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Book Review of Death by Choice by Daniel C. Maguire

William E. May

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planted scientific criteria for the time of death and acceptable formats for dealing with doctors, donors, and recipients in transplantations.

The major concern of Medico/Moral Committees is morality—truth—protection of innocent life—concern for society's most helpless beings—the unborn, the deformed—the aged. Legal questions need to be faced, but legality should not dictate morality. It is our position—not without competent legal backing—that the more firmly our Catholic position and integrity are reaffirmed, the stronger our case in court. In recent personal correspondence with Andre Hellegers, he felt that Medico/Moral Committees can help resolve tough cases within the directives but not within the civil legal system. "Ultimately you would be asked how you picked the jury."

Age of Ecumenism

Our hospitals have been first in establishing departments of pastoral care to bring in—as official, part-time chaplains—ministers and rabbis of the community to minister to their own parishioners. The Catholic hospital respects the conscience of every one.

Pluralism is a two-way street. As others who disagree with us go their way freely, we expect and demand the right to go ours.

So frequently, Pluralism is spoken to imply that we should abandon our positions and join those with whom we are in fundamental disagreement. This is not logical. This is not Democratic. However, let it not be said of us that we do not respect the conscience of others. We do. That is why we promote Departments of Pastoral Care and other interfaith programs. We respect the inviolability of the conscience of others. We demand the same freedom for our conscience.

Every hospital has a conscience. A hospital is not simply paired cement and automated equipment. The conscience resides in the sponsoring group and Board of Directors. As they are legally responsible for the quality of care and the protection of standards in the hospital, we believe that they are likewise responsible for the ethics and moral tone of the services provided.

Conclusion

Yes, we are in a battle, it is a new ball game, but we are in there fighting, confident and hopeful. We are restricted in many ways—but especially by our own caution, fear of taking hard stands. The Catholic Hospital vanishes from the American scene because of total secularization, it will be an irreparable loss. Despite the doomsayers from within and without the Church, we are indeed Catholic and society needs Catholic hospitals. We will not abandon the challenge!
the way to describe our moral actions truthfully. This, after all, is what ethics in a normative sense is all about: it is an attempt to find out the moral meaning or human significance of our deeds. And this is a meaning that we do not give to our actions, but it is one that they have, whether we want them to have it or not, and that we ought to be able to discover. We discover that meaning by raising questions (who, what, where, when, how, why, with what results, are any alternatives available). In showing the relevance of these questions in determining the meaning of our actions Maquire is perhaps at his best, although one of my objections to the position that he ultimately develops is that I do not believe that he takes seriously enough some of the answers that may be given to these questions. There are, furthermore, other questions that can be raised. For instance, what moral identity is a person taking on himself in doing this deed? We shall return to this subsequently.

In describing ethics as an activity carried on by intelligent men that consists in the raising of relevant questions Maquire is right on target. That is why ethics consists in large measure in listening, in listening to reality and to people, above all people who do some thinking, people like Maquire. In this section of his book Maquire also comments on the role of principles, feelings (what he calls Gemiit), group experience, rational analysis, and creative imagination in ethics. His observations here are very much worth noting, in particular his reflections on the role of creative imagination in devising viable alternatives to the terrible dilemmas that confront us in our struggle to make sense of our lives. Nonetheless, his discussion of principles in ethics is in my judgment very inadequate, for he makes no distinction whatsoever between a moral principle and a moral rule. This is a matter of considerable importance, but since it is not of immediate concern to the argument that he advances there is no urgency to comment on this here. Still it is a matter of concern, particularly for a brother ethicist. After discussing in general that it means to do ethics Maquire addresses four questions of special relevance in any attempt to get to the true meaning of activities that may terminate life in a medical context. These deal with the difference between omission and commission, the directly and indirectly intended, the use of ordinary and of extraordinary means, and the meaning of proportionality. These questions are of urgency for various reasons. Some writers (e.g., Joseph Fletcher) say that it makes no moral difference whatsoever whether one kills a person directly by an act of commission or "kills" him indirectly by an act of omission (by refusing to use some medical device that could prolong life — or prolong the dying process? — or by ceasing to use it once it has been begun). Maquire argues, and rightly so, that the distinctions between omitting an action and committing an action, between killing a person directly and allowing him to die his own death and thus "killing" him indirectly by refusing to use extraordinary means are valid and of critical moral importance. They are valid because they refer to differing moral realities; there are differing truth-making factors involved. So far, so good.

