This is the authors final peer reviewed version of the item published as:


Copyright : 2007, Elsevier Ltd
Abstract

When assessing decisional competence of patients, psychiatrists have to balance the patients' right to personal autonomy, their condition and wishes against principles of medical ethics and professional discretion. This article explores the age-old legal and ethical dilemmas posed by refusal of vital medical treatment by patients and their mental capacity to make end-of-life decisions against the background of philosophical, legal and medical approaches to these issues in the time of the Younger Pliny (c.62–c.113 CE). Classical Roman discourse regarding mental competency and "voluntary death" formed an important theme of the vast corpus of Greco-Roman writings, which was moulded not only by legal permissibility of suicide but also by philosophical (in modern terms, moral or ethical) considerations. Indeed, the legal and ethical issues of evaluating the acceptability of end of life decisions discussed in the Letters are as pertinent today as they were 2000 years ago.

We may gain valuable insights about our own methodologies and frames of reference in this area of the law and psychiatry by examining Classical Roman approaches to evaluating acceptability of death-choices as described in Pliny's Letters and the writings of some of his peers.

Article Outline

1. Introduction
2. Refusal of treatment in classical Greece and Rome
3. Philosophical orientation as factor in decision-making
4. Letter of Pliny the Younger to Catilius Severus and medical practice of the time
5. Legal right to refuse treatment and ethical acceptability of such conduct
6. Letter of Pliny the Younger to Calestrius Tiro and methods of “voluntary death”
7. The requirement that the decision to exit life be rational

1. Introduction
Over the past 100 years, countries which form part of the Western cultural tradition have adopted the bioethical doctrine of personal autonomy, or as lawyers call it, personal self-determination, as the basis for the law of refusal of medical treatment.\textsuperscript{1} In general, competent adults have a legal right to personal self-determination that allows them to make voluntary choices, including the so-called death-choice.\textsuperscript{2} According to Lord Goff of Chieveley in the English case of *Airedale NHS Trust v Bland*,\textsuperscript{3} adult patients of sound mind have the right to refuse, “however unreasonably” life-prolonging medical treatment; and medical practitioners have the duty to give effect to these wishes, irrespective of whether the refusal of consent is in the patients' best interests. His Lordship concluded that, “to this extent, the principle of the sanctity of human life must yield to the principle of self-determination”.

Subsequently in *Re MB (Medical Treatment)*\textsuperscript{4}, Dame Elizabeth Butler-Sloss, President of the English Court of Appeal of England and Wales described the right to self-determination as “absolute”:

A mentally competent patient has an absolute right to refuse to consent to medical treatment for any reason, rational or irrational, or for no reason at all, even where that decision may lead to his or her own death.\textsuperscript{5}

In the United Kingdom, the common law approach to legal capacity has been codified in the *Mental Capacity Act 2005* c 9(UK),\textsuperscript{6} which provides that “a person must be assumed to have capacity until it is proved otherwise” (s 1(2)), and that “a person is not to be treated as lacking capacity to make a decision simply because he makes an unwise decision” (s 1(4)). According to the Explanatory Notes:

this means that people have the right to make irrational or eccentric decisions that others may not judge to be in their best interests if they have the necessary ability to make the decision.\textsuperscript{7}

Thus, at least in the United Kingdom, rational basis for the decision is not a standard for the determination of its legal validity. The sole precondition to the exercise of the absolute right to refuse any medical therapy, including life-prolonging treatment is the person's mental capacity. For the purposes of the law, mental capacity has two elements: (a) capacity to understand or retain the data relevant to the decision, in particular, information about the reasonably foreseeable consequences of deciding one way or another or failing to make the decision; and (b) ability to make a decision based on that information.\textsuperscript{8} The role of psychiatrists is to assess the decision-making capacity of the refusing patients.

At least in the United Kingdom, the law explicitly provides that when assessing mental competence “subjective values [of the patient] have to be taken into account”.\textsuperscript{9} This philosophical approach to competency was adopted by Dame Elizabeth Butler-Sloss, President of the English Court of Appeal, who in *Ms B v An NHS Hospital Trust* [2002] EWHC 429,\textsuperscript{10} incorporated into her judgment passages from Kim Atkins' article, “Autonomy and the Subjective Character of Experience”.\textsuperscript{11} According to Atkins, if it is accepted that “the subjective character of experience is irreducible” and “grounded in the particularity of our points of view”, then the respect for autonomy mandates both “recognition of the irreducible differences that separate us as subjects”, and “a respect for the particularity of each other's points of view”. This
in turn, means that when a person refuses life-saving treatment, the decision should not be criticised on the grounds of insufficient objectivity, for:

insisting that a decision be made from a fully objective perspective can only produce a decision that is further from the patient's own point of view, not closer to it.\textsuperscript{12}

Such a subjective – strictly autonomy-based – test is effectively self-referential. It reduces the juridical evaluation of the decision-making process to the narrowly defined question of legal capacity, and directs psychiatrists to exclude rationality of the final decision in their professional assessment of the patient's condition. The common law notion of “sound mind” based solely on cognitive competence is much more limited than the Roman idea of \textit{mens sana}. While the term “autonomy” was not used by classical Greeks and Romans, their approach to the legal and ethical validity of death-choices through refusal of life-prolonging treatment was much broader.

\textsuperscript{203} In Classical Rome, freeborn Roman citizens enjoyed a legal right to refuse any medical treatment. Yet, the practical exercise of this right by the Romans was considerably qualified by social and ethical considerations, which emphasised the rationality of the final decision and required that it be virtuous. The aim of this essay is to examine these considerations. In my discussion, I shall utilise the \textit{Letters} of Pliny the Younger and other philosophical and medical works of the period to examine social and legal attitudes to hastening of death in Rome of the Emperor Trajan (ruled 98–117 CE), as well as the role and approach of Hippocratic physicians to their patients' end of life decisions.

