

**THE  
ETHICS OF MEDICAL  
HOMICIDE AND MUTILAT  
ION**

BY

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## PREFACE

In this book is discussed the morality involved in the ordinary cases of medical homicide and mutilation. Craniotomy has been omitted because this operation on the living child is never morally licit, and when done on the dead fetus it has no moral quality that requires explanation.

The articles may seem to be intended for Catholic physicians and spiritual directors alone, but the desire in writing them was to reach all practitioners, to the end that the Natural Law which binds every man may be observed. Morality is not made such in its fundamental principles by any religious creed, but by the requirements of Divine Order, which finally prevails no matter what the opposition. Killing and maiming without sufficient extenuation did not become unlawful solely by the establishment of Christianity. Practically, however, physicians who have no religion, or a religion which is so illogical as to pay no attention to dogma, or even to rail at it as obtrusive, necessarily gravitates to the emotional in morality, and the principles of this book will not even interest them. Dogmas are abstract propositions, and all human society rests on abstract propositions. The most vital facts in morality, the basic distinction between crime and all that is virtuous or indifferent morally, is in abstract principle alone, but physicians and pastors who are not trained in philosophy and rational religion cannot appreciate an abstract principle—they are influenced only by the concrete.

Obstetrical text-books, unfortunately, are written by such emotional men; by men who lack all training in ethics other than that inculcated in

childhood out of the mental vagaries of the women in the household; and these authors prescribe therapeutic homicide as if it were a drug in the American Pharmacopœia. The reader is told that if the patient is a Catholic he is to respect her religious "prejudices"; if she is not a Catholic one need not bother about moral scruples when it is necessary to take a life to stop fits. Since the civil law does not prosecute a physician for therapeutic abortion on an inviable child, most physicians deem such an act not only permissible but scientific, and they hold that if a man's conscience will not let him kill a fetus to alleviate maternal distress he is guilty of malpractice.

Decrees of the Catholic Church are cited in these pages, not because morality is an asset of the Catholic Church alone, but because it alone pronounces officially on these medical subjects after careful consideration by competent specialists. This Church has made decisions in comparatively few medico-moral cases, and the questions still undecided authoritatively are very numerous. They are quite difficult, too, because judgment supposes a knowledge of both medicine and ethics, a combination seldom found in one person. As physicians do not know ethics, and moralists do not know medicine, there is often trouble in getting at even a statement of the questions at issue between them. In the preface to *Essays in Pastoral Medicine*, in 1906, I mentioned a noted case of this kind, and in 1911 a similar incident occurred in a discussion of the morality involved in the sterilization of criminals and the defective by the state. This dispute was taken up by the leading canonists and moral theologians in the United States, Belgium, Holland, Austria, Spain, Italy and France, and for nearly two years these men wrote article after article based upon utterly erroneous physical data.

The books we have on medico-moral subjects are either obsolete at present, or insufficient; or, more commonly, they are the work of amateurs in medicine. These last are worthless when they are not harmful. If, however, I may judge from the questions sent to me for answer by clergymen and physicians from all parts of the country, our theological seminaries and medical schools are in grave need of courses on the morality of medical practice. In this book, to the preparation of which I have given years of anxious thought because of the extreme

responsibility involved in its decisions, the data for the most important parts of such courses are presented.

Austin O'Malley.

THE ETHICS OF MEDICAL HOMICIDE AND MUTILATION

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# THE ETHICS OF MEDICAL HOMICIDE AND MUTILATION

## CHAPTER I

### General Principles Concerning Suicide and Homicide

A Discussion of euthanasia through the use of narcotics in cases of incurable diseases periodically recurs, and the opinions of those in favor of putting the patient out of his misery are expressions of mere sentimentality, as in Maeterlinck's essay, *Our Eternity*. They think either that the passing of a law by a legislature removes all moral difficulty, or that morality is a trifle which should never stand in the way of expediency. Those who oppose this method of euthanasia base their argument, first, on the fact that many patients supposed by even clever diagnosticians to be incurable recover health; and, secondly, on the fact that the giving power of life and death to physicians is liable to grave abuse. This side misses the central truth and argues from accidental and secondary premises. Whether it is expedient, humane, or impolitic to kill incurable patients are almost irrelevant considerations: the fundamental question to be answered here is, Is there a Supreme Being who alone is master of life, to give it or to take it?

