SPECIAL  SECTION

CATHOLIC HEALTH CARE AND STERILIZATION

The "Principle of Cooperation" Provides the Necessary Ethical Guidelines

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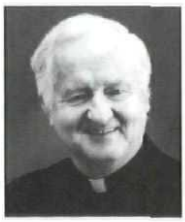
The Catholic Church in the United States has never retreated from involvement in secular culture. It follows the words of Jesus: "Render unto Caesar the things that are Caesar's, unto God, the things that are God's" (Mt 22:21). Thus the Catholic community and its leaders have sought to contribute to the common good of the United States at all levels of activity—political and economic, as well as spiritual.[1] But the Catholic community must make sure that it does not surrender values and ethical integrity as it cooperates with other people and institutions in our pluralistic culture.

Catholic hospitals are a special concern insofar as cooperation is concerned. We saw, in the September 11th tragedy in New York City, how intimately Catholic health care is involved with the life of our nation. But how far can Catholic hospitals go in cooperating with other health care providers, whether individuals or institutions, that do not share the church's value structure?

To have firm guidelines for working with those who do not subscribe to the ethical norms of Catholic health care, the Catholic community depends upon the *principle of cooperation.*[2] The purpose of this article is, first, to explain the principle, and, second, to apply it to a frequently contested question: Is it possible for Catholic health care facilities to cooperate with health care facilities or individuals that provide contraceptive sterilizations?[3]



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Two Notes

Before discussing the principle of cooperation and its application to the matter of direct sterilization, I must make two points, which, I hope, will enhance understanding of the principle. First, what are principles in moral theology? For the most part, they are general norms that, when applied to particular events or activities, offer a plan of behavior that seeks to avoid sin and foster virtue. Several different kinds of principles can be found in moral theology. Some are divine commands; others are derived from natural law reasoning based on human experience. Some are stated in a negative manner (do not commit adultery); others are stated in a positive manner (honor your parents).

The principle with which we are concerned in this investigation, the principle of cooperation, is derived primarily from human experience. It is not one of the Ten Commandments and does not emanate directly from sacred Scripture. Rather, it is a guide—developed over the centuries by moral theologians in light of Catholic teaching on the morality of human acts—that enables us to discern types of activity that we may engage in with people who perform evil actions, on one hand, from types of activity with such people that we must avoid, on the other.

One of the first theologians to provide insight into this principle was St. Thomas Aquinas. He observed that the actions we perform often have two effects, one that is good and corresponds to the moral object of the act chosen, and another that, because it is beyond the intention of the moral object, has no moral value, even though it may have a negative physical effect.[4] The principle Aquinas observed has become known as the "principle of double effect." We will later see that his insight is at the heart of legitimate cooperation because it is only in cases in which the princi-

ple is operative that one can legitimately cooperate with a person who is performing an evil act. Moral theologians who came after St. Thomas, many called "Manualists" because they sought to codify Catholic moral teaching in handbooks or manuals for confessors, tried to apply the principle of cooperation to daily life.[5]

When explaining it, the Manualists often reminded their listeners that the principle, although useful, is difficult to apply. I shall later seek to explain more thoroughly the source of these difficulties; for the moment, however, let us simply note that part of the difficulty arises from the principle's unusual terminology and the types of issues involved in decisions of cooperation. People in Catholic health care tend to consider the principle so abstruse as to be understood only by those with theological degrees. Indeed, the principle of cooperation is sometimes described as a "casuistic" principle, the intention being to discourage its use.[6] But the principle of cooperation is founded upon the nature of human acts, not upon similar cases used as paradigms for moral decisions; hence it is not casuistic. Rather than considering the principle difficult or esoteric, I will contend in this article that it is a common-sense principle and that people use it every day, although they may not realize it. The principle of cooperation can be understood and applied by anyone who takes the time to study it. In discussing it here, I will build upon the thought of the theologians of the past, avoiding, in so far as possible, the confusion that sometimes arises from the terminology and examples those theologians used.

