

## **An unholy mess: why 'the sanctity of life principle' should be jettisoned**

*The aim of this article is to present an account of an important element of medical ethics and law which is widely cited but is often confused. This element is most frequently referred to as 'the principle of the sanctity of life', and it is often assumed that this language has a religious provenance. However, the phrase is neither rooted in the traditions it purports to represent nor is it used consistently in contemporary discourse. Understood as the name of an established 'principle' the 'sanctity of life' is virtually an invention of the late twentieth century. The language came to prominence as the label of a position that was being rejected: it is the name of a caricature. Hence there is no locus classicus for a definition of the terms and different authors freely apply the term to divergent and contradictory positions. Appeal to this 'principle' thus serves only to perpetuate confusion. This language is best jettisoned in favour of clearer and more traditional ethical concepts.*

### **Sanctity of life versus quality of life**

According to Stephen Smith 'there are two standard views about how we value life. They are called the Sanctity of Life position (SOL) and the Quality of Life position (QOL)' (Smith 2010, p. 102). The language of 'sanctity of life' is applied especially to the issues of abortion and euthanasia but also to other issues of life and death in healthcare, such as decisions to withdraw life-sustaining treatment. Smith associates the SOL view with John Keown (1997a, 2002, 2006) and John Finnis (1993) and QOL with Peter Singer (1994), John Harris (1995) and David Price (2001, 2007). This is indeed a 'standard account' and Smith is not to be criticised unduly for presenting it: a similar account is given by Jonathan Herring (2008, p. 464) and both are dependent on Keown (2002). Nevertheless, it should be noticed that both Keown and Finnis show some reticence about using the language of 'the sanctity of life'. Finnis, in the work cited by Smith (Finnis 1993), does not use the language of 'sanctity of life' at all and, while Keown uses it in reply to Price (Keown 2006), and elsewhere (Keown 1997b), he generally prefers the term 'inviolability of life' (2002, page 40).

## The misleading impression of religious provenance

It is frequently asserted that 'the sanctity of life principle clearly has religious origins' (Keyserlingk 1979, p.10 repeated verbatim, but without quotation marks, by Otlowski 1997, p. 213) or that the 'clearly religious connotations' (Kuhse 1981, page 74 citing Clouser 1973) of the terminology imply a religious provenance that is 'obvious from the vocabulary alone' (Bayertz 1996, page xiii). However, it is important to note that this language did not originate in the tradition that it purports to represent. Leon Kass points out that 'the phrase "sanctity of life" does not occur either in the Hebrew Bible or in the New Testament' (Kass 2002, p. 235 cited by Baranzke 2012, p. 299). Similarly Yoel Jakobovits expresses puzzlement at the use of the term 'sanctity of life' by Jewish scholars. For, while it has become common usage in recent years, the equivalent in Hebrew *kedushat hahaim* does not appear in early Jewish literature. Indeed, he says, the phrase 'has a foreign, almost Christian, ring to it' (Jakobovits, Tandler and Rosner 1994, p. 131).

It seems, however, that Jakobovitz is mistaken in attributing this phrase to Christian sources.

According to Daniel Callahan, 'the phrase "the sanctity of life" is not a traditional religious concept. It has no fixed meaning and is not an official part of any church's doctrine' (Callahan 2001, p.16 cited by Gushee 2013, p. 28). Callahan's claim finds support from investigations by James Keenan (1996) who notes that term 'the sanctity of life' does not occur in any of the official teaching documents of the Catholic Church dealing with the subject of killing prior to the late twentieth century. Indeed, it was only in 1987 that a similar phrase was first used in this context. The document on assisted reproduction *Donum Vitae* includes the following passage:

'Human life is sacred because from its beginning it involves the creative action of God and it remains for ever in a special relationship with the Creator, who is its sole end. God alone is the Lord of life from its beginning until its end: no one can under any circumstance claim for himself the right directly to destroy an innocent human being.' (*Donum Vitae* intro. 5)

This passage was subsequently quoted in the Catechism of the Catholic Church (§2258) and also in the encyclical of Pope John Paul II on the inviolable good of human life, *Evangelium Vitae* (§53). It is

only at this point, in 1995, that a pope invokes the idea of life being 'sacred' (*sacra*) as the basis for the moral prohibition on killing the innocent. It is true that *Evangelium Vitae* cites an earlier pope, Pope John XXIII, using very similar language in 1961.

'Human life is sacred—all men must recognize that fact. From its very inception it reveals the creating hand of God. Those who violate His laws not only offend the divine majesty and degrade themselves and humanity, they also sap the vitality of the political community of which they are members.' (*Mater et Magistra* §194)

This seems to anticipate the language of *Donum Vitae*. However closer examination shows that the idea that 'human life is sacred' was not being used in the 1961 document as an argument against killing. The context was rather a condemnation of those means of transmitting human life which failed to respect the sacred bond of marriage and which therefore disobeyed 'the all-holy, inviolable and immutable laws of God' (*Mater et Magistra* §193).

