I. Introduction

In Ireland there currently exists no legislation governing advance directives despite a decision of the Supreme Court in 1995 which upheld the constitutionality of the right to refuse life sustaining treatment (artificial nutrition and hydration). Since then successive Governments have failed to introduce a detailed legislative framework to govern this area of medical practice. This has occurred despite recent recommendations for such legislation by both the Irish Law Reform Commission in its Report on Bioethics: Advance Care Directives and the Irish Council for Bioethics. Such a reluctance on the part of the legislature to introduce a statutory framework for advance directives reflects the tension which continues to exist in Ireland between a traditionalist Roman Catholic model of bioethics, informed by Thomist Natural Law principles and a more secular model of bioethics which is informed by a more pluralist model of bioethics.

II. Death, Bioethics and Medicine in Irish Society

In the discourse of medicine in postcolonial Ireland which was influenced by the dominant discourse of the Roman Catholic Church, the body was a site to be regulated. Moreover, the imbrication of Roman Catholic

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4 See further, Tom Inglis, "Foucault, Bourdieu and the Field of Irish Sexuality", 7 Irish Journal of Sociology (1997), pp. 5–28, pp. 19–20, where he notes that the language of
natural law theory into the legal discourse of postcolonial Ireland marked law as a means of purifying the threatening otherness of those who did not conform to the social code. The Constitution, the so-called arbiter of individual rights was in the early postcolonial period a document which upheld this conservative Roman Catholic social code.\(^5\) Until recently the medical profession did not support the introduction of a liberal model of treatment withdrawal. Such a conservative approach was not challenged by governments which did not want to subvert the presumed traditionalist majority attitude to treatment withdrawal. Instead of attempting to gain community consensus on this issue (as well as many other bioethical issues), and working towards a solution which expresses the values of all sectors of society, governments have tended to see such matters in very simplistic terms, either they are morally supportable or morally suspect. In all this the so-called secular Irish State’s ethical guide has been until recently the Roman Catholic Church. However, in recent years one has begun to see the emergence of a more deliberative model on bioethics with the establishment of the Irish Council for Bioethics, liberal interventions on the part of the courts, and active calls for balanced regulation by the Law Reform Commission, as well as a more liberal approach by the Irish Medical Council (the professional regulatory body for medical professionals). These developments signal the beginnings of a different thinking on bioethical issues in contemporary Ireland.

III. The Evolving Jurisprudence on End-of-Life Decision-Making

In the case of *Re A Ward of Court*,\(^6\) the Irish Supreme Court encountered, for the first time, a case involving the right of a chronically ill patient to die. The person behind the appellation, Ward of Court, was a forty-five year old woman who at the age of twenty-two suffered irreversible brain damage during a minor surgical procedure under general anaesthetic. This left her in a near persistent vegetative state. She was kept alive since this incident by means of artificial hydration and nutrition. The patient was unable to communicate. She had minimal capacity to recognise

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\(^6\) [1995] 2 ILRM 401.