Material cooperation and Catholic institutions: An inquiry into traditional moral principle and its meaning for Catholic institutions today, with reference to Catholic hospitals in Australia

Joseph C. Parkinson

University of Notre Dame Australia
Material Cooperation and Catholic Institutions

An inquiry into a traditional moral principle and its meaning for Catholic institutions today, with reference to Catholic hospitals in Australia.

Rev Joseph Parkinson STL

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This dissertation views the Principle of Legitimate Cooperation as a guiding norm for the activity of Catholic institutions in the world. It samples various expressions of the principle from the seventeenth century to the present day, noting the significance of the central terms ‘intrinsically evil acts’ and ‘sufficiently serious reason’, and suggests that while the principle traditionally applied to individual moral agents, it can also apply to institutions. Taking as starting-points the Second Vatican Council’s call for a renewal of moral theology and the Church’s post-conciliar view of itself as ‘sacrament of Christ’, the dissertation sketches an essentially Christological and ecclesiological background against which to view the identity and mission of Catholic institutions: their actions make the Church ‘present and active in the world’. From the case study of a Catholic hospital in rural Western Australia the dissertation concludes that while the principle often forbids cooperation with others who do evil, in particular instances a Catholic institution might determine that its Catholic identity impels it to cooperate.
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A Note on Language

The English language suffers from having no singular personal pronoun which is gender-inclusive. The author considers that the use of ‘one’ in place of ‘he’ or ‘she’ is often clumsy. In view of this difficulty, he wishes the Reader to understand that if at times the text refers to a moral agent as ‘he’, ‘him’ or ‘his’, or as ‘she’, ‘her’ or ‘hers’, it is to be taken as referring to moral agents of either gender, unless the context demands otherwise.
Abbreviations and Translations

Throughout this work, except where noted otherwise, footnote references to a work following the first full citation will normally consist of the last name of the author(s) and the principal or other distinctive word(s) or other abbreviation of the title of the work.

Other abbreviations:

AAS Acta Apostolicae Sedis. (1908- .)

CCC Catechism of the Catholic Church. English text. (Homebush: St Pauls/Libreria Editrice Vaticana, 1994.)


Except where noted otherwise,
- all quotations from the Scriptures are taken from The Jerusalem Bible (London: Darton, Longman & Todd, 1966);
- all quotations from the documents of the Second Vatican Ecumenical Council are taken from Austin Flannery OP, ed. Vatican Council II: The Conciliar and Post Conciliar Documents. (Dublin: Dominican Publications, 1975);
- citations of papal and curial documents not taken from Flannery (volumes 1 or 2) are taken from the St Paul’s editions;
- all English citations of Thomas’ Summa theologiae are taken from the Blackfriars edition;
- all other translations from languages other than English are the author’s.
Acknowledgment

I wish to acknowledge with gratitude the assistance of many people who have been extremely generous with their time and wisdom, and without whom this work would not have been possible.

In the first place my supervisor, Rev Dr Peter Black CSsR of the University of Notre Dame Australia, whose patient guidance has been invaluable.

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In acknowledging the contributions of so many, and of any others I may have inadvertently omitted, I hasten to add that I alone take responsibility for any errata or other infelicities in the text.

I am very grateful to the late Archbishop William Joseph Foley of Perth, at whose request I first began higher studies in Moral Theology, and to my present Archbishop Barry James Hickey of Perth, with whose encouragement and support I have been able to bring this work to completion.

In particular I thank my family and friends for their constant encouragement and patience with me while I have been preparing this dissertation, and over my twenty years of priesthood.

May our loving God bless you all for your kindness and generosity, and grant me many opportunities to repay this debt of gratitude.

Fr Joseph Parkinson
Perth WA, June 2001
Dedication

To my parents, C A (Bob) and Margaret Parkinson, my first and best teachers in the ways of faith.
INTRODUCTION

A Case Study

In September 1927 the Sisters of Saint John of God bought a colonial homestead and opened a hospital in Bunbury, then a small rural port in south-west Western Australia. As the town grew, so did the hospital: by 1939 it had become an 80-bed general and maternity facility; a new five-floor hospital was built in 1972 to cater for 110 patients (83 general and 27 maternity); and a major building program in 1988 added surgical and casualty services.¹

But by the late 1980s the provision of rural health care in Western Australia had become not only a public health priority but also a ‘hot’ political issue.

One of the problems facing the John of God Health Care System as a whole, and the Bunbury hospital in particular, is the difficulty of planning for the future because of the frequency of changes in government health policy, especially with regard to the location of public hospitals. If a new public hospital is situated beside a St John of God hospital, it is clearly not advisable to spend millions of dollars on a new private hospital at precisely the same time. In the short term the hospital will examine possible working opportunities with the government’s health department in extending health care services to public patients.²

Over sixty years the St John of God Hospital had become an important thread in the fabric of life in Bunbury. In numerous country towns in Western Australia and elsewhere the Sisters had been among the first to provide hospital-based nursing care. Some of the St John of God Sisters had dedicated their entire religious lives to serving the people of Bunbury in that particular hospital. Their commitment to

¹ Data on the history and development of St John of God Hospital Bunbury were kindly provided by Sr Mary Eugenia Brennan SJG of the St John of God Heritage Centre in Subiaco, Western Australia, in private communication with the author. See also her publication to mark the centenary of the Sisters in Australia, *The Love of Christ Urges Us*. (Subiaco WA: Sisters of St John of God, 1994). Information on negotiations with the State Government of Western Australia, on various proposals examined and on the final configuration of the collocated health care campuses was kindly provided by Mr Don Good, Trustee of St John of God Health Care, in private communication with the author.

excellence in health care combined with sincere respect for the dignity of all patients had made them valued members of the growing rural community. The people of the region did not want to lose the St John of God Hospital, yet by the early 1990s that had become a real possibility.

For at that time the State Government announced that it would replace its existing Bunbury Regional Hospital with an entirely new public facility capable of meeting the needs of the town into the next century. At virtually the same time, St John of God Health Care realised that its 1988 renovations would be inadequate to meet present or future needs, which raised the possibility of St John’s having to build an entirely new hospital themselves. It was evident that Bunbury could not support two new facilities of such size and quality, so St John of God Health Care began discussions with the State Government on a number of proposals which might meet increasing community needs, while also preserving the presence of a Catholic hospital in the town. Realising that its original plan was too ambitious and expensive, the Government came to view a joint facility as a cost-effective way of delivering the required upgrade of medical services in Bunbury.

The first proposal (Proposal 1) was for St John’s to build and manage a single new public hospital. Obviously some morally objectionable procedures (such as terminations of pregnancies and contraceptive sterilisations) could not be conducted in a facility under Catholic management, so the Government was prepared to build a separate clinic on another site to deliver these services.

It will become plain that not all Catholic moralists would have been content with this arrangement.³ In any event Proposal 1 did not proceed, due in no small part to overwhelming public reaction against the perceived privatisation of regional hospital care. But since subsequent public consultation revealed considerable support for both public and private facilities in the town, other possible configurations were considered:
• Proposal 2 would have seen the development of two completely separate hospitals, with a full range of medical services apportioned between them. But

³ In particular see 3.1.4.2 below.
because this would have necessitated a duplication of some paramedical and ancillary services which would not have been cost-effective, Proposal 2 was rejected.

- Proposal 3 would have seen the Government build a major public regional hospital with a private wing in which St John’s could provide a limited range of care. There were obvious management problems with this proposal, but the definitive objection came from the private health insurance industry: this arrangement would have been prohibitively expensive to fund.\(^4\)

So the preferred option, Proposal 4, became ‘collocation’: there would be two separate hospitals located on the same site; each would manage its own administration and admissions, and each would maintain its own medical and hospital services, but between them they would provide the full range of services required in Bunbury. Furthermore, each hospital could ‘bid’ for the provision of a single set of ancillary services, which is where cost-savings would be made. Equally, of course, each hospital could ‘opt out’ of services it did not wish to deliver.

In terms of medical services, then, Proposal 4 sees each hospital provide its own children’s, obstetric, general medical and surgical wards, as well as delivery suites, operating theatres and day surgery units. The public regional hospital provides Accident and Emergency, intensive care and psychiatric services, while St John’s provides renal dialysis, oncology and palliative care. As for ancillary services, the public hospital is under contract to provide instrument sterilisation services to St John’s, while St John’s is under contract to provide catering and maintenance services to the public hospital. St John’s also maintains a separate medical centre, in which many of Bunbury’s medical specialists have rooms. The collocated campuses of the Bunbury Regional Hospital and the St John of God Hospital Bunbury accepted their first patients in 1999.

\(^4\) Under existing health insurance legislation in Australia, a public patient admitted to a public hospital attracts a fixed payment from Medicare (the national public health insurer) which is made to the hospital and the treating practitioner; a private patient in a public hospital attracts a slightly lower Medicare payment; but a private patient in a private hospital can only be funded by private health insurance - at a substantially higher level. Theoretically, a public hospital with a ‘private’ ward could admit private patients to that ward and reap higher financial rewards from the private insurer than from Medicare. This arrangement is strenuously resisted by private health insurers, who believe that this would eventually drive them out of business.
The outcome of this arrangement is that the State Government has been able to provide better quality hospital facilities for Bunbury at a fraction of the original capital cost; the people of Bunbury now have access to a much greater range of health services and more up-to-date facilities; and the Sisters of St John of God have been able to continue their particular vocation to the people of Bunbury and so maintain a Catholic health-care ministry in the south-west of Western Australia.

Material Cooperation and Catholic Institutions

As in the Bunbury case, the cost of providing quality hospital care in the developed world is a major factor impelling Catholic and non-Catholic health facilities toward cooperative arrangements. Another factor, from the Catholic perspective, is changing patterns in membership of religious orders which have traditionally provided hospital care. Not to put too fine a point on it, for Catholic health care facilities the choice has sometimes come down to ‘collaborate or close’.

But the challenges posed by institutional collaboration are not limited to financial or religious concerns, nor even to the central question of health care provision. From the Catholic institution’s point of view there is also a critical ethical question, which might be put as follows: in view of some of the medical and surgical procedures conducted at public health facilities - procedures which the Catholic Church considers gravely immoral - should this Catholic institution enter into formal collaboration with this public health facility? Is such structured institutional cooperation justifiable in view of the immoral procedures which the public facility will inevitably provide? The ethical question is not whether a collaborative arrangement can be forged, but whether it should be forged. It is the question of institutional cooperation in evil.

As suggested, not all Catholic moralists would have been happy with Proposal 1 in the Bunbury case, largely because it would have tied a Catholic institution officially and structurally to procedures such as abortion and contraceptive sterilisation. It could be argued, of course, that the Catholic hospital
would never provide these services itself, for that would be a clear contradiction of the Church’s stated opposition to these procedures. But even so, some Catholic moralists would maintain that the Catholic institution is not therefore excused from guilt because its intention to enter such a cooperative arrangement includes an acceptance that immoral procedures will be performed (albeit on other premises). A similar concern has greatly exercised the minds of the Catholic bishops of the United States of America, where many such collaborative arrangements have already been made. It is the same vexed question which prompts the present study.

Fortunately the Catholic moral tradition has long since developed a principle which sheds some light on these complexities: the Principle of Legitimate Cooperation in Evil. This principle is difficult to state in a few words – indeed, reference is sometimes made to ‘the principles which govern cooperation in evil’, because analysing instances of cooperation requires application of a number of more fundamental moral norms. For the time being, however, the following will serve as a ‘definition’ of the Principle of Legitimate Cooperation in Evil:

Cooperation in evil, as distinct from actually doing evil oneself, occurs when one moral agent concurs in the evil deed of another. Cooperation is formal if one agrees (either directly or indirectly) with the other’s evil deed: for example, a gunsmith willingly supplies a gun to a bank robber, with the intention of assisting the robber in his evil deed. Cooperation is material if one does not agree with the other’s evil deed, but only innocently provides some goods or services which the other abuses in order to perform the deed: for example, to sell petrol to a bank robber, who subsequently uses his car for the getaway. Formal cooperation is always wrong, because to cooperate formally is to adopt the evildoer’s end as one’s own. Depending on the relationship between one’s own act and that of the other agent, material cooperation may be permitted if one holds a sufficiently serious reason for cooperating.

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5 For example, this is the position of American philosopher Germain Grisez - see 3.1.4.2 below.
6 See 4.2.2.2 and 4.3 below.
7 Different authorities entitle this the ‘Principle of Cooperation’, the ‘Principle of Legitimate Cooperation’, or the ‘Principle of Material Cooperation’. For all practical purposes these refer to the same principle, and in the present study these titles will be used interchangeably.
8 See the National Conference of Catholic Bishops, Ethical and Religious Directives for Catholic Health Care Services (1994), Appendix. This is discussed in 4.2.2.2 below.
This definition will undergo considerable refinement as the present work unfolds. One of the major aims of this work is to explore the meaning of cooperation in evil through studying the evolution of the principle over the last 400 years.

It will be noted that the principle as stated applies to individual moral agents rather than to groups or institutions. This is consistent with the history of the principle, and is one of the reasons why it can be said that the principle only ‘sheds light on’ rather than ‘resolves’ instances of institutional cooperation. There are significant differences between individual moral agents and institutions as moral agents. Another major aim of the present work is to explore the relationship between ‘cooperation in evil between individual moral agents’ and ‘cooperation in evil between institutional moral agents’, and to suggest how the traditional principle might be applied to institutions.\textsuperscript{10}

It will also be noted that the principle as stated ‘permits’ material cooperation for a serious reason. The ‘permission’ of material cooperation emphasises the fact that, were circumstances otherwise, one would not cooperate at all. But given the circumstances which prompt Catholic and non-Catholic health care facilities to consider cooperative corporate arrangements, another question might legitimately be put: could a Catholic institution ever be \textit{compelled} to cooperate with another doing evil? A third major aim of the present work is to suggest a framework within which one might consider this question.\textsuperscript{11}

The present work, accordingly, falls into three broad sections. The focus of the first part (Chapters One and Two) is the way in which the principle of legitimate cooperation evolved in history and was presented in Catholic moral theology up to the time of the Second Vatican Council. Chapter One examines the origins of the principle in the sixteenth, seventeenth and eighteenth centuries and follows through its preservation in the moral manuals. What emerges is a picture of one process by which moral principles evolve, are clarified, and sometimes atrophy unless re-

\textsuperscript{10} See below, 4.3.  
\textsuperscript{11} See Chapter Five below, in particular 5.2.
examined periodically in the light of contemporary moral questions. Chapter Two seeks to unfold the principle in terms of the traditional metaphysics of human action, as the principle had come to be defined prior to Vatican II, and to unfold the meaning of the principle’s central terms: ‘intrinsically evil acts’ and ‘sufficiently serious reason’. These two chapters reveal that, as happens so often in moral reasoning, morally right answers were reached before satisfactory explanations of their rightness were developed.

The focus of the second part (Chapters Three and Four) is the evolution of the principle of legitimate cooperation since Vatican II. Chapter Three reviews the principle as it appears in the successors to the moral manuals and in magisterial teaching, revealing both innovative approaches on the part of some modern moralists and an increasingly proactive role on the part of the magisterium. In Chapter Four a double transition is made: from ‘moral theology conducted within the confines of the Catholic Church’ to ‘moral theology conducted in dialogue with the modern world’; and from ‘cooperation among individual moral agents’ to ‘cooperation among institutions’. These two chapters bring the discussion more or less up to date and place it in the context of the contemporary renewal of moral theology. Here too one notes what is, at least at the time of writing, a major point of controversy: the meaning and legitimacy of ‘immediate material cooperation’ by Catholic institutions.

The focus of the third part (Chapter Five) is the renewal of moral theology sought by Vatican II, and in particular the question of Catholic institutions entering into cooperative arrangements with non-Catholic bodies. Drawing on the insights of some recent trends in theology in general - in particular, transcendental Thomism - a theological framework is developed for interpreting institutional cooperation. The aim of this chapter (and of the work as a whole) is not to arrive at fixed solutions for particular cases - indeed, it will be argued that questions of cooperation in evil cannot be answered in the abstract - but to suggest an additional level of meaning which may shed light on institutional cooperation.

This arrangement of material permits a comparison to be drawn between the principle as it appeared in the ‘traditional’ Catholic moral theology, and its treatment
in light of Vatican II’s call for a renewal in the discipline. Nevertheless this study is only more or less chronological, and some anomalies are inevitable: for example, some theologians studied in Chapter Four are contemporaneous with those studied in Chapter Three; and a consideration of specifically institutional cooperation does not occur until late in Chapter Four. Further comments on the ordering of material will be made in the text.

While the present work is wide-ranging in some respects, its aims are quite tightly circumscribed. The intention is not to present a comprehensive study of the origins and development of the principle of cooperation, because such studies have been made previously. Nor is it to analyse the entire manual tradition of cooperation, but only to sample a selection of manuals which were once influential in this country. A complete metaphysics of human action is likewise beyond the scope of this work, as is a fuller treatment of ‘intrinsically evil acts’ and ‘sufficiently serious reason’ - although it will be necessary to arrive at an adequate understanding of all of these. The temptation to develop a more comprehensive analysis of trends in the emerging renewal of moral theology has also been resisted, in order to stay focused on the major question under investigation.

It is recognised that the interpretation of the principle of material cooperation which is offered here is neither exclusive of other interpretations nor exhaustive in itself - but it will be sufficient to ground the theological view offered in the final chapter. Furthermore, the present work does not claim to resolve controverted questions nor settle every argument which might be mounted for or against the immediate material cooperation of Catholic institutions in such procedures as in-vitro fertilisation. It claims only to develop a framework within which these matters might be addressed.

In terms of sources, selections have been made according to various criteria, including influence on the practice of moral theology in Australia, relevance to the specific question of institutional cooperation, and impact on contemporary thinking on material cooperation. There are further specifications of sources in the text.
The present work will have achieved its aim if it is able to demonstrate that a truly theological interpretation of legitimate institutional cooperation in evil can be, at one and the same time, grounded in the Catholic moral tradition and responsive to the Second Vatican Council’s call to a renewal of moral theology.
1.0 Introduction

Moral principles have history. They do not simply appear from the ether - mysterious, unheralded and perfect in form - to resolve theoretical moral dilemmas. By the time they are received as ‘principles’ they have undergone a long process of evolution: proposition, testing, recasting. They originate and evolve in response to real situations faced by real people in the real world. They are the fruit of living moral communities and of their attempts to address real moral problems, to give practical guidance to real people in the concrete circumstances of their lives. Moral principles are the children of many parents, with successive generations contributing questions or clarifications or refinements to their ‘final’ form.

The evolutionary development of moral principles, the result of an interplay between an actual moral problem and contemporary attempts to address it, gives rise to both strength and weakness. One strength is that a principle which has developed in this way is able to offer a degree of practical help in addressing moral dilemmas, for there is always something to gain from the wisdom of those who have previously sought answers to the questions one presently confronts. But one weakness is that the concrete situations which gave rise to the principle are themselves constantly evolving, taking on new and more complex forms which often were never previously envisaged, much less addressed. For example, the principle that ‘non-combatants should not be targets of aggression’ was easy to honour in the traditional model of warfare, in which each side wore a distinctive uniform that helped to identify combatants from non-combatants and one side from the other. But the same principle becomes almost impossible to apply in modern guerrilla warfare in which, by the very nature of that style of conflict, anyone may be an aggressor and hence a legitimate target.
The perpetual challenge for the moralist is to imitate the householder who draws on both old and new (Mt 13:52): to bring the truth of the moral tradition into play with the concrete realities of contemporary life, and so to find a path toward acceptable resolutions to moral problems. This can be achieved only by first ‘piercing through’ various historical expressions of the principle in question to reach its unchanging core, that central moral truth which the principle seeks to express and protect. This often intensely academic pursuit, ironically, is undertaken only in order to render the principle more practically applicable. So the moralist must descend through issues of interpretation and history to dialectic, and then work outwards again to a systematic resolution of the previously unmanageable moral problem.

The principle of legitimate cooperation is a good example. Cooperation in evil, as distinct from doing evil oneself, is ‘concurrence’ or ‘collaboration’ with an evildoer. The problem of legitimate cooperation takes the form of a dilemma: on one hand, one knows that one’s own good works will be taken up and used by another person to serve some evil purpose; on the other hand, like every moral agent, one is bound to avoid evil in any form. For example, the owner of a liquor store knows that a particular patron will abuse the alcohol purchased from him: should he therefore stop serving this patron? Knowing that his act of selling alcohol will be abused, is the store owner (‘the cooperator’) justified in continuing to do so? If he continues to serve him, will the cooperator share the guilt of the patron (‘the principal agent’) for becoming intoxicated? When is he justified in totally refusing to cooperate with the principal agent? The principle of legitimate cooperation provides a base from which to analyse this kind of problem and work towards a morally justifiable resolution.

In the following study it will emerge that each instance of cooperation in evil must be assessed individually, since solutions will vary according to numerous variable factors in the equation: for example, the relationship which exists between

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the agents; other duties of the cooperator; and the kind of evil intended by the principal agent. Nevertheless the principle offers a solid framework within which to assess these variables and work towards a solution. This is a tribute to the careful analysis of countless moralists who each contributed to the development of the principle throughout its history.

The aim of this chapter is two-fold: to study briefly the early development of the principle of legitimate cooperation (1.1) and its treatment in the later moral manuals (1.2), and on the basis of this development, to deduce something of the world-view within which the principle arose (1.3). This will prepare the ground for a study of the structure of cooperation (Chapter Two), and for an exploration of the principle in more recent Catholic moral theology (Chapters Three and Four).
1.1 Material Cooperation: The Development of a Principle

1.1.1 Introduction

Previous inquiries into the principle of material cooperation obviate the need for any exhaustive historical survey in the present work. Nevertheless, in order to situate the present study it will be helpful to highlight three key moments in the development of the principle: the contributions of Thomas Sanchez and St Alphonsus Liguori and, falling between them, an action of the Tribunal of the Roman Inquisition in 1679.

Alphonsus Liguori (1696-1787) is recognised as making the greatest contribution to the development the principle of cooperation, most notably in his *Theologia moralis* and his works of guidance for confessors. But his achievement in reframing the principle and bringing new insight to the problem of cooperation in evil came only by way of a substantial reworking of the tradition as he had received it through Thomas Sanchez (1550-1610).

1.1.2 Thomas Sanchez

Thomas Sanchez studied the question of cooperation in the particular context of sin, exploring how one’s venial sin (or even one’s otherwise morally indifferent act) could become serious sin by virtue of scandal or cooperation in the sin of another. His principal interest was in the cooperating agent’s culpability: the manner and extent to which a cooperator would share in the guilt of the principal agent, and consequently the extent to which the cooperator would share responsibility for making restitution for harm done to third parties.

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3 The forerunner of Alphonsus’s *Theologia moralis* was his commentary in 1748 on the work of Herman Busenbaum SJ. Roy notes three distinct works of Alphonsus for the guidance for confessors (the best known of which is the *Homo apostolicus* of 1759), and one for ‘the people’. See Roy, ‘La coopération’, 399-400.
In view of his particular context, it is not surprising that Sanchez’s focus was on the ‘direct-indirect’ distinction of cooperation: for Sanchez, ‘all cooperation is culpable participation in the other’s fault’.\(^6\) In this view, direct cooperation occurs (in the moral order) when one immediately participates in an evil act to which one has induced the other agent, and (in the physical order) when one participates immediately in that action while intending the same evil end, or when one participates more remotely but by some intrinsically evil means, or when one participates more remotely by morally indifferent means but with the intention of facilitating the sin of the other.\(^7\) For example, a locksmith directly cooperates in theft if he provides skeleton keys to a burglar with the direct intention of facilitating the burglar’s evil deed. Indirect cooperation is had when one participates more remotely in the sin of the other by a morally indifferent act and without intending to favour the sin of the other, and where one has some duty to prevent or avoid the sin of the other, and where there is no sufficiently good reason to justify one’s cooperation. For example, purely for friendship’s sake and without directly intending to aid the other’s evil deed, one volunteers to repair the weapon of an assassin.

So for Sanchez, if one’s participation was not intimately connected with the other’s sin, and one’s own act was good or morally indifferent, and one did not intend the sin of the other, and one either had no duty to prevent the sin of the other or one had such a duty but also held a sufficiently serious reason to act, then one’s action was neither direct nor indirect cooperation in that sin, and one did not share culpability for it.\(^8\)

To furnish another with a material which is itself indifferent, without willing his sin, but for another motive, is not to cooperate directly in evil. No one is said to be a direct moral cause of that which he neither commands, nor counsels, nor wills, nor assists. Now, here, he neither counsels, nor commands, nor wills, nor assists with the other’s sinful act, but he only offers the material; and it is not in this way that the sin of the other is constituted, but by the act through which the other abuses that material.\(^9\)

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\(^7\) Roy, ‘La coopération’, 382-383.
\(^8\) Roy, ‘La coopération’, 384.
This is an important step in the evolution of the principle. Sanchez establishes here a distinction between direct and indirect cooperation according to the *moral causality* in question. One who cooperates *directly* is one who participates immediately, or by intrinsically evil means, or by evil intention; while one who cooperates *indirectly* participates by otherwise innocent means but without good reason. In both cases the cooperator exercises some form of *moral causality* in the principal agent’s evil deed: *directly* when the participation bears directly on the evil nature of the action itself, and *indirectly* when the participation is more remote but offered without good reason.

It is also important to note that, in the case of indirect cooperation, the cooperating agent’s act becomes involved in the principal agent’s sin not by virtue of the cooperator’s intention, nor by the nature of the act he performs, but *solely by the principal agent’s abuse of that act*. But, for Sanchez, there was no real cooperation at all (at least in any morally relevant sense) if the cooperator had a good reason to act; the implication is that this reason was sufficient to justify the cooperator’s act even in the face of the other’s abuse. Cooperation for Sanchez was therefore not mere physical participation, but *morally culpable* participation in the sin of another. It is inevitable, then, that sometimes he confused the question of cooperation with that of induction and active scandal.¹⁰

Roy notes that Sanchez takes his definition of scandal from Thomas Aquinas: ‘*a word or action lacking rectitude (minus rectus) which furnishes to another an occasion of ruin*’.¹¹ By ‘furnishing another with the occasion of ruin’ one provides a *moral cause*, in the strict sense of supplying to the will an object likely to elicit consent. It is in providing this moral cause (especially when one has a duty not to do so, or lacks any good reason to do so) that one can be said to counsel or to assist with the sin of the other. This renders one morally culpable, and Sanchez calls this action ‘cooperation’.

However, the category *minus rectus* causes Sanchez a problem: ‘The act of scandal is called minus rectus because it lacks in one manner or another the rectitude which is its due, whether the act in itself is evil or whether it presents the appearance of evil’. But Sanchez must explain how an act which is morally indifferent in itself, and which does not have the appearance of evil, can fall into this category. He does so by expanding the definition of *minus rectus* to include an act which ‘even if it does not have the appearance of evil, can avoid the spiritual ruin of another if it is not performed’. Because the obligation to avoid the spiritual ruin of one’s neighbour falls within the precept of charity, Sanchez here opens the way for the fuller treatment of cooperation under this precept which Alphonsus Liguori achieved.

Another development is the emerging definition of ‘indifferent’ and ‘intrinsically evil’ acts. An indifferent act is simple enough: it is one which is not already morally determined and can be made to serve either a good end or an evil end. But for Sanchez there seem to be two varieties of intrinsically evil acts: a) those which are actually intrinsically evil, or truly evil in their very essence, and b) those which are virtually intrinsically evil. The latter are acts which are indifferent in themselves, but normally so closely identified with evil ends that they themselves deserve to be called evil. Actually intrinsically evil acts may never be commissioned lawfully, while virtually intrinsically evil acts ‘so nearly approach the evil’ that they require a proportionately grave reason to justify their performance. Without this justifying reason, the one performing such acts could be said to

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11 See Roy, ‘La coopération’, 385-389. The reference to Thomas is to ST II-II, 43, 1: ‘... dicitur quod dictum vel factum minus rectum praebens occasionem ruinae sit scandalum.’

12 Roy (‘La coopération’, 387, footnote 20) quoting Sanchez, *Opus Morale*, Lib. I, cap. VI, 1: ‘Dicitur minus rectum, id est, quod ex aliquo capite caret debita rectitudine, aut quia in se malum est, aut mali speciem habet...’

13 Roy (‘La coopération’, 387, footnote 21) quoting Sanchez, *Opus Morale*, Lib. I, cap. VI, 1: ‘... aut si nec hanc (speciem mali) habeat, dicitur inordinatum, aut minus rectum eo quod gratia vitandae proximi ruinae, dimittendum esset.’

(virtually) intend the evil done by the principal agent and so to cooperate culpably in it.\textsuperscript{15}

It seems, then, that Sanchez classifies human acts on two planes. On the universal or speculative level an act may be essentially evil, or it may be essentially indifferent depending on the use to which it is put. However, on the particular or practical level where concrete circumstances must be taken into account, some of these ‘essentially indifferent acts’ are in fact evil in virtually every case: that is, in almost no set of circumstances would one have a sufficiently serious reason to justify them - and so these acts are virtually ‘intrinsically evil’.\textsuperscript{16}

So while it seems true that Sanchez sometimes confused the distinct moral issues of scandal and cooperation, he certainly carried forward the concept of \textit{intrinsically evil acts}, and highlighted the need for a \textit{proportionately serious reason} to justify one’s cooperation in the sin of another. These factors were to figure prominently in another development not long after Sanchez’s death.

1.1.3 The Condemnation of 1679

On 4 March 1679 the following proposition was the fifty-first in a list of sixty-five condemned by the Tribunal of the Roman Inquisition under Pope Innocent XI:

\begin{quote}
A servant who, following orders, knowingly helps his master to climb through a window in order to ravish a virgin, and furthermore serves the same by carrying a ladder, opening a door, or cooperating in a similar manner, does not sin mortally if he does this out of fear of substantial harm, such as fear of being treated badly by his master, or being looked upon fiercely, or being expelled from service.\textsuperscript{17}
\end{quote}

\textsuperscript{15} Roy, ‘La coopération’, 395-397. At 397 he quotes Sanchez, \textit{Opus Morale}, Lib. I, cap. VII, 16: ‘\textit{Si res indifferentes sit ita proxime ad peccatum ordinata, ut per se mala sit merito censenda, quamvis in aliquo casu possit esse licita, juxta dictum 7, suppeditans non excusatur a culpa, quamvis certo sciat alium paratum ad peccatum et inventurum alium, qui materiam suppeditet. \ldots\ Et ratio est, quia tales actiones ita proxime peccato accedunt, ad illudque ordinantur ut ex se malae dici merito quaeant, nisi causa aliqua urgenti excusentur.’

\textsuperscript{16} Roy, ‘La coopération’, 398. Note that Sanchez ties these ‘virtually intrinsically evil acts’ to the question of whether they are able to produce good effects.

\textsuperscript{17} Alphonsus (\textit{Theologia moralis}, Tom. 1, lxx-lxii) cites the \textit{Propositiones Damnatae ab Innocentio XI} in March 1679: ‘\textit{Famulus, qui submissis humeris, scienter adjuvavit herum suum ascendere per fenestram ad stuprandam virginem, et multoties eidem subservit deferendo scalam, aperiendo
In view of Sanchez’s achievement, and for the purposes of the present study, the critical question is: *did the Inquisition condemn this proposition because the servant’s actions were intrinsically evil in the circumstances, or because the servant lacked a sufficiently serious reason to justify his cooperation?*\(^{18}\)

Following Sanchez, ‘intrinsically evil acts’ were understood to be acts which could not serve any but evil ends. If the 1679 proposition was condemned because the servant’s acts were judged to be ‘intrinsically evil’ in this sense, the key questions then become: (i) on what basis are human acts to be judged to serve nothing but an evil end? and (ii) how does the agent’s foreknowledge (that his acts will be abused unto evil) influence this judgment?\(^{19}\)

Most moralists took the position that, if the servant’s acts are ordered solely to the intrinsically evil end of the master, then the servant’s acts themselves are also intrinsically evil. It would be this issue of ordering or intending an act to an evil end, and the manner in which the act is so ordered, which would open the way for Alphonsus to clarify the distinction between formal and material cooperation.

On the other hand, if the proposition had been condemned because the servant’s actions lacked a sufficiently serious reason, then the focus of attention switches to the *justification* of cooperation: in what way do the circumstances surrounding a proposed cooperative act, circumstances which are known to the servant, help to justify that act? Do they alter the moral species of the cooperative act, or do they so complicate the subjective assessment of its good and evil effects that cooperation may be rendered excusable? In more modern terms: is cooperation in evil to be *objectively justified* on the basis of the morality of the act itself, or *subjectively excused* on the grounds of the cooperator’s intention?

Moralists of the time remained divided over these matters and seemed unwilling to propose definitive answers. This may have been because the Inquisition’s moral weight discouraged any claims to absolute resolution of such controverted aspects of the condemnation. These questions, and clarification of the categories of cooperation which would serve to illuminate them, remained essentially unresolved until the time of Alphonsus Liguori.

1.1.4 Alphonsus Liguori

Alphonsus treats cooperation in two locations in his *Theologia moralis*: the particular question of cooperation and scandal is dealt with in the tract on charity, while the more traditional problem of ‘restitution for unjust damage’ is dealt with in the tract on justice. Like prior and subsequent manualists, Alphonsus uses the term ‘cooperation’ somewhat equivocally in these locations, but his great achievement was to untangle various meanings of ‘cooperation’ and give that term its clearest definition. More complete assessments of his work may be found elsewhere.

As Sanchez, so Alphonsus in *de restitutione* examines whether those who cooperate in doing harm to another should be held to make restitution. The response is clear:

All are held to make restitution who in any manner are a cause influencing and effecting the harm which follows; and those who, being by office and the obligations of justice obliged to guard against such harm, do not prevent it.

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22 Alphonsus, *de restitutione*, Dubium II: *An qui cooperantur ad damnum alterius teneantur ad restitutionem*.

23 Alphonsus, *de restitutione* 557: ‘Tenentur omnes illi, qui quoquo modo sunt causa influens et efficax damni secuti; ac qui, ex officio et obligatione justitiae obligati cavere damnum, non caverunt.’
He then considers the ‘nine modes of cooperation’ which had become traditional: ‘Jussio, concilium, consensus, palpo, recursus, participans, mutus, non obstans, non manifestans’. The first six represent positive cooperation in harm done to another, while the last three are negative - cooperation by omission. Roy notes that, ‘by relationship to the act of damage, cooperators exercise influence in a dual way according to the two modes of physical causality and moral causality’. This distinction based on causality becomes significant as Alphonsus begins to distinguish ‘cooperation properly so called’ from ‘scandal’ and ‘induction’.

Two points are clear in de restitutione. First, as with Sanchez, the focus here is on the issue of culpability: in general terms, a cooperator is required to make restitution to the extent to which he shares moral responsibility for damage done by the evil he helps to cause. The crucial point for Alphonsus, as for Sanchez, is moral causality: in the question of restitution, the cooperator is to be considered culpable insofar as he has exercised moral causality by influencing the will of the principal agent either by helping to form the principal agent’s evil will (for example, by command, counsel or flattery), or by strengthening the principal agent’s existing evil will (by agreement, defense or participation), or by failing to dissuade the principal agent (by being silent, or remaining passive, or failing to reveal the other’s fault). In all of these the cooperator is held to make restitution.

Second, however, among these nine modes of moral causality Alphonsus notices that the cooperator can also exercise purely physical causality in one mode: participation in the evil act itself. One’s moral culpability for purely physical participation in an evil act (and therefore one’s duty of restitution) depends on two factors: the proximity of one’s cooperation in the evil act, and whether one cooperates freely or because of some grave fear. Many moralists held that because

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26 The focus on culpability here prompts even Alphonsus at times to confuse cooperation with scandal or induction. Roy, ‘La coopération’, 401-402.
27 Alphonsus, de restitutione 571: ‘Participantes dupliciter intelligi possunt: nempe in re furata et in actione furti. Participantes in re furata tenetur quidem restituere quantum de illa ad ipsos perveniit. Quoad participantes vero in actione furti, videndum an ipsi concurrant at totum damnun vel ad partem.’
28 Alphonsus, de restitutione 571, quoting Lessius: ‘Excusantur tamen (modo actio per se non sit mala) qui ea non sponte, sed justo metu coacti faciunt . . .’
too proximate a cooperation would render the cooperative act intrinsically evil, proximity itself was the major factor in determining culpability even in the presence of an excusing reason.\footnote{Alphonsus, \textit{de restitutione} 571 : ‘Si actiones cooperantis remote concurrant ad furtum . . . tunc cooperans ob metum mortis vel alterius gravis mali, excusatur tam a restitutione quam a culpa; quia istae sunt actiones per se indifferentes, neque laedunt dominum, nisi ex malitia furis. - Secus, si actiones sint proxime influentes in furtum . . . tunc cooperans non excusatur neque a culpa neque a restitutione. Ratio, ut dicunt, quia actiones hae, utpote intrinsecce malae, non possunt ob quicumque metum excusari.’} Alphonsus preferred an alternative approach: given that the cooperator exercises no moral causality in the principal agent’s sin (that is, his is purely physical participation), the cooperator’s act and the principal agent’s act must each be considered to have their own moral status. Even very proximate physical cooperation may be permissible so long as the cooperator holds a sufficiently grave reason to act.\footnote{That is, if the cooperator acts for the same end as the principal agent then his deed is obviously evil; but if he acts for another end, for example to prevent a greater harm befalling himself, then his act must be considered as distinct from that of the principal agent. See Alphonsus, \textit{de restitutione} 571: ‘Ratio, quia omnes praefatae actiones, tam primi quam secundi generis, sunt revera indifferentes: cum, juxta finem quo fiunt, vel licitae vel illicitae esse possint. - Si enim tu praestas illas cum pravo fine nocendi domino, certe erunt tibi illicitae. - Si vero praestas, ad damnum tuum in vita vel honore praecavendum, tunc licitae tibi erunt; et quod fur illis abutatur ad suam pravam voluntatem exsequendum, hoc per accidens se habet: tuque solum materialiter tunc cooperaris ad peccatum illius, quod ex justa causa licite permittis.’}

So in the first place Alphonsus distinguishes between participation by an intrinsically evil act and participation by an essentially indifferent act. In the second place, he distinguishes between participation by an essentially indifferent act with a sufficiently serious excusing reason, and participation by an essentially indifferent act without such an excusing reason.

The distinctions which Alphonsus uncovers in \textit{de restitutione} also occur in the tract \textit{de caritate}. Here Alphonsus’s primary concern is not with culpability and restitution, but with the demands of the virtue of charity itself - and again the role of the sufficiently serious reason is crucial. His progress towards defining ‘cooperation properly so called’ can be traced in three phases.

\textit{First, with regard to causality:} in \textit{de caritate} 47 the question is put whether it would be a sin of scandal to ask of someone that which he could not do without sin,
if he were already of a mind so to sin.\textsuperscript{31} In his reply Alphonsus notes that a principal agent who is already prepared to perform an evil act cannot be the subject of scandal or induction in the strict sense, since the evil object has already been presented to, and approved by, his will.\textsuperscript{32} The logic here is compelling: the cooperator in question is clearly participating in the other’s evil action, but is not strictly inducing it. There is, therefore, a real distinction between cooperation on one hand, and scandal or induction on the other. As in \textit{de restitutione}, it is when Alphonsus notices that one may \textit{physically cooperate} in an act without exercising any \textit{moral causality} that the nature of ‘cooperation properly so called’ becomes clear: if the cooperator’s act exercises moral causality in the principal agent’s act, that act qualifies as scandal or induction and is best dealt with under those titles; if there is no moral causality at all, but only physical participation in some form, then the act is one of cooperation properly so called and is best handled under that title.\textsuperscript{33}

It will be recalled that Sanchez had defined cooperation primarily with reference to the \textit{fault} of the principal agent, and his emphasis on moral causality is similarly with reference to that agent’s \textit{fault}, to the point that he seems reluctant to consider purely physical participation within his definition of cooperation.\textsuperscript{34} While this frame of reference is in keeping with Sanchez’s concern to study the question of restitution for unjust damage, it is now obvious that this approach must inevitably lead to some confusion. For Alphonsus, on the other hand, cooperation properly so called is defined primarily not in terms of participation in the principal agent’s \textit{fault}, but in terms of the cooperator’s participation in the principal agent’s \textit{act} by contributing some physical assistance. The same distinction allows Alphonsus to define formal and material cooperation:

But it is better to say, with others, that [cooperation] is formal which agrees with the evil will of the other, and cannot be done without sin; true material [cooperation] is that which concurs only

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\textsuperscript{31} Alphonsus, \textit{de caritate} 47: ‘\textit{Quaestio 3: An sit peccatum scandali, petere ab alio aliquid, quod ipse non praestabit sine peccato, si jam paratus sit ad peccandum?’ Roy (‘La coopération’, 408) notes that while Alphonsus poses the question in terms of \textit{induction}, he responds to it in terms of \textit{cooperation}.

\textsuperscript{32} Roy, ‘La coopération’, 408.

\textsuperscript{33} Roy (‘La coopération’, 403) notes that in the tract on charity Alphonsus no longer identifies as ‘cooperators’ those who exercise such moral causality - rather they are agents of scandal.

\textsuperscript{34} Roy, ‘La coopération’, 384.
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with the evil action of the other, [which is] outside the intention of the cooperator.\textsuperscript{35}

Second, with regard to the nature of the cooperative act and the cooperator’s subjective intention: defining ‘cooperation properly so called’ as ‘cooperation without induction’ effectively eliminates eight of the nine modes dealt with in \textit{de restitutione}, since none of the eight could avoid influencing the principal agent’s will in some way. This leaves only \textit{participans} - or more precisely, only one form of \textit{participans}, namely purely physical participation - and this would be ‘cooperation properly so called’ only if certain conditions apply. Given that the principal agent has already formed a will to sin, Alphonsus lists these conditions as:

1° If the work or cooperation would be in itself good or at least indifferent. 2° If it would be through a good intention and for a reasonable cause, and not in order to help the other to sin. 3° If one is unable to impede the sin of the other, or at least for a reasonable cause one would not be expected to do so.\textsuperscript{36}

These conditions strictly circumscribe \textit{participans} as ‘cooperation properly so called’. The first condition specifies that the cooperative act must not be evil in itself, or else the cooperator would sin in his own right. The second condition requires a good intention, since an evil intention would vitiate an otherwise good or indifferent act; it also requires a justifying reason serious enough, in the circumstances, to override one’s normal obligation not to participate even only physically in an evil deed. The third condition requires that, even given a good or indifferent act, a good intention and a sufficient reason, one must also hold some reason to be excused one’s normal obligation to prevent or impede spiritual harm to one’s neighbour.

\textsuperscript{35} Alphonsus, \textit{de caritate} 63: ‘\textit{Sed melius cum aliis dicendum, illam esse formalem, quae concurrit ad malam voluntatem alterius, et nequit esse sine peccato: materialem vero illum, quae concurrit tantum ad malam actionem alterius, praeter intentionem cooperantis.’ Emphasis added. See also Roy, ‘La coopération’, 422.

\textsuperscript{36} Alphonsus, \textit{de caritate} 59: ‘1° Si tuum opus vel cooperatio sit secundum se bona vel saltem indifferentes. 2° Si bona intentione et rationabili ex causa fiat, et non ut juves alterum peccare. 3° Si alterius peccatum impedire nequeas, aut saltem non tenearis propter causam rationabiliem.’
It will be noted that, like Sanchez, Alphonsus defines as intrinsically evil an act which cannot be commissioned except as ordered to sin. Granted that the cooperator’s act is not intrinsically evil in this sense - that is, not in itself ordered to the principal agent’s evil act - the cooperator’s act is taken to be essentially indifferent in itself, and Alphonsus’s major concern then is with the cooperator’s intention. He insists that the cooperator’s intention must be good or at least indifferent, since an evil intention would vitiate an otherwise morally indifferent act. But even where the act is good or indifferent in itself and the cooperator’s intention is also good, Alphonsus points out that the cooperator must still evaluate his cooperation with prudence, according to various considerations:

1° How grave is the sin to which occasion would be given; 2° how probable it is that, if one did not cooperate, the other would not commit the sin; or how inevitable is the sin; 3° how closely one’s cooperation bears upon the sin; 4° how great a right one has to perform the cooperative act; 5° finally, how greatly the sin offends the demands of justice, by virtue of the harm it does to a third party.

Third, with regard to the question of culpability, Alphonsus notes that a sufficiently grave reason is always required to justify material cooperation: cooperation without a proportionate reason would constitute a sin against both the virtue offended by the evil with which one cooperates, and the virtue of charity which requires one to avoid allowing serious harm to one’s neighbour (that is, the principal agent) - including spiritual harm. But cooperation with a proportionately grave reason may constitute a sin against neither virtue. Again, Alphonsus’s reasoning is compelling:

- with regard to an offence against the virtue of charity:

37 Alphonsus, de caritate 59 : ‘Et Sanchez censet auctores citatos locutos fuisse casu quo absit justa causa excusans; vel quando cooperatio sit intrinsece mala. Semper autem est intrinsece mala illa actio, quae ex se determinata est ad peccatum: uti esset, quaerere domino concubinam, idola fabricare, et quid simile. Secus, si actio potest fieri sine peccato: puta, ministrare mensae, aperire januam, etc.’

38 Alphonsus, de caritate 59 : ‘1° quanto gravius est peccatum cujus occasio datur; 2° quanto probabilius est, te non cooperante, alterum non peccaturum; aut quanto certior est affectus peccati; 3° quanto propinquius tua cooperatio peccatum attingit; 4° quanto minus jures habes ad tale opus; 5° denique, quanto magis peccatum cum justitia pugnat, idque propter damnum tertii.’

39 Alphonsus, de caritate 47.

40 Note that ‘offences against the virtues’ here refers to the sin of the cooperator which is tied to the nature of his cooperation and whether or not it is justified. The sin of the principal agent is a
Indeed, charity obliges us to avoid serious harm to our neighbour, as often as it may be done without serious inconvenience. However, when we have a grave reason for asking, we cannot abstain from asking without serious inconvenience; and therefore in this case we are certainly excused; the opposite is true if the reason is not serious, and much more so if the reason is unlawful or frivolous.\textsuperscript{41}

- \textit{and with regard to offence against the other virtue in question:}

Truly we say that someone asking without a just cause . . . would not be excused a grave sin against the other virtue to the offending of which he morally induces his neighbour. And this is so even if it might be the case (which in practice, as we have just said, is morally impossible) that the external act would not strengthen the malice of the neighbour who is already prepared to sin. The reason is that, without a just cause, it is never lawful to cooperate with an objectively evil action; even if it is only permissive concurrence, to concur even morally with an objectively evil act without a just cause is of itself always evil; accordingly it is certain that to induce another senselessly to perjury, fornication, etc., even if the other person does not actually sin, is a grave sin against the opposite virtue; . . . \textsuperscript{42}

It seems, therefore, that Alphonsus requires the cooperator to hold a sufficiently serious reason for two purposes: \textit{firstly} in order to excuse the cooperator from his normal duty in charity to prevent spiritual harm befalling his neighbour, and \textit{secondly} in order to excuse the cooperator from his normal duty to refrain from assisting the principal agent to offend another virtue or virtues. This double sense of ‘sufficiently serious reason’ appears when the cooperator acts under some threat of harm:

\ldots when one performs an action which is indifferent in itself, that is, one which may be either good or evil, one is not held out of charity to abstain from it, not even if another person would abuse it in order to commit sin; moreover, when someone threatens one with serious

\textsuperscript{41} Alphonsus, \textit{de caritate} 47: ‘Caritas enim nos obligat ad vitandum damnum grave proximi, quotiescumque sine notabili incommodo id possumus. Cum autem habemus graven causam petendi, non possimus sine gravi incommodo a petendo abstinere; et ideo tunc equidem excusamur; secus vero, si causa sit levis, et tanto magis si sit illicita aut vana.’

\textsuperscript{42} Alphonsus, \textit{de caritate} 47: ‘Verum dicimus quod petens sine gravi causa . . . non excusatur ab allo peccato gravi contra virtutem, ad quam laedendam moraliter inducit proximum. Et hoc, etiamsi daretur casus, quem practice jam diximus moraliter impossibile esse evenire, quod opere externo non augeretur malitia proximi parati ad peccandum. Ratio, quia sine justa causa nunquam licet cooperari ad actionem objective malam; concurreere enim moraliter, etsi permissive, ad actum objective malum sine justa causa, per se semper est malum; prout certum est, quod inducere amentem ad pejerandum, fornicandum, etc., etiamsi ille non peccat, est grave peccatum contra virtutes oppositas; . . . ’
harm, it can be lawful to permit the other person to sin. For on one hand charity does not oblige one to suffer grave harm in order to avert the other’s sin; and on the other hand, the malice of the other person does not alter the nature of one’s own act, which by its indifference avoids being intrinsically evil. And the author Continuator Tournely teaches the same opinion as me, saying: I am not held to undergo serious harm in order to avert the sin of another; rather his own malice is imputed to himself only.  

In all of these cases Alphonsus assumes the principal agent’s will to sin. Without this prior intention of the principal agent, virtually any cooperation would constitute inducement: either as assisting the principal agent to form his evil intention, or as strengthening the evil intention he has already formed. It is significant therefore that in de caritate, while Alphonsus eliminates what he admits is virtually impossible (that the cooperative act would not strengthen an evil intention already formed), he still finds a grave sin in the case of one who cooperates without just cause. In this case, the grave sin is not defined primarily with reference to the fault attaching to the principal agent’s act: the sin is defined primarily in terms of the cooperator’s own act, which constitutes unjustified participation in the principal agent’s evil deed.

Here the importance of Alphonsus’s achievement is clear. In defining cooperation primarily in relation to the act of the cooperator rather than to the fault of the principal agent, he effectively identifies a boundary which previously had gone unnoticed: it is the boundary between the cooperator’s culpability for his own act, and his shared culpability for the act of the principal agent. Consequently Alphonsus insists that several conditions must be met for legitimate cooperation:

- the principal agent must already be determined unto evil (so there is no question of induction);
- the cooperator’s act must be good or indifferent in itself (so it does not merit condemnation in its own right);

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43 Alphonsus, de caritate 66: ‘... cum te praestas actionem per se indifferentem, scilicet, quae potest esse bona et mala, non teneris ex caritate ab illa abstinere, ne alter ea abutatur ad peccandum; quando autem alias grave damnum metuis, licite permettere potes peccatum alterius. Nam ex una parte, caritas te non obligat cum gravi damno peccatum ejus avertere; et ex altera, malitia alterius nequit mutare naturam tuae actionis, ita ut de indifferenti evadat intrinsec mala. Et idem mecum sentit doctus auctor, Continuator Tournely, dicens: Non... teneor grave subire detrimentum, ut alterius peccatum avertam; ipse sane malitiam suam sibi imputet.’
• the cooperator must not intend the evil of the principal agent (so that his cooperation is not formal); and
• the cooperator must possess a sufficiently serious reason to act (in the knowledge that the abuse of his act will occur only in virtue of the principal agent’s evil will).

In lawful cooperation properly so called, the cooperator is not at all culpable for the sin of the principal agent or for the evil wrought by the principal agent’s act, and therefore he is excused any harm which follows from the abuse of his own act. This boundary clarifies much of the confusion inherited from Sanchez.

In this way Alphonsus resolved the question posed by the condemnation of 1679. The servant in that case is not condemned because his actions are intrinsically evil by virtue of assisting his master to sin, since ‘opening a door’ or ‘holding a ladder’ are acts which are indifferent in themselves and may in other circumstances be ordered to good ends. Therefore (assuming that he acts with a good intention) the servant’s acts do not constitute formal cooperation in the master’s evil deed but only material cooperation, and a sufficiently serious reason (such as the threat of death) can justify such cooperation. However, the servant’s reasons as given in the condemned proposition are not serious enough to justify his cooperation in this case, so Alphonsus concludes that what was condemned by the Inquisition was not ‘formal cooperation’ but ‘unjustified material cooperation’. He holds that only the threat of death would excuse this material cooperation, but not even the threat of death would excuse material cooperation in a more serious evil, such as the killing of innocent people.

Alphonsus himself provides a concise summary of his achievement in *de caritate* 63:

- *First*, in distinguishing cooperation as formal and material he ties material cooperation to physical participation in the principal agent’s *act*, and formal cooperation to moral participation in the principal agent’s *fault*:

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44 See Roy, ‘La coopération’, 422.
45 Alphonsus, *de restitutione* 571.
But it is better to say, with others, that [cooperation] is formal which agrees with the evil will of the other, and cannot be done without sin; true material [cooperation] is that which concurs only with the evil action of the other, [which is] outside the intention of the cooperator.  

• Second, in specifying the conditions for legitimate material cooperation he hints at a definition of ‘proportionate reason’:

That [act of material cooperation] is lawful when of itself the act is good or indifferent; and when there is also a just cause proportionate to the gravity of the sin of the other and to the proximity of the concurrence . . .  

• Third, in explaining how the cooperator may be excused from the demands of charity, he clearly distinguishes the principal agent’s intention and act from the cooperator’s intention and act:

The reason is that simultaneously with your indifferent action performed without an evil intention, should the other person wish to abuse [your action] in order to perform his sin, you will not be held to impede his action even out of charity. This is because charity does not oblige when it demands grave inconvenience, so in performing your cooperation for a just cause, you do not sin. Then indeed his sin does not proceed from your cooperation, but from his own malice by which your action will be abused.  

• Fourth, Alphonsus explains what might be called the psychological structure of material cooperation properly so called:

It is not true to say that your action, even if indifferent, becomes evil when it conjoins with the circumstances of the depraved intention of the other person; for your action does not conjoin itself with his evil will, but he conjoins his evil will with your action; so your action then will not be a cause in itself influencing the sin, but only an occasion which the other person abuses in order to sin. 

\[\text{Emphasis added.}\]
Finally, it is apparent that the locations of the two discussions of cooperation are very significant. In *de restitutio*, where the central concern is assessment of the degree of recompense to be made for unjust damage, the primary question of cooperation is: *in view of the evil effects which will follow from the principal agent’s evil action, is the cooperative act still justified on this occasion?* In *de caritate*, on the other hand, the central concern is purely whether charity always obliges one to prevent the principal agent from suffering spiritual harm from an evil which he wills upon himself. Regardless of any further evil effects which may flow from the principal agent’s action, the primary question of cooperation in evil here is: *in view of the spiritual harm which the principal agent will do to himself, is the cooperator’s action justified?*

Alphonsus looks at cooperation through the two lenses of ‘justice’ and ‘charity’, and identifies two distinct focal points: the harm done by the principal agent’s act, and the principal agent’s sin in itself. In the former, the question of cooperation in evil (properly so called) certainly arises, but it may easily be confused with the attendant issues of harm done to third parties and responsibility for restitution, and even with the problems of scandal and induction. It is only in the latter, where the sole focus is on the principal agent’s sin, that the question of cooperation in evil (properly so called) is seen in itself. This point was not universally appreciated by many subsequent authors.

But since many instances of cooperation in evil involve injustice to third parties in one way or another, it is valid to ask: is Alphonsus’s distinction real or only notional? Is it useful in fact, or only in theory? In the condemnation of 1679, for example, the questions concern only the servant’s cooperation: is the servant justified in cooperating with his master, and if so, why? But it is incontestable that a grave injustice is being done to a third party, the virgin ravished by the master. Does this injustice not go to the heart of the servant’s action? Does not the servant share some culpability for the master’s sin?

conjuncta cum mala voluptate illius, sed illud conjungit suam malam voluntatem cum actione tua; unde tua actione non erit tunc causa per se influens in peccatum, sed tantum occasio, qua ille abutitur ad peccandum.’

29
This is precisely the point of Alphonsus’s distinction. The servant will share culpability for the master’s sin only if the servant’s cooperative action is itself unjustified - which, as Alphonsus noted, depends on the ‘fear of substantial harm’ involved. Alphonsus believed that the servant would not be bound to redress any injustice toward the virgin if his cooperation was not in fact unjust (and the threat of grave harm to himself might guarantee precisely that). Again, subsequent authors did not always appreciate this point. It is perhaps significant that these two issues - the effect of ‘duress’ and the question of whether a cooperator is responsible for the effects of the principal agent’s action - continue to arise even in much later treatments of the principle of legitimate cooperation.

1.1.5 Conclusions

The following schema illustrates, in a simplified way, the clarification of concepts which Alphonsus brought to the question of cooperation in evil.

<table>
<thead>
<tr>
<th>Cooperation</th>
<th>Sanchez</th>
<th>Alphonsus</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immediate</strong></td>
<td>Direct cooperation</td>
<td>Induction</td>
</tr>
<tr>
<td>Direct cooperation</td>
<td>Direct cooperation</td>
<td>Formal cooperation</td>
</tr>
<tr>
<td>Introducing the other to sin</td>
<td></td>
<td></td>
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<tr>
<td>Intending the same evil end</td>
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<tr>
<td>by intrinsically evil means</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Mediate</strong></td>
<td>Indirect cooperation</td>
<td>Unjustified material cooperation</td>
</tr>
<tr>
<td>by innocent means,</td>
<td></td>
<td></td>
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<td>for no serious reason</td>
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<tr>
<td>by innocent means,</td>
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<tr>
<td>for a serious reason</td>
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<td></td>
</tr>
<tr>
<td>Not cooperation</td>
<td>Legitimate material cooperation</td>
<td></td>
</tr>
</tbody>
</table>

Figure 1.1 Cooperation in Thomas Sanchez and Alphonsus Liguori.

The century following Alphonsus saw the moral manuals make no appreciable improvement to his position. In one sense this was a period marked by repetition and consolidation of past achievements: ‘. . . nothing seems to have changed much in a hundred years except the names of those articulating the old arguments’. It is not surprising, then, that while there were inevitably some variations between one manual and another, the principle of cooperation remained essentially as Alphonsus had left it.
Nevertheless, the nineteenth century did see the beginnings of a renewal in moral theology. Discontent at the style of the manuals, and at what was perceived as an excessively legalistic approach to the ministry of the confessional and to moral life, was fuelled by the need to address challenges issuing from the rise of rationalism. Beginning in the universities, this renewal movement was marked broadly by ‘a recovered sense of the past and of historical development, a renewed sense of speculation, of mysticism and an effort to align theology more closely with life.’

This trend in moral theology emerges very unevenly and very late in the manuals of the twentieth century. And in most respects, as noted, the principle of cooperation remained unaffected by these developments - which is both a comment on the vitality of the genre, and a tribute to the work of St Alphonsus.

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1.2 Cooperation in the Later Manuals

1.2.1 Introduction

The moral manuals hold a particularly important place in the Catholic moral tradition. They had the specific aim of preparing clerical students for the role of confessors, but as a genre which evolved over time they also provide a base-line for longitudinal studies of particular moral questions.

This section will explore the principle of cooperation as it appears in three moral manuals. It has already been noted that in most respects the manualists’ treatment of cooperation does not vary greatly from that of Alphonsus, but this study will help to situate a later discussion of the structure and content of the principle. In some ways these texts - all taken from the first part of this century and frequently illustrating the tendencies noted above - may be taken as representative of what turned out to be the final stage of the manual tradition.

The choice of these particular manuals is driven by two factors: the parameters of the present work, and the influence which these authors exercised on the formation of priests in Australia in the years just prior to and immediately after the Second Vatican Council. That Council is a natural boundary since it mandated a far-reaching revision of moral theology, a renewal which is having a significant impact on the way in which moral principles are presented today.

1.2.2 Aertnys-Damen

Three aspects of Aertnys-Damen’s *Theologia moralis* (1932) make it an immediate candidate for study: it is typical of the genre as it stood at the beginning of this century; it underwent many editions in its long history (eight prior to the

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1918 Code of Canon Law, the eighteenth and final edition in 1967); and as the work of two (and eventually three) notable Redemptorist theologians it could be expected to stand squarely in the tradition of Alphonsus Liguori.

True to that tradition, Aertnys-Damen treat cooperation in two locations: *de restitutione*\(^{54}\) and *de caritate*.\(^{55}\)

In *de restitutione* the treatment follows the focus of Alphonsus very closely: cooperation is defined broadly as concurrence in the action of another which brings about unjust damage. The authors list the traditional nine modes, and note the two offences inherent in unjust cooperation: against charity, and against the other virtues in question.\(^{56}\) They deal with the problem of cooperation by induction in the first five positive modes, before treating of *participans*.\(^{57}\)

Here the authors repeat the distinctions made by Alphonsus between participation through *benefiting* from an unjust act, and participation in the *commissioning* of the unjust act itself. Participation in the latter case is either *formal* or *material*,\(^{58}\) and material cooperation may be either *immediate* (when one cooperates in the performance of the evil act itself) or *mediate* (when one offers some matter which serves the commissioning of the evil act). Some of the examples have not changed from the time of Sanchez: offering one’s shoulders for someone to climb through a window, making or providing skeleton keys for a thief, and so on.\(^{59}\)

In assessing restitution the authors also repeat the doctrine of Alphonsus: whoever participates through *benefiting* from the unjust act is always held to make restitution; whoever participates through contributing to the *commissioning* of the unjust act itself is held to make restitution *when their cooperation is theologically culpable*. *Formal cooperation* is always sinful, and so restitution is always

\(^{54}\) Lib. III *De praeceptis Decalogi*, Tr. VII *De VII et X praecepto*, Pars I *De justitia commutativa*, Sectio III *De restitutione*, Cap. IV *Restitutio ob injustam cooperationem ad damnum*.

\(^{55}\) Lib. II *De praeceptis virtutum theologicarum*, Tr. III *De caritate*, Cap. VI *Peccata contra caritatem*, Art. 3 *Cooperatio*.

\(^{56}\) Aertnys-Damen, *de restitutione* 769.

\(^{57}\) Aertnys-Damen, *de restitutione* 782-783.

\(^{58}\) The authors have already defined these in their *de caritate* 398.

\(^{59}\) Aertnys-Damen, *de restitutione* 782, with reference to Alphonsus in his *de restitutione* 571.
required. Those who cooperate *materially* are held to make restitution when they have no ‘just and proportionate reason’ for acting, since only such a reason can justify material cooperation.\(^{60}\)

Aertnys-Damen seek to shed some light on what might constitute this ‘just and proportionate reason’ in various cases. *Immediate material cooperation* would not be justified if, in seeking to avoid harm to oneself, one cooperated in inflicting a harm of the same order on one’s neighbour; but it would be justified if the threat of harm to oneself was of a higher order than the threat to one’s neighbour. *Mediate material cooperation* would be permitted where the threat of harm to both parties was equal.

In *de caritate* the authors also follow closely the doctrine of Alphonsus whom they acknowledge as making the greatest contribution to clarification of the question. While the reserve the strict sense of cooperation to one who ‘*concurs either physically or morally in the evil action of the other more principal agent*’,\(^{61}\) they immediately note that the principal agent is one who is already determined to act: that is, they exclude all notion of induction. Granted this, *formal cooperation* is defined as ‘*concurrence in the formal sin of another, or in his evil will in such a way that it necessarily includes concurrence in the sin itself*’.\(^{62}\) This may come about *ex fine operis*, when the act is of its nature ordained only unto the sin, or *ex fine operantis*, by the intention of the cooperator. In either case the sin of formal cooperation is taken to be obvious, and directly voluntary, and so never lawful.

*Material cooperation*, on the other hand, concurs ‘*only in the material sin or in the evil action of the other and not with his evil will*’\(^{63}\) - that is, the cooperator must not formally intend the evil of the principal agent. Here the traditional concept of intrinsically evil and morally indifferent acts is employed: material cooperation

\(^{60}\) Aertnys-Damen, *de restitutione* 783: *‘Materialiter cooperans ad restitutionem tenetur nisi ex justa et proportionata causa auxilium praestet; tunc enim solum cooperatio ejus licta est.’*

\(^{61}\) Aertnys-Damen, *de caritate* 397.

\(^{62}\) Aertnys-Damen, *de caritate* 398: *‘Cooperatio formalis ea est quae concurrit ad formale peccati alterius, seu ad ipsius malam voluntatem, ita ut necessario includat consensum in ipsum peccatum.’* Emphasis original.

\(^{63}\) Aertnys-Damen, *de caritate* 398: *‘Cooperatio materialis ea est, quae concurrit tantum ad materiale peccati seu ad malam actionem alterius et non ad malam voluntatem.’* Emphasis original.
occurs ‘when anyone without evil intention performs a work in itself indifferent, which of its own nature is not ordained solely unto the sin, but which can be made to serve either good or evil purposes, and which the other agent abuses in order to sin’.  

Material cooperation is further categorised, somewhat vaguely, as proximate or remote ‘according to the matter or means of sinning, or better, as it leads proximately or remotely to the execution of the sin’.

Material cooperation per se is illicit, but per accidens it may be lawful for a proportionately serious justifying reason. The authors conclude that lawfulness depends upon three simultaneous conditions: that the act is in itself good or indifferent, that the end (intention) is good, and that it is for a just and proportionate reason. Ilicit cooperation, whether formal or material, is always a sin against all virtues offended.

Aertnys-Damen then further specify their position on what constitutes a ‘just and proportionate reason’: it must be proportioned to the one cooperating, and to the manner of cooperating, and to the sin of the principal agent. Only in relation to all of these circumstances can a truly prudential judgment be reached.

A more serious reason would be required to justify material cooperation as the following factors vary:

- whether the cooperator is bound by office to prevent the sin;
- the more likely it is that the sin would not occur if one did not cooperate;
- the more certainly the cooperator knows that his act will be abused;
- the more proximate the cooperation to the sin;
- the more serious the sin itself; and

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64 Aertnys-Damen, de caritate 398: ‘Hoc autem contingit quando quis absque mala intentione operam praestat de se indifferentem, quae non natura sua ad solum peccatum ordinatur sed tam bono quam malo usui inservire potest, at qua alter abutitur ad peccandum.’

65 Aertnys-Damen, de caritate 398: ‘... prout materia vel medium peccandi, quod praestatur, proxime vel remote conducit ad peccati executionem.’

66 Aertnys-Damen, de caritate 399.

67 Aertnys-Damen, de caritate 400: ‘Causa cohonestans cooperationem materialem debet esse proportionata tum ad personam cooperantem, tum ad modum cooperationis, tum ad peccatum cui exsequendo opera praestatur. Hae enim sunt actionis circumstanatiae quas respicere debet prudentia, cujus est determinare quaenam causa in casu particulari cooperationem materialem cohonestet.’
• the more severe the judgment of the principal agent.  

Then the special rules governing material cooperation are given: material cooperation is always lawful if it is done in order to avoid a greater evil; proximate cooperation in an action which gravely damages the public good is never excusable on the grounds of protecting a private good; proximate cooperation in the sin of another, especially necessary cooperation, is excused if one acts out of a fear of grave harm or loss at least equivalent to that suffered by a third party - whereas remote cooperation in the sin of another may be lawful for a less serious reason. But if denying one’s cooperation would prevent the sin being committed, then a more serious reason is required to justify one’s act.

Note that here the authors cite Alphonsus directly, and refer to a footnote in the Gaudé edition which draws attention to the fact that while he is considering cooperation with a specific focus on whether charity permits the cooperator to allow the principal agent to sin, Alphonsus also counts ‘harm done to third parties’ as a relevant factor. This does not represent a loss of focus on the primary question in *de caritate*, but is rather an indication that the extent of harm done by the evil deed helps to define the gravity of the principal agent’s sin. As noted, some later authors missed the subtlety of this point and referred instead simply to ‘further harmful effects’ as a distinct matter to be considered under *de caritate*.

Finally the authors note that, as clear-cut as these distinctions may seem in theory, they are not always so in practice:

The application of principles and rules to individual cases of cooperation are prone to certain difficulties. The heart of these lie in discerning: 1° which actions are indifferent in themselves, and which are truly determined unto evil; 2° which actions are proximate and which are truly remote insofar as they apply to the perpetration of the sin; 3° when a reason would be just and proportionate such as to excuse from material cooperation. In these matters it is not uncommon for the classical authors to disagree among themselves,

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68 Aertnys-Damen, *de caritate* 400. Compare this with Alphonsus, *de caritate* 59.
69 Aertnys-Damen, *de caritate* 401, where there are signs of a distinction between necessary and contingent cooperation.
70 The reference is Alphonsus *de caritate* 66. Alphonsus refers the reader to his own treatment of cooperation in his *de resitutione* 571.
and St Alphonsus, speaking of just and proportionate reason, wrote in *Homo apostolicus* n.32: ‘Before everything else, it should be the rule to observe what the Doctors say; because it arises from a prudent estimation, [their] judgment in this matter will be more common and also more probable’.  

This monitum precedes an analysis of individual cases of cooperation: many of these are virtually unchanged from the time of Alphonsus, although in a few instances the authors include more contemporary issues.  

If the moral manuals form a single genus of many species, Aertnys-Damen would seem to serve as a typical specimen. The authors systematise and preserve the best of traditional teaching, including supporting arguments, and apply traditional principles to particular questions. But with few exceptions the teaching on material cooperation in this manual is much as Alphonsus had left it over 150 years before.  

1.2.3 **Henry Davis**  
The first edition of Henry Davis’s *Moral and Pastoral Theology* (1935) was almost exactly contemporaneous with the twelfth edition of Aertnys-Damen, yet there are significant differences between them.  

In the *Preface* to his first edition Davis provides an intriguing glimpse into the world from which his manual emerges and for which it is intended. On one hand he reflects the inertia of the tradition:  

A writer on Moral Theology today must be indebted beyond measure to the labours of past writers, for the matter is one that has been treated with the greatest acumen and scholarship during well-nigh three centuries, and *there is no room for originality*.  

On the other hand he demonstrates a sense of the emerging interdisciplinary demands of moral theology, urging the reader to have recourse to experts in various  

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71 Aertnys-Damen, *de caritate* 402.  
72 For example *de caritate* 405, concerning Masonic sects and Socialists; and *de caritate* 406, concerning telegrams.  
fields of study, since ‘a Moral theologian cannot hope to have exact knowledge in any other science than his own’. He also acknowledges that he is ‘painfully aware how easy it is to misapply a principle to a concrete case, especially when several principles which appear to be mutually antagonistic have to be co-ordinated’. It is apparent that Davis does not intend simply to repeat in English the content of the Latin manuals, but aims rather to strike a balance between that long moral tradition on one hand, and practical guidance for his contemporaries on the other. That practical guidance often comes in the form of ‘Pastoral Notes’, which nevertheless are normally couched in the traditional language and attitudes of canon law.

The structure is more or less in keeping with the Latin manuals, and Davis treats cooperation in the traditional locations. Under ‘restitution’ he perpetuates the confusion of cooperation with scandal and induction, noting various divisions of cooperation: positive (‘by actual help or moral suasion’) which includes the first six of the traditional nine modes, and negative (‘by not preventing injustice when one could and should prevent it’) which embraces the remaining three modes. The positive modes are treated first, but the discussion is much less detailed than in Aertnys-Damen and there are few case studies.

Concerning participation, Davis echoes the traditional distinction between participating in the unjust act itself and participating in the results of an unjust act. In the latter case the cooperator is bound to make restitution; in the former, restitution is required for any harm of which he was ‘the efficacious and culpable cause’. The author also distinguishes necessary and unnecessary cooperation: the former is required in order to produce the damage, the latter is not. Concerning the negative modes of cooperation, he notes that restitution must be made where ‘one is bound in justice to prevent injustice to another, and refrains from doing so, though one could have prevented it without an equivalent harm to oneself’. It is perhaps significant that, unlike Aertnys-Damen, Davis does not dwell on what might constitute ‘equivalent’ or ‘greater’ harm, beyond noting the general principle that

76 Davis, vol. II, 310-311.
‘no one is bound to forestall harm to another at the cost of greater harm to himself’.79

Under the virtue of charity Davis defines cooperation as ‘concurrence with another in a sinful act’, whether by acting with another in sin or by supplying another with the occasion of sin.80 He touches on proportionate reason, noting that ‘. . . it is important to distinguish between immediate and mediate, proximate and remote cooperation, since a more serious excuse is required for immediate than for mediate cooperation, as also for proximate than for remote’.81 Davis’s definitions are worth quoting in full:

1. Cooperation is formal when A helps B in an external sinful act, and intends the sinfulness of it, as in deliberate adultery.
2. Cooperation is material when A helps B to accomplish an external act by an act that is not sinful, and without approving of what B does.
   (a) This material cooperation is immediate, if it is cooperation in the sinful act of the other, as to help a burglar to empty the jewels that he is stealing into the burglar’s wallet.
   (b) Material cooperation is mediate, if it is an act that is secondary and subservient to the main act of another, as to supply a burglar with tools for his burglary.
      (i) Mediate cooperation is proximate, if the help given is very intimately connected with the act of another, as to hold a ladder for the burglar as he climbs up to a window for the purpose of burglary.
      (ii) Mediate cooperation is remote, if the help given is not closely connected with the other’s act, as to purchase tools for a burglar.82

It is notable that in defining material cooperation Davis maintains Alphonsus’s boundary between the acts of the principal and secondary agents. But a certain imprecision in the next distinction threatens to obscure this boundary once again: if the tools supplied to the burglar are tools specifically for burgling (for example, skeleton keys), some manualists would consider this to be virtually formal

80 Davis, vol. I, 341. The debt to Alphonsus is evident. 
cooperation because the supplier is morally certain that the tools will be used for an evil purpose, rather than for lawful entry to a property.83

Broadly speaking, Davis’s treatment of the morality of cooperation is a conflation of the standard manualist teaching:84 formal cooperation is always illicit, constituting a sin against charity and against the other virtues offended; material cooperation is normally sinful, unless two conditions are verified simultaneously: that the cooperative act is not in itself sinful (that is, is morally good or indifferent); and that there is a sufficient cause (sufficiently serious reason) to permit the other’s sin. Like Aertnys-Damen, Davis notes that material cooperation in grave harm to the Church or State is never lawful, since great public good always comes before private good. Immediate material cooperation in sin is always wrong unless it is necessary to avoid a greater evil, as may happen (for example) under the threat of death.

Finally, it is worth noting Davis’s comment as he attempts to describe what might constitute a ‘sufficient cause for permitting the sin of another’:

In estimating the sufficiency of the excuse for material cooperation, we must consider the spiritual character and needs of another, our relations to him, what and how great is his offence against God, the harm that may accrue to a third person, the public harm likely to ensue, how close the cooperation, how indispensable it may be. So many factors enter into all questions of material cooperation, that only the most general principles can be laid down. Great varieties of opinion, therefore, on any given case except the most obvious, are inevitable, and there is no more difficult question than this in the whole range of Moral Theology.85

Bernard Häring’s The Law of Christ marks a critical point in the history of the moral manuals.86 On one hand the author sets out to present traditional moral teaching in the context of Christ seen as the most fundamental ‘law’ of the

83 For example, see Aertnys-Damen, de caritate 405, Resp. 3°. At this point it is sufficient to note that Davis uses the category ‘immediate material cooperation’ to describe what for some moralists is simply a form of ‘implicit formal cooperation’. The significance of this will be explored in Chapters Two and Four.
85 Davis, vol. I, 342. Compare Davis’s account of a ‘sufficient cause’ with Alphonsus, de caritate 59; and Aertnys-Damen, de caritate 400.
Christian. On the other hand his work represents the fruits of a reaction to the traditional manuals which had developed in the universities in the late nineteenth and early twentieth centuries, and which contributed to the Second Vatican Council’s call for renewal. As a result, moral theology would no longer merely repeat the old formulae but would be based on a solid foundation of Scripture and patristics, and philosophical and empirical anthropology. The fact that this work predates the Second Vatican Council - it was published in German in 1954 and in English translation in 1963 - underscores its profound significance.

The origins of the text are indicative of its nature: the author’s professional training was not in canon law but in philosophy and theology; he had studied not at one of the traditional Roman academies but in Tübingen; in addition to the traditional manuals Häring’s sources included the ‘more recent works’ of Tillmann, Sailer and Hirschmann. Furthermore, where the traditional manual was intended for the training of confessors, Häring’s work was intended for clergy and laity alike. It was, in the words of the translator, ‘a new and rich approach to the whole field of moral theology’.

This was nowhere more apparent than in the structure of the work: where Aertnys-Damen and Davis followed the traditional order (Human Acts - Law - Sin - Virtues - Decalogue - Sacraments), The Law of Christ flowed in three broad steps: ‘The nature of the moral agent’ - ‘Fellowship with God’ - ‘Fellowship with the created order’. The author professed this to be an arrangement ‘very largely in the traditional manner’, yet in many respects it laid out a whole new orientation for the modern moral text: a strong theological anthropology with reduced reliance on

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89 Häring, Terzo Millennio, 4. Häring notes that he studied the relationship between religion and morality in Scheler, Kant and Hartmann, and (among Protestant authors) Scheleirnacher, Brunner and Otto.
90 Häring, Terzo Millennio, 3, where the author notes: ‘The decision of my superiors to opt for Tübingen or Monaco was an indication of a turning-point which had been prepared by public opinion.’
91 Häring, Terzo Millennio, 3.
abstract notions of law; an emerging appreciation of the biblical sources of Christian morality; characterisation of the moral life as responsive relationship with God, other human beings, and creation; and emphasis on the ‘new’ fields of bioethics and social justice. Yet it also maintained continuity with the tradition by largely preserving the scholastic terminology and (occasional) cross-references to more traditional manuals and to the Code of Canon Law.