It may be noted that while *Donum Vitae* and John Paul II refer to life as 'sacred' (*sacra*), they do not speak of the 'sanctity' (*sanctitas*) of life and it may also be noted that even in these very recent documents the predominant language is not one of sacredness but of 'respect', 'inviolability' and the 'right to life'.

The recent provenance of this phrase has been demonstrated by George Khushf (1996) after an exhaustive literature survey covering 4,800 libraries including libraries of congress in 26 countries. He was only able to find two significant references to the use of this phrase in its modern sense prior to the twentieth century, and 'nearly all citations' were from after 1948. A distinct but related attempt by Andi Sullivan to find journal articles using the terms 'sanctity of (human) life', 'sacredness of (human) life' and 'human dignity'<sup>1</sup> also found no references before 1893 and only 239 citations

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<sup>1</sup> Note that this search includes the term 'dignity' which is a distinct concept from 'sanctity' or 'sacredness' and this accounts for many citations especially during and after the second world war when 'human dignity' language was often invoked in opposition to Nazi ideology. The concept of human dignity is not the focus of the present article.

before 1939 in comparison to 8,475 from 1940 to the present. Indeed, the great majority of references (6,467) were from 1970 onwards (Gushee 2013, p. 26).

### **Occasional references earlier in the tradition**

The language of the 'sanctity of human life' thus became prevalent among Christians only in the mid twentieth century, and indeed has entered into official church teaching only in the late twentieth century. In the course of this article I will suggest that this language emerged in reaction to moves in Western countries to legalise abortion and euthanasia and should be understood in this context. Nevertheless, it should be acknowledged that the terms 'sanctity', 'sacrosanctity', 'sacredness', 'reverence' or 'inviolability' were *sometimes* applied to human life prior to the twentieth century. A clear example can already be found in 1858:

'The life of this new human being is sacred, and no one but God himself either has or can have the least shadow of a right or liberty to take it away' (Tracey 1858, p. 109 cited by Coope 2006, p. 65, see also examples cited by Gushee 2013, p. 26 and Khushf 1996).

It is possible to find other similar quotations in this period but it is important to recognise that they are occasional and do not reflect a received linguistic usage or a distinct moral theory.

The dominant strand of Catholic moral reflection on homicide begins with the Commandment 'thou shalt not kill' (Exodus 20.13, see for example Augustine *City of God* I.20, Thomas Aquinas *Summa Theologiae* 2a2ae q.64). This Commandment was sometimes explicated by reference to the dignity of human nature (*ST* 2a2ae q.64 art.2 ad 3) but not by reference to the sacredness or sanctity of human life. Neither the phrases 'life [is] sacred' (*sacra vita*) or 'sanctity of life' (*sanctitas vitae*) or their variants occur in the *Patrologia Latina* or in the works of Thomas Aquinas with the modern meaning. Rather, if used, such phrases refer to holiness of life, that is, to a person or a way of life that is holy.

David Gushee, in perhaps the most significant defence of the use of this language, acknowledges that mention of 'the sanctity of life' is not to be found 'in the classic creeds and confessions of the ancient church. It is not in the codes of canon law. It is not a phrase one finds in Augustine, Aquinas,

Luther Calvin or Wesley' (Gushee 2013, p. 28). One might add that the phrase is also absent from the English common law tradition and has only come to be invoked in case law in the last few decades.

In relation to the early Christian writings, Gushee is only able to identify two quotations that appeal directly to the sacredness of human life. One of these, by Clement of Alexandria, he uses to open his discussion of the patristic sources:

'For think not that stones, and stocks and birds, and serpents are sacred things, and men are not; but, on the contrary, regard men as truly sacred, and take beasts and stones for what they are.' (*Exhortation against the heathen* chapter 10 cited by Gushee p. 116 and p. 129)

It should be noted, however, that this quotation is taken from a discussion of the worship of idols that are made of stone or wood and made in the shapes of birds and serpents. This passage is not used by Clement to explain or ground the prohibition against killing innocent human beings. Hence it provides no ancient Christian precedent for the modern usage of the term 'the sanctity of life'.

The only patristic reference Gushee can find explicitly relating the sacredness of human life to the prohibition of homicide is from a work by Lactantius. The passage concerns warfare and judicial execution in which context Lactantius argues that 'it is always unlawful to put to death a man, whom God willed to be a *sacred animal*' (*Institutes* 6.20 cited by Gushee 2013, p. 128, emphasis by Gushee). This passage does indeed demonstrate that an early Christian writer could invoke the sacredness of human life as a reason for the prohibition against killing. However, what is most striking from a modern perspective is how rare such language is in the early church. This isolated example is the only patristic quotation relating the sacredness of human life to the prohibition on killing that Gushee provides in book of 461 pages devoted to the topic. Furthermore, while the writings of Lactantius had sufficient merit to be preserved down the centuries, he hardly ranks with Augustine or Jerome in the West, or with Basil or John Chrysostom in the East.

