, the California Supreme Court interpreted their Probate Code to prevent a conservator from "withholding artificial nutrition and hydration from a conscious conservatee who is not terminally ill, comatose, or in a persistent vegetative state, and who has not left formal instructions for health care or appointed an agent or surrogate for health care decisions." Conservatorship of Wendland v. Wendland, 110 Cal. Rptr. 2d 412, 413 (2001). In 2000, the Colorado State Court of Appeals upheld the state's ban on physician-assisted suicide in the face of a First Amendment challenge. Sanderson v. People, 12 P.3d 851 (Colo. App. 2000), cert. denied. The Alaska Supreme Court recently held that the privacy provision of the Alaska Constitution does not include the right to a physician's assistance in suicide. Sampson v. State, 31 P.3d 88 (Alaska 2001). The Florida Supreme Court also ruled that the ban on assisted suicide did not violate that state Constitution's right to privacy. Krischer v. McIver, 697 So. 2d 97 (Fla. 1997).
78 "Components" of the right to die issue include the whether to withhold (not provide) nutrition, hydration, medication or other life-sustaining substances or treatments and whether to withdraw (cease or remove) such treatment once it has been already been started, such as in the case where its use is deemed "futile." Another question is whether to provide palliative care in the form of pain relief medication in large amounts, even when it is known that the administration of such high doses will shorten the life of the patient.
81 This directive is based on Ashcroft's interpretation of the Federal Controlled Substances Act, 21 U.S.C.A. § 801 (2001), a significant departure from the interpretation of his predecessor, Attorney General Janet Reno.
authorizing physicians to prescribe such medications which withstood numerous court challenges. In response, the State of Oregon and several patients expecting to utilize the law sued the federal government in an effort to prevent the directive from taking effect. A federal judge issued a temporary injunction for five months while he considers the case. However, a situation similar to the plight of the two pre-certified applicants in the Northern Territory arose, as a result of the Attorney General’s and Justice Department’s actions, in that patients previously approved to receive lethal medications are put into limbo. The outcome of this case remains to be seen.

V. INFLUENTIAL FACTORS

A. Government & Politics

As may be seen from the preceding discussion, the government in power, and therefore politics, plays an extremely important role in determining the legality of euthanasia and related practices in the three societies studied. For example, in the Northern Territory, its very status as a territory, rather than a state, was important to the eventual outcome of the Rights of the Terminally Ill Act. If the Northern Territory had been a state, it is questionable whether the Federal Parliament would have intervened so quickly and easily to override the legislation drafted by the citizens’ elected representatives. Since the government in power at the time was the conservative coalition headed by John Howard, however, it may be safe to surmise that the federal government would probably have acted equally as strongly against a “rogue” state.


84 One patient affected by the lawsuit is James Romney, a 56 year-old who has amyotrophic lateral sclerosis, or Lou Gehrig’s disease, and was diagnosed as having from eight months to two and a half years to live. In reaction to the Attorney General’s announcement, Mr. Romney stated, “I was devastated, totally shocked. It set me back, it took away all my sense of liberty... Believe me, just knowing that this is an available option is very liberating for a person with my condition, and they’re trying to take it away from me.” Verhovek, supra note 82.

85 One school of thought believes that a legislative body elected directly by its citizens should represent the will of its people, while another argues that elected officials should lead their citizens, perhaps even espousing unpopular ideas, provided the leader believes them to be beneficial. Whether more local government or more centralized government should take precedence is also a debatable question. The impact of these differing styles of representative
Perhaps had the composition of the Northern Territory's Supreme Court been different, the Federal Parliament may not have become involved at all.  

Furthermore, in all three societies, the separate branches of government overlap in the attention they pay the right to die. In the Netherlands, the courts made the initial forays into the euthanasia movement by minimizing or even recognizing an exception to criminal punishment. The ministerial representatives similarly defended and followed this pattern, perhaps developing a universal culture of acceptance. And approximately thirty years after the first groundbreaking decision, the legislature gave its imprimatur to the practice of euthanasia by, in effect, codifying the judicial decisions.

