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A Catholic View of Mercy Killing

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According to a still extant truism, this article would appear to be mistitled. As the truism has it, there is only *the* Catholic opinion on mercy killing; to speak of *a* Catholic opinion, thus implying the peaceful coexistence of other opinions, would appear to be a contradiction in the terms of monolithic Catholicism. The truism, however, is false. There is vigorous dispute among Catholics on this issue, as indeed there is on all issues of contemporary moral debate.

The truism, of course, was grounded in a position commonly identified as the Catholic position. Pope Pius XI was speaking for a long-dominant ethical tradition when he said: "What could ever be a sufficient reason for excusing in any way the direct murder of the innocent?" Pius XII, using the same categories, condemned the "deliberate and direct disposing of an innocent human life." Thus one could morally kill an aggressor in self-defense if there were no less drastic alternatives, but one could not directly kill innocent life (that is, intentionally will it, as either an end or a means). Obviously, this rubric effectively drummed out of court any possibility of moral abortion or moral mercy killing. Both were seen as direct killing of the innocent and, as such, were considered murder.

This tradition, however absolutely opposed it was to the direct termination of life, was rather nuanced and advanced regarding the indirect termination of life. As the Catholic theologian Joseph V. Sullivan put it, indirect action "may be defined as an action or omission having some other immediate effect in addition to the death of a person. Such a death, even when foreseen to follow an act, need not be intended in itself, but can be merely permitted." (*The Morality of Mercy Killing*, The Newman Press, Westminster, Md., 1950) This distinction may seem unduly donnish, but the results of it were often quite practical. For example, one could give a large dose of sedative to a patient though it was foreseen that the dose would probably accelerate the dying process. Bringing on death more quickly was only being *permitted* and thus *indirectly* willed and so, in this view, could be deemed moral. Closely related to this was the papally endorsed teaching that only ordinary means need be used to prolong life. Extraordinary means were any means that involved a grave burden for oneself or for another. If a comatose patient was being maintained by a respirator, and it was clear after several days that the loss of consciousness was



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permanent, it would be morally right to "pull the plug," that is, to stop the respirator. As Cardinal Jean Villot, Vatican Secretary of State, put it in his address to the International Federation of Catholic Medical Associations in 1970:

... a medical man does not have to use all the techniques of survival offered him by a constantly creative science. In many cases would it not be useless torture to impose vegetative resuscitation in the final stages of an incurable sickness? The doctor's duty here is rather to ease the suffering instead of prolonging as long as possible, by any means whatsoever and in any condition whatsoever, a life no longer fully human and which is closing to its natural end ...

Therefore, it can be seen that this particular Catholic position, though it put the direct termination of nonaggressive life under a taboo, was quite sensitive to the human moral right to a good death. It defended our right to die without the oppressive intrusion of unavailing heroics. In this regard, this venerable teaching is far ahead of the ethical positions enshrined in current American legal structures, where even the suspension of extraordinary means remains enmeshed in legal ambiguity.

I have accepted the invitation to offer a Catholic viewpoint on mercy killing.* My position is this: In a medical context, it may be moral and should be legal to accelerate the death process by taking direct action, such as overdosing with morphine or injecting potassium, and so on. *A fortiori*, the use of extraordinary means is morally optional. I have argued this position extensively in my book *Death by Choice* (Doubleday, Garden City, N.Y., 1974). Here I will incorporate my position into a demonstration of the fact that it is compatible with historical Catholic ethical theory.

Catholics and Situation Ethics

It is difficult to speak of anyone's relationship to "situation ethics," since situation ethics is a clumsy umbrella term that covers many disparate ethical methodologies. The Catholic scene illustrates the equivocal nature of the term. In 1956, the Holy Office issued an instruction saying:

... in order to safeguard the purity and security of Catholic doctrine, this Supreme Sacred Congregation of the Holy Office forbids and prohibits this doctrine of "Situation Ethics" by whatever name it is designated, to be taught or approved in Universities, Academies, Seminaries and Houses of Formation of Religious, or to be propagated and defended in books, dissertations, assemblies, or, as they are called, conferences, or in any other manner whatsoever.