My second point concerns contemporary theologians who question whether the principle can be used in regard to hospitals and health care corporations.[7] Such people maintain that when the principle was considered in the past, it was applied to the activities of individuals—bartenders, for example—not corporations. Of course, there were few Catholic corporations in existence when the theologians of the past wrote their treatises. However, for the past century, both the civil and church law have recognized the existence of moral persons or juridic persons—that is, corporations—possessing rights and responsibilities similar to those held by the individual.[8] When, in 1975, the Holy See issued norms prohibiting formal cooperation in the performance of direct sterilizations in Catholic hospitals, it recognized the fact that hospitals, many of which were already corporations under the civil law, might use the principle of material cooperation.[9] It seems that Jesus himself recognized the moral responsibility of juridic or moral persons when he criticized the Pharisees as a group (Mt 23:1; Mk 12:38) and when he chided the city of Jerusalem for "killing the Prophets" (Mt 23:37; Lk 13:34).

AN OPPORTUNITY FOR WITNESS

Leaders of Catholic organizations considering partnerships that might involve cooperation with direct sterilization should ask themselves:

- Have we consulted with the local bishop and explained the need for the partnership?
- Are we certain that we have separated ourselves from the promotion, performance, and management of proscribed procedures? That is, do we avoid formal and immediate material cooperation?
- If our cooperation is material mediate in nature, is there a sufficient reason to form a partnership?
- Will we be able to control or eliminate scandal?

The teaching of the church in regard to prohibited medical procedures is well developed and should not be neglected in the process of cooperating with other hospitals. However, our pluralistic society affords us few opportunities to explain clearly the reasons behind the teaching of the church; forming partnerships with non-Catholic health care providers may provide such an opportunity. As the *Ethical and Religious Directives for Catholic Health Care Services* say, "New partnerships can be viewed as opportunities for Catholic health care institutions and services to witness to their religious and ethical commitments and so influence the healing profession" (pp. 34-35). Leaders of Catholic health care organizations should realize, when they find themselves faced with an opportunity to follow the guidelines of the principle of cooperation, that the institutions of the church use this principle frequently and that life in a pluralistic society requires it.

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The Principle of Cooperation

Most of us know that it would be wrong to freely and knowingly cooperate with people or organizations that perform evil acts or to withhold actions that would prevent such acts. It would also be wrong to encourage another to perform an evil act or to agree with an evil purpose of a wrongdoer, even if no physical act of cooperation were extended or offered. Actions of this type are called *formal* cooperation and are prohibited by the moral law because they indicate a will to do or approve of evil. The logic of this teaching is obvious to everyone, not just theologians. If a Catholic hospital were to approve of direct sterilizations, allow physicians to perform such procedures on its premises, manage another facility in which the procedures were performed, or encourage other facilities to perform them, that hospital would be involving itself in formal cooperation. This is simply common sense. Helping another to perform an evil action by freely participating in it, managing it,

encouraging the evildoer, or maintaining silence when protest could prevent it—all these bespeak consent and approval of the evil action.

Some writers—observing that many hospitals, health care corporations, physicians, and patients do not consider direct sterilization an evil or unethical act—suggest that a Catholic hospital could cooperate knowingly with them because no sinful action would be taking place. Although it is true that many people involved in providing, performing, or undergoing sterilizations do not think they are doing wrong, they are not thereby absolved of it. The essence of an evil action is determined neither by the attitude or motive of the agent performing the action nor by the agent's recognition (or lack of recognition) that the action is wrong. Rather, the fundamental morality of a moral act is found in the *formal object* of the action performed (the goal of the action).[10] This fundamental morality is revealed in the question "What are you doing?" not in the question "Why are you doing it?" When we speak about evil actions, we are thus not making a judgment about the moral guilt or subjective motives of those who perform them, but only about the moral object of the action performed.

