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G. J. McAleer: *To Kill Another: Homicide and Natural Law*

Daniel P. Maher

Assumption College, dmaher@assumption.edu

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Book review by Daniel P. Maher

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G. J. McAleer, *To Kill Another: Homicide and Natural Law*

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Every human community reveals something essential about itself by the manner in which it distinguishes legitimate from illegitimate killing of human beings. We commit ourselves to an understanding of life and, more important, we shape our own lives when we delimit who may be killed, by whom, and for what reasons. Graham McAleer brilliantly focuses on the fact that in recent decades Western democracies have drifted away from a tradition in which public authority alone retained the privilege of intentional, lethal force. As it has become more common to deny that war can be just and to reject capital punishment as barbaric, we see increasing acceptance—even institutionalized embrace—of *private* homicide, especially medically controlled killing. Justice Harry Blackmun, who gave us *Roe v. Wade*, “also refused to sign any death warrants lest he become part of the ‘machinery of death.’” We now shield criminals by law, while the innocent and defenseless are eliminated on private authority in accord with law.

McAleer persuasively traces this shift to our having adopted “the mistaken ethics of humanitarianism.” Humanitarianism is “an emotional sensibility” according to which loving (or caring) means eliminating all suffering and pursuing egalitarian justice. Christian love, by contrast, takes the form of *sacrifice* “wounding the lover,” accepts that we cannot be invulnerable, and even finds suffering good. Humanitarianism denies any authority above the human individual, and so it excludes God as constituting the most objectionable form of hierarchy. McAleer argues that by doing so humanitarianism abandons moral realism, forfeits the rule of law, and ultimately becomes “a prop for totalitarianism.” Indeed, appropriating themes from John Paul II, McAleer asserts, “Law without God collapses into a homicidal humanitarianism.” McAleer thus portrays what Daniel J. Mahoney has called the “double logic” of modernity: the liberation of man from a despised dependence on God toward full self-sovereignty actually terminates in the systematic degradation of human life by totalitarian regimes. McAleer responds to this complex movement by articulating a “political theology” to combat humanitarianism’s false account of the emotions and its elimination of God from law and politics.

McAleer also presents his book as an “*extended commentary*” on the eight articles of Aquinas’s treatment of homicide (*Summa Theologica* II-II, q. 64). This extended (as opposed to *extensive* or *exhaustive*) commentary amounts to a non-exegetical analysis of contemporary problems related to homicide with the aim of illustrating and defending the principles of Thomistic jurisprudence today. McAleer imitates Francisco de Vitoria, who produced the last such commentary on Aquinas’s treatment of homicide in Spain in the 1530s. McAleer supports his claim that Aquinas and Vitoria together have developed the best available theory of homicide by choosing a series of contemporary topics—such as NATO bombing in Kosovo and the surgical separation of conjoined twins—and using them to illustrate the moral and legal superiority of their natural law to humanitarianism. A strong defense of the privilege, reserved to political authority, to kill intentionally only the guilty exceeds in justice, in mercy, and in decency a humanitarianism that tends inevitably toward the destruction of the innocent.

McAleer considers his book “*applied*” theological ethics focused on *our* political and legal problems. His goal is not merely to throw theological light on the issues; no, he means to slay the humanitarian dragon, and this requires more than simply explicating scholastic quodlibets. McAleer channels Aquinas and Vitoria through a discourse and a set of concerns drawn from Adam Smith, Carl

Schmitt, Max Scheler, Aurel Kolnai, Pope John Paul II, and Albert Camus. He regards the Munich School of Phenomenology (including Scheler, Kolnai, and John Paul) as the “crucial platform for contemporary Thomism.” McAleer’s interests are emphatically though not exclusively those preoccupying Catholic theological ethics, and he structures his thinking with categories and themes distinctively associated with the Hungarian-born, moral phenomenologist and political theorist Kolnai. The principal voice for humanitarianism is Peter Singer, but he also draws on anarchists like Max Stirner and Mikhail Bakunin. It is not misleading to think of the book as a confrontation between contemporary humanitarianism and McAleer’s phenomenological Thomism on the relation of God to law as manifested in the problem of killing.

McAleer devotes each of eight chapters to a topic that allows him to uncover the fault lines between the tradition we have inherited and the humanitarianism we find so seductive. Although he casts each chapter as argumentatively discreet, the first contains the most complete sketch of the moral theory he assumes throughout and has expressed more fully in *Ecstatic Morality and Sexual Politics* (Fordham, 2005), to which he refers often. Anyone not familiar at least with a good deal of contemporary Thomism, Scheler, and Kolnai will likely stumble coming to terms with McAleer’s thinking. This book does not introduce that thinking but applies it. Within each chapter and within each paragraph, it is as if McAleer has a dozen or more windows open on his computer desktop (one featuring Scheler, another Vitoria, another Singer, and so on), and he might, at any moment, jump to any one of his main interlocutors or to any of a number of others who play smaller roles. The polyphonic effect is impressive but often disorienting, and one wonders about the ultimate coherence of the whole. Still, he displays great learning in the range of his sources, even if his deployment of them burdens the reader somewhat. Over the course of the book it becomes easier to see where McAleer sits at the center of all this. Ultimately, readers *observe* McAleer’s thinking more than they encounter the argument that might lead them to share that thinking.

After this overview, it seems appropriate to describe the contents, raise a substantive difficulty with the argument as a whole, and note some technical deficiencies.