On the other hand, we find the priest-theologian Louis Monden, S.J., writing that, with all the proper distinctions having been

*I eschew the term "euthanasia" whenever possible because I find it so scarred by variegated usage. For many people, it inexorably connotes Nazi euthanasia practices. Some use it to refer to both direct or indirect causation of death. Others say that it means only the cessation of extraordinary means in the contemporary context. A word that means so much to so many is somewhat out of linguistic control. The adjective "beneficent" redeems it somewhat in this journal, but not sufficiently, in my judgment.

made, "We must clearly affirm with the great classical authors that Catholic morality is, in fact, a *situation ethics*." (*Sin, Liberty, and Law*, Sheed and Ward, New York; 1965) What Monden is saying here is really self-evident. There can be no ethics that does not assess the moral significance of the situation being judged. In the classical just-war theory (which has long been held in honor in Catholic thinking), for example, one could not tell a just war from an unjust one without analyzing the situation and seeing what moral meaning was contained in the empirical realities of the conflict in question. In a word, no system of ethics could know the morality or immorality of an action or a process without being sensitive to the situational factors that make up the reality of the case. Whether one is killing out of self-defense or out of lust makes for a different situation and different moral meaning. If that is situation ethics, then all ethics is situational by the very fact that it must assess the morality of *situationed* persons.

Thus Thomas Aquinas is speaking rudimentary good ethical sense when he says, in *Summa Theologiae*, "human actions are good or bad according to their circumstances." In the sense that all ethics is situation ethics, Aquinas is also a situationist in ethics. He recognizes that circumstances make a difference in the morality of concrete situations.

There is, of course, a strong temptation to ignore this rudimentary insight into the morally differentiating meaning of circumstances. Making distinctions where there are differences is good logic and good ethics; but, in cases where we sense great possibility of abuse, the moral community frequently retreats to the simplism of taboo. The taboo mentality considers certain classes of actions as bad "regardless of the circumstances." The stimulus for taboo comes from the perceived security of knowing that what cannot be used cannot be abused. Taboo lifts a particular kind of conduct out of real, distinction-making ethics and puts it under an undifferentiating ban and proscription.

This is what has been done regarding mercy killing in many moral communities, including the Catholic community. It is the singular lot of humankind to know the prospect of death and to stand in awe of it. For the theist and the atheist, death sustains its mystery. This mystery can only be pierced by entering the experience, but we hesitate, quite naturally, wondering with Hamlet what awaits us in the sleep of death. On the battlefield, of course, the primitive instincts of vengeance and of anger born of threat blunt our sensitivities before the dread fact of death. But off the battlefield, in situations where compassion, not anger, is the dominant emotion, we shy from choosing death for ourselves or for others. This instinct is a good one. It is an instinct to be fortified with reflection. It is not, however, an instinct to be frozen into indeterminate taboo.

Taboo knows no exceptions, and that is its weakness. But life, which ethics seeks to evaluate, is marked by both the regular and the exceptional. Such is our reality. Not to recognize either rule or exception is to become unreal, or, in ethical terms, immoral. Rules and exceptions both serve human life. If being moral is loving well—and I submit that it is—then it must be experienced in life and manifested in ethics that love dictates both rules and exceptions to them. Neither rules nor exceptions enjoy a primacy. It is life, which is both regular and exceptional, that is primary.

Applying this again to the question of mercy killing, let it be said that it is a good commendable principle to care for the dying. We should company with them, anticipate and meet their needs. Though dying is natural, it is rarely easy. In a Faustian, can-do culture, such as that which dominates in the United States, gravely ill persons can succumb to the pragmatic heresy that usefulness, productivity, and dignity are as one. The duty of those who are

living and well to those who are living and dying is to help them experience their dignity and possibility to the end. They are still capable of the distinctive activities of personhood. They can receive and give love; they can laugh and respond to beauty; they can still create and care and console. If we must descend to pragmatic language, then let it be said that their lives are still useful. The principle here then is: care for, cherish, and preserve the life of dying persons. And that principle is a good one—but the aspect of preserving life is not an absolute.

