

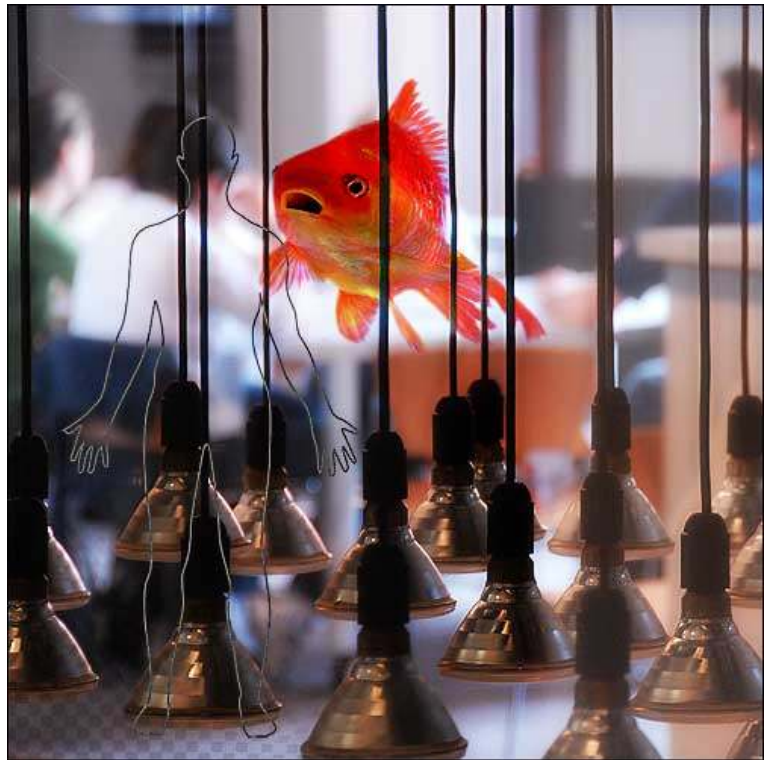
# LIVING IN A PLURALISTIC WORLD

## Cooperation in the wrongdoing of others

**Brian Lewis\***

Given the social nature of the human person, it is obvious that interaction between persons has always been part of human life. Today, more perhaps than ever before in human history, collaboration with others is a commonplace of life. In a great number of instances, people are employed by others or themselves employ staff. Individuals and families depend on others to supply the material necessities of life: food, housing, heating, clothing. They send their children to school to be educated by others. They depend on others for recreation, for sport, for entertainment and indeed in almost every aspect of their daily life. Interpersonal relationships and dependencies such as these nearly always involve cooperation in the activities of other persons. In a pluralistic society such as ours, cooperation occurs in almost every form of personal activity that intersects with other human activity.

Cooperation becomes a moral issue when the activity with which we cooperate is judged to be morally wrong. Are there moral limits to collaboration with others? How far may we go in this before our cooperative activity with the wrongdoing of others, even though it may not be wrong in itself, becomes morally wrong? How are we to assess such limitations? The questions are important, because we have a fundamental moral obligation to do good to others, not harm to them. Clearly this obligation not only forbids us seducing or scandalising others but also, at least in certain circumstances, giving positive assistance to them in their morally unacceptable behaviour.



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Moral theologians in the Catholic tradition have endeavoured to work out answers to these questions. As they have done in other areas of moral concern (recall, for example, the [principle of the 'double effect'](#) and the issue of [the resolution of conflict situations](#)<sup>1</sup>), they have formulated and refined over several centuries practical guidelines to assist in the resolution of cases of cooperation with others when their actions are judged to be morally wrong. The result is not a simple rule of thumb but a highly complex formulation appropriate to the complex structure of human action, requiring some effort both to understand and to apply. The effort needed is well

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<sup>1</sup> See my articles on this website.

worthwhile, as the tradition has furnished us with an important key to living morally in a pluralistic world.

