Cooperating with Non-Catholic Partners

(Published in Ethics & Medics, November 1998)

Replacement of traditional fee-for-service health care with capitation, the rising costs of new medical technologies, the duplication of health services among competitors, and the need to attract physician networks and managed care contracts, are some of the factors that necessitate collaborative efforts among health care facilities. Although the Ethical and Religious Directives for Health Care Services (ERDs) [1994] state that Catholic facilities should seek alliances with other Catholic institutions first, unfortunately, that is not always possible.

When a potential local collaborator is engaging in procedures that contradict Catholic moral teaching by violating the dignity of human persons, the Catholic teaching on the principles of cooperation comes into play. The operative Directive here is #69, which states that when a Catholic health care institution is participating in a partnership that may be involved in activities judged morally wrong by the Church, the Catholic institution should limit its involvement in accord with the moral principles governing cooperation.

This Directive states that Catholic institutions should use the principles of cooperation in order to limit involvement in evil with non-Catholic providers, not expand it.

Also it should be noted that although Directive #69 states that the involvement of the Catholic institution with those doing evil should be limited by the moral principles governing cooperation, the Directive does not state that they are necessarily or fully applicable to collaborative ventures between Catholic and non-Catholic institutions. Indeed, we are not convinced that the principles are fully applicable to corporate personalities and contractual arrangements, since the principles were developed to help individual Catholics discern what kind of involvement they could have with those doing evil without actually becoming partly responsible for that evil itself and thereby incurring moral guilt. However, "cooperation" is the moral principle which is used to discern permissible types of collaboration with those doing evil, and we at the Center attempt to use it as far as possible.

The aim of this article is to set forth, in as clear a manner as possible, how The National Catholic Bioethics Center uses the principles of cooperation to assess whether or not a given collaborative venture between Catholic and non-Catholic health care institutions crosses the line into Catholic moral culpability for the evil which is being perpetrated in the non-Catholic institution.

Directive #69 is the only directive which refers to "the moral principles governing cooperation." The ERDs then provide a brief explanation of the principles of cooperation in an Appendix to the ERDs. However, it should be remembered that the Appendix is but a brief explanation of the principles and is not as useful as a fuller exposition would have been. In the "Introduction" to the Directives the bishops do say that this document will...
have to be revised from time to time, and we believe that the Appendix could certainly be modified on some points in the future. Nonetheless it does serve as a point of departure for those providing a moral analysis of proposed collaborative ventures between Catholic institutions and non-Catholic institutions that may be involved in evil.

At the outset, we state that we understand that cooperation (in moral evil) is the free and knowing assistance of an individual in an immoral act, either as a means or an end, principally performed by another person (the principal agent).

The Appendix begins by stating that the principles of cooperation differentiate the "action of the wrongdoer from the action of the cooperator." Two important points of clarification can be made about this starting point in order to understand the purposes of the principles of cooperation. First, the cooperator is obviously not immune from becoming a wrongdoer. Some types of cooperation cross the line into the actual doing of evil so that there are two wrongdoers; the original wrongdoer and the cooperator. The principles of cooperation presume that we know the different kinds of wrongdoing. What needs articulation are the different sorts of cooperation which can serve as a guide for the cooperator to avoid evil while doing and pursuing good.

It should be obvious that there is never any other motivation for the Catholic institution to consider cooperating with those who may be engaged in certain immoral activities than to pursue good, which in this case is the provision of health care to those in need, particularly to those least able to obtain it. However, we cannot pretend that there is not a cultural context within which Catholics must make their judgement with respect to a given instance of cooperation, and the dominant culture is simply no longer repulsed by acts which, until recently, were universally viewed as morally repugnant such as abortion, euthanasia, physician-assisted suicide, indeed even contraception.

**Formal and Material Cooperation**

The Appendix first divides cooperation into its two well-known types, formal and material, and states "If the cooperator intends the object of the wrongdoer's activity, then the cooperation is formal and, therefore, morally wrong." The "moral object" is the kind of act performed. Thus, if two people intend to procure an abortion and work together to procure the abortion, they share the same moral object.

