

Avoiding illicit connection with evil:  
Alphonsus Liguori, Thomas Aquinas, contemporary issues

Kevin L. Flannery, S.J.

In presenting her teaching on various subjects, the Church often invokes the distinction between formal and material cooperation; in doing so, she also often cites St. Alphonsus Liguori. In the main part of this essay, explained is the distinction as understood by Alphonsus. The distinction is certainly a valid and useful one, although some aspects of Alphonsus's exposition of the distinction are problematic and have given rise to understandings of the distinction incompatible with his own understanding. Moreover, the distinction, however understood, is not applicable in a wholly coherent manner to some of the issues to which it is occasionally applied.

The action theory of St. Thomas Aquinas, based as it is on ideas put forward originally by Aristotle, is useful both in clearing up the problems inherent in Alphonsus's exposition and in analyzing moral situations to which the formal/material distinction is not properly applied. The essay goes on, therefore, to explain how Thomas's theory might be employed in these two regards. It then applies ideas found in Thomas to two contemporary issues: the use of vaccines connected in some way with abortions and the objection by the Little Sisters of the Poor to the "contraceptive mandate" issued by the United States Department of Health and Human Services.<sup>1</sup>

#### I. Innocent XI and Alphonsus Liguori<sup>2</sup>

We begin, somewhat in the middle of the history of the moral theory of cooperation with evil (*cooperatio ad malum*), with Pope Innocent XI, who was Pope from 1676 to 1689, which is to say just after what might be called the classical period of Jesuit casuistry. The major names in that period would be John Azor, S.J. (d. 1603), Paul Laymann, S.J. (d. 1635), and Hermann Busenbaum, S.J. (d. 1668). In 1679, Pope Innocent issued a condemnation of what was generally recognized as a "laxist" position regarding cooperation. The condemned proposition—known as Proposition 51—runs as follows :

A servant who, offering his shoulders, knowingly helps his master to climb through a window in order to violate a virgin and often assists him by carrying a ladder, opening a gate, or cooperating in some similar way, does not sin mortally if he does this out of fear of notable injury—lest, for

---

<sup>1</sup>A version of this paper was delivered as the Waite Chair Lecture at Creighton University, April 8, 2021. I am grateful to the president of Creighton University, Daniel Hendrickson, S.J., for inviting me to be the holder of the Anna and Donald Waite Chair for the academic year 2020-21, and also to the Waite family for funding the chair. I also thank for their help in thinking through various issues discussed in this essay Elizabeth Kirk, O. Carter Snead, Maureen Condic, Christopher Tolleson, Nicanor Austriaco, Michael Pakaluk, Ramon Lucas Lucas, L.C., Thomas Joseph White, O.P., Kevin FitzGerald, S.J., James Clifton, S.J., and Paul McNellis, S.J.

<sup>2</sup>I go more in depth into matters discussed in this and the subsequent section in Kevin L. Flannery, *Cooperation with Evil: Thomistic tools of analysis* (Washington, D.C.: Catholic University of America Press, 2019); see also Kevin L. Flannery, "Two factors in the analysis of cooperation in evil," *National Catholic Bioethics Quarterly* 13 (2013): 663-75.

instance, he be ill treated by the master, or be subject to angry looks, or be expelled from the house.<sup>3</sup>

Pope Innocent is speaking here about cooperation. He does not employ the expression 'formal cooperation'—which, as we shall see shortly, is an expression referring to cooperation that is necessarily sinful—but his speaking of "mortally sinning" would suggest that he is speaking about the type of act that other scholars would place in that category. It is notable too that the servant in the story does not necessarily *want* the virgin to be violated; only out of fear does he cooperate in the more deliberate sin of his master.

The next major figure in this story—that is, after Innocent XI—is Alphonsus Liguori (1696-1787). Alphonsus was the founding father of the Redemptorists, the religious congregation that runs in Rome the academy named after their founder, the *Alphonsianum*, which specializes in moral theology and has therefore a significant influence upon the Holy See's teaching in ethical matters. In 1839, Alphonsus was canonized; in 1871, he was declared a Doctor of the Church; in 1950, he was named (by Pius XII) patron of confessors and moral theologians.