In the first chapter McAleer extracts from two films an ill-defined moral accusation that buying diamonds makes one “complicit” in the brutality perpetrated by those who use the diamond trade to finance rebellions. Humanitarians aim to reduce the cash flow by insinuating that all diamonds share the moral taint of African “blood diamonds.” McAleer appeals to complex Thomistic distinctions relating voluntariness and ignorance in order to argue that our invincible ignorance as to the pedigree of diamonds in the marketplace renders this a non-issue. The world is not always morally clear, and our inability to prevent an evil does not make us party to it. Against the humanitarian impulse to insist on the eradication of evil by any means necessary, McAleer re-asserts that moral phenomena differ in kind (slavery is not murder, and property is not theft) and argues with Kolnai that they also differ in moral “emphasis” and thus in their claims on us.

In the second chapter, McAleer upholds the traditional state privilege to kill only the guilty, and here he criticizes forcefully John Paul II and Thomists (like John Finnis) who permit strains of humanitarianism within their Catholicism. The third chapter addresses not homicide but the legal protection against double jeopardy, especially as it has come under pressure in England in the form of emphasis on responding to victims’ suffering by ensuring punishment. McAleer asserts that double jeopardy protects the innocent from persecution through practically unlimited state resources; he offers a less compelling argument that preserving the plea is “an effort to make mercy present in criminal procedure.”

Like Chapter 3, chapters 5 and 7 treat innovations in jurisprudence. Chapter 5 examines the “wrongful life” tort, with concentration on theological and philosophical issues (Singer is the target) more than case law, to which he appeals extensively in the other two chapters. The claim at law that it could be blameworthy *not* to have killed someone to preclude present suffering seems tailor-made for McAleer’s

intentions. In the seventh chapter, he examines the case of the Maltese conjoined twins and the judicial reasoning surrounding the decision to perform an operation that was legally (and perhaps morally) equivalent to directly killing one twin. McAleer muddies his analysis by sometimes calling this a killing on private authority (with state acquiescence) and sometimes calling it a killing of an innocent ordered by state authority.

He takes up just war in chapters 4, 6, and 8. In Chapter 4, he asks whether Christianity has revealed all war as evil and addresses the issue at the more fundamental level of the relation of nature and grace. Against de Lubac, Rahner, and Millbank and with Aquinas, Cajetan, and Domingo Bañez, he defends the thesis that there is an autonomous moral realm knowable by reason "beneath" grace. This, he says, preserves the low value of war even in the presence of the higher values made known through Christian revelation. In Chapter 6, he reaffirms the sovereignty of nation-states in respect of the privilege of making war without moral permission from any international agency. In Chapter 8, he argues that the NATO bombing campaign in Kosovo and some analysts of population growth illustrate ways humanitarianism condones the killing of innocents. Bombing from high altitudes protected combatants (pilots) while virtually guaranteeing civilian casualties. McAleer characterizes these civilian deaths as "intentional . . . homicides," "murder," and "war crimes," although he calls for no prosecutions. (Unfortunately, McAleer does not also consider contemporary tactics, such as missile strikes from Predator drones.)

In his conclusion, he revisits and perhaps revises the understanding of nature and grace presented in Chapter 4. There he at least appeared to endorse Cajetan's "twofold order," which "separates natural desire from an achieved, graced holiness." He argued for an "autonomous morality that reason can know" and to which salvation is in some important sense accidental. In the introduction, he identified the autonomous moral order with natural law. In the conclusion, he says, "And in a strong sense . . . only acts that are eucharistic, acts that are Christological, stand in right order to God." It is a "mistake" to think "there is some natural normative rationality that is accessible separate from the 'sectarian' life of Christ." In the conclusion, natural law is "always sectarian" and not a common idiom of discourse with non-Christians. In this context, he reopens the question of the compatibility of killing with Christianity. In light of *Gaudium et spes*, "Perhaps now there is no Catholic natural law theory of war." Ultimately, he works his way back around to say, "Nature has a value integrity of its own to which belongs the ever present possibility of killing," but the path there is not fully clear. Somehow the solution depends upon his Christological metaphysics establishing a continuity and a discontinuity between nature and the Incarnation (supported by a "new naturalism," which sounds quasi-sociobiological: "the behavior of bacteria and primates confirms the traditional social forms captured in the order of charity"). Whereas the introduction implies that moral standards might be "sourced" both in nature and in Christ, the conclusion seems to endorse a Christocentrism that McAleer might elsewhere reject as "monistic."

The tension between the "autonomous morality" known to reason and the "always sectarian" natural law lacks a clear resolution. When McAleer endeavors to explain that sectarian character, he exhibits one of the more dissatisfying characteristics of the book as a whole. Especially when he makes properly theological arguments, McAleer resorts to oracular pronouncements that tax even a patient and sympathetic reader ("The ovum is a piece of the true Cross"). Ordinarily, these are advanced to explain and to solve problems, and while McAleer may in fact have insights that deserve prolonged reflection, he does himself a disservice with unnecessary obscurity.

Finally, one cannot overlook numerous editorial deficiencies, from clumsy grammar and punctuation to inconsistencies, inaccuracies, and omissions in citing sources. An appendix containing Aquinas's *Summa Theologica* II-II, q. 64, is unhelpful because McAleer's argument is normally so distant from Aquinas's text that associating each of the eight chapters with one article seems contrived. To mention only the most glaring problem: article 6 is omitted entirely. Together these errors bespeak a

pervasive carelessness that interferes with his intellectually serious analysis of this exceptionally interesting and urgent topic.

Daniel Maher is Associate Professor of Philosophy at Assumption College in Worcester, Mass. His research centers on ancient philosophy, especially Aristotle, and on medical ethics. Recently he published "Theory in Bioethics" in *Medical Ethics and Humanities* (Jones & Bartlett, 2010). He has also written for *Hermathena*, *Society*, *Nova et Vetera*, and *National Catholic Bioethics Quarterly*.

dmaher@assumption.edu

Daniel P. Maher, Ph.D.
Assumption College
500 Salisbury Street
Worcester, MA 01609