The essay will provide a brief biography of the Younger Pliny, a social background on people of his class and an analysis of the philosophical – moral – norms they were expected to adhere to, including decisions concerning end of life. Two of the Younger Pliny's \textit{Letters} will be examined. The \textit{Letter to Catilius Severus} about a medical condition of Titius Aristo will be analysed in the context of medical theories and ethical practices of the time as underpinned by law. The \textit{Letter to Calestrius Tiro} will be considered in the light of legal, moral and social acceptability of motives and methods of “voluntary death”, in particular, the requirement that both the decision-making process and the decision to exit life be strictly rational.

2. Refusal of treatment in classical Greece and Rome

The anxiety over medical, ethical and legal issues involved in refusal of life-prolonging procedures is as old as the Western medical tradition. The \textit{Hippocratic Corpus}\textsuperscript{13} contains discussions on whether physicians should treat terminally ill patients. Classical Greek and Roman writers analysed the issue of when, why and in what manner it would be acceptable for a competent person to voluntarily “exit life”.\textsuperscript{14}

The “Romans” referred to in the title of this essay were well educated freeborn male citizens who belonged to the social and cultural elite of the mid-first century and early second century CE. They all pursued \textit{cursus honorum},\textsuperscript{15} a professional career path, which often included legal practice. I chose this period primarily because of the
insights provided by the writings of Gaius Plinius Caecilius Secundus (c62–c113 CE), known as Pliny the Younger (Pliny).

Like many members of his circle, Pliny was born into a patrician family of the equestrian rank. His parents were landowners in Comum near Lake Como. Following the death of his father, Lucius Caecilius Cilo, Gaius was adopted by his mother's brother, Pliny the Elder, a polymath and the greatest naturalist of the Antiquity. Pliny became an outstanding lawyer, and a distinguished senator, attaining consulship in 100 CE. Between 104 and 6 CE he was elected a chairman of the river Tiber Conservancy and Urban Sewage Board (curator alvei Tiberis et riparum et cloacarum urbis), and became a member of the imperial judicial council. In 110, Emperor Trajan appointed Pliny a Legate Propraetor for Bithynia-Pontus. He died in office while serving as the Emperor's representative with full consular powers, and a special commission to improve the governance of the province. Among Pliny's close personal friends was the lawyer and historian, Tacitus.

Between 99 and 109 CE, Pliny published nine books of Letters (Epistulae); the tenth book spanning the period of 98–113 CE and containing his correspondence with Emperor Trajan was published posthumously. Pliny's Letters vividly portray his milieu, while providing an insightful commentary on many social, legal, political, cultural and moral (ethical) aspects of Roman life. For example, in his respective letters to Calestrius Tiro and to Catilius Severus, Pliny described how two of his sick friends (Corellius Rufus and Titius Aristo) determined whether or not to voluntarily exit life by refusing further treatment.

3. Philosophical orientation as factor in decision-making

Greco-Roman religion was essentially institutional and civic in nature. At least since the late Republic, many Romans looked towards Greek and Roman philosophers for ethical guidance regarding public and personal conduct; indeed, the teaching of rhetoric and philosophy formed an important part of education of children in the middle class and patrician households. In their communications Pliny, his friends and correspondents refer to the literary and philosophical – ethical – heritage of Greece, the “Golden Age” of the late Roman Republic, the Augustan era, as well as moral values espoused by their own vibrant intellectual environment. They considered philosophy to be an ethical system, which provided a moral “way of living”. Pliny's long standing friend, the philosopher Euphrates of Tyre, advised him that:

anyone who holds public office, presides at trials and passes judgment, expounds and administers justice, and thereby puts into practice what the philosopher only teaches, has a part in the philosophic life and indeed the noblest part of all.

Euphrates was a Stoic. However, in Pliny's time, there were a number of different philosophical schools, and their impact on the Roman moral and legal discourse was not dissimilar to the influence that various religious denominations and socio-political doctrines exert of on modern jurisprudence and medical ethics. In particular, Romans tended to evaluate the acceptability of the choice to hasten one's death by reference to the hierarchy of moral and social values as systematized by different philosophical schools.
Broadly, the most influential schools of the time included Epicureans, Cynics and Stoics. Epicureans considered that freedom from anxiety and fear of death and afterlife (eudaimonia) together with freedom from bodily pain (ataraxia) was the most desirable state of well-being. As long as life had pleasure left in it, Epicureans were expected to continue living. Hence, Epicureans were principally opposed to suicide, contending that those who were sufficiently schooled in Epicurean philosophy would be able to endure even severe pains. An Epicurean could contemplate leaving life only if the distress suffered was constant and unendurable, and the voluntary death was arrived at calmly and rationally (aequo animo) being “the result of a calculation that the alternative would be a continued life of pain.”

The Cynics focused on the individual and sanctioned suicide in cases of painful illness, old age, unrequited love, and “as a way of avoiding compulsion to act contrary to one's rational judgment of what is right to do”. A number of ethical doctrines developed by the Cynics were incorporated into Stoicism by Zeno of Citium (336–264 BCE), though Stoics approved of suicide only if it fell into a category of a “sensible” or “reasonable removal” (Greek: eulogos exagoge). Zeno committed suicide when he was suffering from an agonizing foot injury. Stoic philosophy with its emphasis on reason (logos), physics, and practical ethics exerted profound influence on Roman upper classes (including jurists) of the late Republic and the first 200 years of the Empire.

In general, Roman patricians who were not professional philosophers, tended to be eclectic in their adherence to philosophical schools. Pliny's Letters tend to reflect his sense of moral values and ethical principles derived from Stoic philosophy. The letters to Catilius Severus and to Calestrius Tiro respectively, involve the question of “how one should judge morally a decision to end one's life”.

4. Letter of Pliny the Younger to Catilius Severus and medical practice of the time

The letter to Catilius Severus was probably written in late 90s, and concerned Pliny's visit to a sick friend and colleague, Titius Aristo. Like Pliny, Titius Aristo was an eminent lawyer, member of the imperial council (consilium), and a judicial adviser to the Emperor Trajan. He had been seriously ill for some time. On this occasion, Titius Aristo received his friends reclining on the sofa. Pliny writes admiringly about his friend's patience in overcoming the pain and thirst brought about by his febrile condition.

