

APPROPRIATION OF EVIL: COOPERATION'S MIRROR IMAGE

M. CATHLEEN KAVENY

[The author argues that the category of cooperation of evil needs to be supplemented by a new category of appropriation of evil. Cooperation focuses on agents who must decide whether to perform an act that contributes to the morally objectionable action of another. In contrast, appropriation concentrates on the "mirror image" problem faced by agents who must decide whether to make use of the fruits of another agent's morally objectionable action. She suggests that the new category better illuminates problems involved in research using fetal tissue obtained from elective abortions, the purchase of goods made in sweatshops, and some affiliations between Catholic health care facilities and those that perform procedures prohibited by the Ethical and Religious Directives.]

OUR ACTIONS BOTH DRAW UPON and contribute to the actions of other agents in many ways and on many occasions. Much of the time, of course, we are unable to specify each and every act performed by someone else that has in some way helped us to carry out an action we presently contemplate performing, just as we cannot predict with any degree of certainty the precise set of actions that our acts will enable others to perform. Sometimes, however, we can identify a connection between our acts and the prior or future acts of other agents. In many instances, we view that connection with gratitude or gratification, recognizing that our accomplishments depend upon the good work of our predecessors, or hoping that our acts will contribute to the worthwhile projects of those who come after us. Unfortunately, however, there can also be circumstances in which we are deeply troubled by the prospect of a connection between our action and the action of another agent because we judge the other's action to be morally objectionable in some respect.

Agents confronted by such circumstances must decide whether to go

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forward with their contemplated action despite its connection with the morally objectionable action of another, or to avoid that connection by foregoing both their act and whatever good it would have achieved. The salient moral issues involved in such a decision can be analyzed under two categories whose application depends precisely upon how the agent faced with the moral decision is situated with respect to the unacceptable action performed by someone else. On the one hand, sometimes the question is posed by an agent whose action (or its fruits or byproducts) will be taken up and incorporated into the morally objectionable plans of another agent. On the other hand, sometimes the question is posed by an agent considering whether or not to take up and incorporate the fruits or byproducts of someone else's illicit action into his or her own activity. In the Catholic moral tradition, the first scenario falls within the domain governed by the category of cooperation with evil. In this essay, I argue that the tradition needs to be developed to incorporate a new analytical category, which I call *appropriation of evil*, in order to grapple properly with the second scenario.¹

Why is the new category of appropriation necessary? First and foremost, it accurately describes what is morally at stake in a number of problems receiving increased attention today, ranging from conducting research with tissue taken from electively aborted fetuses to purchasing clothes made in sweatshops located in developing countries. Second, it presupposes and highlights a crucial aspect of Catholic moral teaching that has been in grave danger of being eclipsed in both the manuals of moral theology and in contemporary secular ethics: the teaching that an evil act does its greatest damage to the one who performs it. It is only the renewal of virtue ethics, which emphasizes the manner in which an agent's actions shape his or her character, that has allowed us to reaffirm this insight. Moreover, it is only with the benefit of virtue ethics that we can appreciate why the moral problem of appropriation of evil cannot be reduced without remainder to the problem of cooperation with evil. Third, lacking the appropriate category, several contemporary moralists have attempted to use the matrix of cooperation to grapple with what in reality are appropriation problems. These attempts are deeply problematic, not only because they are unable to take hold of the true nature of the moral difficulty at issue, but because they can give a distorted impression of its seriousness.

It is my hope that formulating a new category of appropriation of evil will obviate some of the difficulties described in the foregoing paragraphs. The first section of my article describes and applies this new category of

¹ Both categories refer to "evil" in its moral sense, not in its metaphysical sense as a *privatio boni*. Strictly speaking, one cooperates with or appropriates morally defective acts, not with evil per se.

appropriation, developing it in contrast with the tradition's well-honed sense of the range of problems falling under the category of cooperation. Section two responds to the possible objection that problems of appropriation are in fact reducible to cooperation problems, at least to the extent that they raise any true moral difficulties at all. The third section attempts to root both the categories of cooperation and appropriation in an agent-centered, virtue-oriented action theory. Finally, the fourth section begins the task of formulating criteria to evaluate appropriation problems by looking at three case studies.

TOWARD A NEW CATEGORY OF APPROPRIATION OF EVIL

The Analytical Matrix of Cooperation

The general definition of cooperation with evil offered in the manuals of moral theology is "concurrence with another person in a sinful act."² This definition covers situations normally associated with the word "cooperation" as it is used in its nontechnical sense, such as when one person engages with another person in a common project on a more-or-less equal basis (e.g., the bank-robbing team of Bonnie and Clyde). From a moral perspective, these are the easy cases. Both Bonnie and Clyde are equally responsible for the design and execution of their illicit plans. Each intends the wrongful actions of the other as the means to a common end benefitting them both.

However, as a technical term of moral theology, "cooperation" is generally used to refer to the theoretically and practically more difficult situations in which the two agents in question are not equal participants in the instigation and execution of the morally objectionable activity. Rather, one agent (the "cooperator") faces a situation in which his or her act will somehow contribute, in a subordinate way, to a morally unacceptable action plan designed and controlled by someone else (the "principal agent").³

² See, e.g., Henry Davis, S.J., *Moral and Pastoral Theology 1: Human Acts, Sin, and Virtue*, ed. L.W. Geddes (New York: Sheed & Ward, 1958) 341; Edwin F. Healy, *Moral Guidance* (Chicago: Loyola University, 1942) 43; Dominic M. Prümmer, O.P., *Handbook of Moral Theology*, trans. Gerald W. Shelton (Cork: Mercier, 1956) 103. By "sinful" the manualists here mean "objectively morally wrong." Obviously, to address the subjective sinfulness of any act would require taking into account the state of knowledge and freedom of the agent who has committed it.

³ See Orville N. Griesse who defines formal cooperation as a "sharing of the *intent* of the principal agent who performs the action" and material cooperation as the provision on the part of the cooperator of "some type of assistance which facilitates the performance of an immoral procedure, but there is no sharing in the intent of the principal agent" (*Catholic Identity in Health Care: Principles and Practice* [Braintree, Mass.: Pope John Center, 1989] chap. 10, "The Principle of Material

Bernard Häring defined cooperation as “any and every physical or moral assistance in the commission of [an objectively] sinful action and in union with others.”⁴ Germain Grisez and Joseph Boyle aptly describe cooperation problems as concerned with the morality of “helping.”⁵

Questions raised by the principle of cooperation include the following: How far, if at all, should we design or alter our own plans of action to avoid their conscription into the illicit plans of another? How do we decide when the contribution that our action will make to another’s wrongdoing is too great, or the connection between their action and ours is too close? When does making such a contribution to their wrongdoing morally stain us, and when is it simply the regrettable, inevitable consequence of living in a fallen world that is also ineluctably social? Anthony Fisher neatly summarizes the posture of the cooperator with respect to the morally objectionable activity of the principal agent:

Though co-operating in the project, the agent in question is not the one most directly involved, conceiving, instigating, directing, coordinating, and actually engineering the operation. Rather she is in a secondary or subordinate role to the principal agent(s) and contributes something which facilitates the wrongdoing of the principal agent(s). What she wants to know is how close she can properly get to taking part, without becoming, as it were, an accessory, a conspirator. How involved can she be without becoming tainted by it.⁶

A few specific examples of cases discussed by Catholic casuists will help illustrate the range of moral questions the category of cooperation was designed to illuminate. Can a locksmith agree at gunpoint to help robbers break into a bank’s safe and carry out the money? Can a taxi driver bring a customer to an address that he knows to be a brothel? Can a medical student participate in an elective abortion in order to complete the requirements for his or her medical degree? Can a registrar witness the remarriage of a Catholic who has been civilly divorced but whose first marriage has not been annulled? Can a private secretary take down in dictation, type, and mail a letter in which her boss reveals a secret that is injurious to a third

Cooperation” 387–88); Germain Grisez defines cooperation as “the subordinate action of one who contributes something to the wrongdoing of another, who is the principal agent pursuing his or her proper good” (*The Way of the Lord Jesus 2: Living a Christian Life* [Quincy, Ill.: Franciscan, 1993] 440).

⁴ Bernard Häring, *The Law of Christ 2: Special Moral Theology* (Cork: Mercier, 1963) 495.

⁵ Germain Grisez and Joseph Boyle, *Life and Death with Liberty and Justice: A Contribution to the Euthanasia Debate* (Notre Dame: University of Notre Dame, 1979) 422.

⁶ Anthony Fisher, “Co-Operation in Evil,” *Catholic Medical Quarterly* 44 (February 1994) 15.

party? Can a worker contribute to United Way when a portion of the funds will support Planned Parenthood? Can a clerk keep his position in a drugstore that sells morally objectionable magazines and contraceptives? Can a legislator vote for a law that provides public funding for abortions?⁷

The Catholic moral tradition has developed an elaborate and sometimes abstruse matrix for evaluating cases of cooperation with evil. Despite the definite tone adopted by some manualists when discussing these matters, the matrix is not designed automatically to generate undebatable answers to what are undeniably complicated questions, as James Keenan has repeatedly pointed out. Rather, its function is to illuminate some of the salient issues that potential cooperators should consider in evaluating the moral status of their actions.