Alphonsus spent a large portion of his adult life preaching missions and hearing confessions in southern Italy, especially in rural areas. He managed at the same time to pen an impressive number of works, especially devotional works, but also a much-augmented version of a manual of moral theology published a century earlier by the Hermann Busenbaum. This repeatedly augmented version of Busenbaum came to be regarded (quite reasonably) as Alphonsus's own work, appearing eventually under the title *Theologia moralis*.<sup>4</sup>

When the issue of cooperation with evil is discussed nowadays, the name of Alphonsus Liguori is inevitably mentioned. In his analysis of the issue, Alphonsus employs language he found in the tradition, already mentioned, that developed in the century before Innocent XI's 1679 condemnation of Proposition 51. From this tradition he took the distinction between formal and material cooperation. Formal cooperation is (to repeat) necessarily immoral; material cooperation is not *necessarily* immoral—although it could be if the cooperation is too "close" (proximate) to the primary evil act.

Throughout the history of reflection on this issue, one comes across explanations of the distinction—sometimes attributed to Alphonsus—according to which one formally cooperates if and only if one shares the intention of the primary evil-doer, and one cooperates merely materially if one does not share that intention. This is not, however, Alphonsus's position. In the section of *Theologia moralis* in which he presents the distinction, he begins by citing a number of other moralists, including a Dominican and a Jesuit whose accounts of the distinction are couched in very Thomistic terms. And then he says the following :

But it is better with others to say that that cooperation is formal which contributes to the bad *will* of the other and cannot be without sin, but that cooperation is material which contributes only to the bad action of the other, beside the intention of the one who cooperates.<sup>5</sup>

Important here is the fact that, in describing formal cooperation, Alphonsus speaks of contributing to the will [*concurrit ad malam voluntatem*] of the primary evil-doer and

---

<sup>3</sup>"Famulus, qui submissis humeris scienter adiuvat herum suum ascendere per fenestras ad stuprandam virginem, et multoties eidem subservit deferendo scalam, aperiendo ianuam, aut quid simile cooperando, non peccat mortaliter, si id faciat metu notabilis detrimenti, puta ne a domino male tractetur, ne torvis oculis aspiciatur, ne domo expellatur" [Heinrich Denzinger, et al., *Enchiridion symbolorum definitionum et declarationum de rebus fidei et morum* (San Francisco: Ignatius Press, 2012), §2151].

<sup>4</sup>The best modern edition is Alphonsus Maria de Liguori, *Theologia moralis*, ed. L. Gaudé (Rome: Typographia Vaticana, 1905-1912 (4 vv.)).

<sup>5</sup>*Theologia moralis* 2, §63, emphasis added.

distinguishes this from sharing his intention. By speaking thus, Alphonsus in effect is marking out an area of bad activity, to which the formal cooperator's action is linked, but which is more expansive than the primary evil-doer's intention.<sup>6</sup> Of course, sharing a malefactor's intention is also immoral—it turns what in certain situations would otherwise be material cooperation into formal cooperation—but that is not the only way of cooperating formally. One does this also when one simply "contributes to [*concurrit ad*]" the bad will of the primary evil-doer.

Imagine, for instance, an abortionist whose intention in performing an abortion is to allow a woman to pursue without interruption a musical career, and a medical student who opposes abortion but must help the abortionist in the procedure, handing him instruments, etc., lest he fail his internship. (I use here the pronoun 'his' in its more inclusive sense.) The primary evil-doer's intention here is sharply specific and includes killing an unborn child. The medical student does not share this intention. But the abortionist's *will* takes in much more than that intention. It takes in everything in the scene that gets its sense—we might also say its *form*—from that intention: the fact that the woman is made to position herself in a certain way, the fact that the instruments are laid out on a tray in order of their use, the fact that close at hand is a vessel into which the body of the aborted fetus will be placed, etc., etc. These facts involve (obviously) physical things but they are not mere matter. They are matter that is "headed" in a particular direction: the direction determined by the primary evil-doer who intends to perform the abortion. Even though the medical student does not share the abortionist's intention, in helping the abortionist as he does, he enters into the larger scene informed by the will of the abortionist.

That this is how Alphonsus understands formal cooperation is apparent a few numbers later in the *Theologia moralis*. He asks the question, "Whether it is licit for a servant because of grave fear to write or to carry amorous letters to the concubine of his master?" His response:

Whatever others say, I believe ... that these things are never licit since they cooperate formally in the sin of the master, fostering his obscene love.<sup>7</sup>

This servant need not be sharing his master's intention; nonetheless, says Alphonsus, his cooperation is formal. The master's intention of sinning with his concubine creates a larger "scene," informed by his will, into which the servant's action enters.<sup>8</sup> This interpretation is both sound and in accordance with Church teaching: the example that Alphonsus gives of formal cooperation closely parallels what is said in Proposition 51, the proposition condemned by Pope Innocent XI in 1679.