The reason for this particular visit was Aristo's request that a group of “intimate friends” consult his physicians about the likely outcome of the disease. According to Pliny, if the physicians pronounced Titius Aristo's condition terminal, he would “deliberately put an end to his life”. The exact Latin phrase used by Pliny is “willingly exit life” (sponte exiret e vita). At the same time, Titius Aristo resolved that:

he would carry on with the struggle if it was only to be long and painful; he owed it to his wife's prayers and his daughter's tears, and to us, his friends, not to betray our hopes by self inflicted death so long as these hopes were not in vain.

Again, the exact phrase is “voluntary death” (voluntaria morte).
In other words, depending on the medical prognosis Titius Aristo would decide whether to willingly exit life by refusing further treatment. As related by Pliny, Aristo's decision-making process was in harmony with the practical ethics of Roman Stoic philosophy. In particular its concept of virtue, which Cicero defined as consisting of three properties:

the first is the ability to perceive what in any given instance is true and real, what its relations are, its consequences, and its causes; the second is, the ability to restrain the passions, which the Greeks call paqhe \((\text{paqhe})\), and make the \(*206\) impulses \((\text{hormas})\) obedient to reason; and the third is, the skill to treat with consideration and wisdom those with whom we are associated, … \(^{44}\)

Titius Aristo, having accepted the circumstances of his disease ‘with humility’, asked for and objectively analysed (rationally processed)\(^5\) the information provided by his physicians. When making the choice, he ensured that it was not impulsive, capricious, or selfish. His conduct was also ethical (virtuous) because in reaching his conclusion, he balanced his rights against his obligations: the right to personal self-determination, against the moral and social obligation not to inflict unnecessary anguish on one's family and friends.\(^{46}\)

The outcome of Titius Aristo's decision regarding voluntary death was predicated on the medical diagnosis and prognosis of his condition. There is no description of doctors attending Titius Aristo, who was probably either a freedman or descendant of a freed slave,\(^{47}\) and achieved professional success solely through his intellectual ability.\(^{48}\) Whom would he have chosen as his physicians?

The practice of medicine at the time of Emperor Trajan was virtually unregulated. The rights and obligations of persons who claimed to practice medicine were determined by their legal status. Roman law treated differently doctors who were slaves (\(\text{servi}\)),\(^{49}\) freedmen (\(\text{liberti}\)), and wealthy Roman citizens who practiced medicine (\(\text{medici ingenui}\)).\(^{50}\) Traditionally, Roman citizens practiced “paterfamilias” medicine, which was based on lore and natural remedies (mostly cabbage) as presented in the \(\text{Naturalis historia}\) of the Elder Pliny.\(^{51}\) However, the Elder Pliny's contemporary, Aulus Cornelius Celsus (\(c25\ \text{BCE}–45\ \text{CE}\)),\(^{52}\) a patrician author and encyclopaedist, seems to have been also a practicing physician in the Hippocratic tradition. In his extant work, \(\text{De medicina}\), Celsus emphasised medical ethics, scientific observation and rational approach to the disease. Celsus considered that knowledge of anatomy, physiology and pharmacology was a prerequisite to good clinical practice, and that classification of the disease (diagnosis), and prediction of its course (prognosis) must precede treatment decisions.\(^{53}\)

As a Roman patrician, Celsus – the \(\text{medicus ingenuus}\) – was probably atypical. For in the first century CE, the vast majority of those who called themselves doctors (\(\text{medici}\)) were either freedmen or slaves.\(^{54}\) They tended to come from the Hellenistic East,\(^{55}\) and were referred to collectively as “Greek”. Amongst them were charlatans, faith healers and gymnastic trainers, as well as highly educated specialist medical practitioners. Some of the best known general and specialist physicians of Antiquity practiced medicine in the first century Rome. They included Erotian (\(fl \ e 50\ \text{CE}\)), the Hippocratic lexicographer and physician; Scribonius Largus, physician to Emperor Claudius (ruled \(47–54\ \text{CE}\)), who articulate the principle that “medicine is the science
of healing, not harming"; Pedanius Dioscorides (fl c 40–90 CE), *207 physician and pharmacologist who around 64 CE published the famous and influential *De materia medica*; and the younger contemporary of Pliny, Soranus of Ephesus, who was regarded the pre-eminent physician of his day.57 Most educated physicians were adherents of one of various medical schools or sects. The Dogmatic, Methodist, Empiric and Pneumatic schools followed different strands of the Hippocratic tradition.58 However, there was a general agreement amongst the medical schools that in essence, the Hippocratic therapy consisted of three main elements: diet (including regimens of food and drink, bathing, massage, and exercise), medicines, and surgical procedures.59

Hippocratic medicine in the sense of its ethical conduct was practiced by only a small minority of medical practitioners across the social spectrum; nonetheless, given that Titius Aristo's decision was predicated on the diagnosis and prognosis of his illness, he might have employed physicians from one of the Hippocratic schools. In Pliny's letter about Titius Aristo, the physicians are mentioned only in relation to their prognosis of his illness. The diagnosis was probably of an acute disease with positive prognosis, and Titius Aristo considered pain and distress due to a non-terminal illness not to be sufficient reasons for hastening death. Moreover, the treatment must have been successful because in one of the subsequent letters to Aristo, Pliny thanks him for a literary dinner party;60 and in another note he asks him for legal advice regarding the handling of voting procedures in the Roman Senate.61

But if the prognosis were negative and the patient's death deemed inevitable, would Greco-Roman physicians of the Hippocratic tradition consider themselves under a duty to continue treatment? Probably not, for the Hippocratic axiom that: “regarding diseases, make practice of two things — to help, or at least do no harm”,62 did not imply an obligation to prolong the patient's life at any cost.63 The Hippocratic treatise *On the Art* defined the three fundamental duties of physicians as consisting of (1) alleviation of their patients' suffering; (2) lessening the violence of their diseases; and (3) refusal to treat those whose disease is too far advanced, conscious that in such cases medicine is powerless.64 Recognising the limits of medicine, Hippocratic physicians accepted that: “when disease exceeds the power of medicine to heal, it is the power of the disease not the lack of skill which is to blame.”65 Celsus in *De medicina* re-affirmed the Hippocratic approach when he wrote that medical practitioners:

> should know above all which wounds are incurable, which may be cured with difficulty, and which more readily. For it is the part of a prudent man first not to touch a case he cannot save, and to risk the appearance of having killed one whose lot is but to die.66

Whereas the author of Hippocratic treatise *On the Art* focused on the limits of medicine in treatment of advanced and terminal disease and the attribution of death to the underlying illness in such cases, Celsus was concerned about possible legal consequences for physicians undertaking treatment of incurably ill patients who subsequently die. In both cases, however, the guiding principle of prognosis would have been a double-tier distinction between acute and chronic diseases on the one hand, and conditions that were capable or incapable of curing or stabilizing, on the other.
5. Legal right to refuse treatment and ethical acceptability of such conduct

Freeborn Roman citizens' right to refuse medical treatment was grounded in their legal status,\(^\text{67}\) which was protected by personal private (delictual) action for any wrongful interference with bodily integrity that was humiliating \(\text{*208}\) to the victim \((\text{actio iniuriarum})\).\(^\text{68}\) The more violent forms of such interference, including striking, causing pain \((\text{verberare})\) were punishable under \text{Lex Cornelia de iniuriis}.\(^\text{69}\)

There is no indication in the letter of Pliny of the method Titius Aristo would have chosen to “willingly exit life” in the event of an unfavourable prognosis. Had he died as a result of refusal of treatment, the cause of his death would have been attributed to the disease. But, given his painful illness, had Titius Aristo pursued “voluntary death” even by some other means, with few exceptions, his conduct would have been lawful. Roman law provided that “if a person did not lay hands on himself through fear of imminent condemnation for a crime, but rather through weariness of life or the inability to endure pain, the manner of his death would not impede the opening of the will”.\(^\text{70}\) Likewise, a soldier who attempted to lay hands on himself and did not succeed, was to be punished by death unless he wished to die because of unbearable pains, sickness, affliction (mourning), or for another reason; in such cases he was to be dishonourably discharged.\(^\text{71}\)

However, although Roman citizens had a legal right to refuse life prolonging treatment, they were ethically constrained from exercising it irrationally or selfishly, on a whim. Indeed, if Titius Aristo decided to refuse medical treatment or to end his life in some other way for purely selfish reasons, his conduct though a legally permissible exercise of a right, would have been considered morally objectionable. Thus in the Roman world as in ours some legally permissible decisions were, nevertheless, morally or socially open to criticism.\(^\text{72}\) In Rome, moral opprobrium of voluntary death had social rather than legal implications.

6. Letter of Pliny the Younger to Calestrius Tiro and methods of “voluntary death”

As noted above, Roman attitudes to suicide varied;\(^\text{73}\) however, those Romans who condoned it, did so only if the “voluntary death” \((\text{voluntaria morte})\)\(^\text{74}\) had an acceptable motive and method.\(^\text{75}\) Apart from painful and incurable illness, in Rome of the late Republic and early Empire, suicide as a political act was perhaps the best known manifestation of an “acceptable motive”.\(^\text{76}\) Throughout the first century CE many members of the upper class committed suicide to avoid the notorious treason trials, which invariably led to execution, confiscation of property and prohibition of burial.\(^\text{77}\)

Death by a sword, cutting of veins, ingestion of poison,\(^\text{78}\) refusal of food,\(^\text{79}\) and refusal of medical treatment were tolerated as acceptable methods of ending one's life.\(^\text{80}\) Some modern scholars argue that if asked, many doctors were ready to provide poisons for their terminally ill patients.\(^\text{81}\) For example, Ludwig Edelstein wrote that “in antiquity many physicians actually gave their patients the poison for which they were asked. Apparently \text{qua} physicians they felt no \text{*209} compunction about doing so”.\(^\text{82}\) Edelstein refers to Tacitus, \textit{Annals} XV.64 as his source. In this and surrounding passages, Tacitus describes the death of Seneca the Younger,\(^\text{83}\) who in 65 CE was
ordered by Emperor Nero to commit suicide. In compliance, Seneca cut his wrists. The flow of blood was very slow, exhausting, and extremely painful. Seneca, concerned that he would loose self-composure, “entreated his well-tried doctor, who was also an old friend”, Annaeus Statius, to supply him with hemlock. Hemlock was the poison taken by Socrates,84 and Seneca procured the drug some years before in unknown circumstances. The doctor was clearly reluctant to administer the drug, for Seneca had to “entreat” him to do so. In the event, as Tacitus records, “when it came, Seneca drank it without effect”.85 The inadequacy of the dose suggests that Seneca did not procure the poison from, or on an advice of a doctor. If anything, the passage suggests that Roman doctors were unwilling to supply deadly drugs even to a person who was in the process of self-annihilation.

Annaeus Statius' reluctance to administer hemlock might have been influenced by the fact that although Seneca initiated the process of “self-removal”, his suicide was not voluntary. It was an extra-judicial death-sentence imposed by Nero. If Seneca refused to comply, or failed to complete the act of self-killing, an imperial officer, who was present at the scene, would have escorted him to be killed at the place of public execution.86 The doctor might have been loath to collaborate in this extra-judicial act of state. Moreover, Annaeus Statius would have been conscious that his action of administering the poison could expose him to the charge of murder by poison (veneficium). The legal status of Annaeus Statius is unknown; however, as noted above, the great majority of even highly educated doctors were either slaves or freedmen.