In the United States and Australia, societies that appear to have more divergent, or perhaps more vocally divergent, opinions on the right to die, the politics of the issue often cause the debate to switch fora, as the issue shifts locale. For example, in 1996, the Northern Territory was the center of the debate in Australia and when opponents failed to defeat the legislation by court challenge, they moved to Canberra and the Federal Parliament to attempt to overturn the legislation. Similarly, in 1996, Oregon was the heart of most of the action in the United States, but when that referendum finally succeeded, opponents shifted debate to the national government by focusing on the introduction of the Federal Pain Relief Promotion Act of 1999. Although that democracy is particularly interesting in Australia where all eligible citizens are required, by statute, to vote.

The dissenting opinion in Wake v. Northern Territory discusses at length the facts of the underlying case and views of euthanasia vis-à-vis murder. It appears that the dissenting justice would have preferred to consider the merits of the case, rather than dismiss it on procedural grounds, as the majority did. "In a context such as the present . . . I do not think that the legal question can ignore the philosophical questions, both moral and political, involved, and the values at stake. The plaintiffs' submission, I think, with respect, involves much deeper and broader questions than whether parliament by clear words can abrogate a 'fundamental right.'" Wake v. Northern Territory (1996) 109 NTR 1 (Angel, J. dissenting) (visited Apr. 22, 2002), available at http://www.austii.edu.au/cgi_bin/disp.pl/au/cases/nt/nts/1996/56.html?query=title+%28+%22make%22+%29.


Act ultimately failed in 2000, its more conservative backers were buoyed by the presidential election of George W. Bush in 2001. The newly elected Republican President appointed a conservative Attorney General who reversed the prior administration's policy on controlled substances and thus challenged the Oregon law concerning physician-assisted suicide.8

These points elucidate the intersection of the various branches of government and the ability of citizens to express themselves in cultures that respect freedom of speech and the rule of law. As the politics of governing officials swing from conservative to liberal and back again, the fora for debate changes from the executive to the judicial to the legislative branch. All the while, healthy debate ensues, but these heady issues are still not resolved. The right to die is an extremely controversial issue where law, politics and religion often collide.

B. Religion

One of the most powerful influences in matters pertaining to life and death is religion. Around the world and throughout history, individual people and societies have devised belief systems to explain the unknowable and to provide answers for difficult questions. One question that fits into the category of difficult questions is whether it is morally or ethically correct for a person to kill himself. Perhaps even more difficult is whether it is right to assist a person who asks for assistance in ending her own life to end her physical suffering. The world's main religions address these questions and provide guidance to those who seek it, but not necessarily any definitive answers. This paradigm helps to explain why the law governing the right to die is so unsettled.

Many of the world's religious faiths emphasize the value of the preservation of life, even though they provide different explanations for this belief.9 "Turning first to three monotheistic religious traditions which have had global influence, Judaism, Christianity and Islam, for all their differences, basically address ethical issues concerning the end of life from a common value perspective. In particular, discussions centre [sic] on the values of sover-
The concept of sovereignty provides that the physical bodies of humans are created by God or a Divine Being and thus God is the ultimate decision-maker in matters of life and death. Individual humans who attempt to alter the Being’s divine plans are acting outside their world and thus “playing God.” As such, the theory of “vitalism,” preserving physical life at all costs with all available technologies, has been rejected by many Western religions.

Using these basic ideas as guidelines, individual religious traditions offer further explanation. “For example, Orthodox Jewish thought emphasizes the sanctity of life (as displayed in bodily integrity) which translates into a stronger commitment to life-extending technologies than in Roman Catholicism, which stresses the capacity for human relationships as a threshold for determining the permissibility of stopping life support . . . However, some faith communities in Protestant Christianity and in Reformed Judaism have argued . . . [that] when faced with terminal illness, one may well be disposed to ending life, and one’s immediate community (or family) may support this method of death.” Perhaps the strongest expression of disapproval of euthanasia or physician-assisted suicide has come from the leader of the Roman Catholic Church, Pope John Paul II, who considers it part of the Western “culture of death” that also includes abortion, capital punishment and war.