As we have seen, Alphonsus says of material cooperation that it "contributes only to the bad action of the other, beside the intention of the one who cooperates." The first idea here, that material cooperation is contributing not to the will but "only to the bad action" of the primary evil-doer, is also sound and especially useful. Alphonsus is saying, in effect, that there is such a thing as an action that cooperates with an evil

---

<sup>6</sup>For this distinction, see *Summa theologiae* [ST] 1-2.12.1 ad 4.

<sup>7</sup>*Theologia moralis* 2, §67.

<sup>8</sup>In another work, which he wrote explicitly for priests hearing confessions, he gives other examples of formal cooperation; it comes about, he says, "when one directly cooperates in a sin (as in him who fornicates), or else when it *flows into the bad will* of one's neighbor who wills to sin, as would be serving as a lookout ['watching the back'] for an assassin so that he might steal or kill more securely; to write amorous letters for an adulterer or to convey gifts to a concubine; to accept gifts from him who would undermine your integrity. These and similar acts of cooperation are intrinsically evil, for by them a hand is given to one's neighbor in committing a sin—or, at least, the bad will of the latter is fostered—and so for no reason, not even that of death, can they be dismissed as not mortal sin [Alphonsus Maria de Ligorio, *Homo apostolicus instructus in sua vocatione ad audiendas confessiones, sive praxis et instructio confessoriorum* (Mechliniae: H. Dessain, 1867-1868 (3 vv.)), tract.4 punct.5 §31].

action without entering, as a participant, into the scene informed by the primary evil-doer's will. If we think of that scene as a distinct and identifiable area within which certain individuals do things which, in their very intelligibility, are connected with what the primary evil-doer intends (even though they do not intend what he intends), Alphonsus is saying that an act of material cooperation does not enter into that area but cooperates with it as that distinct and identifiable area.

To refer once again to the example of the abortion, as we have seen, the abortionist and the medical student who assists him are within the conceptually demarcated area of formal cooperation. But a receptionist sitting at his post just outside the operation room and doing what he does during any procedure—telling others not to enter the room during the procedure, for instance—is quite possibly not entering into the will of the primary evil-doer. Let us say that the receptionist works in a hospital that performs many types of procedure and that he has never thought seriously about the moral difference between an abortion and a genuinely medical procedure. By making sure that others do not enter into the operation room, he is "just doing his job." His preventing someone from entering the room is material, not formal, cooperation. His action makes sense—has intelligibility—independently of what is happening in the operation room. As Alphonsus puts it, he is not contributing to the will of the abortionist but only to "the bad action," outside of which he stands: physically but also—and more importantly—intelligibly.

But imagine another receptionist in the same hospital who is perfectly aware that the morality of abortion is hotly disputed and is ideologically committed to the pro-abortion side of the debate. He also knows that at a particular moment an abortion is being performed in the operation room and, when someone approaches wanting to enter the room, he does what he always does: turns him away. Unlike the other receptionist, whose action cooperates only with the abortion *qua* action, his cooperation, because his intention is "joined up" with the intention of the abortionist, enters into the scene being played out in the operation room. In a sense, that scene, which in the case of the other receptionist was limited to the operation room, has become larger and includes now the reception desk and the person there in charge.

The intention of the ideologically committed pro-abortion receptionist may occasionally become manifest: as when, for instance, on a particular occasion he might be especially insistent that a particular person not see that an abortion is being performed, while with other persons and regarding other procedures, he is less insistent. But, even if his sharing the intention of the abortionist never becomes manifest in this way and he is always perfectly uniform and regular in doing his job—even still his cooperation is not material but enters formally into the scene with the abortionist, the medical student, the pregnant woman, her baby, the instruments laid out on the tray in order of their use, etc.

The cooperation of the other receptionist is still possibly immoral. After defining material cooperation and distinguishing it from formal cooperation, Alphonsus says that material cooperation is licit "when there is present a cause which is just and proportionate to the gravity of the sin of the other and to the proximity of the cooperation which is contributed to the execution of the sin."<sup>9</sup> We might suppose that the receptionist is the sole source of income for his family and can find no other employment than as a receptionist at that hospital. Such circumstances might qualify as "a cause which is just and proportionate to the gravity of the sin of the other." On the other hand, we might suppose that the receptionist could just as well work for another employer. Given the proximity of his present occupation to the abortions performed in the operation room, his cooperation would be material but also illicit.

---

<sup>9</sup>*Theologia moralis* 2, §63.