This tension between the dying manual tradition and the nascent renewal in moral theology is apparent in Häring’s treatment of cooperation. The context of the teaching is the Christian mission to ‘bear witness in the midst of the world to the divine love and cooperate in the establishment of a fellowship of love reaching out to embrace all mankind’. Unjust cooperation is portrayed principally as a violation of Christian love - love of self, and of one’s neighbour. Given the more narrative style of the text it is understandable that the nine modes of cooperation are not systematically listed, but they are represented in ‘Sins against Love of Neighbour’ and more clearly in the treatment of ‘Restitution for Culpable Cooperation in Damage’.

Häring defines only the more fundamental categories of cooperation. Formal cooperation is ‘every cooperation in the sin of another which by its inner purpose (finis operis) or deliberate intent (finis operantis) is characterised as complicity in the sin of another’. This is always sinful, and it violates both of the virtues noted by Alphonsus. In ‘merely material cooperation’ the cooperator’s act is good or indifferent and contributes to the other’s sin neither in itself nor by the cooperator’s intent, but solely through being misappropriated by the principal agent.

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95 See Häring, Terzo Millennio, 4; see also R Gallagher, ‘The Manual System’, 12-14. To these characteristics Häring himself adds: the sociology of religion and of the family, developmental psychology, and psychotherapy - all of which emerged more clearly in his second major work, Free and Faithful in Christ. (Homebush, NSW: St Pauls, 1978-1981).

Raphael Gallagher notes, however, that Häring found this vast synthesis difficult to achieve: ‘If, at times, [Häring’s] synthesis is not fully coherent, or if the special part of The Law of Christ seems at odds with the basic principles of the first part, that is because of the pioneering nature of the work. The originality of The Law of Christ is not in its systematic-speculative thought but in the vision it ultimately implies.’ R Gallagher, ‘The Manual System’, 12.


98 These are, respectively, in Häring 1963, vol. II, 494-517; and vol. III, 488-491.

Häring also emphasises a point which is so obvious that it could easily be overlooked: the cooperator must foresee that his good or indifferent act may be abused by the principal agent; without this foresight, cooperation as a real moral question simply does not arise.

All relevant circumstances must be considered in assessing the morality of cooperative acts. While an act in the abstract may be good or indifferent, it may not be so in a particular concrete situation. Häring notes that concrete circumstances may alter the morality of a cooperative act in two ways: they may so impact on the act that what in other circumstances may be justifiable material cooperation becomes, in this case, formal cooperation; or the particular circumstance of lacking a 'morally good motivation' (= sufficiently serious reason for acting) may lead the cooperator to judge that his act 'has no value at all except insofar as it contributes to the sin of another. And this is formal cooperation'.

Maintaining a clear Thomistic line, Häring stresses that

. . . the circumstance that one’s act is in itself meaningful and justifiable is an important condition or presupposition for merely material cooperation. In taking this position, we abstract entirely from the question whether another [person] perverts it or not: we hold that the act itself must be founded in right reason.

Thus, in line with Alphonsus, Häring underlines a critical element in the equation: the perversion of the cooperative act must be due entirely to the malice of the principal agent, and not at all to either the intention of the cooperator or to the moral nature of the cooperative act itself when all relevant circumstances are considered. The presence of a sufficiently serious justifying reason is one of those circumstances. Only under these conditions can the cooperator continue to fulﬁl the Christian virtues of love of God, love of self, and love of neighbour. Yet while the spiritual motivation which justifies material cooperation (‘prevention of spiritual hurt to oneself and others and the possibility of effective action “in the world”’.

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100 Häring 1963, vol. II, 498. Häring’s debt to the manual tradition, and his inability at this point to break completely with that tradition, is illustrated in his employment of the 1679 case.
102 Alphonsus, de caritate 63.
may be a leitmotif of Häring’s ‘new’ manual, his practical principles for material cooperation vary little from the tradition.\(^\text{104}\)

Häring does not define the categories of cooperation, beyond ‘formal and material cooperation’ in the tract on charity, and ‘positive and negative cooperation’ in the tract on restitution.\(^\text{105}\) In keeping with the tradition he emphasises the importance of holding a proportionately serious reason, but he offers no further clarification of this concept. He also emphasises the importance of the good or indifferent act, with the added insistence that a proper evaluation can be made only in light of all relevant circumstances surrounding the concrete act. But his greatest contribution to the question is probably in the matter of motivation: material cooperation, as indeed the whole of the moral life, assumes a new quality and texture when the agent is motivated not by fear of the law, but by love of God and a desire to live the Gospel.\(^\text{106}\)

1.2.5 The Manuals: A Postscript

The Law of Christ did not mark the end of the manual system of moral theology, but it does embody some of the ‘strands of influence’ which, since the 1940s, had prepared the way for the passing of the manuals.

From within the manual system itself, even those of a definitely casuist outlook, there was an awareness of the lack of theological coherence. The regula agendi should more clearly follow on the regula credendi: casuistry should never be an end in itself: it is given its context by other theological principles. The acceptance of a more obviously thomistic approach by many manualists logically

\(^{104}\) Häring 1963, vol. II, 498-500. The principles Häring offers are very similar to those in Alphonsus, de caritate 59, and Aertnys-Damen, de caritate 400.


\(^{106}\) For the sake of completeness, it should be noted that all of the manuals in this study also employed the concept of material cooperation to address the problem of ‘abuses of matrimony’ - material cooperation in coitus interruptus and the like: see Aertnys-Damen lib. VI, tract. VIII, pars V, caput II Usus matrimonii, especially 896 De debito cum onanista; Davis vol. IV, 256: De abuso matrimonii; Häring 1963, vol. III, 357: Cooperation with a spouse using illicit methods. However, these discussions merely apply the principle - they shed no further light on the nature or categories of cooperation. In general terms there is agreement among the manualists in applying the principle according to the boundaries (established by Alphonsus) between the acts of the principal and cooperating agents: while both spouses contribute to the one marital act, their contributions may be distinguished according to physical and moral causality of the abuse. The other significant element of this discussion is the emphasis placed on the sufficiently serious reason which is required to justify the material cooperation of the innocent spouse - but even here the manualists’ principal contribution is more to an understanding of the psychology of marital intercourse than to the principle of material cooperation as such.

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questioned the place of conscience in the overall methodology of moral theology and, further, the commandments-schema of the manual was seen as a deviation from the virtue schema which was the more logical extension of thomistic principles.  

In some respects the internal renewal of moral theology, which hurried the demise of the manuals, was an extension into this discipline of a fundamental spirit of renewal which had already impacted biblical studies, liturgy and systematic theology. Another factor in the decline and disappearance of the manuals was the emergence of other arenas in which theological discourse could be carried forward - at this time, in particular, the growth of theological journals.

But the greatest contributing factor to the end of the manual system was the Second Vatican Council itself. Not only in calling for a more scriptural, Christocentric, virtue-based moral theology, but more broadly in its re-visioning of the nature and ministry of the Church, the Council opened a door through which the manual system simply could not pass. As Raphael Gallagher has pointed out, as long as the Church subscribed to a single ecclesiology giving rise to a single view of ministry - and a single role for moral theology - the manual system of moral theology was safe. But a renewed ecclesiology, a wider sense of ministry and a subsequently broader vision of the role of moral theology meant that the traditional manual could no longer cope with the task. The genre had atrophied, so it was simply allowed to disappear.

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108 R Gallagher, ‘The Manual System’, 13-14. Dario Composta (‘Le tendenze della teologia morale nel post-Concilio Vaticano II.’ Euntes Docete XLVII(1994) 351-400, at 371-372, footnote 31) adds two other factors in the fall of the manual system: the loss of facility with Latin in seminaries, and the disappearance of meetings for ‘solution of moral cases’ to which all clergy were held each month. However, neither of these factors seems causal: in the first place there were several English-language manuals in use long before Vatican II, so in the English-speaking world at least, the loss of Latin was not in itself a cause of the demise of the manuals; and secondly, the place of casuistry in moral theology was under challenge long before the ultimate disappearance of the manuals.
110 ‘Special care should be given to the perfecting of moral theology. Its scientific presentation should draw more fully on the teaching of holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world.’ Second Vatican Ecumenical Council, Decree on the Training of Priests Optatam totius. (28 October 1965) 16.
On the positive side it may be claimed that however cold the manuals appear to the modern eye, they possessed a clarity which seems to have disappeared from much of contemporary moral theology.\footnote{112} Perhaps this is a function of the evolution which has occurred from the manuals’ magisterial, declarative tone to the broader narrative style and indicative tone of many modern texts - a style often containing other ecclesiological suppositions which are yet to be clearly enunciated and explored. Bernard Häring rightly indicates that this shift away from an imperative style of moral theology runs the risk of bringing with it a weaker sense of the binding force of moral truth, as though a more narrative formulation of moral teaching naturally implies a change of content.\footnote{113} His suggestion of a more ‘paracletic’ style of moral teaching, originating in the gift of the Spirit who from within our consciousness impels us to live the Truth, may be a way forward. However, as with much in the emerging renewal of the discipline, this possibility remains to be developed.


\footnote{113} Häring, Terzo Millennio, 50-58.
1.3 Conclusions: Observations on the Principle of Cooperation

1.3.1 Introduction: A Question of Perspective

In a now-famous passage of his address at the opening of the Second Vatican Council, Pope John XXIII drew a distinction between the substance of a doctrine on one hand and, on the other hand, the way in which that doctrine is expressed.\textsuperscript{114} A similar distinction emerges in the seminal writings of Bernard Lonergan on theological method and historical consciousness.\textsuperscript{115}

Underlying these distinctions is the same critical insight: a truth which is best expressed in one manner at one point in history may be more appropriately expressed in a different manner at another point in history. This has been further developed in the context of evangelisation and catechesis: the preaching of the unchanging Word must be adapted to the requirements of different individuals, communities and cultures, and this kind of adaptation ‘must always remain a law for all evangelisation’.\textsuperscript{116} In catechesis these adaptations are to be determined in relation to such factors as ‘differences in culture, age, spiritual maturity and social and ecclesial conditions amongst those to whom it is addressed’.\textsuperscript{117}

These understandings all refer to the ‘forward’ processes of doing theology and proclaiming the Word. In this light, the evolution of the principle of cooperation from Sanchez to Härting may be portrayed as the result of a dual process: on one hand, an ongoing quest for greater understanding of the central moral truth captured by the principle, and an exploration of the structure of cooperation; and as a corollary of this, on the other hand, application of the principle to new moral

\textsuperscript{114} This address is found in English translation in Walter M Abbott SJ, ed. The Documents of Vatican II. (London: Geoffrey Chapman, 1967) 710-719. At 715: ‘The substance of the ancient doctrine of the deposit of faith is one thing, and the way in which it is presented is another.’ This was incorporated into the Pastoral Constitution on the Church in the Modern World Gaudium et spes. (7 December 1965) 62: ‘... the deposit and the truths of faith are one thing, the manner of expressing them is quite another.’


\textsuperscript{116} Congregation for the Clergy, General Directory for Catechesis. (11 August 1997) 169. [Hereafter: GDC.] The GDC itself is quoting Gaudium et spes, 44.
situations - without, perhaps, such precise insights into theological or catechetical method.

The following observations are based on the reverse of these processes: from the various received expressions of the principle of cooperation it is possible to gain an insight into the world from which that principle emerged and in which it evolved. A comprehensive analysis of the historical-cultural sources of the principle is obviously beyond the scope of the present work. Nevertheless, the following observations should be sufficient to help address the question: how effective is the principle of cooperation in its own world-view?

1.3.2 The World-View of Cooperation

The following are three aspects of the treatment of cooperation in the manuals which help to reveal the world-view in which the principle evolved. They reflect approaches taken by manualists who, like their works, were products of their times.

1.3.2.1 Cases studied in the manuals

The kinds of cases of cooperation analysed in the manuals reveal something of the world in which the principle evolved. Aertnys-Damen, for example, group cases under several headings.\footnote{GDC 170, quoting the CCC 24.}

i) Servants cooperating with their masters in evil deeds, such as serving food in violation of ecclesiastical law, assisting the master to fulfil his lustful desires, or assisting in illicit medical practices or surgery.

ii) Innkeepers selling wine to intoxicated clients, or serving forbidden food on days of fast or abstinence.

iii) Merchants selling goods which are destined only to evil purposes, or providing premises for prostitution or other illicit purposes.

\footnote{See Aertnys-Damen, \textit{de caritate} 403-407. Häring’s list of cases is similar: Cooperation of servants and officials; of physicians, nurses and hospital personnel; Taverns, business, service; Judges and attorneys; Scandalous writing; Politics; Cooperation in False Rites. See Häring 1963, vol. II, 501-517.}
iv) The writing, publication, advertising, or selling of immoral or heretical books.

v) Cooperation with non-Catholic ministers or practices, or in building non-Catholic places of worship, or in making items for use in non-Catholic rituals.

This list may create an impression that sins of cooperation relate exclusively either to contraventions of ecclesiastical law (fasting, abstinence, cooperation with non-Catholics), or to sexual immorality in one kind or another. It is apparent that many of the cases studied in the early manuals concern what a Catholic might or might not do - that is, the moral duties incumbent upon Catholics by virtue of their religion. This is entirely in keeping with the sacramental destination of the moral manuals, but it may also reflect early studies of cooperation (like that of Sanchez) which confused cooperation with active scandal: sometimes the real moral question concerned the scandal which might follow if a Catholic were to perform or cooperate in certain actions.\textsuperscript{119}

Apropos of which it may be significant that, in the manuals, cases of cooperation in \textit{de restitutione} deal with the virtue of justice and so are applicable to all moral agents, while those in \textit{de caritate} often seem to deal with the fundamental demands of the Christian virtue of charity. Of course, as noted above, matters of justice are also matters of charity; but it is very important to identify clearly which of these virtues is the particular focus of one’s attention, since the categories of cooperation employed and the questions one asks will differ from one virtue to the other.

The cases in the manuals also provide some insight into the world in which the principle evolved. Some of the cases are fairly universal and would probably apply at any point in history, referring to the cooperator as a servant or employee: selling alcohol to one who is already inebriated, or providing premises for prostitution, or assisting one’s employer to commit immoral acts. Others refer specifically to the agent’s Catholic duties at that time (the laws of fast and

\textsuperscript{119} See for example the case of the Catholic contributing to anti-Catholic papers, or selling books which contain heresy: Davis, vol. I, 344-345.
abstinence, assistance at non-Catholic religious services), some of which were substantially redefined after Vatican II.

The first class of cases reflect a world marked by two factors: a certain *transparency in affairs* (the servant knows who his employer is, and knows the employer’s evil intention), and *relationships of financial and social dependence* (the threat of loss of employment would constitute a sufficiently serious reason in some cases, because the servant might thereby lose also his home and livelihood). The second class of cases reflects a perspective in which *the Catholic faith was the only valid religion*, and all reasonable persons should accept and observe the wisdom of ecclesiastical laws, and no-one should willingly help to promote or assist non-Catholic religions in any way. It is also interesting that in extreme cases (such as that dealt with in the 1679 condemnation), only the threat of death would justify a servant’s cooperation in evil. This appears to demand not only a finely honed ability to weigh greater and lesser values, but also highly developed virtues of justice and courage.

Once again the later manual of Häring takes a slightly different line. While he also demands great courage and even heroism in some cases,\(^\text{120}\) he reflects a more contemporary view of the world in which other religions are treated with more respect: in some circumstances Catholics may even make financial contributions to the construction of Protestant churches!\(^\text{121}\)

### 1.3.2.2 Styles of moral dialogue

The principle of cooperation evolved within the tradition of the moral manuals. In their destination for the use of confessors, the manuals point to a world in which *the Sacrament of Confession is both valued and frequently accessed* by the faithful, and in which the confessor has a duty to *shed light on complex moral situations* from his educated vantage point. In this perspective the confessor seems

\(^{120}\) See Häring 1963, vol. II: cases such as those of the military serviceman refusing to accept a condom as a condition of taking leave (at 507) or the soldier who refuses to obey an unjust order (at 515).

\(^{121}\) Häring 1963, vol. II, 517. These themes are further developed and grounded in Häring’s *Free and Faithful in Christ*, although his particular application of ‘tolerance’ and ‘respect for consciences’ in his later text did not meet with universal acceptance.
to act more as judge than as physician. And in the magisterial tone they often adopted, the manuals reflect a world in which certainty in moral matters is not only possible, but to be expected; nevertheless, some also recognise that the question of cooperation in evil is so complex that ‘only the most general principles can be laid down’.  

On one hand the traditional treatment of cooperation indicates a prevailing paradigm of law: what man is expected to do in his moral life can be expressed in terms of laws known by revelation of the Divine Will directly, and in natural law. However, there is often no great distinction drawn between duties which flow from natural law and those which flow from ecclesiastical law. On the other hand, after Alphonsus the treatment of cooperation was also seen in light of the virtue of charity, perhaps indicating a greater appreciation of the virtues in moral life. This is particularly well-developed in Häring’s The Law of Christ, in which the principal task of the Christian is to ‘bear witness in the midst of the world to the divine love and cooperate in the establishment of a fellowship of love reaching out to embrace all mankind’.  

1.3.2.3 Probabilism and proportionality

It is evident from the older texts that not all of the manualists agreed on the solution of particular cases of cooperation: it was not unusual for an author to cite a dozen or more sources holding differing opinions of greater or lesser probability. Today this would be taken to indicate a healthy variety within the moral community where ongoing dialogue, analysis and discussion are valued avenues to greater clarity and moral certainty. But at a deeper level this reliance on ‘probable’, ‘more probable’ and ‘most probable’ opinions portrays a world in which one’s principal task is to obey the law, at least to the extent that one knows one’s duties under the law. Furthermore, the authority of the magisterium is also considerable: it has already been suggested that general response to the 1679 condemnation was overwhelmingly passive, with moralists limiting their comments to merely justifying

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124 See for example Alphonsus, de caritate 61.
that condemnation on the basis of one or other interpretation of intrinsically evil acts.\textsuperscript{125}

Finally, and curiously, the manuals seem to rely on some form of proportionality in resolving cases of cooperation. Questions of proximity and necessity, and of sufficiently serious reason, are essential to the resolution of most cases, but these can normally be assessed only in the context of other variable factors. In many manuals this seems to entail weighing benefits gained against harm done (or harms avoided against harms permitted). This highlights another surprising lacuna: despite Alphonsus’s ground-breaking work in \textit{de caritate}, it is generally the \textit{effects} of actions, and not their \textit{objective natures}, which play a determining role in many manuals. This indicates a certain \textit{lack of a metaphysical base} which will be discussed further in the next chapter. In the later manuals the situation was only notionally better: Davis provides a substantial treatment of the structure of the human act,\textsuperscript{126} as does Häring in the context of the human agent as moral subject,\textsuperscript{127} but neither seems to rely greatly on this metaphysical base in resolving cases of cooperation.

\subsection*{1.3.3 Conclusions}

In the evolution of the principle of cooperation from the treatment of Sanchez to that of Häring, one observes a late movement towards greater openness to the complexities of life in a changing world and yet, in the midst of this complexity, a persisting desire for absolute certainty in moral judgments. One finds this tension clearly marked in \textit{The Law of Christ}: Häring makes a conscious effort to engage the concrete realities of life in the modern world - a vast enterprise fraught with uncertainties - yet still manages to speak magisterially in resolving cases as far as his casuistry allows. His analysis is detailed and searching, but is balanced by his

\textsuperscript{125} See Roy, ‘La coopération’, 415.
\textsuperscript{126} Davis, vol. I, 11-63.
note that only general principles can be laid down, because very different principles may need to be applied in individual cases.\footnote{Häring 1963, vol. II, 500-501: ‘Our first task is to illustrate the universal principles which are always valid. The conclusions we arrive at in individual instances, however, may in their concrete application under different sets of circumstances involve new principles.’}

In the context of this movement, the principle of cooperation as it appears in the earlier manuals seems to reflect a world of established and fixed social, political and ecclesial structures in which each moral agent apparently knows with a degree of certainty the relevant circumstances of their situation: who they work for, what purpose their work serves, where their moral responsibilities lie. Much of their moral knowledge is nourished by the teachings of a Church which appears supremely sure of its moral ground, and whose faith the moral agents clearly either do or do not share. The employee-employer relationship is equally unequivocal: the employer holds the upper hand, and the employee is often pictured as having few alternatives to obedience. He also deals directly and individually with the employer: there is no concept of organised labour, unionism or arbitration. In this light the cooperator’s question seems to be: ‘what does the law allow me to do?’

Coming virtually at the other end of the manual tradition The Law of Christ shares many of the same characteristics, and yet approaches the question of cooperation more from a perspective of virtue. In their mission of sanctifying the world, Christians must never descend to the level of the world or be animated by its spirit, but must ‘painfully permit that our good works now and again be perverted to evil ends’.\footnote{Häring 1963, vol. II, 500.} This delicate balance requires Christians to be as innocent as doves, yet as wise as serpents (Mt 10:16). The cooperator’s question here seems to be: ‘how may I engage the world without compromising my Christian integrity?’

This evolution in the manuals was neither smooth nor gradual: in most respects the genre singularly failed to keep pace with the great changes in worldview which were occurring beyond the Church in the century prior to Vatican II. This became a basis for considerable criticism of the genre, and certainly contributed to its demise.
And despite some undoubted achievements in describing various aspects of cooperation in evil, the manuals never managed to solve the subjective pole of the problem: in assessing the circumstances which contribute to his ‘sufficiently serious reason’ for cooperating, how can a cooperator be sure that his interpretation of circumstances is adequate? Can a cooperator always be absolutely clear about what he intends and what he excludes from his intention? Can he always distinguish between an ‘intrinsically evil act’ and a ‘virtually intrinsically evil act’?

Even within its own world-view, as the manuals themselves sometimes indicate, the traditional principle of cooperation does not always seem to have worked well. Even if the cooperator had a clear picture of the extent of his moral responsibilities and was able to draw the boundary first identified by Alphonsus, still the application of the principle was fraught with difficulty and uncertainty. But then, with the accumulated wisdom of the Church behind him, the cooperator needed only to ask what the moral law allowed him to do, and so he was able to arrive at resolutions which, if not absolutely certain, were at least probable - and this was sufficient. The role of the pastor was limited to the examination of cases in the confessional, and there the traditional principle of cooperation provided at least a stable frame of reference.

That the principle continues to play a significant role in Catholic moral theology following the demise of the manuals is evident from many contemporary sources: the texts which began to ‘replace’ the manuals, the teaching of the Roman magisterium and of episcopal conferences, and the moral dialogue which flourishes ever more abundantly in theological journals. Some of these will be studied in Chapters Three and Four of the present work. Prior to this, however, it will be helpful to clarify the ‘inner structure’ of cooperation in Chapter Two, in order to arrive at a better understanding of two concepts which are of great importance to the principle - ‘intrinsically evil acts’ and ‘sufficiently serious reason’.

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Chapter Two

THE STRUCTURE OF LEGITIMATE COOPERATION

2.0 Introduction

The early evolution of the principle of legitimate cooperation can be viewed as the simultaneous development of two perspectives on the problem of participation in evil: on one hand, clarification of fundamental categories needed to define and apply the principle of legitimate cooperation and, on the other hand, deepening appreciation of the wider moral significance of cooperation in evil.

The latter perspective embraces the broad picture, the overall meaning of legitimate participation in evil in the context of Christian life in the world. The Christians’ need to be ‘wise as serpents and innocent as doves’ has its basic significance here, where deeper questions arise concerning the broad implications of engagement in a world in which evil is often done, a world which often seems hostile to Christian values. The emergence and evolution of the principle of cooperation is one response to this challenge.

But progress on this level requires a clear view of the structure of cooperation in evil. Here the tangled threads of physical and moral responsibility must be identified, sorted and defined in relation to one another in order to ground general rules in keeping with the fundamental norms of morality. Sanchez, Alphonsus and the manuals advanced the evolution of the principle at this level because the practical questions they addressed demanded structural clarity.

In other words, the second perspective addresses questions of meaning which take the form: ‘what are the moral implications of living in a world in which evil is frequently done?’ These arise through more practical questions of the form, ‘am I justified in cooperating in evil in this particular case?’ But there are even more fundamental or meta-ethical questions of structure, such as, ‘what makes a good act
to be good, or an evil act evil?’ The practical cases of cooperation which were studied in the manuals, then, stand methodologically midway between the issues of structure on which they depend, and the issues of meaning to which they lead. As is so often the case in moral matters, the devil is in the detail.

Aertnys-Damen identify three difficulties on the structural level, and these form a focus of the present Chapter:

- identifying which acts are morally good or indifferent and which are truly evil;
- identifying which cooperative acts more proximately or remotely approach the evil act of the principal agent; and
- identifying when a reason is just and proportionately serious enough to render licit a materially cooperative act.¹

The second part of this work will reflect on the meaning of cooperation in evil in the modern world, and on the parameters of the traditional principle. To lay the groundwork for that perspective, the present chapter seeks to clarify key elements of cooperation at the structural level. The first step is to frame cooperation in terms of of Thomas’ view of the structure of human acts (2.1).² This will permit exploration of various categories of cooperation which have emerged in the evolution of the principle (2.2), and investigation of the two central terms of that evolution, namely ‘intrinsically evil acts’ and ‘sufficiently serious reason’ (2.3).³ These represent some of the most controverted issues in the recent history of moral theology,⁴ but a

¹ Aertnys-Damen, de caritate 402.
² It should be noted that, for Thomas, questions of structure are necessarily connected with the perspective of the moral agent, and so with questions of meaning. This is implicit in Thomas’ understanding of the terms ‘moral’ and ‘good’ applied to human acts: an act within a person’s voluntary dominion is ‘moral’, and ‘good’ if it accords with authentic human nature. See below, 2.1.2, at point 2.
³ This study will refer to ‘sufficiently serious reason’ rather than to ‘proportionate reason’, in order to distinguish this concept from the question of ‘proportionalism’. See below, 2.3.3.
more comprehensive study of these terms lies beyond the scope of the present work.

2.1 The Structure of the Moral Act

2.1.1 Introduction
Case studies in the manuals indicate that cooperation in evil can occur in many ways, and yet the basic ‘shape’ of legitimate cooperation remains fairly constant: a principal agent abuses the act of a cooperator and, independently of the cooperator’s will, turns that act to an evil purpose. Enquiries at the structural level concern the conditions under which a cooperator who foresees this abuse may still commission his act without offending the virtues of charity or justice.

Sanchez identified two of these conditions: the cooperator’s act must itself be either good or morally indifferent; and the cooperator must hold a sufficiently serious reason for acting. Alphonsus added several important refinements: legitimate cooperation occurs only on the level of physical causality where there is no question of scandal or induction; therefore the cooperator’s act can be kept distinct from the principal agent’s act and must be justified in itself in the same way as any other moral act. Furthermore, the cooperator must also hold a reason which justifies his act in light of the principal agent’s sin and the harm which will be done thereby - in its most basic form, harm to the principal agent’s own spiritual welfare.

Alphonsus did not base his treatment of cooperation on the psychological structure of the human act as it appears in the writings of Thomas - Roy indicates that Alphonsus’s treatment of cooperation was fully developed well before he included a substantial metaphysics of human acts in his *Theologia moralis.* But Thomas’ analysis of human action was adopted widely in the manuals, and indeed in the Church in general, so it is reasonable to employ that analysis to clarify the ‘inner structure’ of cooperation.

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One of the key elements in Thomas’ analysis of human acts is ‘intention’, and one of the principal reasons that different manuals employ different categories of cooperation is that they hold different positions on two key questions: what a cooperator intends, and how he intends it.

For example, in defining formal cooperation Aertnys-Damen teach that what a cooperator intends is the formal sin of the principal agent; and the manner of intending may be two-fold: either *ex fine operantis* (by the deliberate willing of the cooperator) or *ex fine operis* (by the ‘inner purposiveness’ of the action performed). But when he defines formal cooperation, Davis teaches that what is intended is the sinful act of the principal agent, and the manner of intending is by participation in the external sinful act while intending the sinfulness of it. As will be noted below, Davis therefore employs the category ‘immediate material cooperation’ to describe what Aertnys-Damen call simply ‘formal cooperation *ex fine operis*’.

It will be recalled that Alphonsus defines formal cooperation in terms of cooperation in the other’s evil will (which is why formal sin occurs), and material cooperation in terms of cooperation in the other’s evil action (which, in the simple case, implies only material sin). While this distinction was not uniformly maintained in the manuals, it is obvious that what one intends and how one intends it are critical structural issues. The question of what an agent intends is the question of ‘moral object’, for which an answer will be sought in the next section. The question of how an agent intends a moral object will be discussed in the subsequent section.

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6 ST I-II 12.
7 Aertnys-Damen, *de caritate* 398. On describing the *finis operis* as ‘inner purposiveness’, see Häring 1963, vol. II, 496. By ‘inner purposiveness’ is meant the end or object of the action performed by the agent, where this end or object is distinguishable from the agent’s own further object or end. This ‘inner purposiveness’ is sometimes referred to as the act’s own ‘intentionality’, precisely to distinguish this from the further intention of the agent. It is important to note that this use of ‘intentionality’ does not imply that an action can exist apart from the agent who performs it: it is rather a term employed by some moralists to convey the idea that the *finis operis* of the action performed sometimes determines the morality of the action itself, regardless of whatever further intentions the agent may have. See below, 2.1.2, point 10 (a), and 2.1.3.
9 See 1.1.4 above.
10 These two issues lie at the heart of many contemporary debates in moral theology. See for example: Gerard N Casey, ‘A Problem of Unity in St Thomas’s Account of Human Action.’ *The New Scholasticism* LXI(1987) 146-161; John Finnis, ‘Object and Intention in Moral Judgments
2.1.2 Moral Objects

Turning to Thomas raises two difficulties. First, the sheer size of the thomistic corpus makes it a daunting task to attempt a comprehensive analysis of his thought on any one subject. Such an analysis is obviously beyond the scope of the present work, which will confine itself to the substantial study found in the Prima secundae of the Summa theologiae.

Second, at different times Thomas studies the human act from different points of view and, naturally, what he sees depends on the point of view he is taking at the time. Further, he often uses one term to describe distinctly different aspects of what he sees, which can lead to further confusion. For example, ‘finis’ is the ‘objectum’ of the will (ST I-II 1, 3; 19, 2 ad 1); in 19, 2 moral good and evil derive from ‘objectum’; in 1, 3 the moral species of acts derive from ‘finis’; and in 18, 6 where the human act is considered in its interior and exterior dimensions, the form of an act is provided by the ‘finis’ of the internal act while the matter is provided by the ‘objectum’ of the external act. To minimise confusion, this analysis will attempt to clarify at every point the precise concept in question, as far as this is possible.

This difficulty raises a critical point. It has been argued that at least some of the debates in modern moral theology arise because neo-thomist commentators did not view matters from the same perspective as Thomas himself: where Thomas examines the human act from the point of view of the acting person, others took the perspective of the act itself. One result is that Thomas and the manualist may use

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11 Thomas uses the one ‘matter-form’ distinction in a variety of ways to illustrate various different aspects of the human act, and this too can cause confusion. John Finnis makes a similar point on Thomas’ sometimes confusing use of language in ‘Object and Intention’, at 1.

12 On this question see for example Rhonheimer’s comment on Veritatis splendor 78 in ‘Intrinsically Evil Acts’, at 3. John A Gallagher’s Time Past, Time Future is an extended commentary on the recovery of Thomas from the distortions of neo-thomism.
the same terms to denote what are in fact quite distinct moral realities. It is lack of clarity in moral discourse which necessitates the following definition of terms.

The problem of defining moral objects of human acts amounts to a problem of providing an adequate description of those acts.\textsuperscript{13} It is often very difficult to determine which elements are necessary to provide an adequate description of the basic moral species of the act (as good or evil in species, which is the question of ‘moral object’), and which elements provide an adequate description of the total moral quality of the act in its species (as possessing more or less goodness or evil).

So: what constitutes an adequate description of the moral object of an act? More specifically:

- what constitutes the moral object which determines the moral species of a human act?
- in shaping the moral object of an act, how significant are the agent’s own intentions? and
- how do circumstances touch upon and influence the moral species of an act?

The following points, drawn from the teaching of Thomas Aquinas, summarise the structure and morality of human acts:

1. A human act is deemed ‘human’ because it proceeds from reason (ratio): ‘intellect’ (intellectum) which apprehends the end (finis) and presents it to the will as a good (bonum), and ‘will’ (voluntas), the rational appetite which inclines to that end considered as bonum.\textsuperscript{14}

2. A human act is in the genus ‘moral’ insofar it flows from the action of the will - it is a voluntary act.\textsuperscript{15} A human act is in the species ‘good’, ‘evil’ or ‘indifferent’
insofar as it does or does not accord with right reason (ratio recta). A human act must be in conformity with right reason in order to be judged morally ‘good’. This judgment is based on what is essential to the agent, that is, what is proper to man considered precisely as ‘man’. (It is important to note that, in concrete cases, Thomas holds no human acts to be morally indifferent.)

3. Within this structure an initial distinction can be made between the order of intention and the order of execution. In the order of intention, intellect and will are concerned with settling on both the end which is desired (finis), and that which is for the end and needed to obtain the end (id quod est ad finem); in the order of execution, intellect and will are concerned with commanding the exterior powers to actually obtain the end.

4. For the purposes of this study we may therefore distinguish three acts of will: in the order of intention
- the elicited act of will intentio whose object is finis, and
- the elicited act of will electio whose object is id quod est ad finem;
and in the order of execution
- the imperated acts moving external powers to obtain the end (usus).

power of the will that human acts have the term ‘moral’ applied to them. Human acts are placed in the genus of morals by the fact that they are in the power of the will. For St Thomas, the term human and the term moral mean the same thing, with reference to the agency of the human will. On the other hand, to say a human act is good or evil is decided by reference to the intellect. ‘Thus good and evil in human acts are considered insofar as the act is in accord with reason informed by the divine law, either naturally, by instruction, or by infusion.’ [De Malo 2, 4.]

16 ST I-II 18, 5 ad 2: ‘Dicitur enim malus actus secundum suam speciem, non ex eo quod nullum habeat objectum, sed quia habet objectum non conveniens rationi, sicut tollere aliena.’ Emphasis added. See also ST I-II 18, 9: ‘si [actus] non sit ad debitum finem ordinatus, ex hoc ipso repugnat rationi et habet rationem mali; si vero ordinetur ad debitum finem, convenit cum ordine rationis, unde habet rationem boni.’

17 See Louis Janssens, ‘St Thomas and the Question of Proportionality.’ Louvain Studies IX(1982) 26-46, at 30. The following chapter will note that Germain Grisez holds ‘good’ to refer not merely to the essence or nature of man as such, but also to the future possibilities of human fulfillment. On this he is able to ground the value theory which distinguishes his work. On the question of ‘man as man’, see below, 5.1.2.

18 ST I-II 18, 9.
19 See for example ST I-II 1, 1 ad 2; 9, 1; 13, 5.
20 ST I-II 12.
21 ST I-II 13.
22 ST I-II 16.
The object of each discrete act provides the form of that act.\textsuperscript{23} Insofar as the object of each act is apprehended as an end or good which is ‘fitting’ according to reason, that end or object sets the will in motion;\textsuperscript{24} and insofar as the object actually does accord with right reason (and so is actually ‘good’), that end or object establishes the act of will as good.

5. Considering the objects of intentio and electio as the ends of those acts: it is evident that the end of electio (id quod est ad finem) is willed only on account of the end of intentio (finis). It is in this sense that the human act as a whole can be considered to embrace more than one end: a remote end finis which is what is willed as end of the entire act, and a proximate end id quod est ad finem which is what is willed in order to attain the finis.\textsuperscript{25} Furthermore, insofar as id quod est ad finem is willed only on account of finis, intending the means (proximate end) implies intending the end (remote end).\textsuperscript{26} This establishes the possibility of two kinds of intending in human acts: one directed to the remote end, and the other directed to the proximate end.

- It is also possible that several proximate ends may need to be willed in order to conduct the agent to the one remote end finis, in a chain or ‘nested set’ of means-and-ends.\textsuperscript{27} If the one human act may be considered as a composite of intermediate acts in this way, it becomes clear that what is the remote end finis of one act may be considered a means or proximate end id quod est ad finem of the next act, and so on, until the ultimate finis (the last remote end!) is attained.\textsuperscript{28} At this point the ‘motion’ of intellect and will reaches that state of fruitio or quies which marks the satisfaction of the appetite, and so the act (‘motion’) ceases.\textsuperscript{29}

6. If intentio and electio are considered as discrete acts of will, each may be considered to have its own distinct object.\textsuperscript{30} The goodness of these objects is

\textsuperscript{23} ST I-II 9, 1.
\textsuperscript{24} ST I-II 9, 2.
\textsuperscript{25} ST I-II 12, 2.
\textsuperscript{26} ST I-II 8, 3 ad 2; 12, 4.
\textsuperscript{28} ST I-II 13, 3. But note that the ‘ultimus finis’ cannot strictly be an object of ‘electio’.
\textsuperscript{29} ST I-II 11; See also I-II 31-34.
\textsuperscript{30} ST I-II 12, 4 Resp. and ad 2.
judged in relation to right reason, per comparationem ad rationem:\footnote{ST I-II 18, 5. This is the meaning of ‘intrinsic morality’: see Fabbro, Cooperation, 37.} finis is judged insofar as it is good and fitting in itself, and id quod est ad finem is judged insofar as it is good and fitting (‘proportioned’) to that finis.\footnote{ST I-II 8, 2 ad 2; 3. Thomas seems to suggest that, in relation to the comparative goodness of finis and id quod est ad finem, sometimes a subordinate objective (means) may not be proportioned to the intended end, in which case the act of willing the subordinate objective (electio) is less good than the act of intending the remote end (intentio): ‘Sed voluntas potest velle aliquod objectum non proportionatum fini intento; et sic voluntas, quae fertur in illud objectum absolute consideratum, non est tantum bona quantum est intentio.’ (ST I-II 19, 8). See also II-II 64, 7: ‘Potest tamen aliquis actus ex bona intentione, proveniens, illicitus reddi, si non sit proportionatus fini.’} But from the integrated viewpoint in which finis and id quod est ad finem are taken together (since id quod est ad finem is willed only for the sake of finis),\footnote{ST I-II 8, 3. Wherefore Mullady says that the elicited acts of will are moral per se, while the imperated acts of will are moral per accidens. See Mullady, The Meaning of the Term Moral, 79.} then in a ‘nested set’ of means-ends finis and id quod est ad finem can be viewed as the single object of a single act,\footnote{ST I-II 12, 4 ad 2; ad 3 explains the distinction between intentio and electio: ‘Sic igitur inquantum motus voluntatis fertur in id quod est ad finem, prout ordinatur ad finem, est electio; motus autem voluntatis qui fertur in finem, secundum quod acquiritur per ea quae sunt ad finem, vocatur intentio.’} the goodness of which is determined by finis since this serves as ‘form’ of the total act.\footnote{ST I-II 18, 7.}

7. Thomas teaches that, because it provides the form of the act, it is the end of the act which provides its moral species: ‘finis enim dat speciem in moralibus’.\footnote{ST II-II 43, 3; see also I-II 1, 3; 18, 4. Mullady, The Meaning of the Term Moral, 103: ‘The application of ‘finis enim dat speciem in moralibus’ is a cornerstone of the moral doctrine of St Thomas. This end refers to the intended end. It can also refer to the proximate end of the exterior act. In both cases, it is always judged as good or evil in relation to reason as final cause.’ On this and the subsequent point - including the example here of ‘almsgiving’ - see William E May, An Introduction to Moral Theology. (Huntington, Indiana: Our Sunday Visitor, 1991) 132-136.} If intentio and electio are considered as two discrete acts of will, then consideration of the moral species must include the object or end of each act - and these may be of different species.\footnote{ST I-II 1, 3 ad 3.}

- If the end of electio (proximate end, id quod est ad finem) is per se ordered to the end of intentio (remote end, finis) then the human act as a whole can rightly be considered a single moral act with a single object, since both acts are clearly ordered to the same end. Thus, in an ideal case, almsgiving is ordered to the relief of poverty as a remote end: the object of electio (giving money to the poor) is per se ordered to the object of intentio (the relief of...
poverty); the proximate end *id quod est ad finem* (giving money to the poor) is ordered to the remote end *finis* (relief of poverty), so this human act has a single object.

- But if the end of *electio* (proximate end, *id quod est ad finem*) is only *per accidens* ordered to the end of *intentio* (remote end, *finis*) - that is, there is no *necessary* or *essential* ordering between the two - then the single human act, considered as a composite of *intentio* and *electio*, may be considered to embrace two moral species. Thus in another case, the object of an apparent act of almsgiving (giving money to the poor) is *not* essentially ordered to the object of an agent who intends vainglory, yet it can be made to serve that end. Here the proximate end *id quod est ad finem* (giving money to the poor) is ordered only *per accidens* to the remote end *finis* (vainglory) - it serves the end of ‘vainglory’ not of itself but only by the agent’s intending - so while this human act may be considered single in number, it has two distinct species because it engages two distinct objects.³⁸

8. In all cases, the principle *bonum ex integra causa, malum ex quocumque defectu* applies.³⁹

- Where the proximate end is ordered *per se* to the remote end (that is, where the act effectively has a single object), then the moral species of that act will flow from the *integrity* of that object: if the object is good with reference to reason, the act may be good in species; where the object is evil, the act will be evil in species.⁴⁰ Thus, the former case above may be adequately described as ‘almsgiving’.⁴¹

³⁸ ST I-II 18, 7.
³⁹ See ST I-II 18, 4 ad 3; and II-II 110, 3: *‘Bonum enim est ex integra causa, malum vero est ex singularibus defectibus.’* Casey, ‘A Problem of Unity’, at 150: ‘The point of this evident principle is that if an action is to be adjudged morally good, it must be good in all respects. In the context of St Thomas’ thought, this amounts to saying that an action is good only if it be both good in kind and done for a good end. If an act fails to be good in either one of these respects, then it fails to be good as a whole. This being the case, one must realise that neither the goodness of the end nor the goodness of the moral object alone is sufficient to render an act completely good.’ And Mullady, The Meaning of the Term Moral, 94: ‘However, because evil derives from a single defect, it cannot change the disorder of the act in relation to reason on a more common level, but rather places one moral act in two species of good and evil.’
⁴⁰ ST I-II 18, 5.
⁴¹ Black, The Moral Relevance, 83: *‘We can conclude therefore that the object of the external act may be subsumed under the one generic meaning with the end of the will if that act is per se ordered to the end. The object of the external act may not be subsumed under the one generic meaning with*
• But by the same token, where the proximate end is ordered only *per accidens* to the remote end (that is, where there are two objects which may be of different species), then the moral species of the entire act will flow from the *diversity* of those objects: if all objects are good, the entire act may be good in species; but if even one object is evil, the entire act is vitiated. In the latter case above it is clear that the remote end intended by the agent (vainglory) is evil, so regardless of the proximate end it would not be accurate to describe the entire act as ‘almsgiving’ - it is more adequately described as ‘vainglory’, which is the form given it by the agent’s intended end or object.\(^{42}\)

• Note that the latter case is one in which a ‘nested set’ of means and ends serves a single *finis* to which the means are not ordered *per se* or necessarily. If one considers the means (giving money to the poor) as a discrete act, it evidently has its own *intentio* and *electio* which the agent must will in order to attain his further end of vainglory. It can be said, then, that the agent truly intends to give money to the poor, which is a good thing to do. But this does not provide an *adequate* description of the *total* act because the agent has an *additional* intention (a more remote end) which vitiates the act considered in its wider or more complete dimensions. Because the additional remote end is vainglory, the entire act is rendered evil *ex quocumque defectu*.

• By the same token, even if an agent intends a good remote end, his total act may be vitiated by a *disproportioned means:*\(^{43}\) for example, if the agent intends ‘almsgiving to relieve poverty’ as his *finis*, but chooses ‘theft’ as an *id quod est ad finem*, then his entire act is evil in species *ex quocumque defectu* - the defect resides in the fact that the means are not proportioned to the end.

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\(^{42}\) Thus also Thomas (ST I-II 18, 6) holds, with Aristotle, that ‘he who steals in order to commit adultery is directly more adulterer than thief.’

\(^{43}\) ST II-II, 64, 7: ‘*Potest tamen aliquis actus ex bona intentione, proveniens, illicitua reddi, si non sit proportionatus fini.*’
From this analysis it seems clear that an adequate description of the moral object of an act must embrace *what the act is actually about, what it actually means*, and not just what physically happens. That is, the moral object of an act can be adequately described only by taking into account the moral species of both its proximate and remote ends in the context of all of the circumstances which are morally relevant to the act considered in its entirety.44

9. So for Thomas, the ‘finis’ which determines the moral species of a human act is not simply the object of *intentio*, nor merely the material object or physical matter of the act - the *materia ex qua*.45 Rather:

- the *finis* which gives moral species is the *moral object* of the act - the object of the act considered as proceeding from the will according to the order of reason;
- the moral object in this sense is *that moral matter which the act aims to attain or with which the act deals* - the *materia circa quam*,46 the ‘intelligible subject matter upon which the will’s act of choice bears’,47 which is the ‘intentional object’; not the physical form, but the ‘form conceived by reason’;48
- the moral species of an act can be known only when the moral object (and so the act itself) is adequately described - that is, when it is known for what it actually is *in genere moris*, as ‘the doing of what was chosen, ie as the carrying out of the proposal shaped by intelligence and adopted by choice - ie considered under the description which it had in the practical reasoning which made it seem the thing to be doing’;49
- according to this structure, the goodness or evil of a human act depends on whether the *materia circa quam* itself accords with the order of reason, *per*

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44 That the object of an act must embrace what the act really *means* - which includes the agent’s intention as well as the act’s own intentionality or ‘inner purposiveness’ - is emphasised by Finnis in ‘Object and Intention’, 22-23; and by Rhonheimer in ‘Intentional Actions’, 296.
45 ST I-II 18, 2 ad 2.
46 ST I-II 18, 2 ad 2.
48 ST I-II 18, 10. See also Rhonheimer, ‘Intrinsically Evil Acts’, 28; and 2.3.2 below.
comparationem ad rationem - whether or not the moral object befits the nature of the agent:50

◊ where the object of electio is ordered per se to the object of intentio, the act can be seen to have one moral object which is provided by the object of intentio, finis; and where this finis is according to the order of reason, the act considered thus far has a single moral species, ‘good’;

◊ where the object of electio is not ordered per se to the object of intentio, but rather is made to serve this end only by the agent’s intention, the one act can be considered as having two objects and two moral species; and where either the object of electio or the object of intentio does not accord with the order of reason, the act considered as a whole is ‘evil’ ex quocumque defectu;

- in either case, considering the human act as a whole, the moral object is that which places the total act in its moral species as good, evil or indifferent; as such the moral object is circumscribed by the objects of intentio and electio, considering these in the context of all morally specifying circumstances, and this provides an adequate description of the act in its basic moral species.51

10. The total moral quality of an act can be known only when the moral act as a whole is adequately described - that is, when all morally relevant factors are considered - which requires account to be taken of all of the traditional ‘sources of morality’: the object, the end/intention, and the circumstances.

- Thus far only the first of these has been considered, the object of an act, and this may be described from varying points of view:

\[\text{50} \text{That is, whether the object is capable of being ordered to God and to the good of the person. See ST I-II 1, 8; and Pope John Paul II, Encyclical Letter Veritatis splendor. ‘On Certain Fundamental Questions of the Church’s Moral Teaching.’ (6 August 1993). AAS 85(1993) 1133-1228, n.72.}

\[\text{51} \text{Note that the use here of ‘good’ and ‘evil’ is truly moral (as flowing from willed acts), but as yet these do not refer to the culpability of the agent. A distinction between ‘malum’, ‘peccatum’ and ‘culpa’ occurs in Thomas in ST I-II 21, 1 and 2: ‘Dicendum quod malum in plus est quam peccatum, sicut et bonum in plus est quam rectum . . . ’ (21, 1); ‘Dicendum quod sicut malum est in plus quam peccatum, ita peccatum est in plus quam culpa. Ex hoc enim dicitur actus culpabilis vel laudabilis, quod imputatur agenti;’ (21, 2). Where malum refers to evil simply, peccatum refers to an action which is morally evil insofar as it lacks due order (ratio recta); but this moral evil is not yet that morally culpable fault (culpa) to which the English word ‘sin’ normally refers.}

\[\text{67}\]
a) *considering the act as an integral whole*, ‘object’ is the moral object, that moral matter which the act as a whole aims to attain or with which it deals. When this is adequately defined, the object places the act in its fundamental moral species: it is assessed in the light of all those circumstances which affect the act’s fundamental species (what kind of act it is, and whether it is good, evil or indifferent in itself), and is that moral matter which is the end of *intentio, finis*, for which the end of *electio, id quod est ad finem* is also willed. The moral object is the *materia circa quam* (in its moral meaning) which provides the moral meaning of the act considered in itself, independent of the agent’s further intentions or motives and independent of any non-specifying circumstances which surround and accompany the act.

b) *considering electio and intentio as discrete acts*, the ‘object’ is the first source of morality defined by the diversity of *finis* and *id quod est ad finem*: where both are good, the object in itself is good, but where either is evil the object is evil. As morally specified by this object, the act as a whole may be further strengthened or weakened in its goodness or evil by the *agent’s further intentions* and/or other attendant *circumstances*; or it may be vitiated by further intentions or other circumstances - that is, its moral object when adequately defined may be evil.

c) *as that which provides the act’s fundamental moral species*, the ‘object’ is the heart of *objective morality*. It is the moral object which enables one to say that human acts have a moral meaning and moral species (can be classified as good, evil or indifferent) *ex objecto* or *ex genere*,\(^{52}\) that is, prior to and independently of any non-specifying intentions of the agent and of all non-specifying circumstances. In this sense it is the moral object which provides the basis for an adequate moral description of the act.

- As a source of morality further to the moral object, *end/intention* refers to the *further intentions or motives* of the agent. It is that which the agent aims to attain, in those cases where this end may be distinguished from the moral object of the act considered in itself:

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\(^{52}\) ST I-II 18, 2.
where the object is morally indifferent in species, further intentions may provide the specification necessary to place the act in its particular species of good or evil, or

where the moral object provides the basic moral species of the act as good or evil, the agent’s further intentions or motives may increase or decrease the goodness or evil of the act without altering this fundamental moral species, but

if the act as a whole is already specified as evil ex objecto, further good intentions or motives in themselves cannot place the act in the species ‘good’, since the act as a whole has already been vitiated ex quocumque defectu.

- The circumstances surrounding an act, which are numbered as a further source of morality distinct from object and end/intention, are to be distinguished from those circumstances whose task it is to specify the moral object of the act:

  - the circumstances here are those ‘properties’ surrounding or accompanying the act which do not touch the act’s object or fundamental moral species as good, evil or indifferent, but which ‘fill out’ the act’s complete goodness or evil;  

  - while non-essential to the moral object, they are ‘due circumstances’ to the act as a whole, such that if one due circumstance is missing, the whole act may be vitiated;

  - they are morally significant insofar as they are like ‘properties’ of the moral act considered as a whole - otherwise they are merely incidental to the act; an example would be the circumstance time: an act which is good by both object and intention may be vitiated if performed at the wrong time.

2.1.3 A Problem of ‘Intending’

It has been determined that the ‘moral object’ of an act is to be defined in terms of both the remote end (the agent’s deliberate intention of the end, the object

\[ \text{\footnotesize 53 ST I-II 18, 3, especially 3 ad 2. See also I-II 73, 7.} \]

\[ \text{\footnotesize 54 ST I-II 18, 3: ‘Nam plenitudo bonitatis ejus non tota consistit in sua specie, sed aliquid additur ex his quae adventur tanguam accidentia quaedam; et huiusmodi sunt circumstantiae debitae. Unde si aliquid desit quod requiratur ad debitias circumstantias erit actio mala.’} \]

\[ \text{\footnotesize 55 See ST I-II 18, 9.} \]
of intentio, the finis of the act considered as an integral whole) and the proximate end (the intentionality implicit in the means, the object of the discrete act of electio, id quod est ad finem) considered in the context of all morally relevant circumstances.

Thus in their treatment of charity Aertnys-Damen define ‘formal cooperation’ not only in terms of the ‘finis operantis’ but also of the ‘finis operis’. In the former, it is clear that an agent’s intention to assist or facilitate another’s evil deed constitutes formal cooperation: for example, one freely keeps watch for a thief while hoping that he succeeds in his crime. In the latter, cooperation may be considered formal ex fine operis because the cooperator intends an act which of its nature (that is, of its own intentionality) is ordained only to the other’s evil act, and so implicitly intends the evil itself: ‘nam finis operis intrat in essentiam rei; qui ergo vult rem, necessario vult finem operis’.56 For example, without explicitly hoping that the crime succeeds, one keeps watch for a thief; if the act of ‘keeping watch’ is freely undertaken, then its object is clear: it can have no intentionality other than to assist in the crime. For Aertnys-Damen, then, regardless of whether it is intended ex fine operantis or ex fine operis, the evil of the principal agent is intended by the cooperator - which leaves no doubt as to the moral species of formal cooperation.

But Davis defines formal cooperation more restrictively: formal cooperation occurs when the cooperator assists the principal agent ‘in an external sinful act, and intends the sinfulness of it, as in deliberate adultery’.57 So ‘formal cooperation’ for Davis applies only to an act which is both in itself materially evil by virtue of the intentionality or ‘inner purposiveness’ of the act itself (ex fine operis), and also formally evil by virtue of the will of the cooperator who ‘intends the sinfulness of it’ (ex fine operantis). In the first example above, for instance, the act of keeping

56 Aertnys-Damen, de caritate 398. See also Servais Pinckaers OP, Le Renouveau de la Morale: Études pour une morale fidèle à ses sources et à sa mission présente. (Téqui, 1964) 139: ‘Finis operis et finis operantis ne constituent pas, du point du vue moral, deux sortes de finalités de nature différente; ce sont deux degrés d’une même finalité issue de l’intention volontaire.’ This insight of Pinckaers, and the summary explanation of Aertnys-Damen, serve to prevent the notion of ‘intentionality’ from assuming excessive significance. Even granting the existence of the ‘objective moral order’, every action that is a truly moral action proceeds only from an act of will/intention of a particular human agent.

watch is materially evil, but the cooperator’s desire that the crime succeed makes it formally evil as well.

Using Davis’s definition it seems evident that an act not of its own intentionality ordered to an evil could still be classed as formally cooperative solely on the grounds of the evil intentions of the cooperating agent. For example, a hardware salesman sells a hammer (in itself an innocent act), but hopes that the buyer will use it for some evil purpose. In this case the first condition (that it is an ‘external sinful act’) is fulfilled by virtue of the second (that the cooperator ‘intends the sinfulness of it’): the salesman’s intention is sufficient to render it an ‘external sinful act’ *ex quocumque defectu*. Thus an act can be made to constitute formal cooperation even if it does not have that intentionality in itself and would in other circumstances be a good or indifferent act. On this point Davis can be reconciled with Aertnys-Damen on the question of formal cooperation *ex fine operantis*.

But Davis seems to suggest that an act which is not in itself externally sinful, and which is commissioned by one who does not intend the evil of the principal agent, does not strictly constitute formal cooperation at all, even if it directly and immediately assists the principal agent in carrying out his evil deed. The example he offers is ‘to help a burglar to empty the jewels that he is stealing into the burglar’s wallet’. Even ‘without approving of what [the burglar] does’, the cooperator’s act of helping a burglar in such an intimate way seems to have no intentionality other than to assist in the evil deed, which for Aertnys-Damen would be sufficient to render it formal cooperation *ex fine operis*. Yet Davis deems this ‘immediate material cooperation’, implying that this kind of cooperation is somehow morally distinct from what he defines as formal cooperation. It is on this point that he seems to diverge from Aertnys-Damen.59

59 It is significant that the category ‘immediate material cooperation’ does not appear in Aertnys-Damen in their treatment of charity. They do employ the category in their treatment of restitution, where the question is not centred on one’s duties in charity but on one’s duties in justice to make good any damage for which one is morally responsible. Material cooperation is immediate when one cooperates in the very same evil act as the principal agent; it is mediate when one cooperates by some other discrete action which the principal agent abuses to his own evil end. Since the focus here is not so much on the question of the cooperator’s intention as on the proximity of his action to that of the principal agent, it seems apparent that the matter of ‘immediacy’ bears directly on the
The reason lies in Davis’s account of the moral object of the cooperative act:

Immediate material cooperation in another’s sinful act is always wrong, though there are many apparent exceptions, especially in matters of justice. Thus, under threat of death, I may, very probably, help another to destroy the property of a third person, because if in extreme hunger it is permissible to take the food that belongs to another not in extreme need, it would seem that an analogous method of saving one’s life is not sinful. The owner of the property destroyed is, it is alleged, not reasonably willing that his property should be preserved at the cost of my life. . . . [under the circumstances] this is not using a bad means to compass a good end: the means are not bad, for nobody’s rights are invaded.60

The argument is simple: even though the material action of the cooperator immediately participates in the evil deed of the burglar, the cooperator is not committing theft as such because, in Davis’s view, ‘theft’ is to be defined in terms of taking another’s property against his reasonable will.61 Since it would be objectively unreasonable for the property owner to prefer his property to the cooperator’s life, the cooperator is not committing theft at all. Therefore, regardless of the outward appearance of his action and its obvious immediacy to the burglar’s crime, his cooperation is material and not formal because it has its own distinct and

cooparator’s responsibility to make restitution for the harm he himself has caused, and only indirectly on the question of the cooperator’s moral status. See Aertnys-Damen, de restitutione, 782.

For his part, Häring employs the dual sense of ‘intention’ noted here - formal cooperation occurs when the cooperator directly serves the evil: ‘Either through his own inner approval of the principal’s sinful deed (ex fine operantis) or through a cooperation which by its very nature (ex fine operis) is approval of the act he formally makes the (principal agent’s) act his own.’ Häring 1963, vol. II, 496, parentheses and emphasis added. Material cooperation is had by an act which ‘neither in itself (ie by its own inner purposiveness) nor by the intent of the agent, contributes to the sin of another, but is misused or misappropriated by the latter and is thus placed in the service of his sinful activity’. Häring 1963, vol. II, 496, emphasis added. Häring thus requires that neither the agent nor the act itself may have an evil purpose. This reflects Alphonsus, de caritate 66.

Furthermore, Häring traces the distinction between formal and material cooperation to those morally relevant circumstances which ‘penetrate the structure of the action’ and thereby ‘qualify it unequivocally for direct complicity in the sin of another’. Häring 1963, vol. II, 497. This is the question of ‘moral object’, discussed above. To the problem of determining which circumstances do or do not touch the moral object of the act, Häring proposes a practical solution (drawn from Alphonsus) which is remarkably like that later adopted by Finnis and proposed here in terms of an ‘adequate description’ of the act: ‘We hold that if an act is to be appraised as merely material cooperation, it must be such also in relation to the immediately determining circumstances, so that a clear-thinking man can, without wrestling with concepts and abstractions, simply say: ‘What I am doing is in itself good. I am doing it sincerely and with worthy motives. The perversion of my act is entirely due to human malice.’’ Häring 1963, vol. II, 498. Compare this with Finnis, ‘Object and Intention’, 23-25.

legitimate moral object: the preservation of his life. The material aspect of the cooperator’s act may seem to coincide with the burglar’s action, but its moral species is in fact quite distinct.  

Davis could have opted for another argument, along the following lines: one may distinguish between an evil act as peccatum (objectively morally evil) and an evil act as culpa (subjectively morally culpable) since, as Thomas explains, an act is imputed to its agent only when he is master of that activity through his will. In Davis’s case, while the cooperator by an external act renders direct assistance to the burglar, the circumstance of fear or ‘duress’ (the threat of death) diminishes his subjective culpability. Fear for his very life places the evilness of the principal agent’s deed beyond the cooperator’s voluntary dominion (which is the meaning of praeter intentionem), and so the total evil of principal agent’s act cannot be imputed to the cooperator.

Davis’s approach draws attention to the implied questions one may ask concerning an apparently formally cooperative act:

- If one asks about the imputable sinfulness (culpa) of the cooperation, one might well label this act ‘immediate material cooperation’, because where an agent acts under considerable pressure or duress his cooperation may be materially evil (peccatum) but not formally sinful (culpa).
- If instead one asks only about the material evil (peccatum) of the cooperation, then one might prefer to label it ‘implicit formal cooperation’: when the agent acts under duress the intentionality of his action certainly encompasses the material evil ex fine operis, even if by virtue of the duress that material evil is not fully imputable to him.

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61 Davis, vol. II, 269: ‘It is of the essence of theft that a thing be taken with the intention of keeping it, at least for a time, against the owner’s reasonable will; this is unjust taking away.’
62 See 2.3.2 below. At the risk of complicating this analysis: the cooperator’s action is, in Sanchez’ terms, a virtually intrinsically evil action which is rescued from being intrinsically evil because it is justified by an extremely serious reason.
63 ST I-II 21, 2: ‘Dicendum quod sicut malum est in plus quam peccatum, ita peccatum est in plus quam culpa. Ex hoc enim dictur actus culpabilis vel laudabilis, quod imputatur agenti; nihil enim est aliud laudari vel culpari, quam imputari aliqui malitiam vel bonitatem sui actus. Tunc enim actus imputatur agenti quando est in potentate ipsius, ita quod habeat dominium sui actus.’ See also above, footnote 51.
64 See also below, 4.3.2.
Davis’s approach suggests that there is a real distinction to be drawn between *explicit* formal cooperation and at least some forms of *implicit* formal cooperation. While both are evil according to their basic moral species, he believes that they differ greatly in at least one important respect: in *explicit* formal cooperation the agent is deliberately willing the evil and so is fully culpable; in *implicit* formal cooperation (or that variety which he calls ‘immediate material cooperation’) the agent may not be entirely culpable if, because of extreme circumstances, the evilness of the principal agent’s action is excluded from the cooperator’s voluntary dominion.\(^{65}\)

In favour of this interpretation it could be argued that too strict an adherence to the two senses of ‘intention’ in Aertnys-Damen might risk contradicting the very tradition in which the principle of cooperation evolved. The moral manuals, which served to clarify and then preserve the principle, had precisely the task which would only be complicated by such a strict interpretation of ‘intention’: the task of helping pastors to assess the culpability of penitents. In his own moral and pastoral works Alphonsus defines formal cooperation in terms of ‘concurrence’ in the evil *will* of the other, while material cooperation is ‘concurrence’ only in the evil *action* of the other.\(^{66}\) This suggests that formal cooperation requires the cooperator to approve or intend the evil intended by the principal agent, while to participate without this intention (such as merely through supplying *id quod est ad finem*) might be to leave that evil *praeter intentionem*. When assessing the culpability of penitents in the Sacrament of Reconciliation, for example, this distinction is very important.

Herein lies the value of Davis’s position. Even if it is more strictly accurate to deem such acts ‘*implicit formal cooperation*’, the category ‘*immediate material cooperation*’ not only makes clear where the *source of the act’s objective moral disorder* might lie (that is, in the intentionality or ‘inner purposiveness’ of the material action and not in the cooperator’s formal intention), but also serves to draw

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\(^{65}\) This was the point made by the US Bishops in the Appendix to their *Ethical and Religious Directives for Catholic Health Care Services*. [Origins 24(1994) 449, 451-462. Hereafter: ERD] See 461, where the terms ‘immediate material cooperation’ and ‘implicit formal cooperation’ were distinguished on the basis of duress. See below, 4.2.2.2 and 4.3.2.

\(^{66}\) Alphonsus, *de caritate* 63. The use of ‘concurrency’ may also be significant; in itself the image of ‘concurrency’ does not require ‘intention’ but only a ‘running together’ or ‘coinciding’ of things. Perhaps Alphonsus is deliberately avoiding the question of intention?
one’s attention to the parallel and not insignificant issue of the subjective moral status of the agent.\textsuperscript{67}

In summary, then, while Aertnys-Damen’s position seems more strictly faithful to Thomas, Davis’s position also has clear practical advantages. Certainly both are represented in the manual tradition.\textsuperscript{68}

\subsection*{2.1.4 Conclusions}

The moral meaning of a human act is fully determined with reference to several of its aspects: firstly, the moral object, which is the moral matter with which the act is concerned (embracing the totality of ends and means adopted); secondly, the agent’s intentions or other purposes in commissioning the act; and thirdly, the other circumstances which ‘fill out’ the total moral meaning of the act. The moral object is the moral meaning of what the agent actually does, which is quite distinct from the physical or material aspect of the act. The agent intends this moral object \textit{explicitly} by forming a deliberate act of will to achieve it, and/or \textit{implicitly} by willing a material action which of its own intentionality or ‘inner purposiveness’ possesses that moral meaning.

These distinctions have great significance for the question of cooperation in evil. Some of the manuals insist that if an agent commissions an act which of its very nature is cooperative in evil, then the agent intends that evil. Others teach that if an agent commissions an act which of its very nature is cooperative in evil, but the agent does not explicitly will that evil himself, then that agent should be held culpable for that evil only if he lacks a sufficiently serious reason for commissioning his act.

This diversity would confuse the question of cooperation in evil, but for three points:

\textsuperscript{67} The question of immediate material cooperation will be taken up again in Chapter Four.
\textsuperscript{68} For an extended discussion of this point see Fabbro, Cooperation, 49-54.
• *First*, the two sides of this debate seek to highlight two distinct aspects of the problem of cooperation; they are taking two different views of the same reality. The first view emphasises the *cause* of the evil in formal cooperation, while the second view emphasises *responsibility* for the evil in formal cooperation. In a correct understanding of cooperation these will not always coincide.

• *Second*, reference to the structure of the moral act reveals the importance of the first and most fundamental determinant of morality: the *moral object*. The physical fact that an agent is cooperating in an evil does not necessarily reveal whether that cooperation is formal or material, justified or unjustified. For this to be known the moral object must be known, and the moral object is rationally distinct from the material object. The moral object can be known accurately only when the act in its total moral meaning is adequately described.

• *Third*, following Alphonsus, it is clear that in order to cooperate legitimately a cooperating agent must have a moral object of his own, distinct from that of the principal agent. This emphasises the importance of the cooperator’s *own intentions* and the totality of those morally specifying *circumstances* which touch his own act. This underscores again the need to achieve an adequate description of the act of the cooperator, considered both in itself and as cooperative.
2.2 The Structure of Legitimate Cooperation

2.2.1 Introduction

The preceding description of the metaphysics of the human act permits analysis of the structure of legitimate cooperation. This will be assisted by two preliminary observations.

First: the principle of legitimate cooperation assumes that the ‘First Principle of Practical Reason’ will be observed: ‘bonum est faciendum et prosequendum, et malum vitandum’. 69 This principle bears the following interpretation:

a) a bonum which is intended as finis of a morally good act often encompasses at least some of the good consequences of the act - but some evil consequences may also occur; 70

b) only a good is to be actively done or pursued or intended as an end - that is, willed as the object of intentio, finis, to which the object of electio, id quod est ad finem, tends;

c) an evil is not to be actively done - that is, not to be willed as an intentional object of a moral act either ex fine operis or ex fine operantis, even if it would be done only in order to obtain a good;

d) nor is an evil to be passively tolerated - that is, permitted to occur even as an unavoidable and unintended consequence (‘praeter intentionem’) of a moral act - unless this is warranted by a sufficiently serious reason. 71

69 ST I-II 94, 2.

70 That the end of a human act may be counted a bonum because of the good consequences which flow from that act, is implicit in the agent’s ability to intend one finis over another according as one finis may serve more purposes than another (ST I-II 12, 3), or to freely choose one means over another according to its superior attraction (ST I-II 13, 6 ad 3). It is also the meaning of Finnis’ statement (‘Object and Intention’, 25): ‘What consequences, results, outcomes of one’s choosing and doing are to be judged intended and what are to be judged side-effects (praeter intentionem) . . . is settled simply by considering why one is doing what one is doing, counting as within the proposal one has adopted by choice everything which one wants for its own sake or for the sake of what one wants for its own sake . . . ‘

71 This explains why, in the tradition, cooperation is spoken of as ‘lawful’ or ‘unlawful’, rather than as ‘good’ or ‘evil’. This language implies that the moral law requires in c) that if the act by which one cooperates is itself an evil act, then simply because it is an evil act (and not because it is cooperating in evil) it ought never be done; and in d) that to cooperate in evil is not morally
These points allow further definition of two frames of reference which have already been noted in the traditional distinctions of cooperation:

- the cooperative act **considered in itself simply as a human act** must be justified in itself, judged to be good or indifferent in species;
- the cooperative act **considered as cooperating in an evil**: even when the evil which ensues remains ‘*praeter intentionem*’, the act may be judged lawful (‘legitimate cooperation’) only where there is a reason serious enough to override the cooperator’s normal obligation to avoid evil.

*Second:* as described above, it is of the nature of cooperation that a cooperator’s act is used by a principal agent to attain his own evil *finis* - that is, to assist in the fulfilment of the principal agent’s own act. In some sense, then, the whole structure of cooperation can be conceived as a kind of ‘nested set’ of means and ends, with the cooperator’s act in the role of means (*id quod est ad finem*) serving the principal agent’s end (*finis*). This analogy has its limitations: for example, it tends to blur the moral boundary established by Alphonsus, and this opens up the possibility of confusing ‘cooperation’ with ‘double effect’.\(^{72}\) But it also highlights the role of the cooperator’s act within the second frame of reference: the fact that it is cooperating in another’s evil.

### 2.2.2 Categories of Cooperation

Using the structure and the two frames of reference noted above, and recognising that hypothetical examples of cooperation may admit of more than one legitimate interpretation,\(^{73}\) the traditional categories of cooperation may be described as follows.

#### 2.2.2.1 Formal and Material Cooperation

permissible unless it is justified in the circumstances by a sufficiently serious reason, and then only when the evil remains strictly ‘*praeter intentionem*’.

\(^{72}\) It has been noted that, for Alphonsus, each agent commissions his own discrete act: if cooperation is to be legitimate then there must exist a moral boundary between the act of the cooperator and the act of the principal agent, such that the cooperator’s own *finis* and his *id quod est ad finem* are distinct from the evil of the principal agent’s *finis*. See Roy, ‘*La Coopération*’, 422.

\(^{73}\) This is because in a hypothetical example it is always possible to add or remove circumstances which would radically alter the interpretation of the case. This is a danger in virtually all theoretical studies, as the manuals attest. The examples used in the present survey are certainly not so well defined as to restrict their interpretation to only one or other category of cooperation.
• In the first frame of reference: It is the cooperator’s intended object which provides the form of the cooperative act. If the cooperator intends the same evil object as the principal agent, then the cooperator’s act is evil *ex objecto* by virtue of his own deliberate intention.\(^{74}\) For example, it would be formal cooperation for an accomplice, acting freely and willingly, to help a robber commit theft.

• In the second frame of reference: Given that the cooperator does not directly intend the same evil object as the principal agent, he may nevertheless intend that an otherwise-innocent action *should be of service to the principal agent* in attaining that evil end - in which case, again, the cooperator’s act is evil *ex objecto* by virtue of his own intention. Here the cooperator is intending that his act, which is otherwise quite distinct and complete in itself, should serve as *‘id quod est ad finem’* to the principal agent’s *‘finis’*. For example, it would be formal cooperation for an accomplice freely to assist a robber by driving him away from the scene of a crime, with the intention that the robber escape. Even though the action of driving the vehicle has its own (otherwise innocent) end, the cooperator intends - and therefore makes his act to serve - the robber’s evil end. Despite having its own *finis operis* it is ordered to the robber’s crime *ex fine operantis*: therefore it shares in the same species as the principal agent’s act, and by virtue of the cooperator’s intention is *explicit formal cooperation* in evil.

• Still within the second frame of reference: Even if the cooperator does not *explicitly* intend to cooperate either in an evil or with the principal agent who is intent upon evil, the cooperator’s action may *of its own intentionality or ‘inner purposiveness’* be ordered to assisting the principal agent’s evil act. That is, while the cooperator does not *explicitly* hold the principal agent’s evil as the object of his act of *intentio*, that evil may still be, *ex fine operis* or *implicitly*, the object of the cooperator’s act of *electio*. For example, a worker in a pharmaceuticals laboratory freely and willingly makes abortifacient medications. These tablets have only one purpose, so they are only destined to the one evil end. Since willing the means necessarily implies willing the end to which the

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\(^{74}\) Note that if the cooperator wills the evil simply and solely by himself, the act is evil *ex objecto* and in this respect at least does not strictly qualify as *cooperation* in evil. But it is assumed here that the cooperator intends the evil *for the sake of* the principal agent or *because* that evil is also intended by the principal agent - in which case the act truly qualifies as formal cooperation.
means are necessarily ordered,\textsuperscript{75} the cooperator’s act in this case may be described as evil \textit{ex objecto} (\textit{ex fine operis}) and, if commissioned freely, this qualifies as ‘\textit{implicit formal cooperation}’.\textsuperscript{76}

All of these varieties of cooperation are forbidden under the First Principle of Practical Reason. It follows that if cooperation in evil is ever to be permitted, it can never be \textit{formal} cooperation. This leaves only \textit{material cooperation}, that purely physical participation (\textit{participans}) identified by Alphonsus.

Material cooperation is also defined variously. For Aertnys-Damen material cooperation is ‘\textit{concurrence only in the material sin or evil action of the other but not in his evil will}’ by an action which is indifferent in itself (that is, not evil either \textit{ex fine operantis} or \textit{ex fine operis}) but which the principal agent alone makes to serve his evil end.\textsuperscript{77} For Davis material cooperation occurs when the cooperator helps the principal agent to ‘\textit{accomplish an external act by an act which is not sinful, and without approving of what [the principal agent] does}’.\textsuperscript{78} For Hāring material cooperation is had by a good or indifferent act (that is, an act which is not evil \textit{ex fine operis}).\textsuperscript{79} The differences between these positions have already been discussed. In all cases material cooperation is normally unlawful, but may be permitted for a reason which is sufficiently serious to override one’s normal obligation to prevent the other from falling into sin.\textsuperscript{80}

So material cooperation is distinguished from formal cooperation because it has its own moral species, and this by virtue of having its own moral object. The moral species of the cooperative act is determined by the personal intention of the cooperator \textit{and also} by the ‘inner purposiveness’ of the action by which he

\begin{itemize}
\item \textsuperscript{75} See Aertnys-Damen, \textit{de caritate} 398.
\item \textsuperscript{76} But note that if the medications could also be used for an innocent purpose, then the worker’s action would not automatically (\textit{ex fine operis}) qualify as implicit formal cooperation in abortion. In this case their destination to an evil end is not implicit in the production of the medications themselves, but would rest with the intention of those who use them.
\item \textsuperscript{77} Aertnys-Damen, \textit{de caritate} 398.
\item \textsuperscript{78} Davis, vol. I, 341,
\item \textsuperscript{79} Hāring 1963, vol. II, 496.
\item \textsuperscript{80} This is based in Alphonsus, \textit{de caritate} 47. Aertnys-Damen state that material cooperation is \textit{per se} illicit, but \textit{per accidens} lawful for a just and proportionate cause (\textit{de caritate} 399); Davis
\end{itemize}
cooperates, all considered in light of the circumstances surrounding the act - which may or may not justify this cooperation.

2.2.2.2 Immediate and Mediate Material Cooperation

As noted already, immediate material cooperation is defined by some who use this category as ‘cooperation in the sinful act of the other’.\textsuperscript{81} Others require that the cooperator ‘actually performs the immoral action in cooperation with another person’\textsuperscript{82} - that is, physically performs all or part of the evil action itself. For example, Davis counts as ‘immediate material cooperation’ the action of a cooperator who helps a burglar ‘to empty the jewels that he is stealing into the burglar’s wallet’.\textsuperscript{83}

It may be significant that some definitions refer to cooperation in an ‘immoral action’ rather than in an ‘immoral act’: this could be interpreted to imply that ‘immediate material cooperation’ relates only to the material action performed (\textit{id quod est ad finem}) and not to the totality of the moral act (which includes the deliberately intended \textit{finis}). This seems to be the meaning of some manualists who maintain that immediate material cooperation may be excusable when the cooperator has an extremely serious reason for acting.\textsuperscript{84}

In any event, because in immediate material cooperation the moral object of the cooperative act is either the same as the moral object of the principal agent’s act,

\textsuperscript{81} Davis, vol. I, 341. This is derived from Alphonsus, as distinct from Sanchez who tied cooperation to the\textit{ guilt} rather than to the\textit{ act} of the principal agent.


