Abating Treatment with Critically Ill Patients: Ethical and Legal Limits to the Medical Prolongation of Life


Robert Weir's objective in this book is to 'establish reasonable ethical and legal limits to the technological prolongation of life lest we become unthinking and uncaring slaves to that technology' (p VII). His detailed survey of moral and theological standpoints, case studies, legal rulings and recent proposals for living wills and natural death acts, provides the background to his argument in favour of greater patient autonomy with respect to the refusal of life-prolonging therapy.

Twenty years ago moral debates about the end-points of life focused on the issue of euthanasia (literally meaning a good death) which was frequently presented as a black and white issue; one was either in favour or against. Now fine distinctions have emerged between death with dignity, negotiated death, passive and active euthanasia, mercy killing and the withdrawal or withholding of life-sustaining therapy. Nevertheless, two extreme positions can be recognised in the current debate: vitalists or pro-lifers on the one hand endorse what Weir describes as a 'technological imperative' – doing everything possible to prevent or postpone the deaths of critically ill and terminally ill patients. On the other hand ‘right to die’ radicals and libertarians are actively seeking to promote the legalisation of euthanasia and assisted suicide. Avoiding both extremes Weir focuses attention on criteria for 'treatment abatement', an expression which covers 'decisions to withhold – or not to initiate – a form of treatment' and also a 'reduction in degree or intensity' or a 'progressive diminishing' of treatment (p10). Another meaning of 'treatment abatement' is the 'nullification' or 'termination' of treatment which encompasses 'decisions by autonomous critically ill or terminally ill patients (or the surrogates of non-autonomous patients) to refuse all forms of life-sustaining treatment' (p 10). For Weir treatment abatement is not a form of assisted suicide and he cites numerous legal rulings to establish this point.

One important feature of this book is the location of key distinctions in their appropriate historical context. The distinction between extraordinary and ordinary treatment, for example, goes back to the 16th century, and was used as an argument against surgery which, before anaesthesia and antisepsis, was certainly extraordinary, with surgical amputations compared with torture. During the Spanish Inquisition of the 17th century there were equally profound discussions about whether or not a person giving a goblet of water to a heretic burning at the stake should pour it onto his feet to provide momentary relief. Theological opinion at that time saw it as extraordinary and of no value as it would bring no benefit to the condemned man.

The modern debate on treatment abatement began in 1976 with the New Jersey court's recognition, in the Quinlan judgement, of an ethical need to limit life-prolonging treatment. But since 1985 when the Supreme Court of New Jersey ruled that a nasogastric tube could be removed from Clair Conroy (an 84-year-old patient with serious mental impairment and limited life-expectancy) the debate has focused on removal of life-sustaining nutrition and hydration. Weir's account of the moral issues involved in this debate is the most comprehensive available and for this reason his arguments deserve careful consideration. His distinctions between treatment abatement and various forms of euthanasia is sensible and practical, and he rightly argues that repetitious references to the etymology of euthanasia and distinctions between active-passive, omission-commission, and withhold-withdraw now need to be placed in the historical archives of biomedical ethics. Yet doubts may still linger concerning the status of nutrition and hydration as a form of therapy. Is the withholding of food, even when artificially administered, the same as the withholding of antibiotics? For many the withdrawal of nourishment may express a similar form of callousness to that which Weir discerns in unwanted life-prolongation. And finally, how widespread is the fear of life-prolongation compared, for example, with the fears of an early termination of therapy, (as expressed in the controversy over brain death and organ removal) or the reality of under-treatment which is the condition of most of the world's population? Weir's discussion of under-treatment is brief – rightly so for this is not the subject of the book – but in an era of waiting lists and preventable deaths it is rather odd that so much attention is applied to arguments in favour of accelerated death.

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Consent and the Incompetent Patient: Ethics, Law and Medicine

Edited by Steven R Hirsch and John Harris, 101 pages, London, £7.50, Gaskell/Royal College of Psychiatrists, 1988
Whilst it is probably the case that the major ethical dilemma in consent to medical treatment lies in the decision as to competence itself, it is also true that ethical and legal questions continue to arise after an individual is adjudged to be incompetent. This book attempts to address the legal, medical and administrative issues involved in the treatment of those considered to be incapable of consenting to treatment or participation in research because they are unconscious, or incapacitated by profound mental illness, severe mental handicap, or organic disease severely affecting reason and perception. The book is wholly made up of material from a day conference held at the Royal Society of Medicine in December 1986 concerned with this topic; eleven papers were given (of which eight appear), and the book also includes transcriptions of discussion throughout the day, in which participating doctors and lawyers, with representatives of the Mental Health Act Commission (MHAC) and of the National Schizophrenia Fellowship (NSF), explore the major issue – professional (medical) responsibility vs legal restraint. It can be inferred from the content of most of the contributions that the conference was organised in response to the publication of the MHAC Draft Code of Practice which appeared in 1986.