## II. A problem (or two) in Alphonsus's account

There are, however, some problems with the way that Alphonsus describes material cooperation and its relationship with formal cooperation. Just before the phrase we have just looked at, he says of material cooperation that it is licit only if it is "per se good or indifferent" . And a couple of numbers later, he considers the question "Whether it is licit for a servant, on account of his servitude, to bear gifts to a prostitute?" He cites a number of authors who say that, if the gifts are "edibles" or "other small presents," this is licit. But then he says that it is more truly said that "this is intrinsically evil since in fact the gifts per se foster obscene love."<sup>10</sup>

So, Alphonsus appears to be adding to the criteria we have already seen and saying that formal cooperation involves actions that are intrinsically immoral, material cooperation actions that are not intrinsically immoral but are either in themselves good or indifferent—although the example he gives of an intrinsically evil act (delivering edibles or small gifts) leaves one wondering just what distinguishes an intrinsically evil act from an indifferent act. He also at one point says that the indifference that he associates with material cooperation is due to the fact that "another's wickedness cannot alter the nature of your action in such a way that, from an indifferent action, it becomes [*evadaf*] intrinsically evil."<sup>11</sup>

The problem with this concatenation of ideas is, first of all, that the acts that Alphonsus describes as formal cooperation, such as delivering gifts to someone, are not so very different from those he identifies as involved in material cooperation. At one point, for instance, he says that holding a ladder or opening a strong-box for a thief are "truly indifferent, for, depending on the end toward which they go, they could be either licit or illicit."<sup>12</sup> But someone might argue that the same thing can be said of delivering gifts.

Alphonsus might have restored some semblance of consistency to his theory by reversing himself and saying that both formal and material cooperation could involve acts that are *in themselves* (that is, independently of other factors) indifferent. But he would have had to deal also with the other principle just mentioned: that one person's wickedness cannot alter the nature of another's action, changing it from an indifferent act into an intrinsically evil act. Applying this principle, the reluctant medical student handing instruments to the abortionist would be performing an indifferent act which could not be affected morally by the act of the abortionist. This, by Alphonsus's own reckoning, would put the medical student's cooperation outside of the realm of formal cooperation. The medical student would be cooperating materially but (presumably) proximately. The only way to cooperate formally would be to share the intention of the primary evil-doer.

Some of the moralists who come after Alphonsus do just that—sometimes invoking the authority of Alphonsus himself. Alphonsus, however, does not go that route, possibly because he saw that it would be hard to reconcile with what Innocent XI teaches in condemning as mortally sinful carrying a ladder or opening a gate—even under great pressure—in order to help a man intent on adultery. Or possibly because he eventually recognized as problematic introducing into the analysis of cooperation with evil the factor of act indifference.

---

<sup>10</sup>*Theologia moralis* 2, §65: "But Father Concina contends more truly that this is intrinsically evil since in fact the gifts per se foster obscene love." Father Daniel Concina was a Dominican (1687-1756) whose writings on moral theology were roughly contemporaneous with those of Alphonsus. Alphonsus uses similar language also at *Theologia moralis* 3, §571, where he characterizes "breaking open gates" and "setting fire to a house" as "intrinsically evil."

<sup>11</sup>*Theologia moralis* 2, §66.

<sup>12</sup>*Theologia moralis* lb3 §571 p.67ab.

There is indeed evidence that this latter realization was at least part of his reason. Later editions of the *Theologia moralis* contain a sort of appendix on Thomas Aquinas's understanding of act indifference—or, more precisely, on Thomas's position that there *are* no indifferent human acts (or, to be precise, no indifferent voluntary acts).<sup>13</sup> It is clear in this appendix that Alphonsus agrees with Thomas; he does not, however, go back and revise the various places in his *Theologia moralis* where he speaks of indifferent acts. He was a busy man: major superior of the congregation he had founded and shortly to be made a bishop.

### III. Thomas Aquinas (drawing on Aristotle)

Let this mention of Thomas Aquinas serve as a transition to our final figure in this history of the treatment of connection with evil. We are headed now, of course, in reverse chronological order and considering a saintly scholar who predates Alphonsus, Innocent XI, and the early casuists already mentioned. Thomas's writings on human action are often useful in resolving problems that present themselves in the writings of philosophers and theologians whose understanding of human action is less comprehensive than his. It should also be mentioned that all of the authors we have so far mentioned regard Thomas as an authority and even, in some cases, describe themselves as Thomists.

Thomas Aquinas did not write a treatise on cooperation with evil. That may seem like a deficiency, but it is actually quite the opposite. He does consider cases that would be—or are—analyzed by some moralists as cases of cooperation, but his analysis considers them as they pertain to justice understood more generally. The analysis of cooperation with evil has tended—perhaps as a consequence of the way Innocent XI's Proposition 51 is formulated—to focus upon the relationship between the cooperator and the primary evil-doer. Never mentioned is the person (or persons) injured, as ought to be the case when judging who is responsible—and to what extent—for any injustice suffered. For Thomas, the injustice done to the other and how that person might possibly be compensated is always a major concern, as is the injustice done to the polity (or polities) to which the various parties belong.

Focusing upon just one cooperator and one evil-doer—and developing a theory on that basis—also makes it more difficult to analyze the morality of cooperation in which a *corporate* entity might be engaged. For this reason, the more comprehensive approach found in Thomas Aquinas is of special use to, for instance, university presidents and to hospital administrators. It is true that morality has ultimately to do with the actions performed by individuals; but the effects of these actions can be diffusive, depending on an individual's position or authority.<sup>14</sup>

In Thomas's writings on human action, essential are what—for historical reasons—he calls the "circumstances" that might contribute to the very nature of a human action. Among these circumstances is intention: a very important circumstance, to be sure, but just one among many, any of which might make what would otherwise be a good act, an evil act. This is the reason why Thomas maintains that there is no such thing as an indifferent human act. In analyzing a human act, if there are no negative factors—no negative circumstances—that enter into it, that act is good, for

---

<sup>13</sup>What I have called an "appendix" appears actually as the sixth and final article (*An detur actus indifferens in individuo*) in what Alphonsus calls a *Tractatus praeambulus* to *Theologia moralis*'s fifth book [Alphonsus Maria de Liguorio, *Theologia moralis*, v.2, 702-3]. This *Tractatus praeambulus* is not included in the 1757 (the third) edition; it does appear in the 1767 (the sixth) edition, which is the first edition published after Alphonsus became a bishop (in 1762). One presumes that the *Tractatus praeambulus* was written before he became a bishop.

<sup>14</sup>Thomas holds that the person who orders that harm be done to another (or others) bears even more guilt than the one who carries out the order: "...principaliter tenetur restituere ille qui est principalis in facto, principaliter quidem praecipiens, secundario exequens, et consequenter alii per ordinem" [*ST* 2-2.62.7 ad 2].

voluntarily action itself is good (and not indifferent). If a negative factor does enter in, that factor characterizes the act negatively: sometimes very negatively, sometimes less so. This entails that, although it is true that a person's intention in performing a particular act characterizes it in an important way, other factors must also be taken into account. These factors—the so-called "circumstances"—do not remain peripheral to the action itself but become part of what the person is doing and for which, therefore, he is responsible.<sup>15</sup> One need only think of the criminal charge of negligent homicide. A person may not even be aware of the lethal effects of his otherwise innocent action, and yet the circumstance of his negligence in this regard changes its moral character into a serious violation of justice.

This understanding of the way that circumstances become constituent parts of a human action would be Thomas's answer to the thesis that, since the primary evil-doer's wickedness cannot alter the nature of the cooperator's action, only sharing the intention of the primary evil-doer can make a cooperator's action to be formal cooperation. Thomas would certainly agree that the evil of one person's act cannot enter into another person's act. But he would argue that to maintain that sharing the intention of the primary evil-doer is the only way that an act might constitute formal cooperation, is to make the mistake of placing the interconnected moral actions—the relevant moral "scene"—within a too limited moral theory: a theory that looks solely at the relationship between the cooperator and the primary evil-doer.

Ethics has to do rather with our relationship with the *common* good. When a person performs what would otherwise be an upright act but is an act in some way responsible for what we might call "a nodule of disorder" appearing in our common moral universe, that disorder exists in that person's soul but also and at the same time in our common moral universe, for, as Aristotle (followed by Thomas) says, "the human good [τὸν ἀνθρώπινον ἀγαθόν]" is "the same thing for the individual and for the πόλις" (for, that is, the polity), although "the good of the πόλις is greater and more perfect to attain and to preserve."<sup>16</sup> We are not mere individuals. Because we are *human* individuals, each of us is attached to the polity of which he is a part—and that polity is ultimately the human race itself. The crucial relationship, therefore, is not the relationship between the cooperator and the primary evil-doer but the relationship that all persons—including the victims of injustice—have with the common good. The objection that the immorality of one person's act cannot enter into another's act is a mere cavil. The immorality of a cooperator's (or anyone's) action comes from the state of the common good, of which he is an integral part.

The polity, says Aristotle elsewhere, is "one of the things that emerge by nature" and so we can say that "man is by nature a political animal."<sup>17</sup> Thomas Aquinas accepts—indeed, embraces—this idea and, as a result, we find in his writings a profound respect for the law as established by the polity. The laws that command our respect are those that are in accordance with the natural law (which, in turn, is in accordance with the eternal law). The laws that are bound up more closely with the precepts of the natural law—precepts having to do, for instance, with the sanctity of life and the nature of marriage—establish absolute prohibitions. We see this, for example, in the prohibition of formal cooperation with evil, as understood by Alphonsus Liguori and others. When a moral question stands at a some distance from the basic precepts

---

<sup>15</sup>The "circumstances" are introduced by Aristotle at *Ethica Nicomachea* [EN] 3.1.1111a3-21. On the way in which circumstances come to be constituent part of actions, see Kevin L. Flannery, *Action and Character according to Aristotle: The logic of the moral life* (Washington, D.C.: Catholic University of America Press, 2013), 118-22.

<sup>16</sup>εἰ γὰρ καὶ ταῦτόν ἐστιν ἐνὶ καὶ πόλει, μείζον γὰρ καὶ τελειότερον τὸ τῆς πόλεως φαίνεται καὶ λαβεῖν καὶ σφῆζειν [EN 1.2.1094b7-9].

<sup>17</sup>ἐκ τούτων οὖν φανερόν ὅτι τῶν φύσει ἡ πόλις ἐστὶ, καὶ ὅτι ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον... [Politica 1.2.1253a1-3].

of the natural law, the place to look for an answer is still the laws of the polity. The relevant laws may establish positive duties and often prohibitions but not necessarily *absolute* prohibitions. And sometimes there may as yet be no law dealing precisely with the question at hand. The legislator (or the moralist) must examine good law already established and, exercising prudence, decide what would be the best thing to do or not to do.<sup>18</sup>

#### IV. Vaccines

That brings us, finally, to the couple of contemporary issues referred to earlier, the analysis of which is better suited to Thomas's more comprehensive approach than to the theory of cooperation with evil.

The first issue has to do with the production and testing of vaccines against the Covid-19 virus. The vaccines currently available in significant quantities in the United States all have some connection with aborted fetuses. In the testing phase for their vaccines, the pharmaceutical corporations Pfizer and Moderna made use of a cell line called HEK-293 that had its origin in cells taken from a fetus aborted in the 1970s. Johnson & Johnson used this same cell line (plus another called PER.C6) in the manufacture of their vaccines.<sup>19</sup> Neither of these corporations is connected with the individuals or entities that performed the original abortions or with the entities that used the fetal cells in order to create the cell lines. It is impossible, therefore, for the corporations making use of the cell lines in the manufacture or testing of the vaccines to be cooperating—formally or materially—with evil since cooperation requires someone or some entity with whom a cooperator cooperates.

That said, however, there are reasons not to use the vaccines mentioned and also to prefer vaccines with no connection with abortion, if such vaccines are available. One reason that is sometimes mentioned is the avoidance of scandal. It is possible that, when seeing those publicly committed to the defense of life making use of the vaccines connected with abortions, other persons might draw the conclusion that this commitment to the defense of human life is not sincere. But an alternative—and ultimately more effective—means of avoiding scandal is to explain clearly why an act that appears immoral is not immoral or not necessarily immoral.

A stronger reason would invoke the respect we owe to the children who were killed, from whose bodies we know the cell lines derive. Respect for the bodies of the deceased is natural to man. One sees this in the funeral rites—as varied as they may be—performed throughout human culture quite generally. In his *Rhetoric* Aristotle speaks positively of Sophocles's Antigone's insistence on burying the body of her brother Polyneices, suggesting that she is following a law of nature [*Rhet.* 1.13.1373b4-12].<sup>20</sup>

---

<sup>18</sup>See *ST* 1.94.4-5.

<sup>19</sup>A cell line is a "cell culture" or group of cells that are related to one another in so far as they all derive from an original cell or group of cells that were made capable of reproducing themselves outside the animal body they came from by spontaneous or artificial means, and of passing on this capacity to the cells derived from them for many years or even indefinitely. (I thank Kevin FitzGerald for this definition.) The cell line HEK-293 has its origin in a fetus aborted in 1972; cell line PER.C6 has its origin in a fetus aborted in 1985. It is unclear whether the former abortion was elective. "Though HEK293 is commonly believed to have been obtained from an aborted human fetus, I received an e-mail a few months ago from Professor Frank Graham, who established this cell line. He tells me that to the best of his knowledge, the exact origin of the HEK293 fetal cells is unclear. They could have come from either a spontaneous miscarriage or an elective abortion" [Nicanor Pier Giorgio Austriaco, "Moral guidance on using COVID-19 vaccines developed with human fetal cell lines," *Public Discourse: The Journal of the Witherspoon Institute*, 26 May 2020].