\textsuperscript{83} Davis, vol. I, 341.

\textsuperscript{84} See Fabbro, \textit{Cooperation}, 50-51: ‘In his treatment of immediate cooperation Zalba remarks that, even though the cooperator is subjectively ordered to a good end, the fact that he participates so closely in the evil action will often mean that the object of his action (the \textit{finis operis}) will implicitly be infected by the evil in which he is actively participating. His cooperation will then be implicitly formal. Nevertheless, Zalba goes on to say that this need not be the case. In special circumstances one can cooperate immediately in the other’s sinful action without incurring its malice. This cooperation is material and can be justified for a proportionately grave reason.’ Fabbro gives the reference as: Marcellinus Zalba, \textit{Theologiae Moralis Compendium}, 2 vols. Biblioteca de Autores Cristiano (Madrid, 1958) vol I, n.285.
or at least is difficult to distinguish from it, immediate material cooperation is normally held to share the same moral species as the principal agent’s act.\textsuperscript{85}

By contrast, \textit{mediate material cooperation} is defined as cooperation by an act which is ‘\textit{secondary and subservient to the main act of another, as to supply a burglar with tools for his burglary}’.\textsuperscript{86} Here there is a clear distinction between the act of the cooperator and the act of the principal agent: the cooperator’s act (if considered in itself) has its own clear moral object which qualifies it as good or indifferent, but that act still provides the principal agent with some means or goods or services which are required for the commissioning of the principal agent’s evil act. For example, it would be mediate material cooperation in theft if a storekeeper were to sell a ladder which the buyer subsequently uses in a robbery. Of course, that the service he provides subsequently assists the principal agent’s evil deed must remain \textit{praeter intentionem} for the cooperator.

Foreseeing that his act will be abused by the principal agent (that is, in the second frame of reference), the cooperator must have a sufficiently serious reason for commissioning his act. Häring further insists that the materially cooperative act must be in itself ‘\textit{meaningful and justifiable}’ if it is to qualify as legitimate material cooperation: that is, when considered within the first frame of reference, the cooperator’s act must in itself be ‘\textit{founded in right reason}’.\textsuperscript{87}

Just as the category ‘immediate material cooperation’ used by some moralists coincides with some senses of ‘formal cooperation’ used by others, as noted above, the category ‘mediate material cooperation’ employed by some moralists seems to equate more or less with plain ‘material cooperation’ employed by others.

### 2.2.2.3 Proximate and Remote Material Cooperation

\textsuperscript{85} In Chapter Four it will become apparent that some moralists believe that ‘duress’ provides the cooperator with a different moral object in some cases (which differentiates ‘implicit formal cooperation’ from ‘immediate material cooperation’). See 4.3.2 below.

\textsuperscript{86} Davis, vol. I, 341.

\textsuperscript{87} Häring 1963, vol. II, 498.
This distinction is employed only when the cooperator’s act has already been judged to be merely material cooperation - that is, it has its own good moral object distinct from the evil moral object of the principal agent’s act.

Some actions of a cooperator will be more closely connected to those of the principal agent (such as the cooperator who actually holds a ladder for a burglar while he breaks into a building), while other actions will be more remote (such as the cooperator who merely sells the ladder in the first place). That is, although they are clearly distinct from the principal agent’s evil deed, some cooperative acts will more closely serve as *id quod est ad finem* to the principal agent’s evil *finis*, and others more remotely serve it. Given that the cooperator’s act is not ordered *ex fine operis* to the evil end of the principal agent, it is apparent that this ‘proximity’ or ‘remoteness’ cannot originate in the will of the cooperator but is, as it were, an objective potential of his act, either in itself or in its outcomes: the cooperative action has its own potential to be of service, proximately or remotely, to the principal agent. But this potential must always remain *praeter intentionem*. It must be solely the principal agent’s evil will which actuates this potential and makes the cooperator’s act serve his evil end. For example, the act of selling ammunition to a gun-owner is not in itself ordered to the gun-owner’s intention to shoot his neighbour, but it more proximately serves his evil intention than does the action of, say, the person who manufactures the ammunition.

What are not so evident are the *criteria* by which some actions are judged to be ‘proximate’ and others ‘remote’ from the principal agent’s evil act. Aertnys-Damen make this judgment according to ‘*the matter or means of sinning, or better, whether it serves proximately or remotely the execution of the sin*’;\(^88\) Davis refers vaguely to help which is ‘*very intimately connected*’ or ‘*not closely connected*’ with the other’s act;\(^89\) while Häring simply calls cooperation ‘*all the more serious if the act serves the evil purposes of another not merely remotely but also immediately and proximately*’.\(^90\) Some manualists seem to require the cooperator’s act to exercise some form of causality of the principal agent’s evil act (although it has been noted

\(^{88}\) Aertnys-Damen, *de caritate* 398.  
^{90}\) Häring 1963, vol. II, 498. These positions are in line with Alphonsus in *de caritate* 63.
that Alphonsus resists this on the grounds that it risks confusing cooperation with induction and scandal), while most insist that the very fact that the act is cooperative constitutes a circumstance which must be taken into account in forming an adequate description of the act.\textsuperscript{91} All agree that more proximate cooperation requires a more serious justifying reason.\textsuperscript{92}

Given the uncertainties surrounding this distinction, some manualists hold that proximity or remoteness cannot be more clearly defined and are best left to a prudential judgment of individual cases.\textsuperscript{93}

\textbf{2.2.2.4 Necessary and Contingent Material Cooperation.}

This distinction is based on whether a cooperator, either by office or other circumstance, has a duty or ability to prevent the evil from being done; or whether by withholding his material or service he would be likely to impede the principal agent. That is, the central issue is not how closely the cooperator’s action serves the principal agent’s act, but how necessary it is to the successful completion of that evil act.

Some manualists do not distinguish between necessity and effectiveness. ‘Necessity’ refers to a necessity of agency, and concerns whether this particular agent’s cooperation is necessary for the evil act to be done. ‘Effectiveness’ refers to a necessity of means, and concerns whether the goods or services supplied are necessary for the evil to be done.\textsuperscript{94} When the category is employed, ‘necessity’ in cooperation generally refers to necessity of agency.

Aertnys-Damen require a more serious reason to justify material cooperation when there is a greater necessity of agency. This occurs when a particular cooperator has the ability to prevent the principal agent’s evil deed simply by withholding his services - that is, the sin can be prevented because there would be

\textsuperscript{91} See Fabbro, \textit{Cooperation}, 16-19.
\textsuperscript{93} See Fabbro, \textit{Cooperation}, 19.
\textsuperscript{94} See Fabbro, \textit{Cooperation}, 20.
no-one else to provide that material or service.\(^95\)  For example, the night-watchman of a business has a greater duty not to cooperate in burglary than, say, the janitor. Among factors required to assess a sufficient reason Davis counts how ‘indispensable’ the cooperator’s act may be to the principal agent’s act,\(^96\) which is in line with Häring’s assessment that a more serious reason is required if the cooperator’s act ‘should be the indispensable condition for the execution of the [principal agent’s] nefarious design’.\(^97\)

All three agree: if the required goods or services would probably be supplied by some other cooperator anyway, then there is less necessity (or greater contingency). One then requires a less serious reason to cooperate because one has a less serious moral duty to withhold one’s act. And if the evil will come about regardless of what this particular cooperator does, then the justifying reason would not need to be very strong at all.

It seems, then, that this distinction touches on the sufficiency of the justifying reason: one may have a *prima facie* obligation to prevent an evil from occurring, but in the actual circumstances - including the presence of a sufficiently serious reason - this may not translate into a concrete duty to withhold the good or indifferent services which will be abused.

2.2.3 Conclusions

The structure of legitimate cooperation reflects the two frames of reference noted above. In the first frame of reference the distinction between material and formal cooperation refers to the morality of the cooperative act in itself - the morality of the act considered simply as ‘act’: insofar as one who cooperates formally shares the same evil object as the principal agent, the cooperator’s act is evil in itself. In the second frame of reference the distinctions between proximate and remote cooperation, and necessary and contingent cooperation, refer to the question of whether the act is justified in the circumstances - the morality of the act

\(^95\) Aertnys-Damen, *de caritate* 400.
\(^96\) Davis, vol. 1, 342.
considered as ‘cooperative’: since the cooperator’s act is good in itself, its morality must further be assessed in light of its nature as cooperating in evil.

Questions of proximity and necessity therefore do not arise until the morality of the act, considered simply as a human act, has been established. Within the first frame of reference a proposed act may be judged evil *ex objecto* by virtue of either the *finis operantis* or the *finis operis*; in either case it is an evil act and ought not be commissioned.

But the question may be asked: is it legitimate even to attempt to evaluate a cooperative act ‘in itself’, without any reference at all to its nature as cooperative? It is reasonable to answer ‘no’, since to assess an action in this way would be to omit circumstances which may touch the very moral nature of the act. Nevertheless it is legitimate to make an *initial* evaluation of the act ‘in itself’ in order to judge whether it merits condemnation ‘in itself’ *prior* to any consideration of its nature as cooperative. This is clear concerning the first touchstone of legitimate cooperation, the *intrinsically evil act*: only if an act is *not* intrinsically evil - is either good ‘in itself’ or indifferent ‘in itself’ up to this point - is it necessary to proceed to an assessment of it insofar as it is cooperative.

And in that second frame of reference an act which is *not* intrinsically evil may be commissioned even though it constitutes material cooperation in evil, but only if there is a reason sufficiently serious to excuse the cooperator from the obligation to avoid evil. The gravity of this justifying reason will vary with the judgment of proximity and necessity, *inter alia.*

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2.3 Conditions for Legitimate Cooperation

2.3.1 Introduction

These clarifications allow further investigation into the nature of ‘intrinsically evil acts’ and the ‘sufficiently serious reason’ required to justify material cooperation in evil. Like the categories ‘formal’ and ‘material’, these two elements have undergone considerable redefinition during the evolution of the principle: modern definitions of them would be foreign to the early manualists. It is necessary, then, not only to sketch these two elements in the development of the principle, but also to establish clear descriptions of them as they stand today. They play a very important role in the modern understanding of cooperation in evil.

2.3.2 Intrinsically Evil Acts

It is instructive to note that, notwithstanding the evolution since 1610 of the formal definition of ‘intrinsically evil acts’, some aspects of the process of defining these acts have not really changed at all since the time of Sanchez.

Sanchez categorised acts according to the purposes or ends they served: an intrinsically evil act was one which could not be made to serve any good end, while an indifferent act was one which could be made to serve either a good or an evil end, depending on the will of the agent.\(^98\) Two points are immediately significant.

*First:* in his category of ‘indifferent act’ Sanchez held that some acts, while essentially indifferent, are

\[\ldots\ \text{commonly defined in favour of an evil end. These acts have such a connection with this evil use that ordinarily, in fact, they require a good reason to be called indifferent rather than evil in themselves.}\(^99\)

He illustrates what he means: to kill innocent people and burn their houses would normally be deemed an act which is evil in itself, but in rare circumstances in

time of war it may be lawful, for example when grave necessity requires it and the agent’s intention is to do no further evil.  

*Second:* it is significant that even though he defines these acts in terms of the purpose they normally serve, Sanchez still describes the connection between moral species and *finis* in terms of the agent’s implied volition:

These acts have such a strict relationship to their abusive use that the one who performs them, as an almost necessary consequence, adheres voluntarily to the evil use. . . . According to this interpretation, these essentially indifferent acts are practically evil in themselves.  

This corresponds more or less with the argument that an agent who wills *id quod est ad finem* implicitly wills the *finis* to which those means are ordered.

It has been noted that some more modern manualists hold exactly this position on formal cooperation, but they define the moral species of this kind of act in terms of *the act’s own moral object*, whereas Sanchez defines the moral species in terms of *the uses to which the act can be put*. In both cases, however, the definition of this type of ‘virtually intrinsically evil act’ rests on an adequate description of the act in the concrete: only when the act is adequately described in terms of all morally relevant circumstances is its moral species finally revealed. So even though Sanchez and the modern moralist use different criteria to define these acts, they are really using more or less the same path to arrive at a definition.

Until Alphonsus, at least, the 1679 condemnation was generally interpreted according to Sanchez’s criteria. In that example, a servant cooperates with his master’s evil action by opening a door, holding a ladder, and similar actions. While they may have been indifferent in other circumstances, the servant’s acts were commonly considered to be intrinsically evil in the concrete case because they were ordered solely to the master’s evil designs: since the master’s act was evil, so was the

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99 Roy, ‘La Coopération’, 395. These are the acts which some moralists call ‘male sonantes’, or acts which ‘only become good if the agent supplies them with a good end’. See Fabbro, Cooperation, 43.  
cooperation of the servant. Thus the criterion for determining whether an act is intrinsically evil or not was held to be not the cooperator’s act itself but the totality of circumstances in which the act occurred, including especially the moral species of the act with which he cooperated.

Alphonsus drew a critical distinction: even if the cooperator’s act is to be defined with reference to the principal agent’s act, the cooperator’s act still must have its own moral meaning. The evil intention of the principal agent does not affect the morality of the cooperator’s act considered in itself, for this has its own moral species. In the particular case of participans identified by Alphonsus as genuine cooperation, the fact that the cooperator’s act will be cooperative in evil remains praeter intentionem for the cooperator, because his act is rendered cooperative only by the principal agent’s will. This is an essential condition of legitimate ‘material cooperation’ properly so called: Alphonsus emphasises that the principal agent must be already determined to sin, and that the cooperator’s act must be indifferent or good in itself. Obviously, these conditions guarantee that the cooperator’s act has its own distinct moral object.

But Alphonsus further differs from his predecessors in defining an intrinsically evil act not in terms of the use to which it can be put, but more strictly in terms of the effect it has on the evil will of the principal agent:

The criterion which St Alphonsus carefully chooses places the intrinsically evil act by which one cooperates in immediate relation to the concept of formal cooperation. Formal cooperation concurs with the evil will of the other agent which it augments or confirms. For St Alphonsus, the intrinsically evil act is precisely that which achieves such an act of cooperation. An act of cooperation which has the effect of augmenting, of confirming, of rendering more confident the evil will of the other is an intrinsically evil act.

‘One may not, however, on account of any fear perform any action which has the effect of augmenting or confirming the evil will of a thief, as for example by keeping watch, or advising of the hour,'

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104 See Alphonsus, de caritate 63
105 Thus Häring, for example, insists that the cooperator’s act must be justifiable in and of itself. Häring 1963, vol. II, 498.
or telling him a better way to steal, because these actions are formally and intrinsically evil.  

Two points are significant here. **First**: Alphonsus does not seem to require the cooperator to *intend* his act to augment or strengthen the will of the principal agent - the question is more simply whether the cooperator’s act, of itself, is apt to exercise such an influence. That is, this influence may follow purely *ex fine operis* and remain *praeter intentionem*: one who cooperates with a thief out of fear might in some cases do so by an act which is apt to augment the thief’s evil will, even though this is not what the cooperator intends to do.

**Second**: Alphonsus offers no objective criteria for determining *when* a cooperator’s act would have such a causal influence on the principal agent’s will, and therefore no objective criteria for determining when a cooperative act is intrinsically evil. He leaves this to prudent judgment in individual cases. This gap in his otherwise masterly treatment has been explained in terms of the prevailing state of metaphysics: most of Alphonsus’s sources pay scant attention to the tract on human acts, so he does not define ‘intrinsically evil acts’ in terms of their moral object, as later manualists would. Roy notes that it was only in the sixth edition of his *Theologia moralis* that Alphonsus developed his own treatment of the structure of human acts - by which time his treatment of cooperation had been in its final form for ten years.

On the other hand, this lacuna may indicate that Alphonsus considered the assessment of causal influence to be possible only in concrete cases - which is the arena of the virtue of prudence. If this is so, then Alphonsus’s definitions here would seem to concern that *second* category of acts considered by Sanchez: the ‘virtually intrinsically evil act’ which requires some serious circumstance to rescue it

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107 Roy, ‘La Coopération’, 435. See also Fabbro, *Cooperation*, 38-39. Note that Thomas seems to use not the ‘*intrainsece malum*’ of *Veritatis splendor* 80, but ‘*secundum se malum*’, as in ST II-II 64, 2 ad 3: ‘*Et ideo quamvis hominem in sua dignitate manentem occidere sit secundum se malum . . .*’ In the Blackfriars edition the phrase is rendered ‘intrinsically evil’, but it might be better translated literally as ‘evil in itself’: this has the advantage of indicating exactly where and why the action is evil in such a way that no subjective intentions or circumstances can possibly render it ‘good’ - which, of course, is precisely the meaning of ‘intrinsically evil’ in *Veritatis splendor* 80.
from its normal evil species and justify its commission. In this light it is significant that Alphonsus, like Sanchez, insists that the cooperative act be considered in the context of all morally relevant circumstances:

As with other moralists of his era, St Alphonsus judges the act of cooperation as it is performed here and now. He does not judge in the abstract an act of *carrying a gift to someone*, but he judges in itself the act of *carrying a gift to the concubine of someone*. If that act is not conceived as augmenting or confirming the will of the one who commanded it, St Alphonsus does not call it intrinsically evil.\(^{108}\)

This is an important condition for an eventual resolution of the problem of intrinsically evil acts. Some later moralists would insist that an intrinsically evil act was not one which in the concrete circumstances served only an evil end, but one which could not serve any good or honest end in *any* circumstances.\(^{109}\) Others would hold, more in line with Sanchez, that what was *otherwise* an intrinsically evil act may be rendered legitimate in some particular situations.

These two positions can be reconciled if, like Alphonsus, one maintains the need to describe adequately each act in the context of its concrete circumstances. It is not the mere physical action which is intrinsically evil, but the entire *ensemble* of the moral object of the act itself, with the agent’s intention, in the concrete circumstances.\(^{110}\) Morally, the act is not adequately described until all relevant factors are taken into account; but when the act *has* been adequately described - which requires taking account of neither too few nor too many factors - then the moral species of that particular act is defined.

How does this sit with Thomas Aquinas’ assertion that circumstances can alter the moral species of an act?\(^{111}\) The answer is: perfectly happily, and the

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\(^{110}\) Rhonheimer, *Intentional Actions*, 284: ‘What is called ‘intrinsically evil’ [in Veritatis splendor 80], therefore, is concrete choice, describable in behavioral terms, that cannot be reduced to simple ‘behavior’, however, because every choice includes an intention of the will and a corresponding judgment of reason. That is also the reason why the encyclical speaks here about ulterior intentions, and not about intention as such: because ‘object’ and intention are not mutually exclusive terms. There is some intentionality required so that an object of a human act can be constituted.’

\(^{111}\) ST I-II 18, 10; 73, 7.
examples which Thomas offers only serve to illustrate the importance of describing a moral act adequately.

Thomas teaches that in order to describe moral acts adequately one must turn not to the natural forms of acts but to their ‘forms as conceived by reason’. These are neither as self-evident nor as fixed as natural forms. Thus, theft can be defined as ‘taking what belongs to another’. In the simple case, with no other circumstances influencing the act, all acts of this kind are adequately described as ‘theft’. But of the many circumstances which surround every human act in the concrete, some so touch the act that they alter its object and therefore sometimes its species.

For example, ‘retaining the gun of another who would use it to kill an innocent person’ might not be classed as an act in the species ‘theft’ but as an act of another species (perhaps ‘preservation of life’). Similarly a circumstance such as ‘place’ (for example, taking a sacred object from a church) might require an act to be described as ‘sacrilege’ rather than ‘theft’ - in which case ‘theft’ is not an adequate description, but ‘sacrilege’ is. But it is not really accurate to say here that an evil act (‘theft’) has been made good by additional circumstances; it is more accurate to say that, in the circumstances, ‘theft’ is not an adequate description of these particular acts. The natural or physical forms of the external actions may be similar, but their rational or moral forms are radically different, and so they require different moral descriptions as ‘theft’, ‘sacrilege’ or ‘preservation of life’.

So when Thomas teaches that ‘circumstances can alter the moral species of an act’, he is not teaching that one act may be described differently under two different sets of circumstances. Rather he is insisting that the two different sets of

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112 ST I-II 18, 10: ‘... sicut species rerum naturalium constituuntur ex naturalibus formis, ita species moralium actuum constituuntur ex formis, prout sunt a ratione conceptae...’ The example of theft is drawn from this article.
113 ST I-II 18, 10: tollere alienum.
114 In the same vein, it is not accurate to say that the basic moral species of an act cannot be defined from its object, independent of factors such as the agent’s further intentions and other circumstances surrounding the act. It is more accurate to say that, quite independently of the agent’s personal motives for acting and of other circumstances, the object of an act may provide the act’s basic moral species if the moral object (and so the act in itself) is adequately described.
circumstances effectively circumscribe two distinct acts with two different ‘forms as conceived by reason’, which require the acts to be described differently. This may come about in various ways:

- some concrete circumstances surrounding an act are not merely accidental to the act but are essential to it because they touch its moral species;\(^\text{115}\) thus the act of taking something which belongs to another may not always be adequately described as ‘theft’ - it may be ‘preservation of life’, or ‘sacrilege’, depending on essential circumstances.

- from the perspective of the cooperator’s intention: the one who, under duress, cooperates with a thief might not be described as ‘stealing’ as such if he does so purely to preserve his own life. His action may have a similar natural or physical form but his intention is different from the principal agent’s intention, so when he acts only in order to save his own life his action may have a different moral form and might require a different description.\(^\text{116}\)

In contrast to Alphonsus, the modern definition of ‘intrinsically evil acts’ is grounded solidly in the metaphysics of human action. The primary point of reference is the moral object of the act, and that object is measured against ratio recta:

Reason attests that there are objects of the human act which are by their nature ‘incapable of being ordered’ to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed ‘intrinsically evil’ (intrinsec malum): they are such always and per se, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. Consequently, without in the least denying the influence on morality exercised by circumstances and especially by intentions, the Church teaches that ‘there exist acts which per se and in themselves, independently of circumstances, are always seriously wrong by reason of their object’.\(^\text{117}\)

\(^{115}\) ST I-II, 18, 3 ad 2.

\(^{116}\) Fabbro, Cooperation, 4: ‘Vittrant’s analysis [of a similar case] clearly illustrates that in the moral evaluation it is insufficient to consider the physical phenomenon in isolation from the agent’s intention in the concrete circumstances.’ [The reference to Vittrant is given as: Jean-Benoit Vittrant, Théologie Morale. Third ed. (Paris, 1941) n.217.] Fabbro notes that Vittrant here follows Alphonsus, de restitutione 571. This reflects Davis’s argument on immediate material cooperation: see Davis, vol. I, 342-343, and at 4.3.2 below.

\(^{117}\) Veritatis splendor, 80.
So even in cases of acts which gain their (evil) moral species from the *finis operis* itself, it is clear that, from a structural point of view, an act is to be deemed ‘intrinsically evil’ only when it is adequately described. All morally specifying circumstances must be ‘factored in’ in order to describe the moral object (as distinct from the physical object), and only then can the act be placed in its moral species.

But in whatever manner intrinsically evil acts are considered, one problem remains: how does one determine which circumstances are truly accidental to the moral object of an act and so are incapable of altering its species, and which circumstances intimately touch the moral object, are able to alter its moral species, and so are essential to the adequate description and moral specification of the act?

This problem dogs the question of intrinsically evil acts, even in its most recent formulations.\(^{118}\) While it is evident that individual circumstances must be considered within “the sum total of circumstances which provoke or motivate the action and directly accompany it”,\(^{119}\) it may not be possible to go past the example of Alphonsus who leaves the determination of such difficult matters “to the prudence of moralists and to the conscience of each person to judge in particular cases”.\(^{120}\)

### 2.3.3 Sufficiently Serious Reason

A ‘sufficiently serious reason’ is required to justify cooperation in evil. The task here is to uncover what ‘sufficiently serious reason’ means, and how it functions in the case of legitimate cooperation.

A ‘sufficiently serious reason’ seems to imply some process of comparing various factors, leading to an outcome which permits cooperation. The key questions here are: what would be the ‘terms’ of such a comparison? and how would the comparison actually be made and an outcome reached?

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\(^{118}\) For modern formulations see *Veritatis splendor* 79-83, and the CCC 1754. Thomas recognises the difficulty of evaluating circumstances in ST I-II 18, 10: “Et ideo quod in actu uno accipitur ut circumstantia superaddita objecto, quod determinat speciem actus, potest iterum accipi a ratione ordinante ut principalis conditio objecti determinatus speciem actus . . . ”


\(^{120}\) Roy, ‘La Coopération’, 434.
An associated question is: does the ‘sufficiently serious reason’ merely permit cooperation, or may it impose an imperative to cooperate? Indeed, is a ‘sufficiently serious reason’ ever really capable of compelling cooperation in evil? This will be discussed in more detail later in the present work, but for present purposes ‘sufficiently serious reason’ will be taken to have the meaning it has generally in the manual tradition: it is ‘sufficiently’ strong to overcome objections which would otherwise forbid cooperation in evil. In other words, ‘sufficiently serious reason’ here is taken as permissive rather than as imperative.

It is useful to note that some manuals prefer the term ‘proportionately serious reason’, or variations of the same. While this raises the spectre of some kind of proportionalism, these terms do have a place in the discussion of cooperation under de restitutione where one task is, precisely, to balance one set of harms against another set of harms. But the problems inherent in trying to balance goods and evils are well known, and in any event the very structure of material cooperation would seem to make such a calculus extremely difficult or even impossible because, from the cooperator’s point of view, the ‘goods’ and ‘evils’ flow from two distinct acts commissioned by two different agents.

Alternatively, ‘proportionately serious reason’ could refer to that ‘proportion’ which must exist in a morally good act between objectum and ratio recta, or between id quod est ad finem and finis. But this is based on a developed metaphysics of the human act, of a kind which does not seem to have played a significant role in the critical early evolution of the principle of material cooperation.

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121 For example, Aertnys-Damen hold that ‘Materialiter cooperans ad restitutionem tenetur nisi ex justa et proportionata causa auxilium praestet; tunc enim solum cooperatio ejus lícita est.’ (de restitutione, 783. Emphasis added.) and Haring 1963, vol. II, 499 refers to a ‘proportionately good reason.’

In any event it will become clear that even if it has been used in this way by some commentators, the terms ‘proportionate reason’ or ‘proportionately serious reason’ do not adequately capture the meaning intended by Alphonsus and those subsequent manualists who sought to develop his insight into the virtue of charity. It will be argued here that in de caritate there is only an apparent ‘apportioning’ or ‘balancing’ of effects; and since it is in de caritate that cooperation properly so called is discussed, it is preferable here to use the term ‘sufficiently serious reason’ to express the condition required for legitimate material cooperation.

This discussion addresses two points. First, the ‘sufficiently serious reason’ required to justify material cooperation refers to both of the frames of reference used in this chapter. In the first (the act considered in itself), it refers to the need for the agent to hold a sufficiently serious reason to perform the act itself; in the second (the act considered as cooperative), it refers to the need for the cooperator to hold a sufficiently serious reason to permit evil to occur. It is possible, of course, that a single reason may meet the requirements of both frames of reference. Second, since the manuals discuss cooperation in two places, de restitutione and de caritate, there is the possibility that ‘sufficiently serious reason’ may not have the same meaning in both locations. This remains to be investigated.

In the first frame of reference any sense of ‘cooperation’ may be ignored. It is evident that an agent requires a good reason to perform any moral act, and this reason must be good enough to justify the act in view of any evil effects which may follow from that act either directly or indirectly (praeter intentionem). Here the ‘sufficiently serious reason’ plays a positive role: given Thomas’ understanding that no human act is indifferent in the concrete, a ‘sufficiently serious reason’ is necessary to render any act morally good in itself. As noted, this ‘goodness’ arises from a combination of the intentionality of the action itself, the agent’s further intentions, and any additional circumstances which may be necessary to ‘fill out’ the moral object of the act.

123 ST I-II 18, 9.
However, this particular reason will not automatically satisfy the requirements of the second frame of reference, which considers the act precisely as cooperative in bringing about some evil. Indeed, many acts which are good in themselves would be manifestly unjustified in view of the evil in which they participate, and this is the very heart of the problem of legitimate cooperation. The second frame of reference is therefore the major field of inquiry.

The manuals raise the matter of cooperation in two tracts - *de justitia* (under *de restitutione*) and *de caritate* (under *de scandalo*). Questions in *de restitutione* concern an agent’s culpability (and therefore his duty to make restitution) for damage in which he participates and of which he is a moral cause, if he acts without a *just and proportionate cause*. Note that the focus here is not on the cooperator’s own act in itself, but on the evil effects of the action with which he cooperates, insofar as those evil effects impact on a third party. The central question in *de restitutione* is: is the cooperator justified in allowing harm to come to a third party as a result of the principal agent’s abuse of an otherwise innocent act?

The function of a ‘sufficiently serious reason’ here is to permit the cooperator to act despite the harm to third parties, which his act is made to serve. The general consensus is that a cooperator who is himself subject to substantial threat of harm may cooperate legitimately - that is, without being held to make restitution - if he does not otherwise exercise moral causality in the harm done. Here the threat of harm to oneself seems to be compared with the threat of harm to the third party, so the function of a ‘sufficiently serious reason’ is to ensure that, even if the cooperator does participate in bringing harm to another, the strict demands of justice are not offended.

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124 See for example Alphonsus, *de restitutione* 571.
125 Alphonsus requires a substantial threat of harm such as death itself (*de restitutione* 571); Aertnys-Damen make the same immediate-mediate distinction as Alphonsus, teaching that immediate material cooperation is excusable if it is commissioned under threat of harm greater than that threatening the third party, while mediate material cooperation is excusable under threat of equal harm because this constitutes a just and proportionate cause for remote cooperation in harm to another (*de restitutione* 783); Davis notes simply that ‘No one is bound to forestall harm to another at the cost of greater harm to himself’ (vol. II, 314); Haring 1963 vol. III holds that the culpable action must be ‘actually the effective cause, not merely the occasion’ of the damage (487) and that ‘If the agent carried out the evil action freely, he is also liable’ (488) - which implies that the agent is not liable to the extent that his cooperation is not freely given.
In contrast, the ‘simple case’ in *de caritate* defines cooperation properly so called: whether one may cooperate in evil if one exercises no moral causality whatever in the harm which the principal agent is already determined to bring about. Here again Alphonsus sets the terms: the principal agent must already be determined to sin, so that there is no question of moral causality on the part of the cooperator; and the cooperator’s deed must be good or indifferent in itself, so that it is not blameworthy in its own right. The focus then is on a single evil effect - indeed, upon the primary evil effect: the sin or ‘spiritual ruin’ which the principal agent will bring upon himself. The central question in *de caritate* is: is the cooperator justified in allowing the principal agent to sin by abusing an otherwise innocent act?

The function of the ‘sufficiently serious reason’ in this case is to excuse the cooperator from the *prima facie* duty to prevent one’s neighbour from committing sin and thereby suffering spiritual harm. A reason such as the ‘threat of grave harm to oneself’ is normally held to justify material cooperation in this case. Here the ‘sufficiently serious reason’ seems to compare the harm which the cooperator would suffer as a result of non-cooperation with the harm the principal agent threatens to cause to himself by abusing the cooperator’s act, so the function of a ‘sufficiently serious reason’ here is to ensure that, even if the principal agent does sin, the cooperator does not offend the strict demands of charity.

Two problems are immediately evident. *First*, in both of these tracts it seems clear that regardless of his good intentions, the cooperator intends (at least implicitly) to permit an evil - which the First Principle of Practical Reason bids him avoid. *Second*, even if this difficulty can be overcome, the ‘sufficiently serious reason’ still seems to require some form of ‘proportioning’ of the harms permitted - and how can the problems of proportionalism be avoided?

In regard to the first objection, the principle of cooperation requires that the cooperator’s act must be itself good or indifferent, and that the evil must flow solely from the principal agent’s evil will. Furthermore as *de restitutione* makes plain, the

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126 Alphonsus, *de caritate* 63.
cooperator is not held responsible if he is not a moral cause of the damage done. If he were a moral cause, the harm done by the principal agent would be attributable to him and could be treated as ‘indirectly voluntary’, in much the same way as the unintended evil effects of an act which he alone commissions (as occurs under the Principle of Double Effect). Clearly there is a difference in physical causality between ‘cooperation’ and ‘double effect’, but if the cooperator exercises moral causality in the principal agent’s evil act the two cases may be treated in approximately the same way.\textsuperscript{127} What sets cooperation proper apart, then, is precisely the question of moral causality: \textit{in legitimate cooperation the cooperator himself is not a moral cause, even indirectly, of any harm which the principal agent may do to himself or to other parties.}

Clearly this holds true for cooperation in both tracts: where the principal agent is already determined to sin, a legitimate cooperative act will exercise no moral causality and the cooperator will not be held responsible for either the principal agent’s sin (in \textit{de caritate}) or for unjust damage to third parties (in \textit{de restitutione}).

On one hand the different foci of the two tracts are of great significance. The fact that \textit{de restitutione} focuses on the harmful effects of the principal agent’s action does not mean that the principal agent’s sin is negligible - rather, this tract is simply asking a specific question concerning restitution. Similarly the focus of \textit{de caritate} - the principal agent’s sin itself - does not deny that questions of restitution may also arise in connection with a particular case of cooperation. The two tracts simply focus on different aspects of the one phenomenon.

On the other hand, as Alphonsus indicated, the ‘simple case’ of cooperation properly so called raises only the question of the principal agent’s sin - the focus of \textit{de caritate} - without any question of further harmful effects or of restitution. This is extremely significant, for some later moralists attempted to apply Alphonsus’s criteria for cooperation properly so called in \textit{de caritate} to clear cases of injustice in

\textsuperscript{127} Cooperation differs markedly from double effect: in material cooperation there are two acts and two sets of consequences to consider, whereas in double effect it is a single act which causes both sets of consequences.
The result was a re-confusing of issues which Alphonsus had been so careful to distinguish and define.

It is far more fruitful to follow Alphonsus’s lead: in any given case of cooperation, one ought to treat the issue of cooperation proper under the criteria of *de caritate*, and treat the issue of restitution under the criteria of *de justitia*. This parallels the situation noted above concerning moral causality: where there is no moral causality (cooperation properly so called) one deals with the specific issue of cooperation alone, but where there is moral causality one must address the additional question of culpability (and restitution) for indirectly voluntary evil effects.

So does a cooperator actually *intend to permit an evil*, which the First Principle of Practical Reason forbids? At best only indirectly, and then only for a reason serious enough to excuse his *prima facie* duty not to permit harm to befall his neighbour. In legitimate material cooperation it is clear that, because the cooperator exercises no moral causality whatever and possesses a sufficiently serious reason to act, he is in no way culpable for any evil which results.

In regard to the second objection concerning ‘sufficiently serious reason’ and a ‘proportioning’ of harms: even where any harm done by the principal agent remains strictly *praeter intentionem* for the cooperator, it may be that traditional treatments of cooperation in *de caritate* only seem to define the justification of cooperation in terms of ‘comparing’ this harm with the harm threatening the cooperator himself. It can be argued that there is in fact an entirely different process at work.

In order to develop this argument the situation of cooperation may be described in the following terms: a ‘sufficiently serious reason’ allows one to perform a good or morally indifferent act even though the principal agent will bring about an evil (of whatever kind, and always *praeter intentionem*), because material cooperation in that act is somehow ‘preferable’ to material cooperation in some other

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128 In Chapter Three it will be suggested that Germain Grisez attempts to do this in a later work.
act, or to no cooperation at all. The question then is: is there an objective basis for this ‘preference’?\textsuperscript{129}

It has been noted that the question of charity always arises in cases of cooperation, but the question of justice does not. It therefore seems reasonable to look to charity, as Alphonsus did, to locate an objective basis for the ‘preference’ inferred.

There is generally held to be an order which is to be observed in the practice of charity, and that order places (i) one’s own spiritual good above the spiritual good of one’s neighbour; (ii) the neighbour’s spiritual good above one’s own physical self; and (iii) one’s own physical self above the physical self of one’s neighbour.\textsuperscript{130} Thus, ‘charity does not oblige us to sacrifice our own body for our neighbour’s safety, except where we are bound to provide for it’.\textsuperscript{131}

This ordo caritatis establishes the ground on which Alphonsus insists that one is not bound to endure grave harm in order to prevent one’s neighbour from sinning.\textsuperscript{132} Given that one is under no other obligation to prevent the principal agent from sinning, the virtue of charity alone does not demand that the cooperator withhold a good or indifferent act simply in order to prevent the principal agent from coming to spiritual harm, where the cooperator himself is also under the threat of spiritual harm.\textsuperscript{133} Since any sin flows from the principal agent’s evil will alone, the virtue of charity leaves the cooperator free to cooperate or not.

\textsuperscript{129} This idea of ‘preference’ is found in Johnstone, ‘The Meaning of Proportionate Reason’, 234.

\textsuperscript{130} Thomas gives the order of charity in ST II-II 25, 12 as: God, self, neighbour, one’s body. See also ST II-II 26, especially 2-5. Alfonso gives another order in de caritate 25: '(1) seipsum, secundum bona spiritualia; (2) proximum, quoad eadem bona; (3) seipsum, quoad bona corporalia; (4) proximum, quoad eadem; (5) denique seipsum, et deinde proximum, quoad bona externa.'

\textsuperscript{131} ST II-II 26, 5 ad 3.

\textsuperscript{132} Alphonsus, de caritate 63; and at 66: ‘Ratio, quia, ut mox supra diximus, cum te praestas actionem per se indifferentem, scilicet, quae potest esse bona et mala, non teneris nisi ex caritate ab illa abstinere, ne alter ea abutatur ad peccandum; quando autem alias grave damnnum metuis, licite permettire potes peccatum alterius. Nam ex una parte, caritas te non obligat cum gravi damno peccatum ejus avertere; et ex altera, malitia alterius nequit mutare naturam tuae actionis, ita ut de indifferenti evadam intrinsece mala.’ Emphasis added.

\textsuperscript{133} Alphonsus, de caritate 66. Others would express this simply in terms of a ‘principle of preference’ without offering any objective grounding for that preference: for example Johnstone (‘The Meaning of Proportionate Reason’, 234-235) considers that Johannes Gury SJ had such a principle in mind when he dealt with this issue in relation to double effect. Interestingly, while Johnstone rightly concludes that the assessment of proportion in this case involves a complex of terms
Hence the ordo caritatis establishes an objective basis for the cooperator ‘preferring’ to cooperate in what is for him a lesser rather than a greater evil. Where there is no obvious good to be done, or when faced with a choice of spiritual harm to oneself or to another, the cooperator who acts for a just cause does not act with the intention of actively doing an evil of any magnitude, since this would be contrary to the First Principle of Practical Reason. Neither does the cooperator enter into a balancing of good and evil effects, or of evil and worse effects. He simply recognises his objective obligations in charity - and the ordo caritatis does not oblige him to endure spiritual harm in order to prevent the principal agent from causing spiritual harm to himself.

So as Alphonsus realised, the ‘sufficiently serious reason’ which would justify cooperation properly so called is grounded in the virtue of charity and preserves the order of charity. By observing this order the cooperator preserves the integrity of both himself and his action. The evil which results is not intended either explicitly or implicitly but remains strictly praeter intentionem, and this is permissible as long as the cooperator’s act is good or indifferent in itself, that is, it does not exercise any moral causality with regard to the evil which results, and the order of charity is preserved. While it may be an act of the greatest charity to sacrifice oneself for another, the ordo caritatis does not require this.134

On one hand, then, a sufficiently serious reason is required to justify the cooperator’s act simply as an act; on the other hand a sufficiently serious reason is required to exempt the cooperator from the normal demands of charity. In both cases a reason can qualify as ‘sufficiently serious’ only if it maintains the order of charity.135

such as proximity and probability, he makes no reference to Alphonsus’s own treatment of exactly this point in his de caritate 59.

134 ST II-II 26, 5 ad 3.


* at 45: ‘Proportionate reason means three things (a) a value at least equal to that sacrificed is at stake; (b) there is no less harmful way of protecting the value here and now; (c) the manner of its protection here and now will not undermine it in the long run.’ For McCormick, then, some form of moral calculus is of the essence of proportionate reason.
One major question remains: how does the cooperator know, in a concrete case, that he is exempted from the normal demands of charity? How does he know when he holds a sufficiently serious reason to cooperate in this particular evil in this particular case?

Like the assessment of circumstances surrounding the moral act, this is normally not a matter of absolute certainty but requires prudential judgment. Neither Alphonsus nor subsequent manualists seem prepared to go beyond indicating which factors are to be considered in such an assessment. In Alphonsus’s view these factors include the gravity of the other’s sin, the probability that the other would not sin if the cooperator withholds his act, the proximity of the cooperation to the sin, the right of the cooperator to act in any case, and any offence against justice, especially against third parties. Clearly, they also include the cooperator’s basic reason for acting, and that reason would have to be greater or weaker depending on other variable factors. What is certain is that this assessment can only be made when all morally relevant factors are taken into consideration - that is, when the cooperator’s act, considered as cooperative, is adequately described - and this is a matter of prudence.

Figure 2.1 compares - in general terms only - the function of the ‘sufficiently serious reason’ which justifies cooperation in de restitutione with that in de caritate.

<table>
<thead>
<tr>
<th>de caritate</th>
<th>de restitutione</th>
</tr>
</thead>
</table>

* at 47: charity consists of beneficentia as well as benevolentia and ‘is always controlled by the possible’ - that is, where no good can actually be done one is obliged to do (or permit) the least evil. For McCormick, a moral conflict is essentially a choice between greater and lesser evils.

* at 48: the notion of proportionate reason is always only analogous: when all is said and done, the agent does not engage in a simple utilitarian calculus but in a much more complex - and subjective - weighing of alternatives in which ‘the preference of a good for or in another at the cost of that good for or in myself should not, in view of human weakness and immaturity, be demanded.’ For McCormick, Christ’s command to ‘love one another as I have loved you’ is not to be demanded as an absolute norm but rather proclaimed as a principle of growth.

136 Alphonsus, de caritate 59.
<table>
<thead>
<tr>
<th>Relevant Virtue</th>
<th>Charity</th>
<th>Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus</td>
<td>The principal agent’s sin itself</td>
<td>Further evil effects of the principal agent’s sin</td>
</tr>
<tr>
<td>Function of Justifying Reason</td>
<td>To permit my action despite the principal agent’s sin</td>
<td>To permit my action despite these evil effects</td>
</tr>
<tr>
<td>Key Questions</td>
<td>Am I justified in allowing the principal agent to sin by abusing my good or indifferent action?</td>
<td>Am I justified in allowing further evil effects which will flow from the abuse of my good or indifferent action?</td>
</tr>
<tr>
<td></td>
<td>or In light of the principal agent’s sin, am I justified in acting?</td>
<td>or In light of these evil effects, am I justified in acting?</td>
</tr>
<tr>
<td>Restricting Cooperation</td>
<td>Even where there will be no offence against justice in regard to other parties (ie no further evil effects), charity toward the principal agent may require me to refrain from acting</td>
<td>Even where charity toward the principal agent does not of itself require me to refrain from acting, justice may require me to avoid contributing to the production of evil effects which will harm other parties</td>
</tr>
<tr>
<td>Permitting Cooperation</td>
<td>Cooperation may be permitted for a serious reason if the demands of charity are not offended, because my action exercises no moral causality in regard to the principal agent’s sin</td>
<td>Cooperation may be permitted for a serious reason if the demands of justice are not offended, because my action exercises no moral causality in regard to the harm done to others</td>
</tr>
</tbody>
</table>

**Figure 2.1** Alfonsus, *Theologia moralis*: the function of ‘sufficiently serious reason’ in ‘de restitutione’ and ‘de caritate’.

### 2.3.4 Conclusions

Contemporary debates on the moral assessment of human acts reveal divergent positions which, unsurprisingly, are often difficult to reconcile.\(^{137}\) At the core of much of this divergence is the question: what is to count as pertaining to the object of a moral act?\(^{138}\)

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\(^{137}\) For example, the debate between Richard McCormick and Martin Rhonheimer noted above in this Chapter, Footnote 10.

\(^{138}\) See McCormick, ‘Some Early Reactions’, 497.
• Some modern moralists (the ‘proportionalists’) are accused of wanting to include too much in their concept of moral object: not only the *finis* and *id quod est ad finem* of the act and its moral meaning in itself, but also *all* of the agent’s intentions and *all* surrounding circumstances, including *all foreseeable consequences*;\(^\text{139}\)

• Others are accused of wanting to include too little in their concept of moral object: no consequences and few circumstances, but two meanings of ‘intention’.\(^\text{140}\)

It is true that some consequences of an act will enter into the definition of its moral object, since often an agent acts precisely in order to obtain those outcomes. These consequences are usually embraced in the notion of *finis*. But in this context those consequences are to be assessed primarily in relation to *ratio recta* and not by any calculus of benefits and burdens, or of good and evil effects. An adequate description of the moral act, in other words, will not stop short of embracing whatever is necessary to classify the act in its species, but nor will it wish to confuse that assessment by going beyond what is necessary.

The tradition recognises that in some cases an act will be seen to be ‘evil’ by virtue of its very object, in such a way that no combination of circumstances or further intentions could possibly render this action justifiable or ‘good’. These acts are ‘actually intrinsically evil’, or evil *ex objecto* in every case.\(^\text{141}\) Thus ‘abortion’ may be described as ‘intrinsically evil’ because no possible complex of circumstances or subjective intentions can alter its fundamental moral meaning: the deliberate and voluntary killing of an innocent human being.\(^\text{142}\)

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\(^\text{139}\) Rhonheimer accuses McCormick of having an ‘expanded notion of object’ in ‘Intentional Actions’ at 285; at 291-300 he assesses this further, insisting that ‘proportionalists’ describe actions in terms of their consequences and commensurate reasons, rather than in terms of their objects seen from the point of view of the acting person.

\(^\text{140}\) McCormick accuses Rhonheimer of this in ‘Some Early Reactions’ at 501; Rhonheimer defends his view of moral object and intentionality in ‘Intentional Actions’ at 285-291.

\(^\text{141}\) See *Veritatis splendor*, 79-83 for a discussion of this point.

\(^\text{142}\) Pope John Paul II, Encyclical Letter *Evangelium vitae*. ‘On the Value and Inviolability of Human Life.’ (25 March 1995). AAS 87(1995) 401-522, n.57. See also n.62, where direct abortion is defined as ‘a grave moral disorder’: ‘No circumstance, no purpose, no law whatsoever can ever
The tradition also recognises that in other cases an act will be seen to be ‘evil’ by virtue of its very object as defined in the context of its concrete circumstances, and be ‘virtually intrinsically evil’ or evil ex objecto in this case. But other rare and extreme circumstances may demand another assessment such that, in those rare circumstances, a materially similar act might be adequately described as ‘morally good’. These are acts which Sanchez held to ‘so nearly approach the evil’ that they require a sufficiently serious reason to justify their performance, and without this justifying reason the one performing such acts could be said to intend the evil.\textsuperscript{143} It is not accurate to say that this justifying reason changes the moral species of the act; it is more accurate to say that, considering the gravity of the reason for acting, this act is more appropriately described in another way. Thus what is ‘theft’ in one situation is better described as ‘preservation of life’ in another, and ‘sacrilege’ in a third.

All of this is critical in the assessment of legitimate cooperation in evil. Structural emphasis on the moral object demands great attention to what it is that the cooperating agent is actually doing: if his act is not evil in virtue of its object and he holds a sufficiently serious reason to act, then his action must be distinguished from that of the principal agent. Furthermore, it is only by attending carefully to the totality of his act - its moral object, his own further intentions, and all other relevant circumstances including the strength of his reason for acting - that the cooperator can determine how his action is most accurately to be described.

The years since the Second Vatican Council have brought enormous changes in the social, economic and political shape of a world in which evil is so often done. How some of these changes might affect the interpretation of the traditional principle of cooperation will be a subject of Chapter Four of the present work. First, however, it will be helpful in Chapter Three to review some of the ways that the principle has been preserved, developed and presented since Vatican II.

\textit{make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.}
Chapter Three

MATERIAL COOPERATION SINCE VATICAN II

3.0 Introduction

Bernard Lonergan indicated that theological investigation of particular questions requires the development of a critical history of their origins and evolution, which may lead to that insight which is ‘understanding’. What is true for particular questions is true a fortiori of the theological disciplines in which they arise and, in the view of many modern moralists, this is especially so in the case of Catholic moral theology.

However, a critical history of past and current trends in moral theology would take the present work well beyond reasonable bounds. Nevertheless, some general comments will help to establish a context for this chapter.

As noted above, the moral theology of the manuals had been intended to prepare clerical students for ministry in the confessional; this is evident, for example, in the manuals’ emphasis on distinguishing mortal from venial sin, and on resolving doubts of conscience. According to the prevailing view of that ministry, it was necessary for the confessor to know what the moral law would allow or forbid.

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1 Lonergan, Method in Theology, 187-189.
3 See 1.2.1 above.
This explains why the traditional manuals speak of material cooperation as ‘licita’ or ‘illicita’. But such an orientation also carries the risk of a moral minimalism which is less concerned with knowing God’s will and more concerned with avoiding God’s punishment for sin. Moral theology of the manualist period has been described as ‘casuistic, unecumenical, unbiblical, ‘domestic’ in its concern (social morality being relegated to the periphery), centrally controlled, natural law oriented, and sin-centred’. Its view of moral obligation was generally permissive (‘what the moral law allows’) rather than genuinely imperative (‘what God calls me to do’).

Servais Pinckaers OP notes that late in the nineteenth and early in the twentieth century, a renewal of Thomism brought about two reorientations. First, in place of the Commandments some manualists sought to restore the moral and theological virtues as ‘the principle of the organisation of moral material’. It was hoped that this would lead to a more positive view of moral obligation: less of ‘what the commandments allow’ and more of ‘what the virtues require’. But it was not entirely successful:

. . . the material itself was not transformed by these improvements. The categories changed, but the content was always shaped by obligations and legal prohibitions. The teaching on the virtues was interesting but remained more theoretical than practical and still suffered from the impoverishment of notions inherited from nominalism. Virtue, prudence, chastity were far from recovering their lost power and dynamism.

Second, the tract on man’s last end and beatitude was restored, but because the overall focus still remained on ‘what the law allows’ the positive moral implications of ‘beatitude’ were never fully explored. So moral theology languished as a poor cousin of canon law, and moral obligation generally continued to be conceived as permissive rather than imperative - except, of course, where it was expressed in the negative: ‘Thou shalt not’.

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5 McCormick, ‘Self Assessment’, 42.
6 Pinckaers, Sources, 299.
7 Pinckaers, Sources, 299.
8 See Pinckaers, Sources, 200-300.
The Second Vatican Council caught up and gave formal impetus to what had already developed as a substantial movement for renewal in moral theology. It called for a solid grounding in the Scriptures, for a much more positive perspective on the moral life, and for a focus on the Christian’s sense of being ‘called’, of having an ‘obligation to bring forth fruit in charity for the life of the world’. It is notable, however, that conciliar and post-conciliar documents generally provided few specific guidelines on the method or content of this renewal. This may be simply a function of the complexity of the renewal itself, or it might be a recognition that, just as Christians fulfil their moral duty by responding to a concrete ‘call’ from God here and now, so the shape of modern moral theology can be ‘worked out’ only in relation to the concrete moral challenges of contemporary life. In any event the Council has generally been interpreted as calling for not simply a rearrangement of existing material, but a radical refounding of the discipline.

The process of renewal has been anything but smooth. Mahoney notes that it took off in two unplanned and uncoordinated directions - methodology and

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9 Above, 1.2.5.
10 Second Vatican Ecumenical Council, Decree on the Training of Priests Optatam totius. (28 October 1965) 16: ‘Special care should be given to the perfecting of moral theology. Its scientific presentation should draw more fully on the teaching of holy Scripture and should throw light upon the exalted vocation of the faithful in Christ and their obligation to bring forth fruit in charity for the life of the world.’
11 In Sources at 302 Pinckaers notes that, apart from Optatam totius 16, the council made little specific reference to moral theology at all. He maintains that an earlier general statement in the same paragraph of Optatam Totius should be taken to include moral theology: ‘[Seminary students] should learn to seek the solution of human problems in the light of revelation, to apply its eternal truths to the changing conditions of human affairs, and to express them in language which people of the modern world will understand.’ Other than these texts, Pinckaers holds that Gaudium et spes offers only general themes which should be reflected in a renewed moral theology (‘the human condition and vocation, the dignity of the person, human activity in the world, the dignity of marriage and the family, socioeconomic life, the political community and the safeguarding of peace.’ Pinckaers, Sources, 302) while the post-conciliar document of the Congregation for Catholic Education, The Theological Formation of Future Priests (22 February 1976) offers a more specific agenda for renewal.
Mahoney (The Making of Moral Theology, 303) maintains that Gaudium et spes 33 should also be taken to embrace moral theology: ‘The Church is guardian of the heritage of the divine Word and draws religious and moral principles from it, but she does not always have a ready answer to every question. Still, she is eager to associate the light of revelation with the experience of mankind in trying to clarify the course upon which mankind has just entered.’
12 Mahoney, The Making of Moral Theology, 307: ‘It was not simply a matter of tuning the engine and tightening the steering of moral theology, but of a thorough systematic overhaul of the whole vehicle and of sending it off into quite new and (for it) uncharted areas of modern living.’
13 Pinckaers, Sources, 304: ‘The postconciliar era has produced a sort of defrosting of Catholic moral teaching as a new wind sweeps over it. But as often happens when the wind gets too strong,
specific moral issues\textsuperscript{14} - while McCormick identifies fundamental, methodological and ecclesiological issues as basic areas in which modern moral theology is still finding its feet.\textsuperscript{15}

Leaving aside the uneven and at times tempestuous unfolding of the renewal, it is easy to see why methodological issues should figure so prominently. In order to arrive at a positive conception of the nature of moral obligation flowing from Christian vocation, one requires a point of departure which is, at one and the same time, both as universal and as particular as that vocation itself. Raphael Gallagher has suggested that such a point may be found in ecclesiology.\textsuperscript{16} The search for an appropriate ‘point of departure’ is essentially an exercise in hermeneutics; one critical challenge in the renewal of moral theology may well turn out to be the quest for an ecclesiology which grounds, simultaneously and with equally imperative power, both universal moral obligation and particular Christian vocation.

Meanwhile, the methodological, ecclesiological and systematic details of a moral theology faithful to the call of Vatican II are still evolving by means of that energetic dialogue which both precedes and facilitates authoritative verification (or falsification) of particular positions.\textsuperscript{17}

This Chapter will sample the treatment of legitimate cooperation in the genre which succeeded the moral manuals (3.1), and then in more recent magisterial teaching (3.2), before making some preliminary observations on the status of the principle in contemporary moral theology (3.3).

\textsuperscript{14} Mahoney, \textit{The Making of Moral Theology}, 308.
\textsuperscript{15} McCormick, ‘Self-Assessment’, 43-45, where he also discusses the related question of theological dissent.
This arrangement of material creates some anomalies: for example, the authors of the modern moral texts studied (Häring, Peschke and Grisez) are contemporaries of other writers who will figure in the following Chapter. It should be emphasised that the intention here is not to facilitate a strictly chronological study, but rather a study of a genre which approximates the traditional moral manuals in intent, if not in method. This section, then, aims merely to study the successors to the moral manuals: for a more comprehensive view of contemporary writing on legitimate cooperation, one should view the material in this and the succeeding Chapter as a whole.

Another anomaly is the placement of papal and other magisterial teaching in this context. The reason for this lies in the method of the traditional moral manuals themselves: they often cited papal and curial documents as definitive sources of moral teaching - for example, the Condemnation of 1679. In addition to their other ends, however, modern texts treat moral theology as a distinct discipline with its own legitimate aims and methods, rather than as merely an interpreter of magisterial teaching. But if magisterial teaching in modern moral texts is less prominent than it was in the manuals, it is perhaps more significant in contemporary moral theology as a whole: for example, the moral teaching of Pope John Paul II continues to have incalculable impact on the discipline as it proceeds along the path of renewal. For this reason it is appropriate to consider modern moral texts and recent magisterial teaching in close proximity, but separately. Again, a more comprehensive view of the status of modern moral thinking about legitimate cooperation would require Chapters Three and Four of the present work to be taken together.
3.1 Cooperation in Later Moral Texts

3.1.1 Introduction

In order not to abandon the moral tradition - or rather, in order to renew it for the benefit of the same Christian community which gave birth to the manuals - a modern moral text must address at least some ‘traditional’ moral issues, albeit in new ways. New approaches are necessary for several reasons: ‘traditional’ moral problems often need to be re-interpreted in light of changing social circumstances, and new cultural contexts sometimes prompt entirely new questions or pose new difficulties which traditional methods could neither foresee nor address.

It is not surprising, then, that contemporary moral texts have employed a number of different approaches - with varying degrees of success - in reinterpreting the challenge of legitimate cooperation. The aim of this section is to gain some insight into the nature and parameters of this re-interpretation, and to illustrate the significance of some of the methodological issues which are proving crucial to the direction of this renewal.

3.1.2 Bernard Häring (1979)

Twenty-five years after The Law of Christ Bernard Häring began publication of a new three-volume textbook in moral theology, Free and Faithful in Christ.\(^\text{18}\) By this time his view of the task of moral theology had undergone a considerable revolution:

Moral theology, as I understand it, is not concerned first with decision-making or with discrete acts. Its basic task and purpose is to gain the right vision, to assess the main perspectives, and to present those truths and values which should bear upon decisions to be made before God . . .

[therefore] the author does not follow the trend of those who confine moral theology practically to ‘normative ethics’: his

first intention is to form a Christian mind set and that profound vision which is essential for Christian maturity.19

This ‘profound vision’ of the Christian moral life is the key to Häring’s view of a renewed moral theology. Its central concepts are responsibility for one’s Christian life of creative liberty and creative fidelity, and co-responsibility with others for the moral quality of social life.20 This co-responsibility - also expressed as ‘creative mutuality’ and ‘reciprocity of consciences’ - is grounded in a personalism which professes to resist ‘individualistic narrowness’: ‘It is a personalism that confronts each of us with God, with our fellowmen and with all of creation’.21 The manualists clearly drew on a very different vision of moral theology, so Häring feels free to claim an independence from their work. Instead of citing the opinions of numerous traditional experts, he turns to . . . great prophetic figures throughout history who have had the charisms of creativity and fidelity, and who, even in the midst of conflict, were as faithful as they were bold in bringing their contributions into the common heritage.22

Given that ‘creative liberty’ is such an essential aspect of his new vision of the moral life, and in view of this new and prophetic source of inspiration, it is perhaps surprising that Häring’s treatment of cooperation in *Free and Faithful in Christ* differs so little in structure and content from that which he had offered twenty-five years earlier.23 Nevertheless, several aspects of his later approach merit attention.

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20 Häring 1978, 1.

21 Häring 1978, 3. On ‘creative mutuality’ and ‘reciprocity of consciences’ see the same volume at 70-71 and 265-270 respectively. On the latter, see also *Terzo Millennio* 66-79.

22 Häring 1978, 5.

23 The introduction to *Complicity in the Sins of Others* in Häring 1979, at 479, virtually summarises Häring 1963, vol II, 495-6. The treatments of formal and material cooperation are virtually identical in structure and content, but the examples of licit and illicit cooperation in Häring 1979, at 483-486, differ from those in Häring 1963, vol II, 500-517, insofar as they are gathered under only three broad headings: cooperation in politics; complicity of managers and employees; complicity in abortion. In the spirit of ecumenism promoted by Vatican II Häring omits from his later work all reference to ‘cooperation in false rites’.

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In terms of its meaning, cooperation is seen as a sin against ‘actualising the Truth in love’. Charity is a virtue for every person, but it has a particular meaning for Christians who are ‘free and faithful in Christ only to the extent that we are grounded in him who is the Way, the Truth, and the Life, and who has promised to send us the Spirit of Truth to guide us into all the truth’. By charity towards neighbour the Christian makes Christ present; by failing in charity towards neighbour (for example, by illicit cooperation in his sinful deed) the Christian is unfaithful to Christ.

This orientation is very significant. In his introduction to ‘Complicity in the sins of others’ Häring emphasises that the call from God to be ‘yeast in the dough, salt to the earth’ makes it difficult for the Christian to avoid confronting the problem of cooperation. In practical terms, cooperation in evil can only be avoided completely if Christians ‘opt out’ altogether - but this would preclude them from ever ‘actualising’ Christ in the world. Häring is concerned that Christians must confront head-on the challenge of cooperation in evil, but this will always test the fidelity and creative mutuality which lie at the heart of authentic Christian moral life.

Having distinguished carefully between cooperation and scandal, Häring deals with material and formal cooperation in turn before outlining the principles which apply. Here he adds a single paragraph to his earlier treatment of the same principles:

The moral conviction of the principal agent has to be taken into account. The concurrence of my good action with that of another who is convinced that his action is good is not formal cooperation although one might be convinced that the other’s action is wrong. This happens frequently in our pluralistic society. We think, for instance, of situations where the sincere conviction of the main agent is supported by that of a considerable number of good people.

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24 This is the title of Häring’s tract on charity in which he deals with cooperation - see Häring 1979, 419.
25 Häring 1979, 2.
26 Whereas scandal furnishes the occasion for another’s sin, cooperation, as we treat it here, enters into the actual execution of a sinful action already determined. Of course cooperation also poses the question of scandal.’ Häring 1979, 479.
27 Häring 1979, 482. Emphasis added.
This addition is significant on two levels. On a fundamental level it indicates how Häring’s new orientation leads him to a heightened awareness of the methodological implications of ethical pluralism: it may require a review of the traditional processes of moral decision-making. Translating this to the question of cooperation itself, Häring believes that the principal agent may well be commissioning evil, but in virtue of his sincere but erroneous conscience his action is not formally sinful. Obviously this begs the question of cooperation in formal sin: if the principal agent is not committing formal sin because he is acting in erroneous conscience, then clearly the cooperator is not formally cooperating in formal sin. But Häring is claiming more than that: he holds that this is not formal cooperation at all, and so is presumably at most merely material cooperation. Is this necessarily true?

In Häring’s example it seems obvious that the cooperator is still cooperating in evil, and (in traditional terms) in material sin, since that is what the principal agent is doing. The critical moral question then is: is this cooperation necessarily only material? Could it ever be formal cooperation and therefore seriously wrong, even though the principal agent’s act constitutes ‘merely’ material sin?

In view of the discussion in the previous chapter, the answer to the latter question must be ‘yes’. Even in Häring’s world of ‘creative mutuality’ the cooperator’s action must still be distinguishable from the principal agent’s action, or else the problem of cooperation simply would not arise: the cooperator’s action would always be evil in itself. Therefore it is obvious that the actions of the cooperator must be judged on their own merits, and not merely in relation to the material or formal sinfulness of the actions of the principal agent.

If a cooperator intends the evil which is done unwittingly by the principal agent - and this ‘intending’ may be either ex fine operantis or ex fine operis, according to the traditional approach - then by virtue of this intention his cooperation is formal. The moral quality of the cooperator’s action does not depend on the subjective moral status of the principal agent’s action: thus he may commit

28 See 2.1.3 and 2.2.2.1 above.
formal cooperation in evil even when his action does not constitute any kind of cooperation in formal sin. For example, a child may not be aware that lighting fires can have serious consequences, but the shopkeeper who sells him matches with the intention that the child should cause damage to property would surely be cooperating formally in that evil. And because it is formal by his own intention, the shopkeeper’s act is evil in and of itself. In the case in point Häring rescues his position only by insisting that the cooperator’s action must be ‘good’ - presumably, not intentionally cooperative (either ex fine operis or ex fine operantis) in the principal agent’s materially evil action.

Häring himself seems to affirm this line of reasoning - if not this conclusion - in the case of a pharmacist who supplies contraceptives to a customer who, he believes, is acting in good conscience:

[the pharmacist here] commits, in my opinion, no formal or material cooperation with a sin of another, due to his conviction that the customer is in good conscience. If there is no sin on the part of the other, there is no cooperation in sin.29

Obviously this position poses other problems. It is true that an evil done in good conscience may not constitute formal sin,30 but that is an issue primarily for the principal agent. In Häring’s example this enters into the cooperator’s deliberation only in terms of whether or not he may leave the principal agent in good faith, and whether in so doing the order of charity remains intact. But here Häring is claiming even more than this: he assumes that if the customer commits no formal sin, then there is no sin at all with which to cooperate - apparently, if there is no culpa there can be no peccatum.

29 Häring 1979, 485. Emphasis added. It is important to note that this case follows that of ‘formal complicity’ which occurs, in Häring’s opinion, when for example a pharmacist sells an item to a customer while quite aware that the item has only one purpose, and that evil. This is what the manuals would have called ‘formal cooperation in an intrinsically evil act’.
30 This is clear in magisterial teaching: see the Congregation for the Clergy, The Washington Case. (26 April 1971). L’Osservatore Romano 20(164) 20 May 1971, 6-7; Congregation for the Doctrine of the Faith, Replies to Questions. (29 July 1974) as yet unpublished (see this Chapter, footnotes 155 and 156); and the Australian Catholic Bishops’ Conference, Pastoral Letter on the Application of ‘Humanae vitae’. (September 1974) in Nicholas Kerr, comp. Australian Catholic Bishops’ Statements Since Vatican II. (Homebush, NSW: St Pauls, 1985) 151-155.
In terms of the traditional metaphysics this is manifestly untrue. The customer’s good conscience is a question of the subjective or formal aspect of his action, which may be considered in distinction from the objective or material quality of his action. The fact is, the customer is committing (or is about to commit) material sin, and it is in this that the pharmacist’s action will cooperate. Häring’s position here appears indefensible. His approach to the problem of ethical pluralism seems to require him to discount all moral implications of the material sins of others. But if that were the case, it would mean that whenever a principal agent acts in good conscience, the question of formal cooperation by a secondary agent would simply never arise. It is not immediately evident why Häring takes this course.

He next turns his attention to the precise question of cooperation in evil - that is, objective evil or ‘merely’ material sin. Häring immediately introduces two new ideas into his analysis of cooperation:

If, however, the pharmacist himself feels in conscience that these means are intrinsically and absolutely evil, it can be disputed - especially in view of differing opinions on this point even within his own Church - whether respect for the other person’s conscience allows him to serve the customer of good conscience. In this case tolerance may be better for peaceful relationships and for avoiding hard reactions against the Church.31

Häring seems hold that where the principal agent’s act is intrinsically evil ‘respect for the other person’s conscience’ may not suffice to justify cooperation, but ‘tolerance’ may justify merely material cooperation in this act. The same reasoning seems to underpin his closing comments on cooperation, where he deals with a very different scenario:

It is very much disputed and can be disputed whether Catholic hospitals must in all circumstances refuse cooperation (for instance by offering their facilities) for sterilisation when in the eyes of the doctors and patients, it can be qualified as therapeutic in a broad sense. A good reason for allowing doctors who, in conscience, are convinced that this is a positive health service in the particular case, and are ready to offer it only to those patients requesting it in good conscience, can be taken from a broad understanding of tolerance and respect for a sincere conscience, especially in questions and

31 Häring 1979, 485-486. Emphasis added. Häring carefully adds that this reasoning cannot be applied ‘where unjust damage to third persons must be avoided’.
situations where the givenness of an objective moral evil is doubtful.32

Häring makes no effort to define or to develop the concepts ‘respect for sincere conscience’ and ‘toleration’, so it is difficult to evaluate his position accurately. He seems to have received these terms indirectly from an analysis of religious liberty, but the text does not explain what he might mean by them.33 It is possible that he is simply extending into the field of cooperation a principle he treats earlier under the virtue of charity, in which he notes the conditions under which one may omit the duty of fraternal correction.34 Alternatively, his position here may be an expression of his general concern to promote ‘creative mutuality’ and ‘reciprocity of consciences’ - which in his view, seemingly, require one to ignore ‘merely’ material evil. This difficulty in grasping the exact meaning of Häring’s claim may be due to the particular style of his later work, which he deems ‘paracletic’: it is meant to ‘manifest the binding force of the beatitudes, the ‘law of the Spirit’, while also demonstrating the attractive power of the Christian moral message’.35 However he understands them, Häring’s use here of ‘tolerance’ and ‘respect for sincere conscience’ later attracted considerable attention from theological and magisterial authorities.36

Whatever Häring’s intention in the balance of Free and Faithful in Christ, his treatment of cooperation here is neither as coherent nor as satisfying as his earlier work. His goal to ‘form a Christian mind set and that profound vision which is essential for Christian maturity’ would certainly seem to warrant a re-interpretation of the whole problem of cooperation, but his later treatment of the principle is really

32 Häring 1979, 486. Emphasis added. A surprising aspect of this paragraph is that Häring makes no reference at all to the Congregation for the Doctrine of the Faith’s Response Quaecumquae sterilizatio. ‘On Sterilization in Catholic Hospitals.’ (13 March 1975) [AAS 68(1976) 738-740] which had been in circulation for three years by the time he published this volume of Free and Faithful in Christ. And in view of his emphasis on reciprocity of conscience in moral life it is equally surprising that while the traditional treatment of cooperation often notes the associated danger of scandal - an obvious problem in this case - Häring here makes no mention at all of scandal.

33 A footnote refers the reader to an article of Charles Curran, which in turn is an interpretation of cooperation based on concepts found in John Courtney Murray SJ, The Problem of Religious Freedom. (London: Geoffrey Chapman, 1965). For further discussion, see 4.1.2.4 below.

34 Häring 1979, 456-458: ‘Fraternal encouragement and correction.’

just a re-working of *The Law of Christ* which fails to preserve its clarity. It is as though the ‘paracletic’ nature of his renewed moral theology and its grounding in his version of a solidly Christian anthropology - his ‘turn to the subject’ - has absolved Häring from the need to develop a sound metaphysical basis for his later position on cooperation in evil, and especially formal cooperation.  

3.1.3 Karl H Peschke

The first edition of Karl Peschke’s *Christian Ethics* (1975) was intended as a response to the call of Vatican II for a renewal of the discipline, and as a ‘handbook’ of moral theology for priests and lay people involved in religious education. Both volumes of the work underwent substantial revision in light of the revised code of Canon Law (1983).

Peschke’s understanding of moral theology is grounded in a decidedly scholastic metaphysics:

Christian ethics or moral theology is that part of theology which studies in the light of Christian faith and of reason the guidelines which man must follow to attain his final goal.

This ‘goal-orientation’ is central to Peschke’s design. One of his major insights into method is the importance of both the ontological and the eschatological orientations of the human person: moral theology must attend not only to *who man is*, but also to *who man is to become*.

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36 Häring’s ideas attracted the attention of Germain Grisez and Pope John Paul II, both in 1993. See below, at 3.1.4.2 and 3.2.1 respectively.

37 J Gallagher argues that Häring’s emphasis on ‘creative fidelity’ rather than normative ethics leads him in *Free and Faithful* to dissolve the metaphysical foundations of natural law itself because, in Häring’s vision of Christian morality, natural law ‘does not any longer provide access to an objective moral order which the Christian need only look at in order to see. . . . Given the historical, social, and cultural contexts in which persons seek the good, the only caveat that remains of the traditional natural law is that it ought not be sought arbitrarily.’ J Gallagher, *Time Past*, 206. This would explain Häring’s conflicts with magisterial authorities who have consistently sought to preserve the objective moral order.


39 Peschke 1986, 3.

40 Peschke’s approach illustrates the scientific nature of theology as described by Lonergan: ‘The methods employed are partly of a positive nature, as used in the biblical and historical sciences, and
The ontological point of departure consists in the study of man’s concrete, existing nature and of the world around him. . . . The knowledge of what man is, what his possibilities are and the limits he cannot transcend, is indispensable for a realistic moral discourse. However in order to decide what man should choose among the many possibilities open to him, the ontological point of departure alone is not sufficient. It must be complemented by the teleological and eschatological point of departure, which informs man about the goal to be achieved, the kind of person he should be and the work he is to do.41

The eschatological orientation is significant not only for the content and general tenor of Peschke’s work, but also for its structure.42 One discussion of cooperation is located under ‘Restitution for culpable cooperation in damage’ as was usual in the manuals;43 however his more general treatment of cooperation is found not under ‘charity’ but under ‘sin’ - specifically, ‘Responsibility for sins of others and sinful cooperation’, which covers seduction and scandal as well as counselling the lesser evil.44 The theme of ‘responsibility’ enables Peschke to present ‘charity’ principally in terms of its positive demands, rather than in terms of what it forbids or merely allows. ‘Charity’ provides for Peschke an eschatological point of departure: his positive vision of the obligations of Christian charity enables him to explain how man’s actions conduct him to his final end, rather than merely circumscribing limits beyond which he dare not go.45

In this light it is understandable that Peschke pays particular attention to the ‘ordo caritatis’. He distinguishes charity as ‘appreciative esteem and benevolence’

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41 Peschke 1986, 7-8.
42 The structure of Peschke’s work is much closer to that of Häring’s The Law of Christ than to any of the traditional manuals, or even to Häring’s later text.
43 Peschke 1993, 711ff.
44 Peschke 1986, 314ff; cooperation is at 320-324.
45 Even under ‘sin’ Peschke manages to retain an eschatological orientation: ‘Man is bound to strive after the ultimate end and not to offend in any of his actions against it.’ Peschke 1986, 286. This means that (a) man is obliged to pursue his ultimate end actively, and certainly to avoid anything which would lead him away from that end - or, in view of man's social-historical nature, anything which would lead others away from it; but also (b) given appropriate conditions - and according to the order of charity - man is not obliged in every case to intervene in order to prevent his neighbour’s sin, and may at times even be justified in materially cooperating with his neighbour in
from charity as ‘intensity of affection’, and he distinguishes both of these from charity as ‘responsibility for one’s personal obligations’. Under the last he notes that ‘[o]ur own development, sanctification and salvation depend more on our own responsible acts than does the salvation of our fellowmen’ - which approximates Alphonsus’s position on justifying material cooperation under the order of charity.

Thus, in dealing with scandal, Peschke argues that

. . . every moral obligation demands from a man that he should not violate it or wilfully cause its violation; but it does not require by itself to hinder others from violating it; if such an obligation exists, it is usually an obligation of charity.

He uses another of Alphonsus’s criteria to distinguish seduction and scandal from cooperation: seduction implies deliberate moral causality, scandal implies moral causality *praeter intentionem*, but cooperation proper implies no moral causality at all.

In describing the categories and principles of cooperation Peschke attempts to encompass several positions, with mixed success.

First, formal cooperation is defined as occurring ‘when one externally concurs in the sinful deed of another and at the same time internally consents to it. This kind of cooperation is always sinful’. Here he agrees with Davis: formal cooperation requires both intention of the end, *finis*, and intention of means, *quod est ad finem*. It is self-evident that this kind of action is sinful, because an evil end is directly intended. He notes that ‘moral handbooks’ distinguish explicit from implicit formal cooperation: direct intention of the other’s evil end (*ex fine operantis*, by willing the same *finis*) is explicit formal cooperation, while indirect intention of that end (*ex fine operis*, by willing only *id quod est ad finem*) is implicit formal cooperation.

Peschke 1993, 208f.
Peschke 1986, 316.
Peschke 1986, 314-316. At 321: ‘In contradistinction to seduction and scandal, cooperation does not give rise to the sin of another, but it only assists a principal agent, who is already determined to the evil deed previous to the cooperation.’

Peschke 1986, 321.
material cooperation’ rather than ‘implicit formal cooperation’, but only the latter is necessarily ‘sinful’.

Peschke also reflects Davis in defining material cooperation, even using identical examples, and he is no more able than Davis to provide a definitive distinction between proximate and remote material cooperation.\footnote{Peschke 1986, 322.} But then he introduces a confusion:

More useful for the formulation of moral norms however seems to be the distinction between cooperation by means of actions which in themselves are not harmful to others, such as selling a bottle of whisky, giving a key, driving a car, preparing instruments for an operation, and cooperation by means of actions which by their own, internal finality cause harm to another, such as telling a lie, damaging another’s property, beating a person, killing him. All the actions forbidden by the traditional absolutes belong to this second category.\footnote{Peschke 1986, 322.}

Here he appears to refer to \textit{indifferent acts} and \textit{intrinsically evil acts}, but chooses to define these in terms of whether they do harm to another ‘by their own, internal finality’. This is unfortunate, because it seems to place Peschke in the line of consequentialism. But perhaps Peschke here is simply providing an idiosyncratic definition of these critical concepts, in line with the ‘moral/pre-moral’ distinction.\footnote{For example, in Peschke 1986 at 265, 276 and 323 he seems to favour the idea of ‘pre-moral’ intrinsic evil, but with Milhaven acknowledges the difficulty of allowing the possibility of intrinsically evil acts at the ‘moral’ level. This question was addressed in Chapter Two in terms of ‘adequate descriptions’ of moral acts.}

The effect is to blur the field of vision at a time when clarity is of paramount importance: ‘\textit{damaging another’s property}’ may indeed be an action which by its own internal finality does harm to another person, but Davis argues that under extreme conditions it may also qualify as, for example, justified immediate material cooperation. Peschke’s additional distinctions - and the terms he chooses to express them - are not particularly helpful.

