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THE ANDREWS' BILL: COMPROMISED CITIZENSHIP OR THE PROTECTION OF HUMAN RIGHTS?

by

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The public policy making process in the Northern Territory is quite unique, for despite the Northern Territory Self-government Act 1978, enabling the Northern Territory Legislative Assembly to make laws controlling areas such as health services, education, and transport, the Commonwealth retains the right to override Northern Territory specific legislation with Commonwealth Acts. While the Commonwealth holds this right over all States and Territories, it is suggested by some Territorians that the Commonwealth Parliament does not necessarily accord the Northern Territory Parliament due respect. These beliefs were cemented when Northern Territory legislation condoning voluntary euthanasia was rendered redundant by Commonwealth euthanasia laws. The implications for this degree of Commonwealth intervention has sparked debate over the extent to which Northern Territory residents are able to exercise their political rights. This event has also spurred discussion concerning the imposition of a set of values on people who do not share such values.

The history of representation for people living in the Northern Territory has been an ongoing cause of concern. From 1884 to 1910 non-Indigenous Territorians were represented in both houses of South Australian Parliament.¹ This ceased to be the case when the Northern Territory was transferred to Commonwealth Government, in 1911.² From the date of transfer until 1936 non-Indigenous Territorians were only permitted to shape political processes at the local government level, though they were allowed to elect a non-voting member for the Commonwealth House of Representatives in 1922.³ In 1936 this member was granted permission to speak and vote on issues of particular concern to the Northern Territory. By 1975 Indigenous Australians finally gained the right to vote, the Northern Territory Legislative Assembly had been established, and the Northern Territory had been permitted to elect two senators with full voting rights to the Senate.⁴ Northern Territory self-government was granted in 1978, allowing Territorians the right to elect representatives in the Territory’s own parliament.

What does Citizenship mean in the Northern Territory?

The concept of citizenship originates from the ancient Roman and Greek worlds and is linked to the emergence of the nation state.⁵ The principles of citizenship are generally understood to encompass membership of the nation State, as well as the rights and obligations associated with this membership.⁶ Citizen rights comprise: civic rights, such as freedom of speech; socio-economic rights, such as the right to economic welfare, social security and health care; and political rights, including the right to equity before the law, and the right to vote and organise politically.⁷

Hindess suggests that citizenship is ‘one of the central organising features of Western political discourse’, and as such it is not surprising that there are numerous conflicting meanings associated with the concept.⁸ One of the reasons the notion of citizenship is contested is because it remains unclear whether the primary focus of citizenship is on the rights it ‘secures’ or the obligations that membership of the State demands. Further, it has to be recognised that the idea of citizenship does not have positive connotations for all groups of peoples. Indigenous Australians, members of gay and lesbian communities, people living with disabilities, and
women in general have been repeatedly subjected to restricted citizenship. This is not surprising given that the power elite, those with direct access to decision-making, are predominantly white, able-bodied men, with high socio-economic status.

With regard to the Northern Territory's law making powers the concept of citizenship is important, as the protection of citizen rights and the enforcing of citizen obligations is the key role of Australia's liberal democracy. It is the role of the Northern Territory Government to ensure that as elected representatives all Members strive to reflect the needs of their constituents through their law making capacities. In making laws which mirror the values of Territorians the Northern Territory Government provides a voice for all members of the Northern Territory. The Commonwealth Government performs a similar role, in that it monitors and conducts activities related to foreign affairs, internal and external defence, social security, trade and customs, in ways which best meet the needs of Australia and, therefore, Australians.

These two levels of government generally complement each other, with the Northern Territory Self-government convention implying that the Commonwealth Government will only override Northern Territory laws during civil conflict or war. However, problems can arise as the Constitution (section 122) stipulates that the Commonwealth Parliament has the power to make laws in relation to Territories, without sharing its law-making powers with Territory Parliament. This means that while in 1978 the Commonwealth gave permission to the Northern Territory Government to make many of its own laws, any such laws can be disabled by Commonwealth legislation. The fact that this situation can present itself makes it obvious that the degree of autonomy held by the Northern Territory Government is limited. It also suggests that Territorian citizenship, including the rights of Territorians to have a say in the making of laws, can be Constitutionally dismissed without due consideration of the democratic processes that inform Northern Territory governance. Despite these concerns, up until 1996 the Commonwealth Government supported all Northern Territory legislation made as a result of the Northern Territory Self-government Act. It was upon the legalisation of voluntary active euthanasia in the Northern Territory that the Commonwealth acted to stifle Northern Territory legislation.