The crucial issue is whether the contribution to the wrongdoing is intentional; in other words, whether the cooperator actually intends, either as an end in itself or as a means to some other end, the wrongdoing designed by the principal agent. The tradition calls such intentional furtherance of the illicit activity of another *formal cooperation*; precisely because it involves intentional evildoing on the part of the cooperator, it is never permissible. A clear example of formal cooperation taken from the foregoing list of examples is the medical student who participates in an abortion in order to complete his or her degree requirements; from the perspective of traditional Catholic moralists, such a student is impermissibly doing evil that good might come of it. In many other cases, however, identifying whether or not formal cooperation is involved is far from a straightforward task.⁸

Material cooperation, in contrast, is the label applied to situations in which the cooperator does *not* intend the morally objectionable actions of the principal agent. Whereas formal cooperation is always prohibited, the permissibility of material cooperation is determined on a case-by-case basis, and depends upon a variety of factors, each of which may point in a different direction. Many of these factors are encapsulated in an elaborate series of categories designed by moral theologians to identify to what de-

⁷ Fisher's article includes a helpful collection of classic cooperation cases treated by traditional moralists ("Co-Operation in Evil" 19–21). Other helpful lists can be found in Davis, *Moral and Pastoral Theology* 1.342–52; and James Keenan, S.J., "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles," *International Philosophical Quarterly* 29 (1989) 206–20. In addition, German Grisez discusses over 30 cases involving cooperation with evil (*The Way of the Lord Jesus 3: Difficult Moral Problems* [Quincy, Ill.: Franciscan, 1997]).

⁸ Two crucial and interrelated issues that arise in applying the matrix of cooperation are: how to describe the intentional action of the cooperator; and how to take into account the way that duress might affect our assessment of the cooperator's actions. I will explore these complicated issues more fully in a forthcoming article.

gree⁹ and in what respect¹⁰ the action of the cooperator overlaps with and contributes to¹¹ the illicit action of the principal agent.¹² Other salient concerns include the gravity of the loss that would be suffered by the cooperator if he or she declines to cooperate and the magnitude of the evil planned by the principal agent.¹³ A final important consideration is the risk that cooperating in a given situation will cause scandal to others. This phenomenon is not to be identified with the hushed whispers, the raised eyebrows, and the admixture of fascination and repulsion that the common meaning of the term evokes. Rather, “causing scandal” in the theological sense connotes performing an action that increases the possibility that

⁹ The category of immediate vs. mediate cooperation considers the degree to which the physical extension of the action of the cooperator overlaps with the wrongful action of the principal agent. If the cooperator’s action, described from an external perspective, completely overlaps with the action of the principal agent, then the cooperation is immediate; if there is some distance between the two actions, the cooperation is mediate. For example, even theorists who maintain that Patty Hearst’s participation in the bank robbery did not constitute formal cooperation would likely acknowledge that it qualified as immediate material cooperation, precisely because the physical extension of her action coincided so closely with the wrongful action of the Simbionese Liberation Army. When viewed from the external perspective of an onlooker, there is generally nothing that distinguishes an act of immediate material cooperation from an act of formal cooperation. Consequently, most manualists have been extremely reluctant to sanction acts of immediate material cooperation, apart from duress.

¹⁰ Once we have determined that the cooperator’s act is mediate cooperation, and therefore does not completely overlap with that of the principal agent, we use the categories of proximate or remote cooperation to consider the convergences and divergences that do exist between the two action plans. These categories direct us to examine how the two actions are situated with respect to each other in terms of a three-dimensional graph incorporating the axes of temporal proximity, geographical proximity, and causal proximity. All else being equal, the more proximate an act of cooperation is to the illicit activity of the principal agent, the harder it is to justify.

¹¹ If the action furnished by the cooperator is essential for the principal agent to succeed in carrying out his or her wrongful action, it is *necessary* cooperation; if the principal agent will succeed with or without his or her help, the cooperation is *contingent or free*. All things being equal, it is more difficult to justify necessary cooperation than it is to justify contingent cooperation.

¹² See, e.g., Griese, *Catholic Identity in Health Care: Principles and Practice* 388, citing Thomas O’Donnell, *Medicine and Christian Morality* (New York: Alba House, 1976) 32.

¹³ For example, church teaching prohibits using the category of material cooperation to justify abortions on the premises of Catholic hospitals, although that category can be used to justify the performance of sterilizations on their premises. See M. Cathleen Kaveny and James Keenan, S.J., “Ethical Issues in Health Care Restructuring,” *Theological Studies* 56 (1995) 136–50, at 146. National Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (Washington: United States Catholic Conference, 1995), Directive 45.

other persons who witness the action will engage in morally objectionable activity themselves.¹⁴

The Distinct Problem of Appropriation

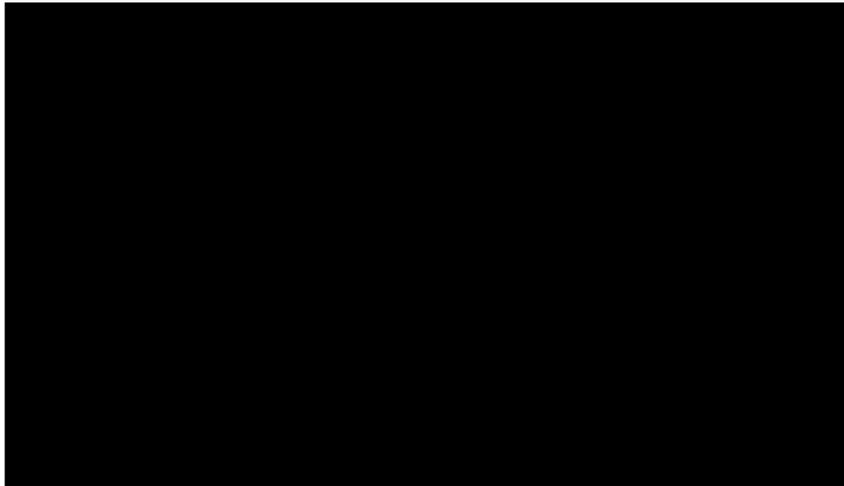
As important as cooperation problems are, they do not cover the whole range of ways in which the actions of an agent who is trying to be virtuous can intersect with the morally objectionable acts of others. The category of cooperation covers cases in which agents worry about whether they may morally perform an action that in some way *facilitates* someone else's morally objectionable activity; it does not cover the "mirror image" situations in which agents wonder whether they can *take advantage of* the fruits or byproducts of someone else's wrongful acts in order to facilitate their own morally worthwhile activity. As noted above, I propose referring to this latter situation as the problem of "appropriation of evil." More specifically, situations posing questions of appropriation of evil arise when one agent (the "appropriator") must decide whether or not to proceed with an action that in some respect makes use of the fruits or byproducts of a morally objectionable action performed by another agent (the "auxiliary agent").

Some examples of appropriation problems include the following: Can a contemporary researcher make use of data from experiments performed by the Nazis? Can a researcher use fetal tissue obtained from elective abortions in carrying out experiments? Can a woman buy a dress from a discount store, having reason to believe that its inexpensive price is attributable to the manufacturer's exploitation of the labor of desperately poor children in developing countries? Can a wife support herself and her five minor children with income her husband earns by working at a nuclear arms factory that manufactures counter-population weapons? Can a worker accept a promotion that he or she would not have received had not the employer unjustly fired a co-worker who had more seniority and was next in line for the job? Predicting that there will be a riot as a result of controversial, racially charged verdict, can an ambitious reporter position herself so as to best capture it on film and further her career? Can a wealthy individual take advantage of an income tax law that was passed by legislators in order to protect their own financial interests rather than

¹⁴ Scandal is defined as "some word or deed (whether of omission or commission) that is itself evil or has the appearance of evil and provides an occasion of sin to another" (Prümmer, 102). The Appendix to the *Ethical and Religious Directives for Catholic Health Care Services* specifies that "in making a judgment about cooperation, it is essential that the possibility of scandal should be eliminated." As James Keenan, S.J., and Thomas Kopfensteiner point out, avoiding scandal involves "demonstrat[ing] reasonably to our communities that our conduct is actually in keeping with traditionally accepted forms of behavior" ("The Principle of Cooperation," *Health Progress* 76 [April 1995] 26).

the interests of poor families? Can a wounded soldier choose to follow Rambo rather than G.I. Joe to safety, when he believes that Rambo will create a safer path in his wake by engaging in activities that are morally prohibited to soldiers during battle?

The basic structure of the actions involved in cooperation and appropriation problems is the same. In both types of cases, an auxiliary agent performs an action that somehow facilitates or supports the principal agent's efforts in performing his or her own action. What is different in each case is the respective identities of the agent facing a moral decision about whether or not to go forward with a particular action, and the agent who has already decided to perform a morally objectionable act. In short, in cooperation cases the *auxiliary agent* is the morally conscientious decision-maker who must decide what to do in light of his or her prospective action's likely *contribution to* an evil act performed by the principal agent. In appropriation cases, the roles are reversed. Here, it is the *principal agent* who is the morally conscientious decision-maker, who must decide whether to go ahead with an action that *makes use of* the fruits or byproducts of a morally objectionable act performed by the auxiliary agent.



While Catholic moral theology has devoted a great deal of attention to cooperation problems since the category was formulated by Alphonso de Liguori, no one to my knowledge has previously explicitly recognized the existence of a parallel set of appropriation problems, let alone developed a matrix to facilitate their moral consideration.¹⁵ What could account for

¹⁵ Several cases considered in Germain Grisez's *Difficult Moral Questions* involve appropriation of evil. Generally, he recognizes that they may involve questions that are not identical to those involved in cooperation, although he does not

this rather startling failure on the part of Catholic moralists to step back for a moment and acknowledge that the realm of cooperation covers only half of the possibilities for good actions to intersect with evil ones? While a detailed historical study of this question lies well outside the scope of this article, let me hazard a guess that anticipates some responses that I will make to possible objections to the category of appropriation later in this article.