Gushee claims that these two quotations, one from Clement and one from Lactantius, are 'among the most important statements to be found anywhere in Christian history [on the sacredness of

human life]'. (Gushee 2013, p. 128). It should be noticed, however, that these passages were not recognised as 'important statements' in their own day. These passages were not quoted with any great frequency by later patristic or medieval writers and they played no role in the development of later Christian tradition on the ethics of killing. Rather, they have been identified by Gushee in the twenty first century because they are 'important statements' for *his* thesis.

There is certainly much in the Christian tradition of East and West that *could* ground the claim that human life is sacred. This would include recognition of the dignity of human nature based on the creation of human beings in the image and likeness of God. There is at least one passage in Scripture in which the prohibition on killing human beings is linked overtly to the creation of human beings in God's image (Genesis 9.6). To this could be added the taking of a human nature by the second person of the Trinity in the mystery of the incarnation, and the subsequent invitation of human beings into the divine life. 'It is this sublime vocation that confers upon human existence its sacredness or sanctity. It alone endows human life with eternal value, from conception, through physical death, to resurrected existence in the Kingdom of God.' (Breck 1998, p. 6)

It is certainly possible therefore, on the basis of such themes, to develop of theological account of the sanctity of human life which would ground the prohibition against killing. Nevertheless, it should be noticed that neither the fathers of the Church of Latin West or Greek East nor the scholastic theologians of the High Middle Ages did in fact develop such an account. They did not relate the Commandment against killing human beings to the sacredness of human life. Understood as the name of a well-established 'principle', 'the sanctity of (human) life' is virtually an invention of the late twentieth century.

### **The origins of language in caricature**

If the phrase 'the sanctity of (human) life' was scarcely used in discussion of homicide prior to the second half of the twentieth century, whence did it originate? Or what was the occasion for it becoming so prominent? The rise of such language is sometimes said to owe something to the writing of Albert Schweitzer or Karl Barth, or to Fritz Jahr. However, none of these thinkers used the

phrase 'the sanctity of life'. Schweitzer and Barth refer to 'reverence for life' (Barsam 2008, pp. 43-53) and Jahr (1927) to the 'bioethical imperative' (see Zagorac 2011).

The origin of the phrase 'sanctity of life' in its modern usage – not the very first such use but the use that brought this language to prominence – is to be found in a particular work by Glanville Williams. His monograph of 1957 on *The Sanctity of Life and the Criminal Law* is 'widely regarded as [the] foundation stone' of the modern discipline of medical law (Keown and Jones 2008, p. 85). The extent of the book's influence can be seen by the fact that it was cited by Justice Blackmun in the United States in the 1973 Supreme Court judgement that created a constitutional right to abortion and was still felt worth of citation by Lord Justice Brooke in the United Kingdom in 2001 in relation to the separation of conjoined twins (Keown and Jones 2008, p. 86).

According to George Khushf, while there are occasional examples in the nineteenth and early twentieth century of the phrase 'the sanctity of life' being invoked as the basis for the commandment 'thou shalt not kill', the first such usage in the title of a publication was in an article against euthanasia by a Presbyterian preacher John Sutherland Bonnell in 1951. The paper was entitled 'The Sanctity of Human Life' but, according to Khushf, there is only one line in that article that includes the phrase: 'Christianity has never ceased to emphasize the sanctity of human life and the value of the individual, even the humblest and lowliest, including the afflicted in mind and body.' Joseph Fletcher responded to this article in 1951, and later incorporated his response into his *Morals and Medicine* (1954) but Fletcher does not use the language of 'sanctity of life' at this point; rather, he speaks of life as 'sacrosanct' (though by 1974a he too would use the term 'sanctity of life'). The work of Glanville Williams, which cites Fletcher and is clearly influenced by him, is without doubt the first book-length publication to use the phrase 'the sanctity of life' in the title in its modern sense, and arguably the first extensive use of the term in its modern sense. It is this work that is the source of the prevalence of the term in the modern discussion. It is instructive that Williams gives no previous citations for the use of the phrase 'the sanctity of life', nor does he provide a definition of the principle.

It seems clear that Williams chose the phrase in an attempt to undermine the prohibition against killing the innocent in certain cases. The phrase, as Williams uses it, is intended to suggest that such killing is prohibited only because of a 'feeling' or a 'general opinion' that is a vestige of a *religious* heritage. The following passage, which illustrates well Williams's approach, is the first use of the phrase 'the sanctity of life' in the book of that title. It comes at the end of an extended discussion of infanticide.

'Even the modern infidel tends to give his full support to the belief that it is our duty to regard all human life as sacred, however disabled or worthless or even repellent the individual may be. This feeling, among those who do not subscribe to any religious faith, may sometimes be in fact a legacy of their religious heritage. Although morals need not logically depend on a transcendental faith, the system of morals professed in a society with a long religious tradition is likely to be coloured by that religion.

I am not clear in my own mind that this general opinion, whether religious or secular, on the subject of the sanctity of life justifies the punishment of a mother who, finding she has given birth to a viable monster or an idiot child, kills it' (Williams 1957, p. 19).