Veneficium was a capital offence for Roman citizens; slaves or freedmen found guilty, were crucified or condemned to fight wild animals.87 Moreover, under the resolution of the Roman Senate known as Senatusconsultum Silanianum (10 CE), if there was suspicion that a master had been killed by his slaves, his will could not be opened nor the inheritance acquired until all slaves and freedmen who lived with him “under the same roof” were subjected to examination and torture.88 Unless a murderer was found, all slaves would be condemned to death. For instance, in one of his letters to Titius Aristo89 Pliny asked the jurist for advice on procedural matters relating to a debate in the Senate on whether the freedmen of the deceased consul, Afranius Dexter, after being “put to the question”, should be acquitted, banished, or executed. Afranius Dexter was found dead, but it was uncertain: “whether had killed himself, or his servants were responsible; and if the latter, whether they acted criminally or in obedience to their master”. Given the harsh legal sanctions, there was very little incentive for either Roman citizens practicing medicine, or the medici slaves and freedmen to provide their patients or masters with poison.90

The Senatusconsultum Silanianum was not invoked where the master committed suicide. However, slaves and freedmen were still punished if the master killed himself in their sight, and they did not prevent him from harming himself.91 In an example from a slightly later period (138 CE), it is unclear whether the ethical imperative, the fear of legal sanction or both led to the situation described by Aelius Spartianus, in his Historia Augusta92 whereby the dying Emperor Hadrian:

… attempted to kill himself, but the dagger was taken from him. He then became more violent, and he even demanded poison from his physician, who thereupon killed himself in order that he might not have to administer it.
According to Cassius Dio,93 in desperation, Hadrian: “finally … abandoned his careful regimen [prescribed by Hermogenes, Hadrian's personal physician] and by indulging in unsuitable foods and drinks met his death.”

Hadrian rejected medical advice and died through deliberate overindulgence. In contrast, Pliny's guardian, mentor and friend, Corellius Rufus,94 ended his life by refusing food offered to him by his physician. Sometime in late 96 or early 97 CE,95 Pliny wrote thus to Calestrius Tiro:

I have lost a very great man, if ‘loss’ is the right word for such a bereavement. Corellius Rufus has died, and died by his own wish, which makes me even sadder; for death is most tragic when it is not due to fate or natural causes. When we see men die of disease, at least we can find consolation in the knowledge that it is inevitable, but, when their end is self-sought, our grief is inconsolable because we feel that their lives could have been long.96

Corellius Rufus developed hereditary gout97 at the age of thirty two. The disease, which initially affected his feet, was unremittingly progressive and agonizingly painful. At the age of sixty seven, Corellius composed a “balance sheet” whereby on the one side he evaluated his reasons for living (pretia vivendi), which included “a good conscience, good reputation, high authority, besides a daughter, a wife, a grandson, and sisters, and true friends”.98 On the other side he listed two major reasons for death (mortis rationibus). The first involved the fulfilment of his self-defined raison d’être: in the late 80s he resolved to endure any pain and illness just to outlive Emperor Domitian, “that robber (latroni) if only by a single day”.99 With Domitian's demise, Corellius “felt free to die”. The second reason was the very pain he endured — the torture of the gout, which was spreading through all his limbs, and which he could no longer control through strict regimen of abstinence, moderate living and the sheer strength of mind. Corellius Rufus therefore decided that as his “perpetual” (chronic) disease grew progressively worse, he could only escape it by “severing all links with life”. For four days he refused all food (cibo). Neither his family nor his friends were able to persuade him to take nourishment. In classical Rome, just like today, doctors could not force treatment or nutrition upon a free and competent citizen. Indeed, Pliny admiringly reports that when the physician offered him food, Corellius Rufus replied: “kekrika” (Greek: “I have made my decision”).

It appears that Corellius Rufus died within a week of his decision to refuse nourishment. In his deep sorrow, Pliny addressed Calestrius Tiro thus:

Send me some words of comfort, but do not say that he was an old man and ill; I know this. What I need is something new and effective which I have never heard nor read about before, for everything I know comes naturally to my aid, but is powerless against grief like this.100

Pliny's anguish was occasioned by the loss of a great friend through suicide, but not its mode. Abstaining from food as a method of hastening death was practiced in Ancient Greece and Rome. In *Acute Diseases*. 56 Hippocrates pointed out that the mistaken belief that hydromel (mead) weakened the body arose “through those abstaining to death”.101
7. The requirement that the decision to exit life be rational

Roman lawyers, as well as other Roman citizens, were aware that where the master's death was a result of treatment refusal and starvation, the household slaves and freedman would not be subject to sanctions under Senatusconsultum Silanianum (discussed above in relation to Afranius Dexter). Moreover, voluntary death by abstention from nourishment could only be achieved through “persistent resolution”, a quality essential to the Stoic notion of virtuous action. Corellius Rufus was able to endure “worthless” or “undeserved tortures” (indignissima tormenta) of his chronic and painful illness by “force of mind” (viribus animi sustinebat), and his decision to forego food was also governed by “supreme reason” (summa ratio). Hence, the conduct of Corellius Rufus was that of a rational Roman Stoic. In general, whether one followed Stoic or Epicurean ethics (which also emphasised reasoned choices), social and moral acceptability of voluntary death was strictly predicated on the rationality of the decision-making process.

The “balance sheet” of Corellius Rufus illustrates the Roman process of reasoning that focused on balancing subjective experiences and desires of the patient against objective values and societal norms. The two had to run in tandem to be morally acceptable. Integral to the rational decision-making process was an examination of adverse consequences that the decision to “willingly exit life” would have not only for oneself but also for others. Moreover, unless the reasoning that led to the death-choice was coherent, it raised doubts about the rationality of the decision to end one's life. For example, Seneca the Younger recorded in De Vita Beata (On the Good Life) 19.1 that the suicide of the Epicurean philosopher Diodorus was considered contrary to Epicurean doctrine because: “he cut his own throat. Some want this deed to be seen as madness, others as rashness.” Critical of Diodorus' suicide, Seneca underscored the irrationality of the act by juxtaposing the philosopher's declaration that he was “happy and full of good understanding” (beatus ac plenus bona conscientiae) when making his decision, with his parting words: “I have lived, and finished the course which fortune dealt me”. Although this sentence appears rational, it is in fact a direct quotation from the betrayed, distraught and suicidal Dido's final speech in Virgil's Aeneid 4.653.