By its very definition such a Being is necessary (as opposed to contingent), self-existent; its essence always has been and always will be actualized into existence, and that from itself alone; it is an individual substance of an intelligent nature, and therefore a person. A contingent being is one that happens to be (*contingere*); it is of necessity neither existent nor non-existent; it has no logical aversion to existence, but in itself it has no more than a possibility

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of actuality. A necessary Being, on the contrary, essentially must be; it cannot not be; it is absolutely and essentially its own existence.

There must be such a Necessary Being. If there were not, all things would be contingent, which is an absurdity. The absurdity arises from the fact that if all things were contingent nothing would be actual, nothing could ever come into existence, because there would be nothing to bring the primitive potentiality of the contingent beings into actual existence. The sufficient reason for the existence of contingent beings is either in themselves or in something outside themselves. It cannot be in themselves, because as they do not yet exist they are nothing; therefore it is in a Being which is not contingent, but whatever is not contingent is necessary. Therefore the existence of contingent beings absolutely requires the existence of a Necessary Being, which always was in existence. The ordinary name for this Necessary Being is God. Contingent beings are all creatures, all organic and inorganic beings without exception. There is, then, a God, the first cause or creator of all contingent beings, among whom is man; and since God created man wholly, this creature is wholly subservient to God, under the dominion of God, and his life is owned solely by God; God alone is the master of life and death, and he alone can delegate such mastery.

From the relation between the Creator and the creatures arises the natural law. Violation of this law is the source of all moral evil in the world, and of much of the physical evil. Reason shows us this law, and the method of observing it; and reason and unreason, observance or disregard, of the order fixed by the natural law are the foundation of happiness and unhappiness. Whatever a human being is or does, he must seek happiness; that is an essential quality of his being. Happiness is the satisfying of our desires; but as our desires are limitless, only

infinite good can satisfy them. The sole sufficient good that sates all human longing is the infinite Necessary Being, and to be happy we must be united with that Being. Obviously the only possible method of possessing

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this infinite God is through mental union, by undisturbable contemplation of his infinite truth, goodness, being, beauty, and his other attributes. If perfect, everlasting happiness is not in that, in what can it be? Is it in human fame, honor, riches, science, art, man, woman, or child? None of these can give *lasting* happiness, and no other happiness is real happiness.

Now, the only means we have to obtain union with infinite good is to follow out the condition inexorably placed by God, which is to act in life in keeping with right reason, to obey the law. Man's supreme honor is in freedom from the tyranny of unreason, and in a full obedience to external and immovable order, with the belief that his chief duty is to apprehend and to conform thereto.

This is morality. From the beginning men have held that certain acts are wrong and to be avoided, and that others are to be done. What is wrong, moreover, is such of its own nature, not from our will: we deem the fulfillment of duty, obedience to law, the first, highest, and last necessity of life. If we deny this truth we let in chaos. What is right or wrong is one or the other on its own merits, prescinding from its pleasurable or pain.

We must seek good whether we will or not. Good is the sole object upon which the will operates, it is the raw material of the will's business. The ultimate standard of this good is God himself as its exemplary cause, but proximately the standard of moral good is our rational nature. Through our reason we judge whether a thing is good or bad; that is, whether it perfects or injures us; and as it is good or bad for us our will's tendency toward it is good or bad. Many acts are indifferent in themselves, but take on a good or bad quality from our intention; others are good or bad in themselves apart from our volition: charity is good, lying is bad, whether they are willed by us or not.

The morality of any action is determined (1) by the object of the action;

(2) by the circumstances that accompany the action; (3) by the end the agent had in view.