However, while we do not disagree with that definition, it may be too narrowly worded to account for the full dimension of formal cooperation. The morality of the cooperator's act or of the principal agent's act is determined in either case not only by 1) the "moral object" or kind of action performed, but also by 2) the intention with which the act is performed and 3) the circumstances associated with the act (the traditional "fonts" of morality). The cooperator can participate in different ways in any of these three components of the principal agent's act. The Appendix correctly, but we believe incompletely, defines formal cooperation only in terms of the object of the principals agent's act. When the Center evaluates a collaborative venture, actual or proposed, we understand formal cooperation as the intending or concurring in any one or more of the immoral components of the principal agent's act, either as an end in itself or as a means. One could intend as essential circumstance for the commission of an evil without directly intending the evil itself. One could, for example, intentionally provide some of the circumstances necessary for the performance of an abortion without actually willing the abortion.
Implicit Formal Cooperation Not Permitted

According to the Appendix, "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." Based upon our definition of formal cooperation given above, we understand implicit formal cooperation to be intending any one or more of the immoral components of the principal agent's act but as a means to something other than the principal agent's act. In our judgement Catholic health care institutions are especially susceptible to implicit formal cooperation. For example, a Catholic hospital may explicitly reject the immoral activities of a potential non-Catholic partner and yet forge a legally binding agreement by means of which the non-Catholic partner is able to continue to engage in the immoral practices which simply come to be performed some place else. But the physical distance of the immoral practices from the Catholic hospital is morally irrelevant if the Catholic institution is contractually committed to enabling the non-Catholic institution to continue the immoral practices through the provision of such things as space, personnel, surgical instruments and financing. When such collaboration occurs it is invariably provided by the Catholic institution not to bring about the immoral procedures, to be sure, but to seek other ends such as financial stability or the continuing provision of health care to the poor. Nonetheless, the immoral procedures would not be taking place but for the collaboration of the Catholic hospital. We would view such involvement as implicit formal cooperation.

Therefore, as applied to health care collaboration agreements, implicit formal cooperation would include such things as the negotiating, writing or consenting to agreements which establish the governance, management, or financing of the immoral procedures of another health care entity, or any institutional participation in those procedures and activities. Implicit and explicit formal cooperation are both wrong under any circumstances and both are rejected by the ERDs.

Material Cooperation, Licit and Illicit

Licit Material Cooperation (Mediate)

With respect to material cooperation, the Appendix states, "if the cooperator does not intend the object of the wrongdoer's activity, the cooperation is material and can be morally licit." [Emphasis added.] This definition does not account for another characteristic of material cooperation which distinguishes it from formal cooperation, namely, that the cooperator contributes only to the circumstances of the principal agent's act. When the cooperator contributes only to the morally licit circumstances associated with the principal agent's act, and those circumstances are not essential to the principal agent's performance of the evil action, we can say that the cooperation is mediate material and may be morally licit.

The Appendix states that material cooperation should be "as distant as possible" from the wrongdoer's act. The term "distant" in the context of collaborative arrangements is often wrongly interpreted to mean a geographical distance, or a distance in the number of levels of management that the Catholic hospital is removed from the immoral procedures. However, even if a distance in these senses is achieved. Catholic health care institutions can still engage in immoral cooperation through their operating agreements. Instead of using the work "distant," it should be said that the more an institution is causally removed
from the immoral procedure or activity, the more acceptable is its material cooperation.

**Illicit Material Cooperation (Immediate)**
The Appendix states that the "material cooperation is immediate when the object of the cooperator is the same as the object of the wrongdoer." Here the language of the Appendix lacks a certain clarity. For if the cooperator shares the same object as the wrongdoer, then as the Appendix itself stated earlier with respect to formal cooperation, "the cooperator intends the object of the wrongdoer's activity." Thus in the Appendix the terms "formal cooperation" and "immediate material cooperation" share the same meaning, and we may substitute the one for the other whenever either occurs.

The Appendix then goes on to state that "immediate material cooperation is wrong, except in some cases of duress." Let us, at this point, perform the substitution. If we substitute "formal cooperation" for "immediate material cooperation" in the preceding sentence, we arrive at "formal cooperation is wrong, except in some cases of duress." When duress is not present, immediate material cooperation, in the words of the Appendix, "is equivalent to implicit formal cooperation and, therefore, is morally wrong." Thus it would seem that it is possible to read the Appendix as justifying some instances of formal cooperation in intrinsically immoral acts if these occur under duress. However, this cannot be what the Appendix means to say. Clearly there is a need for greater clarity in explaining these differences.

In our view, material cooperation arises when the cooperator does not intend the object of the principal agent's act, but nonetheless contributes to the circumstances surrounding that act. If the circumstances are not essential to the carrying out of the wrongful act, the cooperation is mediate material and may be licit depending upon the gravity of the moral object of the wrongdoer and the question of scandal. Immediate material cooperation, in our view, is the contribution of the cooperator to circumstances that are essential to the commission of the principal agent's immoral act and is not licit.

**Immediate Material Cooperation and Duress**

One problem with the explanation of immediate material cooperation in the Appendix is that duress is not defined. In our view, immediate material cooperation remains immoral because most instances of duress do not change the fact that the cooperator voluntarily contributes to circumstances that are essential to the principal agent's act. The cooperator may indeed act through fear of the loss of some great good, but this fear does not force the will since the will cannot act under compulsion (see T. Aquinas, *Summa Theologica*, I-II, q. 6, aa. 4-6). However, the fear that results from duress is a circumstance that substantially alters the culpability of the cooperator, diminishing it or eliminating it altogether.

The Center understands immediate material cooperation as any willful, intentional contribution to the circumstances essential to the principal agent's immoral act. Considered in itself, immediate material cooperation in evil is wrong, but its culpability is significantly reduced or eliminated if done through a legitimate fear of losing a great good.

As has been often noted, the principles of cooperation were originally formulated to assess the morality of cooperative actions of individuals. On an institutional level those who
defend cooperating with a wrongdoer in an immediately material manner through some collaborative arrangement on the grounds of duress employ arguments that require us to transfer their reasoning from individuals to corporations. This simply does not always work. One of the major areas of difficulty concerns the question of whether any potential harm that might face a corporate person could be equivalent to that possibly faced by an individual person.

Consider the following example. A clerk held at gunpoint is told to open the store safe. If he refuses to do so, he has reason to believe he will be killed. When the clerk agrees to open the safe, he consents to what appears to be immediate material cooperation in evil, for he agrees to participate directly in the commission of the crime of theft and his actions contribute in an essential way to that act. There are several ways in which the act of the clerk might be justified. For example, because the good of life is preferable to the good of property, this decision is justified by the choice of life over property. Or it might be questioned whether this was even truly an act of cooperation, since we had defined cooperation earlier as the voluntary participation of one individual in the act of another. In this case, the threat of the loss of life and the accompanying fear could so reduce the free exercise of the will that one might question whether the act can even properly be evaluated in terms of the principles of cooperation.

However, in our opinion, neither line of reasoning is applicable to a health care institution or corporate person. No human life is in jeopardy or under threat when a Catholic hospital closes down or is sold to a non-Catholic buyer, as regrettable and as tragic as that may be. There could be diminished access to quality health care in a given community, but this is not a Catholic problem as such nor one for which the Catholic entity would be morally culpable. The problem of lack of access to adequate health care is a profound social concern in our day beyond the capability of all of Catholic health care to resolve. It is true that the financial health and perhaps even the life of the Catholic institution may be at stake, but the loss of a Catholic health care facility is simply not equivalent to the loss of the life of a human being. This is one reason why it is difficult to apply the principles of cooperation and/or duress to corporate persons.

There is another reason why the principles of cooperation do not easily apply to institutions. The fact of the matter is that Catholic institutions are bound to a more rigorous application of the principles limiting cooperation in evil than are individuals, because Catholic institutions stand as very public witnesses to Catholic teaching and morality. The Holy Father repeatedly speaks of the necessity of re-evangelizing culture, and the public witness of Catholic institutions for positive social change and the attainment of greater social justice because the very foundation of Catholic morality is commitment to the dignity and integrity of the human person.

We must remember that the fundamental purpose of any Catholic apostolate is to bear witness to Jesus Christ and the salvation which He won for all. Jesus cured the man crippled from birth, not primarily to allow him to walk, but primarily to provide proof that He, Jesus of Nazareth, had the power to forgive sins, a power reserved to God Himself. Jesus healed physically in order to give witness to a greater healing which He and His Church offer, healing from moral evil. Catholic institutions can do nothing which would contribute to the advancement of evil in the world nor can they do anything which would lead to confusion in people's minds about what constitutes sin without betraying Jesus Christ Himself, in other words, without betraying the One who gives meaning to their very existence. Sacrifice of moral principle for the sake of financial gain, for the sake of an
increase in market share, for the sake of gaining a competitive edge, even for the sake of serving the poor cannot be legitimate, for Catholic institutions must give constant preference to spiritual goods over those that are temporal.