Similarly, Islam recognizes the sanctity of life as decreed by God in the Koran. “‘Take not life which Allah made sacred otherwise than in the course of justice.’” (Qur’an 6:151 and 17:33). The Shari’a [Islamic law] went into great detail in defining where taking life is permissible whether in war or in peace (as an item of the criminal law), with rigorous prerequisites and precautions to minimize that event.” This being said, the Chair of the Medical Ethics Committee of the Islamic Medical Association in the United States believes that when treatment becomes “futile, it ceases to be manda-

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92 See id.
93 See id.
94 “These kinds of arguments stress the dignity of the individual as a free decision-maker (which also applies to persons entrusted with the decision-making responsibilities of others). This dignity provides the basis for a political and philosophical claim to self-determination and opens the possibility for choosing the timing, circumstances and method of one’s death.” Id.
95 See id.
Once again, the interpretation of words and ideas becomes of utmost importance in the right to die.

In the more Eastern traditions of Hinduism and Buddhism, the conflict typically comes from the clash between the values of liberation and non-violence (ahimsa). In both belief systems, all beings live through cycles of reincarnation and are punished or rewarded in the next life for actions taken in the current one. "As a general rule, both Hinduism and Buddhism oppose suicide as an act of destroying life. However, a distinction is made in both traditions between self-regarding (or self-destructive) reasons and other-regarding (or compassionate) motives for seeking death." The motivation of one's actions therefore influences the karmic characterization in these traditions and the decision-making with regard to the right to die.

C. Individuals and Non-Governmental Organizations

Many of the most influential individuals in the discussion concerning the right to die are medical doctors. Due to their position as caregivers and their experience with physical suffering, they are in a particularly well-situated position to offer opinions on this question. Although all medical doctors pledge to uphold the Hippocratic Oath, individuals interpret its

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97 Shahid Athar, M.D., *Euthanasia and Physician-Assisted Suicide*, at http://www.islam-usa.com/e2.html. Dr. Athar indicates that the Islamic Medical Association further recommends that advance directives be "a part of all hospital and office medical records of a patient." Id. Advance directives are discussed infra note 115.


99 Id. at 402.

100 The Hippocratic Oath is an oath written by Hippocrates in 400 B.C.E. and has been interpreted in modern times as a code of medical ethics:

I swear by Apollo the physician, and Aesculapius, and Health, and All-heal, and all the gods and goddesses, that, according to my ability and judgment, I will keep this Oath and this stipulation- to reckon him who taught me this Art equally dear to me as my parents, to share my substance with him, and relieve his necessities if required; to look upon his offspring in the same footing as my own brothers, and to teach them this art, if they shall wish to learn it, without fee or stipulation; and that by precept, lecture, and every other mode of instruction, I will impart a knowledge of the Art to my own sons, and those of my teachers, and to disciples bound by a stipulation and oath according to the law of medicine, but to no others. I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to any one if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to
requirements differently.

Perhaps the most well known proponent of the right to die is Dr. Jack Kevorkian, an American with the nickname of “Dr. Death.”101 Kevorkian gained notoriety through his vocal advocacy and nationwide assistance of terminally ill patients in hastening their deaths.102 He invented a suicide machine, the “Mercitron,” and challenged existing laws by offering its use for those in need. He also authored a book celebrating his views on euthanasia performed by professional medical personnel.103

Kevorkian chose high profile tactics to gain publicity for his cause, even going so far as to allow a television program to air his actual participation in an assisted suicide in a state where it was illegal.104 As a result of these activities, Kevorkian was charged with first-degree murder, assisted suicide and delivery of a controlled substance. He also faced charges of practicing medicine without a license, since his license was previously suspended.105

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102 Id.


104 On September 17, 1998, Kevorkian administered lethal injections to 52-year-old Thomas Youk, a man with A.L.S. or Lou Gehrig’s disease, and videotaped the entire process. Kevorkian subsequently offered the videotape to Mike Wallace on CBS 60 Minutes (CBS television broadcast, November 2, 1998). The network chose to broadcast the segment during the November “sweeps,” the competitive network ratings period, highlighting the high level of interest in the issue of Americans.

Before this charge, Kevorkian faced other criminal prosecutions, but had been acquitted by juries.\textsuperscript{106} After many failed attempts at convicting Kevorkian of a crime, a jury in Michigan convicted him of second degree murder in 1999.\textsuperscript{107} He is currently serving a prison term of 10 to 25 years for a death aired on television.\textsuperscript{108} He will be eligible for parole in 2005, when he is 77 years of age.