The Rights of the Terminally Ill Act
In February 1995 Marshall Perron, Member for Fannie Bay, released his intention to introduce a private Member's Bill that would replace the Natural Death Act 1988. The Natural Death Act 1988 provided that a competent person over the age of 18 could elect to refuse treatment when faced with imminent death. Perron felt this didn't go far enough and on 22 May 1995 he introduced the Right of the Terminally Ill Bill, a Bill which if passed would legalise voluntary euthanasia for terminally ill patients in the Northern Territory. In his media release on 1 February 1995, Perron claimed that the decision regarding the Bill was not a party issue, nor was it a political one. He insisted on a conscience vote. After introducing the Bill in May Perron resigned as Chief Minister and as Member for Fannie Bay, in order to minimise any influence he had over Members in the exercise of their choices.

The Rights of the Terminally Ill Bill survived the first reading with thirteen to twelve voting in favour of a second reading. The Bill was then referred to a Parliamentary Select Committee on Euthanasia, chaired by Eric Poole. The committee invited submissions and sought to inform the public and government about the implications of the Bill. The Committee had some major concerns, the most pressing of which was the effect such proposals could have on Aboriginal people. The committee felt that the introduction of euthanasia legislation could

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lead to increased fear of the medical profession within Aboriginal communities. In light of this, and other factors, the committee recommended a number of safeguards, but approved the essence of the Bill. At the third reading the vote was in favour of the proposed legislation, fifteen to ten.20

A Labor Member of the Legislative Assembly, Neil Bell, attempted to scuttle Perron's private members' Bill with a private Member's Bill of his own: Respect for Human Life Bill. However, this Bill was quickly defeated.21 On 20 February 1996, the Rights of the Terminally Ill Act was passed with three amendments. The Administrator assented to the Act and it became Northern Territory law on 1 July 1996.22

A private legal challenge was initiated in the Northern Territory Supreme Court in an attempt to stop the Rights of the Terminally Ill Act coming into effect.23 The Northern Territory Supreme Court rejected the challenge.24 Four people went through the procedures set out in the Act, ending their lives using a computer to administer a lethal concoction of drugs.25

The Andrews Bill
In late June, Kevin Andrews, Member for Menzies in the Federal House of Representatives, vocalised his intent to introduce a private member's Bill that would override the Rights of the Terminally Ill Act. He proceeded to introduce the Bill entitled Euthanasia Laws Bill 1996, in the Commonwealth House of Representatives on 9 September 1996.26 The Andrews Bill sought to take away the powers of Australian territories, in relation to euthanasia.27 Andrews claimed that the Bill was needed to protect the vulnerable, who were left exposed to pressure, abuse and loss of autonomy by the Northern Territory legislation.28 He maintained that the debate was not about Territorian rights, but about condemning 'expendable' people to un-consented death.29

On 9 December the Bill was passed in the House of Representatives, with a vote of 88 to 35 in favour. The Bill was then discussed in a series of Senate committees, the first of which was the Senate Standing Committee for the Scrutiny of Bills. This Committee commented that the Bill could negate the valid powers of the Northern Territory legislative body, threaten the certainty which ought to exist for citizens when the Territories pass laws, discredit the NT's right to self-government, and that it may be considered to unduly trespass on the personal rights and liberties of Territorians.30 Despite this, the committee recommended that the Senate should be provided with an opportunity to decide on the legitimacy of the Bill.31

The Senate then referred the Euthanasia Laws Bill 1996 to the Senate Legal and Constitutional Legislation Committee, which sought to address the concerns noted by the previous committee.32 The committee took a number of months to decide that it would not make any recommendations to the Senate as it was a private Member's Bill, resting on a conscience vote.33 The committee did report that they felt the Constitutional implications were justified and that they felt that it was possibly an extreme enough circumstance to constitute Commonwealth action. Prior to reaching these decisions the committee received over 12 500 submissions from individuals and groups, and conducted two public hearings in 1997.34 The Northern Territory Legislative Assembly also provided all federal parliamentarians with 'The Remonstrance', which detailed their unified opposition to the Euthanasia Laws Bill 1996.