Here let us turn again to the thought of Thomas Aquinas. Principles, Thomas taught, are of two kinds: those that have no exceptions and those that do. The exceptionless principles (which Thomas called the primary precepts of the natural law) include such things as "do good and avoid evil" and "act reasonably." The problem with such principles, of course, is that they do not contain information about what is good or evil or reasonable. They are so uncontaminated with particularizing and complicating content that they can well afford to be exceptionless. So Thomas leaves them quickly and goes on to the secondary principles, or to what could be called practical moral principles. These principles contain some complicating content. They are: Do not kill; do not take people's property; tell the truth; and so on. These principles are applicable most of the time (*in pluribus*); in particular cases (*in aliquo particulari et in paucioribus*), they may not apply.

As an example, Thomas notes that it is a good principle to return things to their owner. However, enter the morally significant circumstance of the owner's intention to do serious harm with the object held, and the principle can be seen as nonapplicable. In effect, a value that is more important *in this situation* takes precedence. This, says Thomas, is the way of all ethics. Monogamy is clearly a value in Thomas' thinking, and it may be expressed as a principle. Yet even here, he notes, particular circumstances may in fact permit a plurality of wives.

According to this theory, therefore, one could say that the principle of caring for and preserving the dying person's life gives a firm rule of conduct *in pluribus*, but *in aliquo particulari* this good principle may cease to apply. In particular cases, caring for and cherishing the dying patient may mean *not* preserving him in a life he can no longer sustain.

The decision here is, of course, the patient's, as long as the patient is mentally competent to make it. It falls to someone else to decide only by default, when the patient cannot make the decision and has not in advance provided for what decision he or she would like made in specified circumstances. When the patient is permanently unconscious and no such prior provision has been made, the decision falls to those who are really or equivalently the next of kin in emergency situations. Legal safeguards for this moral situation would have to attend carefully to the ever possible conflicts of interest and other possible abuses. To say that law could never guard against all the possible abuses of such an extension of moral freedom and that therefore mercy killing should be considered immoral always and everywhere is to fall under the indictment of the ancient adage: *qui nimis probat, nihil probat* (he who proves too much, proves nothing). This is the hackneyed argument of the legal rigorist, who feels that only frozen categories are safe. (In moral language, it is the argument of the tabooist.) It is the argument that has been thrown against the legalization of every advance of human freedom in the history of mores and of law. It is, for example, the argument that was used against conscientious objection until the Quakers beat it down in England in 1802. It is the argument that is still used against selective conscientious objection in the United States. It is an argument that must be listened to, for it is sensitive to dangers that reformists might

underestimate. But it is an argument that attempts to prove too much, and, as such, is flawed.*

Therefore, it can be seen that the Catholic ethical tradition is not lacking in contextual sensitivity (I prefer "contextual" to the ambivalent "situational"). This tradition, as any viable ethical tradition, allows for the import of morally meaningful, empirical variables. By whatever name, this appreciation is indispensable to ethics. More to our point, it gives no aid and comfort to those who would wrap an absolute negative around the subject of mercy killing.

Catholics and Moral Ambiguity

The Catholic position that condemned all mercy killing, because it is the direct taking of innocent life, is liable to several charges of theoretical deficiency. For one thing, it made the categories of directness and indirectness carry more moral freight than they could bear. Whether one intends to inflict death as a means or end, or whether one permits it as an unavoidable consequence of another necessary action, does indeed make for some morally significant differences. The distinction could be ignored only at the peril of skewing ethical analysis. However, recent Catholic thinkers have been stressing that, more important than directness or indirectness, is the question of whether there is proportionate reason to permit or intend a death. This rubric was always present in the traditional Catholic ethics. In much writing, however, it was effectively submerged under the directness/indirectness issue. Significant Catholic writers are now pointing this out, and this opens the way to a revolution in Catholic thinking in areas such as mercy killing.

Proportionality is not as easily determined as psychological directness or indirectness. Whether or not in certain circumstances continued living is preferable to death is much more difficult to ascertain than deciding whether one is intending or permitting death. The move to a renewed stress on proportionate reason as central to ethical analysis is a move to greater ambiguity. It is also a move that is not congenial to taboo thinking, characterized as this is by a complete lack of ambiguity. The old certitude that accelerating the death process was always wrong must yield to an agonizing and never translucent assessment of whether or not there is proportionate reason to induce death. The appreciation of ambiguity, however unsettling, is nonetheless the badge of moral maturity.