Another medical doctor who follows a similar path to that of Kevorkian is Dr. Philip Nitschke, who is often referred to as "Australia’s Dr. Death." While Nitschke has not undertaken the incendiary and publicity-seeking tactics of Kevorkian, nor challenged the government in as blatant a manner, Nitschke is allegedly responsible for assisting in the deaths of at least four people under the Northern Territory’s RTI.

After the RTI was overturned by the Federal Parliament, Nitschke sought and developed other means to share his experience and knowledge concerning assisted suicide. Nitschke devised a computer software program called “Deliverance” that would administer lethal drugs to individuals through an intravenous line. He is also reported to be creating a “suicide pill” composed of readily accessible ingredients such as plants\textsuperscript{109} and household substances that anyone could make at home.\textsuperscript{110} To spread this information, Nitschke operated an “Advisory Clinic” in Melbourne in 1999 and established a “death clinic” in the State of Tasmania in 2000.\textsuperscript{111}

Another influential individual in the right to die debate is Derek Humphry, an activist and author of the how-to suicide manual “Final Exit.” In 1980, Humphry founded the Hemlock Society, an advocacy organization that calls itself “the nation’s largest and oldest death-with-dignity association” and in

\begin{itemize}
  \item physician-assisted suicide from 1990 to the present) (visited Apr. 7, 2002), \textit{at} http://www.rights.org/deathnet/Kevorkian_File.html.
  \item Kevorkian has publicly acknowledged that he is responsible for helping at least 130 people die by assisted suicide since 1990. \textit{See Kevorkian Gets 10 to 25 Years in Prison} (Apr. 13, 1999), \textit{available at} http://www.cnn.com/US/9904/13/kevorkian.02/.
  \item Kevorkian faced assisted-suicide charges in prior trials, resulting in three acquittals and a mistrial. \textit{See id.}
  \item Hemlock, a poisonous herb that grows wild in Australia, was also known in Ancient Greece as a lethal plant and that its ingestion was a method to commit suicide. \textit{See Poisons of Ancient Rome}, \textit{at} www.sun.ac.za/as/journals/akro/akro45/cil-ret2.pdf.
  \item \textit{IAETF World Focus}, \textit{at} http://www.iaetf.org/iua120.htm#51; http://www.iaetf.org/iua117.htm#30.
\end{itemize}
1993 formed the Euthanasia Research & Guidance Organization, both of which maintain an active presence on the internet. Among other things, a videotape of Humphry’s suicide manual that "summarizes graphically how to arrange to take your own life if you feel that necessary" is available online.

Other non-governmental organizations, such as the Dutch Voluntary Euthanasia Society (NVVE), utilize more old-fashioned methods to spread their messages concerning the right to die. Members of NVVE personally visit patients to suggest they complete euthanasia advance directives. These legal forms include options for patients to indicate the length of time in a coma before requesting the administration of a lethal injection, whether they favored euthanasia or physician-assisted suicide and the disabilities with which they would not want to live.

D. Inter-Governmental Organizations

Perhaps recognizing the volatility and fluid nature of issues related to the right to die, the United Nations Human Rights Committee expressed its concerns with the Dutch law allowing euthanasia, but has not condemned it.

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115 An advance directive "is a legal document explaining one's wishes about medical treatment if one becomes incompetent or unable to communicate." BLACK’S LAW DICTIONARY (7th ed. 1999) (Also called medical directive, health care directive or physician’s directive.) Compare, BLACK’S LAW DICTIONARY (7th ed. 1999) (stating a living will "is an instrument, signed with the formalities necessary for a will, by which a person states the intention to refuse medical treatment . . .").

116 IAETF Update 2000 (visited Apr. 22, 2002), available at http://www.iaetf.org/iua120.htm#51. According to Martine Cornelisse, a psychiatrist and NVVE membership coordinator, "We don’t just sit here and wait for people to come to us. We stimulate hospitals and nursing homes to raise the subject with patients while they are still rational and clear. We want the young and healthy to make living wills in the event of them being paralyzed or in a coma after an accident." LONDON TIMES, Feb. 26, 2000, cited in IAETF Update 2000, available at http://www.iaetf.org/iua120.htm#51.