The Euthanasia Laws Bill 1996 was voted on in the Senate on 25 March 1997.35 As a result the Northern Territory Rights of the Terminally Ill Act was overturned, and the Northern Territory
was barred from introducing further legislation relating to euthanasia. A series of minor challenges followed this ruling, but all have been unsuccessful. Further, euthanasia legislation being considered by South Australia, Australian Capital Territory (who had already discussed similar proposals in 1993), the Canadian Senate, and the New Zealand Parliament was all rejected. The leaders of the three major political parties in Australia indicated their personal abjection to euthanasia, and both the Victorian and New South Wales Premiers came out in opposition to the legalisation of euthanasia. Within a short period of time the issue was swept under a political carpet. The *Euthanasia Law Act* 1997 commenced on 10 December 1997.

**Social Opinion concerning Euthanasia**
When state, territory or federal parliament sits it is assumed that as elected representatives members will speak on behalf of their constituents. In light of this, social opinion regarding topical issues are taken into consideration. Such was the case when euthanasia was being discussed.

Euthanasia is a term taken from the Greek words meaning ‘good death’. Voluntary euthanasia involves a mentally competent person requesting to die through the assistance of others or the self-administration of prescribed drugs, in order to be relieved of intolerable physical and/or mental distress. Voluntary euthanasia may be further broken down into two types: active voluntary, which is the deliberate action of killing a patient at that patient’s request; and passive voluntary, whereby the patient elects to have medical treatment withheld in order to die peacefully. It is the former of these that was initially legalised by the 1996 Northern Territory legislation, and which is the focus of continued debate.

Euthanasia is a sensitive as well as controversial issue accompanied by a diversity of societal opinions. Among the groups that opposed the legalisation of euthanasia were the Roman Catholic Church, Anglican Church, and Pro-life groups including Right to Life Australia. They conceive that in condoning voluntary euthanasia doctors are issued with a ‘license to kill’, and the right to ‘play God’. These powers are regarded as dangerous in the hands of human beings. These bodies have further claimed that the legalisation of euthanasia would put at risk those people whom others believe would be better off dead, and with time, euthanasia would become as widely practised and uncontrolled as abortion. The night before Perron introduced his private Member’s Bill, pro-lifers held a candlelight vigil outside the Northern Territory Parliament House. Around the same time Roman Catholic Bishop, Ted Collins, urged the Roman Catholic Members of Parliament to oppose euthanasia legislation because of their faith. Similarly, the Anglican Bishop of the Northern Territory, Richard Appleby, stressed opposition to euthanasia for the preservation of human life.

The Human Rights Commission, numerous AIDS organisations and the Doctor’s Reform Society contested the arguments put forward by these church and pro-life groups. They maintained that euthanasia allows terminally ill patients the opportunity to die with the dignity they deserve, and gives them the chance to take control of their lives, rather than letting their lives be dictated by their disease or condition. It is further suggested that legalised euthanasia enables self-determination, communicates respect and mercy to the dying, and is a compassionate avenue which serves the common good.

**Representatives’ opinions concerning the implications of enacting the Andrews Bill**
The issues raised by the Andrews Bill are not limited to a discussion of euthanasia; in fact the more pressing issue could just as easily be identified as the impact passing the Andrews Bill
has on the citizenship rights of Territorians. Andrews claims that it is the Commonwealth's responsibility to override legislation which threatens the lives of Australian citizens. He asserts that it is a Commonwealth parliamentary responsibility to protect its citizens, and that overriding dubious legislation is not a violation of Territorian rights, but an indication of the commitment the Australian democracy has to supporting the vulnerable.

This position has been at least partially backed by Senators Abetz, Bishop, Collins, Conroy, Ellison, Ferris, Harradine, Herriman, Hogg, McGauran, Minchin, O'Chec, and Woody. These Senators have reported that they would find it difficult to find a more exceptional circumstance than euthanasia to cause Commonwealth intervention. They also endorsed the notion that anti-euthanasia legislation would not create any uncertainty for Territorians regarding the Northern Territory Government's powers, as they believed the Commonwealth legislation will be viewed as unavoidable. These twelve Senators, along with Senator Cooney, stated that the protection of the sanctity of life should prevail over other concerns. These views imply that the citizenship rights of Australians, and particularly Territorians, are being considered. It may be inferred that in ensuring the protection of human life, regardless of the individual's wishes, that these Senators are making sure that vulnerable citizens are safeguarded against possible exploitation.