1. The term *object* has various meanings, but here it

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means the deed performed in the action, the thing which the will chooses. That deed by its very nature may be good, or it may be bad, or it may be indifferent morally. To help the afflicted is in itself a good action, to blaspheme is a bad action, to walk is an indifferent action. Some bad actions are absolutely bad; they never can become good or indifferent—blasphemy or adultery, for example; others, as stealing, are evil because of a lack of right in the agent: these may become indifferent or good by acquiring the missing right. Others are evil because of the danger necessarily connected with their performance,—the danger of sin connected with them, or the unnecessary peril to life. An action, to have a moral quality, must be voluntary, deliberate; and mere repugnance in doing an act does not in itself make the act involuntary.

2. Circumstances sometimes, though not always, may add a new element of good or evil to an action. The circumstances of an action are the Agent, the Object, the Place in which the action is done, the Means used, the End in view, the Method observed in using the means, and the Time in which the deed is done. If a judge in his official capacity tells a sheriff to hang a criminal, and a private citizen gives the same command, the actions are very different morally because of the circumstance of the agent giving the command. The object—it changes the morality of the deed whether one steals a cent or a thousand dollars. The place—what might be an offensive action in a residence might be a sacrilege in a church. The means—to support a family by labor or thievery. The end in view—to give alms in obedience to divine command or to give them to buy votes. The method used in employing the means—kindly, say, or cruelly. The time—to do manual labor on Sunday or on Monday. Some circumstances aggravate the evil in a deed, others excuse or attenuate it. Others may so color the deed that they specify it, make it some special virtue or vice. The circumstance that a murderer is the son of the man he kills specifies the deed as parricide.

3. The end also determines the morality of an action. Since the end is the first thing in the intention of the agent,

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he passes from the object wished for in the end to choosing the means for obtaining it. Without the end the means cannot exist as such. There are occasions when an end is only a circumstance: for example, if it is a concomitant or extrinsic end. When this extrinsic end is in keeping with right reason or when it is discordant thereto, it may become a determinant of morality. In every voluntary, or human, act there is an interior and exterior act of the will, and each of these acts has its own object. The end is the proper object of the interior act of the will; the exterior object acted upon is the object of the exterior act of the will; both specify the morality, but the interior object or end specifies more importantly, as a rule, than the exterior object does. The will uses the body as an instrument on the external object, and the action of the body is connected with morality only through the will. We judge the morality of a blow not by the physical stroke, but from the intention of the striker. The exterior object of the will is, in a way, the matter of the morality, and the interior object of the will, or the end, is the form. Aristotle said: "He that steals to be able to commit adultery is more of an adulterer than a thief."<sup>[1]</sup> The thievery is a means to the principal end, and this principal end chiefly specifies or informs the action.

The means used to obtain an end are very important in a consideration of the morality of an act. There are four classes of means—the good, bad, indifferent, and excusable. Good means may be absolutely good, but commonly they are liable to become vitiated by circumstances,—almsgiving is an example. Some means are bad always and inexcusable—lying, for instance. The excusable means are those which are bad, but justifiable through circumstances. To save a man's life by cutting off his leg is an excusable means. The end sometimes may vitiate or hallow indifferent means, but it does not in itself justify all means. Means, like other circumstances, are accidents of an action, but they are in the action just as much as color is in a man. Color is not of a man's essence, but we cannot have a man without color.

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The effect of an action, the result or product of an effective cause or

agency, may in itself be an end or an object or a circumstance, and it has influence in the determination of morality. Sometimes an act has two immediate effects, one good and the other bad. For example, ligating the blood-vessels going to the uterus to stop a hemorrhage and so save a woman's life, a good effect, has also in ectopic gestation while the fetus is living another immediate effect, namely, to shut off the blood supply from the fetus and so kill it, a bad effect. To make such a double-effect action licit there are four conditions which are explained in the chapter on Mutilation.

