grappling with an intelligent and uncompromising mind, pervades the book.

Kennedy begins by demonstrating conclusively that most of what the medical profession like to regard as medical decisions are also moral decisions in which the community at large and the patient in particular have an ineradicable interest. Doctors tend to be pathologically schizophrenic about this. As Kennedy notes in Chapter 2: 'I am constantly confronted by doctors complaining . . . that they have to make too many hard decisions which it is not really their job to make. . . . But the moment I try to analyse the problem and offer guidance . . . I am immediately met by a chorus of cries. . . that these are medical matters after all'. Having established the place of ethics and law in medical practice Kennedy goes on to analyse their role in the resolution of a wide range of medical dilemmas from experiments on embryos to treatment of the terminally ill.

A disturbing feature of Kennedy's approach to at least some of these dilemmas, is his preparedness, when all else fails, to think that 'a sense of moral outrage may provide the final validation of the argument'. His invocation of this sense occurs in one of the most important and controversial of the essays, that on 'the moral status of the embryo'.

'There is, many would argue, a deep sense of moral disquiet about research on early embryos. Admittedly, it is a non-rational reaction, but this does not mean that it should be ignored. There is a perfectly proper place for intuitive response in the sum total of moral views and values. Equally there is a perfectly respectable argument for taking account of a strongly held and widely held sense of moral outrage or repulsion when considering any scheme for ordering affairs. Furthermore the fact that such moral outrage can draw on some reasoned argument as well as intuition makes it doubly valid as a ground for objection'.

This passage is of the utmost significance and requires careful analysis. Kennedy first implies that 'moral disquiet' should not be ignored because, he asserts, 'there is a perfectly proper place for intuitive response'. He then claims there is a 'perfectly respectable argument for taking account of a strongly held . . . sense of moral outrage'. Now this second sense of moral outrage is clearly separate and

distinct from the moral disquiet mentioned earlier. For the first mentioned 'moral disquiet' is clearly identified as an intuitive response, whereas the later 'moral outrage' is not itself an intuitive response but is said to draw on such a response as part of its validation. So we have a 'sense of moral outrage' validated by a 'moral disquiet'. Kennedy does not make clear whether we might also justify our moral disquiet by reference to an intuitive sense of moral outrage.

Furthermore, Kennedy does not articulate what the proper place for intuition is in moral argument, nor does he produce the so-called respectable argument for taking account of feelings of repulsion. If such arguments were to be spelled out they would have to show how we can distinguish moral intuition from mere intuition and moral repulsion from *repulsive* repulsion. The problem is that people as we know, and even whole societies, are apt to feel, express and act upon repulsive repulsion – the sort that is felt at the idea of inter-racial marriage, or of women doing 'men's work' or of Jews merely breathing – quite as readily as the moral repulsion felt about anyone who could seriously entertain such ideas. The drawing of such distinctions cannot be done intuitively, it requires principles and even the makings of a moral theory. In the absence of the articulation of such principles or such a theory we should have the utmost suspicion of any assertion of the respectability of feelings of repulsion.

Kennedy here seems to be taking the same line as his illustrious predecessor Lord Devlin who, when he asserted that the community's moral feelings must be taken into account, was justly rebuked by Ronald Dworkin: 'What is shocking and wrong' Dworkin pointed out, 'is not his idea that the community's morality counts, but his idea of what counts as the community's morality'.

I've had space here to take issue with just one of the arguments with which this book is crammed. There is so much to admire in it that to pick on a point of disagreement seems almost churlish. But Kennedy thrives on debate and no one who wishes to debate the most important issues in contemporary medical ethics can do better than pick Ian Kennedy as a protagonist.

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Medical Negligence: A Plaintiff's Guide

Charles J Lewis, 379 pages, London, £40.00, hbk / £17.50 pbk, Frank Cass and Co Ltd, 1988.

If you find yourself talking at a party with a doctor you have not met before, and he discovers that you are a lawyer, it will usually not be long before he begins to recite a litany of grievances about the law and all its works. Lawyers know nothing of medicine, yet they presume to lay down the law about how doctors should conduct themselves in their relationships with their patients. Those relationships are complex and delicate, yet the law tramples all over them. Judges lack all clinical training, yet they presume to override the clinical judgements of doctors with a lifetime's experience of it. While the courts protect lawyers, they never cease to find doctors guilty of professional negligence, and it will not be long before things here will become as they are in the USA, where professional indemnity premiums are astronomical, and every doctor is forced to practise defensive medicine.

And so the Ancient Mariner proceeds with his tale, quite unaware that most of it is myth. In fact, in England, it is vastly easier to win a negligence suit against a lawyer than against a doctor. Judges are lawyers, and they know how lawyers should work: a judge only needs to read once through a solicitor's file or counsel's opinion to know whether the work was up to his own profession's proper standards. By contrast, only the sworn evidence of distinguished doctors can convince him that one of their colleagues has fallen short of *their* standards. And even then, that may not be enough: there is a well established rule of English law that a doctor cannot be held to have been negligent if what he did (or failed to do) has the support of 'a body of responsible medical opinion' – even if that body is a minority one. In short, if a doctor can find any responsible colleagues to support his clinical judgement in court, the court will not question it even if the plaintiff's medical experts have sworn that it was negligent.