Conversely, Senators Collins and Tambling regarded the Andrews Bill as a violation of the Northern Territory Government's power, especially given that the Northern Territory Self-Government Act states that the power granted to the Northern Territory will not be retracted. In light of this, they view the process as unconstitutional, noting that it is particularly discriminatory as it is only applicable to Territorians, while other state dwelling Australians are not met with such restrictions.

In her address to Parliament Liberal Member for Hindmarsh, Christine Gallus, described the Andrews Bill as the 'most disturbing that has ever come before me'. She felt that passing the Bill was saying to Territorians that the decision-making capabilities of Federal Parliamentarians are better than Northern Territory Parliamentarians. Gallus found additional fault with the Andrews Bill as it implied that the democratically elected Legislative Assembly in the Northern Territory were morally inferior to the representative from other areas. These notions were also picked up on by Senator Bob Brown who expressed his personal support for the Rights of the Terminally Ill Act and conveyed his criticism of the conscience vote that was conducted. He claims that resorting to a conscience vote implied that Federal parliamentarians had more 'desirable' ethics, and neglected the fact that as elected representatives their public duties may oblige them to set aside their own personal beliefs about euthanasia. Brown also insinuated that parliamentarians may have voted according to what they perceived to be a party line, in order to protect their own future in politics. However, it should be noted that the two major political parties were represented on both sides of the argument.

The strongest opposition to the Euthanasia Laws Act came from the united Northern Territory Legislative Assembly. In 'The Remonstrance' they highlighted the fact that: Rights of the Terminally Ill Act was within their legislative powers; that the Euthanasia Laws Act sought to severely restrict the grant of legislative power to the Northern Territory; that it was a direct attack on Northern Territory powers; and that it limits the representation of Territorians in the Australian democracy. The mere introduction of the Bill was regarded as a huge step backward, as never before had the Northern Territory been threatened by restricted powers. Such legislation was seen to create uncertainty and was viewed as inconsistent given that the Northern Territory had already been given support relating to a grant of Statehood. This concern may be regarded
as justified given the recent threats to legislate against mandatory sentencing. Senator Bob Brown's Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 (Cth), similarly threatened to override Northern Territory and Western Australian laws that compel courts to detain or imprison juveniles who commit an offence."

Conclusion
The Commonwealth's intervention into Northern Territory rights to govern health legislation has been met with both opposition and support. The question of whether such intervention was justified will remain contested despite the fact that it has been 'resolved'. The implication the Euthanasia Laws Act has had on the rights of Territorians is difficult to ascertain; however it would appear that the values of the Commonwealth Parliament have been imposed on them without their consent. This may be regarded as inconsistent with the notion of citizenship generally espoused by Commonwealth, democratic rhetoric.

Notes
2 Northern Territory Department of the Legislative Assembly and the Northern Territory Department of Education (NTDLA & NTDE), 1998, Government in the Northern Territory, Northern Territory Legislative Assembly, Darwin, p 40.
13 Legislative Assembly, 1996, The Remonstrance, Northern Territory Legislative Assembly, Darwin.
16 M Perron, media release, 1 February 1995.
17 Cameron, 1996, Euthanasia Legislation.
18 Cameron, 1996, Euthanasia Legislation.

Cameron, 1996, Euthanasia Legislation.

Cameron, 1996, Euthanasia Legislation.


Euthanasia-No!, 1997, Euthanasia.

Euthanasia-No!, 1997, Euthanasia.


*The Australian*, 26 May 1995, Terminally ill patients must satisfy strict criteria.


Cameron, 1996, Euthanasia Legislation.

Cameron, 1996, Euthanasia Legislation.

Cameron, 1996, Euthanasia Legislation.


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64  Legislative Assembly. 1996. The Remonstrance.
65  Legislative Assembly. 1996. The Remonstrance.

*  Jodie Kline completed studies at the Northern Territory University and is now undertaking a doctorate.