The essence of formal cooperation is easy to understand. But if cooperation is not formal, if, that is, one cooperates with an evildoer but without knowingly and willing assenting to the evil act, then one's cooperation is called *material* cooperation. How does this happen? People often cooperate with others in evil actions, either in a positive or negative manner, because of fear of what would happen if they did not cooperate.

This fear is referred to in moral theology as "duress." Duress may be personal or societal; physical, economic, or psychological; direct or indirect. In material cooperation, "the will of the cooperator does not move toward the evil action for its own sake, but on account of something else, that is, in order to avoid an evil which is feared."[11] If the person cooperating with the evildoer assents neither to the objective evil being performed nor to the evil intention of the person performing it, the cooperation is not formal but material. In other words, the cooperator contributes to the evil action under duress. If the cooperator could avoid it, he or she would do so; but, given the fact that duress is present, the cooperator does do something that helps the principal agent to accomplish evil. Many examples of people acting under duress could be cited in our pluralistic society. For example, although many Catholics are convinced that capital punishment is an evil action, they nonetheless pay taxes, which are used to support the practice. They do so because they realize that, first, even if they withheld taxes, they would not stop the practice, and, second, they might be penalized for nonpayment of taxes. Because of the penalties they might incur, they pay taxes under duress.

If one cooperates with an evildoer, but without knowingly and willingly assenting to the act, the cooperation is called *material.*

Once it is clear that one is acting from fear or duress, another element must be discerned before material cooperation can be described as either moral or immoral: the material cooperation must be categorized as *immediate* or *mediate.* Immediate material cooperation implies that the cooperator contributes something essential for the performance of the evil action. Mediate material cooperation implies that the cooperator contributes something antecedent or consequent to the performance of the evil action.[12] A few case studies may help to illustrate this significant distinction.

- Visiting her obstetrician-gynecologist, a woman says, " I am pregnant by a man other than my husband. I must have an abortion or our marriage will be destroyed." The physician refuses. " I am pro-life and would never perform an abortion because it destroys a human life," he tells her. "Could you recommend someone who would do it safely?" the woman asks. The physician says, "To protect you from a 'back alley' abortionist, I will send you to Dr. X, who performs abortions at a state-approved hospital." The physician, although not approving of abortions through formal cooperation, nonetheless performs an act of immediate material cooperation by sending the women to an abortionist. The fear prompting the physician to do this concerns the woman's welfare, not his own, but it nevertheless results in his cooperation in the abortion.
- A widowed nurse with three children is unable to find employment in any health care facility save an abortion clinic. At the clinic, she cares for patients after they have had abortions. Hence her work is consequent to the abortion process, is good in itself, and is a case of mediate material cooperation. She *could* find other, nonnursing work, and she *does* oppose abortion. Her fear of being unable to support her family has led her to cooperate in an evil action. But the activity she performs at the clinic cannot be considered essential to the evil action.
- A Catholic legislator claims to be against abortions because they destroy human life. However, he votes in favor of funding abortions for the poor at the county hospital, maintaining that "the poor should have the same access to health care as the rich." Claiming that he rejects abortion, he nevertheless helps provide an element necessary for the performance of abortions, namely funding. In this,

as in most cases of immediate material cooperation, the cooperator, although not approving of the evil action itself, performs an action that is a means to the end of that action and substantially aids or abets the performance of it.

Determining whether a cooperator's contribution to an evil action was essential to it, or only accidental, was the source of much difficulty and even disagreement in the Manualists' writings. Because mathematical certitude is not possible in assessing moral activities, interpretations of circumstances will often differ; the need for prudent discernment is therefore obvious.