The trouble begins, I think, when Maquire starts to analyze more closely the difference between the "indirectly" and the "directly" intended and the role that the principle of proportionate reason plays in giving us clues to the true significance or meaning of our moral deeds. Maquire, while recognizeing the validity of the distinction between the directly and the indirectly intended, becomes worried about its applicability and begins to place too much stress on the role of the proportionate good. There are many reasons why this can happen, and some are spelled out in his text. For one thing, Catholic moralists in the past went through considerable mental gymnastics over the directly and the indirectly intended (that is, doing deeds that directly accomplish good while indirectly accomplishing evil), and Maquire does a masterful job of showing what these gymnastics were and the absurdities to which they led; justifying some horribly unjustifiable deeds carried out in the name of the "just war," and damning some deeds that really are justifiable, such as aborting a fetus when this is the only available alternative for saving the life of the mother, while offering inane advice about baptizing two-headed fetuses. For another, there is discernible in contemporary Catholic moral thought a fault, crystallized in the position developed by the man who is perhaps the outstanding moral theologian in this country, Richard McCormick, to believe that one can rightly both directly intend and effect evil provided there is a value or good of such importance that its realization can justify the doing of the deadly deed and even directly intending it in itself but not for itself (as McCormick puts it: directly intending and effecting evil in sed non propter se). In other words, the argument, as Maquire advances it, is that a sufficient proportionate good (for instance, human dignity and freedom) can serve to justify the doing of the deadly deed under certain circumstances.

That this in fact is what Maquire himself believes is amply demonstrated in a chapter where he applies this way of thinking to such topics as abortion (justifiable, as act directly terminative of the life of the fetus and intended as such, under certain kinds of conditions, largely dependent on the age of the fetus), capital punishment (not justifiable, because a sufficient proportionate good is not at stake and other alternatives are available), war (yes, to an extent, although there are inherent limitations because of the possible disproportionate use of force), and suicide (yes, under certain kinds of specifiable conditions), and, of course, death by choice in medical situations.

My problem basically is that I think Maquire's approach opens the way to certain kinds of killing that are not truthfully justifiable, and it
open the way toward those because it puts too much weight on the principle of proportionality. In many of the cases that he describes it is, I believe, morally right to take actions that are, as physical activities, "directly" destructive of life, but in these instances, I would argue, the moral activity in question is not properly, that is truthfully and terminatively of the act in question. They are not acts of killing because there is not only a proportionate reason for engaging in them (the protection of a truly human good that is imperilled, such as freedom and dignity) but also in them the intent of the agent and the thrust or directionality of his action is not necessarily against the life of a human being, even though it is foreseeable that some one is going to die as a result of the act in question. They are actions, in other words, in which the doer will not take on as part of his moral identity the identity of a killer because they are not truthfully acts of killing. This is the reason why I believe that it is pertinent to ask, what is the moral identity that a person is taking on, and taking on unavoidably, in and through his deeds. If someone does something that results in death and, in doing this, does not necessarily take on the identity of a killer, one of the reasons why this is so is that the act in question is not properly, that is truthfully or morally, an act of killing.

I can clarify what I mean by taking some examples that Maguire uses. Those Eskimos who used to go off on an ice floe to die so that they would no longer be a burden to the community were not committing suicide, although this is the way that Maguire would describe their deed. I submit that they were not setting out to end their lives to choose death. They realized, of course, that they were going to die. But they were not intending to do this directly. Nor was their act directly terminative of their lives. It was directed toward some thing else — namely their removal from the community and its responses to personal requests of food and shelter and so forth, and the well being of the entire community. They sacrificed their lives for the good of others. It is an act that indeed involved their death but was itself not directed upon their death. For an impartial observer to jump upon them and cry "stop killing yourselves" would be as ludicrous as it would be for a witness to a surgical operation to rush into the operating room and cry "stop mutilating that person, doctor." Similarly some actions that a person may take to stop the insufferable pain that a dying person may be experiencing (Raasey's second qualification, be it noted, in his sensitively written analysis of our duty to care and (only) to care for the dying) may be directly causative of death in the physical sense but not be directly causative in a moral sense. Their doers are not taking on the identity of killers, and they are not doing so precisely because the deed they do is not to be described truthfully as an act of killing.