In his introduction to ‘\textit{Norms for Material Cooperation}’ Peschke states:

Material cooperation in sinful deeds of others is in general illicit, since the evil of sin should not be supported by any means; on the contrary it should be opposed and suppressed. Yet on the other
hand man often cannot escape some cooperation in the sins of others in order to avoid still greater evils.\textsuperscript{54}

This grounds the justification of material cooperation in a preference for a lesser evil, which at first blush might open Peschke to suspicions of proportionalism. But given that he has defined evil and sin in terms of that which leads man away from his ultimate end, Peschke’s position seems to have a soundly thomistic metaphysical base.

He lists factors to be considered in estimating the sufficiency of reasons to justify cooperation: the gravity of the other’s sin, closeness of one’s cooperation to the sinful act, the indispensability of that cooperation, and one’s obligation to prevent the wrongdoing. These are four of the five factors listed by Alphonsus.\textsuperscript{55} But Peschke then takes his own path again.

The fifth factor noted by Alphonsus is ‘how greatly the sin offends the demands of justice by virtue of the harm it does to third parties’.\textsuperscript{56} This passage clearly refers to the harm done by the act (‘the sin’) of the principal agent. In contrast, Peschke’s final norm refers to the damage done by the cooperator’s act:

Material cooperation by means of actions which by their own finality cause harm to others is most of the time not allowed and - if permissible - always requires a much graver reason than other kinds of cooperation. The reason is that in this case one does not merely indirectly make an evil possible, as in the previous category of cooperation, but one directly causes it. Therefore one also has a greater responsibility for it. In such instances a strict proportion is required between the damage inflicted on the one hand and the damage threatening the person who renders cooperation on the other. More exactly that means to say, the damage inflicted upon the other person must be less than the evil threatening the person who cooperates.\textsuperscript{57}

\textsuperscript{54} Peschke 1986, 322. Emphasis added.
\textsuperscript{55} Alphonsus, de caritate 59.
\textsuperscript{56} Alphonsus, de caritate 59: ‘quanto magis peccatum cum justitia pugnat, idque propter damnum tertii.’
\textsuperscript{57} Peschke 1986, 323. Emphasis added.
Traditional studies of cooperation follow the pattern of Alphonsus on this point,\footnote{Aertnys-Damen refer to ‘cooperatio proxima ad peccatum alterius’ especially the case: ‘si cooperatio tertio innocenti graviter damnosa est, requiritur metus damni saltem aequalis’. (Aertnys-Damen, de caritate 401, III); Davis refers to ‘immediate material cooperation in another’s sinful act’ such as helping the other in destroying property in order to save one’s own life. Davis’s argument is that this is not using an evil means to a good end, because no-one’s rights are invaded: the owner of the property could not reasonable will that his property be preserved at the cost of my life. (See Davis vol. I, 342-343); Häring 1963 refers to ‘material cooperation in a deed which inflicts unjust damage on a third party’, and adds: ‘In this we assume of course that one has a right per se to do the deed which becomes a contributing factor or cooperates in inflicting the damage on others.’ (Häring 1963, vol 2, 499).} so it is difficult to see why Peschke chooses to focus on the cooperator’s action and not on the principal agent’s sin. It may be that this is how he wishes to address the question of cooperation in unjust damage without separating it from his general treatment of cooperation. Certainly the examples he offers deal not with causality (the question of who actually causes the harm) but with the proportion between the harm one inflicts on the third party and the harm threatening oneself. The question of restitution for cooperation in unjust damage is handled elsewhere.\footnote{Peschke 1993, 710-713.}

It is possible that Peschke here is struggling with a problem which falls somewhere between ‘cooperating in unjust damage’ in the traditional sense, and ‘counselling the lesser evil’ (which follows immediately in his analysis): it is the question of whether one may oneself directly commission a lesser evil in order to avoid a greater harm to oneself. This could be argued in terms of merely counselling for oneself the lesser evil - following one’s own counsel, as it were - although there is a considerable difference between counselling evil and commissioning evil. Alternatively, following Davis, it could be argued in some cases that an adequate description of one’s action would show that one inflicted unjust harm on no-one: in view of the graver threat to oneself, the harm one is forced to cause to a third party could not adequately be described as ‘unjust’. But however it is argued, the question of directly causing harm to others is clearly distinct from that of cooperation in causing harm; by raising it here Peschke seems to introduce more confusion than clarity.

Perhaps it is this uncertainty which prompts Peschke to close his treatment of cooperation with another clear tribute to his principal sources:
These are some general guidelines to give orientation in the thorny problem of permissible cooperation. The concrete instances of cooperation are very often complicated and therefore inevitably give rise to various opinions. Perhaps there is no more difficult question in the whole range of moral theology.⁶⁰

### 3.1.4 Germain Grisez

Among contemporary attempts to renew Catholic moral theology, none is more radical or thoroughgoing than that of Germain G Grisez. At the centre of his vast project stands *The Way of the Lord Jesus*, a proposed four-volume textbook of moral theology for seminary students and others.⁶¹ This monumental undertaking does not pretend to be a successor to the manuals, but rather represents a novel line of Catholic moral reasoning.

This section will attempt to present Grisez’s treatment of cooperation as it has been developed in the three volumes of *The Way of the Lord Jesus* published to date.⁶² Because his approach to cooperation is so distinctive it is only possible to summarise Grisez’s position here; and in order to make valid comparisons between that position and the tradition, it will be necessary first to provide an interpretation of his whole project.

#### 3.1.4.1 Grisez’s Project

As moral theology emerged from the era of the manuals, some traditional doctrines came to be considered more or less problematic - among them, the

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⁶¹ The first three volumes of *The Way of the Lord Jesus* have been published to date (2001): Vol. 1: *Christian Moral Principles*. (Chicago: Franciscan Press, 1983) [Hereafter: CMP]; Vol. 2: *Living a Christian Life*. (Quincy Il.: Franciscan Press, 1993) [Hereafter: LCL]; Vol. 3: *Difficult Moral Questions*. (Quincy Il.: Franciscan Press, 1997) [Hereafter: DMQ]. Volume 4 is planned for publication in 2004. The whole work is addressed to a very wide audience: 'This book is constructed primarily as a textbook in fundamental moral theology for students in Catholic seminaries . . . However, those already ordained to the priesthood, teachers of religion, parents concerned about the catechetical formation of their children, and others may find the book helpful.' CMP, xxix. Similar statements are to be found in the introductions to LCL and DMQ.

⁶² Cooperation figures in CMP at 300-303, and in LCL at 440-444, but the most developed presentation is in DMQ at 871-897. DMQ applies Grisez’s ethical theory to 200 case studies, fully 25% of which deal with questions of cooperation. The question most relevant to the present study is Question 87: *How far may Catholic hospitals cooperate with providers of immoral services?* This is discussed in more detail at 4.3 below.
teachings on abortion and contraception. Traditional doctrinal arguments against these practices begin in natural law and proceed by a kind of deduction to conclude in absolute moral norms. But some theologians considered that their grounding in natural law opened these doctrines to question on the basis of the so-called ‘naturalistic fallacy’ - the belief that, because a thing is true in the realm of nature, it ought to be normative for moral behaviour. According to their argument, if natural law theory should prove faulty - if the ‘is’ of nature cannot generate a moral ‘ought’ - then the whole fabric of Catholic moral teaching would be at risk. It was to avert this threat that Grisez began a thorough study of natural law theory in Thomas Aquinas.


64 The tradition recognises that this is not a strictly logical process, and the ‘induction’ is only apparent: Thomas Aquinas holds that particular moral norms are only like unto conclusions drawn from basic principles; see for example ST I-II, 94, 4: 'Sed quantum ad quaedam propria, quae sunt quasi conclusiones principiorum communium . . . '

65 Grisez believed that 'the whole fabric of traditional teaching would unravel unless it could be shown philosophically that contraception is intrinsically immoral. His setting out to do just that goes far beyond the specific issue of contraception precisely because it is the whole Catholic moral tradition which is implicitly challenged by the denial of the category 'intrinsically immoral' . . . But even arguments which support the traditional condemnation of contraception are rejected: the classic argument that the natural finality of the act is morally determinative Grisez accuses of the naturalistic fallacy. This same accusation is leveled at those defending the traditional teaching with a so called 'perverted faculty argument', and to those using a phenomenological argument. Presumably because Grisez’s study of Thomas led him to see the value theory of the practically self-evident basic human goods, the speculative move from ‘ought’ to ‘is’ is repeatedly invoked as the weakness of other ethical theories which attempt to defend the tradition.' Mindling, Germain Grisez, 181-182.


He identified several lacunae. First, in some respects Thomas treats the First Principle of Practical Reason (‘Good is to be done and pursued, and evil is to be avoided’) simply as a corollary to the Principle of Finality (‘All beings act for an end’). But there is an unhelpful circularity in defining something as a ‘good’ because it is an ‘end’ of human action, while simultaneously defining it as an ‘end’ because it is a ‘good’. Consequently, the First Principle of Practical Reason of itself does not provide an adequate basis for establishing specific moral norms such as those prohibiting the evils of abortion and contraception. Some intermediate steps are required to fill the gaps: a value theory to define ‘goods’ in terms more useful than simply as ‘ends’ of human actions; and an ethical theory in which these ‘goods’ may be related to the structures and processes of human choosing in such a way as to ground the claim that they ‘ought’ to be chosen.

In developing his value theory Grisez, like Peschke, notices that it is not only man’s objective nature which provides the rule or measure of moral choices, but also man’s future possibilities. In this perspective, true human goods grasped by practical reason may be considered under the title ‘good’ because they promise to be perfective of the human agent and fulfilling of the potencies (or inclinations or tendencies) which first ‘reach out’ for those goods. The same goods may be considered under the title ‘end’ because the ‘perfection’ towards which they conduct the agent is not only the goal of the particular human action but also the very context of contemporary moral debate may be found in Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas to Christian Ethics.* (London: SPCK, 1994) 17-21.

67 ‘Free choice is only an initial grounding of Christian moral thought which explains personal responsibility in light of values (goods) which are real apart from one’s freely choosing them. Grisez couples with the position that human persons can choose freely a theory of what they are free to choose (and later on what grounds they choose): morality consists precisely in the responsibilities of freedom.’ Mindling, *Germain Grisez*, 123. Emphasis original.

68 ‘But scholastic natural-law theory must be rejected. It moves by a logically illicit step - from human nature as a given reality, to what ought and ought not to be chosen . . . . It is not human nature as a given, but possible human fulfilment which must provide the intelligible norms for free choice.’ CMP, 105. Emphasis added. Also: ‘Reason prescribes according to the order of natural inclinations because reason directs to possible actions, and the possible patterns of human action are determined by the natural inclinations, for man cannot act on account of that toward which he has no basis for affinity in his inclinations.’ Grisez, *The First Principle*, 180.

69 ‘It is true that Grisez describes the goods as ends sought for themselves, perfective of the human agent, fulfilling the capacities of the person. . . . The very way practical reason works is to think in terms of goods to be pursued, and it is [in] thinking thusly (ought thinking) that an entire complex of irreducibly basic human goods are primarily grasped as to-be-done.’ Mindling, *Germain Grisez*, 133-135.
fulfilment of the agent’s being. However, in the latter sense this ‘perfection’ is to be understood not as a closed but an open state, ‘a guiding ideal rather than a realisable idea’,\(^{70}\) an ‘openness to continuing and expanding fulfilment’.\(^{71}\) Integral human fulfilment - understood (1) in terms of openness to continuing fulfilment, and (2) not as an ‘individualistic satisfaction of desires’ but rather as ‘the realisation of all the human goods in the whole human community’\(^ {72}\) - is the end of all morally good choices. Any moral choice which offends or inhibits the possibilities of integral human fulfilment is to be considered ‘evil’.

The next step is to identify which goods are conducive to integral human fulfilment. One category of basic human goods are the ‘existential’ or ‘reflexive’ goods which are honoured in every morally good choice: these include self-integration, authenticity, justice, and holiness. The other category are the ‘substantive’ or ‘nonreflexive’ goods which provide ‘free-standing’ reasons for making particular choices: these include life itself, truth and beauty, and skill.\(^ {73}\) The basic human goods thus describe both the goal of integral human fulfilment, and the conditions for the possibility of integral human fulfilment. Like first principles they are undetermined, and their negation or denial in any moral choice amounts to self-contradiction. The basic human goods fill the first gap in Thomas’ moral theory.

\(^{70}\) Mindling, Germain Grisez, 136.
\(^{71}\) CMP, 182.
\(^{72}\) CMP, 186.
\(^{73}\) ‘In sum, there are seven categories of basic human goods which perfect persons and contribute to their fulfilment both as individuals and in communities. Four of these can be called ‘reflexive’, since they are both reasons for choosing and are in part defined in terms of choosing. These are: (1) self-integration, which is harmony among all the parts of a person which can be engaged in freely chosen action; (2) practical reasonableness or authenticity, which is harmony among moral reflection, free choices, and their execution; (3) justice and friendship, which are aspects of the interpersonal communion of good persons freely choosing to act in harmony with one another; and (4) religion or holiness, which is harmony with God, found in the agreement of human individual and communal free choices with God’s will. The reflexive goods also can be called ‘existential’ or ‘moral’, since they fulfill human subjects and interpersonal groups in the existential dimension of their being. The other three categories of basic human goods fulfil persons in the other three dimensions of their being. These goods can be called ‘nonreflexive’ or ‘substantive’, since they are not defined in terms of choosing, and they provide reasons for choosing which can stand by themselves. These are: (1) life itself, including health, physical integrity, safety, and the handing on of life to new persons; (2) knowledge of various forms of truth and appreciation of various forms of beauty or excellence; and (3) activities of skilful work and of play, which in their very performance enrich those who do them.’ CMP, 124.
Grisez’s value theory affirms that it is the totality of these goods that the agent ‘does’ or ‘pursues’, and the denial of them that the agent ‘avoids’, when acting according to the First Principle of Practical Reason. This is specified in his basic principle of morality:

In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfilment.

Note the wording of this principle: it is not only the good which is willed, but also the willing itself, which must be compatible with integral human fulfilment. So both the choice and the choosing are determinative: in traditional terms, morality resides in both imperated and elicited acts.

General determinations of the First Principle of Practical Reason are the basic precepts of natural law - indeed, these precepts are the natural law. But between the First Principle of Practical Reason and the basic principle of morality on one hand and, on the other, specific determinations of these principles (particular moral norms), some intermediate specifications are required in order to establish two necessary relationships: (1) to relate general principles to specific instances of human goods, and (2) to relate specific human goods to integral human fulfilment.

The core of Grisez’s ethical theory are the eight intermediate specifications which he calls the ‘modes of responsibility’. These identify and exclude actions or

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74 Grisez calls this ‘the First Principle of Practical Reasoning’, to emphasise the dynamic nature of human reason directed to action. See for example CMP, 180: ‘The first principle of practical reasoning articulates the intrinsic, necessary relationship between human goods and appropriate actions bearing upon them.’ But note that this principle only delineates what might be done; another phase of practical reasoning is required to choose what ought to be done from this range of possibilities.

75 CMP, 184.

76 CMP, 233: ‘The action of an individual is defined by the proposal adopted by a choice, just as the action of a group is defined by the motion adopted by a vote.’


78 ‘By itself, the first principle of morality is obviously too general to provide practical guidance. Even if acts are defined in terms of choices and human goods, the principle’s bearing on them remains obscure. Specifications of the first principle are needed. They must have a clear bearing on possible choices, so that the relationship - positive or negative - between the choices and integral human fulfilment will be clear. The principles of practical reasoning in general - for example, Life is a good to be preserved - do not specify the first principle of morality, for each refers only to one basic human good, not to integral human fulfilment.’ CMP, 189.
patterns of action which represent kinds of choosing inconsistent with an orientation towards integral human fulfilment.\textsuperscript{79} In this way they protect the basic human goods which, precisely because they are oriented to integral human fulfilment which is common to all moral agents, may be portrayed as \textit{ontological} aspects of moral choosing. The most important \textit{existential} aspects of moral choosing are the ‘vocational commitments’ by which an individual agent freely constitutes and reaffirms his personal identity in a most fundamental way.\textsuperscript{80} In every free choice one bears a responsibility to honour not only the basic human goods but also these commitments. Individual moral choices thus assume great significance. The modes of responsibility mediate between the First Principle and the specific norms which guide individual choices, and so fill the second gap in Thomas’ moral theory.\textsuperscript{81}

The ‘modes of responsibility’ provide an important clue to Grisez’s treatment of cooperation in evil. The structure of these modes reveals that they link the basic human goods not firstly with the \textit{objects} of human choice, but with the \textit{process of choosing} itself. Morality for Grisez resides \textit{primarily} in the elicited acts, in the process of choosing which precedes and accompanies imperated acts, because it is here that \textit{moral responsibility} is most fundamentally attributable to the agent. It is in the elicited act that one first honours both integral human fulfilment and one’s personal vocational commitments. So Grisez’s approach to the naturalistic fallacy amounts to this: he takes the notion of ‘morality’ away from the mere choice of

\textsuperscript{79} CMP, 189.
\textsuperscript{80} Freedom and consistency in choosing are basic to Grisez’s ethical theory. See CMP, 41-59.
\textsuperscript{81} The eight modes of responsibility are studied in detail in CMP. They are:

1. \textit{One should not be deterred by felt inertia from acting for intelligible goods}. (CMP 205)

2. \textit{One should not be pressed by enthusiasm or impatience to act individualistically for intelligible goods}. (206)

3. \textit{One should not choose to satisfy an emotional desire except as part of one’s pursuit and/or attainment of an intelligible good other than the satisfaction of the desire itself}. (208)

4. \textit{One should not choose to act out of an emotional aversion except as part of one’s avoidance of some intelligible evil other than the inner tension experienced in enduring that aversion}. (210)

5. \textit{One should not, in response to different feelings toward different persons, willingly proceed with a preference for anyone unless the preference is required by intelligible goods themselves}. (211)

6. \textit{One should not choose on the basis of emotions which bear upon empirical aspects of intelligible goods (or bads) in a way which interferes with a more perfect sharing in the good or avoidance of the bad}. (214)

7. \textit{One should not be moved by hostility to freely accept or choose the destruction, damaging, or impeding of any intelligible human good}. (215)

8. \textit{One should not be moved by a stronger desire for one instance of an intelligible good to act for it by choosing to destroy, damage, or impede some other instance of an intelligible good}. (216)
external objects or ends, and restores it to its rightful place in the processes of the human heart and mind. The object of a moral ‘ought’ is not an ‘is’ which stands outside the moral agent: at its deepest level it is the moral agent.

In terms of the objects of human choosing Grisez’s ‘integral human fulfilment’ is, as it were, one step nearer to the moral agent than Thomas’ ‘beatitude’. His ‘basic human goods’ identify how it is that the objects of human choosing participate in integral human fulfilment, and his ‘modes of responsibility’ identify how the very process of choosing these objects conducts one towards that fulfilment. In traditional terms, good and evil may indeed reside to some extent in the finis and the id quod est ad finem in themselves, but moral responsibility properly resides in the intending of these, because it is in the intending or choosing, prior to the acting, that the agent expresses his or her fundamental commitment to moral truth: to integral human fulfilment (which is represented in every particular moral object and which underpins every specific moral norm), and to his or her personal vocational commitments. The agent’s primary responsibility is toward this underlying moral truth, and only consequently toward observing particular moral norms. Therefore the most basic moral question is not ‘what does the law permit me to do?’ but ‘what does moral truth oblige me to do?’.

3.1.4.2 Grisez on Cooperation

This structure helps to explain some aspects of Grisez’s treatment of cooperation in evil. In Christian Moral Principles he discusses cooperation in the context of resolving problematic situations of conscience. He summarises the

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82 ‘Like contemplative theology, [moral theology] reflects upon the truths of faith, but it is less concerned to round out the Christian view of reality than to make clear how faith should shape Christian life, both the lives of individual Christians and the life of the Church.’ CMP, 6. This is a problem addressed - with mixed success - by Karl Rahner SJ in ‘On the Question of a Formal Existential Ethics’ in his Theological Investigations 2: Man in the Church. (London: Darton, Longman and Todd, 1963) 217-234.

83 The location of his treatment of cooperation in CMP reveals Grisez’s essentially logical approach to moral reasoning. He moves from natural law to the modes of responsibility (Chapter 8) and then to voluntariness in choosing (9), moral norms (10) and the binding force of moral norms (11), reaching an analysis of Moral Judgment in Problematic Situations (12) which also follows a logical order: doubts of conscience in general (Question A), doubts of fact (B), doubts of norms (C), probabilism (D), resolving doubts in cases of apparently conflicting responsibilities (E) and where one seems obliged to do evil (F), and finally cooperation in evil (Question G, pages 300-303). There are also three appendices to Chapter 12, two dealing with probabilism and one with the principle of double effect.
traditional doctrine, noting the modes of cooperation and identifying cooperation proper as participation ‘in a secondary or subordinate role’. There are blemishes: he appears to confuse the principal with the cooperating agent, and the morality of cooperation with that of scandal; and he seems to distinguish material from formal cooperation only rather vaguely in terms of whether the cooperator ‘participates in the immoral act in such a way that it becomes his or her own’.

A more fundamental difficulty is his assertion that the traditional doctrine of cooperation created an unnecessary problem:

Apparent difficulties arise mainly because it is supposed that being involved in unseemly behaviour or bringing about unacceptable consequences has a moral significance of its own, apart from the morality of one’s choices and other volitional principles of personal responsibility. But that is not the case. One’s responsibilities for what one is involved in is determined by what one personally chooses, freely accepts, and so on.

Grisez rightly holds that the assessment of cooperation requires a clear distinction between effects which one directly intends and produces, and effects which one does not intend even though one contributes to their production by another agent:

What one does in the strict sense is what one chooses to do - that is, what is sought for its own sake and/or included as a means in the proposal one adopts . . . What one brings about, including all foreseen side effects, is far more extensive than what one chooses to do and ‘does’ in the strict sense. One determines oneself primarily in choosing. In choosing one establishes one’s existential identity by settling one’s personal priorities among the goods on which the choice bears. One does not determine oneself in the same way with respect to foreseen side effects, which are neither sought for their own sake nor included in the proposal one adopts.

But in his particular perspective on morality the question of responsibility is paramount, and this impacts greatly on his approach to cooperation in evil:

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84 CMP, 300.
85 ‘The morality of cooperation is clear enough in such cases - one who instigates immorality gives scandal and cannot be free of guilt.’ CMP, 300.
86 CMP, 301.
87 CMP, 302.
88 CMP, 239-240.
At the same time, one bears responsibility for foreseen side effects. Since they are foreseen, these effects are voluntary. One could avoid them by not choosing what one chooses. One might not want them, but one does accept them. Thus, while primarily responsible for choices, which directly determine oneself and shape one’s character, one is secondarily responsible for the foreseen consequences of carrying out one’s choices. Since side effects are freely accepted, it makes sense to ask whether one ought to accept them.\(^{89}\)

Grisez believes that circumstances may arise in which ‘accepting foreseen side effects which it would be wrong to choose’ is permissible,\(^{90}\) but one who accepts these side effects is still responsible for them. These side effects, then, ought not to be accepted at all unless the proposal adopted (the ‘choosing’) not only excludes these evil effects, but is itself adopted only for an adequate reason:

If a nurse who favours abortion adopts a proposal to kill unborn babies and participates in abortion procedures in execution of the proposal, she is killing unborn babies, and it matters not whether outwardly she does no more than fill out forms. On the other hand, if a nurse is threatened with loss of employment unless she assists a surgeon who is doing abortions, she could be assisting in surgery to keep her job without ever adopting a proposal to kill any unborn baby. The acts of the nurse herself need be no different than what she does in any morally good operation. The acts of the surgeon and the death of the babies not only are no ends of hers, they are not even means she chooses. They are only foreseen consequences.\(^{91}\)

What Grisez affirms here is the central importance of the cooperator’s subjective intention and his ‘sufficiently serious reason’: both must exclude absolutely any willing of the evil effects of the principal agent’s action. His position is essentially simple: formal cooperation is excluded (since the proposal one adopts must totally exclude the evil effects - that is, one’s action cannot be not evil in itself), and material cooperation is likewise excluded except for a sufficiently serious reason.\(^{92}\) There is little need for the categories ‘immediate-mediate’, ‘proximate-remote’, and ‘necessary-contingent’.\(^{93}\)

\(^{89}\) CMP, 240. Unfortunately Grisez does not explain what ‘secondarily responsible’ might mean.

\(^{90}\) CMP, 298.

\(^{91}\) CMP, 301.

\(^{92}\) ‘The fact that one does not adopt any proposal which is morally excluded, however, does not free one from moral responsibility - perhaps grave responsibility - for what one helps to bring about. For example, a nurse who prepares patients for abortion not because this behaviour carries
A second treatment of the question of cooperation is found in *Living a Christian Life* in the context of one’s specific responsibilities towards others with whom one is in community. There still seem to be misconceptions about the traditional principle: he appears to suggest that the ‘formal-material’ classification of cooperation does not apply when a cooperative action is required by obedience to legitimate authority, and he purports to offer three instances of illicit formal cooperation, one of which (‘one intends or one’s purpose includes that another commit a sin’) is clearly a case not of cooperation but of active scandal.

On the other hand the treatment here has the benefit of emphasising again the importance of the sufficiently serious reason - ‘adequate reason’ in Grisez’s terms - and the need to establish a truly adequate description of the various alternative actions from which the cooperator must choose. Grisez also responds to Häring:

out any proposal of hers but merely as part of her job perhaps ought to look for a different job or refuse to do these preparations by way of testimony to the truth. The abortions she assists really are a foreseeable and accepted consequence of her own chosen actions; perhaps she is obliged not to accept this consequence. ’CMP, 302. Emphasis added.

Note that Grisez’s concern is not whether the law permits the nurse to cooperate, but whether her vocational commitments impose any obligation not to cooperate.

The overall context of LCL is vocation understood as ‘the whole of the unique life to which God calls each Christian’ (LCL, xii) and virtue understood as the graces God gives to aid Christian response, especially faith, hope, charity, justice and mercy (xvii). Interestingly, at one point in the Introduction to LCL Grisez espouses an approach to morality remarkably similar to Häring’s ‘paraclesis’: ‘Consequently, at the present time any clear and full articulation of the authentic requirements of Christian life is bound to seem hard and unrealistic. That impression will be greater to the extent that those requirements are regarded, wrongly, as a burden imposed, rather than as necessary implications of sharing with the Lord Jesus in service to his kingdom . . . ’ LCL, xvi.

Cooperation ‘often refers to the action of a group of more or less coequal participants, each making a distinct and appropriate contribution in pursuit of a common end. In such cooperation, involving the exercise of authority and the practice of obedience, one fulfils one’s responsibilities toward others by personally doing what is right and avoiding scandal.

Sometimes, though, cooperation refers not to communal action but to the subordinate action of one who contributes something to the wrongdoing of another, who is the principal agent pursuing his or her proper good. In this sense, cooperation is either formal or material.’ LCL, 440.

Grisez acknowledges his mistake without comment in DMQ, 872 footnote 457.

‘Assuming cooperation is material and the act by which it is carried out otherwise would be morally good, the question is whether one has an adequate reason to do that act in view of its bad side effects.’ LCL, 442.

Grisez’s method of establishing this ‘adequate description’ is to ask a set of questions remarkably like that proposed two centuries ago: compare LCL, 442-443 with Alphonsus, *de caritate* 59.

Unfortunately Grisez then seems to weaken his position on an ‘adequate description’ of moral alternatives in a comment on Häring’s cases of cooperation in *The Law of Christ*: ‘The opinions Häring proposes on most of the examples, considered just as he frames them, seem sound, although sometimes additional circumstances could be specified in which they would be unsound.’ (LCL, 443,
‘respect for consciences’ is not an argument for material cooperation because ‘anyone else’s state of conscience is irrelevant to the [cooperator’s] own act’.99 Finally, he explicitly ties morality to spirituality: the mature and responsible Christian person asks not ‘what will the law allow me to do’, but ‘what is God calling me to do’, so there is great need for prudent discernment in choosing which particular act corresponds with God’s will.100

Grisez’s concern to attain a precise understanding of cooperation is evident in his third volume, *Difficult Moral Questions*, his most developed position on the subject.101 His understanding of material and formal cooperation here sheds light on his vision of the structure of cooperation, and helps to explain a certain variation from the tradition.

. . . contributing to another’s wrongdoing is formal cooperation if, and only if, the act by which one contributes agrees in bad intending with the wrongful act with which one cooperates.

Any other way of being involved is not involvement in another’s wrongdoing precisely as wrongdoing. So, *material* in this context refers to that about a cooperator’s act which involves him or her in a wrongdoer’s act in such a way that the two acts share no bad intending in common. Whatever is badly willed by the wrongdoer is at most only an accepted side effect, foreseen but not intended, of the material cooperator’s act.

. . . the material cooperator’s act, if not wrong for some other reason, is wrong if, and only if, he or she should not accept the bad side effects of contributing to another’s wrongdoing.102

And Grisez later specifies what he means by ‘bad side effects’:

The basic bad side effect of material cooperation is that one’s action makes some unintended contribution to another’s wrongdoing. That wrongdoing itself always has bad effects, and these often have further bad effects.103

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99 LCL, 441. Compare with Häring 1979, 484-486.
100 LCL, 443. In dealing elsewhere with discernment (LCL, 291-293) Grisez notes that the model he proposes is to be used only where one has eliminated all evil alternatives and is left only with several good alternatives. Grisez’s treatment of the practical role of prudence is developed further in DMQ, 886-889.
101 DMQ, 871-897: Appendix 2 *Formal and material cooperation in others’ wrongdoing.*
102 DMQ, 873.
On one hand Grisez has previously asserted that an agent bears responsibility for foreseen side effects, and here is simply applying this principle specifically to cooperation. On the other hand this position highlights two ways in which Grisez varies from the tradition.

First, the assertion that ‘whatever is badly willed by the wrongdoer is at most only an accepted side effect, foreseen but not intended, of the material cooperator’s act’ takes Grisez’s position here much further than Christian Moral Principles. While it sits happily enough within his own system the impact of this statement, in terms of the traditional view, is extraordinary: it implies that the evil consequences of the principal agent’s act are effects (albeit foreseen and unintended) of the cooperator’s act. This seems to cut directly across the ‘boundary of culpability’ defined by Alphonsus - the critical clarification that, in legitimate cooperation, the evil which is done proceeds not from one’s cooperation but from the principal agent’s own malice. How is Grisez’s position to be reconciled with the tradition?

Only in the context of his criterion of ‘responsibility’ is Grisez’s position defensible. The evil effects of the principal agent’s act may be considered as unintended side effects of the cooperator’s act only if one’s inquiry is restricted to Grisez’s prior question (raised in Christian Moral Principles) of whether or not the cooperator ought to accept these evil effects. His statement on accepting bad side effects is then seen to refer to the importance of a sufficiently serious reason: since the First Principle requires that evil is to be avoided, there is a prima facie responsibility not to accept the evil effects and so not to cooperate at all. In this view, the task of the sufficiently serious reason is essentially positive: it is to establish the rightness of accepting the evil consequences of the principal agent’s act. This is to be assessed in the context of the obligations or responsibilities one bears in light of the basic human goods and one’s personal vocational commitments, and these may exclude cooperation for any number of reasons.

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103 DMQ, 879.
104 CMP, 240.
105 For example, DMQ, 889: ‘... the problem of judging whether material cooperation is acceptable is part of the general problem of judging whether bad side effects are acceptable.’
106 Alphonsus, de caritate 63.
107 DMQ, 879-882 notes a large number of ‘bad effects’ which may preclude cooperation.
hand, in line with Alphonsus, one could argue that this ‘rightness’ can be established under the order of charity, where the situation may be portrayed as a choice between two evils: the evil of participating in another’s sin, versus the evil to be suffered if one does not cooperate.  

The order of charity permits one to choose to endure the lesser evil.

In order to reconcile Grisez’s position precisely in relation to the tradition, it is essential to emphasise that the cooperator’s ‘accepting’ of these evil effects in no way establishes the effects themselves as objects of the cooperator’s volition. It is not the evil effect itself, but the acceptance of that evil effect, which is present to the will as an object.  

Because they are excluded from the proposal adopted by the cooperator, the evil effects themselves are neither directly nor indirectly voluntary and so the cooperator is not at all morally responsible for them in themselves. But he is morally responsible for the choice to accept them as an unintended aspect of his action, and so the acceptance of them is indirectly voluntary. Thomas establishes that the indirectly voluntary is attributable to an agent only if he could and should have acted otherwise. Grisez argues that the acceptance of these evil effects is indeed attributable to the agent unless their acceptance is consistent with the totality of basic human goods and one’s personal vocational commitments. Alphonsus uses a different argument: the order of charity establishes grounds for the cooperator to believe that he need not refrain from cooperating.

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108 Alphonsus himself, of course, does not seek to establish the ‘rightness’ of material cooperation, but only its permissibility. In the context of Alphonsus’s thinking on the legitimacy of material cooperation, then, any notion of ‘rightness’ could only be analogical; the ‘rightness’ of enduring one evil rather than another is only analogical to the ‘rightness’ of actively doing an obvious good; furthermore, this (analogical) ‘rightness’ can only be established negatively by a kind of comparison and process of elimination, rather than on strictly positive grounds.

109 Grisez has already excluded the evil effects themselves from the proposal which the cooperator adopts (DMQ, 873), and in his discussion of ‘indirect action’ has stated: ‘Since side effects are freely chosen, it makes sense to ask whether one ought to accept them.’ CMP, 240.

110 ST I-II 6, 3: ‘... non semper id quod sequitur ad defectum actionis reducitur sicut in causam in agens ex eo quod non agit, sed solum tunc potest et debet agere.’

At times Grisez seems to doubt the validity of his own position on directly and indirectly voluntary acts, and indeed the certainty of his own judgment. In discussing perplexed conscience, and particularly direct killing, he writes: ‘While I do not wish to deal with specific normative issues here, I admit that my analysis points to the permissibility of certain operations which classical moralists would have excluded. I do not think this position is in significant conflict with received Catholic teaching. However, if my theory and the Church’s teaching should in a particular case lead to inconsistent conclusions, I would follow and urge others to follow the Church’s teaching rather than my theory.’ CMP, 299.
This difference between Grisez and Alphonsus points to a second way in which Grisez varies from the tradition. Throughout Alphonsus’s treatment of cooperation properly so called in *de caritate*, the gravity of his ‘sufficiently serious reason’ (in his terms, the ‘just’ or ‘grave’ cause) is assessed with reference primarily not to the evil effects which will flow from the principal agent’s act, but to the *principal agent’s sin itself*.\(^\text{111}\) For Alphonsus, the fundamental question of cooperation is whether or not one may permit one’s neighbour to commit that sin, to which the order of charity provides an answer: charity alone does not always require one to prevent the sin.\(^\text{112}\)

In *Difficult Moral Questions* Grisez leans most heavily on Alphonsus’s treatment in *de caritate*, yet criticises Alphonsus because he ‘overlooks [material cooperation’s] possible secondary bad consequences even on the evildoer’.\(^\text{113}\) His initial statement that the ‘basic bad side effect of material cooperation is that one’s action makes some unintended contribution to another’s wrongdoing’ could be taken as equivalent to Alphonsus’s focus on the principal agent’s sin in itself; but Grisez then pays minimal attention to this specific sin, preferring instead to focus on its

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\(^{111}\) See for example Alphonsus, *de caritate* 59: ‘1° quanto gravius est peccatum cujus occasio datur; 2° quanto probabilius est, te non cooperante, alterum non peccaturum; aut quanto certior est affectus peccati; 3° quanto propinquius tua cooperatio peccatum attingit.’ It is true that in *de caritate* Alphonsus does consider the question of ‘further evil effects’: his fifth condition for assessing the gravity of the ‘just cause’ is ‘how greatly the sin offends the demands of justice by virtue of the harm it does to third parties.’ (*de caritate* 59: ‘quanto magis peccatum cum justitia pugnat, idque propter damnum tertii.’) However, it is clear that even here his primary point of reference is the evil action of the principal agent: the harmful effects of that action are significant only as factors in defining the gravity of its sinfulness.

\(^{112}\) Alphonsus, *de caritate* 66: ‘quando autem alias grave damnum metuis, licite permettere potes peccatum alterius. Nam ex una parte, caritas te non obligat cum gravi damno peccatum ejus avertere.’ And in *de caritate* 47: ‘Caritas enim nos obligat ad vitandum damnum grave proximi, quotiescumque sine notabili incommodo id possumus.’ The same paragraph makes it clear that this ‘grave harm’ is principally the spiritual harm which the principal agent himself will suffer by virtue of his sinning. Alphonsus’s sense of ‘grave harm’ would seem to belie Grisez’s criticism of lax interpretations of the principle ‘*caritas non obligat cum gravi incommodo*’. *DMQ*, 877, footnote 463. Alphonsus’s clear focus on the key question helps to distinguish cooperation from other related issues. In seduction the question is whether or not one may *induce* one’s neighbour to sin; in scandal it is whether or not one may (intentionally or not) *influence* one’s neighbour to sin; in cooperation there is no question of induction, so the issue is whether one may merely *allow* one’s neighbour to sin. There is also a fourth question: see Alphonsus, *de caritate* 57: ‘Utrum licet suaderete aut permettere minus malum ad majus evitandum?’ and Peschke 1986, 324: whether or not one may *advise* one’s neighbour to commit a lesser rather than a graver evil.

\(^{113}\) *DMQ*, 877, footnote 463.
further evil effects. He seems not to have noticed that, in *de caritate*, Alphonsus deliberately excludes the further harmful effects in order to focus on the primary moral problem of cooperation: complicity in the principal agent’s sin.

This oversight leads Grisez into some awkward corners. For example, concerning the process of establishing the existence of the sufficiently serious or ‘proportioned’ reason, Grisez challenges Alphonsus’s argument in *de caritate* 63, proposing instead that ‘*if material cooperation is to be morally acceptable, the reason for choosing to do the act that constitutes it must be proportionate to the reasons for not making that choice*’. But he does not recognize the significance of Alphonsus grounding a proportioned reason in the order of charity: any ‘comparison’ or ‘proportion’ for Alphonsus is, precisely, the proportion between the evil to which one contributes by cooperating and the evil which one suffers by not cooperating.

Grisez argues that the cooperator is responsible for more than he chooses. This approach seems to lead him at times to confuse physical and moral causality. This and other difficulties notwithstanding, Grisez can be reconciled with the tradition if he is interpreted strictly: the cooperator is responsible for the acceptance of the evil effects of the principal agent’s action, but not for the evil effects themselves. In itself this accords with the tradition which argues that what the

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114 DMQ, 879: ‘The basic bad effect of material cooperation is that one’s action makes some unintended contribution to another’s wrongdoing. That wrongdoing itself always has bad effects, and these often have further bad effects.’

115 DMQ, 877.

116 See Alphonsus, *de caritate* 66. Grisez also claims that Alphonsus’s assessment here does not account for the ‘further consequences’ which ‘always flow from knowingly doing what constitutes material cooperation in wrongdoing and accepting those basic bad side effects.’ (DMQ, 877). In the first place, Grisez has again overlooked the reason for Alphonsus’s primary focus in *de caritate*. In the second place, even on his own criticism of proportionalism Grisez would surely concede that it is extremely difficult or even impossible to account for ‘all of the reasons grounded in the intelligible goods that may be adversely affected by secondary bad consequences’. (DMQ, 877. Emphasis added.) Even granting that Grisez’s perspective refers to responsibility rather than causality, he here seems to require a moral vision of infinite horizon and an ability to predict evil consequences which occur far from the concrete situation in question. Pope John Paul II himself queries the practicality (and indeed even the possibility) of such an exhaustive assessment of consequences in *Veritatis splendor* 77.

117 There are other apparent misunderstandings: Grisez criticises Alphonsus for not including three obvious factors when considering the strength of reasons to forgo cooperation (DMQ, 878), but Alphonsus has listed precisely these factors in *de caritate* 59; and when Grisez condemns Alphonsus
cooperator’s act produces is not the evil effects themselves, but a state of affairs which the principal agent will abuse and so produce those effects. That ‘state of affairs’ would in other circumstances be quite innocent - which is what the early authors meant by an ‘indifferent act’. But even where the principal agent is virtually certain to bring about the evil by abusing that state of affairs, there remains a ‘causal gap’ between the cooperator’s action and the evil effect. It is the principal agent alone who fills that gap.

Nevertheless Grisez’s analysis offers valuable insights into some traditional questions. His emphasis on one’s ‘vocational commitments’ offers a new possibility: one’s existing commitments will often provide reasons against cooperating in evil (for example, the danger of scandal), but may also at times provide reasons in favour of cooperating in evil - although Grisez does not develop this promising line of thought at any length. He not only notes the central role of prudence in assessing material cooperation, but also suggests how prudence might be exercised in practice, scrupulously noting every step the prudent person must take; but then he notes simply that, should the reasons for and against cooperation still seem equally strong, ‘one should discern . . . [and this] will not be difficult’. Finally, he provides typically insightful analysis of several contemporary approaches to cooperation.

It is difficult to assess Grisez’s project without being intimidated by its sheer breadth and depth. The perspective he brings to Catholic moral theology is unquestionably valuable, and his greatest achievement lies in developing an epistemological basis for that perspective. But the value of his treatment of material cooperation comes at a price: in contrast to Grisez’s complexity, the traditional

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for ‘lack of guidance about how to judge whether the reason is proportionate’ (DMQ, 878) he has clearly overlooked again the argument from the order of charity.

118 DMQ, 882: ‘By the same token, if something must be done to fulfill a responsibility flowing from a vocational commitment, there is a stronger reason to accept bad side effects in doing it than if one could forgo the activity without slighting such responsibility.’

119 DMQ, 889.

120 These are the thesis of Charles Curran in his ‘Cooperation: Toward a Revision of the Concept and its Application.’ Linacre Quarterly 41(1974) 152-167 (see DMQ, 891-893); and the United States Catholic Conference, Ethical and Religious Directives for Catholic Health Care Services. Origins 24(1994) 449, 451-462 (see DMQ 893-897). These two approaches are noted later in the present work.
Doctrine of cooperation seems relatively clear and simple to apply. As with the balance of his great project, Grisez’s position on cooperation requires considerable interpretation.

3.1.5 Conclusions

Modern moral texts display a considerable diversity of approach, each requiring a ‘key’ to unlock the text and ‘open it out’ to view. This ‘key’ is essential to grasp not only the author’s concept of the nature and tasks of moral theology, but also his understanding of legitimate cooperation.

The ‘key’ to Häring’s later text is his ‘profound vision’ of the Christian moral life: the Christian is to ‘actualise the Truth in love’, to make Christ present and operative in the world through entering into the ethical ‘stuff’ of the world as salt or leaven.\textsuperscript{121} The problem is that this vision is too broad: it is not sufficiently defined or even grounded in a metaphysics which might permit definition of such important concepts as ‘toleration’ and ‘respect for consciences’. A similar problem besets Peschke’s text, to which the ‘key’ is his eschatological orientation: the Christian’s obligations in charity are outlined in the context of the ‘covenant’ relationship between God and man, where there is no separation between the religious and moral life.\textsuperscript{122} But Peschke does not explain how this general orientation is to be realised in the particular case, in concrete issues of material cooperation.

The ‘key’ to Grisez, on the other hand, is the naturalistic fallacy and his perception of the threat it poses to natural law theory. His achievement is to ground a positive view of moral obligation (’what God wants me to do’) in a more or less traditional metaphysics - albeit augmented by his own value and ethical theories. The problem with Grisez’s approach lies in exactly the same place: his ‘modes of responsibility’ serve only to eliminate kinds of intending and acting which offend integral human fulfilment, leaving a ‘remainder’ of options from which the agent

\textsuperscript{121} See Häring 1979, 419 and 479.
\textsuperscript{122} Peschke 1986, 29.
chooses. The question Grisez sets out to answer is ‘which option ought I to choose?’ The answer he offers is disappointingly traditional: one must ‘discern’.\footnote{DMQ, 889.}

Grisez’s problem is not that his vision is too wide or ill-defined, but that it does not reach far enough. The breadth of his vision, grounded in a brilliant metaphysics, awaits completion in a spirituality which reconnects the moral subject with the Author, ground and horizon of moral goodness: God Himself, who is both ‘Father’ accessible to the moral agent’s love, and ultimate Mystery remaining forever beyond the reach of reason. The agent must therefore seek the will of God not merely in ‘discerning’, but in the particularly Christian way of discerning: prayer and contemplation.
3.2 Cooperation in Recent Magisterial Teaching

This section asks whether official Church teaching on material cooperation since Vatican II has retained or developed any of the orientations identified in the later moral texts. Specifically: what contribution has the teaching Church made to a contemporary understanding of the principle of material cooperation?

The volume of magisterial teaching has been enormous in recent years, and it is a challenge to identify and analyse such a vast amount of material in any logical order. A cumulative or chronological approach would seem obvious, but documents from one source do not necessarily build on (or even acknowledge) earlier documents from the same or other sources. Some statements seek to settle specific questions, conversations or disputes which developed over a number of years, so the question of context is also crucial to a correct understanding of each teaching. It also seems appropriate to choose an ordering of material which respects the relative weight to be accorded different levels of curial intervention, and so the order adopted here is by authority of source: first, recent papal teaching (Pius XII, Paul VI, John Paul II, in 3.2.1); then documents of the Congregation for the Doctrine of the Faith (3.2.2); and finally other curial interventions (3.2.3). The teaching of some episcopal conferences and the writings of some contemporary theologians will be studied in the next chapter.

3.2.1 Recent Papal Teaching

Although Pope Pius XII predates the later moral texts, his teaching on social issues in general and on cooperation in particular prepared the ground for the approaches they would take. He was certainly conscious of a new order in society and new challenges to be met by Christians in the world: the task of rebuilding Europe after World War II was complicated by lack of housing and unemployment, and by even greater threats such as increasingly negative pressures on family life and a declining appreciation of the dignity of the human person.\footnote{124 See Pope Pius XII, ‘Address Nell’ordine della natura, to ‘The Family Front’. (26 November 1951). AAS 43(1951) 855-860. [English text: Catholic Documents Volume VI (London: Pontifical Court Club (Salesian Press), 1952) 28-32.]}

It is in such a
difficult environment that Christians are called to live their mission (‘apostolate’) in the world, but Catholics are never to cooperate in ‘perverse tendencies’ such as contraceptive sterilisation. Nevertheless, in pursuing the demands of the common good it is sometimes permissible to tolerate (‘non impedire’) a lesser evil in order to avoid an even greater evil or to attain a greater good. The concept of a ‘tolerable evil’ is an important element in subsequent treatments of legitimate cooperation.

Pope Paul VI made an indirect contribution in his watershed encyclical *Humanae vitae*. The manuals had long treated the question of cooperation in contraceptive practices, so Paul VI makes no specific mention of it here. However, he endorses Pius XII’s teaching on tolerable evil and expands it to embrace personal ethics, while emphasising the basic rule that evil itself may never be directly commissioned. This position underscores the two conditions for legitimate cooperation: legitimate toleration of an evil requires a morally good or indifferent act and a sufficiently serious reason.

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125 ‘Address Vegliare con sollecitudine, to Members of the Congress of the Italian Association of Catholic Midwives.’ (29 October 1951). AAS 43(1951) 835-854. [English text: *Catholic Documents Volume VI* (London: Pontifical Court Club (Salesian Press), 1952) 1-16.] Four subheadings in the English text reveal the Pope’s broad vision of the Catholic’s mission in the world: I. Your professional apostolate is carried out first and foremost through your personal influence. II. Uphold the value and inviolability of human life. III. Helping the mother in the prompt and generous fulfilment of her marital duties. IV. Defence of the right order of values and the dignity of the human person.

126 ‘It is plainly true that error and sin abound in the world today. God reprobrates them, but He allows them to exist. Wherefore the statement that religious and moral error must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid absolutely and unconditionally . . . The duty of repressing moral and religious error cannot, therefore, be an ultimate norm of action. It must be subordinate to higher and more general guiding principles, which, in some circumstances allow, and even perhaps seem to indicate as the better policy, toleration of error in order to promote a greater good.’ Pope Pius XII, ‘Address Ci riesce, to the National Convention of Italian Catholic Jurists.’ (6 December 1953). AAS 45(1953) 794-802. [English text: *Catholic Documents Volume XV* (London: Pontifical Court Club (Salesian Press), 1954) 12-18, at 15-16].

127 See Chapter One above, footnote 106.

128 ‘Certainly, it is sometimes permissible to tolerate moral evil - when it is the lesser evil and when one does so in order that one might avoid a greater evil, or so that one might promote a greater good. It is never permissible, however, to do evil so that good might result, not even for the most serious reasons.’ Pope Paul VI, Encyclical Letter *Humanae vitae*. ‘Of Human Life.’ (25 July 1968). AAS 60(1968) 481-503, n.14. [English text: Janet E Smith (Nebraska: Pope Paul VI Institute Press, 1993)].

Paul VI also applied to contraception the distinction between objective moral fault and subjective moral culpability, or between ‘peccatum’ and ‘culpa’: this is implicit in *Humanae vitae* 25 and 29, but it would be for other curial sources to make this distinction explicit in subsequent years.
In his major encyclicals *Veritatis splendor* and *Evangelium vitae*, Pope John Paul II seeks to establish clear metaphysical foundations for a renewed moral theology, and to correct some errors which had crept into various efforts at renewal.\(^{129}\) In these encyclicals he provides clear teaching on both the context and content of Christian moral life.

*Veritatis splendor* is a study of moral law, conscience and the moral act presented against a vast theological and spiritual background. In it the Pope intends to place morality and its rational demands in the context of a broad vision of Christian life. His use of the parable of the rich young man (Mt 19:16-21) and the young man’s central question (‘*What must I do to inherit eternal life?*’) serve to establish both the eschatological orientation of morality and the inescapable unity of faith and life.\(^{130}\) In the text itself the Pope takes great pains to relate ‘what I ought to do’ with ‘what the commandments permit me to do’, and adopts an ontological and eschatological stance similar to Peschke’s: who one *is* and what one *does* are essentially related to each other, and both are related to one’s eternal destiny.\(^{131}\)

Love of neighbour springs from a loving heart which, precisely because it loves, is ready to live out the loftiest challenges. Jesus shows that the commandments must not be understood as a minimum limit not to be gone beyond, but rather as a path involving a moral and spiritual journey towards perfection, at the heart of which is love (cf Col 3:14). Thus the commandment

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\(^{131}\) There is an ‘intrinsic and unbreakable bond between faith and morality’ (*Veritatis splendor*, 4) which becomes obvious in light of the experience of God: ‘What man is and what he must do becomes clear as soon as God reveals himself’ (*Veritatis splendor*, 10). There is also ‘a close connection . . . between eternal life and obedience to God’s commandments: God’s commandments show people the path of life and they lead to it.’ (*Veritatis splendor*, 12).

However, in contrast to this positive sense of moral imperative the Pope seems to set the document a more negative goal: ‘In addressing this Encyclical to you, my Brother Bishops, it is my intention to state the principles necessary for discerning what is contrary to ‘sound doctrine’, drawing attention to those elements of the Church’s moral teaching which today appear particularly exposed to error, ambiguity or neglect.’ *Veritatis splendor*, 30. Emphasis original.
‘You shall not murder’ becomes a call to an attentive love which protects and promotes the life of one’s neighbour.  

Nevertheless the commandments do delineate the ‘lower’ limits of the command to love God, and below these limits a commandment is broken; but there are no ‘upper’ limits. Accordingly, one may never willingly commission intrinsically evil acts, because they are ‘by their nature incapable of being ordered to God, because they radically contradict the good of the person made in his image’. 

Defending the good of the person is the central thread of Evangelium vitae. The task is made more difficult by social, legislative and moral contexts in which Christian values are not upheld:

The fact that legislation in many countries, perhaps even departing from basic principles of their Constitutions, has determined not to punish these practices against life, and even to make them altogether legal, is both a disturbing symptom and a significant cause of grave moral decline. Choices once unanimously considered criminal and rejected by the common moral sense are gradually becoming socially acceptable . . . In such a cultural and legislative situation, the serious demographic, social and family problems which weigh upon many of the world’s peoples and which require responsible and effective attention from national and international bodies, are left open to false and deceptive solutions, opposed to the truth and the good of persons and nations.

The context of Christian life today includes ‘structures of sin’ which mark society’s ‘moral conscience’. The mission of the Christian is to proclaim the ‘Gospel of life’ which is the very person of Jesus, to extend that Gospel to people caught up in these structures of sin and in the ‘messiness’ of life today, so that they

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132 Veritatis splendor, 15. The ‘goods’ of human life are to be protected in order to protect the ‘good’ of the person himself. The ‘goods’ protected by the commandments are ‘human life, the communion of persons in marriage, private property, truthfulness and people’s good name.’ See Veritatis splendor, 13.

133 See Veritatis splendor, 52. This explains why Grisez’s ‘modes of responsibility’ are expressed in the negative: it is always easier to say what one definitely ought not to do, than what one ought to do. Unfortunately the same reasoning explains why Grisez’s theory, as well-intentioned as it is, is so vast and difficult to apply.

134 Veritatis splendor, 80.

135 Evangelium vitae, 4.

136 Evangelium vitae, 12 and 24.

137 Evangelium vitae, 29.
too may encounter Jesus and see in their own lives ‘a reflection of God himself’. This demands a self-giving which is difficult and challenging, but which must occur if the Church is to allow its witness to be seen and heard even as Jesus allowed his self-giving suffering to be seen when he was raised on the cross.

Yet as radical and thoroughgoing as that self-giving may need to be at times, the same Gospel of life establishes an order of charity which allows one, given sufficiently serious reason, to prefer one’s own life to that of another. The implication for legitimate cooperation should not be overlooked: if an agent may observe this order of charity in actions in which he himself causes evil effects, it would seem to apply a fortiori when he himself does not cause the evil effects but only participates in the order of legitimate material cooperation. This approximates the position of Alphonsus.

Cooperation in evil is discussed explicitly in regard to the intrinsic evils of abortion and suicide. The ‘network of complicity’ which surrounds abortion is not limited to those who are directly involved, but extends to ‘international institutions, foundations and associations which systematically campaign for the legalisation and spread of abortion in the world’. The canonical sanction for abortion applies to ‘all those who commit this crime with knowledge of the penalty attached, and thus includes those accomplices without whose help the crime would not have been committed’. The last clause implies necessary cooperation, but the text as a whole seems to refer only to formal cooperation: to choose to proceed ‘with knowledge of the penalty attached’ would seem to constitute an explicit intention to commission an act which one knows to be seriously evil.

Similarly the text on cooperation in suicide refers only to formal cooperation:

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138 Evangelium vitae, 32-35.
139 Evangelium vitae, 50-51.
140 Evangelium vitae, 55. The discussion here draws on both Thomas Aquinas (ST II-II 64, 7) and Alphonsus (Theologia moralis Lib. III De praeceptis decalogi et ecclesiae, Tr. IV De quinto et sexto praecepto, Cap. I, Dub. III An et quomodo licet occidere privata auctoritate iniquum aggressorem), as well as CCC 2263-2269.
141 Evangelium vitae, 59.
142 Evangelium vitae, 62.
To concur with the intention of another person to commit suicide and to help in carrying it out through so-called ‘assisted suicide’ means to cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested.\textsuperscript{143}

The fact that the act of suicide is intrinsically evil is beside the point: ‘\textit{to concur with the intention}’ of the principal agent will always constitute formal cooperation, and this is always illicit. Neither of these texts shed light on the possibility of truly \textit{material} cooperation in intrinsically evil acts.

In a particularly incisive passage Pope John Paul II next addresses the arguments of ‘toleration’ and ‘respect for consciences’, and he draws an important distinction.\textsuperscript{144} False tolerance relies on a certain ‘\textit{ethical relativism}’ which holds that a rejection of absolute moral norms is necessary to guarantee true democracy and mutual respect among people.\textsuperscript{145} True tolerance, on the other hand, accepts absolute moral norms but recognises that sometimes, in the interests of social order and the common good, a lesser evil may be permitted in order to avoid a greater evil.\textsuperscript{146} However, the Pope teaches that

\begin{quote}
public authority \ldots can never presume to legitimize as a right of individuals - even if they are the majority of the members of society - an offence against other persons caused by the disregard of so fundamental a right as the right to life. The legal toleration of abortion or of euthanasia can in no way claim to be based on respect for the conscience of others, precisely because society has the right and the duty to protect itself against the abuses which can occur in the name of conscience and under the pretext of freedom.\textsuperscript{147}
\end{quote}

So the ‘\textit{non impedire}’ approved by Pius XII is grounded in pure social expedience, not respect for conscience. Therefore there can be no obligation in conscience to obey immoral laws; indeed, ‘\textit{there is a grave and clear obligation to}

\begin{footnotes}
\footnotetext[143]{\textit{Evangelium vitae}, 66. The supporting text of Augustine also seems to refer to at least implicit formal cooperation.}
\footnotetext[144]{On these concepts, see 4.1.2.3 and 4.1.2.4 below.}
\footnotetext[145]{\textit{Evangelium vitae}, 70.}
\footnotetext[146]{\textit{Evangelium vitae}, 7, referencing the Second Vatican Ecumenical Council, Declaration on Religious Freedom \textit{Dignitatis humanae}. (7 December 1965) 7.}
\footnotetext[147]{\textit{Evangelium vitae}, 71.}
\end{footnotes}
oppose them by conscientious objection'. This sheds a little indirect light on the question of material cooperation in intrinsically evil actions: if there is no moral obligation to obey, support or vote for such 'intrinsically unjust laws', and indeed if there is a grave obligation to oppose them, then it would seem extremely difficult to justify material cooperation in the intrinsically evil actions which these laws permit.149

But having established the agent’s clear moral duty in the face of intrinsically unjust civil laws, the Pope then addresses a particular problem. A legislator may in some cases be justified in supporting a more restrictive law in favour of abortion or euthanasia if the only alternative is a more permissive law and consequently the production of even more evil effects.150 One condition is that the legislator’s ‘absolute personal opposition’ to these evils must be well known, which is a guard against scandal. This case is not an exception to the general rule against obeying, supporting or voting for immoral laws because the legislator is in a unique situation.

In the case outlined in Evangelium vitae 73, the legislator has no choice but to cooperate in bringing about an evil law. The only options are (i) to vote for a more permissive law, or (ii) to vote for a more restrictive law, or (iii) to abstain (in which case the more permissive law would prevail). All three options will help to bring about an intrinsically evil law, so the legislator has no alternative but to cooperate in one way or another (either positively or negatively). Therefore the legislator rightly turns his attention to the harmful effects which will attend the passage of the law: he must consider ‘limiting the harm done’ by voting for the option which will have least negative consequences.

Note that this still technically constitutes material cooperation in evil, since it helps to bring about a state of affairs which inevitably will be abused by others. However, on one hand the legislator’s inability to avoid cooperating reduces personal culpability; on the other hand, the possibility of cooperating with fewer rather than more numerous evil consequences in this case constitutes a justifying

148 Evangelium vitae, 73.
149 Evangelium vitae, 73.
150 Evangelium vitae, 73.
reason. As the Pope carefully indicates, this is not ‘illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects’. To vote for such a law in these circumstances constitutes lawful material cooperation.

It is important to emphasise that the Pope here does not speak of voting for a more restrictive law as ‘choosing the lesser evil’. In regard to abortion or euthanasia, objectively speaking, there are no degrees of intrinsic evil from which to choose, and a more restrictive law in favour of abortion is intrinsically just as evil as a more permissive law. To kill a single innocent human being is an intrinsically evil act, and to kill 100 innocent human beings is also an intrinsically evil act. These acts differ not in how intrinsically evil they are, but in the extent of their evil consequences. Obviously, in terms of the amount of evil done, less is better than more. Therefore the Pope speaks of ‘limiting the harm done’ and limiting the ‘evil aspects’ of the law - that is, limiting the evil consequences.

It is also important in this case to define very precisely the ‘sufficiently serious reason’. The legislator’s cooperation is justified not because of any possibility he or she may have to further limit the harm done by abortion through supporting a still more restrictive law at some undetermined point in the future. Rather, the legislator’s cooperation is justified solely because this particular law will limit the harm which other people will certainly bring about. Future possibilities do not seem to be a factor in justifying cooperation in this case. This passage of Evangelium vitae, then, suggests that it is not reasonable to use a possible but uncertain future benefit to justify cooperation in what is a certain evil in the present.

151 The question of acting for a ‘lesser evil’ will be taken up again in the next Chapter, at 4.1.2.2.

152 In terms of the traditional metaphysics: a legislator may, in these restricted circumstances, legitimately vote in favour of a law permitting abortion because the legislator’s finis is neither the lesser nor the greater evil but the restriction of evil consequences; his moral object is not to support a law permitting abortion, but to support a law restricting the number of abortions which will be performed. Soto (De justitia et iure (Lugduni, 1582) L. IV, q. 7, a. 3) held that in such a case the moral agent was not intending the lesser evil, ‘but rather the hindrance of the greater evil’. See E T Hannigan SJ, ‘Is it ever lawful to advise the lesser of two evils?’ Gregorianum 30(1949) 104-129, at 109.

This is also the interpretation of Klaus Demmer MSC in his ‘Tolerancia y cooperación: Una pregunta a la ética del derecho’ in Lorenzo Alvarez Verdes and Marciano Vidal, eds. La Justicia Social: Homenaje al Prof. Julio de la Torre. (Madrid: Editorial el Perpetuo Socorro, 1993) 335. (See 4.1.2 below.) So while the legislator is certainly cooperating in abortion, his cooperation in the evil (creating conditions favourable to abortion) is material; but his cooperation in the good (limiting the number of abortions) is formal, and for this he may be commended.
Even in the unique environment of civil legislation, cooperation in evil is to be justified only on a case-by-case basis according to the concrete circumstances here and now.

The next passage promises to treat the ‘general principles concerning cooperation in evil actions’, but again the teaching is limited only to the rules governing formal cooperation.

Indeed, from the moral standpoint, it is never licit to cooperate formally in evil. Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it. This cooperation can never be justified either by invoking respect for the freedom of others or by appealing to the fact that civil law permits it or requires it. Each individual in fact has moral responsibility for the acts which he personally performs; no one can be exempted from this responsibility, and on the basis of it everyone will be judged by God himself (cf. Rom 2:6; 14:12).

Significantly, the next sentence reads: ‘To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right.’ Two aspects of this sentence merit comment. First, ‘to take part in committing an injustice’ does not necessarily mean material cooperation, since ‘to take part’ may also mean formal cooperation; indeed, this reading is more in keeping with the preceding paragraph. Second, the subsequent sentence makes it plain that the context here is not material cooperation, but the issue of whether anyone can be ‘forced to perform an action intrinsically incompatible with human dignity’. This passage concerns not material cooperation, but coercion to perform intrinsically evil actions.

There are two intriguing aspects of Pope John Paul II’s treatment of cooperation. First, he does not seem to comment at all on material cooperation, even in connection with intrinsically evil acts. The traditional principle already makes it plain that formal cooperation in such evils is always illicit, so one could

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153 Evangelium vitae, 74. At first glance there are remarkable similarities between this statement and the position of Grisez in DMQ. However, Pope John Paul II differs from Grisez in one very important respect: to take moral responsibility ‘for the acts which he personally performs’ is an acknowledgment of the ‘causal gap’ which Grisez seems to overlook.
reasonably look to John Paul II for guidance on the more problematic question of *material* cooperation - but none is offered. **Second**, his discussion of tolerance of unjust laws is limited to demonstrating that no-one can be forced to obey such laws. Yet in most of the examples he offers, these laws are not *coercive* but *permissive* (such as the decriminalisation of abortion) and it may be argued that these already fall within Pius XII’s teaching on tolerance.\(^{154}\) However, beyond an attack on ‘ethical relativism’, John Paul II offers no further analysis of ‘tolerance’.

Recent papal teaching on cooperation in evil therefore recognises a new context for Christian life - a world of increasingly secular moral values - but essentially only repeats existing teaching on cooperation, and principally on formal cooperation only. It makes little significant contribution to the question of legitimate material cooperation in evil.

### 3.2.2 Congregation for the Doctrine of the Faith

Four statements of the Congregation for the Doctrine of the Faith which touch on the question of cooperation in evil are taken here in chronological order.\(^{155}\)

The *Replies to Questions* (1974) addressed to the Australian Bishops deal with five related issues concerning practical observance of the Church’s doctrine on contraception expressed in *Humanae vitae*.\(^{156}\) The first reply applies the traditional

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\(^{154}\) The Pope may be referring to the civil law in Italy concerning access to abortion and the right of individuals and institutes to refuse to participate in abortion. These issues were raised specifically in 1978 with the passage of Law 194; Dionigi Tettamanzi’s very lucid analysis of this law is discussed below, 4.2.1. It is also possible that the Pope may be thinking of the situation in China and certain other countries in which, in order to control population growth, couples are forbidden by law from giving birth to more than one or two children.


\(^{156}\) The *Replies to Questions* were addressed to Cardinal Freeman (and through him to the Australian bishops), and were accompanied by a confidential letter from Cardinal Seper, Prefect of the Congregation. This letter bears the Protocol Number 52/63 and remains confidential. The *Replies*, which bear no protocol number themselves, were forwarded by Archbishop Cahill and made public by individual bishops. In personal communication with the author on 25 May 2000, Fr Brian
doctrine on personal conscience previously affirmed elsewhere.\textsuperscript{157} The second reply underscores the doctrinal authority of \textit{Humanae vitae}, while the third confirms the teaching of \textit{Humanae vitae} that couples making decisions in certain (but erroneous) conscience may be admitted to the Sacraments \textit{for proportionate reasons’}. The last two replies address cooperation.

The fourth question asked whether an individual doctor may materially cooperate by prescribing contraceptive medications for a couple who have reached their decision in certain (but erroneous) conscience. The reply is revealing:

Here should be applied traditional rules, universally accepted by theologians, on material cooperation in the moral evil of others. Let it be noted that the subjective conviction or the good faith of the couple does not of itself justify material cooperation by the doctor. So that this latter [may] be lawful it is necessary that: 1) the doctor does not subscribe to nor approve the wrong intention or action of the couple; 2) the action by which the doctor gives cooperation be not in itself an immoral act; 3) a proportionately grave cause constrains him to cooperate; 4) he does everything possible so that his cooperation is not interpreted as approval, and that there is no public scandal, or, should there be such, that it is opportunely removed, in particular the scandal of the Church’s doctrine on contraception being obscured before the eyes of society.\textsuperscript{158}

Several aspects of this reply merit attention. \textit{First} is the assumption that there exists a single universally accepted interpretation of rules governing material cooperation. The variations noted among the traditional manuals and later moral texts make this assumption tenuous. \textit{Second}, the doctor’s cooperation must be justified by more than simply the couple’s subjective conviction - which casts grave doubt on Häring’s interpretation of ‘respect for conscience’. Then come the ‘conditions’ for legitimate material cooperation: the doctor must not formally cooperate by ‘subscribing to’ or ‘approving’ the couple’s decision; the cooperative act itself must not be evil; there must be a proportionately grave reason to cooperate; and the risk of scandal must be minimised or removed.

Lucas (Archdiocesan Secretary, Archdiocese of Sydney) confirmed that the CDF had issued the \textit{Replies} in English.\textsuperscript{157} Congregation for the Clergy, \textit{The Washington Case}. (26 April 1971). \textit{L’Osservatore Romano} 20(164) 20 May 1971. 6-7. \textsuperscript{158} \textit{Replies}, IV.
Significantly, a ‘proportionately grave cause’ may ‘constrain’ the doctor to cooperate. ‘To constrain’ is an apparently more robust term than ‘to permit’. The implication seems to be that a justifying reason may sometimes lead one to believe that material cooperation is not only permitted, but positively required. While the document does not further address this condition, this seems to be a significant addition to the usual interpretations of ‘sufficiently serious reason’.

The fifth question is very curious:

Quest. V. - Whether a Catholic Institution vg. the Family Planning Clinic, consulted by some couple, may continue to provide them with contraceptive guidance, help and aid in a manner which is objectively evil?¹⁵⁹

Given its exact wording, the obvious answer to this question is ‘no’: regardless of circumstances, the First Principle of Practical Reason would always rule out offering ‘guidance, help and aid in a manner which is objectively evil’. However, the Congregation’s reply indicates that it understands this fifth question as an extension of the fourth, interpreting it as referring not to the admissibility of acting in an objectively evil manner, but to the possibility of institutional material cooperation.

The reply is very guarded. Because of their Catholic identity such institutions have a duty to ‘give the world a testimony of the right conception and the true observance of morality’, and to practice ‘christian charity under the light of the Gospel, by observing the norms of christian behaviour taught by Christ and his Church.’

In institutions of this kind it is not admissible that a way of acting contradict the objective teaching of the Church itself. If there were to be a general policy of material cooperation in Catholic institutes, it would damage public morality. Therefore, so that in these institutes material cooperation may be licit, motives are required proportionately graver than those required by the general principles on material cooperation (cf. n.IV).¹⁶⁰

¹⁵⁹ Replies, V.
¹⁶⁰ Replies, V
Three aspects of this reply are significant.

- **First**, the public character of Catholic institutions requires a stricter adherence to Catholic moral teaching. In the first place, the risk of scandal and damage to public morality rules out any ‘general policy of material cooperation in Catholic institutes’. Furthermore a general policy on cooperation in contraception would amount to official acceptance of a practice which, as the previous *Reply* implies, is permissible only as particular circumstances might indicate in individual cases.

- **Second**, however, and given no ‘general policy’ on cooperation, this response implies that *individual acts of material cooperation* may nevertheless be commissioned in Catholic institutes provided that the reasons for doing so are significantly more serious than those justifying cooperation by individual Catholic doctors.\footnote{A variant interpretation of this *Reply* has been developed, as follows: the sentence “*If there were to be a general policy of material cooperation . . .*” is followed immediately by “*Therefore, so that in these institutes material cooperation may be licit . . .*” This could be construed as suggesting that an institute may indeed formulate a general policy on material cooperation if there are ‘proportionately graver’ reasons for doing so. In order to support this interpretation it would be necessary to prove that the ‘material cooperation’ in the second sentence is, or could be, identified with the ‘general policy of material cooperation’ in the first. But this seems somewhat ‘forced’, and the fact that such an identification is not immediately evident from the text itself suggests that this interpretation is untenable.}

- **Third**, by making reference to the general principles listed in the previous reply the implication is that in this case an institution might view cooperation as a matter of ‘constraint’ and not merely ‘permission’.

Taken together, these three points are extremely significant. They indicate that the Congregation accepts that material cooperation in evil will sometimes occur in Catholic institutions - indeed by logical extension of the fourth *Reply*, circumstances in individual cases may sometimes be such that Catholic institutions.

\footnote{The interpretation given here is, it is suggested, more supportable. A general policy on material cooperation in some particular evil amounts to an institutional commitment to facilitate that evil. Such a policy would become necessary only when it is foreseen that the question of cooperating in this evil will arise many times, and indeed the very purpose of formulating such a policy is to provide consistent guidance for repetitive episodes of cooperation. But general policies are, of their nature, blunt instruments: they prove their value when they permit one to act without having to engage in close analysis of every fine detail or every particular circumstance surrounding every individual episode or action. Yet, as has been argued, precise assessment of all relevant circumstances is of the very essence of the traditional principle of material cooperation. On these grounds the interpretation of the fifth *Reply* as given here is more consistent with the tradition: individual episodes of material cooperation are to be assessed on a strictly case-by-case basis and, given a sufficiently serious reason, may be lawfully commissioned on the same basis. This interpretation neither contradicts nor ‘forces’...}
consider themselves constrained to cooperate in evil. Clearly this is not a preferable state of affairs, and individual cases can in no way be ‘generalised’ into formal policies, but the Congregation seems to acknowledge that material cooperation in evil will be, and on rare individual occasions must be, a legitimate option for Catholic institutions. Unfortunately the concise form of the Replies allows no opportunity for the Congregation to develop these important considerations.

The Declaration on Procured Abortion (1974) accepts that civil law must sometimes tolerate a lesser evil in order to avoid a greater evil, and that it must always respect the freedom of individual conscience. But there are still moral absolutes: ‘the life of the child takes precedence over all opinions. One cannot invoke freedom of thought to destroy life’. The declaration establishes the teaching later repeated by Pope John Paul II in Evangelium vitae:

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\ldots \text{ a Christian can never conform to a law which is in itself immoral, and such is the case of a law which would admit in principle the liceity of abortion. Nor can a Christian take part in a propaganda campaign in favour of such a law, or vote for it. Moreover, he may not collaborate in its application.}
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However, as noted with the teaching of Pope John Paul II, the reference here seems to be to formal cooperation only: to campaign or vote for an immoral law is clearly to consent to it. It is true that ‘[d]ivine law and natural reason . . . exclude all right to the direct killing of an innocent man’, but ‘direct killing’ requires either an explicit or implicit intention to kill - which would constitute formal and not material cooperation. The Declaration does not address the latter.

The Response on Sterilisation in Catholic Hospitals (1975) deals with two issues: the general question of cooperation in therapeutic sterilisation, and the specific question of cooperation in sterilisation in Catholic hospitals. The first paragraph defines direct sterilisation and prohibits it, according to the tradition. The

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162 Procured Abortion, 20.
163 Procured Abortion, 22.
164 Procured Abortion, 14.
second paragraph denies doctrinal authority to contrary theological opinion. The third paragraph applies the doctrine to Catholic hospitals.

First, it is important to note that the third paragraph focuses on institutional cooperation in sterilisation which is ‘officially approved or admitted’, and not on sterilisation as such. The argument is more or less that employed in the Replies to Questions: official approval or formulation of policy in favour of cooperation in sterilisation amounts to official and generalised acceptance of an evil practice. However a second dimension is added: not only ‘official approval’ of direct sterilisation, but even more so ‘its administration and execution according to hospital regulations is something of its nature - that is, intrinsically - objectively evil’. The reasoning is sound: it is impossible to officially approve, to administer and to execute an intrinsically evil deed without intending to do so. The very existence of a regulation for this purpose would amount to an institutional ‘intending’ which would constitute at least implicit formal cooperation. The official approval (administration, execution) itself is intrinsically evil because, as formal, it shares the same moral character as contraceptive sterilisation.

Second, given that the danger of scandal and of ‘creating misunderstanding’ is avoided, there is a broad statement which some moralists have taken to imply that material cooperation in therapeutic sterilisation may be permitted in individual cases:

The traditional teaching on material cooperation, with its appropriate distinctions between necessary and freely given cooperation, proximate and remote cooperation, remains valid, to be applied very prudently when the case demands it.

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165 Sterilisation, 3a: ‘cooperatio institutionaliter adprobata vel admissa’
166 Sterilisation, 3a: ‘Nam officialis approbatio sterilisationis directae, et a fortiori eiusdem secundum statuta nosocomii regulatio et executio, est res in ordine obiectivo indole sua seu intrinsece mala, ad quam hospitale catholicum nulla ratione potest cooperari.’
Again the Congregation does not specify which variation of the ‘traditional teaching on material cooperation’ it wishes applied, and again it is clear that there can be no institutional policies favouring cooperation in sterilisations.

Here the Congregation does not dissemble: firstly, an official policy would commit the institution to general endorsement of cooperation, whereas evaluation of cases on an individual basis enables the hospital to formulate a fully reasoned response to the unique circumstances of each case; secondly, any cooperation which may be offered on an individual case-by-case basis could only be legitimate material cooperation, which of its nature is clearly distinct from (that is, remote from and contingent to) the intrinsic evil of contraceptive sterilisation; thirdly, although it is not stated here it is reasonable to assume that the Congregation would wish to affirm the position it first expresses in the Replies to Questions: a justifying reason in these cases might ‘constrain’ and not merely ‘permit’ the hospital to cooperate.

The Declaration on Euthanasia (1980) acknowledges that while changes in prevailing culture have influenced the way people view suffering and death, there has also been fairly universal acceptance of the basic rights of the human person. Since the question of euthanasia is one of fundamental human rights, no-one should accept arguments based on ‘political pluralism or religious freedom’ to deny those rights.168 This is a clear rejection of arguments based on ‘tolerance’ and ‘respect for consciences’, at least with reference to the defence of human life itself.

