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[Book Review of] *The Ethics of Homicide* by Philip E. Devine

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competence and integrity in the student, and obligations to the patient. Pellegrino's suggestions are not without their limitations, but he succeeds in identifying several problems, stating the issues within each problem, and making reasonable suggestions to resolve them. He also succeeds in putting his finger on many of the problems that need serious debate within medical schools.

These essays are not to be read quickly. Each has something to say, and it is worth considering. The book deserves a wide reading among physicians in private practice and especially by those physicians and other individuals who are involved in medical education.

— Thomas A. Shannon
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The Ethics of Homicide

Philip E. Devine

Cornell University Press, 124 Roberts Pl., Ithaca, N.Y. 14850. 1978, 247 pp., \$12.95.

Among other things, this book gives a survey of recent views in secular philosophy on abortion, euthanasia, rights of animals (and plants), and rights of persons. After reading this survey, a Catholic with a decent upbringing can only come away with the overwhelming impression that the chief characteristic of modern secular ethics is its utter moral bankruptcy. (This judgment does not apply to Devine himself who tries to stand apart from the general trend.)

What else can we conclude when a philosopher of obvious good-will must twist and turn through several pages (46-106) to prove that a human person deserves more respect than a cabbage? (Devine reports, and tries to refute, the arguments of philosophers who hold that rights are based on "interests" and since plants as well as humans have "interests," then the statuses of plants and humans are basically the same [pp. 48-49].) What else can we conclude when a philosopher of good-will feels required to treat with respect (although disagreement) the ethical condoning of infanticide (pp. 64-69)? And what finally can we conclude, except that modern secular ethics is corrupt, when a large number of philosophers will condone any act, from judicial murder to geronticide and genocide, if it appears that it will produce the best results in the long run?

A case in point of the gymnastics some philosophers will perform to keep their desired conclusions is Michael Tooley. Philosophers had shown that if you deny fetuses (unborn babies) the right to life, then, logically, you must also deny infants the right to life. Whereupon, Tooley concluded that infanticide must be permissible, arguing that a being has rights only if it is self-conscious and has desires that can be frustrated. It was then pointed out that both common sense and the law attribute rights to infants, such as not to be mutilated, or not to be robbed of an inheritance. Tooley replied that such rights are based on the fact that the infant will, in the future, come to desire that the violation (e.g., mutila-

tion) had not occurred, but this did not mean that infants have a right to life, since if the infant is killed no future desire would be frustrated, the future desires being killed along with the infant. I call these gymnastics. Devine points out that according to Tooley's argument, if you injure an infant you had better finish the job and kill him. It seems that Tooley will accept any conclusion, however absurd, as long as abortion remains permitted.

In chapter 1 Devine argues that homicide is *prima facie* wrong, not because of its overall consequences (against "pure" consequentialists) but because of the harm done to the person killed. Personal human life is valuable in itself and must not be destroyed unless there are stringent justifications. Further, what is valuable is personal human life itself, and not simply a certain "quality" of life.

In two important chapters (2 and 3), Devine considers the question: What is the dividing line between two persons with a right to life, and nonpersons? He rejects what he calls the "present enjoyment principle," which says that only those who are in "present possession of distinctively human traits" are persons. This is the principle abortionists invoke, arguing that fetuses or embryos are not persons since they do not "socialize," reason, etc. Devine points out that on this principle not only fetuses but also infants and the reversibly comatose (indeed, all of us during a good night's sleep) would not be persons. Thus abortion, infanticide, and killing the reversibly comatose are logically in the same boat. Devine does not prove that all of these acts are wrong. Rather, he relies on our intuitions to know that infanticide is wrong and infers from that to the defectiveness of the "present enjoyment principle."

Devine takes the position that a person is a being who has a *capacity* for consciousness, meaningful communication, etc. Since both fetuses and infants will develop, if nothing goes wrong, into conscious and speaking human beings, it follows that they, like unconscious adults, are human persons.

However, he denies that the irreversibly comatose, or the severely mentally retarded who never develop speech, have a capacity for specifically human acts. These creatures he calls humans, but not persons. He thus condones abortion for certain "fetal indications" (e.g., Tay-Sachs disease but not mongolism) and the killing of the irreversibly comatose.

Likewise, he holds that the embryo is not a person at least until after twinning becomes impossible, since individuation is an essential component of personhood. Thus he seems also to condone early abortions. (In brief criticism of Devine at this point: the possibility of twinning does not show lack of individuation in the embryo, since twinning could be a process like parthenogenesis; that is, twinning might simply be the production of a new individual from a cell of the first, and continually existing, individual. Hence we have no warrant not to treat the embryo from fertilization onward as a human person.)

Devine argues for a kind of "mixed" consequentialism. That is, he rejects the justification of killing simply on the grounds that "it offers the best results on the whole" (p. 138). He argues that "there seems no stable way of walling off this kind of justification and blocking its extension to cases where it is clearly unacceptable" (p. 150). Hence he restricts justifications of homicide to two forms: 1) cases of "extreme necessity," and 2) defense of oneself or others against an "aggressor."

By the principle of "extreme necessity" he understands that "if the decedent (i.e., victim) loses nothing by being killed (being certainly doomed to die very shortly in any case) and others who would die otherwise will be saved by his being killed, then killing is justified" (p. 145). On this principle Devine justifies abortion in the (rare) cases where otherwise both mother and baby would die, as well as many other types of direct killing.