Note how Williams anticipates and influences the argument popularised by Kuhse (1981, 1987, 2002), and Singer (1993, p.150) that the prohibition on killing the innocent is a vestige of the religious legacy of Western culture. Note also the particular interest of Williams, like Kuhse and Singer (1985), with the non-voluntary euthanasia of children with intellectual disabilities or, in Williams' terms, with the 'idiot child' or 'viable monster'.

It was only after Williams's book, and in opposition to it, that some prominent religious thinkers (including, amongst others, Norman St John-Stevan (1964), Paul Ramsey (1968) and Daniel Callahan (1968)) took up the language of 'the sanctity of life' with a view to defending this 'principle'.

The rapid spread of the language of 'sanctity of life' from the 1970s onwards was also due to the explosion of political and academic debate from that time over the issue of abortion and, from the 1980s, over the issue of euthanasia and physician assisted suicide. Both advocates and opponents of

legalisation of abortion and/or euthanasia found it convenient to frame the debate in relation to an alleged principle of the 'sanctity of life'. This is recognised by Wildes, who states that 'the term [sanctity of life] seems to have emerged more in *secular* discussions of bioethics and in the abortion debate' (Wildes 1997, p. 93 emphasis added). It is evident that the term has its origin outside the theological tradition it purports to describe. The 'clearly religious connotations' of this language (quoting Keyserlingk 1979, p.10 but this is a ubiquitous claim in the literature) derive not from its origin in religious sources but from its origin as a modern caricature of the Western moral and legal tradition. The connotations of this language are part of a deliberate attempt to distract from fundamental issues of justice, solidarity and human rights and falsely to imply that the legal protection which is due to vulnerable human beings is based only on religious sentiment.

#### **Consequent confusion in the meaning of 'the sanctity of life'**

A direct consequence of the recent emergence of this language, and of its origin as a description of an approach that is being rejected, is that there is no agreement as to the definition of this 'principle'. Because there are no ancient sources that use this vocabulary, and thus no *locus classicus* to provide an agreed definition, there is no consensus as to the meaning of the terms. Rather, there are a number of competing definitions, many of which are shaped by opponents of the moral stances it purportedly identifies.

The origins of the language, as a description of a view that is being rejected, lead to problems both of clarity and cogency. In the first place this is due to the general difficulty in characterising a view fairly and accurately if one thinks it false. The danger with not adopting something like Donald Davidson's 'principle of charity' (1984, p. 27 and elsewhere) is of course that the argument, because framed without sufficient intellectual sympathy, will miss its target and will succeed only in knocking down a straw man.

This general problem, which is always a challenge, is exacerbated when the language used to describe and criticise a position is not that of the advocates of that position. In general, rational criticism of an argument should start with the strongest defence of that argument in the words of

those who regard it as cogent. The language can later be criticised but the starting point should be a sympathetic account using language of the tradition from which the argument emerges. This is precisely not what has happened in relation to the 'sanctity of life': the description is external and alien to the intellectual tradition being criticised.

Glanville Williams provides no definition of what he means by the 'sanctity of life', but Joseph Fletcher, who is arguably the main source for the concept invoked by Williams, provides several formulations which he seems to regard as equivalent. According to Fletcher, the sanctity of life principle is the view that 'physical existence is the *summum bonum*'; (1954, p. 184) or that 'life itself [is] the *summum bonum*'; (1954, p.193) or that 'physiological life is sacrosanct'; (1954, p. 193) or that 'life as such is sacrosanct, the highest good and somehow both sacred and untouchable' (1974b, p. 83).

These formulations implicitly (and sometimes explicitly) contrast 'physical existence', 'life itself', 'physiological life or 'biological life'; with *personal* life. Thus Fletcher states that 'biological life is not sacrosanct and that there are more valuable things than being alive' (Keyserlingk 1979, p. 26 quoting Fletcher 1974a, p. 13) and that 'being a man or a person is of more value than simply being alive' (ibid). In Fletcher's view, the received medical ethic which prohibits euthanasia and abortion errs by focusing exclusively on biological existence rather than on 'quality of life'. Fletcher shows the same interest as Williams in promoting the non-voluntary euthanasia of 'idiot' children. There should be no moral guilt in killing a baby with Down's syndrome because 'a Down's is not a person'. Indeed, the 'real guilt' would be 'in keeping alive a Down's or other kind of idiot, out of a false idea of obligation or duty' (Fletcher 1968 quoted by Jones 2016, p. 336) Fletcher coined the term 'vitalist'<sup>2</sup> for what he regarded as the excessive and irrational valuing of biological life inherent in all 'sanctity of life' approaches.

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<sup>2</sup> The use of the term by Fletcher to refer to an *ethical* stance should be distinguished from the use of 'vitalism' to refer to the *metaphysical* claim that the phenomenon of life requires the presence of a 'vital principle' or *élan vital* irreducible to purely chemical or physical forces. This earlier biological thesis was associated most notably with the embryologist Hans Driesch (1867–1941) and the philosopher Henri Bergson (1874–1948).