As historians of moral theology have recounted,¹⁶ the manualists saw themselves as facilitating the work of confessors, whose task it was to judge and assign a penance to each sin confessed by a penitent. Consequently, they focused their analysis on distinct sinful acts and the circumstances that aggravated or mitigated their gravity. While they never entirely lost their concern for an agent's purposes in acting, either in his or her immediate objective (*finis operis*) or his or her broader goals (*finis operantis*), they developed that concern in ways increasingly removed from the agent-centered, virtue-oriented view of human action that permeates the writings of Thomas Aquinas. They began to formulate their description of human actions by assuming an external viewpoint that emphasized the physical structure and causal consequences of the action, not by empathetically adopting an internal viewpoint that described it in terms of the agent's purposeful activity. They *ascribed* intentions to agents based on external descriptions of their actions, rather than encouraging confessors to use those descriptions as extremely reliable clues in *discerning* each agent's own immediate and remote purposes in acting. Decoupled from its essential moorings in broader understanding of how an agent's purposeful activity shapes his or her character, the action theory employed by the manualists began to take on an externalist (sometimes called physicalist) cast.

In my view, it is the externalist quality of their action theory that explains why the manualists saw cooperation with evil as a pressing moral problem, but failed to appreciate the moral dangers posed by appropriation of evil. In cooperation cases, the evil to be done is prospective; the cooperator's action causally contributes to the execution of the illicit action by the principal agent. From a perspective that focuses on the external dimension of human acts, cooperation problems are obvious; we can see how the

attempt to describe the similarities and differences. For example, in question 39 which considers whether "a gangster's sister may accept his money for college expenses" he acknowledges that the problem is "similar to a problem about cooperation, though accepting her brother's money would not involve cooperating with his wrongdoing" (182).

¹⁶ For a history of the development of moral theology, see John Mahoney, *The Making of Moral Theology* (Oxford: Clarendon, 1987); John A. Gallagher, *Time Past, Time Future* (New York: Paulist, 1990); and Charles E. Curran, *The Origins of Moral Theology in the United States: Three Different Approaches* (Washington: Georgetown University, 1997).

cooperator's action fuels the evil act of another agent. But such a perspective renders the moral dangers of appropriation virtually invisible. Appropriators make no causal contribution to the evil action whose fruits or byproducts they appropriate; generally speaking (but not always), at the time they confront the decision about whether to act, the evil act has already been done. The main effect of a decision to appropriate the evil action of another is internal; by choosing to tie their action to the evil act of another, appropriators shape their characters in a way that may not have immediate, tangible consequences in the external world. In short, the immediate impact of the decision to appropriate the illicit act of another is a deeply interior one; it alters the character of the appropriator.

The contemporary reemergence of virtue theory, with its renewed focus on the relationship between act and character, allows us to see that appropriation of evil poses moral dangers that are distinct from, although in some sense analogous to, those that arise in cooperation problems. Moreover, as I argue below, it is the retrieval of a virtue-oriented approach to ethics that allows us to explain some features of the cooperation matrix that would not make sense if we were consistently to apply the externalist account of action of the moralists who developed that matrix.

JUSTIFYING A NEW CATEGORY OF APPROPRIATION

At this point, a reader of this article might object that the manualists were right in their indifference to appropriation as a distinct moral problem. Despite the unsavory connection with evildoing in the examples of appropriation offered in the preceding section, one might maintain that the only morally salient factor in any of them is whether or not the case involves a cooperation problem. In other words, one could contend that my attempt to argue for the recognition of appropriation as a distinct moral issue is a misleading type of moral rigorism: either so-called appropriation problems can be redescribed as cooperation problems, or they are not truly moral problems at all. Taking examples from the list of appropriation problems above, one could deny that the contemporary use of Nazi research results is morally questionable, precisely because there is no danger that the action of the person appropriating the data will contribute to Nazi evildoing. Similarly, one could say that whether a family should accept financial support from its breadwinner centrally depends on whether doing so constitutes unjustified encouragement for him or her to continue in a morally objectionable occupation.

My response to this objection has three prongs, the first of which is a reflection on what constitutes an adequate description of a problem for purposes of moral analysis. I suggest that in many cases in which one agent must decide whether or not to go forward with an action that intersects

with the wrongful activities of another, the categories of cooperation and appropriation do not provide equally helpful ways of describing the moral difficulty that such an agent confronts. Generally speaking, one or the other category frames the issue in a way that better captures the moral problem at stake. In the second prong, I demonstrate the plausibility of this claim through a close examination of a “test case”: Russell Smith’s recent attempt to use the category of cooperation to analyze what is actually an appropriation problem, the moral permissibility of the experimental use of fetal tissue obtained from elective abortions. In the third prong, I explain how moralists who attempt to force appropriation problems into the matrix of cooperation can easily make a double mistake: not only misdescribing the nature of the problem, but misjudging its seriousness by wrongly concluding that it involves formal cooperation (i.e., intentional wrongdoing). Finally, I sketch the implications of this double mistake for a crucial contemporary issue: affiliations involving Catholic health care facilities and institutions that perform medical procedures inconsistent with the Church’s moral teachings.

Framing Moral Problems

Isolating any decision from the ebb and flow of daily life to subject it to moral analysis is first of all a matter of taking a “snapshot” of the situation from the perspective of the person confronting the morally problematic decision. Once we have identified the agent whose perspective we must adopt in asking the moral question, we are immediately confronted with a second question: which way should we point the camera? The categories of cooperation and appropriation provide distinct answers to this second question. Each category supplies us with a frame that shapes the perspective from which we analyze the moral decision at issue. But how do we know we are applying the right category? If a framework is useful in a particular case, it will put the various components of a problem in a perspective that facilitates moral analysis and that locates within its horizon the full range of issues requiring consideration. Therefore, when asking ourselves which category to apply, the primary question should be which category best “captures” the moral problem under discussion. Simply put, the question is whether the basic moral difficulty posed by the moral decision-maker’s contemplated action is that it makes use of or that it contributes to the bad act of someone else.

Many cases fit more naturally within one of the two perspectives offered by the categories of cooperation and appropriation.¹⁷ For example, con-

¹⁷ There are, of course, some moral issues that are equally well described as questions of appropriation and as questions of cooperation. Clearly, true cases of

sider the classic cooperation problem of whether a servant (the cooperator) can deliver a letter making arrangements for a lovers' tryst to the mistress of his employer (the evil-doing principal agent). We can try to force this scenario into an appropriation matrix by attempting to put our morally conscientious servant in the role of an appropriator. So doing, however, demands that we recast the moral question faced by the servant. Using the category of appropriation requires us to describe the decision confronting him (here cast as the appropriator) as whether he may make use of the illicit action (the arrangement of the tryst) of his employer (here in the role of the evil-doing auxiliary agent) for his own ends (earning his salary).

Even a moment's reflection suggests that this description significantly distorts the issues involved. The essence of an appropriation case lies in the fact that the appropriator uses the illicit action or its fruits or byproducts to further the appropriator's own plan of action. But here, neither the illicit action nor its immediate consequences facilitates the servant's goals; his own agenda would not be detrimentally affected in any respect if his employer changed his mind at the last minute and decided to break off the affair. The servant has not set up his own plans in any way that incorporates the employer's evil action or its fruits or byproducts. Consequently, it makes very little sense to describe his question as whether or not he can use the illicit affair of his employer. However, if we recast the problem in terms of the framework provided by the category of *cooperation*, the real moral question facing the servant immediately comes into proper focus. The decision facing the servant (now properly cast in the role of cooperator) is clearly whether he should perform an act (delivering the letter) that directly helps his employer (now, rightly viewed as the principal agent) go forward with a specific, morally illicit plan of action (the affair).

Furthermore, the category of cooperation provides us with a better way

conspiracy to commit evil fall under this category. Co-conspirators Bonnie and Clyde both contributed to and made use of each other's illicit actions. However, there are also other cases that may qualify. For example, suppose a situation in which a husband steals very rare medication solely because he knows it will help his invalid wife. She has to decide whether or not to take the medication he has procured for her through wrongful means. Her decision clearly presents an appropriation issue: "Do I take this medicine in order to get well, knowing that it is the fruit of my husband's thievery?" Yet it presents almost as strong a problem from the perspective of cooperation: "Do I take this medicine in order to get well, knowing that my doing so will provide just the encouragement my husband needs to commit future acts of theft?" Such "hybrid" problems should be examined under both categories. Of course, I am assuming in this example that the moral description of the husband's action as theft, i.e., the unjust taking of property belonging to another, is correct. For a *locus classicus* of the argument that it is not always unjust to take property belonging to another—i.e., for a starving person to take food from someone who has plenty, see Thomas Aquinas, *Summa theologiae* 2–2, q. 66, a. 7.

of understanding what is at stake for the servant in this decision. In a loose sense, it *is* true that the servant will gain some benefit (or avoid some harm) as a general consequence of his decision to participate in his employer's plan to arrange a tryst. Why, then, does not this prospect of benefit make this an appropriation case after all? Because this general type of beneficial connection is not what is contemplated by the category of appropriation of evil, which would be implicated only if the illicit action per se (or its fruits or byproducts) benefitted the servant. Here, it is not that the servant will be hindered in accomplishing his own objectives if he cannot conscript his employer's action to further them.¹⁸ It is rather that the servant might be subject to an unpleasant consequence (termination of employment) unless he facilitates his employer's action—unless, in other words, he cooperates.