Another source of difficulty in the application of the principle of cooperation is the fact that some theologians refer to essential cooperation in an evil act as *immediate material* cooperation, whereas others refer to it as *implicit formal* cooperation. Some Manualists use these terms as if they were synonymous, but they are not. The judgment that an act involves formal material cooperation is made from the point of view of the person acting, while the judgment that the act bespeaks implicit formal cooperation is made by an outside observer.[13] The former judgment resembles a decision prompted by conscience, whereas the latter one resembles a decision in a court of law. Implicit formal cooperation signifies that, even though the person cooperating maintains that he or she is not assenting to an evil action, he or she is in fact contributing to its essence in a way that causes others to believe it unreasonable to assume that there can be any other motive but assent. The case of the Catholic legislator who votes for abortion funding for the poor is an example of immediate material cooperation, which is often called implicit formal cooperation by other Catholics observing such actions. In some cases, the cooperator may declare that his or her cooperation was only accidental, although others maintain that he or she *should have known* that the action was evil. An act of implicit formal cooperation thus verges on explicit formal cooperation, but it involves an interpretation by an outside observer. To avoid confusion, one should avoid using the terms as if they were interchangeable, as was done in the Appendix of the 1994 edition of the *Ethical and Religious Directives for Catholic Health Care Services.* If one *does* refer to cooperation in the essence of an evil act as "implicit formal" cooperation, then one must mean mediate material cooperation, the only kind of material cooperation that anticipates or is consequent to the evil action.[14] Because of the antiquity of the term and because it is used in the recent revision of the *Directives* (Directive 70), I will refer here to cooperation in the essence of an evil action as immediate material cooperation, rather than implicit formal cooperation. Doing so will, moreover, avoid a legalistic imputation in an act that is primarily one of conscience.

It is important to note that although an act may be intrinsically evil, the person committing it is not.

When teaching about the morality of human acts, the church says some actions that are *intrinsically evil:* they are evil no matter who performs them and what the circumstances are because, as Pope John Paul II has said, they "are by their nature 'incapable of being ordered' to God, because they radically contradict the good of the person made in his image."[15] In *The Splendor of Truth,* he lists some intrinsically evil acts: "Whatever is hostile to life itself, such as any kind of homicide, genocide, abortion, euthanasia and voluntary suicide; whatever violates the integrity of the human person, such as mutilation, physical or mental torture and attempts to coerce the spirit; whatever is offensive to human dignity such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution and trafficking in women and children."[16]

Immediate material cooperation with this type of action is always prohibited, but it is clear that acts that are intrinsically evil may differ in their moral gravity.[17] Thus abortion is a more serious objective evil than direct sterilization, even though both acts are intrinsically evil. It is important to note, when considering the teaching of the church in regard to intrinsically evil acts, that although the act in question may be intrinsically evil, the person is not. John Paul II has indicated that even in the case of abortion, "circumstances can mitigate to a notable degree subjective responsibility and the consequent culpability of those who make these choices, which in themselves are evil."[18]

Concerning health care providers (whether individuals or corporations), the revised *Directives* say that "Catholic health care organizations are not permitted to engage in immediate material cooperation in actions that are intrinsically immoral, such as abortion, euthanasia, assisted suicide, and direct sterilization" (Directive 70). A footnote appended to this directive (n. 44) quotes a 1975 statement "absolutely" forbidding "any cooperation institutionally approved or tolerated in actions which are in themselves, that is, by their nature and condition, directed to a contraceptive end. . . . For the official approbation of direct sterilization and, *a fortiori,* its management and execution in accord with hospital regulations, is a matter which, in the objective order, is by its very nature (or intrinsically) evil." To facilitate decision making in regard to cooperation, the bishops deleted an Appendix from the 1994 edition, not-

ing that it did not "sufficiently forestall certain possible misinterpretations and in practice gave rise to problems in the concrete application of the principle."[19]

In general, immediate material cooperation in an evil act is immoral or unethical because it involves one essentially in an action that is evil by reason of its formal object. However, theologians who consider this principle usually point out that one may cooperate with an evildoer if one is under severe duress and if the evil act in question concerns material goods. These theologians would not condemn a person who assisted an evildoer in such a case, even if that assistance were essential to the evil act; they would consider it unreasonable of the material goods' owner or caretaker to require the cooperator to endanger his or her life or well-being to protect the goods. Bank depositors should not, for example, expect bank employees threatened with serious physical harm to refuse to cooperate with robbers. If they *did* insist that employees risk their lives in such a situation, the depositors would be described by these theologians as "unreasonably unwilling."