The doctrine of Probabilism is very important in morality. Any law must be promulgated before it really becomes a law, and promulgation in a rational conscience is sufficient. Sometimes there is rational doubt of the existence, the interpretation, or the application of a law in a given case. Here probability is the only rule we can follow. A law which is doubtful after honest and capable investigation has not been sufficiently promulgated, and therefore it cannot impose a certain obligation because it lacks an essential element of a law. When we have used such moral diligence as the gravity of the matter calls for, but still the applicability of the law is doubtful in the action in view, the law does not bind; and what a law does not forbid it leaves open. Probabilism is not permissible where there is question of the worth of an action as compared with another, or of issues like the physical consequences of an act. If a physician knows a remedy for a disease that is certainly efficacious and another that is doubtfully efficacious, he may not choose this probable cure. Probabilism has to do only with the existence, interpretation, or applicability of a law, not with the differentiation of actions. The term probable means provable, not guessed at, not jumped at without reason. The doubt must be positive, founded on reason, not a matter of mere ignorance, suspicion, emotional bias. The opinion against a law to permit probabilism must be solid. It must rest upon an intrinsic reason from the nature of the case, or an extrinsic reason from authority, always supposing the authority is really an authority. The probability is to be comparative

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also. What seems to be a very good reason when standing alone may be weak when compared with reasons on the other side. When we have

weighed the arguments on both sides, and we still have a good reason for holding our opinion in a doubtful case, our opinion is probable. The probability is, moreover, to be practical. It must have considered all the circumstances of the case.

There is, then, a Supreme Being whom we *must* obey, who created and owns human life primarily; there is also a moral law. On these facts rests the argument relating to the destruction of human life. How far, then, has a human being dominion over his own life, and, secondly, over the life of any one else?

St. Thomas,<sup>[2]</sup> Lessius,<sup>[3]</sup> and others offer as one argument to prove suicide is not licit, that it is an injury to society or the state of which the suicide is part, and to which the use and profit of his service rightly belong. Lessius, while developing this proof, acknowledges its weakness.

If there were only one man in the world, and no society or state, suicide would still be illicit, because its basic deordination lies deeper than society or the state. If suicide were a moral evil solely because it deprives the state of the suicide's life, then for the same reason no one might become a citizen of another state, emigrate, nor might man abandon society and live as a recluse. Moreover, if a man were detrimental to the state rather than beneficial, in this point of view that fact alone would justify suicide, and the state would then be justified in permitting or even commanding suicide; and we shall show later that the state has not this power.

It is true that the injury done the state or society by loss of use and profit, by scandal and similar evils, is a solid argument against suicide, as such injury aggravates the deordination of suicide, but in itself the injury done to the state and society is not the fundamental reason against suicide.

St. Thomas<sup>[4]</sup> argues against suicide because it is contrary to the charity a human being should have for himself. This

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is true ordinarily, and suicide takes on part of its guilt just because it is an offence against the regard a person should have for himself;

yet this argument is not basic. We are told that if one sins against charity in killing his neighbor, *a fortiori* he sins in killing himself. Yet suppose just what the advocates of euthanasia suggest, viz., that a neighbor is in great agony and incurable: then the act of killing him takes on a quality of charity rather than of uncharity. And so for the suicide: if the patient is willing to be killed, there would be no uncharity; if he were unwilling, then homicide in any form would be uncharitable and unjust. The argument from charity, therefore, is too narrow to fit the whole case; and its very weakness is a source of error for the advocates of euthanasia.

Still another argument is often advanced against suicide, viz., that a man is obliged to love his own life, since it is the foundation, or the necessary condition, to him, of all good and every virtue, and this circumstance makes the destruction of that life unlawful. That argument has solid truth, but if it held absolutely it would prevent us from desiring death in any case, and no one denies that there are conditions in which a desire for death is fully legitimate. No desire for death, however, can give the slightest justification for the destruction of life.