Put another way, we could say that the *cooperation* is a means to the servant's ends. That is by no means the same thing, however, as saying that his employer's illicit act is a means to his ends. In fact, not only have traditional interpretations of cooperation acknowledged that the cooperation generally facilitates the cooperator's ends, they have *required* that those ends be sufficiently substantial to justify the cooperation. For example, one of the key features an agent must consider in deciding whether or not to go forward with an act of material cooperation is the consequence of not cooperating. All things being equal, an individual should not materially cooperate with the evildoing of another unless there is a sufficiently weighty reason for doing so.

We find a similar problem of “fit” when we attempt to describe an *appropriation* problem within the framework of cooperation. Consider the case of the worker deciding whether or not to accept a promotion to a position that is available only because the company unjustly fired her co-worker. We could try to force this scenario into the cooperation model in the following manner: The moral issue could be described as whether the worker (here cast as the cooperator) should engage in an action (accepting a promotion) that facilitates the illicit plan of her employer (here the principal agent) to fire persons unjustly. But just as we found with our misbegotten attempt to describe a cooperation problem in terms of appropriation, our attempt to do exactly the reverse here is both awkward and ultimately unsuccessful.

The fundamental issue in this second scenario is not whether the worker's action in accepting the promotion will “help” the employer's unjust plan of action; it is not even clear that the employer has developed an illicit action plan to govern future personnel decisions. Moreover, even if the employer has done so, it is not evident that the worker's decision to accept

¹⁸ Matters would be different, however, if the servant had been paid to arrange for a photographer from a supermarket tabloid to record the rendezvous.

the promotion will have any affect whatsoever on the employer's behavior. Rather, for the newly promoted employee, the salient question is whether she (the appropriator) can take advantage of the fruits of the unjust action of her employer (the evil-doing auxiliary agent) in order to further her own goals of career advancement. It is an issue of appropriation, not cooperation.

But there is, after all, some relationship between the promoted employee's action and the possible future wrongdoing of the unjust employer. By recasting the problem in terms of appropriation, we are better able to appreciate its nature. In general, whenever an appropriator takes up a auxiliary agent's illicit action or its immediate consequences and makes use of them in a constructive way, the appropriator fuels the auxiliary agent's capacity to discount the wrongfulness of his or her action by pointing to the good that came from it. Moreover, by fueling the auxiliary agent's capacity to rationalize his or her wrongful act, the appropriator might be "helping" the auxiliary agent to commit another act of a similar nature in the future.

Why does not this "help" count as cooperation with evil? Because this type of help is not what triggers the category of cooperation, which applies to situations in which the cooperator's *act* and/or its fruits or byproducts are used to facilitate the wrongdoing of the principal agent. Here, it is not as if the employer will *make use* of the employee's act of accepting the promotion in order to pursue a plan of unjustly terminating other members of the workforce. Rather, the wrongdoing employer might *interpret* the action of the employee in accepting the promotion as providing a reason why the action in question was not unjust. In turn, this rationalization might make it easier for the employer to act in a similar way in the future, should it become convenient to do so. But the attenuated way in which an appropriator may facilitate future wrongdoing on the part of a auxiliary agent does not transform an appropriation problem into a cooperation problem, any more than the "benefit" that a cooperator receives by playing a role in facilitating wrongdoing of a principal agent (i.e., benefit from cooperating) transforms a case of cooperation into a case of appropriation.

As the foregoing examples demonstrate, it is awkward and unsatisfying to attempt to use the category of cooperation in analyzing what is actually an appropriation problem, as well as to attempt to use the category of appropriation to analyze what is in reality a cooperation problem. Both attempts yield results that are similar to what happens when someone attempts to put a shoe designed for the right foot on its mirror image, the left foot. With difficulty, the shoe can be forced on the wrong extremity, and the wearer might possibly be able to hobble a step or two. Ultimately, however, the misplaced shoe will not do what it was designed to do; it will not provide a secure and comfortable platform on which its wearer can walk or run. Analogously, using the category of cooperation to analyze the

mirror image problem of appropriation will not in the end accomplish what that category was designed to accomplish, which is to help agents identify the morally salient components of a decision involving the intersections of their own actions with the wrongful actions of others.

A Test Case: Use of Tissue from Electively Aborted Fetuses

If the analysis set forth in the two preceding sections is correct, we would expect that any article attempting to analyze an appropriation problem with the tools provided by the category of cooperation would exhibit two general flaws. First, we would predict the article would incorporate an unsuccessful struggle to make the categories of cooperation latch onto the contours of the situation at hand. Second, because the categories of cooperation are finally of little or no help in analyzing appropriation cases, we would also expect the article to struggle to provide an ad hoc identification and evaluation of the moral difficulties inherent in the situation. These expectations are confirmed by a close examination of Russell Smith's article, "The Principle of Cooperation in Catholic Thought" in which he uses the category of cooperation to consider the morality of using fetal tissue procured from elective abortions in medical research.¹⁹ Smith concludes that such use constitutes impermissible material cooperation in evil.

Of the article's approximately ten pages of text, Smith devotes the first eight to a concise and helpful description of the roots of the category of cooperation in Catholic thought, along with an exposition of the basic categories through which it operates. However, he does not devote the same amount of attention to the actual application of these categories to the problem at hand. Surprisingly, his analysis of the morality of using fetal tissue obtained after elective abortions consumes less than two pages of text. One explanation for this disproportionate allocation of analytical attention is the relative uselessness of the categories of cooperation in evaluating what is actually an appropriation problem. As demonstrated below, if Smith had attempted to apply the framework of cooperation to the fetal tissue issue in a methodical manner, he would have been forced to confront this uselessness head on.

Smith defines cooperation as the "participation of one agent [the cooperator] in the activity of another agent [the principal agent] to produce a particular effect or joint activity." He gives examples of three different types of cooperators: the hostage, the taxpayer, and the accomplice. He acknowledges that the common feature exhibited in each of the three cases

¹⁹ Russell E. Smith, "The Principle of Cooperation in Catholic Thought," in *The Fetal Tissue Issue: Medical and Ethical Aspects*, ed. Peter J. Cataldo and Albert S. Moraczewski (Braintree, Mass.: Pope John Center, 1994) 81–92.

is that the action of the cooperator contributes to the action of the principal agent, although the character of that contribution varies from one to the next.²⁰ However, when Smith turns to the question of the experimental use of fetal tissue from elective abortions, he does not seem to recognize that the moral problem created by the experimental use of fetal tissue from elective abortions does not exhibit the same fundamental structure. Instead, its structure is just the reverse; the moral question is whether the principal agents can accept the contribution to their project made by the morally impermissible actions of the abortion provider.

Because the categories of cooperation were not designed to deal with moral problems having the structure of the fetal tissue issue, they fail to grab hold of it in an analytically satisfying manner. For example, in discerning whether cooperation is formal or material, we need to pose the moral question from the perspective of the potential *cooperators*, asking whether they intend to further the action of the wrongdoing principal agent. But how do we do so in this case? The categories of cooperation simply do not fit. On the one hand, it is the researchers who are confronted with a decision about whether to go forward with their action despite its connection with the wrongful action of another; we should therefore be posing the moral question from their perspective. On the other hand, we cannot pose a cooperation question from the perspective of the researchers, because they are not cooperators, but principal agents—and principal agents struggling to be morally upright, at that! In fact, the role of cooperator (which is a type of auxiliary agent) is played by the wrongdoing abortion clinic, since the byproducts of its actions (the aborted fetuses) are being used to further the objectives of another set of agents (the researchers). Accordingly, adopting the perspective of the morally perplexed cooperator in this situation would require us to ask whether the abortion providers intend the (supposedly illicit) actions of the researchers when they perform their abortions. Obviously, the question is nonsensical.

In order to force the application of cooperation's framework for distinguishing formal from material cooperation in this situation, it is necessary to distort both the factual situation and the questions one puts to it in significant ways. For example, one could focus on whether the abortion providers intend the research on fetuses to go forward, and conflate this issue with the question of whether allowing such research would legitimate abortion. Alternatively, one could attempt to fuse the issue of whether the researchers intend the elective abortions with the question of whether their research could exist without it. This latter distortion is the one that Smith adopts.

More specifically, Smith claims that the intentions of the researchers can

²⁰ Smith, "The Principle of Cooperation" 84.

be separated from the intent to abort the fetuses because “the researchers are only interested in research. *Their research on fetal tissue does not absolutely depend on the performance of abortion.* Abortion itself is a metaphysically contingent circumstance attaching to the fetal tissue upon which research is being done.”²¹ It is true that the researchers need not intend the performance of the abortion. It is true, however, *not* because their research does not depend upon abortion, but because they need not have any way of influencing decisions about whether or not one is performed. Taken at face value, Smith’s approach would lead us to say that a prosecutor intends the criminal activity of his defendants, because his success, indeed his job, does “absolutely depend” upon that activity. Yet clearly that cannot be the case. As discussed in more detail below, intention is purposeful causality; agents cannot intend outcomes over which they know they will have absolutely no influence. Provided that they have nothing to do with its planning or execution, neither prosecutor nor researchers intend the wrongful activity that becomes the basis for their own virtuous actions.

There are analogous difficulties raised by Smith’s attempt to apply the other categories of cooperation to the problem of fetal tissue research. In the end, he concludes that the use of fetal tissue obtained as a result of elective abortions constitutes proximate, mediate, contingent, material cooperation. This conclusion locates this use of fetal tissue on the less grave end of the spectrum of various types of cooperation. Consequently, we would expect that Smith would find such research morally acceptable, at least under some circumstances. Nonetheless, he reaches precisely the opposite judgment, maintaining that the scientific use of tissue from electively aborted fetuses should not be permitted. Significantly, his reasons for so judging do not derive from the application of the principles central to the category of cooperation. Smith maintains that “the value of the lives aborted would be further denigrated by making the victims mere instruments of medical progress.” He also suggests that there are other ways of meeting research needs other than by using the tissue of electively aborted fetuses. Strikingly enough, both of these points implicitly invoke the structure of an appropriation problem, which focuses on the permissibility of using the fruits or byproducts of an evil act.