Euthanasia is defined as ‘an action or omission which of itself or by intention causes death, in order that all suffering may in this way be eliminated’.169 It is ‘a

168 Euthanasia, p.511 [Flannery 2].
169 Euthanasia, p.512 [Flannery 2]. More or less the same definition is used in CCC 2277. But in Evangelium vitae 65 Pope John Paul introduces a slight variation: euthanasia is ‘an act or omission which of itself and by intention . . . ’ (Emphasis added.) If the word ‘intention’ in this text means both the agent’s intention and the intentionality of the action, then the use of ‘and’ rather than ‘or’ makes no material difference to the definition. But if ‘intention’ here means only the agent’s intention, then this variation represents a significant ‘tightening’ of the definition of euthanasia, for it then excludes from ‘euthanasia’ actions which only ex fine operis (but not ex fine operandis) bring about the death of the patient. This ‘tightening’ seems to sit more happily with the existing teaching, expressed in the Principle of Double Effect, which deals with administration of pain-relief which, in sufficient quantity, will also hasten the death of the dying patient. See Pope Pius XII, ‘Address Trois questions religieuses et morales concernant l’analgésie, to the Italian Society of Anaesthesiology.’ (24 February 1957). AAS 49(1957) 129-147.
crime of the utmost gravity’: ‘... nothing and no one can in any way permit the killing of an innocent human being ... nor can he or she consent to it, either explicitly or implicitly.’

The interpretation of ‘permit’ here is important. If ‘permit’ is taken only in an active sense, then the Declaration clearly rules out formal cooperation (that is, cooperation by actively granting permission); but if ‘permit’ is taken in a passive sense it could mean that positive steps should be taken to prevent euthanasia (that is, not even passive permission is tolerable). On the other hand, a moral prohibition on ‘permitting’ an evil is meaningful only when the person prohibited is in such a position that their ‘permitting’ is morally significant. If one cannot prevent the evil in any case, it does not seem meaningful to suggest that one should not ‘permit’ it.

The precise meaning of this phrase is unclear, but it may be that in this passage there is at last an indication that not even material cooperation is permitted when one is in any position to prevent such a grievous ‘violation of the divine law, an offence against the dignity of the human person, a crime against life, and an attack on humanity’. If this is the case, the argument seems to be that since human life is the most basic of all human goods, charity and justice demand that those who are able to prevent euthanasia can never permit it to occur, much less explicitly approve it. There is no question here of any ‘balancing’ of goods (my life against the life of the patient), and the order of charity cannot be invoked in order to provide grounds for anyone to believe that they may cooperate in any way - materially or formally, actively or passively - in a direct attack on the life of an innocent human being.

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170 Euthanasia, p.513 [Flannery 2].
171 Thus Alphonsus teaches that one may not kill the innocent in order to save one’s own life (de caritate 66). These grounds support an argument that this absolute prohibition on all forms of cooperation applies to intrinsically evil acts which constitute direct attacks on human life itself (abortion, euthanasia). But it is not immediately obvious that the same prohibition applies to intrinsically evil acts which do not constitute direct attacks on human life - acts such as contraceptive sterilisation. This will be clarified below (4.3.2), but at this stage it is interesting to note that a comparison of the language and content of these four CDF documents could suggest some distinction between kinds of intrinsically evil acts.
The Congregation for the Doctrine of the Faith has made a great contribution to the development of the principle of material cooperation, on three points in particular:

- **First**, material cooperation is possible where a serious reason ‘constrains’ one to cooperate. This is much more than ‘permitting’ cooperation, for ‘constraint’ implies that a different question is asked: not ‘what does the law permit me to do?’, but ‘what are my obligations under the circumstances in this situation?’ By implication the Congregation appears to concede that, at times, a Christian person or institution may be obliged to cooperate materially in evil - that is, cooperation may be an imperative. But it gives little indication of the grounds on which such a judgment might be reached.

- **Second**, a Catholic institution can never establish any kind of policy of cooperation in evil, since the making of such a policy would be damaging to public morality and would commit the institution to the acceptance of practices which the Church believes are evil. Nevertheless the Congregation apparently allows that grave circumstances may lead a Catholic institution to judge in a particular case that it should cooperate materially in evil. A ‘case-by-case’ approach is necessary, but this does not eliminate all material cooperation in evil.

- **Third**, the Congregation seems to teach that when an action is properly defined as ‘abortion’ or ‘euthanasia’, and when one is able to prevent such evils, then no cooperation of any kind is permissible because these are offences against the most basic of human rights, the right to life itself. Pope John Paul II would clarify this further: because they are offences against such a basic right, actions which are adequately defined as ‘abortion’ and ‘euthanasia’ are intrinsically evil.172

### 3.2.3 Other Curial Interventions

172 *Evangelium vitae*, 62: ‘No circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.’ However, as noted, the Pope’s treatment of cooperation in these evils is restricted to formal cooperation. It is not immediately clear why he did not deal with the question of material cooperation in these acts, nor take the opportunity to formally extend the Congregation’s exclusion of material cooperation to embrace other intrinsically evil acts such as contraceptive sterilisation. Possibly these matters would have required a more detailed analysis than the encyclical genre normally allows.
The document *Dans le cadre* (1981) addresses basic ethical issues concerning the gravely ill and dying.\footnote{Pontifical Council ‘Cor unum’, Document *Dans le cadre. ‘Some Ethical Questions concerning the Gravely Ill and the Dying.*’ (27 June 1981). This translation taken from Erminio Lora, ed. *Enchiridion Vaticanum 7: Documenti Ufficiali della Santa Sede 1980-1981.* (Bologna: Dehoniane, 1985) nn.1234ff.} It reminds nursing staff (who must follow the instructions of attending physicians) that it is absolutely forbidden to perform any action which is, in fact, an act of direct killing: neither the doctor, nor the family, nor the patient himself can release nurses from responsibility for their own actions.\footnote{*Dans le cadre, 7.4.2* (n.1276). In certain circumstances an action which only indirectly leads to a shortening of life may be performed - an application of the Principle of Double Effect.} A nurse’s subordinate position may place her in a position of cooperation in evil acts, but she may never commission such actions on her own initiative, since hers cannot be anything other than *material cooperation* justified only by a necessity which is evaluated according to the gravity of the act, the degree of participation in the whole process and in the production of the immoral effect, and the motives which prompt the nurse to obey [*aux raisons qui incitent l’infirmière à obéir*] (fear of personal harm in case of refusal, an important good to be safeguarded without exposing herself to the risk of dismissal). Insofar as her position allows, the nurse who finds herself caught up in practices which her conscience condemns, will nevertheless seek to give witness to her convictions.\footnote{*Dans le cadre, 7.4.2* (n.1276).}

Three points to note from this text are that ‘a necessity’ may justify material cooperation; that this justification is referred to the ‘production of immoral effects’ and not, apparently, to the sin of the principal agent (presumably, the physician); and the relative weight of the nurse’s motives (sufficiently serious reason) to cooperate.\footnote{By numbering the nurse’s ‘motives’ among factors in the ‘necessity’ which justifies cooperation, this passage seems to imply that these motives do not of themselves constitute a justifying reason to cooperate. Unfortunately the text does not develop this point.}

The third section of the *Catechism of the Catholic Church* (1994)\footnote{Although the Catechism was formally promulgated in 1992, the official Latin text was not prepared until 1994. Since the English version was taken from the Latin text, the 1994 dating is followed here.} summarises the Church’s moral teaching but provides no comprehensive treatment of cooperation. It offers a modified form of the traditional modes of cooperation in n.1868:
Sin is a personal act. Moreover, we have a responsibility for the sins committed by others when we cooperate in them:
- by participating directly and voluntarily in them;
- by ordering, advising, praising or approving them;
- by not disclosing or not hindering them when we have an obligation to do so;
- by protecting evil-doers.\(^{178}\)

While teaching that induction and scandal are to be avoided,\(^{179}\) the *Catechism* does not distinguish the unique kind of participation which constitutes cooperation properly so called. Accordingly it is unclear whether by ‘participating directly and voluntarily’ the *Catechism* means formal cooperation, material cooperation, or participation as a form of induction. In relation to cooperation in abortion and suicide it refers to formal cooperation only,\(^{180}\) but makes no comment at all on material cooperation in these evils, or on the significance of such categories as proximity and necessity.

The *Charter for Health Care Workers* (1995) makes reference to the problem of cooperation only indirectly.\(^{181}\) Physicians who ‘voluntarily contribute to the establishing and support of a connection between prenatal diagnosis and abortion’ would cooperate formally with abortion;\(^{182}\) and laws which encourage medical staff ‘to cooperate proximately in direct abortion’ must not be obeyed but must be refused ‘politely but firmly’.\(^{183}\) Equally, medical staff ‘cannot cooperate in any euthanistic practice even at the request of the one concerned’ because such cooperation would contradict their identity as ‘guardians of life’.\(^{184}\)

Finally, the *Vademecum for Confessors* (1997) returns to the problem of ‘cooperation in the sin of a spouse who voluntarily renders the unitive act

\(^{178}\) CCC 1868. Compare with Alphonsus, *de restitutione* 557.

\(^{179}\) See CCC 1789 (induction) and 2284-2287 (scandal).

\(^{180}\) In the CCC, 2272 (‘Formal cooperation in an abortion constitutes a grave offense.’) makes no reference to material cooperation; and 2282 (‘Voluntary co-operation in suicide is contrary to the moral law’) could mean either formal or material cooperation, but the context implies the former.


\(^{182}\) *Charter*, 61. This would include the connection created by Italy’s Law 194/1978: see 4.2.1 below.

\(^{183}\) *Charter*, 143.
infecund’.\textsuperscript{185} It makes an important distinction between cooperation properly so called on one hand and, on the other, cooperation which comes about as a result of ‘violence or unjust imposition on the part of one of the spouses, which the other spouse in fact cannot resist’\textsuperscript{186} The traditional conditions for legitimate cooperation are repeated: the cooperator’s act cannot be itself illicit, and there must be a proportionately grave reason to cooperate. A third condition, apparently unique to the conjugal context and drawn from the teaching of Pius XI, is that the cooperating partner must seek to help the other spouse ‘to desist from such conduct’\textsuperscript{187} This emphasises the primary focus of conjugal cooperation which, in keeping with the tradition, is the sin of the other spouse rather than the further evil effects of contraception.

\textsuperscript{184} Charter, 148, 150.
\textsuperscript{186} Vademecum, 13.
3.3 Conclusions: The Principle in Moral Theology Today

The Second Vatican Council’s call for a more positive and person-centred view of the Christian moral life has prompted numerous attempts to ‘re-invent’ Catholic moral theology. In the course of this renewal many critical issues have surfaced: methodological issues such as the use of Scripture and the existence of a specifically Christian ethics; fundamental issues such as the direct-indirect distinction, conscience, moral norms and natural law; and ecclesiological issues such as the relationship between the magisterium and the theological community.

The treatment of material cooperation since Vatican II provides a good example of some aspects of this renewal, and of its ‘unevenness’ in general.

3.3.1 The Contribution of Modern Moral Texts: Context

The treatment of cooperation in post-manual moral texts differs from the manualist tradition less in structure and content, and more in terms of the context of cooperation and its meaning in Christian life.

In Häring’s *Free and Faithful in Christ*, for example, the structure of the principle has not changed substantially from his first text, but the context has. He acknowledges that the Christian’s duty to actualise Christ in the world - the mission to be ‘yeast in the dough, salt to the earth’ - cannot be fulfilled without the risk of cooperating in evil, since the only way to avoid cooperation completely is to withdraw from the world. This casts significant light on the meaning of the principle: it is not intended simply to help moral agents avoid personal sin, but also to help them to fulfil their Christian vocation. The traditional principle serves to

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188 For a summary and assessment of these, see Pinckaers, *Sources* 95-103 and 315-323.
189 Josef Fuchs SJ has written a great deal on these issues: see for example his *Christian Ethics in a Secular Arena*. (Washington: Georgetown University Press, 1984). Most recent histories of moral theology, and indeed most recent moral texts, attempt a summary of these debates.
191 Häring 1979, 479.
define the ‘lower boundary’ of the Christian’s response: in living out one’s personal vocational commitments no formal involvement in evil is permissible, and nor is material involvement unless this is justified by a serious reason. But the traditional principle provides no more positive guidance than this, whereas Häring offers a much richer interpretation of the principle.

Scandal also takes on a particular meaning in this context. It still concerns ‘leading one’s neighbour into sin’, but now it also constitutes a contradiction of Christian witness: even if one’s cooperative act seems justified on the grounds that the principal agent will sin anyway, cooperation may still be ruled out if it risks contradicting the very witness one seeks to give.

Häring acknowledges that the mission of Christian witness is more complicated today because society is more pluralist than predominantly Christian.192 ‘Pluralism’ here does not mean simply ‘non-Catholic’ or ‘non-Christian’ in the sense of religious affiliation: it means not universally founded on Christian moral values or directed by Christian virtues - hence Häring’s position on ‘respect for sincere conscience’ and ‘tolerance’.193 In light of modern pluralism, Häring’s position might bear this interpretation: if a Christian’s duty is to make Christ present in the world and to proclaim the saving truth of the Gospel, a Christian certainly needs to respect the consciences of all persons; but there is an additional reason to respect those who do not share Christian values, for it is precisely through engaging these persons that the Christian is able to proclaim the Gospel. Häring can be interpreted as arguing that an ‘apostolic imperative’ may justify tolerance of others’ erroneous consciences, and perhaps at times even justify material cooperation in their objectively evil actions.

Häring’s use of these concepts has met stiff opposition: as noted, both Germain Grisez and Pope John Paul II refute their validity, at least with regard to intrinsically evil acts.194 But whether or not one agrees with his conclusions, Häring’s picture of the Christian’s role in a pluralist society is a valuable

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192 Häring 1979, 482.
193 Häring 1979, 485-486. On pluralism as a context for cooperation, see below, 4.1.
194 LCL, 441; Evangelium vitae, 71.
contribution to what he calls the ‘right vision’ and ‘main perspectives’ of Christian moral life today. But because he does not develop metaphysical underpinnings for his position, it is difficult to imagine how the traditional principle of cooperation can be made to fit this new vision in practice.

The ontological and eschatological orientations of Peschke’s interpretation reveal another perspective on the problem of cooperation. Moral behaviour concerns realising one’s nature as human by deciding and actualising the kind of person one should be, and therefore determining the kinds of actions one should or should not commission. He realises that the obligations of Christian charity create certain responsibilities but, like Häring, Peschke is unable to provide a structure of legitimate cooperation to match his vision.

This is the significance of Grisez’s achievement. He too provides an overarching vision of Christian moral life: the basic human goods which fulfill the agent precisely as human, and the personal vocational commitments by which one lives out the Christian life. But unlike Häring and Peschke, Grisez develops a structure to support his vision: the imperative power of these basic human goods and vocational commitments is captured in the modes of responsibility. This grounds a new dimension of meaning: the challenge of cooperation in evil is not primarily about ‘what the law allows’, but ‘what my foundational faith commitment to God requires of me’. Here Grisez accurately reflects the positive trend in modern moral theology.

However, his focus on the wider implications of the principal agent’s act, and on whether the cooperator should accept those implications, makes Grisez’s theory vast and difficult to manage. This highlights a fundamental contradiction in his position: while Grisez has located cooperation within the context of personal vocation and Christian witness, he effectively emphasises only the Christian’s duty not to cooperate in evil. A Christian may cooperate only if none of the basic human goods are offended. His modes of responsibility notwithstanding, what Grisez does

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196 See Peschke 1986, 8.
not explore sufficiently is the possibility that, in view of the broader social implications of cooperation, the Christian may at times have a vocational duty to bring about some basic human goods precisely by cooperating in an evil - albeit only mediately, materially, remotely and contingently - and even though other basic human goods may be placed at risk.

Furthermore, Grisez’s ‘modes of responsibility’ are really a complex set of exclusions which must be applied in toto in order to arrive at a ‘remainder’ of allowable courses of action. The question one might pose is: given the complex structure of social and economic life today, and the plurality of values which come into play on many occasions, is it really possible in practice to analyse every situation in as much detail as Grisez demands? To put it more simply: in today’s complex world, is Grisez’s interpretation of cooperation any real improvement on the traditional principle?

It is significant that in developing his theory Grisez takes the standpoint of the philosopher he is, intent on covering every possibility and clarifying every shadow of uncertainty. His approach is overwhelmingly objective and logical, even magisterial. Alphonsus, in contrast, took the standpoint of the pastor he was: his concern was to offer authoritative and reliable advice which could be applied in practice by pastors in their daily dealings with ordinary people in concrete situations. The moral tradition generally followed Alphonsus, for good reason: the aim of moral theology in the life of the Church is to help ordinary people respond faithfully to God in the ‘messiness’ of daily life. Importantly, Vatican II’s agenda for the renewal of moral theology retained this practical orientation.

3.3.2 The Contribution of the Magisterium: Content

197 This point is developed eloquently by Pope John Paul II in his Apostolic Letter Spiritus domini. ‘On the Occasion of the Bicentenary of the Death of St Alphonsus M de Liguori.’ (1 August 1987). AAS 79(1987) 1365-1375.
As noted, the Congregation for the Doctrine of the Faith has made a great contribution in recent years to developing the content of the principle of cooperation. The fact that this development did not come through the successors of the manualists (such as Häring, Peschke and Grisez) is curious. It may be that modern moral texts are still infected with a remnant of the ‘manualist’ tradition which requires them to attempt to cover the *entire* field of moral theology. At a time when (as McCormick notes) moral theology is more concerned with methodological, fundamental and ecclesiological issues, this means that much of the energy for renewal is put more into foundational matters and less into specific moral problems such as cooperation.

This seems to be the case at least on the ‘macro’ level of moral texts. At the local level, of course, the modern moral theologian still grapples with the ‘messiness’ of life in the world and must offer appropriate advice to real people in real situations. The crucial contributions of the Congregation for the Doctrine of the Faith arose from exactly the same necessity. In this light the content of the Congregation’s interventions take on a particular hue: by implying that Catholic institutions may feel ‘constrained’ in individual cases to cooperate mediately and materially in an evil, the Congregation recognises the extreme difficulties often encountered by many individuals and institutions in the daily course of their Christian lives in the world.

This reveals an aspect of the authentic nature of renewal in moral theology: it evolves in response to the concrete needs of Christian persons seeking assistance in responding to the call of God in their lives. Certainly this was its meaning for the great pastor, Alphonsus, and whatever their shortcomings in preparing confessors, this was also the intention of the manuals. While it may not have figured as clearly at the time in the minds of the Council Fathers, the same desire underlies Vatican II’s call for renewal: that in the midst of the world they engage every day, moral theology should help the people of God to *‘bring forth fruit in charity for the life of the world’.*

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198 *Optatam totius*, 16.
This is also the significance of Häring’s insight into the role of the Christian person in the world, and the Congregation’s apparent position on the inevitability of cooperation. It is not the direction of moral theology which shapes the lives of God’s people, but the lives of God’s people which shapes the direction of moral theology.

3.3.3 The Contribution of the Moral Agent: Experience

Germain Grisez, in almost a ‘throw-away line’, hints at the unique and irreplaceable role of the moral agent in the whole process of moral decision making. The Christian person wishes to know what it is that God wills. Confronted with the possibility of cooperation in evil, he or she must weigh all reasons for and against cooperating, in the light of the integral human goods and his or her fundamental vocational commitments. However, even after much deliberation, it may be that no particular option seems imperative.

In rare cases the arguments for and against [cooperation] may be so well balanced that the perfectly prudent person would find them equally strong, so that either course would be morally acceptable . . .

In that case, one should discern. Assuming that one has already gathered the necessary information and aroused one’s feelings related to faith and relevant commitments of personal vocation, this discernment will not be difficult. At this final moment, though not a moment before, the conscientious person rightly sees the indication of God’s plan and will in what his or her better, Christian self feels comfortable with.199

Two aspects of this comment merit attention. First, it could be interpreted to mean that God has a single intelligible option in mind which it is the agent’s moral duty to discover. In this case, when the rational processes have failed to deliver moral certainty, one must ‘discern’ the one right answer God has in mind - presumably through prayer and contemplation, which seem here to be almost in the nature of a ‘last resort’.

But an alternative initial assumption leads to a different conclusion. It may be in some cases that, when one is faced with several apparently equally possible
options, God allows the moral agent to choose any of them with equal liberty. That is, in this case God may not have in mind a single ‘right’ option which one must simply discover, but instead chooses a different way to honour the freedom with which He has gifted each person. This is fitting, and certainly in line with the New Testament image of God as ‘Father’ and Christians as ‘adopted sons through Jesus Christ’. It reflects a more dignified and ‘elevated’ notion of sonship than one which demands only blind obedience to the single, certain, fixed and mysterious will of God. It also honours the dignity of human reason: while it may be imperfect and ultimately unable to attain the heights of God, reason is part of God’s gift to the human person and therefore is normally an adequate process by which to direct one’s moral actions.

Second, however, Grisez’s ‘solution’ - discernment - reconnects moral theology with the fundamental context of Christian moral decision-making. The Christian leads a moral life as a disciple learning to follow the Master. It is in prayer and contemplation, and in growing likeness to Christ, that one finds the heart of the moral life, because this is where the moral agent’s identity as Christian (‘man redeemed by Christ’) is grounded. Practical knowledge of good and evil is had most profoundly by a kind of ‘connaturality’, a non-discursive ‘self-knowledge in God’, by which the agent knows ‘what God wants me to do’. By Christian moral discernment, which transcends mere rational analysis, the moral agent discovers not only the nature and extent of moral obligation (the options one ‘ought’ to pursue) but also the true nature of the liberty given by God: one is free to choose.

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199 DMQ, 889.
200 Ephesians 1:5; see also John 1:12; Romans 8:14-17; 1 John 3:1;
202 Austin Fagothey SJ [*Right and Reason: Ethics in Theory and Practice*. 4th edition. (St Louis: C V Mosby, 1967.)] describes ‘connatural knowledge’ as ‘nonconceptual, nonlogical, nondiscursive knowledge, rational in the sense that it is done by the reason or intellect, nonrational in the sense that it is not argumentative or demonstrative or scientific . . . We should not be disturbed at being unable to describe it more clearly, for it is the nature of prescientific knowledge to be obscure, unformulated, and unreflective.’ (52-53). He adds that knowledge by connaturality ‘is not immune from error and needs the criticism, correction, and development ethics can give it.’ (53). Chapter Five of the present work will make use of a similar theory of moral knowledge developed by Pinckaers in *Sources*, 49-74.
It is only prayerful discernment which enables the Christian to ‘bring forth fruit in charity for the life of the world’, because moral discernment necessarily demands attentiveness to the ‘life experience’ which the Christian brings to prayer. Those who listen to the Word of God openly and in union with the Church will certainly know that they are called to make moral choices which accord with and flow from that experience of the Word. But there is also a sense in which those who approach the Word do so through the mediation of their experiences of the world, experiences of good and evil, experiences of freedom and constraint, and experiences of apparently inescapable complicity in the sins of others. Consciously or not, the agent brings these experiences to the process of moral discernment; they mediate the Christian’s encounter with the Word, and the Word sheds His light on them. This occurs in the very person of the moral agent, who often thereby becomes acutely aware of new meanings, new imperatives and new solutions - or new dimensions of existing solutions. This awareness occurs in that ‘most secret core’ and ‘sanctuary’ of the person in which ‘he is alone with God whose voice echoes in his depths’.

In its deepest meaning conscience is thus revealed primarily not as a place but as an encounter; not as a faculty but as a meeting of Word and experience which bears an imperative character.

The fourth chapter of the present work will examine some aspects of the Christian’s experience of apparently inescapable complicity in evil, and the attempts of some contemporary moralists to interpret this experience. The final chapter will attempt to describe a theological interpretation of institutional cooperation in evil, in line with the Church’s desire for a renewed moral theology.

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203 See Pinckaers, Sources, 322-323. This theme is developed in more detail below, at 5.1.3.
204 This bears out Fuchs’ insight into the primacy of ‘personal morality’ in the teaching of Vatican II. See Josef Fuchs SJ, ‘A Harmonisation’, 480-481.
205 Gaudium et spes, 16.
Chapter Four

THE CONTEXT OF COOPERATION

4.0 Introduction

The Second Vatican Council empowered the Catholic Church to rediscover its mission to be ‘yeast in the dough, salt to the earth’. Behind this development was a dawning realisation that ‘the world’ is much more than merely pagan territory waiting to be converted to the one true faith, and the Catholic Church much more than ‘the only State religion’.

Rather, the world is the environment in which the Church is immersed and with which it must necessarily interact in order to exist and to fulfil its mission.

The Church’s need to address real moral problems encountered by Christian people in this world prompts a re-evaluation of the principle of legitimate cooperation. It has already been noted that, in the response to the lived experience of its members, the Church itself seems to hold that a Christian may at times be required (‘constrained’, rather than merely permitted) to cooperate materially in evil done by others.

This marks an apparent development of the traditional doctrine.

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1 Among errors condemned in the Syllabus of Errors of 1864 were the propositions that ‘The Church has no power to define dogmatically that the religion of the Catholic Church is the only true religion’, that ‘In our age it is no longer advisable that the Catholic religion be the only State religion, excluding all other cults’, and that ‘Therefore it is praiseworthy that in some Catholic regions the law has allowed people immigrating there to exercise publicly their own cult.’ See J Neuner SJ and J Dupuis SJ, eds. The Christian Faith in the Doctrinal Documents of the Catholic Church. 2nd edition. (Bangalore: Theological Publications in India, 1976) nn.1013/21, 1013/77 and 1013/78 respectively.

2 Gaudium et spes, 40: ‘Thus the Church, at once ‘a visible organisation and a spiritual community’, travels the same journey as all mankind and shares the same earthly lot with the world; it is to be a leaven and, as it were, the soul of human society in its renewal by Christ and transformation into the family of God. . . . Furthermore, the Catholic Church gladly values what other Christian Churches and ecclesial communities have contributed and are contributing cooperatively to the realisation of this aim. Similarly it is convinced that there is a considerable and varied help that it can receive from the world in preparing the ground for the Gospel, both from individuals and from society as a whole, by their talents and activity.’

3 See 3.2.2 above.
But far from superseding any traditional exposition of the principle based on
the metaphysics of the human act, this approach demands that the very closest
attention be paid to the concrete conditions surrounding every case of cooperation -
to the real intentions, actions, and circumstances (including the social, political and
cultural circumstances) in every particular instance. Such detail is necessary if the
Christian person is to be afforded proper respect as the locus of morality. Human
experience, including actual experience of the culture and society in which one lives,
is much more than merely incidental to moral life: it is the very ‘stuff’ of morality.

This, at its heart, is the meaning of natural law: it is in and through our
human experience that God reveals moral truth. Natural law theory is derived from
reflection on particular moral experiences; this reflection reveals universal values
and generates moral norms; these norms, in turn, are intended to guide moral
responses in particular instances. Natural law theory, the bulwark of traditional
Catholic morality, begins and ends in human experience of life in the world.
Therefore how we experience the world - and how human beings structure their life
in the world - are of enormous importance to Christian morality.

The focus of this chapter is the context in which cooperation occurs. This is
taken in three steps: a brief reflection on the phenomenon of pluralism in
contemporary societies and on various Christian attitudes towards the challenge of
‘evil done by others’ (4.1); a survey of some recent theological writings on material
cooperation which identify and address some of the challenges of cooperation (4.2);
and some observations on the specific problem of institutional cooperation (4.3).
This sets the scene for the final Chapter which proposes a theological framework
within which to view institutional cooperation.

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4.1 The Contemporary Context

If moral behaviour may be defined as the human person’s manner of engaging the concrete reality of the world, then the problem of cooperation in evil marks a significant point of contact between tangible outer reality and the moral agent’s hidden inner life. Therefore an accurate assessment of the morality of cooperation - including institutional cooperation - demands an exact account of the social, historical and cultural contexts in which it occurs. There have been enormous social and cultural changes in the world in the last half of the twentieth century, so it is not surprising that, after a long period of virtual dormancy following Alphonsus Liguori and a gradual reawakening of moral theology prior to Vatican II, there should have been (in some quarters, at least) a considerable reassessment of cooperation over the last forty years.

It is instructive, for example, to compare Pietro Palazzini writing in 1968 with Dionigi Tettamanzi writing just ten years later. Palazzini takes the traditional line: the nine modes delimit cooperation, which he sees more or less exclusively through the eyes of the individual moral agent. Tettamanzi enters his analysis through a rigorous study of the concrete social and cultural situation of the particular question he considers (abortion laws in Italy); he makes no reference at all to the nine modes, but places the problem of cooperation in a much wider perspective. This contrast in approaches is in some ways typical of the different foci and processes of contemporary moral theology.

The Fathers of Vatican II realised that the role of the Church with respect to civil society is evolutionary rather than stationary: whatever the status of the Church in itself, the world is changing rapidly and it is with this changing world that the Church must interact. The implications are enormous. In questions regarding its ability to engage the world in moral dialogue the Church can no longer cast itself as a static entity, an institution preserved untouched by the society which surrounds it. It must always consider itself in its concrete reality as ‘Church-in-the-world’, an

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entity which of its essence is related to - and therefore, in some respects, partially defined by - its social context. Recent European and Asian history has demonstrated that even the most autonomous ‘internal’ workings of a local church can be profoundly affected - and sometimes radically redefined - by the political, cultural and social context in which the church finds itself.6

The aim of this section is to characterise aspects of the social context in which contemporary moral decisions must be made, and to outline some attitudes towards evil done by others.

4.1.1 Pluralism

It is estimated that there were 260 aboriginal ‘nations’ or tribes in Australia in 1788, the year of European foundation.7 The majority of the first white settlers were British (although other European nations were also actively seeking foundations in the ‘new’ country),8 but at the end of the second millennium the people of Australia include migrants or descendants of migrants from some 200 countries.9 There have been corresponding shifts in patterns of religious belief and practice in the last half of the twentieth century: in 1993 only 13% of Australians claimed to attend church on a weekly basis, and overall confidence in churches lagged behind confidence in schools, business and industry, but ahead of confidence in government, the legal system and the public service.10

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6 One thinks, for example, of the restrictions under which the Church once operated in Hungary, and under which it still operates in China.
8 D F Bourke CM notes that a major factor in Britain’s decision to establish a colony in Western Australia was a desire to prevent the French from doing so! See Bourke’s The History of the Catholic Church in Western Australia 1829-1979. (Perth: Vanguard, 1979) 3.
9 Mackay, Generations, 8. Mackay [citing David Day, Claiming a Continent. (Sydney: Angus and Robertson, 1997)] reports a great public outcry when it was revealed in 1936 that only 97% of Australian residents were of British stock. See Mackay’s Turning Point: Australians Choosing their Future. (Sydney: Macmillan, 1999) 37.
10 Philip Hughes et al., Believe It or Not: Australian Spirituality and the Churches in the 90s. (Kew, Victoria: Christian Research Association, 1995) 14 and 69 respectively. Data are taken from the National Social Science Survey 1993.
So whatever it may have been in the past, Australia does not now possess a single culture or a single set of moral values to guide its institutions and drive its functioning as a nation.\footnote{11} Australia today is a pluralist society.

In this context ‘pluralism’ has several meanings. Taken in its simplest sociological sense it means ‘multiculturalism’, the bare phenomenon of different cultural and ethnic groups sharing a single society, as so evident for example in Australia and the USA.\footnote{12}

Multiculturalism is a factor in a second form of pluralism, the existence of a multiplicity of moral values and moral priorities within a single society. Moral pluralism may manifest itself in the variety of moral values held by different people (for example, the value of ‘success’ versus the value of ‘charity’). Alternatively, moral pluralism may arise between individuals not because they hold differing values, but because they hold the same values in differing orders of priority: for example, some may rate ‘success’ more highly than ‘charity’, but others vice versa.

However it arises, moral pluralism seems to be a generational phenomenon: today’s society seems more open and accepting of behaviours previously considered immoral or improper. For some this signifies a threat to traditional moral standards, the collapse of public morality, and a sign of social disintegration. For others it is no more than a sign of apparently ‘normal’ processes of change which modern society, and especially civil authority, must simply manage.\footnote{13}

\begin{itemize}
\item [11] Hugh Mackay holds that Australia was always a ‘diverse’ society: ‘The nature of our diversity may have changed - less religious, more generational, for example; less overtly class-based, more ethnic - but this has always been a hybrid culture and the idea of a once-homogenous Australia, based on the ethos of the bush, is largely a myth.’ Mackay, Turning Point, 35.
\item [12] Mackay notes (Turning Point, 40-41) that where the word ‘multicultural’ may convey a certain negativity arising from discredited policies of assimilation, the word ‘cosmopolitan’ is happily embraced in celebration of ethnic diversity - a much richer and more pleasing concept.
\item [13] John Kekes, The Morality of Pluralism. (Princeton NJ: Princeton University Press, 1993) 4-5: ‘We used to see homosexuality as harmful, but we are becoming convinced that homosexuals are no better or worse than others, and so we are changing our minds about the harm it does. This change, however, alters our morality no more significantly than Christian morality was altered by the growing conviction that witches should not be burned . . . To point to some ways in which the moral values of a period differ from those of the previous one may, therefore, provide evidence for no more than the most routine moral change.’ This position assumes that a proper moral assessment of homosexuality is based on its consequences, and that moral change in society is normal. Neither assumption is necessarily valid.
\end{itemize}
But in a third sense ‘pluralism’ refers to a concept of morality itself: not merely a plurality of cultures or differing moral values, but differing ideas of what morality is. Where *monism* holds that there is only one valid system of moral values common to all people, and *relativism* holds that moral values depend on the choices of each individual, *pluralism* holds a position somewhere between the two.

Some moral values are indeed held in common (such as justice, truth, common good), but human beings are also motivated by ‘non-moral’ values (such as beauty, well-being, creativity). The ‘business’ of ‘morality’ in this view is for each

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See also Ronald F Thiemann, *Constructing a Public Theology: The Church in a Pluralistic Culture.* (Louisville: Westminster/John Knox, 1991) 38: ‘The deep moral pluralism of our culture challenges the very notion that there can be a fundamental value orientation that binds a people together in common action within the public realm. At the same time, to reject the idea that we share any common human values or virtues is to strike at the very heart of the notion of political community. We must find a way between the cultural and religious imperialism that would define the interests and values of one group as the common good, and the moral relativism that would assert that all values and ethical stances are nothing more than the opinions or personal preferences of those who hold them. The former position is a denial of pluralism, the latter a denial that we can share anything in common even as we acknowledge our differences.’

*Kekes, The Morality of Pluralism*, 8-9: ‘Monism is the view that there is one and only one reasonable system of values. This system is the same for all human beings, always, everywhere. Human lives are good to the extent to which they conform to this system, and particular values are better or worse depending on their standing in the system. . . . [Relativism is] the view that ultimately all values are conventional. Human life would be inconceivable without values, but what values people accept depends on the context in which they were born, on their genetic inheritance and subsequent experiences, on the political, cultural, economic, and religious influences on them; in short, what they value depends on their subjective attitudes and not on the objective features of values. . . . Pluralism is a theory about the nature of the values whose realisation would make lives good. The primary concern of pluralism is with the relation in which these values stand to each other; . . . ’ Emphasis added.

*The key descriptive thesis of pluralism is that central features of good lives, as they are conceived in contemporary Western circumstances, at any rate, are best understood in pluralistic terms. These features are, first, that we are motivated by various moral values, such as the common good, duty, personal ideals, love and friendship, self-development, loyalty, justice, human rights, and so on. Second, that we are also motivated by nonmoral values of different sorts, for instance, beauty, playfulness, physical well-being, career plans, creativity, adventure, style, and the like. Third, that we often encounter conflicts in which we feel the tension between and among moral and nonmoral values, and these values motivate contrary choices and courses of action. Fourth, a sense of loss often accompanies the choices and actions our values require because, although we do what we feel it is, on balance, reasonable to do, we are nevertheless often forced in this process to sacrifice important values. And last, we often experience conflicts, not merely within morality, but between morality and such other dimensions of life as politics, aesthetics, intimate personal relationships, or a reasonably interpreted conception of self-interest.’ Kekes, *The Morality of Pluralism*, 11-12.

In some respects this explanation of pluralism is not satisfying. In the first place, motivation by ‘nonmoral values’ occurs when the agent sees some advantage in that ‘nonmoral value’ - which would seem to make it a moral value, or at least indicative of a drive for a good which expresses a moral value (in Grisèz’s terms, a basic human good). So the ‘conflict’ between moral and nonmoral values turns out to be a conflict between different moral values. Secondly, then, pluralism becomes essentially a balancing of moral values within the individual; it can be considered a ‘conception of morality’ in an inter-personal sense only if it can be shown that moral values are indeed shared among people, or at least if there are commonly-held beliefs about appropriate and inappropriate ways to realise moral values. Thirdly, and only if these challenges can be overcome, pluralism could be held as a universal and objective conception of morality. But Kekes seems to imply that this is a
individual to resolve the conflicts which inevitably occur between moral and non-
moral values, or between personal and communal values, in such a way that the
individual achieves what he or she (or others observing, for that matter) would believe to be ‘a good life’.

[Pluralism] concentrates on the possibilities whose realisation may make lives good, and it thereby wishes for us what we wish for ourselves. In this respect, pluralism is quite unlike monism. For what monists wish for us is that we should overcome the obstacles that prevent us from embracing the one true system of values through which we could achieve a good life. The pluralist ideal is that we should make a good life for ourselves. The monistic ideal is that we should find the one good life that is good for all of us. The pluralistic view of individuality is that it involves constructing a good life out of the available plural possibilities. The monistic view is that individuality involves plurality in the ways of reaching the one good life for all. Both see living a good life as the goal. But for pluralists the goal is to achieve what we individually want to achieve, while for monists the goal is to achieve what all individuals alike ought to want to achieve.16

But whether one considers pluralism as a deep-seated difference in basic concepts of morality, or as a more general phenomenon of multiple cultural or moral values, it concerns the co-existence in a single society of differing ideas about good and evil, right and wrong.17 These are the differences which give rise to the kinds of moral dilemmas addressed by the principle of cooperation: a principal agent believes that his action is good, but the cooperator disagrees. From one point of

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17 Patrick Hannon, Church, State, Morality & Law. (Westminster MD: Christian Classics, 1992) 90: ‘Pluralism need mean no more than that there is a factual diversity of belief and practice in religious or moral matters in the world at large or within a particular community. In this sense there has always been a pluralism in morals, certainly in the world at large, and even in regions and countries. If our time is more aware of such diversity the reason is doubtless in modern possibilities for communication. I need only to allude to the ‘revolution’ in communications technology, and the relative facility with which a modern may travel the world.

And of course this awareness breeds questions for value systems if only by showing the viability - not to mention the rival attractions - of alternatives. In modern experience this combines with the democratic instinct so as to create a demand for the legitimation within communities of political or moral viewpoints hitherto looked on as deviant. If formerly the practical implementation of such a viewpoint was precluded by the law, the demand for its recognition now quite naturally takes the shape of a call for legal change.’

Note that Hannon is writing out of Catholic Ireland which was at that time in turmoil over reform to laws governing abortion and divorce.
view it matters less *how these differences arise*; what matters more is *how they affect moral decision-making*, and the fundamental stances a Christian might adopt. And both of these depend upon the basic position one chooses to adopt in relation to the very possibility of moral conflict.

4.1.2 **Attitudes to Pluralism**

What might be a Christian’s attitude toward this pluralist world? The following survey of possibilities is neither exhaustive nor conclusive, but it indicates some of the wider questions which underlie the problem of cooperation in evil. The aim here is not to settle on any one approach at the expense of all others, but to open up a number of perspectives on pluralism to which ‘cooperation’ is but one possible response. It will emerge that the principle of legitimate cooperation may in fact involve all of these attitudes in one way or another.

4.1.2.1 **Moral Conflict**

The most basic problem of cooperation in evil is a conflict of moral values or standards: a principal agent who wills an evil believing it to be good, and a cooperator who identifies the evil and names it as such.

This raises a fundamental question: are moral conflicts real or only apparent? Do moral norms or moral values ever really come into conflict because of the objective condition of the world, or do they only seem to conflict in the mind and heart of the moral agent because of his (subjective) inability to grasp and resolve what is undeniably a difficult (but not essentially insoluble) moral problem? This is a vastly more complex question than can reasonably be addressed here, but some brief comments will shed light on later discussion.\(^{18}\)

Broadly speaking there seem to be three approaches to the question of moral conflict, and the differences between them may best be illustrated by reference to the

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\(^{18}\) For critical discussions of the problem of moral conflicts, see two articles of Charles Robert, ‘La situation de ‘conflit’, un thème dangereux de la théologie morale d’aujourd’hui.’ *Revue des Sciences Religieuses* 44(1970) 190-213; and ‘La Situation de Conflit: Recherche de solutions dans la théologie
casus perplexus: the situation in which a moral agent is, or believes himself to be, confronted by a choice only between two or more moral evils.19

Firstly, there are those who hold that moral values and moral norms can never really come into conflict because all values, norms, rights and duties have their origin in ‘the perfectly ordered demands of natural law’ - this is, in the mind and will of God.20 In this view the perfectly-attuned moral agent will always choose the moral value which is most fully in accord with natural law, and in choosing will not encounter any real conflicts because there can be no contradictions in the one mind of God. Therefore there is never any real casus perplexus, but only agents who feel forced to choose between moral evils and who are therefore always responsible for the evil they choose (unless excused by invincible ignorance). After all, any lingering doubts about moral duties may be resolved by recourse to those of greater moral knowledge, as required in the moral system of ‘probabilism’.21

Secondly, there are those who hold that even if moral conflicts never actually occur, they appear to occur because of the human person’s fallibility.22 This affords the experience of moral conflict a somewhat more objective status: moral conflicts may never really occur ‘out there’ in the objective world, but they certainly really occur subjectively ‘in here’, in the heart and mind of the one who faces the moral choice. In the casus perplexus, in this view, choice of a lesser evil may not be strictly objectively justified, but it is understandable and often excusable given the fallibility of the moral agent.

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19 See for example Davis, vol. I, 72-73.
20 On this discussion see Nicholas Crotty OP, ‘Conscience and Conflict.’ Theological Studies 32(1971) 208-232. At 210 Crotty identifies the manualist tradition as holding this first position.
21 Crotty, ‘Conscience and Conflict’, 212. This position is typified in Davis, vol. I, 72-73.
Thirdly, there are those who hold that moral conflicts do actually occur objectively because of the ‘fallen’ condition of both the moral agent and the world. Here the perplexed conscience faces a choice between evils in fact, and not merely apparently. But in a fallen world all moral choices involve some degree of imperfection, so they are more accurately described as ‘right’ or ‘wrong’ rather than as simply ‘good’ or ‘evil’. The challenge for the responsible moral agent is to choose what is ‘right’ in a particular situation. In the casus perplexus this may mean choosing a ‘lesser evil’. This is not to say that a ‘lesser evil’ can become a ‘good’, but only that to choose a ‘lesser evil’ is ‘right’, and to choose a ‘greater evil’ is ‘wrong’.

These different attitudes to the possibility of moral conflict reveal fundamentally different visions of ‘what is morally possible in human life’. For those who hold that moral conflicts are real, doing evil seems inevitable; but for those who hold that moral conflicts are only ever apparent, doing evil is at least theoretically avoidable. The controversial question of whether an evil which is done is truly moral or only physical (‘non-moral’ or ‘pre-moral’ evil) is far too complex to address here, and is in any event somewhat peripheral to the main point: some believe that moral innocence is possible in life, while others believe that moral wrongdoing (or ‘moral tragedy’) is inevitable.

There is a certain attraction in the possibility of moral innocence: one’s overriding concern is for the quality of one’s own moral life, and who would not wish to be morally pure? But such an attitude precludes recognition of the plurality of potentially conflicting moral responsibilities that ordinarily constitutes a person’s

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23 Crotty (‘Conscience and Conflict’, 214-216) attributes this position to Charles E Curran. At 215: ‘In other words, it is not just that the man confronting conflict situations is a sinful man. What the sinful man confronts is a sinful situation.’ It will be suggested below (4.3.5) that this attitude toward moral conflict inspires a relatively new attitude toward cooperation in evil.

24 Crotty, ‘Conscience and Conflict’, 216.

25 See also this Chapter, footnote 34.

26 See Christopher W Gowans, Innocence Lost: An Examination of Inescapable Moral Wrongdoing. (New York: Oxford University Press, 1994) 219: ‘In brief, those who reject the idea of inescapable moral wrongdoing suppose that moral innocence is possible, while those who accept this idea think that moral tragedy is possible.’ Gowans presents a stimulating discussion of the concepts of moral innocence and moral tragedy at 218-228, and the political problem of ‘dirty hands’ at 228-234. The latter casts an interesting light on Pope John Paul II’s position on cooperation in Evangelium vitae, 73.
Since holding an ideal is an a priori condition for the possibility of attaining the reality, the moral agent who holds from the outset that all moral conflicts are ‘only apparent’ can seek resolution only by trying to eliminate one or other competing moral duty. When one’s duty to avoid evil still seems to conflict with other positive duties, moral principles such as material cooperation or double effect will be employed in purely permissive ways: the moral agent will use a principle to look for an ‘escape’ from the apparent dilemma.

On the other hand, it is undeniable that moral conflict is often at least experienced as real. Those who acknowledge this experience and the existential possibility of moral tragedy tend to be less concerned about the objectivity of their dilemmas, less burdened by a sense of their own fallibility, and more concerned to discover how best to respond to their apparently conflicting responsibilities. In view of this, when one’s duty to avoid evil (even evil done by others) seems to conflict with other responsibilities, use of the principle of legitimate cooperation is more than purely permissive. The principle here does not merely provide an ‘escape’ from an apparent dilemma: it lights the path toward the greatest achievable good. To use the principle here is not an admission of defeat but a way of making the best of an imperfect situation: it is simply a function of ‘the way things are’ in a pluralist world.

4.1.2.2 Compromise and the Lesser Evil

Clergy and layfolk reluctantly admit that various social factors and structures seem to force people of goodwill into a situation which, by usual standards, is considered immoral. They cannot always cast off the feeling that in many cases these norms are a threat to the concrete requirements of life and lead to conflicts of conscience to which there seems to be no solution . . . The question we hardly

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27 Gowans, Innocence Lost, 223.
28 Gowans, Innocence Lost, 223. In discussing prominent ‘tragic-making characteristics’ of moral conflicts, Gowans at 227 notes that one such characteristic is that ‘[t]he morally best action renders the agent a tool in the evil projects of others. When we act for the best, and yet in doing so nonetheless help promote the sinister aims of others - for example, by making a political concession to a despotic government in order to obtain freedom for a hostage - we feel tarnished by the fact that we have been used to implement these aims.’ The example Gowans offers might qualify, in terms of the present study, as immediate material cooperation.
may be put briefly as follows: are we forced by our imperfections and the disintegrated society in which we live to accept a compromise in order to ensure that the Christian life remains possible?29

The word ‘compromise’ commonly implies a concession made to settle a dispute between conflicting opinions or positions, a modification or adjustment of one or other position, or of both.30 In the context of ethics it often has a negative connotation: in an effort to resolve real or apparent conflicts between competing norms or values, an agent must in some way modify the demands of these values or norms, or compromise his own integrity.

God may require us to ‘sin bravely’ (*pecca fortiter*), in the assurance that forgiveness is available in Christ, but we must never lose sight of the fact that all compromise is wrong.31

For one who accepts at least the experience of moral conflict, ‘compromise’ can be conceived as a method not of forsaking moral values but of striving to realise them as best one can amid the ‘messiness’ of life here and now.32 Indeed, it is precisely because it seeks to realise salvation through life in the real world that the Catholic tradition has developed practical principles (such as legitimate cooperation) to help resolve moral conflict.

For some, moral conflicts can be approached by viewing life as a complex of competing rights and duties which can be prioritised.33 Compromise here consists in

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30 *‘compromise, n., Settlement of dispute by mutual concession; adjustment of (between) conflicting opinions, courses, etc., by modification of each; . . . (v.i.) make a compromise; bring (person, oneself) under suspicion by indiscreet action.’* Concise Oxford Dictionary. 5th ed. (1964).


32 See Field, ‘Compromise’, 245: ‘a compromise may express an intention to discover God’s will in an ethically ambivalent situation, especially when two or more principles dictate courses of action which are incompatible.’ Weber, ‘Il compromesso’, 205-206 notes that this is a typically Catholic attitude to moral compromise. See also Ouwerkerk, ‘Gospel Morality’, 7.

33 This approach is noted by Klaus Demmer MSC, ‘Entscheidung und Kompromiss.’ *Gregorianum* 53(1972) 323-351, in which he compares Catholic and Protestant lines of thought. At 324: ‘Catholic theology should examine whether it has not preferred to sideline ‘slippery solutions’
identifying and choosing the greater good or the higher duty, while reluctantly leaving other goods aside. Conversely, moral conflicts may appear to offer a choice only between greater and lesser evils. Compromise in this case has the moral agent seeking to affirm all moral values as far as the concrete circumstances allow: if one cannot achieve a good, one will at least seek to avoid the greater evils.

Now in situations of this kind, the rule of Christian reason, if we are governed by the ordo bonorum, is to choose the lesser evil. This general statement is, it would seem, beyond debate; for the only alternative is that in conflict situations we should choose the greater evil, which is patently absurd. 34

The ‘principle’ of the lesser evil has an honourable history in the Catholic tradition, as the manuals attest. 35 What is less clear is whether, under this principle, a moral agent is really and actively ‘choosing’ an evil at all: wouldn’t that be a case of ‘doing evil to achieve good’, of using an evil means to attain a good end? Further comment will be made below, 36 but with regard to legitimate cooperation two points can be made here.

and in this way oversimplified decision making. In no way does this mean to assert that with consideration of the problem of compromise new territory will be entered. It has always known about the necessity of weighing things up and has borrowed expressions such as ‘ordo caritatis’ and so on for its moral system.’ [Translation here: Rev Dr Alfonsas Savickas.]

Mark Attard notes that Demmer holds compromise to be necessary because of the limited nature of norms; but that in any case compromise is a principle of growth: by grace and human effort man moves forward in hope. See Mark Attard O.Carm., Compromise in Morality. Doctoral Dissertation. (Rome, 1976) 39-40. The reference is to Demmer, ‘Entscheidung’, 349-350.


35 See for example Alphonsus, de conscientia 10; Aertnys-Damen, de conscientia 54; and Peschke 1986, 224. Note that ‘the principle of lesser evil’ may apply not only in some instances of perplexed conscience, but also may be suggested to another as a way of minimising the other’s sin or reducing its evil effects: see Alphonsus, de restitutione 565; Peschke 1986, 324; and especially E T Hannigan SJ, ‘Is it ever lawful to advise the lesser of two evils?’ Gregorianum 30(1949) 104-129, where the principle of lesser evil is traced back at least as far as Cajetan in the sixteenth century.

36 See 4.2.2.3.
First, when it is said that a lesser evil may be ‘chosen’ in conflict situations, the verb ‘to choose’ is used in a particular way. For ‘choice’ is certainly an activity of the will, but in this case it is an exercise of the ‘permitting will’ rather than the ‘intending will’ - which is only an idiosyncratic way of expressing the ‘direct-indirect’ distinction in intending. In a situation of conflict, the ‘choice’ of a lesser moral evil could be legitimate only if this ‘choice’ is an action of the ‘permitting will’, an indirect intention. That is, the direct object of the agent’s ‘intending will’ - one’s direct intention - is a good, but a concomitant evil is foreseen to accompany this good, in which case this evil may be ‘permitted’ or ‘indirectly intended’. Since it is only indirectly intended, this evil is not the moral object of the agent’s action, and so the cooperator is not really ‘choosing’ evil as such.

But second, as already indicated, cases of material cooperation differ from the normal pattern of human acts because the permitted evil flows from a principal agent’s action rather than from the cooperator’s action. So in the case of legitimate cooperation it is only by analogy that the cooperator can be said to be ‘indirectly intending’ the evil. In Evangelium vitae 73, for example, Pope John Paul II demonstrates that the legislator can ‘licitly support proposals aimed at limiting the harm done by such a law’. That is, the direct object of the legislator’s act is not an evil of any kind, but rather the limiting of an evil - which, as the First Principle of Practical Reason would indicate, is morally required whether or not any good can actually be ‘done’ or ‘pursued’. So even here the legislator’s action has its own legitimate moral object: fewer evil effects, rather than more numerous evil effects. For this reason the legislator’s action is deemed ‘legitimate and proper’.

4.1.2.3 Tolerance

Another attitude toward pluralism, ‘tolerance’ or ‘toleration’ properly so called is a stance adopted toward an attitude or practice with which one disagrees or
which one believes to be evil, but which for various reasons one chooses not to resist or suppress.\textsuperscript{41} This last clause is essential. Tolerance is an attitude which is freely and deliberately chosen, not one enforced by impotence: to endure an evil over which one has no influence is not toleration as such.

Tolerance may have various justifications: it may be considered a requirement of prudence, or of rationality, or of morality itself - or indeed of all of these taken together.\textsuperscript{42} But each justification has its limits. Prudence grounds toleration as a requirement of public order: for example, the interests of public peace might recommend toleration of houses of prostitution.\textsuperscript{43} But if public peace would be better served by the suppression of these houses, then prudence might dictate intolerance instead. Another ground for toleration might be the common search for truth in genuine humility and ‘reciprocity of consciences’. Here intolerance takes the form of an ‘intellectual arrogance, a blindness to the possibility that “I may be wrong and you may be right”’.\textsuperscript{44} In this light tolerance holds up even in the face of a scepticism which doubts the very existence of truth, and a relativism which holds that one opinion is as good as another. But again, if good order required the elimination of scepticism and relativism, intolerance might be indicated.


An important commentary on tolerance and the following point (religious freedom and respect for conscience) is Eric D’Arcy, \textit{Conscience and its Right to Freedom}. (New York: Sheed and Ward, 1961) 238-248 on toleration, and 248-258 on religious freedom. The notion of tolerance also figures in the teaching of Popes Pius XII and Paul VI: see 3.2.1 above.

\textsuperscript{42} This is concisely argued by Susan Mendus in \textit{On Tolerartion}, 3-10.

\textsuperscript{43} This is Augustine’s position as cited in James F Keenan SJ, ‘Prophylactics, Toleration and Cooperation: Contemporary Problems and Traditional Principles.’ \textit{International Philosophical Quarterly} 29(1989) 205-220, at 206.

\textsuperscript{44} Mendus, \textit{On Tolerartion}, 6. Vatican II enshrined reciprocity of conscience (and hence this concept of tolerance) as a value for the Church’s mission in the world in \textit{Gaudium et spes}, 16: ‘Through loyalty to conscience Christians are joined to other men in the search for truth and for the right solution to so many moral problems which arise both in the life of individuals and from social relationships.’ Thus also Vermeersch holds that humility (understood as a prudent distrust of oneself and a consciousness of one’s liability to err) is an essential aspect of tolerance. See his \textit{Tolerance}, 14-15.
Or tolerance may be considered a requirement of morality itself, a right to be afforded all people simply as human beings. If pluralism is conceived not as a threat to the good of the human community but as a healthy diversity which enriches a society, then tolerance may be required by morality itself as ‘a direct appeal to people’s right to lead their own lives in whichever way they think best’. Here pluralism as a concept of morality requires tolerance on the part of all, in order to achieve its promise of the greatest possible self-realisation for everyone.

This concept of tolerance need not represent promotion of ethical relativism: . . . the argument has two separate strands, each of which is compatible with the denial of extreme relativism. The first holds that since people are essentially diverse creatures, there may not be any one way of life which is the best for all. Of course, it does not follow from this that any way of life is as good as any other. . . . The second strand of the argument insists that, even if there is one way of life which is best for people, it is more important that they discover this for themselves than that it be imposed upon them from without.

This second strand of argument grounds an attitude of respect for the dignity of conscience, for it requires that ‘we show respect for persons as autonomous agents, as agents who have and are entitled to their own plans and projects, which may differ from our own’. In fact it requires not only that one refrains from offending the rights of other people, but also that one recognises a wider duty of ‘actually helping and encouraging them to pursue the kinds of lives which they believe to be valuable’. This approximates the Church’s duty not only to defend the dignity of conscience, but also to positively promote religious freedom.

45 Vatican II sees this concept of tolerance as a requirement for the Church in the world in Gaudium et spes 28: ‘Those also have a claim on our respect and charity who think and act differently from us in social, political, and religious matters. In fact the more deeply we come to understand their ways of thinking through kindness and love, the more easily will we be able to enter into dialogue with them.’ The Council goes on to note that this in no way commits the Church to approval of the ‘errors’ of others, since tolerance must be extended to the person but not to their erroneous belief or action ‘which must always be rejected’.

46 Mendus, On Toleration, 8. See also Vermeersch, Tolerance, 31: ‘The tolerance of private life is practised principally among equals, and is summed up in the respect which one person is bound to pay to the rights of another.’

47 Mendus, On Toleration, 9.

48 Mendus, On Toleration, 12.

49 Mendus, On Toleration, 14.
4.1.2.4 Religious Freedom and Respect for Conscience

Investigating the role of the Church in the modern democratic State, John Courtney Murray SJ noted that the Catholic Church in the United States of America enjoys a guaranteed measure of self determination under the First Amendment to the Constitution of that nation. But in granting equal freedom to all religions, the same Amendment denies the Catholic Church’s historical claim (in Europe, at least) to the right to establishment. Murray resolved this tension by demonstrating that since the beginning of the twentieth century the Church has been effectively re-casting its position - or developing its doctrine - on religious pluralism, moving from a foundation in ‘tolerance’ to a foundation in ‘respect for conscience’.

Historically the Catholic Church had argued that it was the only true religion, and that the State could only tolerate other religions in the interests of public order. It now argues, on the basis of every person’s right to ‘reach his transcendent goal as best he can’, that respect for freedom of conscience requires both the Church and the State to actively defend religious liberty.

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53 Kossel, ‘Religious Freedom’, 68. See Dignitatis humanae 1: ‘All men are bound to seek the truth, especially in what concerns God and his Church, and to embrace it and hold on to it as they come to know it.’ This position is developed by Pope John Paul II in his Message to the Signatories of the Final Act of Helsinki on 1 August 1975 L’église catholique. ‘On Freedom of Conscience and Religion.’ (1 September 1980). AAS 72(1980) 1252-1260. ‘Man is able, on the basis of his own convictions, to know and to follow a religious or metaphysical concept which engages his whole life insofar as it concerns fundamental choices and behaviours. Even if it does not arrive at an explicit and positive affirmation of faith in God, this intimate reflection cannot be other, in any case, than an object of respect in the name of the dignity of conscience of each person, whose mysterious work of searching cannot be subjected to the judgment of others. Thus, on one hand, each person has the right and the duty to commit himself to the search for truth and, on the other hand, other people and civil society are required to respect the free spiritual development of persons.’ [This translation made from
possession of religious truth, the Catholic Church has developed a stance of openness to other religions which requires it to honour - with more than mere tolerance - their right to exist and to practise their beliefs freely.

Charles E Curran took up Murray’s argument on freedom of religion and applied it to moral truth. He claimed to identify three points at which Vatican II’s doctrine on religious liberty sheds light upon the question of legitimate cooperation in evil.

First, ‘in both cases the dignity of the human person and the rights of the human person to act with responsible freedom must be taken into account’. Under the older approach based on a notion of objective truth, the Church had attracted criticism for giving . . . so much emphasis to the objective and even the physical that it has not given enough importance to subjectivity and freedom . . . In the case of cooperation it seems that one must also consider the right of the individual person to act in accord with one’s own decision of conscience.

This raises the question, secondly, of whether it is adequate to define material cooperation simply in terms of ‘cooperation with an evil action’. Just as the Church no longer categorises religious practices simply as ‘true’ (that is, Catholic) and ‘false’ (all others), is it adequate to deem cooperation between agents simply ‘lawful’ or ‘unlawful’ on the basis of the objective morality of the principal agent’s act? Curran argued that,

. . . a more adequate description understands cooperation as concurring not primarily with a will or with an act but with a person. . . . The point is that the full understanding of cooperation must take account of the dignity of the other person and that person’s right to act in accord with his own responsible freedom.


54 Charles E Curran, ‘Cooperation: Toward a Revision of the Concept and its Application.’ Linacre Quarterly 41(1974) 152-167, see especially 157-161; an edited version of this article appears as ‘Cooperation in a Pluralistic Society’ in Curran’s Ongoing Revision in Moral Theology. (Notre Dame: Fides/Claretian, 1975) 210-228; Curran’s argument is substantially reproduced in Hannon, Church, State, 90-95.


Nevertheless, one cannot ignore the elements of a bad will or a bad act which have been part of the consideration in the past.\textsuperscript{57}

Respect for the dignity of conscience in matters of religion necessarily includes respect for the other’s right to adhere to religious practices which one personally believes to be erroneous. Curran held, thirdly, that the same applied in matters of morality. A principal agent may act in erroneous conscience (that is, believing that there is nothing wrong with the action he proposes to perform); in Curran’s view, a cooperator’s conviction that the principal agent is doing evil does not prohibit cooperation since ‘[t]here can be no formal cooperation when the individual involved does not have a bad will’.\textsuperscript{58}

But these arguments are fraught with difficulty. \textit{First}, Curran suggests that a modern doctrine of cooperation should take account of the principal agent’s human dignity, but he does not describe how the principal agent’s state of conscience might impact materially upon the cooperator’s decision to cooperate or not. \textit{Second}, ‘cooperation with a person’ should indeed pay due attention to the elements of ‘bad will’ or ‘bad act’ as in the past, but Curran does not indicate which elements he means, nor demonstrate how they might be integrated with ‘respect for persons’. \textit{And third}, as noted earlier,\textsuperscript{59} the fact that a principal agent acts in erroneous conscience affects the subjective morality of his own action, but the very concept of ‘cooperation’ implies that there is another moral agent who also acts. This cooperator may well be aware of the principal agent’s erroneous conscience, but this awareness in itself does not excuse the cooperator from making his own moral choice. Even if he were motivated by a desire to cooperate with the \textit{person} rather than with the \textit{action}, a cooperator who intends what the principal agent erroneously believes to be right would himself be acting in ‘bad will’ and cooperating formally.

\textsuperscript{57} Curran, ‘Toward a Revision’, 160.
\textsuperscript{58} Curran, ‘Toward a Revision’, 160.
\textsuperscript{59} At 3.1.2 in relation to Häring’s position in \textit{Free and Faithful in Christ}. Curran subsequently notes ‘the right of the cooperator to act in accord with his conscience so that he cannot be forced to do something he believes is wrong.’ (Curran, ‘Toward a Revision’, 160). The relationship of this statement (concerning the cooperator) to the question of the principal agent’s erroneous conscience is not immediately evident. Finally Curran holds that the rights of the principal agent to follow his erroneous conscience are subject to limitations similar to those applying to religious freedom; that is, public order, which is defined in terms of justice, peace and common morality (Curran, ‘Toward a Revision’, 160-161) - but he does not describe how those limits might apply in practice.
with that evil. And even if his intending remained good, his material cooperation would still require a justifying reason.

Curran’s fundamental difficulties seem to be, first, that he has not noticed that personal morality and religious belief are matters of very different orders, each possessing its own language and inner logic. It is much easier, after all, to identify a particular moral action as ‘wrong’, than it is to identify a particular religious action as ‘wrong’. Pluralism notwithstanding, ‘to harm the innocent’ is commonly held to be morally wrong, but ‘to worship a tree’ is considered, at worst, merely eccentric.

Second, ‘promoting religious freedom’ requires the Catholic Church to help create the conditions under which every person is free to worship God as he or she thinks fit, but it neither requires nor justifies the Church’s participation in that worship itself. In the same way ‘respect for conscience’ requires the Christian to actively promote and defend each person’s right to self-determination; but it does not necessarily require him to cooperate actively in another person’s deed, particularly if he believes that deed to be evil. Neither does it excuse him from taking responsibility for his own moral choices.

In other words, ‘respect for freedom of conscience’ might well translate into a ‘duty to defend another’s right to religious practice’, but it does not necessarily create a ‘duty to assist in that religious practice’: the first ‘duty’ is a necessary corollary of respect for conscience, but the second ‘duty’ is not. In the same way, ‘respect for freedom of conscience’ may translate into a ‘duty to promote the autonomy of others’, but it cannot create a ‘duty to cooperate in evil’: the first duty is a corollary of the principle of respect for conscience, but the second ‘duty’ is not and may in fact contradict respect for one’s own conscience. ‘Respect for the dignity of personal conscience’ is certainly a moral duty, but in itself it neither justifies or excuses cooperation in evil.

4.1.3 Conclusions
Whether the world is homogenous or pluralist, whether one believes in the possibility of moral innocence or the inevitability of moral tragedy, it seems that cooperation in evil is an unavoidable challenge. Beyond the circumstances of particular moral conflicts a moral agent may wonder at the rationale or basic attitude which ‘drives’ cooperation: is it a form of compromise? tolerance? respect for conscience? all or none of these?

First, it is only by analogy that material cooperation can be construed as a compromise in which goods and evils are ‘traded off’ against each other. In legitimate cooperation the cooperator always directly intends only a good and only in an analogical sense can be said to ‘indirectly intend’ or ‘permit’ evil, since the evil is brought about by another agent. From the cooperator’s point of view, and cognisant of the ‘evils’ which will follow each of his respective options, compromise in the case of legitimate cooperation could only relate to the balance sought between the good to be gained by cooperating and the good to be gained by not cooperating or, alternatively, between the evil brought about by cooperation and the evil suffered by not cooperating.60

Second, strictly speaking legitimate cooperation in evil may involve an exercise in tolerance only in some instances, because often the cooperator does not have the power to prevent the principal agent’s evil deed. Where the cooperator does have that power, he requires a much stronger reason to cooperate. And in any case, if cooperation is ever to be considered a form of tolerance it is essential to be clear on its structure: the object of tolerance is not primarily the evil done by the principal agent, but first and foremost the fact that the cooperator’s otherwise innocent act will be abused. A cooperator’s decision to cooperate amounts to toleration of the abuse of his own good or indifferent act. In many instances the only power available to the cooperator is the ability to prevent his own act from being abused - by not acting at all. The very existence of the principle of material cooperation indicates that Christians have not thought this a reasonable option in every case.

60 See the earlier discussion on the nature of the ‘sufficiently serious reason’ at 2.3.3 above.
Third, Charles Curran has highlighted an important point: one who cooperates with a principal agent certainly cooperates with a human being whose natural right to act in accord with his or her own decision in conscience must normally be respected. If *freedom of conscience* is a natural right, then it imposes on everyone else a moral duty to permit this person so to act, and normally to refrain from constraining him or her to act otherwise. But the rights attaching to ‘freedom of conscience’ are not unlimited: harm to the common good or to innocent third parties are normally held to be immoral. There are therefore grounds to suggest that while it is reasonable that an individual agent should not be unnecessarily restricted from acting according to conscience, it is not at all reasonable to demand that third parties must actively assist or cooperate. Human beings clearly have a ‘right to act according to conscience’ but there is no self-evident ‘right to be assisted to act’, especially where the intended act is believed to be evil.

So neither compromise, nor tolerance, nor respect for consciences provides a sufficient underpinning for legitimate cooperation in evil, yet each provides some insight into the functioning of the principle. Clearly it is a principle of action in the face of evil, a principle of limiting evil done, of living a moral life in a world marked by evil. In this connection it is well to recall that the principle was not ‘invented’ in order to solve theoretical moral problems: it was more ‘distilled’ from the practical wisdom of countless individuals who sensed that cooperation in another’s evil was appropriate in some instances. Whether driven by a need to compromise, or by prudent tolerance, or by active respect for the rights of others, they sensed that sometimes one *ought* to cooperate in an evil in order to bring about some good or prevent an even greater evil.

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61 In the broader context of public and political morality Hannon (‘Church, State’, 94) uses the same Vatican II doctrine to ground a more modest claim than Curran’s: ‘And so we may formulate a principle by analogy. In moral matters people should not be forced to act against their consciences nor should they be restrained from behaving according to conscience - provided that the just requirements of public order are observed.’


The principle provides insight into a possible course of action in a pluralist world. In establishing that cooperation in evil may at times be more than merely permitted - that an agent may sometimes be ‘constrained’ to cooperate - Catholic moral teaching has not only accepted that at least the experience of moral conflict is real, but also that ‘pursuing the good’ in the midst of a pluralist world may sometimes require one to ‘get one’s hands dirty’. The next step is to see how some contemporary writers have recognised the challenges of pluralism in their account of the principle.

64 Gowans (Innocence Lost, 228-229) traces the term ‘dirty hands’ to Sartre, but suggests that the problem itself runs back through Machiavelli to Plato. But note that where ‘dirty hands’ normally refers to inescapable wrongdoing by the agent himself, here it refers to morally justifiable cooperation in evil done by others. Catholic teaching does not concede that doing evil oneself in order to achieve good is strictly justifiable.
4.2 Some Contemporary Theological Positions

Rapid technological development and ease of communication mean that the moral textbook is often somewhat dated even as it goes to print. Not surprisingly, then, moral dialogue today is normally conducted in scholarly journals whose frequent publication and wide readership ensure that moral issues can be addressed while they are still unfolding. Another genre with more or less the same immediacy is, as noted above, magisterial teaching.

This section seeks to outline some ways in which some relatively recent theological writings on the problem of legitimate cooperation have taken contemporary social, cultural and theological circumstances into account. That is, how the practice of theology today is dealing with cooperation in evil in a pluralist society: are the traditional categories retained? Do they serve any real purpose, or have they been abandoned? What new questions or categories of cooperation are appearing? Do new approaches help, and can their value be verified?

While it would be of great interest to study this material in strict chronological order, such a vast undertaking is beyond the scope of the present work. Instead the selection of material here is arranged geographically, which highlights another aspect of cultural pluralism: European, North American and Australian theologians do not approach these problems in the same way.

4.2.1 Europe

On 22 May 1978, Italy passed a law governing women’s access to abortion. Law 194/1978 sought to provide for a woman’s ‘right’ to abortion on one hand while, on the other, respecting the Church’s opposition to abortion and to any form of cooperation in it. In an article published in the same year Dionigi Tettamanzi recognised that the concrete detail of Law 194 posed considerable challenges for the Church and for its interpretation of cooperation in evil.65

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65 Dionigi Tettamanzi, ‘Problemi morali circa la cooperazione all’aborto.’ Medicina e morale 28(1978) 396-427. In 1978 Tettamanzi was teaching moral theology in Milan. As the present study is written he is Cardinal Archbishop of Genoa.
Tettamanzi tackles the phenomenon of cooperation - *the fact that persons work together in order to reach a determined end*, on two fronts. On the *structural* level, cooperation is a datum of the intrinsically social nature of man since an individual not only works ‘with’ others to achieve ends but also works ‘on’ others - has an effect on others - by virtue of this cooperative action. On the *historical* level cooperation is a datum of human social life characterised by pluralism: not only are there some individuals who will to do good and some who will to do evil, but ideological and practical pluralism are often enshrined in social institutions and cultural actions, including civil legislation. Here immediately is one development on the tradition: the problem of cooperation engages the social nature of the human person and cannot be adequately addressed solely from the standpoint of the individual moral agent.

In providing for access to abortion, Law 194 created a conflict between civil law and natural moral law. Both of these bind the moral agent: insofar as he is human the moral agent is bound by natural moral law; insofar as he is a citizen of a given society he is bound by the civil law of that society. In view of this ‘dual citizenship’ the *criteria of the morality of cooperation* in Law 194 must be sought not in casuistry but in *a necessary chapter of existential ethics*. In other words, close attention must be paid to the concrete circumstances of the particular case.

Nevertheless Tettamanzi leans heavily on the traditional metaphysics. On the level of intention he holds that a cooperator may act in ‘consonance’ with a principal agent (sharing *the will-intention of the principal agent*) or in ‘dissonance’ with the principal agent (holding a different will-intention). Only the latter - material cooperation - may be morally lawful. On the level of the concrete action itself, he ties morality both to the objective structure of the moral act, and to its connection with the evil effects produced: the cooperator’s action must not be evil either in itself or in relation to the evil done by the principal agent.

68 Tettamanzi, ‘Problemi morali’, 400.
Up to this point Tettamanzi more or less reflects the tradition, but he then introduces an apparent conflation of the categories ‘proximate-remote’ and ‘necessary-contingent’:

From this point of view material cooperation may be configured - and in fact is configured - as:
- remote and non-determining, when it is limited to providing some requirement or assistance which only from a distance leads to abortion, without being a cause of it;
- proximate and determining, when it constitutes the provision of something which quite closely leads to - or facilitates - the abortion and without which the abortion would not be possible. 70

The reason for this conflation lies in the concrete case. Law 194 requires a woman to undergo a thorough medical examination and obtain a certificate of diagnosis prior to requesting abortion. Tettamanzi suggests that a Catholic doctor may conduct this examination (the ‘diagnostic phase’) because it is ‘remote and non-determining’ with respect to the abortion. 71 But he also argues that while issuing the medical certificate may not of itself (per se) constitute formal cooperation in abortion, in the concrete situation (per accidens) Law 194 establishes a ‘strict bond’ by which the act of issuing the certificate becomes ‘proximate and determining’. 72

The traditional interpretation of ‘proportionate reason’, according to Tettamanzi, amounts to a situation of physical or moral impossibility of refraining from cooperation: one has a proportionate reason to act if one cannot reasonably avoid cooperating. But he suggests another approach which marks another significant development in the tradition:

We may ask ourselves if, in the perspective of an ethic which is more decisively sensitive to the reality of a pluralist and secularised society, one may not discover a ‘proportionate reason’ in the

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69 Tettamanzi, ‘Problemi morali’, 401.
70 Tettamanzi, ‘Problemi morali’, 402. He continues: ‘It is evident that in the concrete reality of a vast and articulated network of cooperation, proximity and causality-efficacy are realised in very diverse ways, and end up being gathered in a very wide spectrum - from remote to proximate, from non-determining to determining - which means that the precise degree and type of connection between the means-action of the cooperator and the end-action of the principal agent cannot always be determined immediately or easily.’
71 Tettamanzi, ‘Problemi morali’, 413: ‘Cooperation in the diagnostic phase is morally legitimate, even obligatory.’
72 Tettamanzi, ‘Problemi morali’, 415.
opportunity-necessity of cooperating in order to avoid even worse situations. In this sense G Perico writes: “As for the sufficient reasons for these forms of collaboration, which are more or less proximate to the abortion, they could be recognised in the grave risk of losing one’s position, in the necessity or opportunity that Catholics have of being present in public institutions, and in other analogous motives.” It seems we must certainly respond in the affirmative: the traditional position is taken up and re-read not solely in an individualistic sense but also in a social sense, passing from a reason to avoid an evil or secure a good ‘for me’, to a reason to avoid an evil or secure a good ‘for others’.  

Tettamanzi’s fourth criterion for cooperation he terms ‘the professional criterion’, which approximates the traditional treatment of scandal: the medical profession stands for life, which both direct abortion and cooperation in abortion clearly contradict. This is even more true in the case of religious, who ‘have a special function of witness, that is, of being privileged models of christian life’. Finally, and with the backing of the Italian bishops, Tettamanzi notes that withdrawing one’s services (‘conscientious objection’) is not necessarily the most morally appropriate answer in every case.

Law 194 sought to create a legally recognised ‘space’ for freedom of conscience: no institution may perform abortions unless it is certified, and individual medical personnel in all institutions have a legal right to conscientious objection in most cases. But this ‘space’ is limited: there is no right to conscientious objection where medical assistance is required in order to save the life

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74 Tettamanzi, ‘Problemi morali’, 405.
75 Tettamanzi, ‘Problemi morali’, 406-407: ‘ . . . conscientious objection raised regarding abortion corresponds to both a personal commitment [to avoid evil] and a commitment to legitimately impede the actions of others, while the boycott of abortion laws ‘as such’ turns out not to be absolutely legitimate in the democratic system.’ At 407 he also cites the Italian Episcopal Conference: ‘The right-duty of conscientious objection is not the radical and total solution to every problem.’ Notificazione, 1 luglio 1978.
76 This is contained in Tettamanzi’s note that where religious superiors had sought a right to conscientious objection applying to entire institutions, the Italian government preferred to adopt a system of registration of abortion clinics. The implication is that no Catholic institutions would apply for registration, and so could altogether avoid the problem of cooperation in abortion. See Tettamanzi, ‘Problemi morali’, 408 footnote 12.
77 Tettamanzi, ‘Problemi morali’, 398, citing the Italian Episcopal Conference (7 June 1978): ‘Hospital, medical and paramedical personnel have a grave moral obligation to conscientiously object, which is foreseen in article 9 of the law in question.’
of a woman in danger of death - the so-called ‘therapeutic’ abortion. This clause of Law 194 amounts to a legal obligation to cooperate in abortion. How is the Church to view this?

