Respect for individual autonomy emerged as the dominant principle of Western bioethics during the second half of the twentieth century. From autonomy grew consent. Involuntary treatment administered in the absence of consent, stands in apparent opposition to these prevailing values. In the context of involuntary treatment, consent may be absent either because the patient lacks the capacity to make the necessary decisions or because treatment is imposed despite a capable refusal. While both cases raise issues of personal autonomy, they do so in rather different ways. This chapter will consider the question of involuntary treatment against a background of general human rights principles. While the provision of treatment for mental disorder\(^1\) will provide the main focus, because it is here that many of the most sensitive issues have arisen, reference will be made to treatment for other forms of disorder where relevant. By way of introduction a brief account of the relevant international instruments will be provided. The law will then be considered, first in relation to adults who lack capacity and then, more controversially, in relation to those who retain capacity but are still vulnerable to the imposition of medical treatment.

### A. Human Rights Principles

In relation to the provision of medical treatment, as in so many other areas, the relevant human rights principles do not invariably pull in the same direction. Certainly the importance of self-determination and respect for personal autonomy has been recognised since the early years of the last century. In 1914 Cardozo J was able famously to claim,

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\(^1\) Editors’ Note: The language describing psychiatric disability used in this chapter is the language of the law in the UK at the time the chapter was written. This predates the introduction of the Mental Health Act 2007 and the UN Convention on the Rights of Persons with Disabilities. The analysis of the law in this chapter remains sound, despite the changes which have been made to the law since this chapter was submitted.
“Every human being of adult years and sound mind has a right to determine what shall be done with his own body.”

The same principle has been reflected internationally in the rights guaranteed by article 17 of the International Covenant on Civil and Political Rights (ICCPR) and article 8.1 of the European Convention on Human Rights (ECHR): article 8.1 states, “Everyone has the right to respect for his private and family life, his home and his correspondence.”

In the European context it is now well established in the jurisprudence of the European Court of Human Rights (ECtHR) that these article 8 rights extend to physical integrity and self determination and would be engaged by the imposition of medical treatment without consent (see below). The European Convention on Human Rights and Biomedicine 1997 (CHRBB) is even more specific. According to article 5 of that Convention, “An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.”

Similarly, article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR) provides for the right to the highest standard of physical and mental health, and in elaborating on that article the Committee on the (ICESCR) has observed “The right to health contains both freedoms and entitlements. The freedoms include…the right to be free from…non-consensual medical treatment and experimentation.”

Against this background must be set the increasing emphasis on human dignity. According to article 1 of the European CHRB:

Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.

And in Pretty v United Kingdom, the ECtHR explained, in relation to the ECHR, that, “The very essence of the Convention is respect for human dignity and human freedom.”

The renewed emphasis on human dignity in rights discourse has led to some speculation about its precise relationship to self-determination, a debate which has particular relevance in bioethics. In essence human

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2 Schloendorff v Society of New York Hospitals (1914) 105 NE 92 at 93.
3 ICESCR 2000, para 8.