What is the importance of this? It is this. Many of the deeds that Maguire justifies in his discussion are, in my judgment, truthfully to be described as acts of killing, because in them the doer cannot not intend the death of another human being (e.g., certain kinds of abortion that Maguire justifies, and certain kinds of suicide). For him these are justifiable only in terms of a proportionate good, a principle that he terms the "master rubric in ethics." For me, the principle of proportionality is a necessary but not sufficient criterion; it needs to be complemented by the principle of the directly vs. the indirectly intended, in the sense that both the intent of the agent and the intention or thrust of the action is directly targeted on a good and only indirectly on an evil — and this principle, in turn, must be complemented by the principle of proportionality.

Maguire, I believe, may have let his rhetoric carry him away. He frequently speaks of death as a friend. Death, I submit, is not a friend. To call death a friend is to use a personification, an anthropomorphism. Death, as a reality, is an evil. It is not the greatest evil, to be sure, but it is still an evil, for it is the deprivation of a real good, the good of life, and the only life that we know of immediately and directly. Life too is a real good, and must be recognized and respected as such, even though it is not the absolute or greatest good, the sumum bonum (an error that those make who would insist that we keep on doing everything to preserve life until the matter is completely beyond our control). What is a friend is the person who will do a deed that may indeed bring on death (and even directly, in a physical sense) but will at the same time respect the life and dignity of a human being.

Some readers may suspect that my objections to Maguire's position (since it is one with which I am, in many ways, in substantial agreement) are merely matters of semantics and quibbling. Some may think that I am engaging in the mental gymnastics that typified some of the manualists of a bygone day. Yet there is, I submit, something of crucial significance at stake. To me Maguire's position opens the way to killings that really are killings, to deeds the doing of which would inevitably mean that their doer were taking on, as part of his moral identity, the identity of a killer. I've tried to show why in as short a space as possible. For readers seriously interested in the question I would suggest that they read carefully two of Maguire's favorite authors: Thomas Aquinas and J. Glenn Gray. The article in Summa Theologiae II-II, 64, 7, on killing in self-defense and the difference Gray sees in those combat soldiers who became killers and those who did not, although both engaged in acts that killed people, may help illumine my problem with Maguire. I also suggest that they read an author who is obviously not one of Maguire's favorites, since he is nowhere cited in the work, although he has written, and sensitively so, on the critical issues at stake, Germain Grisez, particularly his study of abortion.

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Daniel Maguire has given us a very sensitive and thoughtful book. He realizes that good ethics depends on good arguments. I believe that he has given us, in this study, many excellent arguments (I have not even noted some of his wonderful ideas about handling the issue of who should decide in issues of life and death). Nonetheless, I think that in many ways he has failed to think deeply enough about the issue, and particularly the relevance of the distinction between the indirectly and the directly intended for the problem at the heart of his book.

William E. May
Professor of Christian Ethics
Catholic University of America

What is most noteworthy in William E. May's reaction to my book is his agreement with me. The main burden of my book is to argue that we have overestimated our moral dominion over death in certain cases such as war and capital punishment and underestimated it in matters commonly referred to as mercy killing or euthanasia. May says that he is "in many ways, in substantial agreement," and that is true. For example, May allows that in certain cases where a dying person has insufferable pain, physically direct action to terminate life may be moral. The person who brings on death "even directly, in a physical sense" may be a friend.

Do not miss what is being said here. Physically direct action may mean such things as bubbles of air, injections of potassium chloride, or morphine, etc. May, while not enumerating the possible means supports the position that life may be terminated not just by omission of extraordinary means, but by commission and direct action. This impressive fact should not be lost in the methodological and semantic debate of May's critique, because it is illustrative of where the argument is today. I predict that it will become increasingly clear that Catholic and other moralists will continue to shift from an absolute negative on death by choice in a medical context. This shift from taboo to nuance is not without danger. The collapse of taboo is always perilous. But the simplism of taboo is not ethics, and it is only ethics, which makes distinctions where are differences, that is worthy of the human spirit. We have no choice but to pay the high price of moral freedom and assume the ethical task of determining when we have the moral right to induce death and when we do not.

May offers criticism of my use of the traditional category "direct/indirect." In the language of one of the older manuals of moral theology, the direct/indirect distinction is explained like this: