

THE PRINCIPLE OF COOPERATION

Theologians Explain Material and Formal Cooperation

One of the most pressing (and most difficult to understand) issues for Catholic healthcare facilities is the issue of material cooperation. Following are frequently asked questions about this concept.

1. What is the principle of cooperation?

The best answer to this question is the explanation in the appendix of the recently revised *Ethical and Religious Directives for Catholic Health Care Services*, unanimously approved by the National Conference of Catholic Bishops (NCCB):

The principles governing cooperation differentiate the action of the wrongdoer from the action of the cooperator through two major distinctions. The first is between formal and material cooperation. If the cooperator intends the object of the wrongdoer's activity, then the cooperation is formal and, therefore, morally wrong. Since intention is not simply an explicit act of the will, formal cooperation can also be implicit. Implicit formal cooperation is attributed when, even though the cooperator denies intending the wrongdoer's object, no other explanation can distinguish the cooperator's object from the wrongdoer's object. If the cooperator does not intend the object of the wrongdoer's activity, the cooperation is material and can be morally licit.

The second distinction deals with the object of the action and is expressed by immediate and mediate material cooperation. Material cooperation is immediate when the object of the cooperator is the same as the object of the wrongdoer.

Immediate material cooperation is wrong, except in some instances of duress. The matter of duress distinguishes immediate material cooperation from implicit formal cooperation. But immediate material cooperation—without duress—is equivalent to implicit formal cooperation and, therefore, is morally wrong. When the object of the cooperator's action remains distinguishable from that of the wrongdoer's, material cooperation is mediate and can be morally licit.

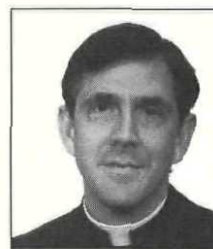
Moral theologians recommend two other considerations for the proper evaluation of material cooperation. First, the object of material cooperation should be as distant as possible from the wrongdoer's act. Second, any act of material cooperation requires a proportionately grave reason.

Prudence guides those involved in cooperation to estimate questions of intention, duress, distance, necessity and gravity. In making a judgment about cooperation, it is essential that the possibility of scandal should be eliminated. Appropriate consideration should also be given to the church's prophetic responsibility.¹

2. How is the principle used?

Until recent years the principle was used to help individuals find out how they could continue to act morally when they came into contact with others—superiors, partners, or clients—who were involved in what the Catholic tradition labels as wrongful activity. The principle was used to help individuals determine to what extent they could perform their own activity when others were acting wrongly and the activity of each intersected. Thus, in the category of superiors, there was the

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servant who transported letters for his master to a woman with whom he was having an affair. How could the subordinate continue his employment in that situation? Concerning partners, there was the case of the spouse who practiced birth control methods against the will of the partner. What were the conditions by which the partner could engage in legitimate marital relations with the

one practicing such methods? Finally, concerning clients, there was the judge who, among other activities, ruled on couples petitioning divorce; the nurse who assisted a physician who was performing an illicit operation; the priest who distributed communion to a known sinner; and the craftsperson who made, among other items, emblems for the local Masonic temple.

All three categories show that the principle was not abstracted above time and space, but that it developed in application to context-specific cases. Today, with the reconfiguration of healthcare through networks, alliances, and mergers, the principle must be applied in analogous and legitimate ways.²

3. Isn't the principle used only to help people keep their jobs?

Though some philosophers have written that the principle of cooperation applied only to individual subordinates (generally those trying to keep their jobs),³ the tradition shows that a variety of individuals were involved with the principle. Cooperation can concern nearly every expression of human activity that intersects with other human activity. Thus Bernard Haering has noted that, without the principle, "the exercise of the lay apostolate" would be "totally impossible."⁴ The principle enables the Catholic to discern the extent to which he or she can be involved with an agent whose act is deemed morally unacceptable.

In almost all instances, the upholders of the tradition believed that the presence of persons of conscience in institutions helped prevent those institutions from engaging in more morally wrong behavior. Similarly today, Catholic healthcare facilities and other Catholic organizations (e.g., educational and social services) invoke the principle of cooperation to maintain their distinc-

Catholic providers and payers turn to the principle to guide them in contracts.

tive moral contribution to a pluralistic society that increasingly permits and promotes morally unacceptable practices. In both personal and institutional contexts, the principle thus helps us to perceive the wrongdoing and differentiate it from the sphere of our intended interests and activities.