Smith also worries that the research in question would create scandal by generating “the almost insurmountable impression of being formal cooperation.” The basis for this worry is not entirely clear. He may be pointing to the fact that the researchers would not simply be surreptitiously scavenging through the refuse of the clinic, but predicting the future availability of fetal remains from the clinic, and making their plans accordingly. In so calculating to use the results of the abortion clinic’s future illicit actions, the

²¹ Ibid. 90 (emphasis added).

researchers may appear to intend those actions. In the next section, I argue that this appearance can not only be deceptive, but a major cause of a tendency to mistake a certain class of appropriation problems for formal cooperation in evil.

In short, a close reading of Smith's analysis of the fetal tissue issue reveals that while the categories of cooperation claim most of the attention, they do not in fact do most of the work. Because those categories yield results that reflect the moral complexities involved in this case only partially and obliquely, Smith has no choice but to draw the moral force of his analysis from elsewhere. This is not to denigrate the principle of cooperation. It is merely to point out that even the best tools do not work well when they are conscripted for a job they are not designed to do. Fundamentally, the problem Smith grapples with is one of appropriation, not cooperation.

Intention, Cooperation, and Appropriation

The treatment of the fetal tissue example by some contemporary moralists points to another unfortunate mistake that can arise in connection with attempts to force appropriation problems into the matrix of cooperation. The focus of an appropriation problem is the appropriator's decision to make use of the fruits or byproducts of the evil act performed by an auxiliary agent. In cases where the evil act is decisively in the past, such as data obtained in Nazi experiments, there is no temptation to claim that the appropriator intends the evil doing at issue. What about situations in which the appropriator makes use of a contemporaneous or future bad act of an auxiliary agent, such as a researcher who makes use of aborted fetuses obtained from the local abortion clinic? As Smith's analysis suggests, it is tempting to say that he or she intends those bad acts as means to his or her ends. When appropriation problems are wrongly forced into the matrix of cooperation, it is tempting to label the role of the so-called cooperator (who is actually an appropriator) as formal cooperation and hence as always impermissible. The moral analysis in such cases can be doubly deceptive: it can misconstrue the nature of the moral problem at issue and it can mistake the degree of intentional involvement that is attributable to the appropriator. In this section, I hope to show why it is not necessarily the case that appropriators intend the contemporaneous or future evil acts whose fruits or byproducts they appropriate in order to further their own ends. I also hope to explain why it can be so easy for moralists mistakenly to conclude otherwise. Doing so will require distinguishing intention from its close cousins, wish and prediction. It will also require unpacking the helpful but sometimes misleading maxim "agents intend the means to their ends."

An agent ordinarily performs an act intentionally when he or she can

give an answer to the question “what are you doing?” Ordinarily, the description the agent gives in response to that question is his or her intentional description of the act. Sometimes, individuals intentionally perform isolated acts that are not designed to lead to a larger end. On many other occasions, however, agents perform individual intentional actions as one step in a “chain” of intentional actions designed to achieve a larger purpose.²² The intermediate actions in the action chain are means to the last item in the chain, which is usually the most comprehensive goal. In order for an agent to claim that he or she intends to bring about a certain result in acting a certain way, the agent must believe both that there is some likelihood that the result in question will actually take place; and also that the action will in some appreciable way facilitate the occurrence of the result. Correlatively, an agent cannot be said to intend in an action either: any result that he or she knows or believes will not come about; or any result that he or she knows or believes that the action will in no way assist.

Precisely because agents cannot intend an outcome over which they know or believe their action has no influence, we need to distinguish between an intention and a pure wish, on the one hand, and intention and a prediction, on the other. Needless to say, when we intend a certain result in our actions, we desire to bring about that result. In a sense we wish for that result to occur. However, intention of an end does not involve a pure wish, because intention also requires the agent to make a deliberate attempt to cause that end to come into being. In contrast, a pure wish is an agent’s desire that some event or state of affairs come to be the case, unaccompanied by any action that the agent believes will help bring about that event or state of affairs. Unlike intention, a pure wish is desire uncoupled from causation.

Precisely for this reason, our pure wishes are entirely unconstrained by the laws of cause and effect. As the old adage observes, “if wishes were horses, beggars would ride.” Wishes are free, in every sense of the term. Because a pure wish is a desire unconstrained by laws of causation, an agent can wish for an end without necessarily wishing for the means required to bring about that end in the real world. Unlike intentions, which must pass through the agent’s intermediate actions on the way to a final objective, wishes can pick and choose. Indeed, it is frequently because an agent realizes that the means necessary to achieve a wished-for end will be very onerous that he or she decides against upgrading it to the status of an intended end (e.g., a college student who opts for law school rather than taking organic chemistry, a prerequisite to realizing her dream of becoming

²² Elizabeth Anscombe, *Intention* (London: Basil Blackwell, 1957; reprint ed.: Ithaca, N.Y.: Cornell University, 1966).

a doctor). Clearly, wishes are subject to moral scrutiny. Nonetheless, because wishes can pick and choose, it is a mistake to subject them to the same sort of means-end analysis to which we subject intentions. For example, it is a mistake to assume that parents who wish that an organ become available to save the life of their dying child are also committed to wishing for the death of another child to become the organ donor. They are not.

In addition to distinguishing an intention from a wish, we also need to distinguish it from a prediction. If a wish is an agent's desire unchained from reality, particularly its causal demands, then prediction, in a nutshell, is an agent's view of reality unchained from desire. More specifically, a prediction is an individual's judgment at one point in time that an event or a state of affairs will or will not take place at some future point in time. Prediction is a matter of the intellect; intention is fundamentally a matter of the will. Consequently, we can predict matters that we cannot properly be said to intend, including the intentional actions of others over which we have no control.

This sharper understanding of the difference between intention and prediction, on the one hand, and intention and wish, on the other, allows us to gain some critical distance on the maxim "agents intend the means to their ends." In one sense, it is clearly true. Agents intend their own intermediate actions that serve as stepping stones to the larger ends they strive to bring about. However, there are also many means to their ends that agents do not and cannot intend, simply because they have no control over them. Here, prediction and wish come into play. Sometimes the means in question is a natural occurrence. For example, the owners of a tourist trap near Old Faithful do not intend that the geyser will erupt after regular intervals, although its dependable outbursts are absolutely crucial to the success of their business and they wish for them to occur. Rather, they predict that the geyser will consistently erupt, and plan their own intentional activities accordingly. Other times, the requisite means is an intentional action performed by someone else. Hollywood tour bus operators ordinarily cannot intend that Mel Gibson jog every morning along a certain beach in Malibu, since they have no control over his route. They can, however, predict and wish that Mel will do so, much as the owners of the tourist trap predict and wish for the regular eruptions of Old Faithful.

Just as some agents construct their own intentional action plans on the basis of their predictions about the morally acceptable actions of others, so others build their action plans on the basis of predictions regarding the illicit actions of other people, over which they themselves have no control. For example, an ambitious undertaker in Al Capone's Chicago might set up his office near mob headquarters, predicting that a lot of business will come his way because of the location. He wishes for the business, although

he does not wish for the murders, just like the parents of the dying child wish for a life-saving organ without wishing that another child lose his or her life. To take another scenario, a private wounded in the heat of battle knows he must follow behind one of his retreating fellow soldiers in order to make it to safety. Predicting that Sargent Rambo will cut a wide swath by breaking every moral rule of engagement, he might decide to follow in his footsteps. The private wishes for effective cover provided by Rambo, but he does not wish for the rules of war to be violated.

It is now clear why someone might mistakenly conclude that the mortician and the wounded soldier each intend the evil actions of which they make use as means to their own ends. First, the desire component characteristic of intention is present in both cases. The undertaker desires an increase in his business and the private wishes for a safe path through the battle. Second, it is clear that in each, the evil action *is* an essential ingredient in the mix of circumstances that will realize each agent's desire. Third, the mortician and the soldier each predict that both the illicit action in question and its personally beneficial results will occur. This prediction resonates with the fact that ordinarily, we expect to realize the objectives of our intentional actions, and benefit from so doing. Taken together, these features of each situation are sufficient to evoke the maxim that "agents intend the means to their ends."

Yet, upon closer examination, it is clear that in neither example does the principal agent actually *intend* the illicit action in question, since he recognizes that he exercises absolutely no *causal* power with respect to it. Moreover, both situations actually pose appropriation problems. In each situation, the principal agent makes use of the illicit action of another agent. However, rather than using of past actions or their fruits or byproducts in a manner now familiar to us, these principal agents are using actions that they predict will occur. But the timing of the illicit action cannot be decisive in identifying appropriation problems. What is crucial is the fact that the principal agent incorporates that action—whenever it occurs—into her or his own action plan without having any causal power over it.