### ***The formulation of the Principle of Cooperation in Wrongdoing***

The Oxford Dictionary defines cooperation as making joint efforts *with* a person, *in* work or doing, *for a purpose*. It therefore involves i) active intervention, not mere ‘toleration’ of what another does<sup>2</sup>, and ii) the issue of one’s intention in collaborating needs to be considered. The Catholic tradition addresses both these elements in its moral evaluation of cooperation: not only in terms of what positive assistance is given (which must not be in itself morally wrong) but more importantly *why* it is given. I take up first the question of the cooperator’s intention.

1) If the person cooperating intends, wants to happen or approves the other’s wrongdoing, the cooperation is called formal.

**Formal cooperation** is the intentional willing, desire or approval of something that one perceives to be evil. Because it involves intentional concurrence in the wrongness of the activity of another, it is thus by definition always without exception morally wrong.

However, since one’s intention need not necessarily be explicit, formal cooperation does not always have to involve explicit approval, as in the case of knowingly consenting to one’s partner’s adultery. It can sometimes be implicit.

**Implicit formal cooperation** happens when one’s explicit disapproval is contradicted by what one does. An example commonly given is the action of an assistant surgeon performing an essential part of an illicit operation, whatever he may think or say, or the health care institute that freely without any duress promotes the use of abortifacients in the local community, even though no explicit approval of abortion is expressed. Whether the intention is explicit or implicit, the cooperation is always morally evil.

2) If on the other hand the person cooperating does not intend, desire or approve, even implicitly, the wrong activity of the other, but contributes something that is of assistance to the other person, the cooperation is said to be material.

**Material cooperation** can again occur at two levels. If one cooperates in the activity itself of the wrongdoer, cooperation is said to be *immediate* material cooperation. In this case the action of the cooperator cannot be distinguished from that of the wrongdoer. Such cooperation is in general morally wrong, although some authors make allowance for the rare case in which one collaborates under duress. The presence of duress distinguishes immediate material cooperation from implicit formal cooperation.<sup>3</sup>

If one cooperates, not in the wrong activity in itself, but by doing something else that helps the other person in doing wrong, this is called *mediate* material cooperation. In this case the action of the cooperator is distinguishable from that of the wrongdoer. For example, consider the case of a nurse charged with preparing the theatre and the medical instruments needed in the performance of an operation seen as morally illicit. What she does is her normal work and it is not morally

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<sup>2</sup> Toleration means that we just let something happen but do nothing about it; in cooperating we actually help someone who is doing something wrong. In general terms, we may say that one is justified in tolerating evil in order to prevent a greater harm from occurring. See James Keenan SJ, ‘The Principle of Toleration’, Judith Dwyer ed., *The New Dictionary of Christian Social Thought* (Collegeville: Liturgical Press, 1994), p. 951-953.

<sup>3</sup> An example would be taking part in breaking-and-entering property under threat of death. Despite its close participation in the wrongful act, authors maintain that this kind of cooperation is not performed with real consent. See C. Henry Pesche, *Christian Ethics* (C. Goodliffe Neale: Alcester, Dublin, 1981), Vol. 1, p. 251-152.

wrong, whatever about the morality of the pending operation. Her cooperation is then mediate material cooperation. For it to become immediate would require her to be involved in the actual operation, say an illicit abortion. Under certain conditions, which will be considered later, mediate material cooperation may be morally acceptable.

Further light is shed upon the question of material cooperation by distinguishing those cases where the cooperative action closely touches the wrongful activity and is necessary to its carrying out, for example, the giving of an anaesthetic for an illicit operation, and where the cooperative activity serves the activity of the other but is not indispensable to it and in any case can be easily replaced, for example, the preparation of the operating theatre for an illicit operation. The former is called *proximate* mediate material cooperation, the latter *remote* mediate material cooperation. The relevance of this distinction will also be taken into account in what follows.

## ***Application of the Principle of Cooperation in Wrongdoing***

### **1) The Extent of the Principle**

Since the 17<sup>th</sup> century when the principle was first elaborated, moral theologians working in the Catholic tradition have applied it to a growing number of individual cases. James Keenan sums these up under three headings: relationships dealing with superiors, partners, or clients,<sup>4</sup> citing examples from various handbooks of moral theology in common usage in past times.

