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

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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’.\(^1\) 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.\(^2\)

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.\(^3\) 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.4 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{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, \textit{Turning Point}, 35.} 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{Mackay notes (\textit{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.}

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 \textit{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{John Kekes, \textit{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.}
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.\textsuperscript{14} Where \textit{monism} holds that there is only one valid system of moral values common to all people, and \textit{relativism} holds that moral values depend on the choices of each individual, \textit{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).\textsuperscript{15} The ‘business’ of ‘morality’ in this view is for each

\begin{quote}
See also Ronald F Thiemann, \textit{Constructing a Public Theology: The Church in a Pluralistic Culture.} (Louisville: Westminster/John Knox, 1991) 38: \textit{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.}'
\end{quote}

\begin{quote}
Kekes, \textit{The Morality of Pluralism}, 8-9: \textit{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. . . . \textit{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. . . . \textit{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.
\end{quote}

\begin{quote}
\textquote{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, \textit{The Morality of Pluralism}, 11-12.
\end{quote}

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 \textit{moral} value, or at least indicative of a drive for a good which expresses a moral value (in Grisez’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

consequentialist concept: the good produced overall must outweigh the evil produced overall. Pluralism in this sense suffers from the same difficulties as all other forms of consequentialism: it must show how goods and evils are first to be defined, and then commensurated, and then balanced to arrive at a surplus of good over evil.


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.\textsuperscript{23} Here the perplexed conscience faces a choice between evils \textit{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’.\textsuperscript{24} The challenge for the responsible moral agent is to choose what is ‘right’ in a particular situation. In the \textit{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’.\textsuperscript{25}

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 \textit{real}, doing evil seems inevitable; but for those who hold that moral conflicts are only ever \textit{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.\textsuperscript{26}

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 ‘\textit{precludes recognition of the plurality of potentially conflicting moral responsibilities that ordinarily constitutes a person’s}

\textsuperscript{23} Crotty (‘Conscience and Conflict’, 214-216) attributes this position to Charles E Curran. At 215: ‘\textit{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.

\textsuperscript{24} Crotty, ‘Conscience and Conflict’, 216.

\textsuperscript{25} See also this Chapter, footnote 34.

\textsuperscript{26} See Christopher W Gowans, \textit{Innocence Lost: An Examination of Inescapable Moral Wrongdoing}. (New York: Oxford University Press, 1994) 219: ‘\textit{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 \textit{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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28 Gowans, *Innocence Lost*, 223. In discussing prominent ‘tragic-making characteristics’ of moral conflicts, Gowans at 227 notes that one such characteristic is that ‘*the 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.
dare ask 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?

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. 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.

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. 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. 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).
See also Helmut Weber, ‘Il compromesso etico’ in Tullo Goffi, ed. Problemi e Prospettive di Teologia Morale. (Brescia: Queriniana, 1976) 199-219. At 200: ‘. . . almost all agree in seeing in compromise an attempt at a certain accommodation. It is the effort to reconcile contradictory aims and desires by reducing and renouncing their full realisation.’
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 Denmer 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.

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\(^{35}\) 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

39 This is the essence of the Principle of Double Effect.
40 Evangelium vitae, 73.
which one believes to be evil, but which for various reasons one chooses not to resist or suppress. 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 tolerance 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. 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. But if public peace would be better served by the suppression of these houses, then prudence might dictate intolerance instead. Another ground for tolerance 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”’. 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, 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.

44 Mendus, On Toleration, 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 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 Tolerance, 14-15.
Or tolerance may be considered a requirement of morality itself, a right to be afforded all people simply as human beings.\textsuperscript{45} 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’.\textsuperscript{46} 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:

\[\ldots\text{ the argument has two separate strands, each of which is compatible with the denial of extreme relativism. The first holds that since people are essentially diverse creatures, there may not be any one way of life which is the best for all. Of course, it does not follow from this that any way of life is as good as any other. \ldots}\]

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.\textsuperscript{47}

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’.\textsuperscript{48} 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’.\textsuperscript{49} This approximates the Church’s duty not only to defend the dignity of conscience, but also to positively promote religious freedom.

\textsuperscript{45} Vatican II sees this concept of tolerance as a requirement for the Church in the world in \textit{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’.

\textsuperscript{46} Mendus, \textit{On Toleration}, 8. See also Vermeersch, \textit{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.’

\textsuperscript{47} Mendus, \textit{On Toleration}, 9.

\textsuperscript{48} Mendus, \textit{On Toleration}, 12.

\textsuperscript{49} Mendus, \textit{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 recasting 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.


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.’
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.\(^{54}\) 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’.\(^{55}\) Under
the older approach based on a notion of objective truth, the Church had attracted
criticism for giving

\[\ldots\text{so much emphasis to the objective and even the physical that it has not given enough importance to subjectivity and freedom }\ldots\]

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.\(^{56}\)

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,

\[\ldots\text{a more adequate description understands cooperation as}
\text{concurring not primarily with a will or with an act but with a}
\text{person. }\ldots\text{The point is that the full understanding of cooperation}
\text{must take account of the dignity of the other person and that}
\text{person’s right to act in accord with his own responsible freedom.}\]

\[^{54}\text{Charles E Curran, ‘Cooperation: Toward a Revision of the Concept and its Application.’ Linacre Quarterly 41(1974) 152-167, see especially 157-161; an edited version of this article appears as ‘Cooperation in a Pluralistic Society’ in Curran’s Ongoing Revision in Moral Theology. (Notre Dame: Fides/Claretian, 1975) 210-228; Curran’s argument is substantially reproduced in Hannon, Church, State, 90-95.}\]

\[^{55}\text{Curran, ‘Toward a Revision’, 159-160.}\]

\[^{56}\text{Curran, ‘Toward a Revision’, 160.}\]
Nevertheless, one cannot ignore the elements of a bad will or a bad act which have been part of the consideration in the past.  

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’.

But these arguments are fraught with difficulty. 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. 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’. And third, as noted earlier, 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 person rather than with the action, a cooperator who intends what the principal agent erroneously believes to be right would himself be acting in ‘bad will’ and cooperating formally.

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59 At 3.1.2 in relation to Häring’s position in 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.

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\(^{60}\) 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.

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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.  

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. 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’.

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’.73

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’.74 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.75

Law 194 sought to create a legally recognised ‘space’ for freedom of conscience: no institution may perform abortions unless it is certified,76 and individual medical personnel in all institutions have a legal right to conscientious objection in most cases.77 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.

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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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.
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.  

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. 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.

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

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90 Demmer, Interpretare, 188. See also ‘Tolerancia’, 329.
91 Demmer, ‘Cooperación’, 91.
92 Demmer, ‘Tolerancia’, 329; also see ‘Der Anspruch’, 702.
speak of a fall into tactical pragmatism or of renouncing one’s own moral identity.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{96}

\textsuperscript{93} Demmer, Interpretare, 189.
\textsuperscript{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.’
\textsuperscript{95} Demmer, Interpretare, 194-195.
\textsuperscript{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).

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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. This seems to refer not only to the common good, but also to a necessary mutuality or reciprocity between the individual and the community in which he or she lives. 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, 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.

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

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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.’
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 . . . ’
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.

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\(^{108}\) 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.

\(^{109}\) CHAC, 1991 Guide, at 11 accepts at least the experience of moral conflict: ‘When rights, duties or values appear to conflict, . . . ’


\(^{111}\) Catholic Health Association of Canada, Health Ethics Guide. (Ottawa: CHAC, 2000).
income, education, employment and social supports'. 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’.\(^\text{116}\) 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).\(^\text{117}\) 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.\(^\text{118}\) 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.\(^\text{119}\)

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 1995 Ethical and Religious Directives, which have subsequently proved problematic on precisely these points.\(^\text{120}\)

### 4.2.2.2 United States Catholic Conference

In 1971 the American bishops published their Ethical and Religious Directives for Catholic Health Facilities (ERD).\(^\text{121}\) In terms of structure this was a

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\(^{117}\) 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 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.


\(^{120}\) See 4.3.2 below.

\(^{121}\) 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 out-moded 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

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Ethical and Religious Directives for Catholic Health Facilities.’ Linacre Quarterly 40(1973) 81-90, at 82) notes that the US bishops had voted 232 to 7 in favour of the 1971 ERD.


123 McCormick and Reich, in particular, make this case.

124 The text of the 1994 Ethical and Religious Directives for Catholic Health Care Services was published in Origins 24(1994) 449, 451-462. Note that sometimes these are referred to as the ’1995 ERD’, presumably because they were approved by the US Bishops in 1994 and published in Origins that year, but not published in their own right until the following year. The earlier dating will be followed here.

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

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\(^ {125}\) 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.
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.\textsuperscript{129}

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.\textsuperscript{130}

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 \textit{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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\item \textsuperscript{128} \textit{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.
\item \textsuperscript{129} \textit{Introduction} to Part 4, \textit{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 ‘\textit{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 \textit{Reply}, noted in 3.2.2 above.
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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

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.

133 Davis, vol. I, 341. See above, 1.2.3 and 2.1.3.
135 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’.
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,

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\item \textsuperscript{136} See 2.3.2 above.
\item \textsuperscript{137} \textit{Veritatis splendor}, 80.
\item \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.’ \textit{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”.’ \textit{Ethics & Medics} 23:9(1998) 3-4, points 3 and 4.
\end{itemize}
but only ‘if this is the only means of saving life or preserving a great good’ - 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.

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. It is presumably in this ‘taxonomic’ use of the principle that an ad hoc advisory committee would find its role. 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.

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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.143

4.2.2.3 James F Keenan

Similarities between the Appendix and his own published works suggest American theologian James F Keenan SJ as one of the key contributors to the 1994 ERD.144 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

143 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, www.chausa.org. See 4.3.2 below for further comment.

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’.\(^{152}\)

\(^{150}\) 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

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’.

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

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.
¹⁵⁸ See Keenan, ‘Double Effect’, 295-300.
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 operantis (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.\textsuperscript{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.\textsuperscript{183} Yet Davis’s example illustrates that the ‘moral reflex’ identifies immediate material cooperation as, in some way, quite distinct from implicit formal cooperation.\textsuperscript{184}

An unsigned article in \textit{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.\textsuperscript{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

\textsuperscript{182} Kissell, ‘Contemporary Relevance’, 42.
\textsuperscript{183} Kissell, ‘Contemporary Relevance’, 39.
\textsuperscript{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’.\footnote{John Haas, cited in the column ‘On Material Cooperation’ in Catholic World Report (February 1995) 46.}

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.\footnote{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.’}

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.\footnote{Philip F Lawler, ‘Playing in Peoria.’ Catholic World Report (February 1996) 40-42, at 40.}

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.\footnote{Compare this solution to the CDF Replies IV and V, noted above at 3.2.2.}

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
duress’: in some cases cooperation is preferable to closure of institutions because it is, apparently, a lesser evil. 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. 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 ‘weighing or balancing of good and bad effects’. 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. 193 He rightly argues that while these actions ‘require two different types of physical and moral cooperation by the physician . . . neither type of cooperation is acceptable’. 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. 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:

190 Lawler, 'Playing in Peoria’, 41.
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’.

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:

... 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?

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’. 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. 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’. 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

\[200\] 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.

\[201\] 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.


\[203\] See 3.2.1 above.

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.205

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.206

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’.  

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. 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.

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.

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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.216

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.217

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’. 218

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{un}avoidable, 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

\begin{itemize}
\item 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).
\item Gleeson, ‘Fr Gleeson replies’.
\end{itemize}
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

‘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 in 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.\footnote{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.}

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.\footnote{Replies, V. See above, 3.2.2, footnote 155.} 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,
and even the Church itself which must bear the consequences. The reason for this emerges in Grizez’s next point.

- **Third**, the issue of the meaning of institutional acts. Grizez 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.\(^{239}\) 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.\(^{240}\) Indeed, representatives of Catholic health care institutions often emphasise that their ministry *‘continues in our day an essential part of Jesus’s own ministry’.*\(^{241}\)

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

\(^{238}\) Grizez, ‘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 Grizez’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.

\(^{239}\) Stanley Joel Reiser (‘The Ethical Life of Health Care Organisations.’ *Hastings Center Report* 24:6(1994) 28-35) offers a revealing analysis of consonance and dissonance between an institution’s stated ethical principles for health care and its actual practices in dealing with employees and students.

\(^{240}\) 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.’*

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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. 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.

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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.\textsuperscript{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 ‘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.\textsuperscript{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 \textit{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.

\textsuperscript{243} See 4.2.2.2 above.
\textsuperscript{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

\[248\] 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’,\(^\text{251}\) for that would amount to radical self-contradiction.

Even in the presence of duress, then, 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.\(^\text{252}\)

\(^{250}\) See for example Aertnys-Damen, de restitutione, 783.

\(^{251}\) Replies, V. See 3.2.2 above.

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.\footnote{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.} An arrangement which constitutes legitimate material cooperation in one situation may not be morally acceptable in another.\footnote{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.} 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.\footnote{See above, 4.2.2.4. The case is cited in Lawler, ‘Playing in Peoria.’} 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.\footnote{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.\(^{257}\) 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.\(^{258}\)

Thus, for example, in 1996 the National Coalition of Catholic Health Care Ministry in the USA issued a *strong public statement regarding partnership arrangements*:

> 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.\(^{259}\)

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\(^{257}\) On this insight, see Stanley Joel Reiser, ‘The Ethical Life of Health Care Organisations’, 32: ‘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.’

\(^{258}\) Byron, ‘Catholic Health Care’, 21.

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’.\(^{260}\)

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.\(^{261}\) 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,\(^{262}\) 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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\(^{260}\) Grisez, ‘In Answer to Critics’, 62.

\(^{261}\) 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.\(^\text{264}\) 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.\(^\text{265}\) 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.’\(^\text{266}\)

### 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.\(^\text{264}\) See Keenan, ‘Institutional Cooperation’, 59.\(^\text{265}\) Lawler, ‘Playing in Peoria’, 40.\(^\text{266}\) 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

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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. 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. 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’.

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.

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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.

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.’

273 Gaudium et spes, 16.