4. Can the principle be used institutionally?

Yes. Long before the *ERD* were revised, Church leaders recognized the import of cooperation. After centuries of the Vatican's negotiation of concordances and treaties with foreign powers, Church leaders knew what it meant for one institution to be allied with another when the other engaged in some activity deemed morally unacceptable.

But, more recently, the Congregation for the Doctrine of the Faith (CDF)⁵ and the United States Catholic Conference (USCC)⁶ invoked the principle of cooperation in considering when a Catholic healthcare facility, under duress, could cooperate in sterilization. Moral philosophers concur about the principle's institutional import.⁷ In fact, as Catholic healthcare providers and payers continue to turn to the principle to guide them in contracts with other facilities, Catholics are likely to associate the principle more often with institutions than with individuals.

5. The principle contains two major distinctions and two or three attending considerations. What is the first distinction between formal and material cooperation?

On one hand, formal cooperation means that the person cooperating intends, desires, or approves the wrongdoer's conduct. Thus, in the examples cited above, if the nurse helps in the operation because she wants the operation performed, if the servant transports the letters because he approves of the liaison, if the priest intends that the sinner receive communion, or if the judge applauds the couple's divorce—then, regardless of any other distinctions, the cooperator is also wrong. We cannot formally cooperate in morally wrong activity, because we cannot intend wrong conduct. For this reason the Vatican held that no Catholic healthcare facility could ever formally

cooperate in providing sterilizations—that is, no facility could perform sterilizations on the basis of an institutional policy that welcomed and sanctioned routine sterilizations.

On the other hand, material cooperation simply means that although we do not share the intention of the wrongdoer, we are involved in the matter or the actual doing of the action. Thus the distinction between formal and material asks whether we intend, desire, or approve the wrong activity. If we do, we are wrongdoers too. If not, then we should consider the other issues.

6. Could people claim they are not formally cooperating when actually they are?

Yes. Someone could claim to be only materially cooperating, when actually he or she is intending, approving, or desiring the activity. Thus some theologians inject the category “implicit formal cooperation.” For instance, the judge who adjudicates only divorce cases is no different than the Catholic healthcare facility that freely (i.e., without duress) promotes throughout the local community the use of contraceptives. Though neither expresses explicit approval or intention, both are implicitly formally cooperating, and formal cooperation (both implicit and explicit) is always wrong. On the evidence of their consistent activity we can see no reason for the cooperators’ conduct other than that they freely intend and approve of the activity.

7. What is the second distinction between immediate and mediate cooperation?

This distinction concerns the action and not the intention; it concerns material, not formal, cooperation. If cooperation is licit, it can only be material; legitimate material cooperation requires that we be able to distinguish our activity from the wrongdoer’s.

To distinguish between the two activities, we consider what the tradition calls the “object” of activity.⁸ The word “object” simply describes what one is doing. The late Rev. Gerald Kelly, SJ, demonstrated the specific determination of an object in the case of nurses cooperating in an operation considered morally wrong:

In itself, the work done by the nurses is not morally wrong. It is exactly the same work that they would do at a perfectly moral operation; hence, it would come under the classification of indifferent or morally good actions. To render this kind of assistance to one who is performing or about to perform an evil action and evil purpose, is called material cooperation.⁹

For centuries theologians carefully examined the object of moral activity. Thus they held that the object of the servant’s action is transporting letters, which is morally indifferent and not like the object of his master’s illicit action, that is, adultery. Similarly, in an institutional context, moral theologians today would recognize that if a non-Catholic partner in an alliance were providing morally unacceptable reproductive technologies, the Catholic partner should be able (with proportionate reason) to participate in the alliance so long as the Catholic partner does not deliver the illicit reproductive services. Those instances in which we can distinguish the objects of activity are cases of licit material cooperation.

When we can distinguish between the two objects of activity, then we have mediate cooperation, which is often licit. In contrast to mediate material cooperation is immediate material cooperation. For instance, if the nurse performed the illicit operation, or a Catholic institution provided the illicit reproductive services, their acts would be immediate material cooperation, which is always wrong, except in certain occasions of duress.