All this, and much more, is made plain in this excellent book. Lawyers can be sure to welcome it; despite its ominous title, so should doctors. Though compendious and well researched, it is thoroughly readable, and will do much to demystify the law for them – as others try to demystify

medicine for non-medical layment. It takes both lawyers and others who are interested (and that should include many doctors) in detail through all the steps both before and during an action for what is loosely called 'medical negligence', and comments pithily on the various stages of this forensic obstacle race. Perhaps these quotations will give the flavour:

'Instructing an expert. This is the Beecher's Brook of your action. We could even say, a little unkindly, that it can be the *pons asinorum*! . . . You need an expert of the right specialty, who can write a thorough and intelligible report that can withstand cross-examination, who achieves a happy mean between seeking to exculpate a colleague and over-egging the plaintiff's pudding in an effort to come up with the goods, who is familiar with the requirements of litigation and appearing in court and who will make a good witness' (p 80).

' . . . the determining factor will be the judge's view as to whether justice dictates recovery [of damages, that is, rather than to health]. He will then find a legal peg on which to hang his decision. . . . The progress of law within a society is always from formalism to flexibility, albeit that in the common law tradition judicial activism is usually disguised by an artfully contrived appearance of deference to authority' (pp 172–173).

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Embryos and Ethics: The Warnock Report in Debate

Edited by Nigel M de S Cameron,
122 pages, Edinburgh, £5.90,
Rutherford House Books, 1987.

This collection of articles appears from internal evidence to originate in a conference at Rutherford House in Edinburgh, of which the editor is warden. One of the articles, by Dr Teresa Iglesias, has already appeared in this journal, and six others in *Ethics and Medicine*. It is therefore only in a rather specialised sense a new publication.

Nor is the reference in the subtitle to 'debate' entirely accurate. This is a highly partisan document, gathering together a variety of expressions of what

is essentially the same point of view, that human life begins at conception, and that research on the embryo must in consequence be ruled out. The editor's opening essay is entitled 'The Christian Stake in the Warnock Debate'; both the title and the essay convey the clear message that this point of view represents the Christian stance on the issues under discussion. In only one article, reviewing the churches' responses to the Warnock Report, is there a real attempt to describe and evaluate other points of view held within the churches. Incidentally, the author, Dr Isobel Grigor, is wrong in stating (p 85) that among the churches responding to the report 'there is unanimous rejection of third party donation on ethical grounds'. That may have been true of the Scottish churches: the Church of England's Board for Social Responsibility, by a majority, agreed with Warnock that ' "those engaging in AID are, in their own view, involved in a positive affirmation of the family" and hence AID may be regarded as an acceptable practice'.

There is a polemical piece by the late Professor Ian Donald. He characterises the report as a 'totally secular, irreligious type of report which would satisfy any atheist. . . one should not be deceived by its mellifluence'.

Despite these defects, however, *Embryos and Ethics* is valuable for the searching attention it gives to a number of central issues in this field. Two deserve special note. Richard Higginson's discussion of the ethics of experimentation on human subjects acknowledges that proxy consent may on occasion be necessary, and is in his view consistent with the main thrust of the ethical tradition. His opposition to experiments on embryos is based on the fact that avoidance of harm to the subject, an integral part of the ethical code of the 1975 Declaration of Helsinki, cannot possibly be honoured where the embryo is concerned. 'Such harm is not unlikely, insignificant, or insubstantial. It is harm with a capital H – wounding, malignant and deadly.' It is a weakness of those ethical analyses which relate the protection afforded to the embryo and fetus to the stages of embryonic and fetal development, that they blur the distinction between relative protection and absolute harm. It would be preferable to state clearly that improvements in the care of some embryos and fetuses are being sought at the expense of others.

In the contributions by the editor and Dr David Atkinson there is a helpful discussion of what is involved in

discerning moral significance in human beings. They are both clear that that significance does not derive from specifiable characteristics such as consciousness, rationality or the like, but from our common call to enter into relationship with God. To be made in the image of God is to be addressed by him, to be related to him. This is common to the human species and unique to it. As Dr Atkinson points out, Christians are 'obliged to make this fundamental discrimination' stigmatised as 'speciesism' by some philosophers.

The Warnock Report chose to bypass this fundamental debate. It can be criticised for doing so. But there remains an impasse in communication between those who, either explicitly or implicitly, endorse the understanding of what it is to be human just mentioned, and those who opt for a more instrumental view. This book is helpful in the way it clarifies some of the areas of dispute: something different, of a different temper, is needed if the extent of common ground is to be mapped and enlarged.

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The Use of Human Beings in Research

Edited by SF Spicker, I Alon, A de Vries, and H T Engelhardt, 291 pages,
Dordrecht, £43.00,
Kluwer Academic Publishers, 1988.

One of the questions that I ask referees for the journal I edit is 'Has the author made an attempt to communicate to the non-specialist?' I fear that the answer in this case would be 'No'. Too much of this book reads as if it had been transcribed from a conversation between a collection of lawyers and sociologists called together to impress each other on the conference circuit.

This particular conference took place in September 1982 in Tel Aviv. I should have liked to have been there, for there is no doubt in my mind that I should have regarded these papers as a perfect excuse to make for the beach. The six years that have passed since the conference have not been spent polishing the prose.

The story of Daniel and his friends who only ate Kosher food yet looked healthier than the young men fattened up by Nebuchadnezzar is cited as the