In light of the foregoing analysis, it is now possible to address the concern about the use of fetal tissue tentatively raised by Smith's article; that if the researchers plan to use fetal remains resulting from elective abortions on an ongoing basis, they intend that those abortions take place in a way that makes them formal "cooperators" in evil. In the first place, the researchers are not cooperators, but appropriators. In the second place, they probably do not intend the wrongdoing. The researchers certainly predict that the abortions will occur, resulting in the fetal remains of which they will make use. They wish and predict success to their own scientific efforts, for which a steady supply of fetal tissue is an indispensable means. However, they do not *intend* that the abortions be performed, because they

exert absolutely no control over the decision to go forward with the procedures performed by the clinic.²³

Application to Catholic Health Care Affiliations

Identifying and eliminating this temptation to confuse certain types of appropriation with formal cooperation is not only theoretically important, it has direct implications for an issue that is of immense practical importance to the Catholic Church today: the permissibility of Catholic health care institutions forging affiliations with non-Catholic institutions that furnish procedures prohibited by church teaching. The Ethical and Religious Directives governing Catholic health care facilities direct that the moral permissibility of such affiliations should be evaluated according to the principle of cooperation.²⁴ In considering such affiliations, some Catholic moralists have suggested that the Catholic institution *intends* the illicit acts performed by its secular partner, because those acts are a means to its own institutional survival. On this basis, they have concluded that the affiliation should not go forward, because it would involve the Catholic hospital in impermissible formal cooperation.

Depending upon the precise structure of the affiliation, this judgment may be warranted.²⁵ But it may also be the case that the Catholic institution is not engaged in cooperation, but appropriation. More specifically, if the affiliation were structured so that the Catholic hospital made no contribution to the wrongdoing of its partner, then the Catholic hospital would not be cooperating with evil. Instead, like the soldier following Rambo or the Chicago mortician in the days of Capone, it would be appropriating evil whose occurrence it predicted but did not intend, because it would exert no causal power in connection with it. Like them as well, it would wish for the good effect (institutional survival), but would not intend the evil means to that effect, because it would do nothing to bring those means about.

What is the practical consequence of discerning that a particular affiliation does not involve formal cooperation with evil, but instead some form

²³ One could imagine a situation in which the researchers would intend that the abortions be performed. For example, suppose the research group entered into a contract with an abortion provider that required the latter to furnish a certain number of fetal remains per year. Under these circumstances, the researchers might intend that at least the specified number be performed by the clinic.

²⁴ *Ethical and Religious Directives for Catholic Health Care Services*, Directive 69.

²⁵ Germain Grisez makes this argument in question 87, entitled "How far may Catholic hospitals cooperate with providers of immoral services" (*Difficult Moral Questions* 393). He is discussing an affiliation where the Catholic hospital seems to have causal power over the services provided by its affiliate, and so therefore would be a cooperator.

of appropriation? Simply that it is not ruled ethically impermissible *ab initio*. It may still be the case that considering all the facts and circumstances, appropriation of evil is not warranted in a particular situation or class of situations. Later in this article, I suggest some criteria that might help us evaluate cases of appropriation of evil. As might be expected, they are analogous but not identical to those used in cooperation.

COOPERATION, APPROPRIATION, AND CHARACTER

At this point, a reader might concede that I have indeed demonstrated that cooperation and appropriation describe distinct ways in which one agent's good action can intersect with the morally impermissible action of another agent. He or she might also object, however, that I have not yet shown why cases of appropriation involve a *moral problem* that is not reducible to whatever elements of a cooperation problem that it may exhibit. In order to respond to that objection, I need to broaden the terms of the discussion. More precisely, I need to set cooperation in the context of the agent-centered Thomistic morality that the category implicitly presupposes if it is to be rightly understood.

An Intention-Based, Agent-Centered Morality

As part of its heritage from Thomas Aquinas, Catholic moral thought conducts its analysis of human action from the perspective of the agent who performs the action, not from the perspective of those who suffer its consequences. Accordingly, Catholic thought employs an intention-based action theory; it analyzes an action under the description provided by an agent's own account of what he or she is *doing*—that is, a description of this purposeful activity that situates it within a broader framework of the agent's near and distant goals. Furthermore, as Aquinas recognized, human actions have a power that goes beyond their immediate consequences in the external world, no matter how significant those might be. The actions we perform over the course of our lives shape our very moral identities by building up or eroding the good and bad habits commonly known as virtues and vices.²⁶ In turn, the habits we develop greatly influence the moral character of our future actions.

²⁶ For a slightly dated but still helpful survey of the fruits of this renewed interest in virtue ethics, see William C. Spohn, "The Return of Virtue Ethics," *TS* 53 (1992) 60–75. The theological literature seems roughly to be divided into two "schools": those inspired by Alasdair MacIntyre's enormously influential work *After Virtue* (Notre Dame: University of Notre Dame, 1981) and those carrying forward a longstanding theme of Dominican theological ethics. Representative examples of the first school include Jean Porter, *The Recovery of Virtue* (Louisville: Westminster/Knox, 1990) and Daniel Mark Nelson, *The Priority of Prudence* (University Park: Pennsylvania State University, 1992). Representative examples of the second

On the basis of this action theory, Catholic moral thought has developed a distinction between the intended consequences of an action and its foreseen but unintended consequences. Agents are responsible for both the intended and the foreseen consequences of their actions. However, the nature and extent of that responsibility is significantly different in the two cases. To take a frequently cited example, Catholic thought has consistently taught that it is never permissible for an agent intentionally to kill innocent persons, no matter how worthwhile the ultimate end. However, it may on occasion be permissible to adopt a course of action that the agent foresees, but does not intend, to result in the death of such persons, provided that there is a sufficiently grave reason for doing so.

The distinction between the intended and the merely foreseen ends of one's action makes sense only if it is situated within a moral framework that is agent-centered in two crucial respects. First, as described above, the action must be described from the perspective of what the agent believes him or herself to be doing, either as an end in itself or as a means to such an end. After all, when viewed solely from the effect on the victim, it does not matter if one's life was cut short intentionally or as the foreseen but unintended consequence of an action whose purpose was entirely legitimate. From the viewpoint of a morality that describes actions from the perspective of the persons performing them, however, the nature of the choice involved in the two cases is vastly different. In the first case, the death of innocent persons is an essential component of the agent's plan—he or she must move through it in order to reach the desired end. In the second case, the agent literally has no use for their deaths; if some way could be found of going around it, he or she would take it.

But why should we care whether an agent understands causing the death of innocent persons to be a means to an end or as a foreseen but unintended consequence of her action? The answer to this question highlights the second, closely related way in which the Catholic moral tradition is agent centered. According to this tradition, the most significant aspect of a human action is the way in which it shapes the character of the person who performs it. Thus, according to traditional Catholic doctrine, individuals who engage in deliberate evildoing harm themselves far more than they do those who suffer injustice at their hands.²⁷ Conversely, aiming at the death

include Servais Pinckaers, O.P., *The Sources of Christian Ethics* (Washington: Catholic University of America, 1995), and Romanus Cessario, O.P. *The Moral Virtues and Theological Ethics* (Notre Dame: University of Notre Dame, 1991). For an article discussing the differences between the two approaches see Thomas F. O'Meara, O.P., "Virtues in the Theology of Thomas Aquinas," *TS* 58 (1997) 254–85.

²⁷ Acts "opposed to life itself. . . . poison human society, and they do more harm

of an innocent human being so corrodes an agent's character that there is no disaster so great that its prevention would justify such a course of action. On the other hand, precisely because it does not implicate an agent in acting under the description "aiming at the death of an innocent person," there may be some circumstances where it is justifiable for an agent to engage in an action under another description that foreseeably but unintentionally results in the death of an innocent person.

This is not to say, of course, that performing an action that foreseeably but unintentionally results in the death of a human being is not an extremely serious matter, or even that it is not wrong in the vast majority of cases. Even in the rare situations where performing such acts are justifiable, so doing is fraught with moral danger. Agents who engage in this type of action, particularly if they do so repeatedly, can accustom their minds and hearts to causing the death of another human being, albeit unintentionally. They can easily become desensitized to the sanctity of life, making it easier for them to choose acts that are deliberately disrespectful of other persons in the future. If the experience of committing murder is corrupting, the experience of causing the death of a fellow human being can be brutalizing, even if it is justified. While not sinful in itself, it can make sinning in the future far easier.

Character and Intimacy with Evil-Doing

The category of cooperation is best understood as applying the agent-centered moral framework just described in a wide range of situations where agents must decide whether to go forward with actions that they foresee will be put to ill use by others. The fundamental question asked by the category is whether the cooperator intends to further the illicit action of the principal agent; if the answer is affirmative, the cooperation is formal and is always morally unacceptable, even if the illicit action would occur without the assistance provided by the cooperator. Cases of material cooperation, in contrast, involve cooperators who foresee, but do not intend, the way that their acts facilitate the illicit actions performed by principal agents. As briefly noted above, the manualists developed an elaborate matrix to assist in discerning the permissibility of material cooperation in particular cases. As we apply it to contemporary problems, it is important for us to acknowledge explicitly a fact that its authors may have recognized only implicitly, if at all: this matrix can only be properly understood and applied when it is first situated in the framework of an agent-centered, virtue-oriented theory of morality.

to those who practice them than to those who suffer the injury" (Vatican II, *Pastoral Constitution on the Church in the Modern World* [*Gaudium et spes*] no. 27; emphasis mine).

One indication of this fact is the multifaceted nature of the cooperation matrix itself. If we were to focus only on the external structure and effects of an action, one aspect of that matrix would assume paramount importance: whether or not the illicit act would take place even if it received no help from the cooperator's action. This consideration *is* a factor, but it is not decisive either way. In some cases, material cooperation is permissible despite the fact that a decision not to cooperate would thwart the illicit intentions of the principal agent. In other cases, material cooperation is not legitimate, despite the fact that the principal agent would find another way to accomplish his or her wrongdoing. The manualists were not only concerned about whether or not the evil act would occur without the cooperation, but also struggled to evaluate how the connection to the evil act of another would affect the character of the cooperator.