117 In the unedited version of the Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant 20/7/01 by the Human Rights Commission, reviewing the Kingdom of the Netherlands, the Committee expressed its concerns with the number of euthanasia cases reported to date (over 2,000), the applicability of the law to minors who have reached age 12, and the use of an post rather than ex ante control mechanism, available at http://www.unhchr.
Rather, the Human Rights Committee requested that a report be filed within twelve months of the report indicating any changes made in response to the Committee’s observations.\footnote{Id.} The Council of Europe,\footnote{9} on the other hand, expressed vehement opposition to the Dutch law, stating that it violates Article 2 of the European Convention on Human Rights.\footnote{20} The Dutch government specifically disputes these comments.\footnote{121}

\footnote{Id.}

Founded in 1949, the Council of Europe “is an intergovernmental organization which aims: to protect human rights, pluralist democracy and the rule of law; to promote awareness and encourage the development of Europe’s cultural identity and diversity; to seek solutions to problems facing European society (discrimination against minorities, xenophobia, intolerance, environmental protection, human cloning, AIDS, drugs, organized crime, etc.); to help consolidate democratic stability in Europe by backing political, legislative and constitutional reform. The Council of Europe should not be confused with the European Union. The two organizations are quite distinct. The 15 European Union states, however, are all members of the Council of Europe.” Council of Europe’s Homepage, at http://www.coe.int/portalT.asp.

The complete name of the European Convention on Human Rights is the “Convention for the Protection of Human Rights and Fundamental Freedoms.” The convention has been amended by numerous protocols over the years since its introduction in Rome in 1950. Article 2, Right to Life, reads as follows:

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a. in defence of any person from unlawful violence; b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c. in action lawfully taken for the purpose of quelling a riot or insurrection.


\footnote{121} “The Dutch government does not believe that the new Act conflicts with its duty under international law to defend its citizens’ right to life against violation by government or individuals. That duty is laid down, for example, in article 6 of the UN’s International Covenant on Civil and Political Rights (ICCPR) and article 2 of the European Convention on Human Rights (ECHR). What underlies both provisions is respect for life. The conventions deprive government and others of the right to take an individual’s life against his will (except in specified circumstances). These provisions are not intended to perpetuate unbearable suffering where there is no prospect of improvement, but rather to offer the individual protection against the violation of his right to life. Neither the wording nor the drafting procedure clarifies what constitutes such unlawful violation. It is generally believed that signatories to the conventions have considerable freedom to interpret their broadly worded provisions within their own national legal systems. However, even if the conventions cannot be interpreted as imposing a general prohibition on the termination of life on request or assisted suicide, the national provisions of signatory states must certainly provide sufficient protection to meet the criterion of ‘respect for
E. Fundamental Human Rights

While human rights are not specifically defined in the Declaration of
Human Rights ("Declaration"), they have traditionally been based on
concepts mentioned in the United Nations Charter ("Charter"). Over the
years, human rights have been expanding into previously unconsidered areas.
For example, while one of the original human rights contemplated by both the
Charter and the Declaration was the right to be free from slavery, today human
rights ostensibly encompass all individuals' rights to earn a sufficient
livelihood, for children to receive free primary school instruction and for
women to be treated as equals to men. These types of additional rights have
generally been recognized through the implementation of a new international
covenant or the novel interpretation of an existing one.

One controversial issue not included in the current scheme of fundamental
human rights is the right to die. The argument to include it within the category
first recognizes that the philosophy behind human rights intimates that all
human beings are inherently invested with dignity and this dignity is
manifested in the society's protection of fundamental human rights. Respect
for the decisions made by individuals is the basis of all human rights.
Although an individual has no input in the decision about when or whether to
be born, once alive, that person should be the main decision-maker on matters
pertaining to the manner and length of life. This viewpoint does not respect
the autonomy of the individual in arguably life's most important decision.

As discussion concerning the right to die intensifies, advocates will argue
that it should be explicitly recognized as a fundamental human right and
protected in a future international covenant. The reasons the right to die
should be protected is that it deems the right to an individual's freedom and
liberty paramount. Freedom and liberty are the greatest rights recognized in
the Declaration. "All human beings are born free and equal in dignity and
rights. They are endowed with reason and conscience and should act towards
one another in a spirit of brotherhood." This right is further augmented by

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\[122\] Universal Declaration of Human Rights, G.A. Res. 217A (111), U.N. Doc. A/810,


\[124\] Universal Declaration of Human Rights, G.A. Res. 217A (111), U.N. Doc. A/810,
the provision that "[e]veryone has the right to life, liberty and the security of person." Following the logic in this pair of recognized rights, all human beings must be able to determine, by their reason and conscience what is necessary to fully realize their life, liberty and security of person and consequently, their death.