8. How does duress impact the principle’s legitimate application?

The issue of duress will play an important role in determining legitimate institutional application of the principle. In forging new partnerships with healthcare providers, the autonomy of the Catholic partner will often be diminished. Partnerships are often entered into under a sense of duress: e.g., the loss of resident physicians upon whom a clinic depends; the loss of an obstetrics department due to managed care contracts; the slow but sure erosion of involvement in the local community. The issue of duress cannot be exaggerated to justify any cooperation in wrongdoing, but neither should its importance be underestimated. A legitimate application of the principle of cooperation requires that all realistic and feasible options to distance the Catholic organization from the wrongdoing of another be explored and written into the contract before the organization forms new partnerships.¹⁰ One might say, then, that the closer one comes to the wrongdoing, the more the duress must be in evidence.

9. If the object of one’s activity is the same as the object of the wrongdoer, then why is the activity immediate material cooperation, not formal cooperation?

Immediate material cooperation characterizes by act what implicit formal cooperation characterizes



by intention. But, as the *ERD* note, "the matter of duress distinguishes immediate material cooperation from implicit formal cooperation."

As we saw earlier, a Catholic healthcare facility that freely promotes (even without explicit approval) the distribution of contraceptives is implicitly formally cooperating. That same activity can also be described as immediate material

cooperation. Since both explicit and implicit formal cooperation are always wrong, immediate material cooperation is always wrong except when instances of duress distinguish it from formal cooperation. For instance, if the Catholic healthcare facility is a clinic providing services to the poor, and must, under the duress of losing its resident physicians, provide contraceptives, that activity is immediate material cooperation, but not formal cooperation.

10. What are the other two conditions to the principle?

The first requires us to distance ourselves as far as possible from the wrongdoer's activity. Thus we are called to be as remote from the activity as possible. This is simply to avoid any cause of scandal. The other condition says that we can only cooperate in wrongdoing when there is a proportionately grave reason.

11. What role does concern about scandal have?

The *ERD* say that when a partnership may "involve" a Catholic facility in morally wrong activities, the facility "should limit its involvement in accord with the moral principles governing cooperation." They add that cooperation "may be refused because of the scandal that would be caused in the circumstances."¹¹ Thus even if one were to consider giving remote, mediate material cooperation for grave proportionate reason, the possible resulting scandal might prompt a prudential judgment to not cooperate.

But the Appendix of the *ERD* specifies what the real issue of scandal often is: "In making a judgment about cooperation, it is essential that the possibility of scandal should be eliminated." Often scandal arises when we cooperate and do

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not demonstrate reasonably to our communities that our conduct is actually in keeping with traditionally accepted forms of behavior. The possibility that our communities might misconstrue what we are doing imposes on us the duty to help them to understand. Especially in light of healthcare reform, Catholic organizations must, before entering new partnerships, educate their communities

about the partnerships, particularly when they are likely to cause scandal. Our efforts must make clear that our entering into a partnership is to advance Catholic interests in healthcare.

Moreover, we must distinguish scandal from alarm. Many are "alarmed" by new endeavors. The issue, however, is not an endeavor's newness, but whether it is congruent with Church tradition.

12. Are there any matters that the *ERD* say cannot be used for cooperation?

Yes. Directive 45 stipulates "Catholic health care institutions are not to provide abortion services even based upon the principle of material cooperation." Thus, regardless of any alliance or partnership, a Catholic healthcare institution cannot provide abortions. The same directive adds, "In this context, Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers."

13. Is the principle of cooperation nothing more than the principle of double effect?

We should not confuse but distinguish between these two traditional moral principles. Cooperation differs from double effect in two significant ways. First, double effect concerns those rare actions that, although they have but a single (either morally right or neutral) object of activity, cause two effects, one of which is wrong. Cooperation, on the other hand, has two distinct objects of activity, the wrongdoer's and the cooperator's. The infrequent instances suitable for double effect pale by comparison to those fitting for cooperation. Cooperation can concern nearly every form of human activity.

Second, double effect addresses only one agent; if the agent does not act, the harmful

effect will not occur. Cooperation, however, involves two agents, including one who already does or will do wrong independently of the cooperator. The cooperator uses the principle, then, to contain involvement in the wrongdoing.

Thus, unlike double effect, cooperation is not primarily a permitting principle concerning *whether* one may act, but rather a guiding principle concerning *how* one should act in the face of wrongdoing. It provides instructions for negotiating one's participation in work with another, some of whose actions are morally wrong.

14. Do the ERD adequately present the principle of cooperation?

We think so. Writing in 1958 about how to apply the principle, the moralist Henry Davis noted there is "no more difficult question than this in the whole range of Moral Theology."¹² Earlier, in 1923, Jerome Noldin noted that most major moralists were routinely unable to come to agreement on several key points of application.¹³

A study of the numerous drafts of the directives shows constant reference to the principle of cooperation. But in what form? In one draft there is a skeletal listing of the four distinctions of the principle. But, in broad consultation, agencies and bishops demanded something more descriptive for the next draft. The drafters then contacted several writers, all living in North America but mostly trained at Roman, pontifical universities. These writers contributed cases that were incorporated into the next draft. That draft aroused such controversy among the bishops that it never made it to any consultation. Illustrative application was out of the question. Davis and Noldin's insights proved right.

Later the principle was presented, with more commentary but no application. This aroused all sorts of disagreement. Some claimed the text was too restrictive, others that it was too loose. This section of the document received the most discussion, scrutiny and revision by the Committee on Doctrine (COD). The final version was done in light of the suggested changes by the CDF and after consultation with the full body of bishops before the November meeting. This occasioned three rounds of meetings in the course of two months. Then, at the meeting four days before the bishops' vote, the chairperson of the COD, Bp. Alfred Hughes, devoted the bulk of his presentation time to a painstakingly thorough explanation of the principle.

The bishops' work helped them to appreciate Davis and Noldin's insight. In that light, after COD's struggle for six years, and responding to the request of many bishops for assistance as they

support the changing nature of the Catholic healthcare ministry, the NCCB's administrative committee formed a new ad hoc committee to be chaired by Bp. Donald Wuerl. This committee, which also represents the NCCB, would refer interested bishops whose healthcare facilities were contemplating major alliances or partnerships to dioceses where similar questions were faced. The committee will also refer bishops to the ERD and its "clarification of the terms relative to the principles governing cooperation and their application to concrete situations." □

NOTES

1. NCCB, "Ethical and Religious Directives for Catholic Health Care Services," *Origins*, December 15, 1994, pp. 449-462.
2. James Keenan, "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles," *International Philosophical Quarterly*, June 1989, pp. 205-220, cites many instances of the principle's use by theologians over the past three centuries. For other writings on the principle see Orville Griesse, *Catholic Identity in Healthcare: Principles and Practices*, The Pope John XXIII Center, Braintree, MA, pp. 373-419; Anthony Fisher, "Cooperation in Evil," *Catholic Medical Quarterly*, February 1994, pp. 15-22; Bernard Haering, *The Law of Christ*, Newman Press, Westminster, MD, 1963, vol. II, pp. 495-517; Russell E. Smith, "The Principles of Cooperation in Catholic Thought," Perer Cataldo and Albert Moraczewski, eds., in *The Fetal Tissue Issue*, The Pope John XXIII Center, Braintree, MA, 1994, pp. 81-92.
3. See Fisher, "Cooperation in Evil," p. 15. Germain Grisez, "Public Funding of Abortion: A Reply to Richard A. McCormick," *Homiletic and Pastoral Review*, June 1985, p. 50.
4. Haering, *The Law of Christ*, p. 500.
5. "Vatican Upholds Ban on Sterilization," *Origins*, June 10, 1976, pp. 33 and 35.
6. USCC, "Sterilization Policy for Catholic Hospitals," *Origins*, December 8, 1977, pp. 399-400.
7. See Joseph Boyle, "Radical Moral Disagreement," in John Finnis, Joseph Boyle, and Germain Grisez, eds., *Nuclear Deterrence, Morality and Realism*, Oxford University Press, Oxford, England, 1987, pp. 343-357. Apparently Grisez changed his position after 1985.
8. On the moral object, compare John Finnis, "Object and Intention in Moral Judgments According to Aquinas," *The Thomist*, January 1991, pp. 1-27, and Thomas R. Kopfensteiner, "Historical Epistemology and Moral Progress," *The Heythrop Journal*, January 1992, pp. 45-60.
9. Gerald Kelly, *Medico-Moral Problems*, Catholic Health Association, 1958, St. Louis, pp. 332-333.
10. See M. Cathleen Kaveny and James F. Keenan, "Ethical Issues in Health Care Restructuring," *Theological Studies*, June 1995.
11. ERD, Directives 69 and 70, respectively.
12. Henry Davis, *Moral and Pastoral Theology*, Sheed and Ward, London, 1958, p. 342.
13. Hieronymus Noldin, *Summa Theologiae Moralis*, F. Rauch, Innsbruck, Austria, 1923, vol. II, pp. 134, 137.