Tettamanzi identifies two possible stances toward cooperation: the ‘rigorist’, for whom no cooperation is ever possible, and the ‘possibilist’ who would permit remote material cooperation in certain defined circumstances. These approximate the two possible attitudes toward moral conflict previously noted: those who believe that moral purity is possible, and those who believe that moral tragedy is inevitable. Both take up positions in respect of the secular state. The ‘rigorist’ holds for moral purity and refuses to cooperate as a ‘decisive and unequivocal prophecy against the decision of the State which has over-reached its legitimate powers’ in passing such immoral laws. Tettamanzi suggests a ‘possibilist’ alternative which, recognising the presence of some positive and acceptable things in the context of this iniquitous law, focuses in particular on the opportunity/necessity of an effective presence of Christians in public structures, or at any rate a presence of those who believe in the values of life and commit themselves to its defence, and consequently on the possibility - in a certain manner - of avoiding greater evils or, more positively, of rescuing some pregnancies by offering valid alternatives to abortion.

The possibilist accepts, however reluctantly, the inevitability of moral conflict and moral tragedy: one unavoidable cost of living in a democratic society is the challenge of material cooperation in evil. In some cases remote material cooperation will seem a lesser evil than a total loss of Catholic presence from the health system. This may constitute a sufficiently serious reason to cooperate in some instances.

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78 Tettamanzi, ‘Problemi morali’, 409, citing Article 9 of Law 194: ‘Conscientious objection cannot be invoked by hospital personnel and auxiliary staff when, in the particular circumstances, their personal intervention is indispensable in order to save the life of a woman in imminent danger.’ It is very likely that this is precisely the situation addressed emphatically by Pope John Paul II in Evangelium vitae 89.


81 Tettamanzi, ‘Problemi morali’, 397.
Tettamanzi has outlined a case for reassessing the structure of material cooperation in the context of a pluralist democratic society. He acknowledges the practical complexity of upholding Christian moral positions in a society which does not share the moral values of the Catholic community—a community which paradoxically, nevertheless, relies on that society to supply the very conditions which guarantee the Church’s flourishing.

Marcellino Zalba SJ also considers the context of modern pluralist society in which cooperation in evil is a frequent challenge because ‘spiritual and transcendental values are easily forgotten’. Even in the ‘person-centred’ approach of modern moral theology, these values must be kept clearly in mind and not abandoned through a misguided sense of ‘respect for erroneous conscience’.

Zalba judges that to use ‘respect for erroneous conscience’ as a justification for cooperating in evil does not really serve the dignity of one’s neighbour at all. He points out that the normal obligation to avoid cooperation in evil obtains when there is no substantial threat of inconvenience (incommodum) to the cooperator, but it does not apply when one has a ‘proportionate reason for tolerating or materially assisting in the execution of the thing, which is evil only because of the other agent’s perverse will.’

Consequently, presupposing the immorality of any formal cooperation in the perverse action, material cooperation, although per se it may not withstand whatever moral evil, per accidens it may turn out to be lawful, and on the contrary even obligatory, not unlike the situation where it is sometimes lawful for a different reason to provoke indirect scandal.

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82 M Zalba SJ, ‘Cooperatio materialis ad malum morale.’ *Periodica de Re Morali Canonica Liturgica* 71(1982) 411-441, at 413.
83 Zalba, ‘Cooperatio materialis’, 417: ‘There is a great difference between purely passive toleration of the evil action of one’s neighbour, whether it is done in good or bad faith, and positive collaboration and personal participation in a work which one knows to be immoral. There is at the same time an enormous and essential difference between erroneous conscience, which gives a judgment which permits or commands [‘permittens vel iubens’] a matter which is per se to be avoided, and correct conscience, which judges this action to be evil in itself, even if it could be done by another agent, acting inculpably in erroneous conscience, without sin.’ Zalba raises the question of ‘respect for erroneous conscience’ with reference to Charles Curran’s ‘Cooperation: Toward a Revision.’
84 Zalba, ‘Cooperatio materialis’, 418.
Zalba applies the principle to the three specific questions of marriage and divorce, abortion, and the sacrament of confession. Like Pope John Paul II in *Evangelium vitae* 73, he holds that legislators may sometimes vote in favour of abortion when the only alternatives are even worse laws: in this case a politician ‘may and must vote in favour of the lesser evil’:

> In this case it is not a question of approving or condemning abortion, but whether to impede or permit unbridled abortions. It is an exercise of wisdom to rein in opposing abuses when those abuses can in no way be eliminated. When there is fear of scandal of the people, it may be removed by opportune explanation.

Finally, Zalba agrees with Tettamanzi that a doctor may give ‘merely informative testimony’ to a woman seeking abortion. But rather than arguing this on the grounds of ‘preserving a Christian presence in a civil structure’, Zalba reverts to the traditional justification:

> . . . [the doctor] is not prohibited from offering this information in order to avoid serious harm to his professional practice. In acting thus he gives occasion or, at worst, remote and contingent cooperation, to abortion. He may not give this testimony merely of his own accord or in order to obtain some personal advantage, either of which would give the appearance of favouring abortion.

In keeping more with Tettamanzi than Zalba, Klaus Demmer MSC also seeks to treat the moral act in its fullest context: it is to be understood not as an isolated |

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86 Zalba, ‘Cooperatio materialis’, 426. Zalba here proposes, apparently as a general principle: ‘Laws may not be supported in parliamentary debate except when, according to his prudent political judgment, the parliamentarian is sure that such laws will result in a diminishing of evil in civil society.’

87 Zalba, ‘Cooperatio materialis’, 432: ‘poterit et debebit suffragari pro minus mala’. Addressing cooperation in abortion (at 433) Zalba responds to the question of ‘respect for erroneous conscience’: ‘It is never lawful for a doctor to cause a direct abortion, or to immediately cooperate in an abortion with a principal agent, even if by doing so he intends either to correct his client with whom he has entered a professional relationship, or to obey a determination of civil law which admits this concrete case, or to acquiesce to the conscience of the patient who has a right to seek an abortion in this case. A healthy civil law cannot heal the immorality of an action which natural law forbids; a moral professional relationship cannot include immoral medical procedures; the absence of formal evil in the principal agent by reason of erroneous conscience concerning an action which is in itself evil, does not free the secondary agent from personal sin when he knows that he wills to concur with an objectively evil action.’

88 Zalba, ‘Cooperatio materialis’, 433.
event (as in the traditional metaphysics) but in its existential reality; not solely in its meaning for the acting person, but also in its interpersonal and social meaning.\textsuperscript{89}

The moral action is inserted not only in an interpersonal context, but also and perhaps more tangibly in a social and ‘inter-human’ context. . . . Seen in this light, the moral action presents itself as a network of actions and reactions, of self-determination and other-centredness. Inevitably, to some degree, it slips from the hands of the agent and so is no longer subject to his evaluation alone but in some manner enters the public arena.\textsuperscript{90}

The ‘public arena’ today is clearly pluralist: there are manifold values and value systems, and often conflicting ideas, but they must all cohere in some way in a single society. It is the task of politics to make possible and to protect the cohesion of each society, so the socio-political context of the moral act is also of great significance.\textsuperscript{91} Intolerance, or unreasonable resistance to the plurality of moral values, would render the Christian incapable of exercising any influence whatever on the direction and quality of the moral and political life of society.\textsuperscript{92}

Demmer notes that the traditional principle of cooperation is based upon an unquestioned assumption that the cooperator is in possession of clear and accurate knowledge of moral truth, ‘which lowers itself to the level of one’s neighbour only in order to resolve questions of strategy’ - that is, exactly how to cooperate lawfully.

In this respect the problem today is put in a much more profound manner. In the cooperator the possession of the truth is not as secure as one might believe; and it is above all here that one must take account of the circumstances which are the object of reason, which not only understands but also interprets them. This pinpoints the current problem. The requirements of one’s irreplaceable judgment of conscience and the right of my neighbour to my tolerance must be reconciled in such a way that one cannot


\textsuperscript{90} Demmer, Interpretare, 188. See also ‘Tolerancia’, 329.

\textsuperscript{91} Demmer, ‘Cooperación’, 91.

\textsuperscript{92} Demmer, ‘Tolerancia’, 329; see also ‘Der Anspruch’, 702.
speak of a fall into tactical pragmatism or of renouncing one’s own moral identity.93

So the problem of cooperation for Demmer consists in the challenge of holding reasonably to the moral values which give direction and meaning to one’s own life, while simultaneously allowing one’s neighbour to do the same. It is as much a social challenge as a personal challenge.

Demmer sees in the democratic ordering of society a ‘room for freedom’ - specifically, freedom of conscience - which both constructs and threatens that society. On one hand freedom of conscience constructs democratic society because it demands a social structure and a degree of compromise capable of accommodating radically differing moral views. On the other hand freedom of conscience threatens society with fragmentation, as differing values compete and sometimes clash head-on over fundamental moral issues.94 The principle of legitimate cooperation enables a conscientious moral agent to steer between Scylla and Charybdis.

Ultimately, freedom of conscience works in both directions. It is a requirement of the human being’s social nature that a Christian must respect the consciences of those who hold other moral values, but it is also a requirement of faith that a Christian has a right to resist values and actions which would harm basic human rights, diminish Christian identity, or offend fundamental moral values.95 And this right to resist - a social right to non-cooperation - can be grounded in the tradition:

The Catholic moral theologian recognises the validity of the Aristotelian-Thomistic theory of truth - viz. veritas est adequatio intellectus et rei. For this reason he maintains the principle that “consensus non facit veritatem”. The agreement that it has been possible to reach on the practical level does not of itself constitute the truth, but it does provide an important index of the same.96

93 Demmer, Interpretare, 189.
94 Demmer, Interpretare, 194: ‘The limits [to tolerance] come to the surface whenever inalienable rights are under attack, and this all the more so for the principal agent himself than for the cooperator and third parties who must suffer the consequences.’
95 Demmer, Interpretare, 194-195.
96 Demmer, ‘Tolerancia’, 331. See also ‘Der Anspruch’, 712-713. Demmer also offers a precise interpretation of Pope John Paul II’s position in Evangelium vitae 73 (see above, 3.2.1): the moral object of the politician’s act is not the lesser evil at all, even though this will be the immediate material outcome of his vote. Rather the moral object (the ‘form conceived by reason’ rather than the
4.2.2 North America

Since 1968 there has been no greater centre of foment in Catholic moral theology than the United States of America. For example, it is no exaggeration to state that the shape of moral theology around the world was profoundly influenced by substantial dissent from Pope Paul VI’s *Humanae vitae* on the part of some American theologians, and by magisterial response to this dissent.97

In retrospect, controversy was inevitable. The Church in the United States had not only imbibed the spirit of Vatican II very quickly, but also possessed the will, the resources, and the infrastructure necessary to carry forward theological debate at a tremendous rate. Conducted within one of the world’s most multicultural societies, it is small wonder that the American Church soon recognised the challenges of pluralism and sought to address them. At the forefront of the Church’s exposure to pluralism were Catholic health facilities, and so much of the theological literature emerging from North America at this time concerned the ethics of Catholic health care.

The following provides a sample of some influential contributions relating to the problem of cooperation in evil. While a strict chronology might be very revealing, this would necessitate a much more wide-ranging study than is possible here. Rather, four touchstones are taken in order: the Canadian Bishops’ medico-moral guides of 1970, 1991 and 2000 (4.2.2.1), equivalent documents from the United States Catholic Conference in 1971 and 1994 (4.2.2.2), some writings of American theologian James F Keenan SJ who has made material cooperation a major focus of study (4.2.2.3), and some other recent writings (4.2.2.4).

mere ‘physical form’ of the act) is the avoidance or reduction of greater evil. Thus, given that the politician has no better alternative in fact, he is justified in voting for less rather than more liberal abortion laws: the moral object of this act is not an evil, but fewer rather than more abortions. See ‘Tolerancia’, 335. 97 Some crucial magisterial teaching came about as a direct response to this dissent, such as the Sacred Congregation for the Clergy, *The Washington Case* (26 April 1971) which provided clear teaching on the nature and dignity of conscience. It can be argued that other CDF documents (such as those discussed in 3.2.2 above) were also prompted indirectly by this controversy.
4.2.2.1 Canadian Conference of Catholic Bishops

The Canadian bishops published a Medico-Moral Guide in 1970 to replace their 1955 Moral Code. The 1970 Guide made no reference at all to the principle of cooperation; it was a simple statement of principles and general norms, to be received

... not as commands imposed from without, but as demands of the inner dynamism of human and Christian life. And precisely because they are that, their application to a particular situation will usually entail a great deal of prudence and wisdom. There, then, personal conscience will find its field of competence. The Guidelines should serve to enlighten this judgment of conscience. They cannot replace it.

A radically revised Health Care Ethics Guide was published in 1991. This was a much expanded and developed resource offering both fundamental principles and ‘a series of articles that serve as formulations of the contemporary Catholic understanding of how the principles and values are applied in particular circumstances’. It was clearly aimed not only at information, but also at practical assistance in clinical decision-making. Three aspects of the 1991 Guide merit brief comment: its sense of the mission of the Catholic hospital; its concept of mutuality; and its particular understanding of the principle of material cooperation.

The Canadian bishops acknowledge that the ministry of Catholic hospitals is an aspect of the mission of the Church, even if hospitals are at least partially funded from the public purse. On one hand it may be assumed that persons approaching Catholic hospitals will know that these operate ‘in accordance with Christian ethical and spiritual values’. On the other hand the 1991 Guide does not discuss whether or to what extent public funding gives the secular community ‘rights’ in respect of

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98 The text of the 1970 Medico-Moral Guide can be found in John F Dedek, Contemporary Medical Ethics. (New York: Sheed and Ward, 1975) 201-205.
99 Preamble, in Dedek, Contemporary Medical Ethics, 202.
102 CHAC, 1991 Guide, 10: ‘Catholic health care facilities, as privately owned and managed institutions that receive public funds for most of their services and programs, form an integral part of Canada’s health care system . . . Their mission has always been to offer accessible, quality health care to those in need in accordance with Christian ethical and spiritual values.’ And at 11: ‘The healing ministry of the Catholic health care facility is an expression of the ministry of Christ and of the church.’
medical procedures it may expect to be performed on the premises, or with the cooperation, of a publicly-funded Catholic institution.

The underlying vision of the human person is not only of an individual with innate and inalienable dignity but also of a social being.\textsuperscript{103} This seems to refer not only to the common good,\textsuperscript{104} but also to a necessary mutuality or reciprocity between the individual and the community in which he or she lives.\textsuperscript{105} There is an analogous mutuality between health care facility and pluralist society: while the health care facility has its own identity as Catholic, it often must ‘collaborate’ or ‘cooperate’ with other agencies in the provision of health care. Clearly the bishops recognise that the pluralist nature of society makes some forms of collaboration or cooperation necessary if the Catholic hospital is to exercise its ministry in the world.

The 1991 Guide not only views the ‘principle of legitimate cooperation’ simply as a particular application of the principle of double effect,\textsuperscript{106} but takes quite a ‘broad-brush’ approach to the conditions which govern its application:

- It is unethical to cooperate ‘formally’ with an immoral act (ie directly to intend the evil act itself). But sometimes it may be an ethical duty to cooperate ‘materially’ with an immoral act (ie one does not intend the evil effects, but only the good effects) when only in this way can a greater harm be prevented, provided (1) that the cooperation is not immediate and (2) that the degree of cooperation and the danger of scandal are taken into account.\textsuperscript{107}

This explanation of the principle has both strengths and weaknesses. On the positive side it acknowledges that cooperation in evil may sometimes be more than merely permitted - it may sometimes be a moral obligation; and the second provision neatly compounds ‘necessity’ and ‘proximity’ in the one concept, ‘degree of cooperation’. But on the negative side it does not make clear whether ‘directly to

\textsuperscript{104} CHAC, 1991 Guide, 14: ‘This means that the autonomy that we respect in a person’s individual choices should be situated within the context of the requirements of the community.’
\textsuperscript{105} CHAC, 1991 Guide, 19: ‘While each person is a unique individual, no one could exist for long or fulfill his/her potential apart from the human community... The individual and social needs of people must always be kept in balance...’
\textsuperscript{106} CHAC, 1991 Guide, 15: ‘This principle applies the Principle of Double Effect to the situation where an act is performed by more than one person who have different intentions.’ As noted previously, this interpretation is based on a misunderstanding of the structure of cooperation.
intend the evil act itself’ refers to both senses of ‘intention’ (ex fine operantis and ex fine operis); and it does not explain the meaning of ‘immediate cooperation’, nor the reason this should be considered immoral.

This account also offers only a broad justification of cooperation: ‘when only in this way can a greater harm be prevented’. This risks reducing the ‘sufficiently serious reason’ to a balancing of harms, but without specifying which harms are meant: harm caused to specific third parties? to the community in general or the ‘common good’? spiritual harm to the principal agent? the harm suffered by the cooperator if he does not cooperate? And this is all without considering whether the harms to be ‘balanced’ are actually commensurable.108

On the other hand the same justification emphasises the hard reality of cooperation: it is the threat of one impending evil which first prompts one to consider cooperation in another evil. So the 1991 Guide sees cooperation as a principle of compromise, effectively a specification of the more general principle governing real or apparent moral conflicts: when seemingly faced only with the choice of several evils, choose the least evil.109 This is, presumably, the meaning of the only other reference to material cooperation, in relation to contraceptive sterilisation.110

The Canadian 1991 Guide was not entirely satisfying, and was superseded in 2000 by a new Health Ethics Guide,111 in which an expanded treatment of cooperation reflects a heightened appreciation of the urgency attaching to this question in contemporary medical ethics.

The 2000 Guide is a response to contemporary society’s ‘broader concept of health’: apart from ‘sickness care’, the determinants of health care now embrace ‘biological factors, lifestyle, physical environment, spiritual well-being, housing.

108 As noted in 3.1.4.2 above, Alphonsus would consider it a matter of comparing the evil to which one contributes by cooperating, with the evil which one suffers by not cooperating
This is a holistic view: the health system is seen as one element in a wide network of care services addressing the needs of the whole person. Inevitably, insertion into such a broad context makes critical reflection on the question of cooperation only more urgent.

That reflection comes in an appendix to the 2000 Guide. Several aspects of the appendix merit comment.

First, it recognises the importance of the specific social and political context of Canada, including the history and structure of health care provision in that country, and especially the role of Catholic health care services and the Church’s role in influencing the direction of public health policy. Being woven into the very fabric of life in Canadian society is an aspect of the Church’s ministry:

Today, this ministry continues to provide an opportunity to bring the values of the Catholic moral and social tradition to bear on public policy considerations affecting the life, health, and well-being of persons, communities and the nation as a whole. Sustaining a strong Catholic health and social service presence is particularly important in a society where contrary values such as individualism and consumerism constantly erode respect for the dignity of human life.

Second, it recognises that the necessity of entering new health care partnerships presents both opportunities and challenges for the Church: opportunities for the promotion of the common good, social justice and responsible stewardship, for a Christian presence at critical moments of life, especially birth, chronic illness, and death; but also challenges:

Promoting justice and the common good in the context of such partnerships can pose a challenge to the identity, mission and ethical integrity of Catholic organisations. Such arrangements may necessitate closer involvement with organisations that do not share Catholic moral principles, and with practices that the Catholic tradition finds morally unacceptable. Such situations create ethical dilemmas that are often difficult to resolve.

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Third, the 2000 Guide grasps the core truth behind the principle of legitimate cooperation: ‘in some instances, the good that is sought can be achieved only through cooperation with what we find morally unacceptable’.\textsuperscript{116} It identifies the key differentiation between the acts of principal and cooperating agents, and the distinctions between formal and material cooperation (distinguished on the basis on intention), and immediate and mediate material cooperation (distinguished on the basis of moral object).\textsuperscript{117} It also notes the need for prudence in assessing the terms of cooperation (duress, distance, necessity, gravity), and proposes that at times the Church may need to risk giving scandal in order to take up a ‘prophetic stance’ in the interests of a greater good.\textsuperscript{118} And the Guide offers a general suggestion - unfortunately, without further explanation - on how a ‘broadening of the boundaries’ of material cooperation may enable the principle to encompass organisations as well as individuals, and so provide guidance for new partnerships in health care.\textsuperscript{119}

Overall the 2000 Guide’s treatment of cooperation is more satisfying than earlier efforts, thanks to a wider context and a tighter focus. The material on ‘duress’ and immediate material cooperation clearly owes a great deal to the USA’s \textit{1995 Ethical and Religious Directives}, which have subsequently proved problematic on precisely these points.\textsuperscript{120}

4.2.2.2 United States Catholic Conference

In 1971 the American bishops published their \textit{Ethical and Religious Directives for Catholic Health Facilities} (ERD).\textsuperscript{121} In terms of structure this was a

\textsuperscript{116} CHAC, 2000 Guide, 89.
\textsuperscript{117} Interestingly, the CHAC 2000 Guide’s understanding of ‘duress’ is specifically tied to the principle of the lesser evil: ‘duress’ converts implicit formal cooperation into immediate material cooperation when, because of duress, ‘the cooperator has lost the freedom to refuse to cooperate lest a greater evil occur.’ (91) This would seem to eliminate the possibility of any legitimate immediate material cooperation in intrinsically evil acts, since (as argued at 3.2.1 above in relation to \textit{Evangelium vitae} 73) there is no greater evil to avoid than an intrinsic evil. This discussion will be taken up again in the next section, and at 4.2.4.
\textsuperscript{118} CHAC, 2000 Guide, 91.
\textsuperscript{119} CHAC, 2000 Guide, 92.
\textsuperscript{120} See 4.3.2 below.
\textsuperscript{121} The text of the 1971 Ethical and Religious Directives for Catholic Health Facilities (ERD) can be found in the Linacre Quarterly 39(1972) 8-12. Anthony R Kosnik (‘The Present Status of the
very different document from its contemporary, the Canadian Medico-Moral Guide: a lengthy preamble establishing the normative nature of the document preceded 43 ‘directives’ dealing simply with ‘permitted’ and ‘forbidden’ medical procedures.

Coming in the wake of Humanae vitae and following hard upon The Washington Case, the 1971 ERD provoked considerable controversy among American theologians. Some critics proposed that the style and content of the directives betrayed an outmoded ecclesiology which considered social pluralism merely as an extraneous datum with which the Church had to deal, instead of a constitutive aspect of modern society which radically alters the very nature of Catholic health care because it carries alternative moral values across the very threshold of major Catholic institutions. Because the US bishops had failed to realise the practical implications of pluralism, said the critics, their concept of material cooperation was hopelessly out-dated.

The 1971 ERD made no explicit mention of the principle of material cooperation. Perhaps in response to some of their critics, the US bishops in 1994 corrected this oversight in their new Ethical and Religious Directives for Catholic Health Care Services. In some ways the 1994 ERD reflected the aims and
structures of the 1991 Canadian *Health Care Ethics Guide*, yet they also managed to retain much of the more directive approach of the 1971 ERD.¹²⁵

In a *Preamble* to the 1994 document the US bishops sought a balance between maintaining their authoritative stance and conceding some points to their critics: for example, there was greater awareness of the pluralistic nature of Catholic health care facilities in the modern context,¹²⁶ but at the same time the authoritative role of the bishop was preserved. This attempt at equilibrium is no more evident than in the bishops’ conciliatory approach to ethical decision-making:

> In consultation with medical professions, church leaders review these [new medical] developments, judge them according to the principles of right reason and the ultimate standard of revealed truth, and offer authoritative teaching and guidance about the moral and pastoral responsibilities entailed by the Christian faith. While the church cannot furnish a ready answer to every moral dilemma, there are many questions about which she provides normative guidance and direction. In the absence of a determination by the magisterium, but never contrary to church teaching, the guidance of approved authors can offer appropriate guidance for ethical decision making.¹²⁷

Three of the six parts of the 1994 ERD were directly relevant to the present discussion. The Introduction to Part 1 accepted that ‘within a pluralistic society Catholic health care services will encounter requests for medical procedures contrary to the moral teaching of the church’, but in refusing to consider such procedures ‘Catholic health care does not offend the rights of individual

¹²⁵ The 1994 ERD reflected the CHAC 1991 Guide not only in their tone, acknowledging that ‘the directives do not cover in detail all of the complex issues which confront Catholic health care today’, but also in their structure: after a general theological introduction, each subsequent part consisted of an ‘expository’ section followed by prescriptive norms. Yet the overall aim had not changed much from the 1971 US ERD: ‘First, to reaffirm the ethical standards of behaviour in health care which flow from the church’s teaching about the dignity of the human person; second, to provide authoritative guidance on certain moral issues which face Catholic health care today.’ See Origins 24(1994) 451.

¹²⁶ On pluralism: ‘By virtue of their baptism, lay faithful are called to participate actively in the church’s life and mission. Their participation and leadership in the health care ministry, through new forms of sponsorship and governance of institutional Catholic health care, are essential for the church to continue her ministry of healing and compassion. They are joined in the church’s health care mission by many men and women who are not Catholic.’ Origins 24(1994) 452. In the same place the bishops’ role was expanded beyond that of ‘teacher’ and ‘pastor’ to include ‘center of unity’ and ‘priest’.

¹²⁷ ‘Preamble’, Origins 24(1994) 452. It is unclear whether ‘magisterium’ here refers to the teaching office of the Roman curia or the American bishops themselves.
conscience’. Directive 6 noted that collaboration with other health care providers can be appropriate. In Part 4 the ERD noted that:

The church’s commitment to life is seen in its willingness to collaborate with others to alleviate the causes of the high infant mortality rate and to provide adequate health care to mothers and their children before and after birth.

Of particular importance, however, was the analysis of institutional and corporate cooperation developed in Part 6. The Introduction to this Part noted that contemporary social circumstances caused Catholic health care providers to be increasingly involved with other providers through joint purchase of services, co-sponsorship of integrated delivery systems or managed care organisations, or other corporate arrangements. These partnerships offer new opportunities for Christian witness, but also make it increasingly difficult to maintain a clear Christian identity and to implement Christian moral values. They make cooperation in evil a real possibility, and the many possible permutations of partnerships make assessment of cooperation considerably more complex than in the past.

To meet these challenges the US bishops offered three avenues of assistance: four directives which focused on cooperation and scandal, an Appendix to the ERD outlining the Principle of Legitimate Cooperation, and an *ad hoc* committee of the National Conference of Catholic Bishops to advise on institutional cooperation.

The first two Directives (67 and 68) noted that church teaching must be respected whenever partnerships affect the mission and identity of Catholic institutions, and therefore relevant bishops must be involved in negotiations and must give appropriate authorisations. Directive 69 required that Catholic institutions apply the principle of legitimate cooperation to determine the extent of

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128 *Origins* 24(1994) 453. This was a fairly obvious response to the arguments mounted by Reich and Curran, but the format of the ERD did not provide an opportunity to explain this refutation.

129 *Introduction* to Part 4, *Origins* 24(1994) 456-457. In the same Part 4, Directive 45 (at 457) specifically prohibited cooperation in abortion and (on the grounds of possible scandal) cautioned against cooperation with abortion providers; but in comparison with this it is interesting to note that while Directive 52 stated that ‘Catholic health institutions may not promote or condone contraceptive practices . . . ’ it did not specifically prohibit purely material cooperation which may occur, for example, if doctors who maintain rooms in church-owned hospitals were occasionally to prescribe contraceptives. It might be argued that this exceptional case would be subject to the conditions given in the fourth CDF *Reply*, noted in 3.2.2 above.
collaboration allowed, while Directive 70 noted the distinct (but related) issue of scandal: even where cooperation is ‘morally appropriate’ in itself, the risk of scandal may mean that cooperation should be refused.

The appendix was entitled The Principles Governing Cooperation. It highlighted the central feature of the principle - a distinction between the action of the principal agent and that of the cooperating agent - and outlined the major categories of cooperation. The two kinds of formal cooperation were given equal prominence: explicit (intending _ex fine operantis_), and implicit (intending _ex fine operis_). The description of the latter was simple:

 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.\(^{131}\)

A second distinction differentiated immediate from 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.\(^{132}\)

The general meaning of this distinction is clear, but the explanation is not: if the moral object of the cooperator’s act is the same as the moral object of the wrongdoer’s act, then they would seem to be performing the same action and the basis of differentiation disappears. So exactly what constitutes ‘duress’? and how does ‘duress’ function so that the cooperator’s act qualifies as ‘immediate material cooperation’ rather than ‘implicit formal cooperation’? The Appendix does not explain, but some observations from the tradition may be helpful.

In his example of immediate material cooperation, Henry Davis referred to ‘cooperation in the sinful act of the other, as to help a burglar to empty the jewels

\(^{130}\) Origins 24(1994) 459-460.

that he is stealing into the burglar’s wallet’. In an exercise of classical casuistry he notes:

Immediate material cooperation in another’s sinful act is always wrong, though there are many apparent exceptions, especially in matters of justice. Thus, under threat of death, I may, very probably, help another to destroy the property of a third person, because if in extreme hunger it is permissible to take food that belongs to another not in extreme need, it would seem that an analogous method of saving one’s life is not sinful. The owner of the property destroyed is, it is alleged, not reasonably willing that his property should be preserved at the cost of my life. . . . [under the circumstances] this is not using a bad means to compass a good end: the means are not bad, for nobody’s rights are invaded.

First, duress - the threat of death in this case - could work in two ways: either it could alter the moral species of the cooperator’s act by providing the cooperator with a different moral object; or it could leave the moral species untouched but diminish the cooperator’s culpability. Second, however, the way in which duress works depends to some extent on the cooperative act itself and the kind of evil in which the cooperator participates. This will emerge more clearly below.

In Davis’s case, duress works by altering the moral species of the cooperator’s act. The severity of duress in his example means that the cooperator, when viewed objectively, is not participating in the unjust destruction of property: to be sure, property is destroyed - but not unjustly, for no-one could justly value private property above life itself. Therefore Davis can conclude that ‘the means are not bad, for nobody’s rights are invaded’ because of the duress the moral object of the cooperator’s action is ‘to save his own life’ - he is ‘preserving a great good’. But in the Appendix, immediate material cooperation occurs when the cooperator’s object is the same as the wrongdoer’s object; but if the moral objects are still the same even in the presence of duress, then duress cannot be operating here as it does

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\begin{align*}
132 & \text{ Origins 24(1994) 461.} \\
133 & \text{ Davis, vol. I, 341. See above, 1.2.3 and 2.1.3.} \\
134 & \text{ Davis, vol. I, 342-343.} \\
135 & \text{ This is an example of the point made in 2.3.2 above: the circumstances of this case are such that, when it is adequately described, the cooperator’s action is not ‘destruction of property’ but ‘preservation of life’.}
\end{align*}
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in Davis’s case. Therefore in the ERD duress can only function in the other way: by restricting the cooperator’s freedom and so diminishing personal responsibility.

With regard to the manner of functioning, two points are immediately evident. First, duress can be a morally-determining circumstance only if the moral species of the cooperator’s action is not already fully determined by its own intentionality (finis operis, as distinct from the finis operantis): that is, only if the cooperator’s action is not itself intrinsically evil.\textsuperscript{136} But where the action of the principal agent (whose moral object the cooperator shares) is ‘incapable of being ordered to God’,\textsuperscript{137} then no amount of duress alone could ever provide the cooperator’s act with a legitimate moral object: it is difficult to imagine how immediate material cooperation in an intrinsic evil could ever be ‘preferable’ as a ‘lesser evil’ since, if the ERD account is true, this cooperation will always share the principal agent’s (intrinsically evil) moral object.

Hence, as noted, the way in which duress works depends to some extent on the kind of action in which the cooperator participates. However, it seems that even in the case of intrinsically evil acts, the second manner of working remains open: ‘duress’ may so adversely affect the freedom of an individual cooperator that it reduces personal culpability.\textsuperscript{138}

Second, as the Appendix implies, even for actions which are not intrinsically evil, not all forms of duress will be so grave as to alter the species of the cooperator’s act or excuse the cooperator’s choice to cooperate. In order to function in either of these ways the duress would have to be of such significance, and directed against such a superior good, that the harm threatening that good would be greater than the evil to which one would contribute by cooperation. So except in cases of intrinsically evil acts, duress may be able to justify immediate material cooperation,

\textsuperscript{136} See 2.3.2 above.
\textsuperscript{137} Veritatis splendor, 80.
\textsuperscript{138} On this point, see Welch, ‘An Excessive Claim’. See also 4.3.3 below and Kevin O’Rourke OP, ‘A Brief Response to Father Keenan.’ Ethics & Medics 23:9(1998) 4: ‘If duress were to impair all freedom, then it might remove subjective culpability, but it would not change the objective nature of an act which is intrinsically evil.’ O’Rourke is technically correct on the question of objective morality, but Keenan apparently also holds this position: see ‘Cooperation and “Hard Cases”’. Ethics & Medics 23:9(1998) 3-4, points 3 and 4.
but only ‘if this is the only means of saving life or preserving a great good’\(^{139}\) - that is, a good greater than that threatened by the evil action of the principal agent. Hence Alphonsus holds that in order to save one’s own life one may assist a thief, but one may never cooperate in killing the innocent.\(^{140}\)

The next question is: is ‘duress’ the only factor which might excuse immediate material cooperation or provide the cooperator with an alternative moral object? Can any other factors work in either of these ways? And can ‘duress’ be taken to embrace not only fear of harm to a substantial present good (such as one’s own life), but also fear of harm to a substantial future good? Some of these questions will be taken up again in the final chapter of the present work.

The third paragraph of the Appendix was disappointing, for it further confused the question of objects by introducing yet another: ‘the object of material cooperation’. It is far from clear whether this referred to the cooperator’s subjective intention, or the intentionality of the cooperator’s act.

Finally, the Appendix rightly emphasised the role of prudence in estimating questions of cooperation, indicating (in line with the tradition) that assessment of cooperation depends more on the exercise of practical wisdom than on any mathematical application of metaphysical principles.\(^{141}\) It is presumably in this ‘taxonomic’ use of the principle that an ad hoc advisory committee would find its role.\(^{142}\) The danger of scandal should also be avoided as far as possible (the Appendix would have it eliminated altogether). And an interesting possibility was opened up: assessment of cooperation should include ‘appropriate consideration’ of ‘the church’s prophetic responsibility’. Here one senses the beginnings of an answer to an earlier question: adequate assessment of material cooperation should include consideration of the risks to goods both present and future.

\(^{139}\) Davis, vol. I, 343.

\(^{140}\) Alphonsus, de caritate, 66: ‘... non licet occidi innocentem, ut tu mortem vites.’ On balancing harms and on his definition of an intrinsically evil act of cooperation, see de restitutione, 571.

\(^{141}\) Thus the disclaimer which Aertnys-Damen issue prior to their study of cases of cooperation in de caritate, 402, repeating the warning of Alphonsus himself that in these matters opinions are bound to vary. See also 1.2.2 above.

\(^{142}\) On moral taxonomy, see Keenan, ‘The Function of the Principle of Double Effect.’
As they stood, the 1994 ERD made a substantial contribution to contemporary interpretation of cooperation in evil. They struck a certain balance between the traditional metaphysics and a more personalist approach, and they raised some key questions for ecclesiology and missiology, particularly concerning the church’s role in a pluralist world. The Appendix to the ERD was probably then the most complete contemporary framing of the principle of cooperation. However, some of the difficulties noted here returned to haunt the 1994 ERD, and the Congregation for the Doctrine of the Faith subsequently required the US Bishops to amend them - in particular Part Six and the Appendix, both dealing with the principle of legitimate cooperation. The bishops’ response was to omit altogether the appendix on cooperation from its 2001 ERD. A fuller discussion of these developments will follow below.\footnote{My thanks to Rev Dr Gerald Gleeson for drawing my attention to a summary of these developments provided by the President of the Catholic Health Association of the United States of America, Rev Michael D Place, in memoranda dated 20 and 26 September 2000. These memoranda are available to members of CHAUSA via its website, \url{www.chausa.org}. See 4.3.2 below for further comment.}

4.2.2.3 James F Keenan


The extent of Keenan’s corpus, and the fact that much of it addresses specific contemporary issues, make it worthy of detailed study in itself. This would
be beyond the scope of the present work, which will limit itself to observations on two foci of Keenan’s writing.

a) The object of cooperation

Keenan’s basic insight into cooperation is put in an article on the vexed question of AIDS and condoms: is it morally lawful to advise the use of a condom to a person who, being HIV-positive, is determined to continue to engage in frequent acts of sexual intercourse? On the surface this appears similar to Alphonsus’s classic case concerning cooperation with one who is determined to sin, with an additional emphasis on tolerating a lesser evil.

[The US Bishops’ letter] . . . permits counsel concerning the use of prophylactics but only after counsel concerning abstinence has failed. If a person is already resolved to perform the illicit act, whether or not counsel is given, he will commit the act; the counsellor plays no part in it. This person is thoroughly self-sufficient. He needs no accomplices . . . to commit this act. I have not found any case that better illustrates the ‘dispensability’ of cooperation than this case. Thus, we see that the letter’s proposals of cooperation in no way assist the person to commit the act.

This position requires a clear distinction between the evil action of the principal agent (unchaste sexual activity) and the evil affects of that action (likely spread of HIV to innocent third parties). Because the principal agent is already determined to commit his sin, Keenan’s argues that the US bishops exercise no moral causality in the action itself insofar as it is sinful, but only participate in reducing its harmful consequences. In this regard their position is analogous to that of the politician in Evangelium vitae 73. Alphonsus would agree: because the sin is inevitable the bishops do not concur in the principal agent’s fault, but only in his material action.

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146 Alphonsus, de caritate 47. See 1.1.4 above.
147 Keenan demonstrates that in their teaching on this question the US bishops employed the principle of ‘toleration’ only in relation to public education programs (‘institutional activity’) which contain information about prophylactics, but they used the principle of ‘cooperation’ proper in relation to offering private moral guidance (‘personal activity’) concerning use of condoms to minimise the risk of transmitting HIV.
148 Keenan, ‘Prophylactics’, 217. Emphasis original. The US bishops’ teaching seems to stand on safe ground, as their argument is virtually identical to a position held widely in the tradition. See Hannigan, ‘Is it ever lawful?’
149 Alphonsus, de caritate 63.
The bishops’ ‘cooperation’ is therefore that one form of *participans* without induction which constitutes ‘cooperation properly so called’, so the next test is whether this cooperation is justified: do Alphonsus’s three key conditions apply? These are that (1) one’s own action must be good or indifferent in itself; (2) it must be for a good intention and a reasonable cause, and not in order to assist the sin; and (3) one is unable to impede the other’s sin.\(^{150}\)

The last two conditions are clearly met: counsel is offered in order to minimise harm to third parties and not to assist the inevitable sin, which in any case the counsellor is powerless to prevent. The first condition, however, requires one to show that advising use of a condom for unchaste sexual activity is not an evil action in this case, that is, an action which is evil by virtue of its moral object. Keenan argues that *in this case*, since the unchaste (and unsafe) sexual activity is inevitable, the cooperator’s action (advising use of a condom) is morally distinct from the principal agent’s action (actual use of a condom) because the moral object of the former (minimising risks to others) is distinct from the moral object of the latter (unchaste sexual activity).\(^{151}\)

In this case and under these circumstances, ‘advising use of a condom’ stands within the moral tradition on advising the lesser evil: given the inevitability of the sin, prudent advice to sin less grievously rather than more grievously ‘is not only lawful, but holy, nay more, it is the office of the Angels’.\(^{152}\)

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\(^{150}\) See Alphonsus, *de caritate* 59.

\(^{151}\) Keenan, ‘Prophylactics’, 209-214. It must be remembered that ‘moral object’ refers not to the physical form of the activity being performed but to its *form conceived by reason*, the ‘moral matter which the act aims to attain or with which the act deals’, its meaning in *genere moris*. See above, 2.1.2, point 9.

Keenan argues elsewhere (on the question of cooperation in direct sterilisation) that ‘In judging the morality of cooperation a clear distinction should be made between the reason for the sterilisation and the reason for the cooperation . . . If the cooperation is to remain material, the reason for the cooperation must be something over and above the reason for the sterilisation itself.’ ‘Institutional Cooperation’, 69. Keenan is here apparently citing the US bishops, ‘Sterilisation Policy for Catholic Hospitals.’ *Origins* 7(1977) 399-400.

\(^{152}\) Cajetan (*Opuscula Omnia* Tom. I, Tract. 31, Resp. 13, ad tertium) cited in E T Hannigan SJ, ‘Is it ever lawful?’, 108. The precise position of Cajetan, as related by Hannigan, is significant: if the principal agent is already determined unto sin, one may not induce him to a lesser sin of a different kind or against a different person, but only to a less serious sin of the same kind against the same person: ‘And hence it is, that if we cannot withdraw an adulterer any other way from committing adultery, we may lawfully provoke him to simple fornication, not by urging him to commit fornication,
Keenan implies that, because it concerns personal activity, such advice can be offered only in individual cases: it may be the most prudent option in a particular instance, and it is the act of ‘offering’ the advice which establishes it as cooperation rather than tolerance. Therefore the bishops are not establishing a general policy of counselling the use of condoms to restrict the spread of AIDS, which could constitute unjustified cooperation in evil and would certainly offend the Congregation for the Doctrine of the Faith’s veto on such policies. They are, rather, recognising that it may sometimes be more prudent in individual instances to counsel the use of condoms (that is, to cooperate only materially) if this is the only way to minimise the harmful effects of inevitable immoral sexual activity in the particular case.

Another test of the bishops’ position further strengthens Keenan’s position: (1) this cooperation gives occasion to a less serious rather than a more serious sin (because it will have fewer or less serious effects); (2) the principal agent’s sin is inevitable in any case; (3) at best, this advice bears only very remotely on the principal agent’s sin as sin; (4) there is a positive duty to minimise harm to others; and (5) far from offending the demands of justice, counselling the lesser evil reduces injustice by minimising harm to third parties.

The basic distinction between the evil action itself on one hand, and the evil effects of the action on the other, is found in the Alphonsian tradition which distinguished cooperation in *de caritate* from cooperation in *de restitutione*. Keenan

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*but by saying to him, 'If you are determined on gratifying your passions, at least don’t violate the bed of another . . . And this is not to induce to a greater or a lesser evil, but it is 'secundum rem' objectively to withdraw from a greater evil.’ Note that this ‘counselling of evil’ is not absolute but conditional (‘If you are determined . . . ’), and this condition is held to be an essential quality (whether or not it is explicitly stated at the time) if counselling a lesser evil is to be considered lawful. This condition may be taken as understood in Keenan’s case of the ‘belt-offering wife’ (Keenan, ‘Prophylactics’, 207).

Cajetan’s position found an honoured place in the manualist tradition: see for example Davis, vol. I, 339: ‘It is held as probable by an impressive number of authors that it is not sinful to advise a person, already fully determined to commit a sin, to commit a lesser one in the same category or against the same person, or even if the sin, such as injustice, affects a third party. To give such advice is consistent with charity.’

In view of these distinctions it might be more accurate to entitle it not the ‘principle of lesser evil’ but the ‘principle of less sinning’, or the ‘principle of less evil effects’.

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proposes that ‘cooperation in favour of less evil effects’ should play a positive role in moral deliberation.

More importantly, there are cases in which A cooperates precisely to diminish the physically evil effects of B’s illicit or morally wrong actions. Here, rather than a question of options or rights, cooperation is a means of determining whether potential catastrophes can somehow be averted. . . . Effectively, in each case the agent asks at some point in his deliberations whether more harm than good could occur by his failure to cooperate materially.155

This casts the principle of legitimate cooperation as a principle of compromise,156 in which (in some cases at least) material cooperation may be positively required if it is the only way of minimising harmful effects. Thus Keenan argues that the principle of cooperation is a ‘guiding principle’ rather than merely a ‘permitting principle’ because it helps the cooperator positively to ‘contain involvement in the wrongdoing’.157 Perhaps the principle often seems otherwise, but this insight sits well with Keenan’s insistence on the ‘taxonomic’ rather than ‘geometric’ function of moral principles in casuistry.158 It may also shed light on the magisterium’s position on moral agents being ‘constrained’ to cooperate.159

b) Immediate material cooperation

Keenan argues that cooperators are not always entirely ‘free agents’ making moral choices completely unimpeded by other factors:160 sometimes they are, or consider themselves to be, acting under some form of ‘duress, constraint or pressure’.161 The question of duress is central to another contentious aspect of Keenan’s position, his defence of immediate material cooperation in an extended dialogue with Russell E Smith.162

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154 On these five conditions see Alphonsus, de caritate 59.
156 At least, compromise in the analogous sense discussed above at 4.1.2.2.
159 See 3.2.2 above.
The case concerns a Catholic hospital threatened with loss of its obstetrics department unless it allows some surgeons to perform (rare) direct sterilisations. Can hospital authorities offer immediate material cooperation (with the surgeons’ actions, presumably) in order to save its obstetrics services?

Smith maintains that, given the intrinsically evil nature of direct sterilisation, duress can function only as a modifier of responsibility: it cannot alter the moral species of direct sterilisation but may diminish the cooperator’s culpability. Therefore he concludes that immediate material cooperation in direct sterilisation is never strictly lawful.

Theologians maintain that in the objective order, immediate material cooperation is equivalent to implicit formal cooperation because the object of the moral act of the cooperator is indistinguishable from that of the principal agent. Those who use the term ‘immediate material cooperation’ have understood this as ethically unacceptable behaviour.

Keenan holds a similar position on the question of culpability, but cites Davis to argue that immediate material cooperation in some evils can be lawful. He does not indicate that Davis’s case does not concern an intrinsically evil act, where his own case does, nor does he advert to the significance of this difference. But Keenan doesn’t question whether direct sterilisation is intrinsically evil: he only asks whether circumstances might arise in which cooperation in direct sterilisation would be justified.

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164 Smith, ‘Formal and Material Cooperation’, 1-2. Emphasis added. Smith’s argument here leads him to conclude that the action condemned in 1679 (see 1.1.3 above) was an example of immediate material cooperation. See Smith, ‘Ethical Quandary’, 92-93. For Alphonsus’s position on the same case, see 1.1.4 above.


Keenan cannot argue here, as he does in the ‘AIDS and condoms’ case, that direct sterilisations are inevitable, for they will not proceed at all without the hospital’s compliance. Therefore he cannot argue that the sole aim of the hospital’s action is to minimise the harmful effects of an inevitable evil action. Instead, he argues that the threat of losing medical services constitutes an evil, and this may be greater than the evil of cooperating in direct sterilisations. His position seems to be that, in the circumstances, it is a lesser evil for the hospital to cooperate positively in direct sterilisations and a greater evil for it to cooperate negatively in the loss of services. In his view the hospital’s action does not constitute implicit formal cooperation in the surgeons’ actions: ‘duress’ makes it immediate material cooperation.

It will also be noted that these two evils are logically distinct: there is no connection per se between loss of obstetric services and cooperation in contraceptive sterilisations, but it is the surgeons’ attitude which establishes a connection per accidens. It is the surgeons’ ultimatum alone which creates the moral dilemma, and the evil which is done in either case will come about solely by virtue of the surgeons’ wills. The desire to argue this case on the grounds of cooperation is very understandable. But it is also important to recall that a moralist like Grisez would hold Keenan’s position to be invalid because the unquestionably good finis operatoris (preservation of obstetrics services) is only achieved by way of an evil finis operis (cooperation in direct sterilisation) - and a good end may never be compassed by an evil means.

One difficulty throughout this debate is that ‘duress’ has not been adequately defined. Smith suggests two elements: it is coercion or compulsion directed against the cooperator, and it is ‘episodic’ rather than ‘systemic’. He does acknowledge that institutions may be subject to ‘systemic duress’, but judges that if

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167 Indeed, in ‘Hard Cases’ at 3 Keenan states clearly that ‘to apply the principle of material cooperation to sterilisation is not to claim that sterilisations are right, but that they are actually intrinsically wrong.’

168 This seems to be a reasonable interpretation of Keenan’s conclusion in ‘Institutional Cooperation’, 72-73.

169 Smith sees this problem in ‘Duress and Cooperation’, 2; see also William J Buckley’s letter under the heading ‘Ethical and Religious Directives’ in Health Progress (July-August 1995) 8.

170 Smith, ‘Ethical Quandary’, 94.
systemic duress is foreseeable, an institution should ‘consider both negotiated dispensation from the requirements of law and/or the possibility of modification of the apostolate’. Keenan finds this distinction ‘curious’ on the grounds that all duress is episodic: it affects moral choices only for as long as it lasts, and it may last for as long as a particular arrangement is in place. But Smith’s argument and Keenan’s response on this point both seem unnecessary. It is surely sufficient to agree with the Congregation for the Doctrine of the Faith: material cooperation in evil cannot be a matter of policy (systemic) for any institution, but may be permitted for serious reasons in individual (episodic) instances according to prudent application of the traditional principle.

Furthermore, only if one holds for the possibility of moral purity is it even necessary to develop an argument that ‘duress’ makes immediate material cooperation lawful. For those who accept the possibility of moral tragedy it is sufficient to argue for the alternative, that ‘duress’ acts to diminish subjective culpability - as it seems to do in the principle of lesser evil. The realist in Keenan does not enter into any ‘geometric’ application of the principle in order to argue that immediate material cooperation may be legitimate; rather he entrusts ‘taxonomic’ use of the principle to the prudence of the appropriate authorities, who may in some cases judge cooperation to be a lesser evil.

But he insists on clarity. Moral objects must be carefully described, and reasons for cooperation must be carefully distinguished from reasons for the evil deed itself. The sufficiently serious or ‘proportionate’ reason which justifies material cooperation must be strong since it concerns a good which is to be protected against harm. Keenan also identifies that a proportionate reason may be sufficiently serious because it excuses the cooperator from blame (as in the case of

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171 Smith, ‘Ethical Quandary’, 95. The latter phrase would seem to include abandoning this particular apostolate altogether.
173 See the CDF Replies to Questions noted in 3.2.2 above.
176 Keenan, ‘Institutional Cooperation’, 59. Keenan holds that in the case of cooperation, proportionate reason functions ‘solely to protect a value, like life or property, that is being threatened; it is not invoked to simply promote something, but rather to protect something that is endangered.’
cooperation by subordinates), or because it minimises harmful effects (for example, in cases where the common good is at stake), or indeed, an agent may hold multiple reasons which work together to justify a single instance of cooperation.

Overall, James F Keenan has made a significant contribution to a contemporary understanding of legitimate cooperation. He reassesses some of the traditional categories in light of contemporary social and political realities, in keeping with his insistence that moral principles must be applied ‘taxonomically’ rather than ‘geometrically’, and this is a valuable insight. At the same time, despite his best efforts, he does not seem to have proposed a conclusive solution to the problem of ‘immediate material cooperation’ in intrinsically evil acts. But every moralist concedes that cooperation in evil lies among the most complex of moral problems, and modern pluralist cultures make it only more so.

4.2.2.4 Other Writers

A number of other writers have also recognised the significance of the principle of legitimate cooperation in modern, pluralist America. For some, interest in cooperation springs as much from their experience of the complex American medical insurance industry as from their Catholic backgrounds. It is not surprising that their assessments of cooperation are somewhat uneven.

Judith Lee Kissell takes the general concept of ‘complicity’ as a model: in relation to the evil brought about, the cooperative act itself is ‘non-violating and incomplete’ since it neither offends a moral norm nor causes the evil itself. She recognises the principle as a ‘conflict-resolving strategy’, and correctly identifies that the ‘wrongness’ of a cooperative act lies precisely in its circumstance as cooperative. Like Keenan she holds that the principle applies taxonomically rather than geometrically, and the operative virtue is prudence.

The role of prudence is to perceive the connection between the moral evil, the non-violating act and its circumstances. We usually

180 Kissell, ‘Contemporary Relevance’, 34-36.
181 Kissell, ‘Contemporary Relevance’, 38.
do not need such insight for the immediate and blatant offence. Further, the very nature of casuistic reasoning in these cases means that each situation is only analogous to the others because so many, and such varied, possibilities for collaboration exist. The ability of prudence to detect and articulate the ambiguous and analogous relationship is critical.182

If only because it does not merely repeat traditional categories and definitions, Kissell’s is a refreshing view. But the use of external models is not always helpful: Kissell dismisses ‘immediate material cooperation’ because it resembles the legal concept of ‘conspiracy’, with implications of co-agency and equal culpability.183 Yet Davis’s example illustrates that the ‘moral reflex’ identifies immediate material cooperation as, in some way, quite distinct from implicit formal cooperation.184

An unsigned article in The Catholic World Report relates the experience of Cardinal Jean Margéot of Mauritius, who resisted government moves to legalise abortion by providing instead a network of natural family planning agencies.185 The results speak for themselves: 20% of women came to use NFP (62% of these being Hindu and Muslim), and the effectiveness of the program convinced the government not to proceed with its abortion law reform. However, to promote a similar NFP program more widely in Africa would require the financial support of international organisations, many of which would demand that Church agencies must also offer referrals to other family-planning centres. Cardinal Margéot recognises here the challenge of cooperation in evil.

Consulted on the morality of cooperating in these circumstances, John Haas suggests that ‘if you substitute ‘abortion’ for ‘contraception’ in this argument, you see immediately why it wouldn’t work . . . You wouldn’t want to cooperate in any way, facilitating people to carry out a gravely immoral act’. He reportedly adds, as another example, that ‘a surgical nurse could in no way prepare for an abortion

182 Kissell, ‘Contemporary Relevance’, 42.
184 The idea of a ‘moral reflex’ is taken from Russell E Smith, ‘Ethical Quandary’, 95. There, as here, it refers to one’s primary non-conceptual response to limited and limiting moral situations.
procedure, or a tubal ligation even if she did not take part in the action or agree with its purposes. That cooperation would be immediate and too proximate’.\(^{186}\)

These arguments are clumsy. In the first place, comparing ‘abortion’ with ‘contraception’ is valid casuistry only if referring a woman for ‘family-planning’ advice includes the element that this an ‘illicit act’; but if there are valid medical grounds for a woman to be prescribed anovulants, then the act of referring her for ‘family-planning’ advice may not be cooperation in evil at all. (On the same grounds, of course, there could never be valid grounds for referring a woman for an abortion.) In the second place, some would disagree with Haas’s reading of the surgical nurse’s position: Gerald Kelly, for example, argues the contrary where the nurse has a proportionate reason to justify cooperation.\(^{187}\)

In another article in *The Catholic World Report*, Philip F Lawler tells of efforts in the US Diocese of Peoria to maintain an important health care system.\(^{188}\) In the absence of ‘an adequate supply of doctors who would accept the system’s ethical standards’, the sponsoring religious order reluctantly accepted that doctors could prescribe birth-control devices, but only in their private practices and not as representing the Catholic hospitals. To place further distance between itself and contraception, the hospitals required that prescribing doctors personally inform their patients that they are acting as private physicians, that they place signs to that effect in waiting rooms, and that hospital prescription pads are not used for prescribing contraceptives.\(^{189}\)

Lawler notes that even the architect of this solution was not entirely happy with it. However, his concession that this ‘remote material cooperation’ is entered only ‘under duress from the marketplace’ illustrates the significance of ‘systemic

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\(^{187}\) Gerald Kelly SJ, *Medico-Moral Problems*. (St Louis: Catholic Hospital Association of the United States and Canada, 1957) 332-335. To his credit, Haas adds: ‘That’s my judgment . . . Obviously, other people have come to other judgments.’


\(^{189}\) Compare this solution to the CDF *Replies* IV and V, noted above at 3.2.2.
duress’: in some cases cooperation is preferable to closure of institutions because it is, apparently, a lesser evil.\textsuperscript{190}

In a survey of factors complicating medical decision-making in the USA, Charles E Millard and Robert McManus offer a simplified treatment of cooperation.\textsuperscript{191} Of particular note are their acknowledgment of the American health care system and pluralism itself as major factors contributing to the challenge of cooperation, and their acceptance of ‘immediate material cooperation’ in situations marked by ‘compulsion or force’. Unfortunately, their interpretation of ‘proportionate reason’ overlooks the difficulties inherent in the ‘\textit{weighing or balancing of good and bad effects}’.\textsuperscript{192}

Two other papers discuss the question of cooperation in connection with physician-assisted suicide (PAS). Patrick Norris OP notes that some physicians feel happier collaborating with ‘physician-assisted suicide’ than with ‘euthanasia’ on the grounds that the latter requires their direct involvement in ending life, while their involvement in the former is more remote.\textsuperscript{193} He rightly argues that while these actions ‘\textit{require two different types of physical and moral cooperation by the physician . . . neither type of cooperation is acceptable}’.\textsuperscript{194} The reason is that there is no greater good to be attained or evil to be avoided: neither ‘avoidance of pain’ nor ‘respect for patient autonomy’ can provide a reason to justify cooperation in these actions.

Less satisfying is the contribution of Ralph P Miech.\textsuperscript{195} He correctly notes that duress plays a central role in immediate material cooperation, but in relation to intrinsically evil acts it can never provide grounds for choosing ‘cooperation as a lesser evil’. Unfortunately the example offered does not prove his case:

\textsuperscript{190} Lawler, ‘Playing in Peoria’, 41.
\textsuperscript{192} Millard and McManus, ‘Today’s Physician’, 92.
\textsuperscript{194} Norris, ‘Wrong Direction’, 35.
... if a physician were to allow his name to appear in an advertisement for a Health Maintenance Organisation that advertises PAS as one of its ‘services’, then even if he may refuse to participate in PAS himself, the use of his name in the advertisement would be a case of immediate material cooperation.\textsuperscript{196}

It is not immediately obvious why use of one’s name in advertising should constitute immediate material cooperation in physician-assisted suicide, unless PAS was the only service advertised.

4.2.3 Australia

In recent years several Australian theologians have also considered the problem of material cooperation. In general their studies emerge from analysis of cases encountered in concrete practice - usually hospital and medical ethics.

Anthony Fisher OP offers a much simplified account of cooperation which nevertheless manages to raise several important issues.\textsuperscript{197} He locates the complexity of cooperation in the myriad relationships within which moral decisions must be made,\textsuperscript{198} and identifies moral purity as an underlying concern for moral agents. But cooperation with others is ‘essential to community and to any human life’, and so cooperation with evil is ‘unavoidable, especially for those who live ‘in the world’, and sometimes it is our duty’.\textsuperscript{199}

In an interesting twist Fisher labels formal and material cooperation simply ‘intentional’ and ‘unintentional’ cooperation, drawing on Grisez’s theory of intention to explain that the former includes the cooperator intending evil either as means or as

\textsuperscript{196} Miech, ‘Patient Suicide’, 3.
\textsuperscript{198} ‘We live and work with others, for particular projects and for the common good, in relationships of equals, or of authority and obedience, each person making a distinct and appropriate contribution in pursuit of common ends. Difficulties regarding cooperation often arise because one is expected to help family, friends, employers, fellow-workers, government or others towards whom one already has duties, a history and a future of relationship.’ Fisher, ‘Co-operation’, 15.
\textsuperscript{199} Fisher, ‘Co-operation’, 15-16.
end, while the latter extends to responsibility also for ‘undesired side-effects’.\footnote{200} And among his comments on intentional cooperation Fisher makes what is, in the literature in general, a very rare reference to the ‘ontological’ significance of cooperation:

\ldots it is very much a matter of what one chooses, what one makes one’s own purposes or means to those purposes, and thus what one makes oneself. The self-creative effects of choices, which are central to the whole moral life, are crucial here: what is what I am doing making me and what is it saying about me?\footnote{201}

Several other aspects of Fisher’s study stand out. For example, his analysis of possible benefits of cooperation include apparent future and positive goods such as ‘the opportunity to serve, to heal, to save and nurture life and health’.\footnote{202} This seems somewhat at odds with Evangelium vitae 73, in which justification of cooperation appears to be limited to a consideration of present good only.\footnote{203} A prudent rule which respects both positions might be: ‘A good which is already being done, or which is foreseen as very probable in the future, is more compelling than a good which may only possibly be done in the future’. This opens an interesting question about the nature of the cooperator’s moral object.

Further, the idea that ‘we are obliged as far as possible to avoid or minimise the harms’ suggests that the principle of lesser evil may play some role in assessing one’s ‘proportionate reason’.\footnote{204} Like most commentators, Fisher’s idea of ‘proportionate reason’ seems to refer to a balance of benefits and harms in the side-effects of the principal agent’s evil action, rather than to the evil of that action in itself. And it is unfortunate that his article concludes with a listing of ‘typical

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\footnote{200}{Fisher, ‘Co-operation’, 16-17. Fisher’s debt to Grisez is also obvious elsewhere: in proposing the ‘Golden Rule’ as a measure of proportionate reason; in explaining the cooperator’s responsibility for all foreseeable effects of moral choices, even the unintended effects; in exploring these ‘bad side effects’ of unintentional cooperation; and in proposing simply ‘discernment’ as the ultimate tool in assessing the morality of cooperation. These may be found in Grisez’s The Way of the Lord Jesus, in Volume 1 Christian Moral Principles at 239-241 and 300-303, and Volume 2 Living a Christian Life at 440-444. See also the present work, 3.1.4.}

\footnote{201}{Fisher, ‘Co-operation’, 16. Unfortunately the form of Fisher’s article does not allow him to develop this promising line of thought. As noted above (3.1.4.1), the moral significance of ‘choosing’ as such is central to Grisez’s thesis; his own comments on the self-constitutive effects of ‘choosing’ are found in Christian Moral Principles at 55-58.}

\footnote{202}{Fisher, ‘Co-operation’, 17.}

\footnote{203}{See 3.2.1 above.}

\footnote{204}{Fisher, ‘Co-operation’, 18.}
cases’: such a bald and unnuanced approach to the complexity of cooperation risks downplaying the significance of the specific circumstances which define or fill out the morality of concrete instances.  

Brian Lewis also notes that assessing the morality of cooperation is more difficult today than in the past:

First of all, in a pluralistic society there is considerable divergence of view about what is to be considered morally evil. Older theologians realised that sometimes people do the wrong thing out of ignorance and in good faith. They called this material sin and tended to regard it as the exception rather than the rule. Such a viewpoint is based on the conception that the moral order is basically stable and readily recognisable, at least in broad outline, by all. There was thus a presumption in favour of wrongdoing being formally sinful. Today we cannot be so sure. The old certainties have gone and disagreement about quite fundamental moral issues is a fact of everyday experience, even within the Catholic Church.

The implications of this position quickly follow: one must respect the dignity of everyone’s conscience and their right to act in freedom, as long as the rights of third parties or the interests of the common good are not offended. But here Lewis falls at the same hurdle as Curran: he seems to demand that the cooperator attend more to the dignity of conscience of others than to the dignity of his own conscience.

To claim that there is ‘considerable divergence of view about what is to be considered morally evil’ does not materially alter the fundamental challenge of cooperation. Before a cooperator can perform a particular act he has to settle on his proposed action as ‘right’ and his moral object as ‘good’. In order to do this he must first judge the morality of the principal agent’s act. The morality of the principal agent’s act therefore influences the cooperator’s assessment of his own action, but it is not determining: the cooperator still bears moral responsibility for his own action. Whatever its validity in itself, Lewis’s view of the objective moral order does not

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205 This leads Fisher into some interesting conflicts with the tradition. For example, counselling use of contraceptives as a ‘lesser evil’ is here labelled simply ‘intentional and forbidden cooperation’. There is no apparent appreciation of the legitimacy of ‘advising the lesser evil’ in certain circumstances.

206 Brian Lewis, ‘Co-operation in Immoral Acts or Procedures.’ Reflections (St Vincent’s Hospital Bioethics Committee) 2:1990. 3-4, at 3.
affect the functioning of the principle of cooperation. Nevertheless the tradition would agree with Lewis that ‘each case must be judged on its own merits’. 207

In discussing moral aspects of cooperation in abortion, Norman Ford SDB draws together the principles of double effect and material cooperation to illustrate their common features. 208 He discards the category ‘immediate material cooperation’ altogether, preferring instead simply ‘proximate material cooperation’:

It would be proximate material cooperation for a passer-by to volunteer to comply with a request from a thief to load stolen goods into a getaway vehicle. . . . However, proximate material cooperation which causes damage to property may be morally justified if the cooperator is forced to do so under a threat of death or serious injury. 209

Ford’s second example of ‘proximate material cooperation’ seems to fit Davis’s case of ‘immediate material cooperation’. However, the first example does not seem to represent either traditional ‘proximate material cooperation’ or ‘immediate material cooperation’, but rather formal cooperation (either implicit or explicit): if his help is freely given, it would seem that the only way the passer-by’s action could escape formal complicity would be if he did not know that the goods were stolen - but in that case his action would not constitute cooperation in evil at all, at least not in any morally significant sense.

Ford views ‘proportionate reason’ as a balance of benefits over harms, and this apparently grounds his objection to any ‘proximate’ cooperation in abortion. But his claim that ‘the material assistance provided by the anaesthetist and the theatre nurse would, in a moral sense, be practically indistinguishable from the abortion itself’ is at odds with other interpretations of similar cases. 210

207 Lewis, ‘Co-operation’, 3. Like Tettamanzi, Lewis (‘Co-operation’, 4) draws an important distinction between inducing evil by counselling and merely providing factual information, and he recognises considerable practical difficulties in establishing policies or guidelines to cover difficult cases.


Unfortunately the form of the article prevents Ford from offering a fuller explanation of the stances he adopts toward therapeutic use of foetal tissue (only tissue from spontaneous abortions may be used) and the morality of prenatal diagnosis. In regard to the latter he takes a line similar to Tettamanzi: there is no formal link between prenatal testing and any subsequent abortion, except where prenatal diagnosis is undertaken with this firm intention; and there is no material link either except in cases in which abortion actually occurs. The implications for Catholic hospitals are clear: all prenatal care must be ‘guided by ethical principles’, so that they ‘do not in practice become search and destroy missions’.

Gerald P Gleeson has written several times on the principle of cooperation in the context of bioethics and institutional cooperation. While his debt to James F Keenan is acknowledged, Gleeson brings his own philosophic insight to both speculative and practical investigation of the principle.

His commentary on the US bishops’ 1994 Ethical and Religious Directives rightly identifies the minimising of evil and wrong-doing as a fundamental reason for even considering cooperation in evil. He offers a vivid explanation of cooperation *ex fine operis*: if an intention to assist the wrongdoer in his wrongdoing is ‘implicitly embodied’ in an action, then that action is either immediate material cooperation or implicit formal cooperation. The difference between these lies in ‘duress’. Gleeson correctly locates ‘scandal’ within the whole question of cooperation: scandal is not merely an ‘additional’ moral question but must also be considered as one of the harms which may follow from cooperation itself, to be balanced against the harm of not cooperating at all.

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One point of obscurity occurs in a passage in which ‘immediate material cooperation’ seems to fall somewhere between formal and material cooperation:

The very existence of the Catholic facility may be threatened if it is unable to cooperate with others, or if it is unable to provide services required of it as the sole provider of health care services in a particular area. Under such duress, what would otherwise be immediate (and so implicitly formal) cooperation, may become material cooperation.  

The 1994 ERD had it otherwise: implicit formal cooperation becomes immediate material cooperation when it is offered under such duress as provides the cooperator with a sufficiently serious reason.

In an initial letter to The Catholic Weekly concerning needle exchange and condom distribution programs as harm-reduction strategies, Gleeson succinctly puts his underlying attitude toward cooperation in evil:

Nonetheless, the strength of the Catholic moral tradition at its best is that while on the one hand, it refuses to compromise the demands of moral truth, on the other hand, it recognises that in an imperfect and sinful world, it is often necessary both to tolerate wrongdoing and even, at times, to actively ‘cooperate’ with it in order to minimise its harmful effects.  

Reaction to Gleeson’s letter highlights both the complexity of the problem of cooperation, and the depth of disagreement between moralists. The origins of the principle itself might indicate why such disagreement persists: it evolved not from any theoretical application of the metaphysics of human action but from the prudential assessment of concrete circumstances in individual cases. Therefore there is, as Gleeson argues elsewhere, ‘scope here for the prudential judgments of practical wisdom, and even for the diversity of judgments that good and wise people reach at times’.  

Germain Grisez’s response in The Catholic Weekly indicates an apparent lack of attention to the concrete details of the cases under discussion.

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offering needles or condoms will at most reduce a potential bad side-effect, but will do nothing to reduce the direct injuries to self and others always involved in drug abuse and unchaste sexual behaviour.\textsuperscript{219}

This is certainly true but, as was noted in regard to \textit{Evangelium vitae} 73, it is precisely the possibility of reducing bad side-effects which may justify cooperation in some instances. It is legitimate to ask whether, even if some harms (‘direct injuries’) are truly \textit{unavoidable}, one is not morally obliged to minimise other harms which are \textit{avoidable}? Grisez seems to misread the case. He says that the youth counsellor’s clientele are ‘presumably sexually active’, and the ‘presumably’ here allows him to suggest that provision of needles or condoms may in fact \textit{induce} the client to sin. But Gleeson’s argument is that this harm reduction strategy is legitimate \textit{because the client is already sinning or is certain to sin in the future} - an exact parallel to Alphonsus’s position.\textsuperscript{220}

Gleeson’s approach stands clearly within the moral tradition. It answers Grisez’s objection that ‘\textit{there is something far worse than a person dying of AIDS . . . the sins of themselves, which if mortal and unrepented, will send those who commit them to hell.}’ If the sin is inevitable whether or not a condom is used, it is surely better to cooperate in minimising the \textit{avoidable} effects of that sin rather than to tolerate these effects \textit{even though they are avoidable}. Here again one notes the significance of Alphonsus’s distinction of cooperation in \textit{de caritate} from cooperation in \textit{de restitutione}.

In his reply Gleeson rightly notes that there is a duty not to compound any harm done by a wrongdoer, but in fact to minimise it.\textsuperscript{221} In doing so the cooperator is not ‘choosing the lesser evil’ because he is not doing an evil of any description: the moral object of the cooperator’s action is not the evil itself, nor the effects of the evil, nor to assist the wrongdoer. As Pope John Paul II teaches in \textit{Evangelium vitae} 73, the moral object here is \textit{the minimising of evil effects}. The wrongdoer’s action is

\textsuperscript{220} Alphonsus, \textit{de caritate} 47. The same point answers the objections of Rev J J Walter in ‘Dear Fr Gleeson - 2.’ Letter in \textit{The Catholic Weekly} (14 May 1995).
\textsuperscript{221} Gleeson, ‘Fr Gleeson replies’.

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neither a means nor an end for the cooperator; it is, rather, an unavoidable evil event which makes the cooperator’s action permissible and even necessary.

In order to verify that this is the case, and so to establish that material cooperation might be warranted, Gleeson suggests that the cooperator should ask:

- Am I morally certain that dangerous wrongdoing will occur? Is repentance and a change of lifestyle foreseeable? Will others be led into wrongdoing? Will assistance *in this instance* facilitate wrongdoing or simply lessen its harmful effects? Will the church’s teaching be misunderstood? Is a prophetic responsibility being ignored?222

In the same spirit Gleeson addresses the question of cooperation in pre-natal diagnosis, mounting a very clear and reasoned defence of the traditional principle.223 The key point is, again, that while the principle provides guidance, each case must be judged on its own merits. If provision of prenatal testing is not tied to abortion either *per se* or *per accidens*, then ‘pro-life’ doctors need not automatically refrain from offering a test in the particular case.

In a third place Gleeson sets out to ‘extend the limits of material cooperation’ on the dual basis of re-examining the goods at stake in cooperation and applying appropriate descriptions of cooperative activity.224 This is a more technical discussion of questions underlying cooperation in general, and it is somewhat less satisfying.

For example, while his explanation of ‘respect for conscience’ is more complete than Curran’s, Gleeson’s statement that Catholic hospitals have a moral duty ‘to enable people to implement their own moral decisions about medical treatments’ cannot mean a duty to provide ‘value-free’ medical care.225 He argues that a hospital has a duty to encourage others to make ‘responsible conscience judgments’,226 but one may wonder whether a responsible cooperator can do this

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222 Gleeson, ‘Fr Gleeson replies’. Emphasis original. These are very relevant questions for any pastoral approach to cooperation.
223 Gleeson, ‘Involvement without Complicity’.
without at the same time providing *formation* in conscience - that is, providing value-laden information. When all of its complexity is taken into account, the exercise of conscience remains a practical judgment of both intellect and will - not of will alone. It would not seem reasonable to encourage *greater liberty in choosing* without at the same time providing for *more informed choosing*.

Gleeson rightly argues that moral acts and moral objects must be adequately described, and that the actions of a hospital must be distinguished from the subsequent (presumably immoral) actions of a patient. But there are some curious inconsistencies as well. For example, he argues (after G E M Anscombe) that if an ‘intrinsic evil’ like ‘mutilation’ may be justified in exceptional circumstances (such as life-saving amputation), perhaps an intrinsic evil like ‘sterilisation’ may be justified in some circumstances. But he also claims to stand with St Thomas on the ground that ‘*sound moral reasoning grasps a distinction here between two kinds of action* in genere moris; *it does not recognise the same action kind realised in different circumstances*’. Now if ‘mutilation’ is indeed intrinsically evil, and ‘amputation’ in Anscombe’s case is clearly a good, then it is clear that ‘amputation’ in this case cannot be adequately described as ‘mutilation’ at all.

Gleeson also wishes to assess the question of cooperation *per se* and not whether the specific actions in question (semen collection, contraceptive sterilisation, and so on) are in fact evil - yet he proceeds to ask whether Catholic institutions can diverge from official teaching based on claims of ‘*liberty in disputed questions*’ and ‘*the possibility of dissent from non-definitive Church teaching*’. It is difficult to interpret these other than as questioning the actual moral status of the actions in question.

These apparent difficulties do not detract from Gleeson’s contribution in clarifying the principle of cooperation. Of particular value is his view of cooperation as a harm-minimisation strategy in the face of inevitable evil, and his

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228 Gleeson, ‘Extending the limits’, 7. On Thomas, see 2.3.2 above.
insistence that appropriate assessments of cooperation cannot be ‘pre-packaged’ but must proceed from prudent deliberation on concrete circumstances in individual cases.

4.2.4 Conclusions

In general terms the traditional categories of cooperation seem to have been retained by most modern moralists, although there is some divergence over the exact meaning of some categories, in particular ‘duress’ and ‘immediate material cooperation’. These more or less traditional concepts help to make the complex question of cooperation in evil somewhat more manageable, even if they do not necessarily make it easier to arrive at clear and uncontroverted solutions to difficult cases.

But while this link with the tradition has been maintained, there have also been some noticeable emerging trends in recent theological opinion on cooperation.

First, there is general acceptance of the reality of existential moral conflict. Even if it is true (as some believe) that moral conflicts have no objective basis, it is undeniable that they are experienced as real challenges in moral decision-making. As Keenan and Gleeson might have it, the principle of cooperation provides guidance in minimising moral tragedy.

Second, in this period of renewal many aspects of moral theology are under review, and there is not yet a common vision of the nature and structure of legitimate cooperation. In general terms the Europeans have sought to understand it in an ‘interpersonal’ or ‘relational’ sense: human beings are bound by the moral law on one hand, and at least partially conditioned by a pluralist democratic society on the other. In this light cooperation is less a question of discrete moral actions and more a matter of expressing and constructing one’s moral identity in a social environment of often-conflicting moral values. While it requires further development, this

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'person-centred' approach to cooperation seems to be in keeping with the Vatican Council’s agenda for renewal in moral theology.

Despite a few tentative moves in the same direction, however, the Americans have generally continued to work out of the traditional categories based in an essentialist metaphysics: cooperation is still predominantly a question of the morality of discrete actions. One result of this (following the 1994 ERD) was the extended dialogue over the nature and function of ‘duress’ and the moral status of ‘immediate material cooperation’. Furthermore, because Curran’s point on ‘respect for consciences’ has been argued on the same metaphysical basis, there seems to have been little exploration of other potentially significant aspects of his basic insight. It may be fruitful, for example, to ask a question in public ethics: whether and to what extent a Christian person may cooperate with evil-doers in order to build a more moral society overall.

Third, and despite these different interpretations of the structure of cooperation, there seems to be universal recognition that assessment of cooperation requires close attention to the context and circumstances of each case, and that conclusions reached in one context will not automatically apply in others. For example, some moral problems arise from laws specific to a particular context (such as Italy’s Law 194), and often the most obvious solution is simply to amend those laws. In the case of pre-natal testing, cooperation will be more or less justifiable depending on whether the testing is connected per se or per accidens to the outcomes; of particular significance are the individual mother’s professed intentions in the event that she receives an unfavourable diagnosis. It is only by paying due attention to context and circumstances in each particular case that one can accurately assess the morality of cooperation.

Ongoing debate on these and other matters highlight on one hand the essential complexity of the problem of cooperation and, on the other, the differing moral stances of those who engage in dialogue. It has been suggested that, in the case of cooperation by individual moral agents, these different stances may represent different points on the spectrum between the ‘moral purity’ and ‘moral tragedy’
positions. In the case of cooperation by institutional moral agents, differing moral stances may also arise from differing ecclesiology. This is a subject for the final chapter of the present work. First, however, it is necessary to examine more closely the specific question of institutional cooperation, and to draw some general conclusions on the status of the principle in moral theology today.