Less obvious but equally important for Fletcher's account is the identification he makes between saying life is 'sacrosanct' or 'sacred' and saying that being alive is 'more valuable' than anything else, that it is 'the highest good' or '*summum bonum*'. Fletcher deliberately frames the concept in this way and presents this as important for understanding his view: 'I believe that needs have precedence over rights: that is my ethical stance. Therefore to be candid and careful about this subject, I am not primarily concerned about any supposed right to live or supposed right to die, I am primarily concerned with human need — both of life and of death' (Fletcher 1974a, p. 12).

The interpretation of 'sanctity of life' as an account of the 'value' of life also explains Fletcher's tendency to conflate 'the ethics of a physician [that] forbids him to take life' with 'the duty to prolong and protect life' (Fletcher 1954, p. 203). If actions are understood only in relation to the physical consequences, for example, whether the action or omission shortens life, then there seems to be no relevant difference between taking life and merely failing to prolong life. The fact that traditional ethics prohibited physicians from intentionally taking life but did not prohibit physicians from withholding or withdrawing treatment knowing this would shorten life (if, and only if, such withholding or withdrawing was not intended to hasten death), thus appears to be a contradiction. To be consistent doctors should either *always* be required to prolong life or they should *sometimes* be permitted intentionally to take life.

The contrast that Fletcher makes between 'sanctity of life ethics' and 'quality of life ethics' (1974b, p. 84) reflects the view that moral theories can be divided between *deontological* ethics, which give precedence to rights, rules, and duties, and *teleological* ethics, which give precedence to goods, needs, or values. It is this distinction that makes plausible the idea that if one rejects a particular rules-based account of the 'sanctity of life' then the only alternative is a needs-based 'quality of life' approach.

The division of the history of moral thought in this way, into deontological and teleological parties, is however, a scheme that only emerged in the 1930s, due to the work of CD Broad (1930) and WD Ross (1930). It became influential in mid-twentieth century Anglophone academic philosophy, just

at the time that Fletcher was writing, and continues to shape the way that ethical theories are taught in schools and at undergraduate level. The origin and continuing attraction of this scheme lies in the way it seems to express the contrast between the thought of two great nineteenth century thinkers: the categorical imperative of Immanuel Kant and the utilitarianism of Jeremy Bentham. However, the division is difficult to apply to ancient or to medieval or to modern continental philosophers, and the parochial character of this scheme became obvious even in the English-speaking academic world with the revival of virtue theory in the late twentieth century. These categories are applicable neither to the thought of Aristotle nor to that of Aquinas. The simple division once taught to generations of school children has now become tripartite. Students are now informed that there are *three* kinds of moral theory: deontological, teleological, and virtue theory (though this threefold division is scarcely less of an oversimplification).

Once the dichotomy breaks down, with it goes the idea that if someone rejects the 'sanctity of life' (deontological) view he or she must accept a 'quality of life' (teleological) view. The problem here is not only that the 'sanctity of life' view is a straw man, a caricature which does not represent the tradition it purports to represent. The bigger problem is that the argument presupposes a false dichotomy. There are more possibilities than obstinate vitalism or the acceptance of medical homicide.

### **Sanctity of life in a 'qualified' sense and the charge of inconsistency**

Later commentators acknowledge that the simple dichotomy of Fletcher and Williams was simplistic and inadequate to most thinkers. In an influential paper in 1975, William Frankena sets out five possible interpretations of 'sanctity of life' and concludes that 'the only tenable view... is a derivative, qualified, and noncomprehensive ethics of respect for life'. (Frankena 1977, p. 58 cited by Wildes 1997, p. 96). This idea of a 'qualified sanctity of life' principle proved attractive and has been advocated by a number of thinkers.

In a twist on Frankena's analysis, Helga Kuhse takes up the distinction between 'absolute' and 'qualified' interpretations of the sanctity of life but argues that *all qualified interpretations are in fact*

*inconsistent*. She claims that contemporary 'qualified' versions of the sanctity of life principle *logically entail* the 'absolute' version. Inasmuch as advocates assert the qualified version and reject the absolute version they are contradicting themselves. If Kuhse is correct, then qualified 'sanctity of life' views cannot be held consistently. Only an absolute and vitalistic conception of the sanctity of life escapes inconsistency. However, it is widely acknowledged that the vitalist version is morally untenable. Kuhse thus presents a more sophisticated argument for Fletcher's conclusion that a 'quality of life' ethic is the only viable alternative to a vitalist 'sanctity of life' ethic.

Fletcher himself had stated that '[t]he vitalist idea that life as such is sacrosanct, the highest good and somehow both sacred and untouchable, is obviously not tenable in actual practice' (Fletcher 1974b, p. 83). However, Fletcher imagines here an inconsistency between vitalist theory (a theory he attributes to his opponents) and pragmatic practice. In contrast, Kuhse acknowledges the possibility of someone holding a non-absolute 'sanctity of life' theory, but charges such theories with logical inconsistency.