The first group included such instances as the employee carrying letters from his master to a woman with whom he was having an illicit affair, or erecting a ladder to facilitate his access to her upstairs room. Could the employee continue to work for his master in such a situation? Similar problems could apply to someone working in a newsagency selling pornographic material to the public. An analogous and more serious case would apply to a laboratory researcher whose work may contribute to nuclear or biochemical warfare.

Under the heading of relationships with a partner, the case most often cited by authors writing in the tradition applied to a husband or wife continuing to have sexual intercourse with a spouse practising contraception against the wishes of her/his partner.<sup>5</sup> Under what conditions may the innocent partner legitimately do this?

In the third category of relationships with clients, consideration was given to medical practitioners working in clinics providing among other things instruction about contraception or abortion, nurses, as we have already mentioned, assisting among other activities doctors who perform unlawful operations, priests distributing Holy Communion even to public sinners<sup>6</sup>, artists including in their repertoire emblems for the use of Masonic lodges.

Against the view of some ethicists, Keenan goes on in his article to establish conclusively that cooperation in wrongdoing applies not only in the case of individual persons but also in the context of institutions. The earlier applications of the traditional principle, it is true, were for the most part made to individuals concerned about keeping their job, as is clear from the examples

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<sup>4</sup> James Keenan SJ, 'Collaboration and Cooperation in Catholic Health Care', *The Australasian Catholic Record*, April 2000, Vol. 77, N. 2, p.1 66-167.

<sup>5</sup> In the Catholic moral tradition contraception is taught to be morally wrong, which explains why theologians have recourse to it in the examples they sometimes use. The teaching about contraception officially stems from Pope Paul VI's encyclical letter *Humanae Vitae* in 1968 and is still the official doctrine today. However, this teaching is not generally considered infallible and it must be admitted that many Catholics in good conscience no longer consider it applies to them.

<sup>6</sup> This was a controversial issue during the unsuccessful bid for election by John Kerry in the United States.

already cited, but institutions have figured more and more in cases considered over the last few centuries. The Vatican itself through its treaties and concordats with many international agencies is a prime example of this. Today Catholic organizations, for example, educational and social services and health care facilities, have recourse to the principle in order to maintain their distinctive contribution in a pluralistic society that increasingly permits and promotes unacceptable practices.<sup>7</sup>

## 2) How the Principle Applies

The principle is best understood by seeing the bearing of the various distinctions already explained.

### Formal Cooperation

The difference between formal and material cooperation is based upon the intention one has in collaborating with another's wrong activity. One may never justifiably intend an evil object. So, in relation to the cases listed above, if the servant aiding his master approved of his illicit affair, if the employee in the newsagency wanted to spread pornography, if the theatre nurse actually approved of the unlawful operation in which she was assisting, if the researcher desired the proliferation of nuclear or biochemical weapons in warfare, then they would be intending something they saw was morally evil. Their complicity would be formal cooperation.



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For this reason many Catholic bishops' conferences forbid Catholic hospitals to provide abortions or sterilizations as a matter of policy, and the same might be said for euthanasia. Today many think the decision to invade Iraq was morally wrong because it was based on false premises and foreseeable that the result would involve much greater harm than good. If that is so, then the so-called 'Coalition of the Willing' involved explicit formal cooperation with the United States on the part of Britain, Australia and other countries in something evil and was therefore morally wrong.

The same moral judgment would fall on the action of say Britain's M15 if, while openly pretending to condemn torture of prisoners, it sent captured secret agents to some other country where torture would be carried out. Even were it explicitly to disapprove of this practice, M15 would be guilty of at least *implicit* formal cooperation and thus guilty of serious moral wrongdoing.

<sup>7</sup> 'Collaboration and Cooperation', p. 167-169.

## Material Cooperation

By far the most important area of concern for moral theologians has traditionally focussed on cooperation by a person who does not intend, desire or approve the morally bad activity of another but who contributes to that activity by something he/she does. This is what we have labelled mediate material cooperation, in other words, material cooperation where the collaborator's action, though helping the wrongdoer achieve his object, is distinct from the action of the wrongdoer. When and under what conditions may one cooperate with another in this way?

The traditional answer is that material cooperation is permissible under three conditions:

- The cooperator's action is distinct from the action of the person(s) with whom one collaborates and is not itself wrong
- There is a proportionate reason for collaborating with the other
- Scandal is avoided or warranted

### (i) *Distinctiveness and Morality of the Cooperative Action*

According to the well-established tradition in moral theology, actions and their morality are determined by their object. The object of the action is simply what the action is about, what we might call the material happening.<sup>8</sup> So we say that the object of stealing is taking another's property, the object of killing is taking someone's life, the object of lying is falsifying the truth. If the object of the cooperative action is different from the object of the action of the other person, then the two actions are clearly distinct. Thus traditionally the act of delivering the letter by the servant has been distinguished from the master's illicit assignation and not considered morally wrong.<sup>9</sup>

As we see from this example, the morality of the cooperative action also depends on its object. However, it is important to be careful not to assess *object* in too abstract a way, forgetting about the context in which our actions always occur. For example, speaking in the abstract we commonly say that it is wrong to take another's property, because we presume that the owner, not unreasonably, would be opposed to this happening. But what if I am starving and in desperate need of food that is the property of another? The context here is quite different and in such a situation we might say that it would be quite unreasonable for the owner to object. So, to know the moral meaning of an action it is necessary to take account not only of the object of the act in itself but also of the circumstances in which it occurs.

Moral theologian Richard McCormick makes the point that certain acts have been traditionally defined to be morally wrong from their object alone, because the definition has included in the object 'not simply the material happening (object in a very narrow sense) but also elements beyond it which clearly exclude any possible justification', for example, theft defined as taking another's property *against the reasonable will of the owner*.<sup>10</sup>

The problem is to evaluate this reasoning in the context of the effect of a cooperative action on the other's action. To use a traditional Catholic example from institutional collaboration, does the provision by a government agency or a hospital of information about 'safer sex' and

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<sup>8</sup> We have entered this territory already on this website in my article on the principle of the double effect.

<sup>9</sup> The importance of distinguishing between moral objects of intention is illustrated according to traditional Catholic principles in the case of a married couple, one of whom is HIV positive, using a condom to avoid the risk of contracting aids by the unaffected partner. The moral object of the use of a condom is to prevent the spread of AIDS, not to prevent conception. The hygienic use of a prophylactic becomes a distinct object of intention and hence open to justification by the principle of the double effect. See James Keenan SJ, 'Prophylactics, Toleration and Cooperation: Contemporary Problems and Traditional Principles', *International Philosophical Quarterly* 29 (1989): p. 13.

<sup>10</sup> Richard McCormick SJ, 'Killing the Patient', *The Tablet*, 16<sup>th</sup> October, 1993, p. 133- 135.

condoms imply approval of the conduct to which these will lead? Obviously it could do so if that were the explicit or implicit intention but that is not necessarily the case.

The moral object intended by the government agency or the hospital, which determines the moral meaning of the act of collaboration in this example is presumably prevention of the spread of the HIV virus, a morally good object of intention and one quite distinct from that of those already decided upon how they will behave who then make use of the information and the condoms. It would be quite a different scenario to promote the sale of condoms as an advertising gimmick for other products, for example, home-delivery pizzas (as some 'enterprising' businesses have been reported as doing). In this latter context the promotion seems to be inseparable from the encouragement of sexual promiscuity for the sake of profit.

Other examples are the following:

- ❖ The provision of clean needles for intravenous drug users does not necessarily imply approval of the use to which the needles are put. This use, though foreseen, is outside the object of the cooperative activity and not intended by the provider. So this could be a case of licit material cooperation.
- ❖ In the institutional context, patients and clients who approach professional persons in a clinic or hospital for advice regarding their situation or condition have a right to appropriate information. It is wrong to induce patients or clients to do something they would consider morally unlawful, but giving objective information does not of itself imply approval of the abuse that others may make of this information.
- ❖ In the counselling situation a couple may, for instance, need to be awakened to the importance of responsible parenthood and should be given an explanation of all the available methods of family planning with their respective merits and demerits. Although a conscientious counsellor will not display complete indifference to the moral evaluation of particular methods, the final choice will be left to the individual couple. It is up to them to decide what they will do with the information given.

