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BOOK REVIEW

Death By Choice

by Daniel C. Maguire

Reviewed by William E. May

At the outset it is necessary to say that several features of this work disturb me greatly, and I hope to show why in some detail later. Despite these troubling qualities, and they are critically significant, the work and the argument that it advances merit wide readership and thoughtful response, particularly by physicians, nurses, priests and others charged with caring for the dying; to its author we owe gratitude for exploring so sensitively a question of tremendous urgency.

The central question Maguire raises is this: "can it be moral and should it be legal to take direct action to terminate life in certain circumstances?" His answer is yes, and the major part of the work is devoted to showing why he believes that this is morally right, although he is also concerned to have this moral right legally recognized.

Before tackling the moral issue, however, Maguire first shows why this question is of such urgency today. We live in a world where the tremendous advances in medical science have made it very difficult to die, in a world where it makes sense to ask whether the medical

"treatment" being given some patients is really helping to preserve their lives or whether it is simply prolonging their death. At present people can be kept alive indefinitely in a comatose state, and there have been instances when autopsies performed on individuals maintained in existence for years have shown that their brains had already liquefied. We live, too, in a world where the law has failed to keep pace with medical realities and where juries at times have had to find persons innocent of "murderous" crimes by reason of insanity when these persons were neither insane nor morally guilty of murder — and juries have had to do this to "get around the law." Finally, we live in a world where the moral certitudes of another day have been questioned, and seriously so, by thinking persons, including Catholic moral theologians and even one bishop, Bishop Simons of India. All this Maguire relates, and brilliantly, in the first part of the book.

In the second part of his study Maguire first provides a methodology for "doing" ethics. He is concerned principally with discovering

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 *Gemüt*), 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 what 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 in-

directly 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 Maguire 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. Maguire, while recognizing 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 Maguire 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 twoheaded fetuses. For another, there is discernible in contemporary Catholic moral

thought a trust, 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 se sed non propter se*). In other words, the argument, as Maguire 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 Maguire himself believes is amply demonstrated in a chapter where he applies this way of thinking to such topics as abortion (justifiable, as an 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 Maguire's approach opens the way to certain kinds of killing that are not truthfully justifiable, and it

opens the way toward these 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, describable as an *act of killing*. 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 foreseen 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 burden 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 or 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 something else — namely their removal from the community and its resources in food and shelter and so forth, and the well being of the entire community. They *sacrificed* their lives for the good of others in an act that indeed involved their death but was itself not *thrust* 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 (Ramsey'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 intent 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 *summum 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.

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.

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ANNOUNCEMENT

The Mendel Club of Boston College and the Guild of St. Luke of Boston presented a lecture April 26 to observe the establishment of a library on medical ethics at Boston College. The speaker was William J. Harrington, M.D., a Boston College alumnus, former member of the Boston guild and chairman of the Department of Medicine at Miami University School of Medicine. His topic was "Human Experimentation." Financed by the guild and housed at Boston College, the new library will serve as an important resource function for those interested in the burgeoning field of medical ethics.