

PROBLEMS OF COOPERATION IN AN ABORTIVE CULTURE

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UNTIL THREE DECADES AGO the moral problem of abortion in American society was relatively straightforward. The conscientious citizen faced two principal questions. The first concerned whether the individual could perform or procure an abortion. The second concerned whether the state should tolerate abortion under certain circumstances. Although public opinion divided on the proper moral and public-policy posture concerning a minute number of "therapeutic" abortions (predominantly those tied to maternal life-endangerment and felonious intercourse),ⁱ American society maintained a firm moral and legal censure against the practice of abortion in general.ⁱⁱ The conscientious citizen experienced little difficulty in distancing himself or herself from an abhorrent practice which remained occult and illegal.

In the intervening years, the moral and public policy dilemmas of abortion remain, in a far more agitated state than that of the hushed debate over therapeutic abortion in the early 1960s. A new moral dilemma, however, has emerged for the citizen opposed to abortion. No longer must this citizen face only the personal issue of whether to perform or procure an abortion. The citizen must now face the question to what extent he or she may cooperate in an abortive culture, that is, a society where abortion is actively promoted, not merely tolerated, by key institutions.

In the current American climate the individual citizen is often forced to finance abortion through taxes and insurance premiums.ⁱⁱⁱ Individual health professionals or social workers may find themselves pressured to provide referrals for abortion. Judges may find themselves facing cases where judicial authorization for abortion is sought.^{iv} In an academic setting, teachers, administrators and students must confront the issue of the recognition, funding and facilitation of groups which promote abortion.^v At the present moment, medical schools find themselves under increasing pressure to provide instruction in abortion-techniques or, in lieu of such instruction, to provide referrals to programs which give such education.^{vi} These pressures to legitimize abortion, however indirectly, indicate the social coercion barely masked beneath the slogans of "choice." They also pose acute problems of conscience for the individual who wants to refuse any sanction for abortion but who must live in a society which relentlessly promotes abortion and

increasingly entraps the private citizen in this promotion.

In order to examine this dilemma, it can be useful to explore certain principles of the manualists, the natural-law ethicists of mid-century, who analyzed the issue of cooperation with evil. The works of Austin Fagothey,^{vii} Andrew Varga,^{viii} Martin O'Keefe^{ix} and Germain Grisez^x are especially helpful in this area. The manualists attempted to sketch certain principles for demarcating acceptable and unacceptable cooperation with evil, especially in work-related settings. Realistic in their appraisals of the possibilities of social reform, they balanced the rights and duties of the conscientious person to refuse participation in evil with the need of the person to live peacefully in a society where certain evils are pervasive and obdurate. Many of these manualists warn that the issue of cooperation with evil, especially that of material cooperation, is one of the thorniest questions in all of moral philosophy. The line-drawing on such an issue is inevitably vague. As valuable as these principles may be in illuminating the quandary of participation in an abortive culture, they cannot substitute for the prudential judgment of the individual conscience attempting to combat abortion in a particular setting.

In the manualist perspective the key distinction in the area of cooperation with evil lies in the difference between formal and material cooperation. In the case of formal cooperation, one positively wills and assists the evil act, although one does not personally perform it. "There is formal cooperation when one not only helps another to do evil but also joins in his evil intention."^{xi} In the case of material cooperation, one assists another in an evil act, although one personally opposes the act. "There is material cooperation when, without approving another's wrongdoing, one helps him perform his sinful act by an action of one's own that is not of its nature sinful."^{xii} The distinction between the two kinds of cooperation lies primarily in the posture of the will (the intention) toward the evil act in question.

The manualists concur that formal cooperation can never be justified, since it involves the agent in approval of an evil action. "Formal cooperation is always morally wrong and cannot be justified under any circumstances."^{xiii} Establishing the limits of formal cooperation in the area of abortion, however, can be more complicated than this categorical condemnation suggests. Germain Grisez suggests the numerous actions which may involve a moral agent in formal cooperation. "A person who commands, directs, advises, encourages, prescribes, approves or actively defends doing something immoral is sometimes said to cooperate in the immoral act."^{xiv} As Grisez indicates, all such actions can involve the moral agent in instigating or provoking an evil act. In the area of abortion, formal cooperators would

include those who counsel in favor of abortion or provide abortion-referrals. They cannot elude responsibility for the evil by claiming that they do not personally perform the abortion. The more deliberate and the more coercive the prescription, the graver the cooperation in abortion manifested by these moral agents.

In *Evangelium Vitae* Pope John Paul II suggests that the sphere of formal cooperation in abortion is even broader. It includes all those, especially within the elite fields of law, journalism and academe, who create an ideological climate which favors abortion. "Responsibility likewise falls on the legislators who have promoted and approved abortion laws, and to the extent that they have a say on the matter, on the administrators of health-care centers where abortions are performed. A general and no less serious responsibility lies with those who have encouraged an attitude of sexual permissiveness and lack of esteem for motherhood, and with those who should have ensured—but did not—effective family and social policies in support of families, especially larger families and those with particular financial and educational needs. Finally, one cannot overlook the network of complicity which reaches out to include international institutions, foundations and associations which systematically campaign for the legalization and spread of abortion in the world."^{xv} Since formal cooperation is distinguished by the posture of the will, those who shape the will in a positive attitude toward abortion share in the evil of the act of abortion. Behind the individual decision of a woman to procure and of a health-care professional to perform an abortion stands a network of persons shaping the values and ideologies which inform the moral decision-making of a particular culture.

As the citation from *Evangelium Vitae* suggests, one particular problem in the area of formal cooperation concerns the role of abortion-related legislation. One commonly hears the argument that a legislator or, in the case of a referendum, the individual citizen personally opposes abortion but supports its legalization. Since the individual claims to abhor the practice and might even personally dissuade others from the practice, the person's actions in the legislative arena might appear divorced from formal cooperation in abortion.

In fact, while the issue of moral responsibility for abortion *via* legislative or judicial action is complicated, legislative action on behalf of abortion would often appear to provide *prima facie* evidence of formal cooperation. In American society, abortion has recently been presented as a legal right of the citizen. A "right," properly speaking, involves a title which justifies a moral agent in demanding immunity or assistance from the community of moral agents for the exercise of a putative claim.^{xvi} To support "abortion rights," as

the media currently (and usually accurately, even if the term is an oxymoron) labels many legislative and judicial decisions in this area, is to claim that the pregnant woman and the attending medical personnel are justified in performing the act. If such an action is justifiable, it is difficult to understand why one would be "personally opposed" to it. Such opposition would appear to a matter of personal pique or a credal conviction as sectarian as the refusal to eat meat on Good Friday. The supposed moral repugnance of the agent to abortion is either feigned or simply based upon ignorance of the actual nature of the legislation or judicial principle one claims to support. This disjunction between moral opposition to and political support for abortion becomes especially grave when, in the wake of *Roe v. Wade*, the citizen supports a program of unrestricted abortion-on-demand. The current campaign to bolster abortion as a right—or even worse, as an entitlement to be funded by the state—involves a citizen in a more difficult cooperation with evil than do other politics, still extant in parts of Europe and Latin America, which limited their legislation to the toleration of abortion as a restricted evil.^{xvii} The claim to oppose abortion morally when one acclaims it as a right and engenders a political culture favorable to abortion is implausible. While ignorance and prejudice may mitigate the personal responsibility of the citizen in such a contradictory posture, enthusiastic support for a putative right to abortion would usually indicate tacit consent to such a practice.

While formal cooperation in evil is categorically condemned, since the upright agent may neither approve moral evil nor willingly help to bring it about, the issue of material cooperation in evil is more complicated. Following the tenets of the principle of double effect,^{xviii} the manualists argue that one may tolerate certain participations in acts which indirectly help another to bring about a moral evil which one personally opposes. On the one hand, one must void a scrupulosity which, by refusing any association with evil acts, simply paralyzes the agent in the face of social interaction. On the other hand, to avoid moral laxness, one must carefully discern the circumstances under which such cooperation is reasonably tolerable.

The natural law tradition has focused upon three principles by which one can measure the reasonableness of the material cooperation with evil which might confront the moral agent. First, one must evaluate the gravity and amount of evil that others might be permitted to perform through the agent's cooperation. Second, one must evaluate the gravity and amount of evil that will probably occur to oneself if one refuses this cooperation. Third, one must evaluate the proximity of one's cooperative act to the evil act which one opposes.^{xix} Following the framework of the principle of double effect, such

considerations permit the moral agent to ponder the proportionate balance of good over bad effects in a congeries of acts, while carefully refusing any endorsement of an intrinsically evil action and any effort to use such an evil act as the means to bring about good.

In the current cultural context of abortion, these principles can illumine the boundaries between acceptable and unacceptable material cooperation. The first principle, that concerning the gravity of the evil act, underlines the seriousness of any material cooperation with abortion. The evil one contemplates is the act of homicide. It is the killing of the innocent. The massive number of such homicides in American society (approximately 1.5 million a year) and the levity of the reasons for which abortion is commonly performed only heighten the evil of the act in which one may consider cooperation. Although material cooperation in evil, especially in complex urban cultures, is inevitable, cooperation with an evil of this gravity requires far stronger justification than cooperation than the majority of evils in daily life. Even remote connection to abortion in the actions one performs demands strict scrutiny of the nature of the assisting material acts.

The second principle, that of evaluating the evil one must bear if one refuses material cooperation, underlines the limits of refusing material cooperation to all instances of abortion. One cannot demand the heroic of oneself and of others in opposing abortion. One cannot ignore legitimate demands of livelihood, family-life and other social obligations in evaluating the possibility of material cooperation in a given case. If we were to refuse any material cooperation to the act of abortion, we would all be meeting at the D.C. jail. We would refuse to pay taxes, since the government uses them to fund abortion. We would be an illiterate lot, since we would not patronize newspapers, magazines, radio-stations or television-channels which show pro-abortion bias. And we would be an unemployed lot, since we would refuse to work in schools, hospitals or businesses which show the slightest trace of pro-abortion sentiment. While such heroism may be appealing in moments of idealistic fervor, and while we may on occasion be called to such heroism, such a stance would seem to deny other pressing obligation toward God, others and ourselves. Such a strategy would also seem to promise little in terms of effective challenge to the wave of abortion which has overwhelmed our society in the past generation. Conscientious objection to abortion, and the practical lines drawn on material cooperation, must reflect prudently the variety of obligations and resources which the individual agent brings to this complex work of resistance.

The third principle, that which evaluates the proximity or remoteness of one's act to another evil act, can be especially helpful in discerning the limits

of material cooperation in the workplace. A hypothetical case can illustrate this utility. In a certain American city, an abortion-clinic is in operation. Certain staff members are obviously guilty of formal cooperation. This would include the staff-doctors who actually perform the abortions and the majority, if not all, of the other medical personnel and counseling-staff who serve the clinic. One could imagine the case of a secretary who works at the clinic. She sincerely opposes abortion. She would never procure one for herself and she has actually discouraged two friends from having abortions through her personal counsel. It is difficult to imagine, however, how her clerical work at the clinic could ever be justifiable material cooperation. She draws her livelihood from the practice of abortion. Her answering of the phone, her direction to clients, her care of files and her scheduling of appointments facilitate the performance of numerous abortions. This massive participation in a business whose sole purpose is the practice of abortion indicates that this is a proximate, intimate cooperation in grave evil. Either the secretary is insouciant of the gravity of this evil or the secretary is deluding herself on how intimately and massively her work fuels the daily killing of the innocent. Such massive, integral cooperation in abortion could not be balanced by other concerns, such as the higher salary the work in the clinic would bring her family.

The material cooperation of other workers involved with this clinic, however, could be far more remote. The building might have a night guard, for example, who must protect all the building's offices, of which the clinic is only one out of fifty. The guard's work does benefit the practice of abortion by securing the property of the abortionist. However, the guard's mission is to protect the property of the entire building. Only incidentally does the abortion-industry benefit. A conscientious guard might seek comparable employment where even this minor connection to abortion can be severed. His work does, after all, provide material assistance to the abortion industry. However, one could imagine a situation (such as the need to sustain his family and the paucity of other employment-opportunities) where such material cooperation would be minimally acceptable.

An even more remote instance of cooperation would be presented by the mail-carrier who delivers mail to the offices of the building, including the office of the abortion-clinic. There is no doubt that the delivered mail helps to further the work of the abortionist. Information is disseminated. Appointments for abortion might be made or confirmed. However, the mail-carrier's concern is simply to provide correspondence to all those on the route. The clinic is incidentally served by the carrier's work, which involves hundreds of other clients each day. Given the gravity of abortion's evil, even

such minor cooperation may well prove disturbing to the conscientious agent. However, such slight material cooperation would not seem to necessitate a change of work.

It is not surprising that the workplace is the privileged area where many of the manualists explore the issue of material cooperation. These ethicists repeatedly argue that the standard of material cooperation in evil which one is willing to tolerate varies according to one's professional duties in a particular area. To cite one of the clichéd examples from the manualist literature, a thief's attempted robbery of a bank requires different standards of material response. The guard has a greater obligation to refuse material cooperation (such as opening the bank-vault) than does the bank-clerk who, in turn, has a greater obligation than does the bank-patron who just happened to be making a transaction at the moment of the attempted robbery. While the obligation regarding formal cooperation is uniform for all—no one may legitimately will the act of theft—the obligations concerning material cooperation vary according to the nature of one's work, the demands of one's contract, even the physical and psychic capacities of the individual worker.

This focus upon the workplace as the privileged locus for exploring material cooperation in abortion can clarify certain of the dilemmas we face in our own workplace, the university. Obviously, the first duty is to avoid the actual performing of abortions in a university-hospital and to avoid the dangerously proximate form of cooperation of providing referrals for abortion. More problematic is the question of working in a hospital-setting where abortions are performed or in a counseling-situation where referrals for abortion are provided. One would need to ask questions regarding the frequency of abortion, how much of the enterprise is devoted to abortion, the proximity of the abortions to one's actual work and how great a cost to the welfare of one's family and oneself the abandonment of this work would entail. One must also ask whether one's presence in the institution, especially when one's refusal of abortion is public, might discourage abortion in certain instances and provoke qualms of conscience on the part of one's colleagues.

More typically, the issue of material cooperation for academics concerns their institutions' formal and material cooperation in abortion outside of the medical setting. Such evidence of cooperation might be manifested in a counseling-service's abortion-referrals, bias against pro-life faculty in hiring and tenure-decisions, bias against pro-life students in the recognition and funding of clubs, official statements by university-officials in favor of abortion, persistent official honors to pro-abortion politicians and the denial of such to pro-life politicians, the funding of abortion through university

insurance-policies. Since the individual faculty-member both benefits the university through his or her services and benefits from the university through salary and medical insurance, there is a moral problem of material cooperation with an institution which indirectly legitimizes abortion through any of the preceding practices.

The development of responsible frontiers of acceptable and unacceptable material cooperation in the area of university-related abortion demands prudential judgments which will vary from one setting to another. To cite an obvious variation, the realistic possibilities of the faculty-member in a secular university and a religious one to oppose institutional embrace of abortion will differ. In certain secular universities, simply succeeding in providing equitable treatment for "pro-life" and "pro-choice" groups and programs may represent a minor, but real, victory for opposition to abortion. The development of a conscience-clause in the university health-insurance and United Way contributions, whereby the individual faculty-member may refuse to fund abortions, may be a substantial improvement over the standing insurance-policy which demands that everyone subsidize abortion as the cost of medical insurance. On the other hand, in a university which claims support by a particular religious confession, especially when that confession explicitly condemns abortion, the possibilities of effective resistance are far greater. One can more easily demand that the university refuse recognition of pro-abortion groups and programs, that it refuse to honor prominent pro-abortion dignitaries and that its health-care and counseling-policies follow in practice the pro-life positions which its sponsoring denomination proclaims in theory.

In discerning the boundaries of material cooperation with abortion in the setting of academe, two extremes must be avoided. The first is the path of insouciance, the confidence that one's personal refusal of formal cooperation with abortion excuses one from further consideration of one's tacit alliance with the abortionist. It is tempting in academe, for example, to refuse even to raise questions concerning policies of health-care, insurance, counseling, club-recognition and university honors. The evidence of complicity with abortion would often prove too overwhelming and the call to resist such material cooperation too excruciating. The courage to seek the truth regarding the presence of the evil of abortion, and the various complicities of one's institution with that evil, represents the first step in facing one's material cooperation with abortion and the quandaries of rejecting or tolerating specific instances of such cooperation.

The other extreme involves a rigorism which attempts to refuse all material cooperation, however indirect, with abortion. In the academic setting, such a

rigorism could only lead one to resign from teaching in the contemporary university. The principle of academic freedom, for example, endorsed in its famous AAUP form by the vast majority of American universities,^{xx} guarantees that some teachers will promote pro-abortion theories and, tragically, tip certain students toward the choice of abortion in certain moments of crisis. While such actions do represent a material cooperation in abortion, they are incidental to the practice of academic freedom, which defends the right of other academics to oppose abortion and which defends an enormous host of academic speeches and books which have no connection whatsoever with abortion. It is legitimate that many faculty opponents of abortion choose to remain in universities with a decidedly pro-abortion tilt in certain activities because, on balance, the good achieved by the faculty-member's work in this setting (which might include the scholarly refutation of pro-abortion claims and the personal encouragement of pro-life groups) outweighs the evils of the material cooperation with abortion which the faculty-member must reluctantly tolerate.

Particularly thorny problems of material cooperation with abortion arise in the political arena. Citizens must currently confront laws which demand cooperation with abortion. Clearly, a conscientious citizen must refuse to obey any law which demands that the citizen actually perform an abortion. No consideration of one's personal welfare or respect for the law (in this case, an illegitimate law) could justify such complicity in the act of killing an innocent human being. One must also refuse cooperation which usually signifies endorsement of abortion, such as providing referrals to abortion-clinics, since such proximate cooperation cannot cohere with a principled opposition to abortion as an unjustified act of homicide. As a citizen shaping public policy and as a legislator, one is obliged to refuse all state-sanction and material support to the facilitation of abortion. One should earnestly refuse state-funding of abortion, of abortion-facilities and of groups and programs which promote abortion. Using the weapons of democratic reform, the citizen should make every effort to identify and reject all material and symbolic facilitation of abortion as crucial steps in opposing abortion, especially when immediate overturn of legal toleration of abortion is not imminent.

The limits of resistance to material cooperation with abortion as a citizen bound to obey laws, however, would appear to be more restricted than one's theoretical resistance as a citizen to current or proposed public policy. The fact that a small part of state-revenue is used to finance abortion or abortion-related activities does not necessarily justify the refusal to pay taxes in whole or in part. In contemporary American society, the bulk of tax-revenue is used

to fund a variety of projects intrinsic to the promotion of the common good. While the citizen has every obligation to attempt to influence state-policy away from direct or indirect subsidy of abortion, the fact that a small part of revenue may tragically fund such actions does not free the citizen from financial obligation to the state. In any society, especially one as complex and pluralistic as contemporary America, certain state-funds will inevitably fuel programs which particular groups of citizens sincerely consider profoundly immoral. The ordinary means for correcting such material injustice is the vigorous use of the rights of petition, assembly, free speech, free press and election. In a democracy, one rarely exhausts such peaceful means of protest and social transformation. Recourse to civil disobedience, such as the use of tax-resistance, can only function as a type of last resort when the orderly means of protest have been exhausted. While such means have a legitimate currency in authoritarian regimes where such civil liberties have withered or in regimes (such as imperial India or the segregated South) where an entire class of citizens is disenfranchised, their justification is rarer in an authentic democracy. Consistently applied, the rigorist refusal to finance a state because some of the state-subsidized actions are patently evil can easily foster social anarchy. It can also divert the citizen from the patient work of properly political protest and organization which can identify the nature of the state's cooperation with evil, criticize this complicity and pressure the state to reverse its policies of cooperation.

In all such discernment of the limits of cooperation with abortion, the social dimension of the evil should be squarely recognized. For decades the issues of conscience in this realm have no longer confined themselves to the simple question of personal participation in abortion. Resistance to the homicidal evil of abortion requires scrutiny of the taxes one pays, the churches where one worships, the newspapers one reads, the schools where one sends one children. And it demands the anguished study of what material cooperation with this abortive culture may be tolerated for other goods and what material cooperation must be refused in the name of the rights of the innocent. For those of us with an academic and intellectual vocation, this discernment of material cooperation with an abortive culture arises in a distinctive setting. Our particular task often lies in research and teaching which carefully refutes the abortionist's propaganda and obfuscation in the areas of biology, philosophy, theology, law and history. It involves the construction of an alternative account of abortion based upon certain facts of biology, the rights of personhood and the proper function of the law. It is precisely the lectern and the library which are the central tools proper to our particular resistance to abortion as academics. Our vocation also involves careful scrutiny of the

complicity between abortion and academic culture. The intellectual's resistance to abortion involves the identification of the evil of abortion and grip of that evil upon the academy through the institution's teaching, biases, programs, clubs and awards. In collaboration with others committed to the defense of life, the conscientious intellectual identifies those institutional cooperations with abortion which must be resisted. And in those inevitable moments when one must regrettably tolerate material cooperation with abortion, one must still name it as an evil which is nothing less than the killing of the innocent.

NOTES

i. For a typology of the various legal approaches to abortion dominant before *Roe v. Wade*, cf. John M. Finnis, "Abortion: Legal Aspects" in *Encyclopedia of Bioethics*, ed. Reich, Vol.1 (New York: Free Press, 1978) 26-32.

ii. For overviews of the history of the American attitude toward abortion, cf. Marvin N. Olasky, "Abortion News in the Late 1920's" in *Journalism Quarterly* 66/3 (1989) 724-26; "The Crossover in Newspaper Coverage of Abortion from Murder to Liberation" in *Journalism Quarterly* 63/1 (1986) 31-37; "Opposing Abortion Clinics" in *Journalism Quarterly* 63/2 (1986) 305-10.

iii. On the problem of cooperation with unjust abortion-related laws, cf. William E. May, "Unjust laws and Catholic Citizens: Opposition, Cooperation and Toleration" in *Homiletic and Pastoral Review* 46/2 (Nov. 1995) 7-14.

iv. Cf. Judge Joseph W. Moynan, "No Law Can Give Me the Right to Do What is Wrong" in *Life and Learning V*, ed. J. Koterski (Washington, D.C.: Univ. Faculty for Life, 1996) 234-42.

v. For a discussion of this dilemma in Catholic higher education, cf. "GU Choice Group" in *Origins* 22/1 (May 14, 1992) 14-15; Father Joseph O'Hare, S.J., "How Student Groups Impact the University's Catholicism" in *Origins* 22/9 (July 23, 1992) 163-66.

vi. The decision of the Accreditation Council for Graduate Medical Education (February 15, 1996) to require abortion-training in all medical schools is illustrative of the coercive tendency. Cf. James Barron, "More prospective obstetricians will be taught abortion skills" in *The New York Times* (15 February 1995) A 1, 5.

vii. Cf. Austin Fagothey, *Right and Reason*, 2nd ed. (St. Louis: Mosby, 1959) 338-41.

viii. Andrew C. Varga, *On Being Human* (New York: Paulist, 1958) 95-96.

ix. Martin D. O'Keefe, *Known from the Things that Are* (Houston: Center for Thomistic Studies, 1987) 65-70.

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- x. Cf. Germain Grisez, *The Way of the Lord Jesus*, Vol. I (Chicago: Franciscan Herald Press, 1983) 300-04.
- xi. Fagothey 338.
- xii. Fagothey 338.
- xiii. Fagothey 338.
- xiv. Grisez 300.
- xv. Pope John Paul II, *Evangelium Vitae* (Boston: St. Paul, 1995) #59, pp. 96-97.
- xvi. For a theory of rights and title, cf. Varga 117-18.
- xvii. Cf. Mary Ann Glendon, *Abortion and Divorce in Western Law* (Cambridge: Harvard, 1987), for a discussion of the extremism of the American legal position in comparison with European positions on the legal status of abortion.
- xviii. Cf. Fagothey 152-56; O'Keefe 50-56.
- xix. Cf. Fagothey 339.
- xx. Cf. American Association of University Professors, "1940 Statement of Principles on Academic Freedom and Tenure" in *Academic Freedom and Tenure*, ed. Joughin (Madison: Univ. of Wisconsin Press, 1967) 33-39.