These cases may also be examples of licit material cooperation.

### ***(ii) Proportionate Reason for Cooperative Activity***

The presence of a proportionate reason for acting can sometimes present some difficulty in practice. As a general rule of thumb, it may be noted that a more serious reason is required:

- the greater the wrong with which one cooperates, especially if notable damage is done to the common good or an innocent third party. Thus a graver reason is needed to collaborate in some way towards homicide than towards another's property.
- the more proximately one's action touches that of the other and the more necessary it is to it. For example setting up the type for a salacious book would need greater justifying reason than supplying the paper for it.
- the more likely it is that, without the cooperation, the other's action will be prevented. If there are others who will collaborate, a less serious reason will suffice.
- the more certain it is that the other will abuse one's action in order to do wrong. If one merely fears or suspects that this will happen, a less serious reason will be needed.

The virtue of practical wisdom must needs guide us in assessing and implementing these provisos if we are facing a problem of materially cooperating in wrongdoing.

It is often helpful to express proportionate reason in negative terms: Do the bad effects of not cooperating outweigh the wrong that will be occasioned by cooperating? In this way licit material cooperation can be seen as a means of limiting the cycle of wrongdoing in our pluralist

society. For example, a woman seeing her husband about to beat a child with a baseball bat, who, powerless to restrain him, snatches up a belt and says: ‘Here, use this’. The full extent of the evil that would otherwise ensue is mitigated by the woman’s collaborative action, which is in this way made morally justifiable.<sup>11</sup>

“We are much more alert today to the primacy of individual conscience in the function of moral decision-making. We realise more clearly than in the past that we have a serious obligation to respect the freedom of others in determining the moral rightness or wrongness of their behaviour, provided of course that the rights of others are not violated or the common good jeopardised.”

In evaluating the morality of material cooperation, attention may need to be given to the evil effect of not cooperating in some cases. We are much more alert today to the primacy of individual conscience in the function of moral decision-making. We realise more clearly than in the past that we have a serious obligation to respect the freedom of others in determining the moral rightness or wrongness of their behaviour, provided of course that the rights of others are not violated or the common good jeopardised. In some instances greater harm would be done to such fundamental values by refusing to cooperate materially with them in their activity. This could have particular relevance at the institutional level.

Finally, it is important to point out that one may cooperate in wrongdoing by failing to act when there is an obligation to do so. Citizens may have a duty to assist police, even at some personal risk, by informing on drug traffickers or other criminals and perhaps seeking the intervention of the law. If one is privy to such information, one must have a proportionate reason to remain silent. Parents may have an obligation to protest against some of the literature that is set for examinations. Christians have sometimes been guilty of ecocide, at least by failing to understand the meaning and thrust of the bible regarding the environment. Many other examples of material cooperation with wrongdoing by culpable failure to act occur in everyday life.

### ***iii) Avoidance of Scandal***

Sometimes collaboration may give rise to scandal. The theological meaning of scandal is not that it may cause surprise but that it provides other people with the temptation or the occasion to do wrong. Because we ought not be indifferent to the effect of our actions on others, we should not as a general rule act in such a way as to cause scandal to others unless we have good reason to do so, even when we are convinced that what we are doing is right. At the very least we may owe others an explanation of our reasons and why we consider they justify our doing what we are doing.

However, the real concern with scandal is not so much with our personal actions but with the occasioning of social evil. This is much more likely to happen at the institutional level. A Catholic hospital, for example, might in some instances have to make a prudential judgment against collaborating otherwise justifiably with some other health-care facilities whose activities are considered morally unacceptable, because of the risk of serious scandal. This is a complex issue that is beyond the scope of this article. •

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<sup>11</sup> See Keenan, ‘Prophylactics, Toleration and Cooperation’, p.207.