<sup>20</sup>On this passage, see Kevin L. Flannery, "Moral taxonomy and moral absolutes," in *Wisdom's Apprentice: Thomistic essays in honor of Lawrence Dewan, O.P.*, ed. Peter A. Kwasniewski (Washington, D.C.: Catholic University of America Press, 2007), 246-54. In this section of the article, I argue that the "natural laws" discussed in



It is true that the cells used in the production of the Covid-19 vaccines contain nothing physical that was present also in the aborted fetuses,<sup>21</sup> but the DNA contained in those cells can be traced back to the DNA of the fetuses. In any case, we *know* that the cell lines began as the cells of the aborted fetuses: that in itself is morally significant.<sup>22</sup> Both Thomas Aquinas and Augustine of Hippo acknowledge that not only the bodies of the deceased are owed respect but so also are objects associated *with* the deceased. Thomas quotes Augustine in this regard: "For, if a parent's garment or ring or any other such thing is the more dear to their children in as much as their affection toward their parents is greater, in no way are the bodies themselves to be spurned...". Thomas immediately remarks: "From this it is clear that he who has affection for someone, venerates even that of his which is left after death, not only his body or parts of his body, but even external things, such as his clothes and similar things."<sup>23</sup> But if respect might reasonably be shown to a possession of a beloved deceased, respect might reasonably be shown also to the cells derived from the cells of a fetus whom we know to be the ultimate source of cells currently being used in order to produce or test vaccines.<sup>24</sup>

Another reason to avoid using the vaccines would be worries about the possible long term effects of the vaccines on things like fertility. Obviously the strength of this reason would depend on the strength of the evidence that these long term negative effects are likely. However, neither of these reasons for avoiding the vaccines—neither the avoidance of scandal, nor the respect owed to what is derived from the remains of the deceased, nor the prevention of long term negative effects—is an overriding consideration, as would be the avoidance of formal cooperation with evil. There is ample room for the prudential judgment, such as necessarily takes into account the common good, that, given the present situation, making use of the vaccines is to be strongly recommended in order to avoid the illness and even death of oneself and/or others.

Indeed, given the present situation, persons or entities possessed of the appropriate moral authority are probably obliged to express a judgment in this regard. Unfortunately, the relevant public or political entities in the United States have forfeited

\*\*\*\*\*

this section of the *Rhetoric* pertain to what Thomas calls the "first intention" of the natural law, which serves as a sort of ideal state of nature and has therefore a bearing upon how related laws are to be applied or not applied.

<sup>21</sup>Says molecular biologist and Dominican priest Nicanor Austriaco: "The aborted fetuses are long gone, as are the original fetal cells. There are no fetal body parts or fetal tissue left. Only distinct, new cells derived from the original fetal cells remain" [Austriaco, "Moral guidance on using COVID-19 vaccines developed with human fetal cell lines"].

<sup>22</sup>I owe this insight to James Clifton.

<sup>23</sup>*ST* 3.25.6c. The passage by Augustine reads as follows: "Si enim paterna vestis et annulus, ac si quid huiusmodi, tanto carius est posteris, quanto erga parentes maior affectus, nullo modo ipsa spernenda sunt corpora, quae utique multo familiarius atque coniunctius, quam quaelibet indumenta gestamus" [Augustine, "De cura pro mortuis gerenda," in *Sancti Aurelii Augustini Hipponiensis Episcopi opera omnia*, vol. 40 of *Patrologia Latina* (Paris: Migne, J.-P., 1865), 595 (3.5)]. The same passage can be found also in Augustine's *De civitate Dei* [Augustine, "De civitate Dei," in *Sancti Aurelii Augustini Hipponiensis Episcopi opera omnia*, vol. 41 of *Patrologia Latina* (Paris: Migne, J.-P., 1845), 27 (1.13)]. Thomas quotes this passage also in book four of his commentary on Peter Lombard's Sentences [Thomas Aquinas, *Commentum in quartum librum Sententiarum magistri Petri Lombardi*, vol. 2, 1 of *Commentum in quatuor libros Sententiarum magistri Petri Lombardi* (Parma: Typis Petri Fiaccadori, 1858), 45.2.3.3 ad 3 (p.1127)].