A strength of Kuhse's argument is that it does not depend on attributing either the language of the 'sanctity of life', or the interpretation of this language given by Fletcher and Williams, to the Western moral and legal tradition. Her argument is compatible with a free acknowledgement that the language of 'the principle of the sanctity of life' is of recent origin and that most advocates of the principle would not accept the 'vitalist' interpretation of the principle given by Fletcher and Williams. Kuhse does not present the 'absolute' or 'vitalist' interpretation of the sanctity of life principle as representing the self-understanding of the tradition. Rather, Kuhse argues that the absolute interpretation is the only consistent interpretation, and thus acts as a *reductio ad absurdum* of the more 'moderate' accounts found in the tradition and in contemporary Roman Catholic teaching. Kuhse defines the 'absolute' interpretation of the sanctity of life principle as follows: 'It is absolutely prohibited either intentionally to kill a patient or intentionally to let a patient die, and to base decisions relating to the prolongation or shortening of human life on considerations of its quality or

kind' (1987, p. 11). Qualified versions of the principle accept the prohibition but add the rider that 'it is however, sometimes permissible to refrain from preventing death' (p. 23).

What, then, is the basis for the charge of inconsistency against qualified versions of the principle?

The inconsistency is ostensibly located with the rationale for the prohibition. If it is *absolutely* prohibited to end the life of an innocent human being, irrespective of the circumstances, and irrespective of the consequences of refraining from doing so, this seems to imply that life is being granted *infinite value*. Such an inference is made explicit in the definition of a 'sanctity of life' ethic provided elsewhere by Kuhse, as one 'that absolutely prohibits the intentional termination of life and that sees all human life, regardless of its type or quality, as of *infinite and intrinsic worth*' (Kuhse 1981, p. 76 emphasis added)<sup>3</sup>. Another way to put this is to say that to attribute 'sanctity', as opposed to 'very great value', to a life is thus to assert that the value of life 'exceeds all other values' so that 'no other value overrides the value of life' (Suber 1996).

If one construes 'sanctity of life' as the attribution of infinite or overriding value to the physical life of a human being, then 'sanctity of life' is indeed incompatible with refraining from preventing death.

If the rationale for prohibiting medical homicide is the infinite value of human life as something worthy of protection or preservation then the same rationale will apply to any action or omission that shortens life whether this is intended or unintended.

In favour of Kuhse's argument, some of those who defend the principle of 'the sanctity of life' do speak of the 'infinite value' of life. For example, the great exponent of Jewish medical ethics, Rabbi Immanuel Jakobovits, once wrote that, 'The basic reasoning behind the firm opposition of Judaism to any form of euthanasia proper is the attribution of infinite value to every human life. Since infinity is, by definition, indivisible, it follows that every fraction of life, however small, remains equally infinite so that it makes morally no difference whether one shortens life by seventy years or

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<sup>3</sup> Note that reference to intrinsic (or inherent) worth is very different from 'infinite' worth. For example, one might refer to the 'intrinsic' value of a commodity meaning its usefulness, in contrast to its 'extrinsic' value for sale or exchange, or in contrast to its 'sentimental value' to a particular person. This would not imply that the 'intrinsic value' of the item was infinite.

by only a few hours, or whether the victim of murder was young and robust or aged and physically or mentally debilitated' (Jakobovits 1979, p. 379). The same reasoning is invoked by disability activist Alison Davis, writing in the *Journal of Medical Ethics*: 'I believe that each human life is of infinite value, and since infinity cannot be multiplied or divided, remaining implicit in its infinity, so too is all human life precious and worthy of protection, no matter how long or short it may be' (Davis 1988, p. 152). This language has even been used by popes, for example, Pope Benedict XVI, in a general audience in 2009, speaks of the 'sacred respect for human life, which always possesses an *infinite value*' (Benedict XVI 2009, emphasis added).

Notwithstanding the occasional use of the language of 'infinite value' by some highly respected representatives of moral or religious traditions that oppose medical homicide there are, nevertheless, good reasons to resist this formulation. If 'every fraction of life, however small, remains equally infinite' then there would be no difference in value between a treatment which gave twenty years of life and one that extended life by a few minutes. This would imply that whatever burdensome or heroic efforts we might make to save someone's life are equally applicable even to someone who is in the last hours or days. Such an attitude is vitalistic and is certainly not how medical treatment decisions have traditionally been made (Davis 2001).

More significantly the 'infinite value' thesis would imply that any shortening of life was an *infinite* harm and thus could never be justified by any other good, not even as a side effect of urgently needed pain relief. Furthermore, if every life has equal value, no matter how great, then it might still seem rational to kill some innocent people to save others. 'Indeed, if we felt that human life were of infinite value, we might well feel morally compelled to kill whenever killing would save more lives than those lost' (Stith 1997, p. 342).