Thus the appearance of lucidity was not sufficient to validate a death-choice. Roman law and ethics recognised competence in the legal sense as the ability to understand the significance of one's actions in terms of right or wrong. Juvenal, Roman satirical poet and contemporary of Pliny, expressed the foremost significance of “sound mind” (mens sana) in the sense of capacity for rational thought and action in the famous aphorism: “Our prayers should be for a sound mind in a healthy body.” However, the presence of sound mind was important only insofar as it enabled competent persons to balance medical factors against the emotional costs and benefits, social commitments and philosophical values they espoused. In his Epistle 24 (On Despising Death), Seneca wrote:

even when reason advises us to make an end of it, the impulse is not to be adopted without reflection or at headlong speed. The brave and wise man should not beat a hasty retreat from life; he should make a becoming exit. And above all, he should avoid the weakness which has taken possession of so many, — the lust of death. For just as there is an unreflecting tendency of the
mind towards other things, so, … there is an unreflecting tendency towards death; this often seizes upon the noblest and most spirited men, as well as upon the craven and the abject. The former despise life; the latter find it irksome.\textsuperscript{110}

Diodorus may have been of sound mind, yet his suicide lacked moral legitimacy because he did not have sufficient motive and acted on an impulse.\textsuperscript{111} Pliny's opinion of Titius Aristo's conduct can serve as a counterpoint to Seneca's disapprobation of Diodorus, while reflecting the former's approach to decisions regarding voluntary death. Pliny, *\textsuperscript{212} having praised Titius Aristo's resolution to persevere with life despite his protracted and painful illness as “heroic” and “worthy the highest applause”, commented that:

Many have his impulse and urge to hasten death, but the ability to deliberate and weight one's causes for such decision and to resolve to live or die according to the counsel of reason, is a mark of a truly great mind.\textsuperscript{112}

By contrasting impulsive decisions (like that of Diodorus), with those arrived at through rational and analytic process, Pliny pinpoints the standards (derived from the Stoic virtues in practical ethics) for assessing the legal and ethical validity of end-of-life decision-making in classical Rome. The respective decisions of Titius Aristo and Corellius Rufus were virtuous and valid because they were made by competent persons, who carefully considered the physical, moral, social, and emotional consequences of each choice not only for them as individuals, but also for their families and friends. Moreover, each was prepared to take full moral responsibility for his actions (praxis).

To conclude, what can the Romans teach us? Well, questions central to end of life decision-making have essentially remained the same over the past 2000 years. Since the middle of the nineteenth century, developments in medical science have made the works of Aulus Cornelius Celsus, Scribonius Largus, Pedanius Discorides, and Soranus of Ephesus of ethical rather than therapeutic importance. Nevertheless, their exposition of Hippocratic principles of right and wrong that govern the conduct of the medical profession is still pertinent. This is particularly so in cases of severe acute conditions, chronic illnesses with intractable pain (such as a gout), and final stages of any disease, when the question arises whether the illness has exceeded the power of medicine to heal a particular patient. For although modern treatments are much better at curing disease, alleviating pain, and prolonging life, in some cases competent patients face choices, which are very similar to those that confronted Titius Aristo and Corellius Rufus.\textsuperscript{113} The difference lies in emphasis on the principles and standards governing decision-making and its acceptability in classical Rome and at present.

Roman citizens had a legal right to “voluntarily exit” life, yet they did not equate all decisions to exercise this right with moral and social legitimacy. To attain ethical (and social) legitimacy, both the decision and the decision-making process had to be rational. In relation to “reasonable removal”, an unimpaired cognitive capacity to process and understand information, and to choose between alternatives (as Diodotus did), was insufficient — the decision had to be a product of moral reflection that was neither self-centred nor patently unwise. Our society, as reflected through legislation and case-law, having elevated the doctrine of personal autonomy to an absolute right
to refuse life-sustaining treatment, focuses strictly on the patient's sound mind. Questions of moral values, personal and social impact of a death-choice are subordinated to the cognitively competent patient's wish, no matter how impulsive, irrational, or unbalanced it might be. Inherent in this narrow – cognition-oriented – approach to the right to refuse life sustaining medical treatment is the risk of harm to some of the most vulnerable members of our society. For a decision to end one's life voluntarily once carried out cannot be unmade. Romans realised that there is no room for mistakes when it comes to a death-choice: hence their insistence on both, its rationality and ethical acceptability. Perhaps it is time to re-consider the modern approach to the refusal of life sustaining medical treatment and the notion of an absolute personal right to self-determination in relation to death-choices.

The article is based on the prize-winning paper presented at the 39th Congress of The Royal Australian and New Zealand College of Psychiatrists Christchurch, New Zealand 9–14 May 2004.

2 See for example, Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 279–80 (1990): “For purposes of this case, we assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition.” In this essay, I shall refer mainly to the English case law; however American, Canadian, and Australian courts have adopted a very similar approach.
3 Airedale NHS Trust v Bland, [1993] AC 789 at 863–4; see also Lord Keith at 857, and Hoffman LJ at 826–27. The case involved withdrawal of medically administered nutrition and hydration from a patient in a persistent vegetative state.
4 Re MB (Medical Treatment) [1997] 2 FLR 426 at 432. A 33 weeks pregnant woman with a footling or incomplete breech presentation (the risk was assessed as 50 per cent) agreed to a caesarean section but refused to allow blood samples to be taken because she was frightened of needle pricks. The court found that she was temporarily incompetent.
5 See also: Pretty v the United Kingdom, The European Court of Human Rights (Fourth Section), Strasbourg, 29 April 2002 (Application no. 2346/02) and Ms B v An NHS Hospital Trust [2002] EWHC 429 (Fam).
6 The Mental Capacity Act 2005 c 9(UK).
8 Law Commission, Mental Incapacity No. 231 (1995) [3.2]–[3.23], adopted in Re MB (Medical Treatment) [1997] 2 FLR 426, at 437; See also: Secretary, Department of Health and Community Services v JWB and SMB (Marion's Case) (1992) 175 CLR
Ms B v An NHS Hospital Trust [2002] EWHC 429 at [81].

Id. The case involved a 43 year old woman who suffered a haemorrhage of the spinal column in her neck, as a result of which she became tertaplegic. Ms B requested that the life-sustaining ventilator be switched off.


The collection of medical writings known as the Corpus Hippocraticum was written between 460 and 300 BCE and consists of about 70 treatises, Aphorisms, the Oath and the Canon.

Romans did not refer to self-inflicted death as “suicide”. Linguistically, the word “suicide” is an eighteen century English neologism; there was no Classical Latin noun “suicidium”. Daube D “The Linguistics of Suicide” 1 (4) (1972) Philosophy and Public Affairs 387–437 at 422, 428.