In recent times, some theologians have sought to employ this exception to all cases of severe duress, even if immediate material cooperation was involved.[20] Moreover, some theologians and ethicists maintain that Directive 70, which prohibits immediate material cooperation in intrinsically evil acts, is a pastoral, rather than a doctrinal, interpretation and therefore want to leave open to a pastor's interpretation the justification of immediate material cooperation in some cases of extreme duress. This opinion is not shared by this author, who believes that the doctrinal issue was settled by John Paul II, who said, "Circumstances or intentions can never transform an act intrinsically evil by virtue of its object into an act 'subjectively' good or defensible as a choice."[21]

If possible, both immediate and mediate material cooperation should be avoided because they bespeak an association with immoral activity, however remote.[22] In the case of mediate material cooperation, a grave cause may justify cooperation with the evildoer. As noted earlier, this is an application of the principle of double effect. If the act performed by the person cooperating is in itself good, or morally neutral, and there is a sufficiently grave cause for performing it, then the act, which in some accidental way contributes to the evil action, may be morally acceptable.[23] In this regard, however, one must distinguish between proximate mediate material cooperation and remote mediate material cooperation. The more proximate the cooperation, the more serious would be the cause that justifies it. The nurse who provides patient care in an abortion clinic cooperates more proximately with evil than does the gardener who cuts the clinic's lawn. Distinctions are also made between material cooperation that is free and material cooperation that is necessary.

Mathematical certainty is not available in moral judgments.

These more refined distinctions can lead to confusion. Some of the difficulties theologians have in regard to the application of this principle are the result of uncertainty concerning which actions contribute to the essence of an evil action and which are merely accidental. In the case of the abortion clinic, the lines can be rather clearly drawn. But they are not always as clear in regard to other occupations, a lawyer's or an accountant's, for example. Mathematical certainty is not available in moral judgments. The virtue of prudence must be exercised in these cases because it is not possible to set hard and fast norms enabling decisions on which all will agree.

The Principle of Cooperation and Partnerships between Catholic and Non-Catholic Hospitals

How does one apply the principle of cooperation to partnerships between Catholic and other-than-Catholic hospitals and health care organizations?* One should note, first, that " decisions that may lead to serious consequences for the identity or reputation of Catholic health care services, or entail the high risk of scandal, should be made in consultation with the diocesan bishop or his health care liaison.... The diocesan bishop should give the appropriate authorization before [such partnerships] are completed."[24] A local bishop could withhold his permission from a partnership, even though the partnership was acceptable under the principle of cooperation, because of the scandal that might be associated with it.[25]

Second, any form of formal cooperation is prohibited, whether explicit or implicit (often called immediate material cooperation, as noted earlier). Such would involve, for example, performing direct sterilizations in a hospital under the sponsorship of a Catholic entity or in a hospital managed by a Catholic health care organization, even if the hospital were owned by another governing board. This latter form of cooperation has been

* "Partnership," as used by the *Ethical and Religious Directives*, refers to any of the many legal relationships agreed to by the people or organizations involved in them. The term thus refers to genuine partnerships (which unite boards of trustees), joint ventures, amalgamations, loose associations, or any other coming together to provide health care or the administration of such care.

tolerated by some Catholic organizations under the supposition that it is licit because neither the Catholic organization nor its employees are providing the prohibited procedures. But management of a hospital constitutes essential participation in its activities, as the notifications of the Holy See have emphasized.[26] By the same token, a Catholic hospital would be involved in formal cooperation if it were to join an "other-than-Catholic" facility under a single new board of trustees, with the Catholic entity maintaining its Catholic name and continuing to refuse to perform immoral procedures and the other entity continuing, usually under its old name, to perform those procedures. Negotiators for Catholic facilities must carefully consider the type of "partnership" that will result from such an agreement to ensure that immoral procedures are not sponsored or managed by the Catholic entity.