The medical contributors, particularly Professor Bryan Jennett, Professor Elaine Murphy and Dr Richard Nicholson, describe their own solutions to the ethical problems they encounter as practitioners working with incompetent patients. Dr John Harris attempts to define philosophical guiding rules which he believes should lie at the root of an ethic for medical treatment – this would make interesting reading for any practitioner trying to define or examine a personal or institutional policy. Two distinguished and able lawyers, David Sullivan QC and Henry Brooke QC, give very readable and different interpretations of the law on incapacity as it stood in 1986, with an addition for publication referring to the case of Re B (1987). It is still a major difficulty however, that the book is essentially an historical document: aside from the clinical and philosophical arguments, the background to this debate has changed in several important respects in the five years since the conference took place. Most significantly, the Code of Practice has now been published in a somewhat different form than the 1986 draft discussed (available from HMSO since August 1990). There have also been developments concerning necessity of treatment and incompetency generally, including the cases of F v West Berkshire Health Authority (1989) and Re T v T and another (1988), which might contribute to an up-to-date account of the law.

Within these significant limitations, the book is an interesting polemical work, which describes the major issues in the treatment of incompetent patients. It is perhaps regrettable that the patients' rights argument was not represented, except implicitly in the views of David Sullivan QC, and perhaps the philosophy of John Harris. A representative of MIND, or even of a self-advocate group, would have helped to dispel the air of professional 'cosiness' which so often develops in discussion of the treatment and care of people with disabilities.

I would recommend that the book be read in conjunction with a copy of the new code, and then only if a more recent multidisciplinary introduction to this field cannot be found. Perhaps such a work could be provided from the same source as this book, as these contributors' views of the new code would be of great interest.

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Legal Aspects of Medicine


This collection of essays belongs to a familiar genre. It springs from a doctor's realisation that the law impinges on medical practice and a belief that by collecting together the views of interested parties a contribution might be made to the prospects of future co-operation. Like many such volumes, this leads to a group of essays of varying originality, authority and quality. It appears that for the most part contributors have been selected for their interest in matters of law and ethics rather than their expertise and few of the essays demonstrate an awareness of the now considerable literature on the field. This results in a book which knowledgeable readers will find a long read for relatively little return. There are, nevertheless, a number of contributions which are well worth searching out.

Among the most interesting chapters is the discussion offered by George A Kanoti of the role of 'ethics consultants'. While the use of ethics committees to provide guidelines for use in the clinical setting is now well established, the use of a 'person who has demonstrated mastery of ethical knowledge' to provide bedside consultations where required is an interesting innovation. Kanoti describes the problems presented to doctors by 'moral moments' where clinical decisions face conflicting moral positions. He sketches the indicators which allow such moments to be identified. He then suggests how the provision of an ethics consultant can reassure patients and relatives, a sort of rite of passage which helps them reconcile themselves with whatever steps are to be taken. The involvement of the ethicist also has an educative role for doctors, teaching them (by experience) the process by which ethical problems can be tackled, and increasing their confidence when faced by apparently intractable difficulties. The ethicist consultant does not remove the decision from the patient or the doctor, but can be called in to facilitate these deliberations.

A further interesting discussion is provided concerning the psychological effects of malpractice suits on defendant physicians. Usually this is left at the level of anecdote, as demonstrated by a judge's exhortation that doctors must realise that to be sued is not a disgrace (p 14) and two defence attorneys' description of the serious impact on some clients (ch 3). Robert S Kasoff seeks to provide a more considered account of the evidence, surveying both the range of responses to litigation identified by researchers and also the prevalence of these different reactions. It is a pity that he stops short of considering the implications of this evidence for legal reform, but he provides a useful introduction for those who wish to do so.

Other interesting contributions include Eugene Robin's wideranging, eclectic discussion of the scope for reform of the law governing medical practice, a summary of the range of criteria used internationally to establish brain death (ch 22) and Robert Asher's criticisms of the way in which regulatory agencies have been given wide powers to scrutinise medical practice with few safeguards.

These chapters will be of interest to informed readers but taken as a whole