Again, the argument that suicide is cowardice is not broad enough. Fortitude is a mean between fear and rashness, and this argument maintains that the suicide sins against fortitude by rashness. If we have good reason it is not rash to expose ourselves to death; the soldier may do so, the person struggling to save a neighbor's life, and so on; it may be the highest form of fortitude thus to expose oneself to death. If the suicide can persuade himself that by his act he is seeking greater good than the life he possesses he would have reason for his act, and at least be above cowardice. This argument is one that can be turned at times so as to cut the fingers of the man that uses it. The fundamental reason that suicide is not lawful is that man cannot be master of his own life, and therefore he may not dispose of it as he pleases.

Suicide is the direct killing of oneself on one's own authority.

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A killing is *direct* when death is intended as an end, or chosen as a means to an end. Direct killing is positive by commission, or negative

by omission. In such cases the will directly rests in the death as a voluntary and free act. A killing is *indirect* when the act of which death is the effect by its nature and the intent of the agent is directed toward another end, but concomitantly, or as a consequence, results in death. In such case death is an accidental effect, and comes indirectly from the activity of the will—it is not necessarily voluntary. If one has a right to do that other deed, or if it is his duty to do it, and there is a proportion between it and his life, he may do the deed and permit the consequent death.

A direct homicide may be done on one's own authority, or on that of another person. It is done on one's own authority if the agent assumes a natural individual dominion over life, and by virtue of such dominion directly kills himself or another; it is done on the authority of another when a man directly kills himself or another by the mandate of a positive divine or human law, and in the name and on the authority of a positive divine or human legislator. It is evident that God, as Creator, has supreme dominion over human life, and therefore by his positive authority he may command a man directly to kill himself. God, however, does not by the natural law confer on man the right thus to kill. The question here is of the natural duty or right which comes from the natural law alone.

Direct suicide on one's own authority may happen in two ways: positively, that is, by doing an act which is directly homicidal; or negatively, by omitting an act necessary for the preservation of life. That a negative homicide be direct, death must be intended as an end or means. If, however, one voluntarily intends an end or a means, but for the sake of antecedent good or evil omits some act necessary to preserve life, his suicide is indirect, *per accidens*, and not always illicit unless there is a precept against just such an omission. Man has no dominion over his own life, he has only the use of it; and the natural law obliges us while using a thing which is under the dominion of another not to omit ordinary means for its preservation. We are not, however, held to extraordinary

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means. His own death is criminally imputable to him who negatively and indirectly kills himself by omitting the ordinary means for

preserving his life, because the precept he is under to preserve his own life makes his act voluntary. If he omits extraordinary means, the death is not criminally imputable to him because there is no precept obliging such means. Certain circumstances may by accident oblige one to use extraordinary means to preserve one's own life—a dependent family, a public office in perilous times, or the like. The proposition, then, is: The natural law does not give a man absolute dominion over his own life.

I. The natural law gives no rights except such as are finally founded in human nature itself; but human nature cannot give a title to dominion over one's own life; therefore the natural law does not give man such a right.

Every natural right is either congenital or acquired. The title to a congenital right is human nature itself; the title to an acquired right is some act consequent to the exercise of human activity. The right to such exercise is, in turn, congenital and founded in human nature.

If nature established the title to dominion over one's own life it would thereby establish the power of destroying that life, and thus of removing the fundamental title to all rights; but nature exists as the foundation for rights, not for the subversion of rights; therefore human nature cannot give a final title to dominion over our own life.

Again, this minor of the first argument is confirmed by the fact that if nature even remotely established the power of self-destruction there should be in nature itself some natural tendency to such destruction, but the direct contrary is the fact.

II. The natural law cannot grant a right to man which is not a means to the common end of human life; but absolute dominion over one's own life is not such a means, therefore the natural law cannot give one dominion over his own life.

The natural law is only an ordination of man to that common end of human life and to the means toward that end. As regards the minor of this second argument, an absolute dominion

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over his own life would give man power to stop all his human activity,

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