John Keown


John Keown’s excellent book *The Law and Ethics of Medicine* is primarily the work of a lawyer and is written with lawyers and judges in mind; yet few books on the law of medicine are as conversant in important topics of contemporary ethics, especially questions of double effect, the nature of the human act, and the value of human life.

Indeed, one consistent theme in Keown’s book is that deep confusions about these issues run through both legal judgments and legal theory as they relate to contemporary medicine. Keown’s aim in *LEM* is to rehabilitate a particular view that he calls the Inviolability of Life (IOL) view. It would understate the case to say that the IOL is infrequently invoked in contemporary medicine. But the decline which the IOL suffered in the 20th century is in part explained by the errors made by its critics in their articulation of the view with which they were disagreeing. So Keown intends to set the record straight both as to what the IOL is all about, and as to how its critics (and sometimes its sympathizers and adherents) have misconstrued it.

As to the former topic, Keown argues that the core theses of the IOL are: (1) that human life is a basic good of human beings, and that all human beings possess ineliminable dignity; (2) that in consequence of (1), no human being is ever to be intentionally killed, for that is to act contrary to that ineliminable dignity and the good of life; and (3) that in order to maintain this restriction on intentional killing, we must distinguish between intention and side effect: not every action that brings about death is an intentional killing, and some acts that bring about death as a side effect may be morally permissible if there is proportionate reason to allow the death. An instance of this principle at work, discussed more than once by Keown, is that it can be permissible to withdraw life-preserving medical interventions if death is not intended, and the proportion of burdens to benefits of accepting the treatment is judged to be unreasonable.

Keown makes two important claims about these principles. First, they are not simply principles of revelation unknown to human reason; rather, they are part of what the late Alan Donagan called “common morality,” the morality that is available to all rational persons in virtue of their rationality.

Second, Keown argues that these principles are not only principles of morality, but are also core principles of Western law, as evidenced in both common law and statutory protection of human life at an agent’s own hands (hence the historic impermissibility at law of suicide) or at the hands of another (recognized not only in laws against murder, but in laws against abortion, assisted
suicide, and euthanasia). Keown’s grasp of the history of English law as it touches on matters of human life is prodigious, and he argues in several chapters that it was precisely the value of human life that was at stake in laws, judicial decisions, and activism restricting abortion in 19th century England and the US and continuing into the 20th. Yet clearly, in recent decades, the law’s commitment to the iol has been eroded, as laws permitting abortion and embryo research have become the norm.

In part, Keown argues, this is because the proponents of such laws have substituted an intellectually enfeebled straw man for an eminently defensible view. For example: the doctrine of life’s inviolability, or sanctity, has give way to a doctrine of the quality of life in part because the iol has been confused with vitalism, the view that everything possible must be done in order to protect the absolute good of human life. In Airedale NHS Trust v Bland, where the question was whether it was lawful to withdraw the tube-feeding of Tony Bland, a young man who had been in a persistent vegetative state for three years, Keown notes that the justices were presented by counsel only with two real options: that of keeping Bland alive at all costs (vitalism); or judging, on the basis of a determination of the quality of his life, that his life was no longer worth living, and that nutrition and hydration should therefore be withdrawn. But the iol, which allows the withdrawal of many forms of treatment when they are not worthwhile (as Keown notes, it is disputed whether provision of nutrition and hydration should be considered a form of medical treatment, or basic care), resists judgments of quality of life without falling back into vitalism. Yet this key third option, the iol, was not given a proper hearing in Bland.

Bland involved further confusions: while three of the members of the House of Lords hearing the case accepted that withdrawal would be carried out with the intention to kill Tony Bland, they held that withdrawal would not be murder because it would involve an omission, rather than a positive act. This is a failure of understanding of action and intention. It is just as possible to intend a death through an omission as an action, and intending hastening a patient’s death is sufficient for a judgment of murder. That the murder was accomplished by an omission rather than some positive intervention is a distinction without a difference in this case.

In the early parts of the book, Keown looks at the intellectual and academic precedents for these judicial failures of understanding. He addresses three “generations” of British medico-legal thinkers: Glanville Williams, arguably the grandfather of contemporary medical law; Sir Ian Kennedy, a “father” of English medical law; and Professors David Price and Emily Jackson, contemporary medical lawyers. All, to one degree or another, are guilty of misunderstanding the iol.