4.3 **Institutional Cooperation**

In a controversial 1995 article Germain Grisez posed the question, *How far may Catholic hospitals cooperate with non-Catholic providers?* Having provoked considerable correspondence, Grisez in 1998 published a ‘revised, final version’ in which he redefined the question in terms of cooperation with *providers of immoral services*. This final response, and the case study which prompted it, offers a framework for surveying some aspects of institutional cooperation.

The case concerns a religious institute of women who operate a number of Catholic hospitals. Several factors now place them under pressure to recast their ministry: ever-increasing complexity in delivering health care; the need to eliminate unnecessary duplications and so contain escalating costs; the demands of governments and health insurers who would impose restrictions on benefits payable (and therefore dictate which medical procedures are economically viable to offer); and resistance to the US Bishops’ 1995 *Ethical and Religious Directives*. Their dilemma, in short, is either to enter ‘mutually agreeable cooperative relationships with those who do not share our faith and ethical views’, or to close their hospitals altogether.

An adequate study of this case would require substantial analysis of both its specific details and its wider context, in particular the crisis facing health care in the USA at the end of the twentieth century. For example, from his experience as pastor Cardinal Joseph Bernardin noted four contemporary challenges to the Catholic health...

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232 Grisez, ‘In Answer to Critics’, 60.
care apostolate in America: declining numbers among the religious who traditionally operate hospitals, and the consequent challenge to maintain the Catholic identity of these institutions; the problem of coordinating national Catholic health systems with the structures and needs of local churches; the ‘commodification’ of health care, which exposes it to typical market imperatives of lower costs, greater efficiency and higher profits; and the general right to health care, and the Church’s public role in advocating on behalf of ‘the unserved and the unborn, the uninsured and the undocumented’.

Many of these issues are critical in their own right but stand outside the scope of the present observations, which attempt only to outline some issues in the assessment of institutional cooperation.

4.3.1 Institutions as Moral Agents

The first issue is provenance, and it may be raised in the form of several questions: are institutions as such moral agents? Are they moral agents in the same way that individuals are moral agents? How do institutions as moral agents differ from individual moral agents? What are the implications for institutional cooperation?

James F Keenan argues that the Vatican’s long-running system of concordats and its involvement with international agencies such as the United Nations Organisation are examples of cooperation by an institution (the Vatican itself) rather than by any particular individual moral agent. On the other hand, while Germain...

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In its Replies to Questions the CDF itself distinguishes between cooperation by an individual moral agent (a Catholic doctor in Reply IV) and cooperation in an institution (a Family Planning Clinic in Reply V) - see 3.2.2 above. Note that Reply V speaks of cooperation by institutions rather than cooperation by institutions: this may indicate a significant distinction between cooperation in evil by individuals within an institution on one hand, and, on the other, cooperation in evil on behalf of an institution. The CDF’s rejection of ‘a general policy of material cooperation’ seems to be grounded on a justifiable fear that such a policy would commit the institution as a whole to material cooperation in evil.
Grisez accepts that institutions as such can cooperate in evil, he holds that a different logic applies:

Moreover, other things being equal, a Catholic institution’s material cooperation is much more likely to be scandalous than an individual Catholic’s. The institution’s acts are presumed to be fully deliberate and free, not the product of ignorance or weakness, as an individual’s might be. And since the institution claims to be distinguished from others by being Catholic, whatever it does is taken by many non-Catholics and even unsophisticated Catholics to be the Church’s own act.  

Here Grisez touches on three major issues, each of which casts some light on the question of institutional cooperation.

- **First**, the issue of **scandal**: as the CDF itself teaches in its *Replies to Questions*, an individual physician may cooperate materially in evil by prescribing contraceptives under certain circumstances, but it would damage public morality if a Catholic institution were to be seen to contradict Church teaching by establishing a general policy of material cooperation in evil. This suggests that whatever their objective nature, institutional acts will be, and must be, interpreted differently from individual acts.

- **Second**, the issue of **moral deliberation**. An individual moral agent makes an assessment of the legitimacy of cooperation knowing that he alone is responsible to make the final decision to cooperate or not, and so he alone will bear the immediate consequences of that decision. (Note that this is true regardless of any duress which may influence the decision.) Grisez holds that a hospital’s acts ‘are presumed to be fully deliberate’ precisely because its actions are governed either by general policy or by particular management decision. Furthermore, as Grisez argues, a board of management is employed precisely so that the burden of decision-making will not fall on any one frail moral agent who would be more prone to ‘ignorance or weakness’. But regardless of which individuals make commitments on behalf of the institution, the consequences of their actions are borne by a much wider constituency: it is not only the board of management, or the chief executive officer, but the institution as a whole, and all of its employees,

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236 Grisez, ‘In Answer to Critics’, 71. This may explain why the CDF requires material cooperation in institutions to be justified by reasons ‘proportionately graver than those required by the general principles on material cooperation.’ See *Replies*, V.

237 *Replies*, V. See above, 3.2.2, footnote 155.
and even the Church itself which must bear the consequences. The reason for this emerges in Grisez’s next point.

- Third, the issue of the meaning of institutional acts. Grisez argues that an institution is ‘a community whose corporate identity and character depend on the people who make it up’. This opens up the prospect of two identities: one based in the formal institutional structure and expressing itself in institutional policies and actions, and the other grounded in the particular material actions of individuals who work in and for the institution. Ideally, of course, there will be complete harmony between these two identities, but there remains the possibility of contradiction.

Now just as the actions of employees can be identified with those of the employing institution, so the actions of a Catholic institution can be identified with those of the Church. And this identification is more than a matter of subjective interpretation: a hospital ‘acts’ primarily through the actions of its medical and administrative staff, so the actions of these employees are the actions of the hospital; likewise if the Church can be said to ‘act’ in health care in and through Catholic hospitals, then the actions of a Catholic hospital - including actions of employees - are in some sense the actions of the Church.

Indeed, representatives of Catholic health care institutions often emphasise that their ministry ‘continues in our day an essential part of Jesus’s own ministry’.

So are institutions as such moral agents? It seems so, or at least they behave like moral agents in many respects. Are they moral agents in the same way that individuals are moral agents? Apparently not. In their manner of reaching moral decisions and in the meaning of those decisions an institution is subject to a different inner logic - and so, perhaps, to different rules of procedure. How do they differ

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238 Grisez, ‘In Answer to Critics’, 64. Pope John Paul II holds that ‘A situation - or likewise an institution, a structure, society itself - is not in itself the subject of moral acts.’ See Pope John Paul II, Post-Synodal Apostolic Exhortation Reconciliatio et Paenitentia. ‘On Reconciliation and Penance in the Mission of the Church Today.’ (2 December 1984). AAS 77(1985) 185-275, n.16. His discussion reinforces Grisez’s point: the actions of individuals are of the essence of institutional actions, and yet in some ways these can be distinguished from one another.


240 Michael Schmaus, Dogma 5: The Church as Sacrament. (Kansas City: Sheed and Ward, 1975), 12: ‘Although the Church appears as a hierarchically structured society, it can be active only through its individual members.’
from individual moral agents? The moral actions of institutions are not only interpreted by others as though they were the actions of the Church itself (which is why they can give scandal): in a real sense they are the actions of the Church. Many Catholic institutions rightly and proudly claim to act in the name of the Catholic community, and so extend into our day the very ministry of Christ, but this wider moral import also demands of an institution a different kind of responsibility for its actions.

Finally, what are the implications for institutional cooperation? In general terms, precisely because their decision-making structures and ecclesial roles differ from those of individual moral agents, institutions would not normally be expected to be open to the same subjective influences as individual moral agents. It may be asking too much of an individual person to possess a sufficient knowledge of ethics, law, business, and economics, as well as sufficient poise and prudence to guide every assessment of complex cases of cooperation. But a major corporate institution such as a Catholic hospital could reasonably be expected to have access to precisely such expertise and virtue, and to make considerable use of them in assessing its institutional commitments. Whether or not its acts are always as ‘fully deliberate and free’ as Grisez claims, the institution’s corporate structure, its decision-making processes, its access to greater resources, and the ecclesial significance of its actions all seem to place it in a class apart from the individual moral agent.

4.3.2 Duress and Immediate Material Cooperation

The US Bishops’ 1994 ERD attracted the attention of the Congregation of the Doctrine of the Faith, particularly on the questions of duress and immediate material cooperation.242 These are complex issues because they encompass a number of variables, including the ways in which duress might function, the question of intrinsically evil acts, and the differences between individual and institutional cooperation. The following comments may help to clarify some of this complexity.

241 Grisez, ‘In Answer to Critics’, 60.
242 See this chapter, footnote 143.
As noted above, duress may alter the moral species of some cooperative acts, and/or it may restrict the cooperator’s autonomy and thereby reduce his culpability.\(^\text{243}\) In order to alter the moral species, duress must so touch the moral object of the cooperative act that it cannot be considered an act in the same moral species as that of the principal agent. For example, Davis’s cooperator is not cooperating in theft so much as preserving his own life: duress means that he confronts a different (and greater) evil than the mere theft of property - loss of his own life - and this constitutes a different moral object. So this particular physical act of ‘helping a burglar place stolen jewels in his wallet’ has a different moral meaning: it doesn’t mean ‘theft’, but ‘preservation of his life’.

But when cooperation is immediate and the principal agent’s action is intrinsically evil, duress cannot function in this way. Because the cooperation is immediate, the cooperator’s act has, \textit{prima facie}, the same moral object as the principal agent’s act; and this can never be a legitimate object of moral choice because it is of its nature ‘\textit{incapable of being ordered to God}’. As argued earlier, if duress can provide a distinct and legitimate moral object, then immediate material cooperation in an intrinsically evil act may be justified on the grounds of being preferable as a ‘lesser evil’. But an intrinsic evil can never be preferable as a lesser evil - hence Alphonsus taught that in order to save one’s own life one may assist a thief, but one may never cooperate in killing the innocent.\(^\text{244}\) Now, if there can be no legitimate immediate material cooperation in an intrinsic evil, then the ERD’s cannot be interpreted as allowing such cooperation if ‘allow’ implies that immediate material cooperation in intrinsically evil acts is objectively justified.

But it has also been suggested that duress can function in a second way: it can diminish the cooperator’s culpability.

Responding to Keenan’s discussion of immediate material cooperation in the 1994 ERD, Kevin O’Rourke OP writes:

The prohibition concerning immediate material cooperation in actions which are intrinsically evil applies even if duress is present.

\(^{243}\) See 4.2.2.2 above.
\(^{244}\) Alphonsus, \textit{de caritate} 66.
Thus, it is erroneous to interpret the Appendix of the ERD in such a way as to allow immediate material cooperation with actions which are intrinsically evil. If duress were to impair all freedom, then it might remove subjective culpability, but it would not change the objective nature of an act which is intrinsically evil.245

There is a distinction between objective and subjective morality which must be maintained, and this is apparent even in the critical text of Veritatis splendor 81: ‘If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it.’ If intrinsically evil acts remain intrinsically evil (that is, their objective morality remains unaffected), how else can a good intention or particular circumstances ‘diminish their evil’ except by affecting their subjective morality - that is, by diminishing personal culpability? Even if the ERD’s cannot objectively ‘allow’ immediate material cooperation in intrinsically evil acts, yet one may agree with O’Rourke that, subjectively, immediate material cooperation in intrinsically evil acts may at times be excusable.

The focus of this discussion is ‘intrinsically evil acts’. One complicating element in the dialogue with the Congregation for the Doctrine of the Faith seems to have been precisely the objective status of ‘direct sterilisation’ and, consequently, the morality of cooperation in sterilisation. Neither the US Bishops nor the Canadian Bishops doubt that abortion and euthanasia are intrinsic evils, but in their 2000 Guide the Canadian Bishops seem to hold open a possibility of cooperation in direct sterilisation.246 However the CDF has proposed that ‘[t]he principles governing cooperation cannot justify Catholic health care institutions’ engaging in immediate material cooperation in intrinsically evil actions such as abortion, direct sterilisation, and euthanasia’.247 This would seem to settle the moral status of contraceptive sterilisation.

246 CHAC 2000 Guide, Article 52: ‘Concerning the conditions of material cooperation regarding sterilisation procedures, one should consult the values and principles in the Introduction.’  
247 This is the CDF’s proposed new Directive 70: see ‘ERD Text Revisions (September 8, 2000)’ included in Rev Michael D Place’s memorandum of 26 September 2000. Full citation given in footnote 143 above.
But even accepting the objective status of direct sterilisation and the fact that duress cannot strictly justify immediate material cooperation in an intrinsically evil act, may a hospital sometimes be *excused* if it opts for immediate material cooperation in direct sterilisation rather than (say) complete loss of obstetric services? Even if duress cannot provide a Catholic institution with a legitimate moral object and so strictly ‘justify’ immediate material cooperation in direct sterilisation, can duress ‘excuse’ such cooperation by an institution in the same way that it sometimes seems to ‘excuse’ cooperation by individual moral agents?

An answer might be sought by exploring the manner in which duress affects individual culpability, and in the difference between individual and institutional moral agents.

One aspect of duress which has not been sufficiently canvassed is its character as an ‘inner conflict’: duress or constraint has to be *experienced as a conflict* if it is to influence the behaviour of a cooperator. Duress can be said to exist when extreme circumstances cause a cooperator to experience a number of ‘pressures’, some pushing in one direction and others pulling in other directions. Often these ‘pressures’ will be experienced when a moral agent sees the need to protect simultaneously several apparently comparable goods (or to avoid simultaneously several apparently comparable evils). There is a choice to be made, as a result of which some goods must be sacrificed (or some evils brought about). In Davis’s case, for example, the cooperator experiences a conflict between the need not to assist the burglar, and the need to preserve his own life. In the case of immediate material cooperation, of course, the moral agent does not merely ‘endure’ the loss of goods or the effecting of evils - he actively participates in bringing them about. It is the combined, compounded and opposing effects of these ‘pressures’ which causes ‘inner conflict’ and effectively constitutes ‘duress’.

In some circumstances then, as O’Rourke suggests, ‘duress’ might be considered to approximate ‘force’ or ‘fear’ in the traditional terminology. These restrict an individual agent’s moral freedom by limiting his legitimate options for action (in the case of force) or by compromising free exercise of the will (in the case
of fear). As always, the final moral judgment is prudential - an exercise of that practical wisdom which ‘transforms moral truth into specific virtuous action’. The traditional moral wisdom has it that because force and fear affect the agent’s ability to perceive moral truth and/or to act in accordance with it, the agent’s culpability may be diminished, even to the point of complete exoneration.

As a more difficult example: an individual moral agent may believe his moral choices are reduced to ‘cooperate in this abortion or die’. Moralists have long held that immediate material cooperation is excusable if it is commissioned under threat of a harm greater than that threatening the third party. The reasoning is plain: the ‘threat of greater harm’ will often provide the cooperator with a legitimate moral object. The problem in the present example is that the harm threatening the cooperator (death) is equal to the harm threatening the unborn child. Objectively, then, immediate material cooperation in abortion is not strictly justified; but subjectively, to the extent that fear clouds perception and sways the will, this individual agent’s culpability may be reduced.

But for several reasons it does not seem reasonable to suggest that duress can operate in the same way in the case of an institutional moral agent. First, as noted above, an institution’s structures and processes of moral deliberation are considerably different from those of an individual agent, and institutions are not normally expected to be as prone to unanticipated external pressure. Indeed, corporate management structures are usually designed precisely to ensure that even the most difficult decisions will be made reasonably and responsibly. Second, it is difficult to imagine what magnitude of pressure could be brought to bear on an institution that would compare with the threat of death to an individual cooperator. The threat of annihilation may sometimes presents the individual cooperator with a distinct moral object, but what duress could threaten an institution’s existence as completely as death threatens that of an individual person? Third, a Catholic

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248 Romanus Cessario OP, *The Moral Virtues and Theological Ethics*. (Notre Dame, Indiana: University of Notre Dame Press, 1991) 80. At 86 Cessario explains that prudential judgment involves the special virtues of *synesis* (which *ensures sound judgment in ordinary matters*) and *gnome* (which *provides the wit to judge the exceptional cases*). Making a moral choice under duress probably requires the latter more than the former - see 5.1.6 below.

249 See for example Davis, vol. I, 19-20 (violence) and 27-30 (fear).
institution should always be aware that its actions are, in some way, not just its own but also actions of the Church. Therefore, especially in the case of institutional moral agents, the CDF indicates that ‘it is not admissible that a way of acting contradict the objective teaching of the Church itself’, for that would amount to radical self-contradiction.

Even in the presence of duress, it seems that a Catholic institution’s immediate material cooperation in an intrinsically evil act can never be either objectively justifiable or subjectively excusable.

4.3.3 The Context of Institutional Cooperation

Since institutions often have quite unique management structures, and since possibilities for cooperation vary according to circumstances particular to each context, there are an almost infinite number of ‘cooperative relationship’ structures which can be devised between a Catholic institution and other institutions or individuals. In the context of corporate structures in the USA, the present case suggests four possibilities:

(1) simple contractual arrangements with other hospitals, diagnostic facilities, individual physicians, and so forth; (2) integrated delivery networks, that is, broad affiliations with other institutions and providers to deliver the complete spectrum of health care in a particular locality; (3) cosponsored health maintenance organisations or similar deliverers of health care to certain groups of insured people; and (4) arrangements assuming responsibility for a purchased portion of the practices of a group of physicians and/or other providers who, at the same time, will remain free to offer the same or other clientele services in which we feel we cannot participate.

250 See for example Aertmys-Damen, _de restitutione_, 783.
As with individual cooperation, assessment of institutional cooperation requires careful attention to the precise details of each case. Some health-service problems will be specific to the American context alone: its health insurance system, its laws regulating companies and corporations, and the particular challenges of public health provision in that country create a unique environment for the structuring of cooperative ventures, so some corporate solutions may be possible there but not elsewhere. An arrangement which constitutes legitimate material cooperation in one situation may not be morally acceptable in another. Each social, cultural, political or industrial context will pose its own challenges and offer its own range of possible solutions. Circumstances which obtain in one country, or even in one region of a country, may pose quite unique challenges but also suggest quite unique solutions. And when circumstances change, solutions change. In the case of the Diocese of Peoria cited above, for example, limited material cooperation in contraception was deemed acceptable because of a lack of suitably trained physicians, but that cooperation will no longer be morally acceptable when appropriate staff become available. Different circumstances and different contexts call for different solutions.

There is a certain universality, however, in the forces driving the trend toward cooperative ventures. Among these are a common underlying economic philosophy and a changing vision of health care.

A third challenge involves the new cutbacks in public funding and aggressive cost containment by both public and private health care purchasers. This fiscal crisis has led to less financial solvency for health care institutions and sharply reduced the historic cost sharing by which health providers subsidised uncompensated care. Within this fiscal environment, Catholic hospitals are less and less able to oppose the prevailing trends and maintain a commitment to the sponsor’s values, such as providing health care to the poor and the uninsured.

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253 For example, in the USA the Catholic health care system has become a ‘safety net’ for those who do not hold health insurance - see Bernardin, ‘Crossroads’, 410; ‘Not-for-Profit Health Care’, 538. In Australia, on the other hand, the national Medicare system has taken much of the ‘safety net’ role from the shoulders of Catholic health care providers.

254 Hence the position attributed to William Daniel SJ: ‘Once you permit material cooperation in principle, it is then simply a matter of what the local situation will tolerate in practice.’ Cited by Fr Michael Prieur in personal correspondence with the author, 29 June 2000.

255 See above, 4.2.2.4. The case is cited in Lawler, ‘Playing in Peoria.’

256 Bernardin, ‘Crossroads’, 410, speaking from the American experience. For parallel observations made in Australia (on the question of religious bodies accepting government contracts to
A Catholic hospital is an historical entity founded by particular individuals and operating according to a particular vision or charism, in order to meet specific health-related goals. The history and guiding vision of an institution give it a certain identity and dictate particular institutional traditions, values and modes of operation which further define the institution. These institutional elements are distinct from other values or modes of operation which individuals within the institution may implement from time to time.\textsuperscript{257} If a Catholic hospital enters a cooperative venture which renders it less able (or even eventually unable) to maintain its commitment to the values underpinning Catholic health care in general and its own charism in particular, then its very identity becomes problematic. This is a universal challenge for Catholic institutions considering cooperative ventures.

No committed Catholic health care provider wants to dilute or surrender institutional Catholic identity by way of accommodation to unacceptable realities (moral or cultural) in partnerships that might assure institutional survival. The objective is to survive as Catholic through acceptable partnerships. And the principle of mediate material cooperation is there to make some less-than-perfect partnerships acceptable.\textsuperscript{258}

Thus, for example, in 1996 the National Coalition of Catholic Health Care Ministry in the USA issued a \textit{\textquoteleft}strong public statement regarding partnership arrangements\textquoteright;:

We believe that ownership arrangements between Catholic Health ministry organisations and publicly traded, investor-owned hospital chains compromise the church’s mission to an unacceptable degree. The primary motivation of publicly traded, investor-owned hospital chains is to provide a return to shareholders. The first commitment of our ministry is to render service to all in the name of Jesus.\textsuperscript{259}

\textsuperscript{257} On this insight, see Stanley Joel Reiser, \textquoteleft The Ethical Life of Health Care Organisations\textquoteright, 32: \textit{\textquoteleft}The traditions of an organisation set it apart from the individuals who work in and direct it. The accumulation of traditions as ways of doing things constructs the identity of the organisation.\textquoteright}

\textsuperscript{258} Byron, \textquoteleft Catholic Health Care\textquoteright, 21.

\textsuperscript{259} Cited in Maryanna Coyle sc, \textquoteleft The Future of Catholic Hospitals.\textquoteright Chicago Studies 35(1996) 249-259, at 252.
4.3.4 Cooperation and Institutional Identity: Three ‘Principles’

The heart of the problem is the risk that ‘Catholic hospitals that avoid all wrongful cooperation and maintain their identity may not be economically viable.’

For Germain Grisez, institutional cooperation could only be lawful if two conditions are met: the choice to cooperate must not only exclude the wider evil effects of the principal agent’s action, but it must also be a positive obligation flowing from the institution’s basic ‘vocational commitment’ - in other words, its identity and mission.

The first condition means that if the materially cooperative institutional act is not strictly justified in itself then it can never be excused - and it has been noted that the circumstance of ‘duress’ cannot strictly justify an institution’s immediate material cooperation in an intrinsically evil act. The second condition means that if a proposed action jeopardises the institution’s identity and mission, then that action cannot be morally justified.

In what ways can a cooperative action jeopardise institutional identity? First, there is the public or existential character of the action which can pose the risk of scandal in the strict sense. Insofar as they express its particular charism and traditions, institutional actions express an institution’s identity. Hence institutional actions can easily give scandal if they publicly contradict the Catholic identity of the institution itself. Second there is the constitutive or ontological character of the action. Grisez holds that free and deliberate actions constitute identity, so actions which contradict that identity are morally unjustified even if they are not, and are in no danger of becoming, scandalous in the strict sense. This sheds light on his view that a Catholic hospital’s ‘vocational commitment’ could never make legitimate any kind of cooperation in intrinsically evil actions such as abortion or sterilisation. It would not matter whether this cooperation became public knowledge or not: in Grisez’s view, cooperation in such intrinsic evils would be so contradictory of the

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261 DMQ, 882: ‘By the same token, if something must be done to fulfil a responsibility flowing from a vocational commitment, there is a stronger reason to accept bad side effects in doing it than if one could forego the activity without slighting such responsibility.’ See above, 3.1.4.2.
262 CMP, 55-58. This accords with Reiser’s insight (‘The Ethical Life of Health Care Organisations’, 32) that because they are historical entities, institutions such as Catholic hospitals must not only remain faithful to their original charism but must simultaneously adapt to contemporary health care needs.
institution’s own identity that it would be preferable to close the hospital altogether and seek other ways to carry on Jesus’ ministry of mercy.263

Often a hospital will have no influence whatever over external pressure which is brought to bear upon it, yet it can and must exercise great care in discerning an appropriate response or ‘resistance’ to this pressure. As noted, it is the combined opposing effects of pressure and resistance which may constitute ‘duress’. For example, a Catholic hospital might experience an external financial pressure to enter a dubious cooperative relationship purely in order to survive as an institution, and a resisting internal pressure to retain its identity as ‘Catholic’. Several points become obvious.

First, this could be portrayed either as a clash of identities (plural): ‘corporate’ versus ‘Catholic’; or as a conflict between different aspects of a single identity: ‘Catholic corporation’. In either case the choice may come down to a preference for one identity (or aspect) over another: where a hospital’s identity as a corporate body might prompt it to enter any financially beneficial venture, its identity as Catholic will prompt it to avoid any ventures which contradict or diminish its Christian integrity. The clash of corporate and ecclesial identities is familiar ground for many Church-sponsored institutions. Since it seems impossible for any institution to honour only one aspect of its identity in isolation from other aspects of

263 Grisez, ‘In Answer to Critics’, 74-75. Two critiques can be made of Grisez at this point. First, the basic mission of any Catholic hospital is, according to Grisez, to carry on Jesus’ ministry of mercy (‘In Answer to Critics’, 63). But his view of the significance of this mission is quite narrow: he claims that since ‘Jesus’s principal intention in healing people was to provide signs and foretastes of the coming of God’s kingdom’, the mission of Catholic hospitals in simply delivering health care ‘does not carry on an essential part of Jesus’s ministry’ (‘In Answer to Critics’, 62). But he seems to have overlooked the fact that, as well as being a sign of the kingdom, ‘to care for the sick’ is a central element in Jesus’s command to the Church and so, to some extent, self-defining for the Church. (Mt 10:8; 25:31-46) This is clearly also a central aspect of Catholic health care in the view of Pope John Paul II, whom Grisez cites at 63.

Second, Grisez holds that ‘doing God’s will and entirely avoiding wrongdoing are at the heart of anything that can be called an apostolate’ - a somewhat rigorist stance on the possibility of those kinds of moral conflict which might prompt a Catholic institution to consider cooperative ventures (‘In Answer to Critics’, 65). He cites Pope John Paul II, who calls on religious men and women to ‘foster respect for the person and for human life from conception to its natural end, in full conformity with the moral teaching of the Church’ [‘In Answer to Critics’, 63, citing Pope John Paul II, Post-Synodal Apostolic Exhortation Vita consecrata. ‘On the Consecrated Life and its Mission in the Church and in the World.’ (25 March 1996). AAS 88(1996) 377-486, n.83.] But Grisez fails to notice that ‘the moral teaching of the Church’ includes the teaching that Catholic hospitals may be
it, one general ‘principle’ for cooperative ventures might be: ‘A Catholic institution should always give priority to uniquely constitutive aspects of its identity or mission’ - that is, to those aspects of its identity which define it and which set it apart from other similar institutions.

Second, when facing a range of possible cooperative relationships, a Catholic hospital quickly realises that some collaborative options will better permit it to preserve its Catholic identity, but other options will make that identity more difficult to maintain. A second general ‘principle’ for cooperative ventures, therefore, might be: ‘A Catholic institution should always give priority to collaborative options which allow it to express more authentically its unique identity’.

Third, as Keenan suggests, the challenge of legitimate cooperation sometimes presents itself as a need to protect an important good or value. In the Peoria case, for example, cooperation in evil was reluctantly approved (at least temporarily) in order to maintain significant health services in a large rural community. Provision of health services to that community had been a core element in the hospital’s identity for over a century. Another general principle for cooperative ventures, then, might be: ‘In particular instances of institutional cooperation, a ‘good to be protected’ will carry greater weight the more closely it expresses or flows from uniquely constitutive aspects of an institution’s identity or mission.’

4.3.5 Institutional Cooperation: Some Conclusions

The present work does not pretend to offer a comprehensive or conclusive study of the very complex question of institutional cooperation. The following observations not only highlight this complexity but also indicate some avenues for future research. They are intended to summarise some of the main points of the constrained, at times and on individual occasions and for proportionately grave reasons, to cooperate mediately and materially with others who are doing evil. See 3.2.2 above.

266 Further reflection on the challenge of institutional cooperation will undoubtedly prompt other ‘guiding principles’ to emerge. Because they relate institutional action to institutional identity, however, these three ‘principles’ seem very relevant to the specific question of cooperation by
present study, and to open the way for the final chapter which will explore a theological ‘background’ or context for institutional cooperation.

In the first place, as has been noted repeatedly, accurate assessment of institutional cooperation requires that close attention be paid to the concrete structures and contexts of each case. Tettamanzi has highlighted the need to take careful account of the social and legal environment in which an instance of cooperation occurs; Keenan, Grisez and Gleeson have argued for similar vigilance regarding the precise structures of cooperative arrangements.

The structure and functioning of institutions reveal that they, like individual moral agents, are essentially social and relational in character. Institutions do not exist apart from one another any more than human beings exist in isolation; rather, each lives and works in conjunction with others. This parallel suggests that (a) adequate approaches to institutional cooperation must take account of the essentially ‘intersubjective’ nature of each institution, and (b) there may be multiple concurrent duties to be ‘factored in’ to the assessment of cooperation. For example, an individual may have duties arising from familial bonds on one hand, and professional duties on the other. Similarly, as a corporation a Catholic hospital may be bound by contract to other health-care institutions, while as Catholic it is bound to the Church as a whole.

It is the relational nature of institutions which raises the possibility of conflicting duties. By virtue of receiving public funding (relationship with secular authority) a Catholic hospital may be bound to provide a full range of obstetric and gynaecological services, but by virtue of its religious identity (relationship with Church) it would be expected not to provide services judged to be immoral - such as abortion and contraceptive sterilisation. These opposing pressures may sometimes create a kind of duress, the goods at stake being (a) the institution’s continued existence as a hospital, and (b) its Catholic identity. However this

Catholic institutions: as the following Chapter will explain, they refer the meaning of institutional actions to the sacramental structure of the Church itself.
conflict might be resolved in practice, it is clear that no accurate evaluation of options can be made until all institutional duties are taken into account.

This focus on the ‘inner structure’ of the moral agent - which, in the case of an individual, would be an aspect of ‘personalism’ - is a sign that analysis of material cooperation since Vatican II has moved beyond the traditional metaphysics of the human act. As the Council called for greater openness to others in a mutual search for truth\textsuperscript{267} and for a clearer appreciation of the nature of the human person,\textsuperscript{268} so the efforts of moral theologians to understand the complexity of cooperation in evil have prompted them to expand the horizon of their inquiries. Increasingly today the question of cooperation in evil is framed in terms of respect for the dignity of the human person, the essentially social and relational nature of the moral agent, both the ontological and existential meanings of moral acts, and the role of Christian persons and institutions in a pluralist and continually evolving world. The present work will add a ‘theological’ reading of legitimate cooperation to this spectrum.

On one hand the traditional metaphysics cannot be abandoned, because it provides a useful framework within which to consider these complexities. But on the other hand questions of cooperation cannot be resolved by a merely ‘geometric’ application of metaphysical principles without reference to the ‘person’ of the cooperator. In many respects analysis of material cooperation represents a frontier for modern moral theology, a challenge to move forward in the spirit of Vatican II while preserving the richness and wisdom of the tradition.

In this sense the question of cooperation in evil is something of a ‘boundary’ question in which the objective and subjective aspects of morality sometimes seem to lose their sharp edges and ‘blur’ into one another. It has been seen this way from the beginning: Sanchez’s distinction of direct and indirect cooperation, and Alphonsus’s distinction of formal and material cooperation, represent efforts to ‘untangle’ the objectively evil from the subjectively imputable. Recent discussions

\textsuperscript{267} See \textit{Gaudium et spes}, 40-45.
\textsuperscript{268} See \textit{Gaudium et spes}, 11-22.
concerning ‘duress’ have the same aim: at times ‘duress’ seems to alter the moral species of acts (their objective morality), at other times it seems to excuse the cooperator’s collaboration (subjective morality) - and sometimes it seems to do both, and often it does neither. Keenan’s insight that the principle is to be applied taxonomically is a function of the same complexity: reliable use of the principle rests ultimately not simply on a mechanical application of objective metaphysics, but on one’s subjective exercise of that prudence which is both a natural and supernatural virtue.

In any event it may sometimes be virtually impossible for a moral agent to provide a logical and completely satisfying explanation of why a particular act is, in his prudent judgment, morally justified. Metaphysical distinctions can help, and have indeed proven to be an essential tool in analysing paradigm cases, but a truly ‘complete’ grasp of one’s actions may lie more in the realm of ‘moral sense’ - ‘connatural knowledge’, perhaps - than in any surgical dissection of intentions and circumstances. In the following chapter it will be suggested that conceptual moral knowledge is often consequent upon, and not prior to, one’s inner, non-discursive conviction that one is simply ‘called’ to act in a particular way. But faith seeks understanding, and being essentially relational, the human person must enter into dialogue with others; therefore moral theology is driven to provide, as far as possible, conceptual explanations of the nature and boundaries of cooperation in evil.

Some moralists have argued that an institution’s identity may not only impose limits on cooperation (for example, for fear of giving scandal) but may sometimes impose a positive duty to cooperate. On these grounds Keenan offers an argument for the involvement of Catholic institutions in in vitro fertilisation research, and a case study on permitting occasional sterilisations in a Catholic hospital if the alternative would deprive a community of its only obstetrics services. Whether or not these positions are objectively defensible, it might be argued that they represent an emerging new attitude toward cooperation in evil.

\[269\] Keenan, ‘Institutional Cooperation’, 64-65 and 71-73 respectively.
Two attitudes have already been noted: the ‘rigorist’ who would avoid all cooperation as far as physically possible, and the ‘possibilist’ who would allow cooperation when this is morally difficult to avoid. This third attitude, which might be termed the ‘essentialist’, would not merely permit cooperation in evil but actively require it when cooperation is essential for an institution to fulfil its Catholic identity and mission. Keenan seems to argue that Catholic institutions may sometimes be morally required to cooperate in evil.

General attitudes toward cooperation in evil more or less echo general attitudes toward moral conflict. As noted, the rigorist rejects the very existence of objective moral conflict and believes that the moral life consists primarily in avoiding evil: for the rigorist the world is an environment marked by evil, to be strenuously resisted in order to preserve personal moral purity. But the possibilist accepts that at least the experience of moral conflicts are real, and believes that therefore the moral life sometimes involves ‘getting one’s hands dirty’. He views the world with something akin to resignation: whether one likes it or not, moral tragedy happens, and material cooperation is regrettable but sometimes unavoidable.

The essentialist, on the other hand, accepts the world as the locus in which the moral agent both expresses and constitutes his identity as a fundamentally relational being. For the Christian essentialist, the pluralist world is where one ‘works out’ one’s salvation. Existential moral conflicts do actually occur because of the fallen nature of both the world and the moral agent. In order to live a truly human life at all one must enter into relationships with many other subjects, and these inevitably include some who do evil. One’s particular mission or work in life expresses one’s very identity and, in the moral life, faithfulness to one’s Christian identity must be preserved over any purely abstract sense of ‘doing good and avoiding evil’. In the concrete it may often be possible to fulfil one’s mission while avoiding evil altogether, but sometimes it is precisely a sense of fidelity to oneself, to one’s most basic identity and to one’s mission, which leads one to collaborate - sometimes very closely - with others who do evil. In some cases this may be a

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270 See 4.1.2.1 above.
cause for regret, but in other instances it is recognised as simply the most authentic path of faithfulness to self and to God.

In its favour, the ‘essentialist’ position seems attuned to a certain ambivalence toward the world which has marked Christian life from earliest times.\textsuperscript{271} The world provides the conditions which guarantee the Church’s continued existence and flourishing, but it is clear that at times this same world conflicts with and threatens to overcome the Church’s moral values.\textsuperscript{272} Vatican II recognised that this ambivalence is not extraneous but is, as it were, ‘inscribed’ in the very ‘stuff’ of the world. The Council’s ideal of religious liberty means that the Church can no longer simply condemn those outside its walls, but must find a workable balance between holding firmly to its own religious beliefs and defending the right of others to do the same. Even in moral matters the Church is engaged with others in a mutual and reciprocal ‘search for truth and for the right solution to so many moral problems which arise both in the life of individuals and from social relationships’.\textsuperscript{273}

One may question whether the ‘essentialists’ have proved their case, and this would certainly be fertile ground for further research. But in any event, those who propose the essentialist position seem to have a point: immersed in a world in which evil is frequently done, Catholic institutions are often challenged to maintain their Catholic identity while working with others who do not share the same moral views, and Catholic institutions sometimes do feel constrained by their sense of mission to cooperate with others who do evil. The final chapter will seek to develop a theological background against which to view the relationship between an institution’s Catholic identity and the challenge of cooperation in evil.

\textsuperscript{271} Both Saint John and Saint Paul exhibit elements of dualism toward the world: the Christian is called to be in the world but not of the world, to be light in the surrounding darkness, to follow the way of life rather than the way of death. See for example 1 John 2:15f; Philippians 2:15; Matthew 5:14; John 3:19-21.

\textsuperscript{272} Gaudium et spes, 44: ‘Whoever contributes to the development of the community of mankind on the level of family, culture, economic and social life, and national and international politics, according to the plan of God, is also contributing in no small way to the community of the Church insofar as it depends on things outside itself. The Church itself also recognises that it has benefited and is still benefiting from the opposition of its enemies and persecutors.’

\textsuperscript{273} Gaudium et spes, 16.
5.0 Introduction

The principle of legitimate cooperation exists because a basic truth has been perceived: on some occasions one is justified in cooperating with those who do evil, while on other occasions cooperation is not justified. A history of the principle uncovers data which are significant not only for this particular moral insight, but also for moral theology more generally.

The principle’s critical early phase of evolution (from Sanchez to Alphonsus) saw a substantial clarification of fundamental concepts, in particular the significance of moral causality: if a cooperator exercised no moral causality and held a sufficiently serious reason to act, he could not be held responsible for the principal agent’s evil deed. In the second phase (embracing virtually the entire manual tradition) the traditional metaphysics was employed in order to conceptualise and explain this basic insight: a cooperator’s action may be legitimate if it has its own legitimate moral object and is justified in the particular circumstances. Paradoxically, the achievement of this second phase seems to have complicated the agenda of the third phase (from Vatican II to the present day) which, without sacrificing the benefits of the traditional analysis, seeks to ground an understanding of legitimate cooperation in a broader theology of the Christian moral life.

It has been suggested that while the principle of material cooperation achieved a certain analytical clarity, it was rarely able to deliver absolutely definitive solutions in problematic situations. This is typified by the concept of ‘sufficiently serious reason’: every manualist knew the importance of holding a strong reason to cooperate, but none was able to strictly define ‘sufficiently serious’ beyond listing some of the variables to be considered. The strength of one’s reason to cooperate remains essentially a matter for individual assessment.
The history of the principle on one hand and its inherent limitations on the other prompt a number of observations on the nature of moral theology.

First, the principle of legitimate cooperation evolved because Christians, conscious that good is to be done and pursued and evil avoided, needed to express and explain a basic moral insight in a form suitable to guide moral deliberation.

The history of moral theology reveals that moral principles generally emerge from careful comparison of similar cases and identification of common features. The critical first step, however, is recognition that morally right solutions have already been reached, and this is grasped initially more by a non-conceptual ‘moral sense’ or ‘fontal knowledge’ than by any strictly logical deduction. It is only subsequently that comparison of similar cases identifies (that is, conceptualises and names) distinctive common features which may become the terms of a principle. Generally, then, a moral agent’s or moral community’s sense of moral rightness precedes its ability to conceptualise and explain the reason for that rightness.

But both this initial ‘fontal knowledge’ and the subsequent analytical reflection are conditioned to some extent by the world-view of the moral agent. On one hand a moral community strives to reach a degree of certainty about moral rightness which transcends subjective individual perceptions - what may be called ‘trans-subjective’ objectivity. But on the other hand, whether one refers to individual moral agents or to entire moral communities, one’s vision of what here and now is ‘to be done’ or ‘to be avoided’ depends on one’s moral world-view: that is, on one’s sense of what is, or at least ought to be, morally achievable or avoidable. As suggested earlier, this is a function of the moral agent’s fundamental stance in

2 For a developed reflection on the nature of moral knowledge, and the relationship between its non-conceptual and conceptual aspects see Pinckaers, The Sources of Christian Ethics, especially 49-57.
3 Pinckaers, Sources, 65-66.
regard to moral conflicts and their resolution: those who hold moral conflicts to be inevitable and those who hold that moral conflicts are avoidable will hold different views on what is morally permitted or required. It is not uncommon for both views, and many others on the spectrum between them, to co-exist in a single moral community.

Second, the history of the principle of legitimate cooperation demonstrates that while the evolution of principles obtains for some moral terms the status of objective definition (such as ‘intrinsically evil acts’), it also necessarily involves a good deal of subjective interpretation (such as ‘what constitutes a sufficiently serious reason’). This helps to explain why, having been identified as critical in the early stages of the evolution of the principle, these terms proved difficult to define with precision.

As the limitations inherent in an ‘objective’ metaphysical approach to morality have come into view, recent moral theology has developed a corresponding appreciation of the role of human experience. Central terms of the principle of legitimate cooperation (such as ‘intrinsically evil acts’ and ‘sufficiently serious reason’) demonstrate that both objective moral truth and subjective human experience play essential roles in balanced moral deliberation. On one hand, only reflection on subjective human experience enables one to ‘put words to’ one’s non-conceptual moral knowledge; it is precisely this reflection which converts the ‘world of immediacy’ into the ‘world mediated by meaning’. On the other hand moral objectivity belongs as much to the latter world as to the former: for example, if moral

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4 See above, 4.1.2.1. In the case of individual moral agents, another element shaping this worldview is the agent’s level of moral development or moral reasoning ability.

5 See Kenneth R Himes OFM, ‘The Contribution of Theology to Catholic Moral Theology’ in Charles E Curran, ed. Moral Theology: Challenges for the Future. Essays in Honour of Richard A McCormick SJ. (New York: Paulist, 1990) 48-73. At 56: ‘Objectivity in the world of meaning asks of us to wed sense data with intelligence and reason. Thus, to obtain moral meaning it is insufficient to rely upon the immediacy of sense data alone. Meaning comes to be in the encounter of the subject with the object of the world of immediacy. The criteria for an authentic encounter are the transcendental precepts: Be attentive! Be intelligent! Be reasonable! Be responsible! . . . What is being proposed is a more critical epistemological method that requires taking into account the role of the subject in discovering the meaning of the objective order. This way of thinking about the matter echoes Lonergan’s idea that “objectivity is simply the consequence of authentic subjectivity.”’ The reference is to Lonergan, Method in Theology, 265.
dialogue is to be meaningful, then the ‘world mediated by meaning’ requires a degree of objectivity about the meaning of such concepts as ‘good’ and ‘evil’.

*Third,* reflection on human experience also reveals the central role of ‘context’ in moral deliberation. The problem of legitimate cooperation is, in essence, the problem of one moral agent’s interaction with other moral agents in a pluralist society. The concrete and particular givens of that society are often central to the assessment of particular instances of cooperation, so it is not at all unreasonable to hold that an action which constitutes legitimate material cooperation in one set of circumstances may not be justifiable in a different set of circumstances. The difference, of course, is in the way that the particular circumstances which surround each instance impact upon its ‘adequate description’.

The concern for context finds an honoured place in the traditional metaphysics, which understood the need to appreciate the concrete circumstances surrounding an act; the same concern underlies Keenan’s insight into the importance of ‘particular assessment in particular instances’ of cooperation. But as noted, there is still a certain objectivity in moral knowledge which is ‘trans-subjective’ in nature. Therefore the pitfalls of moral solipsism or ‘situation ethics’ can be avoided by insisting on the objective meaning and value of *both* the original moral insight and the principle which seeks, however imperfectly, to express it. So the present movement toward a ‘person-centred’ moral theology need not necessarily entail any destructive individualism or relativism. If anything, some recent analysis of the principle of legitimate cooperation tends to highlight the fact that the moral agent is always essentially in relationship with the entire moral community, which would seem to guarantee a certain ‘trans-subjective’ objectivity.

*Fourth,* therefore, an adequate anthropology must go beyond overly simple or individualistic definitions of the human person, and embrace this essentially relational nature of the moral agent. After all, it can be argued that it is only through interaction with others that moral agents are able to express and constitute their identity as persons and as Christian.
The present study has noted that while individual moral agents and institutional moral agents share some attributes in common, they also differ markedly in many respects. It has been suggested that an institution’s corporate structure, its decision-making processes, its access to greater resources, and the ecclesial significance of its actions all seem to place it in a class apart from the individual moral agent.\(^6\) If (from the objective point of view) much depends on the circumstances and social context surrounding a particular instance of cooperation, likewise (from the subjective point of view) much depends on the specific identity, structure and deliberative processes of the particular institution. This is where the identity of the particular moral agent touches the very heart of moral deliberation - which, in the case of individual moral agents, is the essence of a person-centred moral theology.

In summary, this investigation into the principle of legitimate cooperation in evil has begun to reveal the significance of, and interaction between, (i) the moral community’s fundamental apprehension of moral truth, (ii) the prevailing ethos and world-view of the culture in which that moral community is located, and (iii) the world-view, identity and moral experience of the particular moral agent.

In this final chapter some of these themes are taken up and woven into a ‘theological background’ to the question of institutional cooperation. The inspiration for this lies in the Second Vatican Council’s call to a general renewal of moral theology. Elements of this renewal shed some light on traditional accounts of the principle of legitimate cooperation (5.1), but an underlying assumption here is that fidelity to the agenda of Vatican II must carry this discussion beyond the horizon of a philosophical (essentially metaphysical) ethics and into a truly theological vision of the moral life of Catholic institutions (5.2).

Throughout this chapter the ‘moral subject’ or ‘moral agent’ in focus is the Catholic institution, and specifically the Catholic hospital. There are undoubtedly differences between individual and institutional moral agents, but there are also

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\(^6\) See 4.3.1 above.
sufficient similarities to draw an analogy between a Christian anthropology of the human person on one hand, and the Christian identity of the Catholic institution on the other. One aim of this chapter is to recast the moral life of Catholic institutions against a theological - in particular a Christological and ecclesiological - background. It will be suggested that the most significant distinguishing mark of the institutional moral agent is the ecclesial meaning of its institutional acts.

In some senses what follows is a reflection on one possible interpretation of ‘sufficiently serious reason’. Notwithstanding Alphonsus Liguori’s achievement in distinguishing the evil of cooperation per se (in de caritate) from the related question of responsibility for the further effects of that evil (in de restitutione), subsequent treatments generally persisted in interpreting ‘sufficiently serious reason’ as a balancing of good and evil effects - a more or less consequentialist approach. This chapter proposes a more fundamentally ontological and existential interpretation, focussing less on ‘the effects of cooperation on others’ and more on ‘the meaning of cooperation for the Catholic institution itself.’ It will be suggested that sometimes an institution’s Catholic identity might justify mediate material cooperation in evil.

While the intention is to ground this possibility within a theology of moral life, the present approach makes no claims to be either comprehensive or exclusive. It is offered as a theological reflection, a tentative contribution to a much greater project, rather than as a fully developed or definitive position. Neither does it aspire to construct a complete theology of Christian moral life, but only to identify some of its touchstones. It will have achieved its purpose if it prompts further reflection, which in turn may shed light on this complex question in contemporary moral theology.
5.1 Institutional Cooperation in a Renewed Moral Theology

5.1.1 Introduction: Terms of Renewal

The Second Vatican Council’s call for renewal in moral theology sketched only the broadest outline of what must be, inevitably, an intensely searching long-term project. This is to be no mere restoration of an ethics of law or rediscovery of a traditional ethics of virtue, but a radical refoundation. It is to be much more than a search for a new hermeneutic which would simply offer a re-interpretation of the traditional metaphysics. It must not only place moral theology in a new and more vital relationship with other theological disciplines, but must also bring new light to bear on questions which have, under traditional approaches, become only more complex and obscure. Its aim is that moral theology should ‘have a place as authentic theology’, and to that end it is to be deeply rooted in a truly Christian anthropology, in sacred Scripture, systematic theology, philosophy, pastoral practice and spirituality. It is to be a discrete theological discipline in its own right, yet it is also to be considered a part of

. . . a unified scheme of systematic theology . . . a part that concerns the process by which man, created in the likeness of God and redeemed by the grace of Christ, tends towards his full realisation, according to the demands of his divine calling, in the context of the economy of salvation historically realised in the Church.

The present study of legitimate cooperation has retraced the evolution of the principle and its current status in Catholic moral theology. This fifth and final chapter seeks to outline a theological interpretation of a Catholic institution’s legitimate cooperation in evil, an interpretation which is faithful not only to the

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9 CCE, Future Priests, 97-101.
10 CCE, Future Priests, 97. The natural and human sciences also have a role to play: indeed, the data of these disciplines have the potential to help moral theology articulate the critical distinction between universal moral principles and concrete moral decision-making: ‘. . . they can throw much light on the situation and on the behaviour of man, encouraging research, revision, the profound understanding of doctrine which lies between the sure and certain principles of reason and faith, and their application to the concrete facts of life.’ CCE, Future Priests, 99. For a fuller discussion of the Council’s agenda of renewal, see Pinckaers, Sources, xvii-xxi and 298-305.
moral tradition but also to the Council’s call to renewal. The last section of this chapter will revisit the Bunbury case in light of this theological interpretation, but it is necessary first to elaborate this view by outlining five themes which reflect Vatican II’s agenda for the renewal of moral theology:

- *First* (5.1.2), a *theological vision of the moral agent as human person*. A renewed moral theology calls not merely for a philosophical anthropology but for a genuine theology of the human person *'created in the likeness of God and redeemed by the grace of Christ'*.\(^{11}\) The foundational analogy between the individual and the institution as moral agents permits certain conclusions to be drawn regarding a Catholic institution’s commitment and responsibilities to moral truth.

- *Second* (5.1.3), the *apprehension of moral truth*. The Church as moral community has a particular insight into moral truth because of its unique relationship with Jesus Christ, the Word made flesh who is himself Truth (John 14:6). The central question here is how the institutional moral agent apprehends this Truth, and how a relationship with Christ can ‘inform’ its moral decisions.

- *Third* (5.1.4), a vision of the *meaning of moral actions*. A Catholic institution shares the individual Christian’s obligation to *’bring forth fruit in charity for the life of the world’*.\(^{12}\) Institutional moral actions take on particular meaning when viewed in the context of a fundamentally sacramental Christology, and an ecclesiology which recognises in the life of the Church both God’s invitation and humanity’s response.

- *Fourth* (5.1.5), *continuity with the Catholic moral tradition* within which the principle of cooperation emerged and evolved to its present standing. A theological ‘re-visioning’ of the principle of legitimate cooperation must stand in continuity with the wisdom of the tradition or risk radical disconnection from its own roots.

\(^{11}\) CCE, *Future Priests*, 97.
• *Fifth* and finally (5.1.6), the relationship between action and identity. This interpretation of the relationship between an institution’s ecclesial identity and the moral significance of its actions requires an explanation of the ‘mechanism’ which connects the two. An appropriate mechanism can be found squarely within the Church’s moral tradition, in the theory of virtue.

This is an enormous undertaking. The following observations aim only to outline some key themes and lay general foundations.

5.1.2 **The Human Person**

At the heart of Vatican II’s vision of a renewed moral theology is the person of the moral agent, created in God’s image and likeness and redeemed by Christ.  

A genuine theology of moral life will affirm the essential unity of the moral agent’s faith and action, since there is an intrinsic relationship between the person of the moral agent and his moral behaviour: *it is by deliberate actions that the moral agent both expresses and constructs his identity.*  

This insight requires investigation.

On the question of the regulation of births, the Vatican Council reminds the Church that subjective elements of moral deliberation (good intention, evaluation of...
motives) are not sufficient in themselves to lead the agent to moral truth.\(^{15}\) Rather, ‘the objective criteria must be used, criteria drawn from the nature of the human person and human action’.\(^{16}\) Louis Janssens holds that the official commentary on Gaudium et spes makes two important points: first, by insisting that objective criteria can be drawn from ‘the nature of the human person and human action’ the Council teaches that human acts cannot be considered solely from the point of view of an abstract metaphysics but must be referred back to ‘the human person integrally and adequately considered’; and second, this criterion for assessing moral actions is to be considered a ‘general principle’.\(^{17}\)

It is clear, then, why a truly Christian anthropology must stand at the centre of a renewed moral theology. If the fullest meaning of moral actions is to be found only with reference to the authentic nature of the one who acts, then moral theology must develop an ‘integral and adequate’ vision of the human person. This is the essence of the ‘personalism’ which Catholic theology has sought to elaborate in recent years.\(^{18}\) The next question is: of the many dimensions of the human person, which should be included in an integral and adequate vision of the moral agent? If moral reasoning must deal with ‘the whole range of feeling, perceiving, valuing that each individual has come to experience’,\(^{19}\) then the horizons of personalism would seem very wide indeed.\(^{20}\)

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16 Gaudium et spes, 51.


18 It will be noted that this approach is more or less implicit in the ethical theory of Thomas Aquinas, who insists that actions must be understood according to their ‘form conceived by reason’ (materia circa quam) rather than their natural or physical form (materia ex qua) - ST I-II 18, 2 ad 2. See also 2.1.2 above: the moral object of an action is ‘that moral matter which the act aims to attain or with which the act deals - the materia circa quam, the ‘intelligible subject matter upon which the will’s act of choice bears’, which is the ‘intentional object’; not the physical form, but the ‘form conceived by reason’.


20 Janssens (‘Personalism’, 94) discerns eight essential dimensions of the human person:
Three aspects of human personhood seem particularly pertinent to the present discussion:

- the human person is created and graced by God and redeemed by Christ,
- the human person is free and self-determining, playing an active role in coming to knowledge of objective moral truth, and
- the human person is relational, being essentially directed towards others.

**First:** it is a fundamental datum of Christian faith that human beings are created in the image and likeness of God (Genesis 1:27). ‘Creation by God’ relates the human person in essence to the whole of created reality while, on the other hand, ‘being in God’s image and likeness’ is the principle of uniqueness which distinguishes humanity from the rest of creation. In the Christian understanding, furthermore, the proper moral subject is not simply ‘man’ but ‘man redeemed by Christ’, and ‘redemption’ means that humanity has ‘the possibility of realising the entire truth of our being’. It is by the saving action of Christ that the human person possesses this possibility, but it is only in responding personally to God in

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1. The human person is a subject, not an object as are the things of the world. Since a person is called to self-determination, he or she is a moral subject, deciding on all his or her doings in conscience and consequently in a responsible way.
2. The human person is a subject in corporeality. Our body forms part of the totality that we are: what concerns our human body affects our person.
3. Because of the materiality of our body, our being is a being-in-the-world.
4. Human persons are essentially directed toward each other.
5. Not only because of our openness to one another are we social beings, but also because we need to live in social groups with appropriate structures and institutions.
6. Human persons are fundamentally open to God, and it is the task of moral theology to explain how, according to our Christian revelation, our relationship to God affects us in all the dimensions of our person.
7. Human persons are historical beings since they are characterised by historicity.
8. All human persons are fundamentally equal, but at the same time each is an originality, a unique subject.

21 Pope John Paul II, ‘Address to Priests Participating in a Seminar on ‘Responsible Parenthood’.’ L’Osservatore Romano 14(828) 2 April 1984. 7+16. See also Veritatis splendor, 38-39. Edward Schillebeeckx OP eloquently states the significance of being created by God: ‘The dogma of creation (supported by our own experience of our contingency) informs us that, in spite of his bodiliness and his essential involvement in this world, man comes from the hand of God as a person and therefore under all aspects possesses an immediate relationship to God which calls him forth as a person - a situated freedom - into existence. Man belongs ‘first’ to God and only secondly to himself. He exists for God. This is his metaphysical and moral significance. The relationship with God is not something added, it is constitutive of man.’ Edward Schillebeeckx OP, God and Man. (London: Sheed and Ward, 1969) 215.
Christ that the moral agent *realises* or *actuates* that possibility.\textsuperscript{22} So it is that a human being both ‘expresses’ and ‘constructs’ his identity: his deliberate moral actions represent his response to God’s redemptive initiative, and it is by them that he realises the possibility of becoming all that God has created him to be.

The human person’s origin and destiny in God is therefore:

- the basis of human *freedom*: by his deliberate actions the moral agent chooses to form himself more fully or less fully in the image and likeness of God;\textsuperscript{23}
- the basis of moral *responsibility*: one takes most responsibility for one’s own identity when one is ‘moved and drawn in a personal way from within’ to express one’s response to God through moral actions;\textsuperscript{24}
- the basis of moral *rightness*: the moral worth of a person’s actions is defined in terms of that which ‘strengthens, develops and consolidates within himself his likeness to God’.\textsuperscript{25}

Second: the full meaning of moral actions is found only in reference to personhood. The individual moral agent does not determine what constitutes good or evil in moral action, but rather discovers it in the very nature of God and in his own nature created in God’s image and likeness. This is the essence of *natural law*:

At this point the true meaning of the natural law can be understood: it refers to man’s proper and primordial nature, the ‘nature of the human person’, which is *the person himself in the unity of soul and body*, in the unity of his spiritual and biological inclinations and of all the other specific characteristics necessary for the pursuit of his end.\textsuperscript{26}

So the moral agent’s apprehension of moral truth is also a question of self-knowledge. But this knowledge is not a given, to be received passively: it must be sought actively, particularly if one is to be responsible not only for the content of

\begin{footnotesize}
\begin{enumerate}
\item[22] Hence the Australian Catholic Bishops’ Conference describes redemption in this way: ‘Redemption means that the dominance of human limitations and failings has been broken. This was achieved for all who follow him when Jesus broke the power of the greatest of all human limitations, death itself.’ See *The Word Dwells Among Us*. (Melbourne: Collins Dove, 1990) 7.
\item[23] See *Gaudium et Spes*, 17; *Veritatis splendor*, 34.
\item[24] *Gaudium et spes*, 17.
\item[25] *Veritatis splendor*, 39.
\item[26] *Veritatis splendor*, 50. Emphasis original. See also the following section.
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one’s moral choices but also for the quality of inner motivation which prompts those choices.

The quest for moral truth leads one beyond the immediacy of sense perception and into the realm of ‘meaning’. Thomas hints at this in his understanding of ‘moral object’ in terms of the act’s ‘form conceived by reason’, and it is upon this insight that Bernard Lonergan built his theological epistemology: knowledge of the real nature of things, of their meaning beyond their outward appearances, requires active attention, intelligence, reasonableness and responsibility. This activity occurs most profoundly when the moral agent confronts particular concrete situations which call for a considered response. At the heart of natural law theory is an understanding that universal and objective moral truth ‘stands behind’ every particular moral choice, awaiting realisation by the attentive, intelligent, reasonable, responsible moral agent.

Thirdly: it is this realisation which leads to ‘trans-subjective’ moral objectivity. The meaning of moral experience is known to be objective when it is grasped deeply and personally by moral agents in a manner which transcends their individual subjectivity:

It is manifested as an exigency of truth, which informs and governs the desire for good, at the source of the action, in choice and decision. It is at the very heart of personal action that our guiding light touches us, especially on the level of prudential judgment. This objectivity will be the work of the practical reason penetrating our free will. It will be the truth of goodness. Such objectivity can be called ‘trans-subjective’, for truth and goodness move moral persons to go beyond themselves and overcome the singularities that stand in their way. They provide the only solid basis for moral communion and collaboration.

27 See Gaudium et spes, 15.
28 See ST I-II 18, 10; and 2.1.2 above.
29 See Lonergan, Method in Theology, 53: ‘Progress proceeds from originating value, from subjects being their true selves by observing the transcendental precepts, Be attentive, Be intelligent, Be reasonable, Be responsible. Being attentive includes attention to human affairs. Being intelligent includes a grasp of hitherto unnoticed or unrealised possibilities. Being reasonable includes the rejection of what probably would not work but also the acknowledgment of what probably would. Being responsible includes basing one’s decisions and choices on an unbiased evaluation of short-term and long-term costs and benefits to oneself, to one’s group, to other groups.’
An individual moral agent grasps the truth of his personal moral experience, and in so doing uncovers two facts: first, that there remains an unbridgeable ‘gap’ between the experience itself and the ability to conceptualise and communicate it; and second, that other moral agents have their own moral experience of the same truth. In the former is recognised the incommunicable uniqueness of moral experience that grounds a responsibility which is truly personal, for fidelity to this moral truth constitutes fidelity to one’s very self. In the latter is identified the essential objectivity of the truth encountered in that experience: ‘the more profound the personal truth . . . the deeper [its] resonance and the wider [its] audience’.\(^3\)

For example, a moral agent recognises that a central aspect of Christian identity is ‘love of neighbour’ (see Mt 5:43-48). This is actively expressed when one actually seeks to do good for another; at the same time, it is by doing so that the Christian actually becomes what God has called him to be. But it is only in making this choice and in acting this way that one uncovers the essential moral truth which stands behind the command to love - the Truth expressed uniquely and completely in Jesus Christ. As the attentive moral agent recognises the presence of Christ the Truth in and through his moral choices, he recognises also his own authentic Christian identity. Choosing to love one’s neighbour is, therefore, choosing to conform oneself more fully to the image and likeness of God in which one is created, and this reveals one’s own authentic identity. Finally, the relationship between moral truth, Christian identity and moral choosing is not individual but ecclesial: the attentive moral agent recognises that growing conformity to Christ necessarily draws one more deeply into the life of the Christian community.

So it is that the moral agent not only plays an active role in coming to know moral truth, but does so only in communion with other moral agents. The human person is an essentially relational moral subject. It is this characteristic which also allows the human person to be an object in morality:

In moral theory the object stands over against the acting subject (objectum, placed in front of) as a determining element of the

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\(^3\) Pinckaers, *Sources*, 65-66.
\(^3\) Pinckaers, *Sources*, 66.
subject’s knowledge and action. The object, being known, awakens love and desire, elicits respect, wins friendship, and initiates relationships of justice and truth. Thus understood, the object can obviously be a person, recognised as such. I can talk about the object of my love, my hope, or my faith. This is what Christ is for Christians, married spouses for each other. In fact, human persons are the chief object of moral theory, for only in the context of persons can we conceive of morality at all.32

If ‘human persons are the chief object of moral theory’, then the problem of cooperation in evil cannot adequately be cast solely in terms of the outward actions of principal agent and cooperator. In some sense the personhood of the moral agent must be central to the equation. It has already been argued that it is insufficient to use vague terms like ‘cooperation with persons’ or ‘the dignity of personal conscience’ with little or no explanation.33 What is proposed here is more fundamental: the claim is that the personhood of the moral agent enters the assessment of cooperation not primarily as modifying the objective moral status of the cooperative act, but primarily in relation to the meaning of this particular action for this particular cooperator.

At its heart the problem of cooperation in evil is this: that an otherwise innocent action, which ordinarily ought not to be commissioned because it lends assistance to another in his evil design, may in a particular instance be legitimately commissioned if the cooperator holds a sufficiently strong reason for doing so. In this case, since it is not morally pre-determined, the cooperative action awaits final moral definition in the cooperator’s intention or reason for acting, and in the surrounding circumstances. Traditionally the justifying power of the cooperator’s reason depends upon factors such as the evilness of the principal agent’s deed, the proximity and necessity of the cooperation, and the evil effects which will result.34 But taking account of the personhood of the moral agent means that the cooperative act must also be assessed in relation to the person of the cooperator himself: whether and to what extent this instance of cooperation is consistent with the cooperator’s

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32 Pinckaers, Sources, 67.
33 See above, 4.1.2.3 and 4.1.2.4.
34 See Alphonsus, de caritate 59.
core identity as a person created in the image and likeness of God and redeemed by Christ.

In a sense this is simply a re-statement of natural law theory, but it has two advantages over more traditional approaches to cooperation: it accounts for the acting person as well as for the action itself, and it relates the moral assessment of an action explicitly to the ultimate objective norm of morality, which is God. This view of moral agency is based in a truly theological anthropology which reveals that the most fundamental question for Christian moral behaviour is not ‘what am I to do?’ but ‘who am I called to become?’ Beyond the moral object of the action there lies the object of the moral agent, a finis beyond id quod est ad finem, and in its perfect form that finis is ever the same: to become all that God has created one to be. In a theological perspective, then, assessment of cooperative actions begins in one’s knowledge of self as a person created by God and redeemed by Christ, and terminates in a prudential judgment that fidelity to self demands fidelity to God, and vice versa.

5.1.3 The Apprehension of Moral Truth

Both questions - ‘what am I to do?’ and ‘who am I called to become?’ - are questions of moral truth: the former concerns truth in ‘doing’, the latter concerns truth in ‘being’. The relationship between human nature and human action is central to a Christian understanding of morality and provides ‘objective criteria’ which guide assessment of particular moral acts.35 The questions in this section are, ‘where is moral truth to be found?’ and ‘how is moral truth apprehended?’

As noted, traditional Catholic morality seeks moral truth in natural law. Grisez’s justifiable concern to resolve the so-called ‘naturalistic fallacy’ is symptomatic of the fact that some had come to see natural law theory as flawed by a kind of ‘biologism’ in which the data of ‘raw nature’ is supposed to provide criteria

35 Gaudium et spes, 51; Veritatis splendor, 71.
for moral judgment.\textsuperscript{36} This locates moral truth within nature, which reduces the order of morality to a mere reading of empirical phenomena. In this interpretation, moral truth is fully accessible because natural law theory rests on 'pure - that is, non-religious - reason'.\textsuperscript{37}

But an authentic Christian understanding of morality holds that while moral truth ‘speaks’ to humanity through external phenomena, it is not located ‘in’ those phenomena. Historically, natural law theory is not rationalistic but genuinely theological:

\ldots the philosophy of nature on which the scholastics drew in developing their concept of the natural law was itself motivated by specifically Christian concerns, and was developed in part through a process of scriptural interpretation. Moreover, natural philosophy in the twelfth and thirteenth centuries tended to see nature as an expression of divine, transcendent wisdom. For both these reasons, we cannot draw a sharp line between the philosophical and theological aspects of the scholastic concept of natural law; even its philosophical components are more theological than is generally realised.\textsuperscript{38}

Primarily, then, the Christian tradition of natural law locates moral truth in the mind and will of God, that Eternal Law which is ‘the ruling idea of things which exists in God as the effective sovereign of them all’.\textsuperscript{39} Natural law is ‘nothing other than the sharing in the Eternal Law by intelligent creatures’.\textsuperscript{40} The note of ‘intelligence’ is critical: as rational creatures, human beings participate in Eternal Law ‘intelligently and reasonably’, and not merely physically and biologically.\textsuperscript{41}

\textsuperscript{36} This fallacy is addressed in Veritatis splendor, 46-50. See also the Congregation for the Doctrine of the Faith, Instruction Donum vitae. ‘On Respect for Human Life in its Origin and on the Dignity of Procreation.’ (22 February 1987). AAS 80(1988) 70-102. At 74 (Introduction n.3): ‘\ldots this law cannot be thought of as simply a set of norms on the biological level; rather it must be defined as the rational order whereby man is called by the Creator to direct and regulate his life and actions . . . ’
\textsuperscript{38} Porter, Natural and Divine Law, 122.
\textsuperscript{39} ST I-II 91, 1.
\textsuperscript{40} ST I-II 91, 2.
\textsuperscript{41} ST I-II 91, 2 ad 3: ‘\ldots etiam animalia irrationalia participant rationem aeternam suo modo, sicut et rationalis creatura. Sed quia rationalis creatura participat eam intellectualiter et rationaliter, ideo participatio legis aeterna in creatura rationali proprie lex vocatur: nam lex est aliquid rationis . . . In creatura autem irrationali non participatur rationaliter: unde non potest dici lex nisi per similitudinem.’
This takes natural law out of the world of immediacy and places it squarely in the realm of meaning: what is ‘moral’ in human acts relates not to the *materia ex qua* but to the *materia circa quam*, and the ‘reason’ which conceives the moral form of an act is not ‘pure’ reason but *‘ratio recta’*. Natural law is known first and foremost as ‘*a reflection of the image of God within the human person*’, so moral truth is in some sense an essential characteristic of one created in God’s image and likeness.

But in order to provide practical guidance in the moral life, this truth in the human person’s ‘being’ demands specification in actual ‘doing’. Not surprisingly, then, the tradition also developed its concept of natural law from an interpretation of the Scriptures which provide both general and specific moral rules.

[Augustine] identifies the natural law with the Golden Rule and the Decalogue, a view which is also a patristic commonplace. The former, he says, is a basic moral norm that is known to all, and from this rule, it would theoretically be possible to derive at least the fundamental principles of morality. At the same time, given the pervasive effects of sin, our moral knowledge is at best limited and corrupt. For this reason, God has mercifully formulated the fundamental precepts of the natural law in the Mosaic law, particularly in the Decalogue. Hence, the latter can be considered to be a written formulation of the natural law.

Although the Scriptures also contain precepts which do not belong to natural law (such as the ceremonial precepts of the Old Law), the scholastics considered Scripture and nature as

\[\ldots\] two complementary modes of access to God’s wisdom and God’s providential will for humanity. The knowledge of God and of God’s law provided through nature is bound to be incomplete and even corrupt; that is why it was necessary for the basic precepts of the natural law to be formulated anew through the Mosaic law. Nonetheless, there can be no fundamental contradiction between natural law and Scripture. These are two different yet mutually complementary ways in which God’s will is expressed to human beings.

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42 See 2.1.2 above.
43 Porter (*Natural and Divine Law*, 126) traces this view to Augustine.
45 Porter, *Natural and Divine Law*, 132-133. Porter indicates that Thomas teaches the same in ST I-II 94, 4 ad 1. Her point seems to be that traditional natural law theory is both philosophical and theological in nature, but because the order of nature is itself grounded in God’s creative will, even a
It is not surprising then that, as Servais Pinckaers OP suggests, some moralists ‘having come to treat moral theology from the viewpoint of commandments and obligations . . . are primarily interested in strictly normative texts and imperatives’ in the Scriptures.\(^46\) In this view the Scriptures are treated principally as a source of moral content, for the discovery of which the science of exegesis is an indispensable tool. Pinckaers rightly notes, however, that an overly scientific approach to the text would deny access to the Scriptures to all but the most expert of readers.\(^47\)

But the Vatican Council teaches that, because they are the primary locus of revelation for the Christian, the Scriptures are also ‘the principal source of Christian theology’.\(^48\) So while they do provide normative content, the Scriptures have much more to offer moral agents in their quest for moral truth: as Pinckaers argues, it is in a direct and personal reading of the Scriptures that the Christian pierces through the written word to encounter the ‘Word who is Life’.

Scripture does not merely offer human knowledge and experience, which the reader could reproduce with the aid of the text. Scripture is an instrument used by God to communicate with a human person, to manifest himself as a word spoken, and to produce in the reader’s inmost being the experience of an encounter with a Person who is unique. . . . This obviously calls for personal reading, comparable to an intimate conversation, where one’s first care is to listen.\(^49\)

This encounter is indeed personal and intimate, but it is ecclesial rather than merely individual for it occurs ‘under the guidance of the Church’s magisterium’:

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philosophical-rationalistic reading of natural law will find its fullest meaning only in relation to an essentially theological apprehension of the unity which exists between the origin and the destiny of all creation, including humanity.


\(^{47}\) Pinckaers, *Sources*, 317: ‘Here again the question arises: must the scientific biblical exegete stand between the moral theologian on the one hand and the inspired author on the other, whether he be prophet or evangelist? Can nothing worthwhile be understood without him?’


\(^{49}\) Pinckaers, *Sources*, 319.
Clearly this kind of reading is demanding, and cannot remain individual. The Word of God calls for meditation and prayer; it must be put into practice, and this is the principal key to profound, sapiential understanding. We may not isolate ourselves in our own personal interpretation. We must broaden our ideas by entering into a communion of mind and faith with the sacred authors and the entire Church. It is, therefore, an ecclesial reading, done in intimate union with the living tradition and the liturgy, that we must practice.\textsuperscript{50}

This approach to the Scriptures raises a number of important questions for moral theology in general, but two in particular bear directly on the present study.

\textit{First}, Pinckaers is right to suggest that the moral value of the Scriptures does not stop at normative moral content, that ‘substantial’ or ‘ontological’ moral truth exists beyond the ‘wrappings’ of the text,\textsuperscript{51} and that this moral truth may be found ‘through’ the text.\textsuperscript{52} For moral truth is not primarily a datum to be understood, but a Person who is to be encountered.\textsuperscript{53} Moral truth is found not primarily in the words on the page, but in the Word whom the writers had themselves encountered (1 John 1:1-3), the Word who is grace and truth (John 1:14). Consequently, the Christian grows in moral goodness not primarily by conforming his \textit{actions} to the content of the written word, but primarily by conforming \textit{himself} to the Word (John 14:23) and finding in that relationship a source of life (John 6:53-58). Here again one notes the essential connection between ‘being’ and ‘doing’ in the Christian moral life.

Moral theology must certainly attend to the scriptural texts and to particular passages which provide ‘moral content’ - the \textit{strictly normative texts and imperatives}. But what Pinckaers suggests is both prior and subsequent to exegesis. In a direct and personal reading of the Scriptures one encounters the ultimate norm of morality, the creating and redeeming God in whom one finds an answer to the basic

\textsuperscript{50} Pinckaers, \textit{Sources}, 322.
\textsuperscript{51} Pinckaers, \textit{Sources}, 317.
\textsuperscript{52} Pinckaers, \textit{Sources}, 318-319.
\textsuperscript{53} See Pope John Paul II, Apostolic Exhortation \textit{Catechesi tradendae}. ‘Catechesis in Our Time.’ (16 October 1979). AAS 71(1979) 1277-1340, n.5: ‘\ldots at the heart of catechesis we find, in essence, a Person, the Person of Jesus of Nazareth, ‘the only Son from the Father \ldots full of grace and truth’ (Jn 1:14), who suffered and died for us and who now, after rising, is living with us forever. It is Jesus who is ‘the way, the truth, and the life’ (Jn 14:6), and Christian living consists in following Christ, the sequela Christi.’
moral question: ‘who am I to become?’ The written text is logically and chronologically secondary to the Church’s experience of Christ himself, the incarnate Word of God who as it were stands ‘behind’ and ‘within’ the written word. The encounter takes place in the innermost core of the Christian person and is the heart of Christian moral experience, for Christ is that Truth who awaits discovery by the attentive moral agent, the living God who is experienced in ‘the depths of human reality . . . within the trauma of conversion’. The moral agent’s role in discovering moral truth is not passive but active: the Word is accessible only to those who personally take up the Scriptures for direct and active reading.

Secondly, this encounter with the Word provides a fundamental motivation for particular moral choices. The encounter with Christ does not leave the moral agent unaffected but demands a personal response, so particular moral choices are no longer a matter of ‘what am I to do’ but ‘who am I to become because of this encounter’. Christ’s invitation to ‘follow me’ is an invitation to ‘become Christ’ or to ‘put on Christ’ - not merely in one’s external actions but, through them, in the depths of one’s very being and identity. In the ‘trauma of conversion’ the Christian’s choice to become more fully the image and likeness of God is a choice to be converted more and more into the Christ he has encountered. The Christian’s choice to ‘follow Christ’ by loving one’s neighbour as Christ commands (John 15:12) is a choice to conform oneself, or to be converted more and more, to the image and likeness of the Christ one experiences in and through the Sacred Scriptures.

This encounter with the Word, this invitation to become Christ more and more, occurs in the context of the ecclesial community. Therefore the moral actions of Catholic institutions find their fullest meaning only in the context of the nature and mission of Christ and of the Church.

54 Pinckaers, Sources, 323.
55 Pinckaers, Sources, 321.
57 St Augustine, In evangelium Johannis Tr. 21, 8 (PL 35, 1568): ‘non solum nos Christianos factos esse, sed Christum. Intelligitis, fratres, gratiam Dei super nos capitis? . . . Christus factus sumus.’
58 Romans 13:14; 1 Corinthians 2:16.
5.1.4 The Meaning of Moral Actions

Just as the Scriptures are intended not merely to communicate moral content but to mediate an encounter with the Person of the Word, Christian theology has a vastly more noble and expansive task than merely to articulate the data of faith. At its inception the Second Vatican Council was reminded that the Church’s teaching office - and, it is suggested, a fortiori theology itself - is 'predominantly pastoral in character'.

Christian theology aims to enable individuals and the Church as a whole to give ‘an accounting for the hope that is in you’, and so to make a more conscious and complete response to Christ in the concrete particulars of life in the world.

The problem of cooperation in evil constitutes a challenge to Christian identity because it requires a moral agent to discern whether cooperation will enable one to ‘bring forth fruit in charity for the life of the world’ - that is, whether cooperation will promote or diminish one’s likeness to Christ. This challenge has an essentially theological aspect since, for the Christian, the basic moral question ‘who am I to become?’ is a theological question. To put it another way: if, in the matter of legitimate cooperation, questions such as the moral status of the cooperative act and the definition of ‘sufficiently serious reason’ lie in the ethical foreground, then questions of ‘being a follower of Christ’, ‘realising one’s Christian identity’...
identity’, and ‘bringing forth fruit in charity’ constitute a theological horizon. The following brief comments on Christology and ecclesiology aim to sketch only an outline of this background.