Moreover, other elements of the cooperation matrix direct our attention to additional factors that illuminate the way in which the potential act of cooperation will alter the cooperator's character. The categories of immediate/mediate cooperation, as well as that of proximate/remote cooperation, concentrate our focus in just this way. For example, Pope Innocent XI in 1679 condemned as laxist the view that it is permissible for a servant to carry the ladder or open a window to facilitate his master's rape of a virgin.²⁸ Arguably, the servant did not intend the rape to take place; he probably only intended to do the minimal amount of activity to keep his job. By stipulation, that activity extended no further than opening the window or steadying the ladder. We find no suggestion that the rape could be averted if the servant refused to cooperate. Nonetheless, the papal condemnation suggests that the overlap between the servant's actions and the sinful plan of his master was simply too great; in effect, one could say that the servant would be morally "contaminated" by intimacy with his master's evildoing.

This "contamination problem" is only intelligible if one recognizes the close connection between action, habit, and character, as well as the degree to which each agent's description of his or her own intentional acts can be affected by others' perception of what he or she is doing. "Contamination" can be broken down into two basic components: seepage and self-deception. A material cooperator engages in the cooperative activities under his or her own action-description (e.g., "I am just doing my job as a secretary; I am typing and mailing a letter for my boss"). Yet, at the same time, the cooperator knows that his or her activities are viewed under a quite different description by the principal agent (e.g., the secretary's boss might think: "My secretary is setting my blackmail plan in motion"). Be-

²⁸ H. Denzinger and A. Schönmetzer, *Enchiridion Symbolorum*, 36th ed. (Freiburg: Herder, 1976) 2151. This case is cited in Smith, "Ethical Quandary" 112.

cause the cooperator is likely aware of the two competing descriptions of his or her action, it would not be difficult to become accustomed to viewing it in the terms used by the principal agent (e.g., the act of an accomplice in blackmail). Unless the cooperator exercises great vigilance, the principal agent's description of that action could "seep" into the cooperator's moral identity, by affecting the self-conception of the kind of acts of which he or she is capable. For example, knowing that at least one person thinks of her as a blackmailer, the secretary might begin to think of herself in the same way.

Self-deception, the second moral hazard, occurs when the cooperator becomes self-deluded about the nature of his or her own intentions in acting. Particularly if working in very close quarters with the principal agent, it is very difficult for a cooperator not to get swept up into the principal agent's project in such a way that he or she wills its success. If he or she is an employee of the principal agent, the cooperator's career advancement may very well be tied to such success. Rather than candidly acknowledging a sea-change or a gradual shift in his or her moral stance, the cooperator might simply develop an elaborate scheme of self-deceiving rationalization instead.²⁹

The matrix of cooperation directs our attention to the dangers posed by seepage and self-deception in particular cases.³⁰ It evinces a strong concern not only to impede principal agents from going forward with wrongful activity, but also to protect potential cooperators from the corrosive effects that close proximity to evil might have on their own character. When we turn to appropriation cases, we find that potential appropriators face very similar moral dangers.

First, as we saw above, the fundamental moral threat for potential cooperators is intending the evildoing to which they in some way contribute. The parallel danger for agents considering appropriation is ratifying the evil of which they make use. In the appropriation context, ratification of evil is the equivalent of formal cooperation with evil. For an agent to ratify the action of another involves not only taking up its fruits or byproducts

²⁹ James Keenan emphasizes this point in his "Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles," and Germain Grisez does the same in his many discussions of cooperation of evil in *Difficult Moral Questions*.

³⁰ The question arises whether in analyzing *material* cooperation, we should abandon the categories of immediate/mediate, proximate/remote, and necessary/free, in order to focus more directly on the dangers of seepage and self-deception. Grisez appears to advocate this approach in his "Appendix" on cooperation in *Difficult Moral Questions* (871–91). I believe the categories are still useful because they direct our attention to concrete aspects of human action that may make seepage and self-deception more or less likely.

and weaving them into his or her own plans and objectives, for that happens in every appropriation case. It also involves stepping into the shoes of the auxiliary agent in a more fundamental manner. When an appropriator ratifies an appropriated action, he or she takes it up and makes use of it under the intentional description it was given by the auxiliary agent. In effect, the action of the auxiliary agent becomes the appropriator's by adoption. In addition, the appropriator may use that action for the same purposes that the auxiliary agent would have used it.

Second, seepage and self-deception are no less vivid possibilities in appropriation cases than cases of cooperation. If another agent's evil acts contribute in some way to our own objectives, particularly in an ongoing manner, it is difficult not to view them in a more positive light than we otherwise would. Moreover, it is tempting so to accustom ourselves to the benefits that flow from appropriation that we would be inclined to decide against taking steps to eliminate the wrongdoing, if the opportunity presented itself. For example, suppose Rambo experienced stirrings of conscience in the middle of the escape from enemy territory. If he asked the soldier following him to safety what he should do, would not it be almost inhumanly difficult for that soldier to encourage Rambo's change of heart? Similarly, self-deception about one's motives is also possible in appropriation cases. As long as he is not in a position to turn Capone in, would it not be all too easy for the Chicago mortician to convince himself that he would do so if he could?

DEVELOPING A MATRIX FOR APPROPRIATION: THREE CASE STUDIES

Assuming that appropriation should be considered a moral problem that is distinct from, although related to, cooperation, what framework should be used to analyze it? Obviously, I cannot hope to develop here a full-blown analytical framework for appropriation problems rivaling the one that has been formulated for cooperation over the past several centuries. My modest goal is simply to compile a list of questions that will direct the attention of agents confronting appropriation problems toward the morally salient features of the decision that faces them.

The most important question is whether the appropriator intends to ratify the auxiliary agent's wrongful act in making use of that act's fruits or byproducts. Does the appropriator make use of them as if it were the appropriator's own action, as if it were an action that he or she would have engaged in, given the opportunity and/or necessity? As I argued previously, in this type of situation, the appropriator "adopts" the illicit action and assumes moral responsibility for it. It is the moral equivalent of "using someone else to do the dirty work."

However, just as cooperation with evil does not need to be formal in order to be morally problematic, so the moral questions entailed by appropriation of evil are not exhausted once it is determined that the appropriator does not ratify the illicit act of the auxiliary agent. We also need to consider how the dangers of seepage and self-deception can be present in appropriation cases that do not involve ratification, just as they are present in cases of material cooperation, which by definition do not involve intentional facilitation of evildoing. These dangers can loom larger or fade into remoteness, depending upon the way in which the appropriator's action is related to the illicit act of the auxiliary agent. In the hopes of uncovering and illuminating morally salient differences in the range of ways that appropriators can use the illicit actions committed by auxiliary agents, I will explore three cases that incorporate different types of appropriation: the use of Nazi data, the use of tissue from aborted fetuses, and the use of money obtained by someone else's illicit activity. Let me emphasize that my focus here is only on the connection between the appropriator and the evil done by the auxiliary agent. I do not consider other major factors that would need to be taken into account before a final verdict about the acceptability of appropriation in a particular context could be given, most significantly, the good that can be achieved as a result of the appropriation.

Use of Nazi Data in Scientific Research

Should contemporary researchers make use of data compiled by scientists of the Third Reich? Suppose first that the contemporary researchers are neo-Nazis. In this case, they will view the experiments that produced that data in the same manner as the scientists who performed them did. Furthermore, they will likely see their own actions as building upon those of the Reich scientists and furthering the same purposes. In essence, the neo-Nazis will be stepping into the shoes of the original Nazis; they will be ratifying the actions of their predecessors. Just like formal cooperation with evil, ratification of evil is always morally impermissible.

But what if the contemporary researchers are not neo-Nazis; suppose they denounce the means, the goals, and the ideology of the Third Reich.³¹

³¹ The scientific value of much of the data from Nazi experiments has been called into question. For a discussion of this issue, see "Biomedical Ethics and the Shadow of Nazism," a transcription of "A Conference on the Proper Use of the Nazi Analogy in Ethical Debate" [dated 8 April 1976], *Hastings Center Report* 6:4 (August 1976) (special supplement) 1–20; also "Nazi Data: Dissociation from Evil" [case study with commentaries by Mark Sheldon and William P. Whiteley, Brian Folker and Arthur W. Hafner, and Willard Gaylin], *Hastings Center Report* 19:4.16–18; Marcia Angell, "Editorial Responsibility: Protecting Human Rights by Restricting Publication of Unethical Research," in *The Nazi Doctors & the Nuremberg*

Ratification is therefore not at issue. Nonetheless, appropriation of the Nazi data remains morally problematic, in part because there is still a significant intersection between the illicit acts of the Nazis and the ongoing plans of the contemporary researchers. Assuming that the data in question could only have been produced by morally illicit experimentation on human beings, it remains inseparably associated with the evil-doing that yielded it. Furthermore, despite their moral disapprobation, the actions of the contemporary researchers echo those of their Nazi predecessors in two crucial respects. First, obtaining the data that the researchers now plan to use was in fact the primary objective of the Nazis' monstrous experiments. Second, the appropriators plan to use the data for some of the same immediate purposes that the Nazis would have used it, i.e., to increase scientific knowledge of human anatomy.³² Short of actual ratification, it is difficult to see how there could be any greater overlap between the contemporary researchers' perspective on the Nazis' actions and the perspective adopted by the Nazis themselves.