In the principle of defense of self and others, he understands "aggressor" in a causal sense rather than a moral or juridical one. Thus Devine considers an

"aggressor" an unborn baby whose life threatens its mother's life, and so on this principle he justifies abortion to save the life of the mother, even if otherwise the baby would live. He considers war direct killing, but justifies it by this principle also.

"Extreme necessity" and defense against "aggressors" are the only justifications Devine allows. Hence "mercy killing," whether voluntary or involuntary, is rejected. Whether suicide is morally permissible he leaves undecided in this book, but he insists that suicides must not be assisted.

Thus Devine's conclusions might be called "moderate" in relation to secular ethics in general: he rejects abortion on demand, euthanasia, killing simply for utilitarian reasons; but he condones some early abortions, abortions to save the mother's life, abortions for certain "fetal indications," killing the irreversibly comatose, and direct killing in a host of other cases describable as defense of self or others.

I select two areas for basic criticism: his criterion of personhood, and his "mixed" consequentialism:

a) Devine rightly explains that moral rights — the right of a person to be treated as an end in himself and not a mere means, among others — are based on a *capacity* to reason, choose, etc. But he fails to explain why this is so. Rights are based on the capacity to reason and choose, not simply because such beings are capable of "a specially rich kind of life" (p. 95). Simply, "a richer kind of life" denotes a difference in degree not in kind, and what is needed to justify the qualitatively different kind of respect we pay to human persons, as opposed, say, to cabbages or cats, is a qualitative difference in their beings. Briefly, the capacity to reason and choose is such a qualitative difference, because that capacity means that such a being determines himself rather than being a mere passive subject to outside forces. A being endowed with the capacity to reason and choose is a center of activity, an original source of value, whereas plants and brute animals are not unique, being distinctive or individual only through external influences. (This does not mean that plants and brute animals should always be regarded as mere tools for man's use; they also deserve respect, not as ends in themselves, which they are not, but as creatures manifesting the glory of God.)

Devine condones the killing of the severely retarded (those unable ever to speak) and the killing of the irreversibly comatose, because he holds that they lack the capacity to speak, reason, etc., and are therefore nonpersons although human. But the capacity to reason and choose belongs to man's nature, so that every human being has that capacity. The fact that some humans will never, in this life, actualize that capacity does not evidence a lack of it; it shows only that an impediment — insufficient brain development, for example — prevents the actualization of that capacity, just as a man still has the intrinsic capacity to move his arms even if, tied to a tree, he is prevented from actualizing his capacity. Hence every human being is a person and every innocent human being has a right to life.

b) The central part of Devine's book is his explanation of why homicide is *prima facie* wrong (only *prima facie* since he allows justifications). It is wrong, he says, not merely because of consequences in the long run, but, centrally, because of *the harm done to the one killed* (p. 18). At first sight this sounds like common sense. But note that in this claim Devine makes the *primary source* of moral evil wholly *extrinsic* to the will or the will's intrinsic direction. From this premise, the conclusions in the rest of the book follow: 1) if the victim would die shortly anyway, we may kill him, since our act would not increase the amount of (external) harm that will at any rate occur; 2) the admitted harm to the victim can be offset by (seemingly) greater harm that could happen to others if we did not kill him. That is, if the original harm effected in homicide is external to the will, then other external harms will not be qualitatively distinct from the original harm, and thus could quantitatively outweigh it.

According to the Catholic tradition, on the contrary, the source of moral evil is precisely the intrinsic direction of the will. A Christian knows that adultery is committed in the heart even if nothing external has a hair's chance of occurring, and that blasphemy is wrong even though there is, and can be, no direct external effect. That is to say, moral evil consists primarily in the will's repudiation of a basic good or value. Thus in the (rare) abortion case, for example, where the choice is between directly killing one or letting both die, we are obliged not to kill, because the external results are of a different order from that of the interior act of will directed against an innocent human life. The interior act of will constitutes a person's deciding for or against the objective order of goodness or value established by God Himself. Direct killing can be justified only as defense of self or others against *unjust* aggressors. Only *purposeful* aggression makes a person not innocent and thus deprived of the right not to be killed directly. If someone's life endangers the safety of others, through no purposeful act of his own, e.g., because he is diseased or because a foreign country threatens to kill hostages if he is not killed, such a person still cannot be justly killed. Innocent human life (innocent in the sense just explained, and not in a mere causal sense) is inviolable.

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Transition and Tradition in Moral Theology

Charles E. Curran

University of Notre Dame Press, Notre Dame, Ind., 1979. \$11.95 (hard cover), \$4.95 (soft cover).

People may disagree with Father Charles Curran's approach to Catholic moral theology. They may even argue, as he admits, that he has incorporated so much transition into his moral thinking that he has abandoned the Catholic tradition. But everyone knows where he stands. His new volume, *Transition and Tradition in Moral Theology*, once more records his opinions clearly, forthrightly, and persuasively, for whatever they may be worth.

In this volume he has skillfully joined nine separate essays prepared for various occasions into one volume, with admirable continuity and consistency. The nine essays fall neatly into three parts with three chapters each.

Part one considers general moral theology with an overview chapter and separate chapters on contraception and homosexuality. He maintains an even and calm style broken by occasional sweeping statements.

As examples of the latter, consider these three bold and authoritative statements:

"There can be no doubt in the light of the historical circumstances that the official imposition of Thomism was an attempt to prevent any dialogue with the contemporary world and its thought patterns" (p. 12).