Transcendental Thomism offers a starting point, in its concept of the essentially symbolic structure of being. So as to ‘be’ in the order of reality a being must express itself in some way. This self-expression symbolises the ‘being-in-itself’ and makes it real, and yet is distinguishable from it. This structure of self-expression has two important implications.

First, since symbols operate by a process of mediation, the medium itself is of crucial significance: the medium is the very self-expression of the being which reveals itself. This sense of the medium assumes particular significance within the theological horizon of ‘Revelation’, the fact that God communicates the divine presence to humanity.

If God desires to be present to human beings, God’s presence must create a symbolic expression for itself in order that it can be ‘real’ for human beings, since the complete disparity between God and the human makes an unmediated presence and communication of God impossible. Thus in this case ‘symbolic expression’ means that God, in order to reach human beings, to be given or uttered to them, is present in a created medium that retains its created uniqueness, but is transparent to an interpretive recognition of God.

Second, in consequence, the concept of ‘personal communication’ takes on a specific meaning: the mutual self-expression of personal subjects constitutes not just a dynamic of ‘self-revelation’ or mediated dialogue, but a more fundamentally intimate encounter between the subjects themselves.

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63 Karl Rahner (d. 1984) pointed out in a fundamental essay that in the strict and proper sense a symbol is never a mere pointer, but is always a “real symbol”. This is based on the philosophical consideration that all being necessarily creates its own “expression”, in order to come to itself, to discover its own being. This means that all being is necessarily “symbolic”. A being realises itself by expressing itself. To put it another way: a symbol is effective because it brings a being to reality. That is what is meant by “real symbol”: a genuine symbol does what it symbolises. . . . Anyone who has understood the essential character of symbolism cannot play off the “merely symbolic” against the “real”.’ Herbert Vorgrimler, Sacramental Theology. Translated by Linda M Maloney. (Collegeville, Minn.: Liturgical Press, 1992) 10.

64 Vorgrimler, Sacramental Theology, 10.
A turning toward this medium does not imply ordinary growth in knowledge or information; instead, it is a self-opening of the human person for God’s self-communication, an opening that is not the autonomous work of the human person, but is caused by the prevenient grace of God. Thus it is in the turn to this medium that the person becomes conscious of the most intimate nearness of God; it is here that revelation occurs.  

These two points shed light on the unique meaning of the Incarnation, that union of the human and the divine in Jesus Christ who is the medium par excellence of God’s self-communication.  

As God, Jesus Christ is the (self-)Revelation of the Father to humanity in and through the Word-made-flesh, while as human, Jesus Christ freely responds fully and in complete obedience to the will of God. In his entire being - “his words and deeds, his silences and sufferings, indeed his manner of being and speaking” - Jesus Christ is the real symbol of God, in himself both containing and conveying the presence and invitation of God to mankind. At the same time, in his entire being, Jesus Christ offers mankind’s fullest and most perfect response to that invitation, even to accepting death on the Cross in fidelity to the Father’s will. In his own person and in every aspect of his life, then, Jesus Christ typifies the particular dialogical symbolism which the Christian community identifies as ‘sacramental’. Jesus Christ is the sacrament of salvation.

The sacramental structure of the Incarnation highlights three points of significance for the present discussion on cooperation in evil: 

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65 Vorgrimler, Sacramental Theology, 10-11. This structure describes the Christian’s personal encounter with the Eternal Word in and through the Scriptures.

66 See CCC 464-469, summarising the teachings of the Councils of Nicea I (325), Ephesus (431), Chalcedon (451), and Constantinople II (553).

67 CCC 456-460 and 516.

68 CCC 475, citing Constantinople III (681).

69 CCC 516.

• First: the fact of the Incarnation teaches that human experience cannot be neatly separated into spheres of ‘sacred’ and ‘profane’. God’s complete self-realisation in Jesus takes place in a realm marked by evil and sin - indeed, it takes place because of evil and sin. If God did not flee the profane but sought in Jesus to bring to it the divine saving presence, then neither must the Christian person - or, it will be suggested, the Catholic institution - flee the challenge of evil. Far from divorcing oneself from the realm of evil and sin, the individual Christian and the Catholic institution must be present and active within that world. The moral agent, therefore, not only recognises that the challenge of cooperation in evil is virtually unavoidable, but accepts that positive engagement in and with the realm of evil and sin is an aspect of Christian identity.

• Second, Jesus Christ, the sacrament of salvation, communicates God’s presence in this realm precisely in order to redeem it. Even personally culpable evil - not merely ‘malum’ but also ‘peccatum’ and even ‘culpa’ - can be redeemed through God’s salvific will realised in the life, death and resurrection of Jesus. The ‘message about the Cross’ is essentially a message that God’s nearness can be obscured by evil and sin, but not destroyed by them - indeed, the resurrection reveals God’s triumph over them. The Christian cooperator may be assured, then, that even those who do evil in the world can be redeemed if and when they respond to the God who communicates himself to them.

• Third, the sacramentality of Christ is not restricted to the historical Jesus or the Risen Lord, but by the power of the Holy Spirit extends to the whole Body of Christ in history. The Church, in Christ, is ‘in the nature of sacrament - a sign and instrument, that is, of communion with God and of unity among all men’; it is ‘the instrument for the salvation of all; as the light of the world and the salt of

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71 Vorgrimler, Sacramental Theology, 17-18: ‘First, a separation of reality into sacred and profane realms is impossible within Christian faith. A sacred realm (ie, related to the ‘sacrum’, the ‘holy’) would absorb people and things that are removed from the ‘profane’ and are ordered exclusively to God, reserved to God, and close to God alone. In contrast, the incarnation of God in Jesus of Nazareth affirms that the realm in which God comes to human beings, communicating God’s own self and remaining with them, is not removed from the world, no matter how depraved that world may seem to us to be. Christian separation from the evil in this world thus does not express itself in the creation of a sacred space, and the religious realisation of Christianity cannot consist in sacred actions [only].’

72 1 Corinthians 1:18 (New Revised Standard Version).

73 See Vorgrimler, Sacramental Theology, 18.
the earth (cf Mt 5:13-16) it is sent forth into the whole world’; it is ‘the universal sacrament of salvation’. The Church itself is sacrament, the medium of God’s self-communication in the world, because it is the Body of Christ.

If Christ is the sacrament of God, the Church is for us the sacrament of Christ; she represents him, in the full and ancient meaning of the term, she really makes him present. She not only carries on his work, but she is his very continuation, in a sense far more real than that in which it can be said that any human institution is its founder’s continuation.

The Church, the community of believers, is the Body of Christ present in the world for the salvation of the world - ‘to bring forth fruit in charity for the life of the world’. Jesus continues to proclaim the Gospel of salvation to the present age in and through the life of the community of Christians. They make Christ present in the world, just as Jesus makes the Father present in the world. Jesus Christ is the sacrament of God, and the Church is the sacrament of Christ.

For the purposes of the present study on cooperation in evil it is possible to distinguish two aspects of ‘sacramentality’. The reference point for the first, which might be called the ‘ontological’ aspect, is the sacramental symbol itself: in the case of Jesus Christ, in himself and for himself Jesus is the sacrament of God. The

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74 Second Vatican Ecumenical Council, Dogmatic Constitution on the Church Lumen gentium. (21 November 1964), 1; Gaudium et spes, 42.
75 Lumen gentium, 9.
76 Lumen gentium, 48; Gaudium et spes, 45; Decree on the Church’s Missionary Activity Ad gentes. (7 December 1965), 1 and 5.
77 Henri de Lubac, Catholicism. (London: Burns, Oates and Washbourne, 1950) 29, cited in Dulles, Models of the Church, 63. At 63-64 Dulles notes that the notion of ‘church as sacrament’ has origins in Cyprian, Augustine, Aquinas and Scheeben, was developed by de Lubac, and further taken up by Rahner, Semmelroth, Schillebeeckx, Smulders, Congar, Groot, and Martelet. For a short history of the concept see also Vorgrimler, Sacramental Theology, 32-40.
78 Optatam totius, 16.
79 See Jörg Splett, ‘Symbol’ in Karl Rahner SJ, ed. Encyclopedia of Theology: The Concise Sacramentum Mundi. (New York: Seabury, 1975) 1654-1657. Splett (following Hegel and Fichte) suggests that the notion of ‘symbol’ necessarily includes the concept of ‘self-communication to another’ in such a way that it makes little sense to speak of a ‘symbol for its own sake’ - or, as here, to speak of Jesus Christ as a sacrament of God in himself. See Splett, ‘Symbol’, 1655. Nevertheless the Church’s traditional theology of sacrament seems to include some such distinction, by which it is possible to speak both of a sacrament existing in itself by virtue of being properly confected (which is a distinguishing mark of the seven sacraments), and also of a sacrament effectively conveying (communicating) to another the grace (reality) it contains (symbolises). See for example CCC 1128: ‘From the moment that a sacrament is celebrated in accordance with the intention of the Church, the power of Christ and his Spirit acts in and through it, independently of the personal holiness of the
reference point for the second aspect, which might be called ‘existential’, is the community among whom and for whom the symbol mediates the self-communication of the other: in the case of Jesus Christ, among his disciples and for the life of the world Jesus is the sacrament of God.\(^{80}\)

A sacrament is not a static but a dynamic reality, having ‘an event character’ because it is a true symbol of God’s presence and action in the world.\(^{81}\) This is of enormous importance for the Church.

The Church becomes Church insofar as the grace of Christ, operative within it, achieves historical tangibility *through the actions of the Church as such*.

The Church becomes an actual event of grace when it appears most concretely as a sacrament - that is, in the actions of the Church as such whereby men are bound together in grace by a visible expression. The more widely and intensely the faithful participate in this corporate action of the Church, the more the Church achieves itself.\(^{82}\)

This suggests two points: *first*, to some extent at least, the ‘sacramentality’ of the Church subsists in, or coexists with, the lives of the individual Christians who make up the Church; and *second*, it is by means of its own corporate action in the world that the Church ‘achieves itself’ or realises its identity as sacrament.

*First*: through baptism the individual Christian ‘becomes Christ’ or ‘puts on Christ’; through confirmation and Eucharist this Christian identity is uniquely nourished and strengthened; but it is through personal vocational commitments and moral choices, through engagement with the world and taking responsible action

\(^{80}\) To cast it in Johannine terms: ontologically, Jesus Christ is the sacrament of God in himself and continued to be so even though ‘the world did not know him’ and ‘his own people did not accept him’ (John 1:10-11); existentially, Jesus Christ is the sacrament of God actually encountered and received by ‘all who did accept him’, those to whom ‘he gave the power to become children of God’ (John 1:12). Not everyone who saw Jesus recognised in him the presence and self-communication of God, but only those who ‘saw his glory, the glory that is his as the only Son of the Father, full of grace and truth’ (John 1:14). What initially distinguished the Christian community from the rest of humanity, then, is their ‘turning-to-the-medium’ of God’s self-revelation precisely as such, and their radical self-opening to the God whom they encounter in Christ. What *ultimately* distinguishes the Christian community from the rest of humanity, however, is that it is constituted ‘sacrament of Christ’.

\(^{81}\) Dulles, *Models of the Church*, 69.

therein, that the individual Christian concretely ‘real-ises’ that identity. By baptism the individual Christian ‘is configured to Christ’ in a more or less ontological sense, but it is by taking action in the world the Christian ‘makes Christ present’ for the life of the world, realising his Christian identity existentially.

Second: with regard to the ontological aspect of its corporate sacramentality, the Church is most fully ‘sacrament of God’ when the community of believers actually gathers in order to be the Body of Christ, active in and for itself in its own liturgy - most especially in Eucharist. With regard to the existential aspect of its sacramentality, however, the Body of Christ must be active well beyond the boundaries of its own membership. Individually and corporately, Christians must take action in the world, doing that which Christ established the Church to do in order to become in fact that which Christ established the Church to be - the continuing presence in history of God’s offer of salvation in Christ.

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83 CCC 1272.
84 See Dulles, Models of the Church, 70: ‘The Eucharist is indivisibly Christological and ecclesiological. In its Christological aspect it actualises in a palpable way the presence of the Redeemer with the congregation of those who look to him in love and trust. In its ecclesiological aspect the Eucharist celebrates and solidifies the union of the faithful with one another about the holy table. Inasmuch as the celebration of the Eucharist is the sacramental anticipation of the heavenly marriage banquet, the final, eternal form of the community of the saints shines forth even now in this solemnity, just as the source of the Church, Christ’s own sacrifice, is present in it.’
85 In this regard the Second Vatican Council provides two key points of reference: the Church’s role as the ‘soul of human society’, and its missionary nature. The relevant documents are the Pastoral Constitution on the Church in the Modern World Gaudium et spes (7 December 1965), and the Decree on the Church’s Missionary Activity Ad gentes. (7 December 1965).

First, the Second Vatican Council held not just the coexistence but indeed the compenetration of the earthly and the divine: see especially Gaudium et spes, 40. This compenetration means that while its mission is truly religious rather than political or social, the Church ‘is able, and indeed it is obliged, if times and circumstances require it, to initiate action for the benefit of all men, especially of those in need, like works of mercy and similar undertakings’ (Gaudium et spes, 42). The Church esteems truth and goodness in human institutions wherever it finds them, but it is particularly in working for unity that the Church fulfils its nature as sacrament (Gaudium et spes, 42). These are all aspects of the Church’s sacramental nature - see Gaudium et spes, 45: ‘Every benefit the people of God can confer on mankind during its earthly pilgrimage is rooted in the Church’s being the universal sacrament of salvation’, at once manifesting and actualising the mystery of God’s love for men.’

Second, in order to be in fact the ‘universal sacrament of salvation’, the Church ‘strives to preach the Gospel to all’ (Ad gentes, 1). The Church is missionary by its very nature (Ad gentes, 2), and indeed missionary activity is essentially sacramental, ‘the manifestation of God’s plan, its epiphany and realisation in the world and in history’ (Ad gentes, 9). In the world, and especially in the realm of those who do not know God or who deny God’s existence, the Church must implant itself ‘in the same way that Christ by his incarnation committed himself to the particular social and cultural circumstances of the men among whom he lived.’ (Ad gentes, 10). All Christians have a duty to ‘manifest the new man which they put on in baptism, and to reveal the power of the Holy Spirit by whom they are strengthened at confirmation’ (Ad gentes, 11). This ‘revealing’ is more than merely
Now it can be argued that the Church is most clearly active and effective in the world beyond its own boundaries when it acts in and through those structures and institutions which rightly claim an ecclesial identity. Catholic institutions are one of the principal and most clearly identifiable ways in which the Church fulfils its mission as sacrament in the world: for example, it has been noted that the Church fulfils its mission to continue the healing ministry of Christ through the ministry of health care in Catholic hospitals.  

In the context of the present study on institutional cooperation it has also been noted that, in view of the more public ecclesial identity of Catholic institutions, the Congregation for the Doctrine of the Faith considers that material cooperation in evil is harder to justify for institutions than for individual Catholics, an argument apparently based on the danger of scandal. But an ecclesiological argument can also be mounted: in virtue of their more public ecclesial identity, Catholic institutions bear a significantly greater responsibility than Catholic individuals to ensure that their institutional actions realise the Church’s - and their own - ‘sacramental potential’.

According to this argument ‘a general policy of material cooperation in Catholic institutes’ would be damaging not only to ‘public morality’, but to the sacramental nature and identity of the Church itself, that is, to the Church’s ability to make Christ present in the world. The same argument might support the contention that ‘proportionately graver’ reasons in a particular case may convince a Catholic institution that fidelity to its sacramental identity positively requires it to cooperate mediately and materially in an evil perpetrated by others.

In many arenas of life in the world the Church, through its institutions, mediates the saving presence of Christ who attends to the whole needs of the human

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indicative: it is a constitutive self-expression, a sacramental ‘real-ising’ of Christ the New Man in the power of the Holy Spirit. If there is a weakness in Dulles’ treatment of the Church as ‘sacrament’ it is that he pays little attention to the missionary aspect of the Church’s identity. On the other hand, this aspect emerges very clearly in his study of the Church as ‘herald’ and ‘servant’.

See 4.3 above.
person, including especially the need for salvation. ‘To make Christ present in the world’ is the essential mission of the Church in every aspect of its life, and therefore it is the essential mission of all of the Church’s institutions: it is the mission of the Catholic school beyond mere education, of Catholic social welfare agencies beyond meeting merely human needs, of diocesan structures beyond temporal administration, and of the Catholic hospital beyond simply caring for the sick. And if the Church as a whole cannot fulfil its mission in isolation from the world in which evil and sin are present, then Catholic institutions cannot fulfil the sacramental potential of their own particular ecclesial identities unless they are prepared to engage the very powers of the world which make that mission so necessary.

These threads of systematic theology - and in particular of ecclesiology and christology - have a great deal to offer a theological vision of Christian moral life in general, and of institutional cooperation in particular. They demonstrate, first and foremost, that institutional actions do not exhaust their meaning in reference to the particular institution alone, but find their fullest meaning in the identity and mission of the Church as the sacrament of Christ.

- Like the acts of an individual moral agent, a Catholic institution’s actions are more than isolated single events: they represent both ‘interior’ and ‘personal’ responses to particular moral situations, but they are also ‘constitutive’ and ‘existential’ responses which both express and construct the very identity of the institution itself. Taken in their fullest meaning, institutional moral actions flow from an institution’s sense of self-identity and mission: they express ‘who I am’, and they make real ‘who I am called to become’.

- Like the individual moral agent, a Catholic institution acts according to its consciousness of moral truth found first and foremost in the Person of Jesus Christ, who is encountered in and through the Christian community, in particular in the Scriptures and the Sacraments. Prior to conforming its actions to the content of positive moral law - and certainly never contrary to that law - an institution seeks to conform its very identity to the Person of Christ in and through identification with the Church, the sacrament of Christ. Its moral actions, then,

87 See 3.2.2 above.
are an expression of its daily ‘conversion of heart’ in conformity with Christ and the Church.

- Through the Catholic institution the Church makes present the saving life, death and resurrection of Christ for the salvation of the world. Like the individual Christian, the Catholic institution is to ‘bring forth fruit in charity for the life of the world’ precisely because this is the mission of the whole Church. But because of its more public ecclesial identity, a Catholic institution’s moral actions have particular sacramental significance.

5.1.5 Continuity with the Catholic Moral Tradition

How does this view of institutional action correspond with the traditional interpretation of legitimate cooperation in general, and of institutional cooperation in particular?

First it must be admitted that this ‘sacramental’ view of institutions interprets their actions from just one of several possible perspectives. Nevertheless, to grasp the ontological and existential significance of external moral actions is, it is claimed, faithful to a theology which acknowledges the central significance of the moral agent, and this is certainly in keeping with the teaching of the Second Vatican Council.

This view obviously ascribes great importance to the particular intention of the cooperating institution, but this is not to say that institutional actions can never be adequately described unless one takes account of those intentions. The proposed ‘sacramental’ view of institutional actions, on the contrary, assumes the traditional position on intrinsically evil acts: some actions so ‘radically contradict the good of the person’ that they can never express the moral agent’s Christian identity.

The present proposal would exclude all actions which could be conceived as ‘intrinsically evil’ or as ‘implacably opposed to one or other of the basic human

88 See John 15:1-17, especially v.16.
goods’ because, even if moral theology is to grant a central position to the person who acts, a moral agent is never entirely self-defining. Rather the identity of any moral agent, individual or institutional, finds its fullest definition in reference to its relationship with, and fidelity to, the Truth. It is only in the encounter with Christ that a person’s most profound identity is revealed, since the individual moral agent is not merely ‘man’ but ‘man redeemed by Christ’. Like the Church itself, Catholic institutions can be fully defined only in relation to Christ’s saving and redeeming activity. Whether individual or institutional, a moral agent’s ability to conform his exterior actions to this identity is proportionate to his conversion to the Word who is Truth. This is a precondition for the present view of institutional cooperation.

Second, however, an institution’s particular intention (as distinct from the intentionality of its exterior acts) does often play a critical role in determining the meaning of its moral actions. Given that an external action is not already morally determined (as it would be in an intrinsically evil act), deliberation about possible alternative actions may lead an institution to a state of equilibrium or poise wherein arguments in favour of cooperation seem perfectly balanced by arguments against cooperation. In this case it is possible that a desire to express the institution’s fullest identity, an intention to fulfil its sacramental nature - to be the presence of Christ here and now - could be the deciding factor. After all, ‘fulfilling one’s identity’ is not to be measured solely in relation to the effects which follow upon one’s action, but also and even primarily in terms of faithfulness to one’s personal vocational commitment.

But neither can the external effects of one’s cooperation be entirely discounted, as the traditional teaching on scandal warns. The present proposal is, in one sense, an interpretation of Alphonsus’s position on the primacy of charity in cooperation properly so called. Alphonsus held that cooperation in evil can sometimes be permitted according to the order of charity because ‘charity does not

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89 See Veritatis splendor, 80.
90 CCE, Future Priests, 97.
91 The three guiding principles noted above (4.3.4) come into play at this level.
oblige’ when meeting its needs causes one ‘grave inconvenience’. The present question is whether charity can impose a positive obligation to cooperate in evil. The answer offered here is: a Catholic institution may be constrained to cooperate in evil if, in a particular case, cooperation is required of it in order to be faithful to its ecclesial identity. The question of whether this obligation flows from charity or elsewhere will be addressed in the next section.

At the same time, of course, it is important to recall that in de caritate Alphonsus deliberately excluded aspects of cooperation which might be treated under the virtue of justice: were the demands of justice to be offended by cooperating, then the institution would need a substantially more serious reason to cooperate and might also be required to make restitution for the evil effects to which it had contributed. Indeed, in many instances the demands of justice will compel an institution not to cooperate at all.

For, thirdly, even if the institution’s action is not evil either in itself or as cooperative, it is still necessary for a cooperator to hold a sufficiently serious reason to cooperate. In this theological interpretation of the moral life, ‘a desire to express the institution’s fullest identity, an intention to fulfil its sacramental nature - to be the presence of Christ here and now’ might constitute such a reason, but only if:

- it is foreseeable that no injustice will be done to third parties, and
- the alternative to cooperating would deny the institution the possibility of entering a situation in which it could and should be active as the offer of God’s salvation in Christ.

And still institutional cooperation in evil often poses the risk of scandal, a risk that is all the greater because the cooperator in question is a Catholic institution. But where there is no risk of scandal and where the demands of justice will not be offended in relation to third parties, a Catholic institution might conceivably consider that its sacramental nature requires it to commission an action which another will abuse, if it is only by cooperating in this way that the institution can extend to the

92 Alphonsus, de caritate 63. See 1.1.4 above.
principal agent God’s offer of salvation in Christ. This sacramental role might include the possibility of exercising a positive influence upon the principal agent at a later time, but that in itself would not justify cooperation: it is rather the institution’s possibility of being here and now the presence of Christ, of extending here and now God’s offer of salvation, which might justify material cooperation in evil. As noted, it seems necessary to assess every instance of cooperation on the basis of its concrete circumstances and on present actual probabilities, not on mere future possibilities which may never eventuate.\textsuperscript{93}

Furthermore, an institution’s total vocational commitment is often extremely complex. For example, a Catholic hospital must provide excellent medical care, keep all relevant civil and ecclesiastical laws, and operate according to best business practices and highest professional standards. Even when taken together these do not fully define the Catholic hospital’s identity, but each element is so essential to its total vocational commitment that an institution could not reasonably claim to be a ‘sacrament of Christ’ if it culpably failed to fulfil - or worse, actually contradicted - one or other of them.

The task of ‘real-ising’ or expressing a hospital’s vocational commitment is complicated even further when one recalls that an institution’s identity rests in many hands.\textsuperscript{94} There is a formal and official identity which may be enshrined in the hospital’s mission statement or constitution, and there is an informal (but no less real) identity which is expressed in the behaviour of individuals who act in the name of the corporate whole. The formal identity of a Catholic hospital is given shape by the ecclesial community it represents in the field of health care, by the goals and intentions of its founders, and by the ‘accumulation of traditions as ways of doing things’ which make this institution distinct from other similar institutions.\textsuperscript{95} Ideally it is this ‘formal institutional identity’ which is realised in the behaviours of individuals within the hospital. Since patients and others encounter the institution

\textsuperscript{93} See the comments at 3.2.1 above in relation to \textit{Evangelium vitae}, 73.
\textsuperscript{94} See 4.3.1 above.
first and foremost through those individual behaviours, these are of great significance.

Because individual behaviours have such significance in Catholic institutions, hospital administrators bear special responsibility to ensure that all institutional actions, whether formal or informal, are appropriate. For example, because ‘respect for persons’ is an essential aspect not only of good health care but also of Christian charity, a Catholic hospital can authentically express its ecclesial identity and vocational commitment only if individual members of staff act respectfully in all of their ministrations. Clearly this includes not only dealings with patients, but also relationships among staff members, and relationships between management and employees. Or again, since a Catholic hospital acts as a corporate whole through decisions and actions undertaken by its management acting in the name of the institution, hospital management must be structured and must operate always in complete conformity with this aspect of its identity.

For is not just in providing good medical care that a Catholic institution expresses its sacramental identity, since many hospitals provide excellent medical care. Nor is its identity expressed simply by constructing a ‘Catholic environment’, or by providing Catholic chaplaincy services, or by formally enshrining a Catholic mission statement - nor, indeed, just because it chooses to enter into cooperative ventures with other health systems in order to provide a full range of medical care to a particular community which might otherwise be deprived. Rather, the defining aspect of a Catholic hospital’s identity is its ecclesial meaning: the fact that when the institution acts, it is the Church which acts. The institution has a sacramental nature because the Church is sacramental, and a Catholic hospital can extend the healing mission of Christ into the present day only because the Church itself is charged with that mission. Therefore a Catholic hospital can most authentically realise its identity only when the institution as a whole, in all of its corporate actions and in all of the actions of its individual members, conforms itself to the Church’s own identity as sacrament of salvation.
The relationship between institutional identity and institutional action - or between ontological and existential identity - suggests that a theological view of institutional cooperation might find an appropriate interior structure in an ethics of virtue.

5.1.6 Cooperation and Virtue

To develop a comprehensive theology of virtue is not only beyond the scope of the present work, it is largely unnecessary in an era in which the ethics of virtue is undergoing something of a revival. However, two points should be borne in mind in the brief comments which follow.

First: strictly speaking, virtue theory applies to individual moral agents and can be applied to institutions only analogically. That is to say, one might well consider a good individual to be virtuous, but one does not normally apply the description ‘virtuous’ to an institution.

On one hand, virtuous action on the part of an individual (for example, an employee) properly flows from and perfects that individual alone, and it is only by analogy that the actions of individuals could be said to ‘flow from and perfect’ the institution as such. On the other hand, it has already been suggested that just as the Church acts in the field of health care through its Catholic hospitals, an institution such as a hospital acts through individual agents such as doctors and nurses - so it is not altogether unreasonable to transfer the term ‘virtuous’ from individual to institution. Insofar as an individual acts in the name of the institution, the virtues of the individual are the virtues of the institution - so, for example, an institution can

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97 See 4.3.1 above.
be said to act prudently if the one who acts in the name of the institution acts with prudence. 98

Second: the idea of ‘virtue’ here is the classical concept rather than the neo-scholastic version of the later manuals. In the classical view the intellectual virtue of prudence, for example, does not direct the moral virtues from a distance, as it were, by merely supplying knowledge of the virtuous mean; rather, it interacts very intimately with the moral virtues such that practical wisdom shapes the very life and identity of the moral agent. 99 For a virtue not only renders a moral action good but also makes its possessor good; 100 and a moral action is truly good not just when the right thing is done, but when it is done rightly. 101 Thus, in the case of prudence:

The actions of the truly virtuous person express his settled, intellectually informed commitment to live the sort of life that is a good life for human beings. It is sometimes possible for a person who does not have this sort of settled commitment to perform the sorts of actions that a truly virtuous person would perform, but her actions will not be truly virtuous actions precisely because they do not flow from an intellectual commitment to live in a virtuous way (I-II.57.5; I-II.58.4). 102

Further articulation of the classical concept of virtue would take the present discussion beyond reasonable bounds, but these brief comments help to explain how the proposed sacramental model of moral life finds an appropriate ‘mechanism’ in an ethics of virtue. The specific virtues in question are charity and prudence. 103

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98 In any event the suggestion here is only that the structure of virtue sheds some light on how the proposed sacramental model of institutional moral life might function in particular instances of cooperation.

99 Cessario, Moral Virtues, 77: ‘Christian wisdom, on the other hand, develops in an individual, at least in part, as a result of both inclination and experience. Thus, Aquinas insists that the moral virtues and prudence operate according to a kind of synergy, that is, they exercise a causal influence on each other. As a result of this synergy of prudence and the virtues, Christian wisdom, in accord with lex aeterna, really enters into and shapes the appetitive life of the individual. In turn, the rectified appetitive powers enable prudence to grasp intellectually the will’s bent towards the good.’ See also ST II-II 47, 1.

100 ST II-II 47, 4.

101 ST I-II 57, 5.

102 Porter, The Recovery of Virtue, 163.

103 Of course, the virtue of justice also plays a role when cooperation might contribute to harming third parties.
It has been noted that Alphonsus identified the order of charity as an objective basis for preferring cooperation in evil to non-cooperation.\textsuperscript{104} By the same token, of course, it may sometimes be an act of the very greatest charity to refuse to cooperate at all. But can charity ever \textit{compel} one to cooperate in evil?

An answer might begin with the nature of charity, the theological virtue which ‘\textit{reaches to God by joining us to Him}’:\textsuperscript{105}

Aquinas holds that charity . . . functions as the supreme organising principle in the personality of the justified, by which not only all their actions but all their desires and impulses are directed toward God (II-II.23.3, 7). Through charity, the individual is enabled to participate in the very mind and will of God, not only to fulfil the precepts of the natural law . . . but even to grasp intuitively what God’s will is for the individual in any given situation. That is why wisdom is the gift of the Holy Spirit that corresponds to charity (II-II.45.1, 2). At the same time, charity transforms not only the behaviour but the affections and the whole person of the justified.\textsuperscript{106}

Now it would seem from this description that charity could never compel one to cooperate in evil, since evil can never ‘\textit{join us to God}’. But this would be to overlook the very reason that ‘cooperation in evil’ has been such a complex question for moral theologians through the ages: while the First Principle of Practical reason certainly obtains, it is not the \textit{cooperator} but the \textit{principal agent} who does evil. When cooperation in evil is rightly deemed ‘legitimate’, the cooperator does no evil at all but \textit{justifiably} provides goods or services which are abused by the other. So the present question concerning cooperation and charity, the virtue which directs the acts of all other virtues to our final end,\textsuperscript{107} may be formulated variously:

- is it conceivable that virtuous moral agents may believe themselves to be \textit{compelled} by charity to provide particular goods or services which will be abused by another for an evil end?
- could cooperation in evil ever be, or at least appear to the moral agent to be, \textit{congruent} with union with God, the moral agent’s final end?

\textsuperscript{104} See 2.3.3 above.
\textsuperscript{105} ST II-II 23, 3: ‘\textit{caritas attingit Deum quia conjungit nos Deo}’
\textsuperscript{106} Porter, \textit{The Recovery of Virtue}, 169.
\textsuperscript{107} ST II-II 23, 7.
is it possible that virtuous moral agents might believe that cooperation in evil is necessary if they are to express here and now their Christian identity and fulfil their Christian mission to make present God’s offer of salvation in Christ?

These questions cannot be answered in the abstract, since so much depends on the concrete details of the particular instance. Indeed, the tradition’s success in discerning different categories of cooperation - formal and material, immediate and mediate, proximate and remote, necessary and contingent - arose from a moral conviction that some kinds of cooperation are acceptable not in theory or in general but only according to the concrete facts of the particular case. Likewise, recent controversy over the legitimacy of immediate material cooperation in the case of intrinsic evil emphasises that in particular cases some kinds of cooperation are never acceptable.\(^\text{108}\) On the other hand, it was noted above that the magisterium itself has suggested that moral agents may in some cases feel ‘constrained’ to cooperate,\(^\text{109}\) and even Germain Grisez acknowledges that one’s vocational commitment may sometimes provide a strong reason to accept ‘bad side effects’.\(^\text{110}\)

This suggests that the question of whether an institution can feel itself compelled to cooperate in evil finds an answer not immediately in charity, the theological virtue which directs moral virtues to their end, but in the virtue of prudence, the intellectual virtue which in particular cases directs the moral virtues to their mean.\(^\text{111}\)

Under the direction of charity, the aim of all moral virtues is the same, namely, to achieve human good. The human good is grasped in natural reason by

\(^{108}\) See 4.3.2 above.

\(^{109}\) See 3.2.2 above.

\(^{110}\) See 3.1.4.2 above. DMQ, 882: ‘By the same token, if something must be done to fulfil a responsibility flowing from a vocational commitment, there is a stronger reason to accept bad side effects in doing it than if one could forgo the activity without slighting such responsibility.’

\(^{111}\) ST II-II 47, 7. Indeed, in ST II-II 23, 6 Thomas acknowledges a close congruence between these two virtues: ‘But faith and hope attain to God according as from him comes knowledge of truth or possession of good, but charity attains God himself so as to rest in him without looking for any gain. This is why charity is higher than faith and hope, and consequently than all the virtues. By a like argument prudence, which appertains to the reason itself, is better than the other moral virtues, which touch the reason in so far as that establishes the medium in our deeds and feelings.’
synderesis. While it is charity which inclines a moral virtue to its proper end and synderesis which apprehends that end, prudence has a distinct and critical role:

Yet quite how and through what we strike the virtuous mean, this is the business of prudence. For though keeping the mean is the aim of moral virtue, nevertheless it is in the correct marshalling of the means to the end that the mean is found.

It is essential to note here the distinction between the ‘mean’ of a virtue and the ‘means’ by which a virtue is realised. The latter is id quod est ad finem, where the finis is the end to which charity inclines. But the former, the ‘mean’ of a virtue, always consists in ‘conformity with reason’, and ‘conformity with reason is specified in different ways for the different virtues’.

. . . the mean of these virtues is said to be the rational mean, which is determined by reference to the individual’s own overall good. . . . [But] it is the task of prudence to determine what, concretely, the mean of the virtue is. That is to say, synderesis determines the formal end of the virtue, namely, correspondence to the mean, whereas prudence determines the substantive ends of the virtues (cf II-II 47.7 ad 3).

Thomas’ theory of virtue, then, already provides an answer to the ‘gap’ which Germain Grisez proposes to fill by way of his complex value theory, and Thomas’ answer is ‘the virtue of prudence’. The First Principle of Practical Reason dictates that good is to be done; charity orients the moral agent toward the good and synderesis apprehends that good; but it is the virtue of prudence which plays the pivotal role of determining what constitutes the specific ‘instantiation’ of human good in any particular case:

Natural reason, functioning as synderesis, generates the principle that the good of the human person is to be in accordance with reason. Prudence, which takes account of the specifics of an

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112 ST II-II 47, 6 Resp. & ad 1.
113 ST II-II 47, 7.
114 Because of this possibility of confusion between the ‘mean’ of a virtue and the ‘means’ of a virtue, the second sentence of the preceding passage (‘Licet enim attingere medium sit finis virtutis moralis, tamen per rectam dispositionem eorum quae sunt ad finem medium inventur’) might better be translated: ‘For although attaining the mean is the end of moral virtue, nevertheless that mean is found in the right disposition of those things which are for the end.’ As Porter argues (The Recovery of Virtue, 159), prudence always locates the mean of virtue, but sometimes does not seem to be required to identify the means to attain it.
115 Porter, The Recovery of Virtue, 160. The reference is to ST I-II 64, 2.
117 See 3.1.4.1, above.
individual’s own character and circumstances, determines what, concretely, it means for this individual to be in accordance with reason; prudence does this in and through determining the mean of the virtues relative to the individual and to the demands of equality and the common good. That is to say, prudence determines what amounts to a substantive theory of the human good, at least as it applies to this individual in his particular setting, although of course the individual may not be able to formulate that theory in any systematic way.\footnote{Porter, \textit{The Recovery of Virtue}, 162. Emphasis added. Germain Grisez’s great contribution is}

So the virtuous mean is determined in relation to both the individual moral agent and the particular situation with which the agent is confronted. In the context of the present discussion, this means that the virtuous mean is determined in relation to the identity of the institution and its present and future possibilities to make Christ present in the particular situation. For prudence must consider numerous possibilities, including the goods which are actually achievable within a given situation and the concrete subjective possibilities of the particular moral agent.

How does this apply to the question of institutional cooperation in evil, and to the proposed ‘theological background’ to institutional cooperation?

Insofar as a Catholic institution is conscious that it acts on behalf of the Church to make Christ really present in a given field of endeavour, it can be said to have a ‘settled commitment’ to be a sacrament of Christ, to become what God desires it to become. As for an individual moral agent, the basic moral question for a Catholic institution is, ‘who am I to become?’ The answer is always ‘a sacrament of Christ’. This commitment permanently informs and guides the actions of the institution, and in turn those actions ‘real-ise’ that commitment. In all of those actions it is charity which keeps the institution oriented toward the good which is its proximate end (and towards God as its ultimate end), and it is charity which impels the institution to fulfil its Christian vocational commitment.

This ‘settled commitment’ to the good applies to all of the institution’s actions, including those which may be cooperative in evil. Cooperation in evil must
be assessed in terms of the specific circumstances surrounding each instance, and one particular question is always, ‘what is the good to be done in this concrete situation?’ It is charity which orients the institution toward doing the good in general terms, but it is the virtue of prudence which permits the institution to ‘instantiate’ the good according to the concrete circumstances of the particular case. That is, an institution’s ability to determine where a realisable good might lie in a concrete situation, and whether on balance that realisable good ought to be done in fact, is a function of the virtue of prudence.

Two further comments are warranted. The first concerns the analogy between individual and institution: an institution as such could be said to possess the virtue of charity insofar as a ‘settled commitment’ to its ecclesial meaning is a more or less permanent and determining feature of institutional life and work. It might be formally enshrined, for example, in a mission statement. But the very nature of the virtue of prudence suggests that it is possessed not so much by the institution per se as by individuals within the institution.

Thomas teaches that reason consists in three ‘acts’: counsel and judgment, which pertain to speculative reason, and command which pertains to practical reason. The role of prudence is to ‘charge our conduct with right reason’, and since actual moral conduct concerns the concrete and particular, it is evident that prudence is most properly an exercise of practical reason. It is for the leadership and administrators of institutions to make practical determinations of the ‘realisable good’ in concrete situations, and so it is most properly these individuals, acting in the name of the institution as such, who must possess the virtue of prudence. Nevertheless, in virtue of the analogy, an institution guided by prudent administrators could be said to act prudently itself.

Second: as noted, there is general agreement that cases of cooperation in evil are among the most complex and difficult in the whole run of moral theology, and

precisely this, to articulate ‘a substantive theory of the human good’ in a systematic way.

119 ST II-II 47, 8.
120 ST II-II 47, 1 ad 3; 4.
opinions on what is justified and unjustified cooperation are many and varied. This further explains the need for an institution’s administrators to possess the virtue of prudence, and especially for that ‘part’ of the virtue which deals with difficult cases.

Thomas teaches that prudence includes the ‘special virtues’ of *eubulia* (concerning counsel), *synesis* (concerning sound judgment in cases where normal rules of conduct apply), and *gnome* (concerning sound judgment in truly exceptional cases). The last, *gnome*, he describes as follows:

Now sometimes it happens that something has to be done which is not covered by the ordinary rules of conduct, such as when we should not return a deposit entrusted to us by a would-be attacker of our country, or some other such case. We ought, therefore, to judge matters of this kind by certain principles higher than the ordinary rules followed by sound judgment. They call for a corresponding superior virtue of judiciousness, and this is called *gnome*, which implies a certain sharpsightedness of judgment.

A single instance of institutional cooperation may be fraught with many complicating factors: the particular institutional structure, the many permutations of professional and corporate relationships which are possible between institutions, the need to retain an often historically-conditioned institutional identity while simultaneously addressing very contemporary social and cultural situations, to name just a few. The urgency of assessing possible cooperative relationships is often compounded by economic pressures, and the whole process further complicated by the fact that moralists often disagree among themselves on the proper classification of proposed actions: does a particular action constitute mediate or immediate material cooperation? is it too proximate or sufficiently remote? is it necessary or contingent? is the institution’s end, to make Christ present, likely to be achieved in this way? The task of determining the reasoned mean among an institution’s actual possibilities in the concrete case would surely demand precisely that ‘*sharpsightedness of judgment*’ which is the specific virtue of *gnome*.

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121 ST II-II 48.
122 ‘*perspicacitatem judicij*’. ST II-II 51, 4.
Finally, Thomas notes that prudence belongs principally to command, which ‘consists in bringing to execution what has been thought out and decided on’ by eubulia and either synesis or gnome. Therefore prudence has a certain imperative character: the virtuous person must act according to the decision reached in prudence.

Here there is, perhaps, an answer to the question of whether a moral agent (such as a Catholic institution) could ever feel compelled to cooperate in evil in order to realise its nature as a sacrament of God’s offer of salvation in Christ. It is charity which inclines a Catholic institution to desire realisation of its own sacramental nature (as a proximate end conducting it towards its final end, which is God), but it is prudence which (i) ultimately determines the extent to which this end is practically realisable in the concrete circumstances of the situation, which (ii) settles upon the means to realise it, and which (iii) commands that the external act be performed.

Of course, prudence commands not only the attainment of good but also the avoidance of evil. If in a particular situation it is unable to identify ‘realisation of the institution’s sacramental nature’ as an attainable good - if, for example, it identifies that overall there is no good to be attained, or if it determines that any positive action would represent a contradiction of the very identity the institution seeks to realise - then prudence may command that no action be taken at all. In this case ‘to do nothing’ may be considered an action commanded by prudence, and a virtuous action at that: an example of practical wisdom informing the virtue of temperance, perhaps, or courage, or justice. Here still the moral agent is inclined to the good by charity, and here still prudence determines the virtuous mean.

But the point of this section is that prudence may determine that, although another agent will certainly abuse the Catholic institution’s good action and thereby bring about evil, its own vocational commitment to make present God’s offer of salvation in Christ is still an attainable good to which charity inclines that institution. Whether or not the principal agent responds to that sacramental presence is not the

123 ST II-II 47, 8.
primary measure of the goodness and validity of the institution’s cooperative action, any more than the actions of the Old Testament prophets are to be judged good and valid according to the number of sinners who actually repented.\textsuperscript{124} Faithfulness to one’s own identity carries, to some extent, its own measure of validity.

To summarise: fidelity to God demands fidelity to oneself and to one’s very identity as a person redeemed by Christ. A Catholic institution has a sacramental identity, a mission to become Christ and to make Christ present in the concrete circumstances of life in the world. So it is that the person of the moral agent enters into the heart of the moral decision, and that moral decisions are governed by the virtues of charity and prudence which must take account of the concrete circumstances of the particular moral agent and the particular case. It is of the essence of prudence to ordain only those actions by which the particular moral agent, in view of all concrete circumstances, may attain the realisable good. Love of God may incline an institution towards entering a cooperative relationship in order to make present there God’s offer of salvation in Christ, and for precisely the same reason prudence may command the institution to enter that cooperative arrangement.

In the question of institutional cooperation, as in all moral matters, it seems that \textit{‘only the soul which really loves the good can be prudent, but only the prudent soul can really do the good’}.\textsuperscript{125}

\textsuperscript{124} The Scriptures abound with examples of prophets who were faithful to their prophetic mission ‘in season or out’, regardless of the effects of their preaching - see 2 Timothy 4:1-2; Isaiah 6:9-10; Ezekiel 3:27. The prophets expressed their prophetic identity by their words and actions, by responding faithfully to their personal vocational commitment. Their mission was not defined by the reception they received, but by their actions themselves.

\textsuperscript{125} Crossin, \textit{What are they saying about virtue?}, 16, where he summarises the virtue theory of Josef Pieper in Pieper’s \textit{The Four Cardinal Virtues}. (Notre Dame: University of Notre Dame Press, 1966).
5.2 Assessing Institutional Cooperation

Whereas material cooperation commissioned by an individual moral agent has traditionally been assessed from the standpoint of the metaphysics of human action, this interpretation of institutional cooperation proposes an additional theological criterion. The aim of this final section is to outline some of the implications of this interpretation, and to suggest how a theological view of institutional material cooperation might be applied to the case study with which this work began, the Bunbury case.

5.2.1 Some Implications of a Theological View of Institutional Cooperation

There are three immediate benefits in the proposed view of cooperation: it underlines the need for an individual assessment of individual cases; it places the person of the moral agent squarely at the centre of moral decision-making; and it affirms the unity which must exist between moral decision-making on one hand and spiritual life on the other - in other words, the unity of reason and faith.

The proposed theological view of institutional cooperation emphasises the importance of judging each case on its merits. There are many varieties of institutional structures and collaborative corporate arrangements, and many different social and political environments to be accounted in the assessment of institutional cooperation. The breadth of this range of variables suggests that individual instances of cooperation are best evaluated by those with greatest knowledge of the circumstances surrounding the particular case.

This interpretation of cooperation ideally requires the Catholic institutional moral agent to be aware of its ecclesial sacramental identity, and to seek to realise that identity in and through the cooperative arrangement it is considering. A great deal, therefore, rests on the Catholic institution’s consciousness of its mission, on its ability to identify its own mission with that of the ecclesial community in whose name it acts, and on its actual desire to realise its ecclesial identity as sacrament. There can be, and often will be, significant variations in these.
On one hand this might seem to complicate the practical implementation of this view of institutional cooperation: like individual moral agents, institutions may be considered to possess greater or lesser abilities to identify their moral obligations and to act upon them. On the other hand, this is precisely why the Catholic moral tradition developed an appreciation of ‘objective’ and ‘subjective’ morality, and why there is today a revival in the ethics of virtue. The fact that an objective moral obligation exists, is a datum quite distinct from a particular moral agent’s subjective appreciation of being bound by that obligation. Much depends on the particular institution’s consciousness of its ecclesial identity and of the obligations which flow from that identity. For example, two hospitals may enter virtually identical collaborative arrangements with other institutions: for one, cooperation is simply good business and nothing more; for the other it represents an authentic opportunity to make Christ present in the field of health care. The outward or physical actions may be identical, but they have very different moral meanings.

For the person of the moral agent is engaged in the very ‘stuff’ of morality, especially in moral decision-making. In the fuller theological sense proposed here, morality concerns the meaning which human acts have in relation to the present and future identity of the moral agent, as expressing and constructing that identity. Moral decision-making requires the moral agent to assess an external action in the light of its meaning for his or her identity as the acting person. The key moral question in the theological view is not ‘what am I to do?’ but ‘who am I to become?’

At the same time, universal norms of morality preserve the objectivity of moral goodness by orienting the institutional moral agent toward authentic moral truth. As much as a Catholic institution is responsible for formulating its unique

subjective response to the invitation of Truth, and so for constructing its particular institutional identity, it is also required to affirm the universal and objective hallmarks of its ecclesial identity. Because the measure of goodness is universal, there is no place here for a ‘situationism’ in which anything and everything can be justified on the grounds that it ‘seemed right in the circumstances’. The ‘rightness’ of institutional moral action rests primarily on the authenticity of the institution’s response to God’s invitation, not on a subjective balancing of goods or values or outcomes.

This view of institutional cooperation also restores a traditional emphasis to morality: the life of virtue. The moral life is about much more than ‘sins to be avoided’: in its essence it concerns ‘what God wants me to be and to become here and now’. Moral actions not only express the agent’s response to God’s invitation, they also realise it: they make the agent to be what God wants him or her to be. This is the nature of virtue. Thus moral life is reintegrated with spiritual life, and faith with reason.

But this theological interpretation of institutional cooperation would represent only a vague theory if it were not grounded in the traditional interpretation of legitimate cooperation. It is applicable in practice because it complements and does not contradict that tradition. If an institution’s action is itself immoral, or if it constitutes formal cooperation in evil when assessed according to the traditional criteria of intention and intentionality, or if it constitutes unjustified material cooperation (because there is no sufficiently serious reason), or if it constitutes mediate material cooperation which is too proximate under the circumstances, or if cooperation would give scandal, then the present theological interpretation cannot ‘rescue’ the cooperative act by making it somehow legitimate or justifiable.

In other words, this theological perspective does not significantly impact the traditional ethical categories or their application to the particular case. Rather it adds a dimension to the interpretation of ‘sufficiently serious reason’: if all other elements are favourable and only a ‘sufficiently serious reason’ is lacking, then an
institution’s intention to realise its ecclesial identity as sacrament may constitute a sufficient reason in a particular case.

This raises a question which, in terms of actually applying the proposed view, requires a very clear answer: *who makes the assessment of legitimacy in instances of cooperation by Catholic institutions?*

Where the moral agent is an individual person, it is obviously for the agent himself or herself to make this judgment, for only the individual can answer the question ‘*who am I to become?’*. The general principle seems to be: *the judgment of whether a proposed course of action will or will not express the moral agent’s identity lies with the moral agent whose identity is at stake.*

In some respects a Catholic hospital acts in its own name to realise its unique institutional identity, and so the assessment of cooperation rests with the institution itself – that is, with the management structure responsible for institutional actions. But a Catholic hospital also has an ecclesial identity: it can claim to exercise Christ’s ministry of health care only because that ministry belongs to the Church as a whole. Therefore the assessment of institutional cooperation must also rest with the ‘management structure’ responsible for ecclesial actions: that is, with the bishop of the local Church.

If an institution’s management and the diocesan bishop were to work independently in assessing proposed collaborative arrangements then, in the ideal case, they would reach identical judgments. Of course it is possible that they would not, and for perfectly legitimate reasons: a diocesan bishop may not possess all of the required medical or other professional knowledge, and an institution’s management may not have access to all of the required theological and ethical skills. Nevertheless, it seems unreasonable to remove from the diocesan bishop the right and duty to assess the morality of actions undertaken in the name of the Church he leads. Since this question is raised in terms of the theological model proposed, it is reasonable to draw a solution from the same model: the Christology and
ecclesiology evoked here place the diocesan bishop squarely in the focus of decision-making.

In some instances, perhaps, the proposed view will make cases of cooperation easier to solve in theory but harder to solve in practice. But if it is necessary to go beyond an ethics based in the traditional metaphysics of human action and reach a genuine theology of Christian moral life, it is equally necessary to appreciate that the Christian moral life is grounded in the Christian spiritual life. This is where the moral agent encounters moral truth in the Person of Jesus Christ, and it is in this encounter that the moral agent is called to ongoing conversion of heart - indeed, to ongoing conversion of self - through moral actions. Neither institutional nor diocesan leadership need fear the challenge of institutional cooperation if they remain faithful both to the moral tradition of the Church on one hand and, on the other, to that prayer and contemplation which are the very heart of the Church’s spiritual and moral life. The claim here is that, insofar as the present proposal unites these aspects of a Christian’s life, it represents an approach to material cooperation which is entirely faithful to both Thomas Aquinas’ view of Christian morality and the Vatican Council’s call to renewal.\(^{128}\) It is an approach which may prove useful in evaluating instances of institutional cooperation.

5.2.2 The Bunbury Case Revisited

A practical application of this view of institutional cooperation can be illustrated by re-reading the case study with which this work began, the collaborative arrangement between the St John of God Catholic Hospital and the public Regional Hospital in Bunbury, Western Australia. As suggested earlier, this requires an appreciation of the significance of, and interaction between, (i) the Catholic Church’s insight into cooperation in evil; (ii) the social ethos and world-view prevalent in the 1990’s in Western Australia in general and in Bunbury in particular;

\(^{128}\) On Thomas’ view, see Cullinan, *Contemplation as the Basis of the Christian Moral Life*. On the Second Vatican Council’s agenda for renewal, see 5.1.1 above.
and (iii) the world-view, moral experience and sense of self-identity of the St John of God Hospital in Bunbury.\textsuperscript{129}

The relationship between these elements will emerge more clearly as the Bunbury case is reinterpreted in terms of a renewed moral theology. The two specific foci here are (a) the hospital’s sense of itself as a moral agent ‘created by God and redeemed by Christ’ which possesses an ecclesial identity and a sacramental mission, and (b) whether the various configurations of institutional collaboration which were proposed would constitute or contradict that core identity.

An insight into the institutional identity of St John of God Hospital Bunbury can be gained by reviewing something of the history of the hospital itself and of the religious congregation which established it.

The Sisters of St John of God were founded in County Wexford, Ireland, in 1871. The date is significant: Ireland at that time was emerging from the poverty of The Famine and, in virtue of the Land Act of 1870, was transforming itself from ‘a nation of peasants to a nation of landowners’\textsuperscript{130}. The catalyst for the Sisters’ foundation was Bishop Thomas Furlong of Ferns, who wanted to establish ‘a nursing Congregation in his diocese who would care for the poor in the workhouses and in their homes’.\textsuperscript{131} The core of the foundation was a small group of religious from the Congregation of Bon Secours, a community of Sisters founded in Paris in 1824. The confluence of Bishop Furlong’s charitable intention and the Sisters’ dissatisfaction with their present congregation was surely providential. In a very real sense the St John of God Sisters were called into existence by a local Church precisely in order to fulfil the Church’s mission to care for the poor and the sick.

Periodic revisions of the St John of God Sisters’ Constitution reveal that the Congregation has always envisioned an apostolate which would keep pace with changing social, cultural and religious needs. The 1873 Constitution stated that,

\textsuperscript{129} See 5.0 above.
\textsuperscript{130} John Scally, \textit{To Speed on Angels’ Wings: The Story of the Sisters of St John of God}. (Dublin: Columba Press, 1995) 34.
apart from the perfection of its members, the Congregation had several specific characteristics, among them *the introduction of religion and salvation into the families of worldlings, rich and poor, above all, in their last moments; the care of the sick, both rich and poor, in hospitals and in their own homes*. There was also an openness to other fields of the apostolate which the sisters might identify: they could also *take charge of schools, and any other works of charity the bishop of the diocese may approve of*.

With this sense of identity the first eight Sisters arrived in Australia in 1895, and opened their first hospital in Perth in the same year. In 1896, in response to a typhoid epidemic in the Western Australian goldfields, they established another hospital in Coolgardie (which they subsequently moved to Kalgoorlie); by 1900 they had added three schools; and by 1912 another five schools, a school of nursing, and the Kimberley Mission. St John of God Hospital, Bunbury, was their fifth Australian hospital when it opened in 1927.

By all of these works the Sisters of St John of God expressed and constituted their Congregational and ecclesial identity, and fulfilled their mission among the people of Australia. In combining the provision of hospital-based health care with proclamation of the Gospel the Sisters perhaps reflected the spirituality of Bishop Furlong, but this fusing of charitable and religious works was also very much a distinctive mark of their Congregation, suffusing every aspect of their mission. This persists in the new Bunbury health campus.

By the time the new Bunbury hospital was under consideration in 1989, the Congregation was already developing a more specifically Christological and ecclesiological sense of itself:

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133 Scally, *To Speed on Angels’ Wings*, 214.
134 These data are taken from Sr Mary Eugenia Brennan SJG, *The Love of Christ Urges Us.* (Subiaco WA: Sisters of St John of God, 1994) *passim*.
135 Scally (*To Speed on Angels’ Wings*, 45) notes that for Bishop Furlong, ‘true poverty was the absence of the awareness of Christ present in the world and in the human person.’
For the Congregation,  

as for the Church itself,  

there is but one mission, the mission of Jesus.  

Anointed by the Spirit (Lk 4.18; Is 42 and 61),  

Jesus was sent by the Father  

to set his people free:  
to liberate them from oppression,  
from everything, within and without,  
which prevented them from reaching the full stature of their  
personhood.

The Congregation seeks  
to continue and make present again  
in concrete, specific time and place,  
this liberating mission of Christ,  
and in particular,  
to show forth by its ministries,  
by the witness of its consecrated members  
and by the visibility of its corporate existence,  
the compassionate care of Christ for his people.

The particular apostolic concern  
of the founders of the Congregation  
was the faith-view of the people:  
‘the introduction of religion and salvation  
into the families of worldlings, rich and poor.’

Nurturing this faith-view of life  
is the essential apostolic concern  
of the Congregation.  
In their ministry of holistic health care,  
education, catering services,  
pastoral and social work,  
and in all their activities,  
the concern of the members is ultimately  
the building up of the kingdom of God.  
In working with people,  
and in turn being enriched by them,  
they discharge their unique role  
in the apostolic, social and cultural life of the world in which they  
live.

As the Church is missionary by nature,  
so too is the Congregation.136

Three aspects of this statement of self-identity are directly relevant to the  

present discussion.

• *First*, the St John of God Sisters are very aware that their mission is the mission of Christ and of the Church. The language used to express the identification of these two missions is more or less sacramental: ‘to continue and make present again . . . the compassionate care of Christ for his people.’ The Congregation is conscious of its ecclesial and sacramental identity, and the realisation of that identity is clearly a primary object among its moral choices.

• *Second*, the Congregation holds as central the ‘personhood’ of those with whom it works: its ministry is largely determined by the needs and best interests of the people themselves, both rich and poor. In this way the Congregation recognises another primary object of its moral choices: the good of the person. It is here that the charitable and religious aspects of its mission coincide: the very same actions which express the Congregation’s religious self-identity also realise its foundational commitment to Christ’s command of practical charity towards neighbour.

• *Third*, the Congregation is aware that it expresses its sacramental identity in various ways: ‘by its ministries, by the witness of its consecrated members, and by the visibility of its corporate existence.’ Both formal and informal aspects of institutional identity are acknowledged: the Congregation’s authenticity rests in the hands of both the individual members of the Congregation and the visible corporate ‘self’ of the Congregation as a whole. The same applies to the Congregation’s hospital in Bunbury: not only is the provision of holistic health care an expression of the Congregation’s sacramental identity, but that identity rests simultaneously with the hospital as a ‘corporate self’, and with the staff of the hospital.

When it was evaluating various configurations of institutional collaboration with the regional hospital, St John of God Bunbury was aware of itself as a moral agent ‘created by God and redeemed by Christ’, possessing a specific ecclesial and

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137 ‘In order to remain faithful to the apostolic vision of its founders, the Congregation constantly seeks to respond to the changing patterns of society and the particular demands of time and place, by reformulating its theology of mission, adjusting its spirituality accordingly, and flexibly adapting its community structures and apostolic procedures.’ The 1989 Constitution, cited in Scally, *To Speed on Angels’ Wings*, 217.

sacramental identity. Public consultation had reassured the Congregation that its hospital ministry in that town was recognised and valued by the people, and the Sisters themselves wished to continue a ministry which had occupied, for some, a major portion of their religious lives. By providing Catholic health care the hospital had offered the people of Bunbury an opportunity to experience Christ’s compassion for the sick. Through their ministrations the Sisters made present and active the saving love of God. The decision to continue a ministry in Bunbury by entering a collaborative relationship with the regional hospital represents a desire to realise this identity.

The two-fold nature of the Sisters’ ministry - delivery of health care and witness to Christ - warrants closer attention. The charity which orients the St John of God Sisters toward God and neighbour - a charity which the St John of God Hospital Bunbury seeks to make real for the people of that town - is intended to bear fruit for the life of the world, beginning in the lives of the patients themselves. In some ways, then, the physical ministrations of hospital staff are both an end and a means: an end, insofar as it is by this care that the patient is restored to physical health; and a means, insofar as hospital care at St John’s has a unique quality which enables the patient to encounter, identify and respond to the presence and action of God. These aspects of the intention of the caregivers sets health care at St John of God Hospital Bunbury apart from health care provided at the regional hospital.

Awareness of St John of God Hospital’s ecclesial identity played a major role not only in the decision to enter a collaborative arrangement in the first place, but also in determining the final collaborative structure and in settling the range of services which St John’s would provide within that arrangement.

The first proposed configuration in Bunbury (Proposal 1) was for St John’s to build and manage a single new public hospital. But this would have required St John’s to provide, or to cooperate formally in providing, immoral procedures such as abortions and contraceptive sterilisations. On these grounds alone St John’s would
have rejected Proposal 1 - but before this became necessary it was rejected for other reasons. Several other proposals were eliminated for reasons of cost.

That left the option of collocated campuses with some shared ancillary services. The final configuration of these services on the collocated campuses minimises, but does not entirely eliminate, the risk of material cooperation in evil. This is most likely to arise where one campus provides services to the other, but the kinds of services which are actually provided make the risk of cooperation very remote. For example, there are no referrals for abortions or sterilisations from one campus to the other because all attending physicians are aware of St John’s opposition to such immoral procedures and to any involvement in them.

These practical considerations will always be major factors in the assessment of proposed collaborative relationships, and the need to fully appreciate these practicalities makes it clear that accurate assessment can only be made from a position of close proximity to the facts. But the objectivity which can and must mark these deliberations cannot be that arising from a purely theoretical, metaphysical assessment of ‘the case’. It must be that ‘trans-subjective’ objectivity which is attainable only when all responsible parties - that is Sisters, hospital staff, administrators and diocesan bishop - enter deeply and openly into the assessment of the concrete possibilities of the particular instance. When all parties engage in an honest search for the best moral choice, when they work together guided by that ‘wisdom that responds to life’s deepest questionings’, then they are able to attain a degree of unanimity which only occurs through encounter with the same moral truth.

In summary, St John of God Bunbury saw that it has a mission to give witness to Christ through providing health care in Bunbury; both the Sisters and the people of Bunbury consider that ministry an important aspect of their lives; and a decision to withdraw from Bunbury would have robbed the Sisters of an essential aspect of their identity, the town of a powerful witness to Christ, and the Church of

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139 See the Introduction to this work.
an opportunity to be what it is created to be - a sacrament in the world of the presence and action of God in Christ.

The Bunbury case therefore brings to light several touchstones of legitimate institutional cooperation which emerge from a theological view of Catholic institutions, and which complement the three general ‘principles’ noted earlier. These are (a) the extent to which a proposed cooperative action authentically realises the mission of the institution to make Christ present among those to whom the institution ministers in the name of the Church; and (b) the consequences - for the institution, for those to whom it ministers, and for the Church - of not cooperating. If these can be reduced to a fourth principle or axiom to guide future deliberation on institutional cooperation, it might be worded in this way:

When a Catholic institution’s activity is deemed necessary for the Church to fulfil its divine mission in a particular field, this may constitute a sufficiently serious reason for the institution to engage in that activity, even though it may also thereby constitute material cooperation in evil.

5.2.3 Two Examples of Institutional Cooperation

As noted, St John of God eventually chose to provide oncology and palliative care services in the final configuration of collocated health campuses. The background to this option, and to another which did not eventuate, is revealing.

5.2.3.1 A Case for Institutional Cooperation

Several factors are driving the current trend in health care toward shorter stays in hospital, among them better surgical techniques which require shorter recovery times, the financial pressures of managed care and ‘case mix’ (in which funding is linked to the number and variety of patients admitted), and the need to limit patient exposure to nosocomial infection. One side effect of this trend is that hospital staff generally have very limited time in which to offer the patient anything but the necessary medical attention. This limited exposure severely curtails

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140 Pinckaers, Sources, 66.
141 See 4.3.4 above.
142 See the Introduction to this work.
opportunities to expose the patient to the Catholic identity and mission of the institution.

However, exceptions occur in oncology and palliative care which, by their very nature, generally require hospitalisation over much longer time-frames. In oncology there are often repeat admissions as a cancer either does or does not respond to treatment, and the very nature of palliative care often means that periods of hospitalisation are prolonged. Furthermore, oncology frequently - and palliative care by definition - are ‘end-of-life’ phases of health care. That usually means that, in addition to requiring specialised medical care, the patient has particular emotional, psychological, social, familial and spiritual needs. Preparation for death is often a difficult experience for both the patient and his or her family, a time when extra care must be taken to meet sometimes urgent personal needs while maintaining quality health care. Patients and families often require constant spiritual and pastoral care to help them deal with the life-changing transitions which are taking place.

In offering this care - not as an ‘added extra’ but as a normal and ongoing aspect of its holistic health care - the St John of God Hospital expresses and constitutes its identity as sacrament of Christ the divine physician. In view of the spiritual nature of the human person, it can be argued that respect for the dignity of patients demands the provision of more than the purely medical aspects of health care. And in view of its sacramental nature, it can be argued that St John’s has a positive duty to offer those wider services - indeed, failure to do so would amount to failure to meet one of the essential aspects of its ecclesial identity and mission. In light of this, the decision to cooperate with the regional hospital at collocated campuses was not an option but an imperative: in order to be faithful to its own identity and mission St John’s had to maintain its health-care ministry in Bunbury, and the ‘collocated campuses’ option was the best way to do so.

Note, furthermore, that St John of God fulfils its ministry without offending the demands of justice toward third parties: there is no scandal attaching to the cooperative venture. A careful campaign of public information has borne fruit, and the collocation is not considered problematic by either the Catholic or non-Catholic
people of Bunbury. Rather, this arrangement is seen as the best way for the Sisters to express their ‘settled commitment’ not only to the town and its people, but also to the Church and to the Congregation’s own identity. In the circumstances, it can be argued that it would have been scandalous if the hospital had chosen not to collocate.

The St John of God Sisters rightly considered that provision of oncology and palliative care services offered a special opportunity to make an uniquely Catholic contribution to hospital care in Bunbury, a contribution which both benefited the people of Bunbury and realised the hospital’s institutional identity. A second opportunity for cooperation, however, was less clear-cut and raised more intriguing problems.

5.2.3.2. A Case for Institutional Cooperation?

Every surgical hospital requires access to a Hospital Sterilisation Supply Unit (HSSU) which prepares instruments for various surgical procedures. Instruments are collected from theatres, sterilised, and made up into ‘surgical packs’ which contain a range of instruments required for particular operations. These packs are labelled according to the procedures for which they are prepared. During the planning phase of the Bunbury project, St John of God Hospital considered submitting a tender for providing a HSSU for both campuses.

It must be understood that St John’s was determined not to provide any immoral surgical procedures itself - procedures such as terminations of pregnancies (TOP) or contraceptive sterilisations. But running a HSSU would mean that St John’s would have to prepare surgical packs so that these immoral procedures could be performed on the regional campus: for example, St Johns might be asked to provide the regional hospital with packs labelled ‘TOP’. This would have involved St John’s in cooperation in evil. The critical questions are: ‘what kind of cooperation is this?’ and ‘would it ever be justified?’

The initial answers are straightforward enough. Provision of surgical packs which are destined only for an immoral procedure would involve St John’s in formal cooperation in that procedure, and this could never be justified. According to the
traditional analysis, the object of the act of providing packs labelled ‘TOP’ would necessarily intend (ex fine operis) the provision of the immoral procedure itself - in manualist terms, ‘an act which of its own intentionality is ordained only to the other’s evil act also necessarily intends the evil itself’. Since TOP is in fact immoral, cooperation in this way will always be formal and unjustified. Even in the presence of ‘duress’, when some would consider cooperation to be ‘immediate material’, the act by which cooperation is rendered would share the same moral object as the immoral procedure itself. As argued above, if a cooperative act is already deemed immoral, then St John’s could not invoke a theological argument to justify such cooperation based on ‘fidelity to its ecclesial identity and sacramental mission’. Furthermore the Congregation for the Doctrine of the Faith’s determination in the Replies to Questions would rule out any institutional policy or arrangement favouring such cooperation.

But then other possibilities emerge. For example, St John’s might have offered to manage a limited HSSU which provided all surgical packs except those plainly destined for immoral procedures. The regional hospital could obtain these packs elsewhere - from another regional hospital, for instance - which would remove from St John’s the danger of formal cooperation in those procedures. One argument in favour of this arrangement is that when the unit was asked to provide a ‘TOP’ pack, a chain of events might be set in motion: an initial refusal by St John’s might prompt inquirers to ask ‘why will you not provide this pack?’, and this might create an opportunity for St John’s to explain the reasons for its opposition to such immoral procedures - in other words, an opportunity for evangelisation.

The most curious feature of this possibility is that, far from threatening the institution’s ecclesial identity and mission, providing a limited HSSU would

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143 See 2.1.3 above.
144 Note that if a surgical pack could serve more than one procedure, one legitimate and the other immoral, and where that pack was labelled only for the legitimate use, then the act of preparing that pack need not constitute formal cooperation in the immoral procedure. In this case the connection between preparing that pack and its immoral use is purely per accidens and comes about only by virtue of the surgeon’s evil will. Of course packs labelled for innocent surgical procedures might also be used for immoral procedures, but this would take the principal agent’s evil beyond the range of the cooperator’s reasonable foresight.
positively promote St John’s ability to bear witness to Christ by creating opportunities for that witness to occur. Such opportunities sit fairly comfortably within St John’s ecclesial identity and sacramental mission; but could the theological argument support this alternative? A brief analysis is revealing.

In the alternative HSSU proposal, St John’s would never have supplied surgical packs destined only for immoral purposes, so there would have been no *formal* cooperation in the immoral procedures. Certainly this proposal includes the probability that another agency will provide the packs in question; however, St John’s does not *intend* that another agency will provide these packs but only acts in the knowledge that this will *probably* happen. Furthermore, even provision of seemingly ‘innocent’ surgical packs might constitute cooperation in evil if those packs are used for evil purposes, but that is not always a possibility which can be foreseen in a particular case. In traditional terms, the immoral procedures themselves, their outcomes, and the provision of the necessary surgical packs would remain *praeter intentionem* for St John’s: none of these would be either direct or indirect objects of intention. The objects of St John’s volition, rather, would have been (directly) the provision of all other packs so that legitimate surgical procedures might be performed, and (indirectly) the creation of opportunities to explain its moral stance to those who inquire. It is in regard to the latter that the theological argument might be employed.

This arrangement might have created occasions on which St John’s ecclesial identity and mission could have been realised in particularly effective ways, at times when those inquiring were most open to perceive the presence of moral truth. From this point of view it is arguable that St John’s had a *duty* to propose this configuration of service provision, precisely in order to create those opportunities and so realise its identity and mission. But in any event, St John’s was not given this option: the State Government refused to countenance what it considered to be a ‘piece-meal’ approach to a core medical service, and chose to have the regional

145 Grisez might argue that this still constitutes formal cooperation, since the proposal St John’s adopts would still include the provision of TOP packs, albeit sourced from another HSSU. See for example CMP, 240. This objection is addressed above, 3.1.4.2.
hospital provide the HSSU. On one hand this deprived St John’s of an excellent opportunity to realise its identity as sacrament of God’s offer of salvation in Christ; on the other hand, it obviated the need for St John’s to reach a definitive moral evaluation of this complex and intriguing possibility.

5.2.4 Conclusions: Institutional Cooperation, Past and Future

The present work has attempted to portray the history of the principle of legitimate cooperation as an evolution which more or less matches that of moral theology in general.

In the early part of its evolution the problem of cooperation in evil was treated largely in the context of confessional practice, as a matter of pastoral concern. Its complex structure and many permutations made it necessary to develop clarity about categories and kinds of cooperation, so that confessors might know how best to assist penitents in practice. But differentiation of various aspects of cooperation and clarification of related questions (such as scandal and induction) created the impression that the principle was more concerned with theoretical clarity than with offering practical pastoral help to penitents. In other words, the principle took on a life of its own, particularly in the manuals.

This probably led some to believe that all problems of cooperation in evil can be resolved at the level of objective norms and metaphysical theory. Vatican II realised that this is not true - not for the problem of cooperation in evil, nor indeed for any moral question. From the outset the Council saw the role of moral theology (and of the Church in general) as essentially pastoral: to proclaim the Gospel by word and work, to help Christians respond ever more faithfully to God’s invitation in Christ, and so to ‘bring forth fruit in charity for the life of the world’.

This challenge has a specific meaning within the context of Catholic moral theory. Charity is the virtue which orients humanity toward its ultimate end, which

146 Optatam totius, 16.
is God. To ‘bring forth fruit in charity’ in the midst of a pluralist world, therefore, represents a challenge to produce goodness in the world by remaining oriented toward God in all things and in every institutional action, and so witnessing continually to the validity of this orientation. This is a duty not just for the Church’s own sake, but also and even primarily ‘for the life of the world’: that is, in order to continue in the world the presence and activity of Christ who has come ‘so that they may have life, and have it to the full’ (John 10:10).

The Second Vatican Council sought to resolve the pastoral difficulties created by an excessive emphasis on objective morality, and to restore the person of the moral agent to the centre of moral analysis. This means much more than merely ‘excusing’ certain actions on subjective grounds (for example, erroneous conscience): it also means accepting that the person of the moral agent contributes something to the full objective moral meaning of particular actions. Note that the Council’s concern was not with objective morality as such, but with an excessive emphasis upon it: the traditional metaphysics and moral theory continue to play an essential role in clarifying the objective meaning of human actions. The challenge rather was to restore the balance between objective or doctrinal clarity on one hand, and subjective or pastoral benefit on the other. The so-called ‘law of graduality’ is one attempt to bring these two together. The theological interpretation of legitimate cooperation proposed here is another.

What this interpretation offers moral theology in general, and the principle of legitimate cooperation in particular, is a framework which links practical moral decision making to the authentic Christian identity of the moral agent. The former is in the realm of practical reason, the latter in the realm of faith: in contrast to the traditional ‘metaphysics of agency’, this ‘theology of agency’ ties these two inextricably. As an interpretation of moral theology in general, this proposal also has the benefit of relating the moral agent to the entire body of the Church: for example, the full moral meaning of the actions of a Catholic institution can only be assessed in the context of that institution’s ecclesial identity and its mission to make

147 See Familiaris consortio, 9 and 34; Vademecum, 9.
Christ truly present and active in the world. With regard to the specific question of cooperation in evil, this proposal emphasises the compelling power of ‘vocation’: sometimes, despite the evil which will be done by others, a Catholic institution simply must cooperate with them in order to bring about a good which only it can produce and which is necessary ‘for the life of the world’.

One important question is whether the proposed ‘sacramental’ view of institutional actions can also apply to individual moral agents. In some senses it would seem so: the structure of self-realisation through action is the same, and it can be argued that since by Baptism one is grafted into the ecclesial Body of Christ, one also shares the mission and identity of that Body. But insofar as it is more readily identifiable as acting in the name of the Church, a Catholic institution has a more obviously ecclesial role as ‘sacrament’. On the other hand, of course, whether individual or institutional, a moral agent’s ecclesial identity will play an active role in shaping moral actions only to the extent that the moral agent is aware of that identity and wishes to ‘real-ise’ it. It is not simply ‘ecclesial identity’ but ‘awareness of ecclesial identity’ which makes the moral agent’s self or ‘person’ operative in moral decision-making. The present work has proposed that this awareness can and should play a decisive role in the resolution of at least some instances of institutional cooperation in evil.

What of the future of the principle of legitimate cooperation? It has been argued here that the traditional metaphysical analysis of cooperative acts must be retained, since this brings a great deal of clarity to what are often very complex situations. But that metaphysical approach alone cannot always produce satisfactory outcomes, often precisely because it tends to exclude the moral agent as a constitutive element in morality. As instances of cooperation become ever more complex, it will seem harder and harder to analyse and resolve them using only the traditional approaches. Some additional terms of analysis are required. The suggestion here is that, since moral actions both express and constitute the identity of the moral agent, the importance of ‘real-ising’ this identity should be taken into greater account in the analysis of cooperative situations.
All of this is particularly true in the case of Catholic institutions. The world today is becoming more institutionalised. In bigger and bigger cities individuals are thrust ever closer together, and yet are more and more anonymous to one another; this makes it difficult to know exactly with whom one is cooperating and what their intentions are. The business world is increasingly dominated by national and multi-national corporations supplying a vast range of consumables, which brings the institution more intimately into the lives of individuals. These corporations are often engaged in a wide range of businesses, not all of which would be morally acceptable. Individuals who engage the services or accept goods from those corporations will find themselves more and more caught up in cooperation in these evils.

The need for clear Christian witness in this world is urgent, yet it seems increasingly difficult to know with certainty exactly what one ought to do. As time goes by, not only will institutional cooperation become more complex, but Catholic institutions will have to assess their options in terms broader than simply their own particular institutional identity or mission. In the future the Church as a body will insist even more strongly that its institutions assess cooperative ventures in light of their ecclesial identity and mission, and only enter those which promise to enable the Church to fulfil its mission to ‘bring forth fruit in charity for the life of the world’.

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This study established four major aims:

- to explore the meaning of cooperation in evil through studying the evolution of the principle of legitimate cooperation;
- to explore the similarities between ‘cooperation between individual moral agents’ and ‘cooperation between institutional moral agents’, and suggest how the principle of legitimate cooperation might be applied to institutions;
- to suggest a theological framework within which to view institutional cooperation;
- to demonstrate that a truly theological interpretation of legitimate cooperation in evil can be, at one and the same time, grounded in the Catholic moral tradition and responsive to the Second Vatican Council’s call to a renewal of moral theology.

In addressing these aims the author expresses his sincere hope that this study will make a useful contribution to the Church’s understanding of institutional cooperation in evil.
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