**Institutionalized Cooperation**

Another serious difficulty in trying to apply the notion of duress to corporate persons concerns institutionalizing a kind of cooperation which may be legitimate on a one-time basis but not on a continuing basis. It would be strange indeed if the clerk who opened the safe to save his life continued to collaborate with the robber even after the threat of force was over, but this is exactly what sometimes happens to a Catholic health care facility when it agrees, because of "duress," to immediate material cooperation in the provision of contraceptive sterilization, for example, or any other intrinsically immoral act. After the questionable collaborative arrangement is signed--and the potential financial or other disaster has been averted--the Catholic partner finds itself contractually committed to continued cooperation in immoral procedures.

Thus the duress that was originally used to justify cooperation has passed, but the "immediate material cooperation" in evil has not. Such institutional cooperation in non-death dealing immoral acts might be possible on a one-time or even an episodic basis (for example, if a court injunction should order a Catholic hospital to allow the performance of a direct surgical sterilization), but it cannot become an integral part of the daily, ongoing operations of the Catholic facility. We hold that when a Catholic health care facility makes an institutional commitment to facilitating immoral practices by another institution with which it is collaborating, it engages in implicit formal cooperation. When parties sign their names to an operating agreement, they express their intention to carry out certain actions jointly or to exclude certain activities from their joint actions. Whatever the parties agree to do in writing constitute the elements on which they formally agree to cooperate, or they identify those areas in which they will not cooperate in order to achieve their common goals.

While contraceptive sterilizations and abortions may constitute the most common obstacles to collaboration with many non-Catholic health care institutions today, it must be remembered that the number of morally repugnant activities which are becoming increasingly culturally accepted continues to grow. Catholic hospitals must be prepared to avoid culpable involvement also in other immoral procedures, such as in vitro fertilization, artificial insemination by spouse or donor, the use of donor eggs, the cryo-preservation of embryos, fetal experimentation, physician-assisted suicide and euthanasia. As stated previously, when an operating agreement states that the Catholic partner will not engage in certain immoral procedures, but that the Catholic agent nonetheless will assist the non-Catholic partner in setting up a new facility or in making use of an existing facility or personnel or equipment for the performance of these same procedures, this must be viewed as implicit formal cooperation. Despite the claims of the Catholic hospital, the enabling clauses of the operating agreement clearly show that the immoral procedures come into being, or continue in existence, only through the collaborating agency of the Catholic partner.

**The Terms of the Operating Agreement**

Collaborative arrangements with a non-Catholic entity that wishes to engage in immoral activities must require that the non-Catholic agent carry out the procedures entirely
through its own agency and on its own premises, and that it be the sole cause of any facility or practice which is established specifically for their provisions. The operating agreement may acknowledge the kinds of activities in which the non-Catholic institution will be engaged and to which the Catholic entity will not be party because of its moral convictions, but the agreement cannot have the effect of making the Catholic partner assist in the provision of the immoral procedures or practices.

The collaborative agreement should also specify the activities in which the Catholic entity will not be engaged; for example, it should not simply refer to "prohibited or proscribed activities" but rather to specific activities such as in vitro fertilization or the freezing of embryos or surrogate mothering or physician-assisted suicide. In addition to the specification of those acts which Catholics believe do violence to the dignity of the human person, the agreement should also note that the Catholic hospital will not involve itself in procedures which the Magisterium of the Church would in the future judge to be immoral and that the local ordinary should act as the final arbiter on such matters and as the ultimate interpreter of the ERDs and their application within his jurisdiction.

This article reflects our current understanding of the way in which the principles of cooperation can best be used to deal with collaboration between Catholic and non-Catholic health care institutions. It demonstrates the manner in which we use them in the cases of collaboration which are submitted to us. In a future issue, we will lay out some successful models of collaboration employing this outlook. We invite other Catholic ethicists to offer comments on and criticisms of our views with the hope that within the Church a more consistent approach can be found to assess the morality of collaborative arrangements so that the Catholic health care apostolate can be strengthened in its contemporary mission of serving those in need in imitation of Christ.

The National Catholic Bioethics Center

Used with permission of The National Catholic Bioethics Center, Boston, MA
September 21, 2000

© Ascension Health, Inc.