Under the Declaration, human beings are entrusted with, among other things, the ability to pursue their rights by means of "an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Explicit recognition of the right to die would guarantee that if people were prevented from "fully realiz[ing] their life" they would have an avenue for redress. Furthermore, since the Declaration recognizes the right of "[m]en and women of full age . . . to marry and to found a family" or, in other words, to bring other human beings into existence, they should have the ability to determine when, and if, to terminate their own existence. The Declaration also guarantees everyone the "right to freedom of opinion and expression . . . ." Given this provision, no one should interfere with an individual's ultimate expression of opinion concerning himself or herself in the form of a desire for options regarding death. Proponents argue that by placing these crucial decisions in the hands of each individual, the framers of the Declaration envisioned that all human beings should be able to control their destinies as much as possible.

The corollary to these rights, of course, is the recognition of the requisite duties, especially the potential overlap of one person's rights with those of another or of the State. The Declaration indicates that the rights and freedoms are "subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Therefore, it follows that as long

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125 Id. at art. 3.
126 According to individuals suffering from a life-threatening illness, the knowledge that there is an option of taking personal control over their "final exit" from the world brings them security and peace of mind. See generally Derek Humphry, LET ME DIE BEFORE I WAKE & SUPPLEMENT TO FINAL EXIT (1998) and FINAL EXIT: THE PRACTICALITIES OF SELF-DELIVERANCE AND ASSISTED SUICIDE.
128 Id. at Article 16.
129 Id. at art. 16(1).
130 This right includes "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Id. at art. 19.
131 Id. at art. 29(2).
as an individual's rights do not impinge on another's rights and freedoms, they should not be limited. In determining whether an individual's rights violate the just requirements of morality and general welfare of a democratic society, the main issue is who should determine the requirements of morality. In the case of the right to die, the people most directly impacted by the desired act, namely themselves, should decide the morality of their actions.

The Declaration contains a further limitation on one's rights and freedoms in that they "may in no case be exercised contrary to the purposes and principles of the United Nations."132 Although the Declaration itself does not delineate the purposes and principles of the United Nations, they may be gleaned from the Charter's first chapter, entitled "Purposes and Principles." In brief, they are to "maintain international peace and security, . . . develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, . . . achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all . . . and to be a center for harmonizing the actions of nations in the attainment of these common ends."133 Accepting these ideals as the policies and principles of the United Nations, they are silent with respect to ending one's own life. The realization of the right to die as a fundamental human right, therefore, does not violate the aims of the United Nations.

The Declaration also specifically outlines that "[n]othing in [it] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."134 This final provision indicates that any act by a State, group or person aimed at harming another's right or freedom outlined in the Declaration would be inappropriate and perhaps even void. The Declaration, however, is once again silent with respect to acts or activities not aimed at the destruction of any of the prescribed rights and freedoms, such as choosing the right to die.

Advocates for classifying the right to die as a fundamental human right contend that this silence should not be interpreted as proscribing that right and although the drafters of the Charter and the Declaration may not have contemplated the right to die when recognizing the necessity of protection for

132 Id. at art. 29(3).
133 U.N. CHARTER art. 1 (1-4).
fundamental human rights, it is not sufficient reason to ignore the issue now. The right to die should be fully realized by all human beings because it is consistent with the Declaration's statement that "[e]veryone has the right to life, liberty and the security of person." The right also does not conflict with the purposes and principles of the United Nations as written in the Charter. Proponents believe that the decision of when one's life will end, if not made by nature or God, should be made by the individual.

VI. CONCLUSION

The right to die is without a doubt one of the most complicated legal, medical, ethical and religious issues of modern times. Since most governments outlaw suicide and classify aiding a person to kill herself as a crime, the legal system of a government is a requisite player in the debate. Similarly, if a person seeks a physician's advice or a prescription to hasten his death, the medical community is automatically involved and the Hippocratic Oath is invoked. Furthermore, since all of the major world religions consider life as a precious gift to be cherished, ending a life, for whatever motive, not only violates most religious tenets, but may infringe on divine activities beyond the purview of human beings.