Construing the 'sanctity of life' as the attribution of infinite value would therefore lead to a paradoxical disregard for human life. However, the sacredness or inviolability of life need not be construed in this way. These terms do not concern 'value' (either finite or infinite); they concern reverence or respect. Consider the aphorism of CP Scott of the *Manchester Guardian* that 'comment

is free, but facts are sacred'. This is emphatically not saying that facts are of infinite value or that an article is valuable in proportion to the number of facts it contains. It is not that 'more facts' must be crammed in at any cost. The meaning of Scott's injunction is, rather, that it is contrary to journalistic ethics to make factual assertions that one knows to be false. Similarly the traditional prohibition on medical homicide does not imply that greater length of life is always the highest value, to be achieved at any cost and by any means. It is, rather, the claim that it is contrary to medical ethics intentionally to end the life of an innocent human being. Rather than the inviolability of life being an account of the value of length of life, it is simply a recognition of the disrespect that is shown to life when it deliberately destroyed.

The fundamental mistake of Fletcher, Williams, Kuhse and Singer, is to construe 'sanctity of life' as the attribution of overriding 'value' to life. In contrast, Stith seems closer to the truth when he states that 'our attitudes toward human life cannot be captured by the idea of "valuing" at all... the respect or reverence we have for life is an entirely separate stance, unrelated to value' (Stith 1997, p. 297, see also Coope 2006, pp. 61-68). Insofar as this is true then Smith also seems wrong in saying that 'sanctity of life' is a view 'about how we value life' (Smith 2010, p. 102). It is rather a view about how we should not value it! On the other hand, while Stith is correct to state that the ideas of respect or reverence are not 'capture by', or reducible to, the idea of valuing, this is certainly not to deny that life is valuable! It makes perfectly good sense to say that human life is valuable, to oneself and to others, instrumentally, for the goods it makes possible, and inherently or intrinsically, as the good of this person's existence. Such value explains why we seek to save lives and to sustain them, notwithstanding that our efforts are constrained by our simultaneous pursuit of other human goods. A more subtle mistake seems to be implicit in a formulation of the 'principle' given by the Keown: 'the principle of the sanctity of human life... holds that, *because* all lives are intrinsically valuable, it is always wrong intentionally to kill an innocent human being' (Keown 1993, p. 36 quoted in Singer 1995, but here with my emphasis). This formulation does not conflate valuing and respecting (in the sense of refraining from intentional destruction), nor does it invoke a confused idea of 'infinite

value'. However, it still seems mistaken in taking 'value' as the basis for respect. If one were seeking a basis for, or concomitant of, respect, this would be not 'value' but 'dignity'. Perhaps it may be said that dignity is a kind of value or that it implies the presence of value, but even inasmuch as this is so, it is not value per se that is the basis for or object of respect.

Accounts such as those of Stith or Keown need further development to show how human life is both inviolable and valuable. However, even as they stand, these accounts clearly escape Kuhse's critique insofar as they reject the characterisation of the inviolability of human life as an attribution of infinite or overriding value. Kuhse's critique nevertheless performs a useful function in showing why advocates of inviolability should avoid speaking of 'infinite value'. She is also undoubtedly correct in stating that some accounts of a 'qualified sanctity of life ethic' are confused and suffer from internal contradictions (arguably this is true of English case law in relation to withdrawal of treatment - see Stauch, Wheat and Tingle 2012, p. 590).

The language of the 'sanctity of life' as forged by Fletcher and Williams and invoked by Kuhse and Singer, characterises a view that is being rejected. It is at best pejorative and at worst pure caricature. However, this usage is preferable to attempts to reinterpret and commandeer the language of 'the sanctity of life' to promote abortion and assisted suicide. This is the strategy of Ronald Dworkin (1993) whose position 'can thereby appear to give more to conservatives than it really gives, thus mollifying them' (Kamm 1995, p. 171 cited by Coope 2006, p. 67). The account developed by Dworkin has been subject to extended criticism which will not be rehearsed here (Stith 1997, Coope 2006). Dworkin's use of this phrase is cited here only to illustrate that, without any agreed definition to anchor the language, the 'sanctity of life' can take on such disparate meanings as to be virtually unusable in public discourse.

### **A return to clearer and more traditional ethical concepts**

What, then, is lost if discussion of the 'sanctity of life' is replaced by a rule against killing, especially if this rule is understood in the light of an account of the natural law and of Hippocratic medicine?

Writers such as Keown and Finnis effectively replace 'sanctity of life' with 'inviolability of life', and

then interpret inviolability simply as expressing the prohibition 'it is always wrong intentionally to kill an innocent human being' (Keown 1993, p. 36). The term 'innocent' here relates to the possible justification of lethal force in the context of policing, military action, self-defence or criminal justice. Outside any such context, where a doctor is acting as a doctor, then, on a Hippocratic understanding, it will be always be wrong for a doctor intentionally to end the life of a patient. However, if the 'inviolability of life' is understood in this way, by reference to the prohibition, what is added by using the language of 'inviolability' or 'sanctity'? Arguably a subsequent forty years of debate has served only to confirm the conclusion of Daniel Clouser (1973) that the language of 'sanctity of life' is so hopelessly vague and confused that it should be replaced by consideration of the rule 'do not kill'.