The term cursus honorum (also ordo magistratum) refers to the ascending order in which the magistracies (political offices) had to be held by male Roman citizens to make them eligible for a higher magistracy. There were fixed terms for army service followed by the offices of quaestor, praetor, and consul. See: Berger A, Encyclopedic Dictionary of Roman Law The American Philosophical Society, Philadelphia (1980) at 644; Sherwin-White AN, The Letters of Pliny: A Historical and Social Commentary Clarendon Press, Oxford (1966) at 422.

The equestrian order ranked next to the Senate (the highest non-imperial order of the Roman nobility).

The Elder Pliny, Gaius Plinius Secundus (c 24–79 CE) was a cavalry commander during the German Campaigns, which he recorded in Bella Germaniae. He had an extensive legal practice and wrote the greatest Ancient encyclopaedia Naturalis historia, (Pliny the Younger, Letters, To Baebius Macer 3.5). Elder Pliny died at Stabiae at the head of naval rescue effort following the disastrous eruption of Vesuvius in 79 CE (Pliny the Younger, Letters, To Cornelius Tacitus 6.16).

Pliny the Younger also held a number of imperial administrative appointments: between 94 and 6 CE, he was in charge of the army pension fund (praefectus aerari militaris), and between 98 and 100 CE in charge of the state treasury (praefectus aerari Saturni).

The Board was responsible for the upkeep of Tiber's banks (to prevent flooding), and Rome's sewers.

Under Trajan, Bithynia-Pontus became an imperial province.

Cornelius Tacitus (56-c120 CE) had a distinguished legal and public service career, which culminated in the proconsulship of Asia for 112–13 CE. He was the most brilliant of Roman historians. Citations from Annales (The Annals of Imperial Rome), translated by Michael Grant, Penguin Classics, Harmondsworth (1956) will be referred to as Tacitus, Annals followed by book number and paragraph.

Pliny the Younger, Letters. English quotations are from The Letters of the Younger Pliny, translated by B Radice, Penguin Classics, Harmondsworth (1963). In few instances I have modified these translations to more closely reflect the Latin original. Latin text is from Plinii Caecilii Secvndi Opera. Available at http://www.thelatinlibrary.com/pliny.ep1.html Herein under citations from the Letters are referred to as Pliny, followed by the name of the addressee, the book and letter number.

In Classical Rome, all children, boys and girls, free-born and slave were taught at
the minimum, to read and write as well as arithmetic.


25 Euphrates of Tyre (died c120 CE).

26 Pliny, To Attius Clemens 1.10.

27 Titus Lucretius Carus (95–51 BCE) presented the fullest account of Epicurean philosophy in his poem De Rerum Natura (On the Nature of Things). Marcus Tullius Cicero (106–43 BCE) in his De finibus Bonorum et Malorum (About the Ends of Goods and Evils), known as On Ends, was more critical of Epicureanism.

28 According to Cicero's On Ends, 2.96, Epicurus, who suffered from an extremely painful disease, refused to hasten death even on the “final and blessed day”, claiming that recollection of past arguments and discoveries gladdened his soul and compensated the bodily pain.


31 Cynic philosophy focused on the absolute responsibility of the individual as the moral unit, and on the autocracy of the will. Cynics were aggressively anti-conventional; they rejected wealth (at least in theory), social status and higher learning. BR Branham and M-O Goulet-Caze (Eds), The Cynics: The Cynic Movement in Antiquity & its Legacy University of California Press, Berkeley (1997).

32 Griffin M, “Roman suicide” in Medicine and Moral Reasoning, KWM Fulford, G Gillett and JM Soskice (Eds), Cambridge University Press, Cambridge (1994) at 114, citing Epictetus 4.130-1. Epictetus (c mid 50s–130 CE), a contemporary of Pliny the Younger, was a renowned Stoic philosopher and teacher.


34 Zeno's successor, Cleanthenes (d 232 BCE), committed suicide when he developed a painful ulcer on his mouth.

35 Cicero, De legibus (On Laws) 1.23.33; the influence of the Stoic philosopher Chrysippus (c 280–c 207 BCE) on Roman legal writers is discussed by Honoré T, Ulpian; Pioneer of Human Rights 2nd edition, Oxford University Press, Oxford (2002) at 80–84.

36 Professor Tony Honoré, private communication 6 April 2005.


38 Titius Aristo's opinions (responsa) on issues of law were used by later jurists, including Ulpian (who cited Aristo 45 times), and thus form part of Justinian's Digest.
Pliny informed Catilius Severus that: “at present I am always sitting by Aristo’s bedside or worrying about him, so that I have neither time nor inclination for reading or writing anything”. Pliny, To Catilius Severus 1.22.

Romans tended to take advice from many doctors.

Plinius Epistulae 1.22.8: “ut medicos consuleremus de summa valetudinis, ut si esset inusperabilis sponte exire e vita”.

The original Latin is as follows: Plinius Epistulae 1.22.10: “dandum enim precibus uxoris, dandum filiae lacrimis, dandum etiam nobis amicis, ne spes nostras, si modo non essent inanes, voluntaria mori desereret.”


A considered decision made in harmony with the Stoic dictum that “in obeying the injunctions of reason” regarding appropriate and inappropriate actions, a person will have achieved virtue and the “smooth current of life”. Schifield M, “Stoic Ethics” in The Stoics, B Inwood (Ed) Cambridge University Press, Cambridge (2003) at 246.

Amongst the important Stoic virtues was the “affinity” (oikeiôsis) for identifying with the interests of one's family, friends, etc., and “weighing up various interests as they deserved”; see Schifield M, “Stoic Ethics”, id., at 243.

Most of the Greek doctors came to the Republican Rome as prisoners of war or slaves.

Until 368 CE, every free man in Rome could call himself “medicus”.

Pliny the Elder, Historia naturalis (see fn 19).

Celsus wrote an encyclopaedia on Artes (Arts), of which eight books of De medicina (On Medicine) survive.