Because of this extremely close overlap, the contemporary researchers confront an appropriation problem that is analogous in structure and severity to immediate material cooperation. Accordingly, the possibilities of seepage and self-deception are raised here in the most acute manner possible. Practically speaking, can contemporary researchers continue to condemn as unequivocally evil the actions that yielded such an integral component of their own scientific agenda? Appreciating the value of the data, will they not at some point begin to view the experiments that produced it in more favorable terms? Is there not the danger that their own descriptions of themselves as doing nothing more than "bringing good out of evil" will become mere self-deception? The likely answers to these morally pressing questions render the contemporary use of Nazi research data extremely difficult to justify, *despite* the fact that there is no danger that such use will contribute to the cause of Nazism.

Code: Human Rights in Human Experimentation, ed. George J. Annas and Michael A. Grodin (New York: Oxford University, 1992) 226–85; Robert M. Martin, "Using Nazi Scientific Data," *Dialogue* 25 (1986) 403–11; Kristine Moe, "Should the Nazi Research Data Be Cited?" *Hastings Center Report* 14 (December 1984) 507; Arthur Schafer, "William E. Seidelman, "Mengele Medicus: Medicine's Nazi Heritage," *The Milbank Quarterly* 66 (1988) 221–39; Arthur Schafer, "On Using Nazi Data: The Case Against," *Dialogue* 25 (1986) 413–19; Mark Weitzman, "The Ethics of Using Nazi Medical Data: A Jewish Perspective," *Second Opinion* 14 (July 1990) 27–38.

³² There would, of course, be substantial divergence on more remote purposes. For example, contemporary researchers would use the data to aid people deemed unworthy of anything but contempt and death by the Nazis, including Jews, Gypsies, and homosexuals.

Use of Tissue from Electively Aborted Fetuses in Scientific Research

While this second example bears a superficial resemblance to the example involving the use of Nazi data, closer examination reveals a substantial number of differences. In this case, the material that the appropriators wish to use—fetal tissue—is not inseparably connected with the evil action in question. Unlike the Nazi data, which could only be obtained by means of monstrous behavior, fetal tissue might also be gathered in ways that involve no wrongdoing, such as spontaneous abortions. In the analysis of the problem as a whole, the possibility of obtaining fetal tissue from another source cuts both ways. On the one hand, it may suggest that the need to use the byproducts of wrongdoing is not sufficiently pressing to justify the action. On the other hand, by creating some conceptual distance between the illicit act and the material sought by the researchers, it may ameliorate the dangers of seepage and self-deception. These dangers are further abated by two additional ways in which this example diverges from its predecessor. First, the appropriators in this example do not wish to make use of the auxiliary agent's primary objective in performing the wrongful action, but rather to use an unwanted byproduct of that action. Unlike the Nazis who performed evil experiments in order to obtain the scientific data at issue, abortion providers do *not* terminate pregnancies in order to obtain fetal corpses. Second and also unlike the Nazi example, the appropriators in this case are not pursuing even the same intermediate goals as the wrongdoing auxiliary agents.

However, the use of fetal tissue obtained from elective abortions entails an additional moral difficulty that was not implicated by the potential use of Nazi data. The Third Reich was roundly defeated over 50 years ago in the Second World War; in contrast, elective abortion will likely remain a legally available option in the United States for the foreseeable future. The fact that fetal remains can be put to a worthy scientific use may make those who decide to perform or obtain abortions less likely to reconsider their moral views on the issue. Moreover, it also creates additional possibilities for seepage and self-deception on the part of the researchers. Precisely because the widespread practice of elective abortion generates a stable, long-term supply of aborted fetuses that would otherwise be unavailable, it would be very easy for the researchers to begin to view that practice more positively than they otherwise would. They might also come to depend upon the amount of fetal tissue it produces for their work in a way that would mute their opposition to the practice, or hamper their effectiveness in opposing it should the occasion for them to do so arise.

Use of Monies Produced by a Family Member's Morally Objectionable Work

A third type of appropriation question is exemplified by the case of a stay-at-home spouse who discovers that the family breadwinner is engaged in a morally unacceptable occupation, such as designing or manufacturing counter-population weapons. This situation exhibits some features that we have explored in the two examples above. Like the researchers seeking to make use of Nazi data, the appropriator in this case seeks to use the immediate object of the auxiliary agent's wrongful action for the same general purposes that the auxiliary agent chose to perform that action. More specifically, the breadwinner continues in an unjust occupation in order to earn money used to support the family; the spouse accepts that money in order to achieve the same purpose.

However, like the scientists seeking to make use of tissue from electively aborted fetuses, there is no necessary connection between the wrongful activity and the good actions of the appropriators. At most, in both cases, one could acknowledge that the evil action is logically contingent but practically necessary in order to achieve the good objectives that the appropriators seek to accomplish. In other words, while the use of electively aborted fetuses is not a strict prerequisite to achieving the research goals of the scientists, for the foreseeable future, access to spontaneously aborted fetuses may not be sufficient to insure an adequate supply for research needs. Similarly, there are many ways of supporting a family that do not entail the practice of an illicit occupation. Yet some families might have no realistic option other than appropriating the breadwinner's "tainted" money in order to meet basic needs.

Notably, this case also incorporates a feature that significantly distinguishes it from its two predecessors. Here, the appropriator arguably has some *right* to expect the wrongdoer to produce the items that they appropriate. Whereas contemporary researchers have no claim on the material that they make use of from the Nazi scientists or the abortion industry, a family with minor children has a just expectation to financial support from the parent working outside the home.

How does this distinguishing feature affect our analysis? On the one hand, the very fact that the stay-at-home parent accepts the money might encourage the parent working outside the home to continue in an illicit occupation, creating a situation that is just as much a cooperation problem as it is one of appropriation. On the other hand, because the money is owed in justice to the appropriator, there may be less danger of seepage and self-deception. The appropriator can maintain a stable description of his or her act of appropriation, such as "using the money my spouse earns to

meet the needs of our family.” That description does not necessarily trigger reference back to the way in which the money was produced, in the same way that use of aborted fetal tissue likely refers back to the practice of elective abortion that generated it.

Insights from These Cases

Taken as a whole, then, what broadly applicable insights do these three cases yield for us? First, they demonstrate that there are as many different ways in which one agent can appropriate another agent’s immoral act, or its fruits or byproducts, as there are ways of cooperating with another’s immoral act. Second, they suggest a list of questions that can orient us to the specific interaction of the act of appropriation and the illicit act of the auxiliary agent. The nature and degree of that interaction may give us some clue to the dangers of seepage and self-deception in a particular case. Does the appropriator intend to use the intended object of the bad act or a side effect of that action? Does the appropriator intend to use the bad action or its fruits for the same purposes as the auxiliary agent? If the answer to this question is negative, how substantially do the appropriator’s purposes diverge from those of the auxiliary agent? (For example, in the case of researchers using electively aborted fetal tissue, the purposes are parallel, but not inconsistent; in the case of a prosecutor whose career advancement depends on the fact that individuals have committed crimes, the purposes are antithetically opposed.) Does the appropriator have a just claim to the fruits or byproducts produced by the auxiliary agent’s wrongful action? Is the appropriator’s decision to make use of the illicit action, or its fruits or byproducts, likely to feed into the self-rationalizing tendencies of the wrongdoing auxiliary agent?

Furthermore, there are other morally relevant questions for the potential appropriator, which are independent of the degree to which the action of the appropriator is intertwined with that of the evil-doing auxiliary agent: How grave is the wrongdoing to be appropriated? How serious is the appropriator’s reason for engaging in the act of appropriation? Is there another way for the appropriator to achieve his or her objectives that does not involve making use of the illicit act of another? Is the appropriation likely to make it easier for the wrongdoing auxiliary agent to rationalize his or her illicit action? Is the appropriation likely to generate unavoidable scandal?

Needless to say, these two sets of questions do not constitute the moral equivalent of a computer spreadsheet program, which yields definite results provided that the requisite information is fed into the computer. They are proposed as a guide for moral discernment sensitive to the nuances of individual cases, not as a substitute for it. In this important respect, questions of appropriation are no different than those falling under the matrix of cooperation.

CONCLUSION

I have argued here that the Roman Catholic casuistical tradition needs to be developed to include a new category of appropriation of evil, if it is adequately to encompass the full range of ways in which one agent's activity can intersect with the illicit actions of another. The category of appropriation better captures what is at stake in a number of important moral issues, ranging from the use of tissue from aborted fetuses in medical research to purchasing clothing made under unjust conditions in developing countries. Moreover, if we refrain from using the category of cooperation to analyze what in reality are appropriation problems, we are less likely to misjudge the nature and seriousness of the possible involvement in wrongdoing. We are less likely to misdescribe as formal cooperation with evil those cases that actually involve only appropriation of the predicted wrongdoing of another. Clarity on such issues may help us in analyzing some of the most pressing questions in the Church today, such as the permissibility of affiliations between Catholic health care institutions and facilities that perform procedures prohibited by the Ethical and Religious Directives.

On a more systematic level, I hope to have contributed in some small way to the sorely needed reintegration of the Catholic casuistical tradition with the intention-based, virtue-oriented Thomistic moral anthropology that was its most important progenitor. The enormous practical wisdom embedded in the manuals finds its ultimate justification in the Thomistic insight that our characters are formed by the countless intentional acts we perform day in and day out throughout our lives. When set in the context of virtue theory, the categories of cooperation and appropriation both testify to important moral implications of the essentially social nature of human beings. Our characters depend not only upon our own choices viewed in isolation, but also upon how they interact with the choices of other people. Living our lives well requires us to decide what action plans are worthy to pursue in themselves. Far too frequently, it also requires us to consider how, if at all, we should alter those plans if they intersect too closely with the morally objectionable activities of others.