If a Catholic hospital or health care corporation forms a "partnership" with a non-Catholic entity but does not assume management of it (the non-Catholic facility's board remaining in place), then the form of cooperation would apparently be material mediate and could be justified for a grave reason. Let us say, for example, that in a mid-sized town two hospitals, one a Catholic facility, the other a community hospital, fearing severe financial strain if they continue to compete at all levels of health care, decide to divide the services between them. The community hospital might continue to offer direct sterilizations; the Catholic hospital would limit its OB-GYN offerings. In partnerships of this nature, the non-Catholic hospital usually agrees not to perform abortions, thus eliminating a possible source of scandal. A more common form of "partnership" occurs when a Catholic entity joins with another hospital with a different value system to sponsor a joint laundry or some other function that does not involve cooperation in immoral procedures. Cooperation of this type often results in a region's hospitals forming an association to foster their common interests.

The most common and clear-cut method of ensuring that cooperation between Catholic and non-Catholic facilities is ethically acceptable is to have direct sterilization and other prohibited procedures performed by a separate entity. If possible, this separate or third entity would perform direct sterilizations at a facility physically separate from both hospitals in the partnership. Some commentators argue that persuading a third party to undertake the performance of direct sterilizations might constitute formal cooperation.[27] But this opinion seems too rigorous; the Catholic hospital's officials could explain their position without persuading someone else to perform the proscribed procedures. In any case, this more strict opinion gives some indication of the controversies that arise when this principle is applied; it also demonstrates how the virtue of prudence will lead to different interpretations, as I have indicated earlier.

Would it ever be acceptable for the third party that provides the prohibited procedures to do so in the Catholic hospital, or in a hospital managed by a Catholic health care corporation? Is it possible to "carve out" a section of a hospital sponsored or managed by a Catholic juridical person, and have it devoted to providing proscribed procedures? In theory, it is possible, and has indeed been approved in practice in a few situations in which a Catholic corporation has been employed to manage a community hospital. For example, in Austin, TX, a hospital owned by the city but managed by a Catholic health care corporation, Seton Health Care of Austin, was given permission for such an arrangement by the local bishop.[28] This type of arrangement might also be contemplated for a large geographical area in which a Catholic hospital was the "lone provider." Serious reasons would be required for such a "partnership" to occur. First, it might not be possible (for financial reasons, say) to construct another hospital. Second, to avoid formal participation, all personnel performing the prohibited procedures would have to be employed and managed by the third party. Third, the diocesan bishop would have to determine that scandal would not arise from the arrangement. □

Management of a hospital constitutes essential participation in its activities.

NOTES

1. John Deardon, "The Challenge of Religious Pluralism," *Origins*, October 28, 1976.
2. *Ethical and Religious Directives for Catholic Health Care Services*, 4th ed., U.S. Conference of Catholic Bishops, Washington, DC, 2001, pp. 34-37 ("Forming New Partnerships").
3. For a detailed discussion of the church's teaching concerning direct sterilization, see B. Ashley and K. O'Rourke, *Health Care Ethics*, 4th ed., Georgetown University Press, Washington, DC, 1997, p. 287ff.
4. Thomas Aquinas, *Summa Theologica*, I-II, q. 64, a. 7.
5. For a discussion of the Manualists, see chapter IV, Servais Pinckaers, *Morality: The Catholic View*, St. Augustine Press, South Bend, IN, 2001.
6. See E. Lafloret, "The Large Urban Catholic Hospital Revisited," *Linacre Quarterly*, August 2001, p. 219.
7. See, for example, William Smith, "Cooperation Revisited," *Homiletic and Pastoral Review*, January 1997, p. 67.
8. *Code of Canon Law*, 1983, c. 113.
9. Congregation for the Defense of the Faith, *Quae-*

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