It is also clear from this article's brief review that in countries that have legislatively addressed the right to die, there is no consensus on the topic among their citizens or elected representatives. When the Northern Territory passed a law legalizing euthanasia, it was overruled. Several American states have citizens vociferously arguing for passage of referenda legalizing or banning euthanasia, and will likely continue, since the U.S. Supreme Court ruled that the right to die is a matter that should be addressed by the individual states. It remains to be seen whether the Attorney General's recent directive to Department of Justice agents will be able to withstand legal challenge in light of the Supreme Court's rulings.135 In the Netherlands, a smaller country without a federal-state system, there appears to be more agreement, but at least one observer believes that the consensus is forced.136

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135 See supra note 80 and accompanying text.
136 One researcher, Raphael Cohen-Almagor, who spent time in the Netherlands during the summer of 1999 to create a "critical analysis of Dutch euthanasia policy and practice" interviewed 28 of the "leading figures who dictate the decision-making process and take an active part in the debates." The author noted that "[w]hat was striking in my discussions with the Dutch experts was the prevailing acceptance of the euthanasia procedure. There were only a few dissenters, people who were willing to go against the system. My first fourteen interviewees were, on the whole, in favor of the policy, and I felt a growing unease encountering
The fundamental friction concerning the right to die lies between conflicting rights and responsibilities of the individual and the State. Many civilizations and citizens believe that it is the role of State to protect its citizens and thus lawmakers are motivated to outlaw euthanasia and physician-assisted suicide. Many of these same civilizations and citizens, however, believe the right of the individual to determine her own fate is equally powerful. It is clear from this brief comparative review that the more opportunity there is to discuss and debate these conflicting positions and controversial issues, the more varied opinions will be espoused.

The frequency of mention of events relating to the right to die in the media indicates that the issue is not just an isolated phenomenon that will gradually disappear or one that is of interest solely to intellectuals or scholars. On the contrary, as medical technology extends the lifespan of those with access to euthanasia and as information technology spreads awareness of various jurisdictions’ experiences with it, the right to die will continue to move to the forefront of international debate.

The increased debate has already highlighted troubling possibilities, such as the potential for abuse of the right to die, perhaps in the systematic murder of the elderly or mentally ill. Some argue that the practice of any form of hastened death starts down the slippery slope towards involuntary euthanasia. Opponents of these practices draw analogies between current day and Nazi Germany of the 1920s and 1930s. In the United States, many people who

\[\text{137 Dr. Jack Kevorkian allowed CBS's 60 Minutes to broadcast his actual administration of lethal medication, resulting in the patient's death and Kevorkian's arrest on November 23, 1998. See http://www.cnn.com/us/981122/keveorkian. Also, major portions of the Dutch pro-euthanasia documentary, "Death on Request," including the actual death scene, were aired on ABC's PrimeTime Live on Dec. 8, 1994.}\]

\[\text{138 To date, this issue mainly has been encountered by developed nations because it has arisen in the context of ending the suffering of elderly individuals or those with a debilitating illness. Less developed countries tend to have lower life expectancies due to a lack of basic necessities such as sufficient nutrition, potable water and access to health care. Individuals in these communities often succumb to death at earlier ages from diseases and conditions preventable or curable in more developed societies.}\]

\[\text{139 In 1920, Dr. Alfred Hoche, a psychiatrist, and Karl Binding, a law professor, wrote a book entitled THE PERMISSION TO DESTROY LIFE UNWORTHY OF LIVING in which they argued that patients should be provided with "death assistance" from their doctors under certain conditions. The authors discussed mercy-killing of those who asked for it, severely disabled children and the mentally retarded, among others, in order to benefit society by not wasting resources on such}\]
have health insurance obtain medical treatment through health maintenance organizations. These types of managed care institutions are often criticized for placing “profits before people” and there is a concern that managed care may use euthanasia or physician-assisted suicide as a “cost-cutting technique” for patients. It is also predicted that countries which provide health care as part of the state welfare program may require euthanasia as part of health care rationing in the future.