Roman inscriptions referring to doctors in the first 300 years CE show that in the 1st century, out of the total of 176 doctors recorded on inscriptions, 92 were freedmen, 40 slaves, 35 citizens, and 9 foreign non-citizens (peregrine). Nutton V, “Healers in the Medical Market Place: Towards a Social History of Graeco-Roman Medicine” in Medicine in Society A Wear (Ed), Cambridge University Press, Cambridge (1992), 15–59 at 39.

According to epigraphic statistics, almost 90 percent of medical practitioners in the 1st century came from Greece, Pergamum, Tarentum, Sicily, Alexandria, etc. Nutton V, id, at 40.


Soranus of Ephesus wrote the treatise on Gynaecology, which is notable for its humane, rational and compassionate attitude to women; he also wrote On Bandages,
On Fractures, On Surgery and On Acute and Chronic Diseases.


59 The Greeks termed the first Diaithtikh, the second Farmakeutikh, the third Xeirourgia. Celsus De medicina, Prooemium 9.

60 Pliny, Letter to Titius Aristo 5.3.


67 In classical Rome legal status was vital to one's individual and social rights and obligations. The law of legal status was also very complex. Apart from slaves, freedmen, peregrines, free born Roman citizens were divided into humiliores and honestiores each with different sets of rights.


69 Legislation enacted in 81 BCE under the dictator Sulla.

70 Digest 29.5.1. Translation suggested by Professor Tony Honoré to more accurately reflects the fact that suicide was not a Roman conception (private communication 6 April 2005).


72 Professor Tony Honoré private communication 6 April 2005.


74 David Daube argues that this noun phrase for suicide may have been introduced into Latin by Cicero in Epistles 1.16.79. See Daube D “The Linguistics of Suicide” 1 (4) (1972) Philosophy and Public Affairs 387–437 at 412.


77 Tacitus, Annals VI.29.

78 One of the most famous (and gory) was the suicide of Cato the Younger (95–46 BCE) following his defeat by Caesar at the battle of Utica.

79 Titus Pomponius Atticus, an adherent of Epicureanism, Cicero's banker and the addressee of his Epistulae ad Atticum, died in 32 BCE after he decided not to “nourish” his disease [probably bowel cancer], any longer, for as he put it: “whatever food I have taken just has served to prolong my life, thereby increasing my suffering


Edelstein L, *Ancient Medicine* The Johns Hopkins University Press, Baltimore (1967) at 13; cf. Digest 48.8; C 9.16. Edelstein's observation might have held true for Greece, where most of those practicing medicine were citizens of equal civic and legal status to their patients, and itinerant doctors (though not those of the Hippocratic School) may have provided poison to their patients.

Lucius Annaeus Seneca (b c3 BCE–65 CE), Roman Stoic philosopher, advocate, statesman and writer. He was appointed tutor to young Nero in 49 CE, and became consul in 57 CE.

Socrates was sentenced by the Athenian state in 399 BCE to commit suicide. Though urged by his friends to escape, he refused and died after drinking hemlock.

Seneca was placed in a warm bath. “He sprinkled a little of it of it on the attendant slaves, commenting that this was his libation to Jupiter [the liberator]. Then he was carried into a vapour-bath, where he suffocated”. Tacitus, *Annals* XV.61–64.

See the execution of Plautius Lateranus the consul-designate, in Tacitus, *Annals* XV.60.

Berger A, *Encyclopedic Dictionary of Roman Law* Transactions of the American Philosophical Society, Philadelphia (1980) at 760. Those who prepared or kept poison for killing others were considered “venefici”. In civil law (*ius civile*), doctors who used drugs improperly (i.e. to poison the patient) would be culpable also under the contract for services under the actio ex locato and/or Lex Aquilia (D.9.2.7.8; D.9.2.8.).


Seneca the Younger mentions that slaves were reluctant to help their owners' suicide. Seneca the Elder (c55 BCE–c 40 CE) provided a controversia on a slave who refused to give his sick owner poison (*Controversia* 3.9).

Digest 29.5.1.22. If it was established that the slaves could not have stopped the master, they were freed from punishment: Digest 29.5.1.23.


Corellius Rufus, who like Pliny came from Como, was appointed consul (c78 CE), and governor of Upper Germany at the start of Emperor Domitian's reign (81–96 CE).

The letter was written not long after the assassination of Emperor Domitian in
September 96 CE.


Gout is still considered the most painful condition of all types of inflammatory arthritis.


Id.

Daube D, “The Linguistics of Suicide” 1 (4) (1972) *Philosophy and Public Affairs* 387–437 at 404. Both competent and incompetent patients in terminal stages of their illness often tend to reduce and then cease their oral intake. As the disease progresses and death approaches, there is evidence of dehydration, profound loss of weight, anorexia and lassitude. However, there is no evidence that these symptoms actually cause suffering. See: Mendelson D & Ashby M, “Arbitrating ‘end-of-life’ decisions: issues, processes, and the role of the law” in (2006) *Disputes and Dilemmas in Health Law* I Freckelton and & K Petersen (Eds) 2006 Sydney: Federation Press 363–381.


Id., at 147. Hoffer suggests that Pliny’s description of Corelluis Rufus' disease and the will to outlive the rule of Domitian should be interpreted as a political allegory and an inversion of a “political suicide”.


With these words, Dido, the Queen of Carthage stabbed herself to death.


Diodorus was not physically ill or in pain; rather he “praised the tranquillity of … [his] life spent in port at anchor.” Seneca, *De Vita Beata (On the Good Life)* 19.1.

Plinius, *Epistulae* 1.22.10.: “Nam impetu quodam et instinctu procurrere ad mortem commune cum multis, deliberare vero et causas eius expendere, utque suaserit ratio vitae mortisque consilium vel suscipere vel ponere, ingentis est animi.”

Though today, patients who decide to abate curative treatment can rely on palliative care.


For example, in *Re C* (adult: refusal of treatment) [1994] All ER 819, the patient's refusal to have his leg amputated below the knee because of gangrene in his left foot was upheld despite the fact that his decision was made at the time when he was suffering from a psychotic disorder.
Such considerations as the patient's personality, an affective disorder that is not a clinical depression, the impact of medications, external pressures and the setting are also regarded secondary to the right of self-determination.