Commenting on Clouser's proposal, Keyserlingk states that he does not agree 'that the richness and full significance of the sanctity of life concept can be boiled down to any single moral rule, and certainly not the one proposed. It seems that there must be many moral rules, enough to deal with all the biomedical issues to which that principle or concept can potentially extend' (1979, p. 28).

A helpful example, which shows the need for ethical considerations other than the prohibition, is the issue of withholding or withdrawing treatment. It might be that medical treatment, or even basic care, is withdrawn with the aim or intention of ending life. Such a practice would amount to deliberate killing by omission and would fall under the prohibition against medical homicide. What would not fall under the prohibition would be any withdrawal of treatment which did not have this intention. However, such withdrawal might still be wrong by reason of a failure to value life sufficiently (for example, because of assumptions based on discriminatory attitudes towards people with certain disabilities or medical conditions). On the other hand, the continued imposition of medical treatment might also be wrong because of overestimating the benefit of a brief extension of life or underestimating the burdens or risks of medical treatment.

Traditionally, decisions to withdraw treatment have been discussed not in relation to a single rule or principle, but in relation to diverse concepts of burden, benefit, and futility and by reference to the

distinction between 'ordinary' and 'extraordinary' means. Intentional medical homicide, whether by act or omission, would be excluded, but having set this aside, the weighing of benefits and burdens by the patient, with the help of the physician, would require the virtue of *prudentia*. This virtue is necessary to integrate a number of different human goods, virtues and practical principles relevant to action, some of which are role or context specific. From this perspective, it might be said that the mistake of Kuhse and other 'quality of life' ethicists is that they think *one principle* (whether 'sanctity', 'inviolability', 'quality' or anything else) should be able to resolve all decisions 'relating to the prolongation or shortening of human life' (1987 p. 11). The misleading impression that there is one rule or principle which will resolve all end of life issues is another good reason to abandon the language of 'the principle of the sanctity of life'.

The works of John Paul II (1995), John Breck (1998) and David Gushee (2013), among others, show that it is possible to develop a robust theological account of the sacredness of human life in relation to the ethics of killing and of healthcare. Similarly, the works of John Finnis (1993), Richard Stith (1997) and John Keown (1997b, 2002, 2006), among others, show that it is possible to criticise misleading definitions of the phrase and that it is possible to provide a philosophical defence of the inviolability of human life that is not dependent on revealed theology. Reference to the sacredness, sanctity or inviolability of life can therefore be construed so as to express important moral truths. Nevertheless, the recognition that this language is not traditional, and that its modern emergence was, from the first, framed first as a caricature of the tradition, should give one reason to pause in persisting in the use of the phrase 'sanctity of life'. It would be naïve to invoke language, albeit in a carefully qualified sense, without recognising the prevalent confusion that continues to influence the reception of this language.

It is not that the language of 'the sanctity of life' has recently become confused and there is an earlier tradition against which this modern usage can be criticised. There is no *locus classicus* for a definition of the terms and different authors freely apply the term to divergent and contradictory positions. Furthermore, the first sustained (book-length) treatment of this 'principle' was already

deeply confused and this confusion was deliberate, aiming to promote acceptance of abortion, infanticide and suicide (Williams 1957). The phrase has repeatedly been used to insinuate, without the necessity of argument, that the prohibition on killing the innocent depends on a religious worldview. Even if this implication is denied, by writers such as Keown, the very use of the term 'sanctity' helps sustain the misconception.

The language of 'sanctity', in relation to the ethics of killing, emerged in a modern context to encourage in legal, ethical and theological discussion a false dichotomy between a supposedly religiously-based taboo (sanctity of life) and the making of prudential decisions about life sustaining treatment (quality of life). The rejection of the concept of the sanctity of life by Fletcher, Williams and Kuhse, was no more than the knocking down of a straw man. Nevertheless, these thinkers have been successful in framing the subsequent discussion as a conflict between 'sanctity of life' and 'quality of life' positions. This frame is now taken as neutral as though the descriptions of both positions would be accepted by their respective advocates.

In the present context, to lend support that the phrase 'sanctity of life' serves only to perpetuate a discourse that is both confused and dangerous. It is dangerous precisely because it creates a false dichotomy between a vitalist interpretation of 'sanctity of life' and a utilitarian interpretation of 'quality of life'. Given that mistaken or contradictory conceptions of 'the sanctity of life' are ubiquitous, it is better to recognise that this is an unhelpful place to start. It is better, in summary, to jettison the language of a 'principle' of 'the sanctity of human life' in favour of clearer and more traditional ethical concepts: the prohibition on killing the innocent and the prudential consideration of burdens and benefits, integrating distinct virtues and distinct practical principles in pursuit of the human good of the particular individual in the context medical treatment.

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