While only a few nations passed legislation addressing the right to die in the 1980s and 1990s, there is no reason to believe that debate on this topic is subsiding. Other countries have faced the issue with varying results. In 1993, the Canadian Supreme Court upheld the criminal penalties for physician-assisted suicide. In the state of Kerala, India, a lawsuit was filed challenging the laws prohibiting euthanasia and assisted-suicide. In 1995 in Japan, a court outlined the guidelines under which physician-assisted suicide is allowed. In May 1997, Colombia’s Constitutional Court held that a person is not criminally responsible for committing euthanasia if terminally ill patients provide consent.

"mental defectives.” The authors wrote “their death will not be missed in the least except maybe in the hearts of their mother or guardian . . . . When we become more advanced, we will probably be saving those poor humans from themselves.” For a more recent perspective, consider the recent decision of the French High Court of Appeal (Cour de Cassation) awarding damages to a couple who bore a child with Down’s Syndrome after informing the gynecologist of their desire to abort any fetus with physical handicaps. See French court confirms handicapped’s right not to be born, AGENCE FRANCE-PRESSE, Nov. 28, 2001.

The argument is that the cost of one lethal prescription is infinitely less expensive than palliative care or medical treatment in a hospital, nursing home, home health care or hospice. For example, officials in the State of Oregon estimated that a lethal drug prescription would be less than $45, a doctor’s visit between $9 and $81 and each counseling session between $30 to $118, if necessary. These amounts were announced as part of Oregon’s decision to cover assisted-suicide costs under the State’s Medicaid health care rationing program. See IAETF, Oregon Adopts Official Policy to Cover Assisted-Suicide Costs, available at http://www.iaetf.org/iaual5.htm#55.

Rodriguez v. British Columbia (1993) 3 S.C.R. 519 (dismissing appeal of denial of an order declaring the section of the criminal code which makes aiding or abetting a suicide a criminal offense).

According to India’s census commissioner, “Old people are finding it difficult to get the things they want, like access to health care and medicine. The government and private sector infrastructure is just not big enough.” Assisted-Suicide Lawsuits Filed in India, 13 IAETF UPDATE 1, available at www.iaetf.org/iaual6.htm#79 (citing the AP, Mar. 16, 1999).


The ruling did not authorize euthanasia for people with degenerative diseases such as
Belgian lawmakers have been debating whether to legalize euthanasia since 1996, and in January 2001, agreed on a draft proposal to allow euthanasia of both terminally ill patients as well as incurably ill patients with years remaining. In October 2000, a British High Court Judge held that withdrawal of a feeding tube from a patient in a permanent vegetative state does not violate the Human Rights Act. However, in November 2001, five judges in Britain's House of Lords, its highest appeals court, ruled that a man who wanted to assist his wife in committing suicide could not be guaranteed immunity from prosecution. The woman is challenging the decision in the European Court of Human Rights. The city of Zurich, Switzerland issued a directive in October 2000, authorizing assisted suicide for elderly people in residence homes, with the person's consent. Euthanasia is "tolerated" in a number of cantons in Switzerland under strict regulations, and it is not regarded as a crime if a doctor prescribes a lethal medication to be administered.

Due to the uncertainty regarding the right to die, legal documents, such as living wills and advance directives, have emerged in some communities. The idea behind such legal instruments is to allow individuals to decide for themselves when and how their lives should end, in advance of a potentially life-threatening situation. There have been instances, however, when individuals' wishes expressed in these documents have been overridden by well-intentioned family members and attending medical personnel. This type of action emphasizes another difficulty in the application of the right to die.

Attitudes toward the right to die touch upon virtually all aspects of society, including government, culture, religion and other traditions. Societies are composed of the opinions and experiences of many distinct individuals. These individual people are divided, within nations, and even within families, on how to respond to a person's request to end his or her own life. Due to the volatility of the issue and the speed with which medical technology outpaces Alzheimer's, Parkinson's or A.L.S, but only for diseases such as cancer, AIDS and kidney or liver failure. See Euthanasia home page, at http://www.euthanasia.com/colum2.html.


"Suicide is legal in Britain, but helping someone else commit suicide is a crime punishable by as many as 14 years in prison." British Court: Man Cannot Help Wife Die, LONDON TIMES, Nov. 30, 2001.

Diane Pretty v. Director of Public Prosecutions. Id.


our religious and ethical comfort zones, the right to die will continue to be a contentious topic for many years to come.