For Catholics, it is also a return to a tradition and history that in its finer moments came to grips with the undefeatable ambiguity of many concrete moral questions. Because of the penitential practice of confession, Catholic moral theology had to speak to the problem of uncertain conscience. What was to be done when there was an insoluble dispute about a specific issue of morality where there were good reasons and good expert moralists on both sides of the debate? Various so-called moral systems developed to meet this problem. One system, "absolute tutiorism" (from the Latin *tutior*), taught that an opinion that expands one's moral freedom may never be followed unless it is clearly *certain*. According to this system, when there was a debated moral issue, one had to stay with the more rigorous and conservative side of the debate until all doubt was cleared up. Even though the liberal opinion had strong authority behind it and was supported by many good arguments, one could not act morally in this view unless all doubts that the

*By way of self-defense and not of advertisement, I must call attention to the fact that I treated the various objections to mercy killing, where one decides for one's self and where one decides for another, in chapters six and seven of *Death by Choice*. There, space permitted me to attend to more of the complexities of these matters.

opposing view was false were dispelled. This system was condemned on December 7, 1690, by Pope Alexander VIII. The significance of this condemnation should be obvious. It constituted a papal acknowledgment of moral ambiguity and a notable endorsement of human moral freedom.

Another system, which came to be known by the unflattering name of "laxism" (several of whose defenders won the title "the prince of the laxists"), taught that in a debated issue, any opinion that enjoyed even the most tenuous probability could be followed in good conscience. This opinion was also condemned by the Church.

Between these two systems many others flourished, encumbered by such names as mitigated tutiorism, probabiliorism, equiprobabilism, compensationism, and probabilism. Probabilism ultimately prevailed, and its success and very general acceptance in the Church is worthy of note.

Probabilism taught that on a debated issue one was free to act on a position that enjoyed solid probability even though it appeared that the more rigorous opinion was even more probable. Solid probability was determined by the presence of good and serious reasons (intrinsic probability) or by representative support of respected moralists (extrinsic probability).* The cardinal principles of this system were *lex dubia non obligat* (a doubtful law does not oblige) and *ubi dubium ibi libertas* (where there is doubt there is freedom). Thus, on a debated issue, one could adopt and act on one probable opinion among many, even though other opinions were admittedly more probable. Clearly, probabilism is a very liberating theory and, although its insights are not sufficiently represented in modern official Catholic pronouncements on specific moral issues, it remains a solid resource of the Catholic heritage.

As one quite traditional Catholic moralist, Father Henry Davis, S.J., put it, in *Moral and Pastoral Theology*:

In its ultimate analysis, Probabilism is common sense; it is a system used in practical doubt by the majority of mankind. People rightly say: I am not going to debate all day before acting in doubtful matters; there must be some very obvious way of making up my mind. At all events, if I cannot make up my mind for myself, I will act as some good people act, though many other good people might disapprove. That practical solution of doubt is common sense, and it is Probabilism.

The subject of mercy killing today is entering into rapidly expanding debate. Serious and grave reasons and objections are offered on both sides of the issue. Drawing from the Catholic tradition of probabilism, I would say that the position favoring the possibility of moral mercy killing in certain circumstances is more probable by reason of its intrinsic reasons and the inadequacy of the opposing objections. More moralists are beginning to concede this, and I judge that this is the beginning of an irreversible trend.

Because the more fruitful resources of Catholic moral thought have been eclipsed by some recent and actually atypical rigidities in Catholic ethics, many may be surprised to find that Catholic history offers some wise and properly liberating ethical alternatives. These resources will, I believe, be brought increasingly to bear on the opening debate on mercy killing.

*Some theologians taught that in some cases, even one author "of serious and great name" could constitute a probable opinion. In the background of all this discussion was the possibility that the Church would step in and condemn a particular opinion. Since such an intervention by the official magisterium would be fallible, however, the "probability" could perdure. See my essay "Moral Absolutes and the Magisterium" in *Absolutes in Moral Theology?*, Charles Curran, ed. (Corpus Books, Washington, D.C., 1968). In this essay, I argued that it is not meaningful to say that the Church is infallible in determining concrete ethical truth. I have not met much opposition to this view.