<sup>24</sup>The Congregation for the Doctrine of the Faith, in speaking of the use of "'biological material' of illicit origin" mentions the respect due to the bodies of the deceased. See *Dignitas Humanae* §35 [*Acta Apostolicae Sedis* 100 (2008), p.883]. In drawing this connection, the Congregation quotes its own earlier document *Donum vitae* [*Acta Apostolicae Sedis* 80 (1988), I,4 p.83]. In neither document, however, is the Congregation speaking of cell lines such as those used in the currently available vaccines.

much of their moral authority when it comes to pro life related issues. But entities such as the Holy See's Congregation for the Doctrine of the Faith or the United States Conference of Catholic Bishops are not so compromised. While acknowledging that some faithful Catholics, invoking perhaps one of the reasons just mentioned, might object to using the vaccines and that these decisions in conscience must be respected, these two entities have taught that making use of the vaccines is not only licit but also highly to be recommended.<sup>25</sup> Such a teaching would in no way be inconsistent with Thomas Aquinas's moral theory—in particular as it applies to precepts that are not overriding precepts of the natural law.

## V. The Little Sisters of the Poor

As already mentioned, Thomas's moral theory includes no treatise on cooperation. Bearing in mind, however, his understanding of the positioning of any human action within the common good, one sees why: he had no need of such a treatise. When someone performs an act that causes unjust harm to another, the question that poses itself is always, Who is responsible for that nodule of disorder in our common universe and to what extent? In that sense, there is nothing special about cooperation. That said, however, in expounding his general theory of human action, Thomas does provide a number of tools that are useful in the analysis of acts in some sense connected with evil.

One of the places where Thomas provides such tools is article seven of question sixty-two in the second part of the second part (the *Secunda secundae*) of the *Summa theologiae* [ST 2-2.62.7]. Question 62 is about restitution and so has primarily to do with stealing and how to re-establish the just situation that was upset by the act of stealing. Article seven is about those who have not actually come into possession of the stolen goods but were connected in some way with the theft. Clearly, then, Thomas is speaking there about connection with a distinct primary evil. One must exercise prudence in applying what Thomas says to the issues regarding connection with evil since the article is part of the question on restitution and it is possible to be connected with an evil act and yet not be bound to make restitution. Still, however, several of the ideas that Thomas puts forward in ST 2-2.62.7 are immediately relevant to acts in some way connected with evil.

In the first lines of the main argument of the article, Thomas in effect explains how even someone who has not profited from a theft can still be connected morally to it. The evil consists not just in certain goods' being (or having been) in the hands of another but in the very fact that a theft has occurred. Upset by the act of theft is not just the balance of just possession but the common good itself. And so, says Thomas, whoever is a *cause* of the theft (and so the cause of that nodule of disorder) is obliged to make amends.<sup>26</sup> He then lists a number of ways (or senses) in which one might be such a cause, some of them involving direct causation, others indirect. As an instance of direct causation Thomas mentions "moving [someone] toward" [*movendo ad*] a bad

---

<sup>25</sup>For the teaching by the Congregation for the Doctrine of the Faith, see the previous note; see also the same Congregation's 2020 "Note on the morality of using some anti-Covid-19 vaccines" [[http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20201221\\_nota-vaccini-anticovid\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20201221_nota-vaccini-anticovid_en.html)]. The United States Conference of Catholic Bishops' 2020 document ("Moral Considerations Regarding the New COVID-19 Vaccines"), signed by Bishop Kevin C. Rhoades and Archbishop Joseph F. Naumann, can be found at <https://www.usccb.org/resources/moral-considerations-regarding-new-covid-19-vaccines-1>.

<sup>26</sup>The first section of ST 2-2.62.7 reads actually as follows: "...ad restitutionem tenetur aliquis non solum ratione rei alienae quam accepit, sed etiam ratione iniuriosae acceptionis. Et ideo quicumque est causa iniustae acceptionis tenetur ad restitutionem ...". It is the "iniuriosa acceptio" to which I am referring when speaking of a nodule of disorder.

act—which might be done (for instance) by "ordering" [*praecipiendo*] and/or by "expressly consenting" [*consentiendo expresse*]. He also says that the person who orders that harm be done to another (or others) bears even more guilt than the one who carries out the order.<sup>27</sup>

The saga of the legal battle between the Little Sisters of the Poor and the Department of Health and Human Services (HHS), over the latter's implementation of the Obama administration's 2010 Affordable Care Act, has been long and complicated. According to the Affordable Care Act, employer insurance plans are required to include women's "preventive care," which includes contraceptives, some of which are possibly abortifacients (that is, once taken, they sometimes prevent conception but sometimes kill a conceived embryo).

HHS created an exemption from this "contraceptive mandate" and also an "accommodation" regarding the same. The exemption, which applied to churches and some other entities, did just that: it exempted the pertinent entities from having to provide the contraceptive-providing insurance. The "accommodation," which was offered to (among others) the Little Sisters, was quite different. It required them to fill out a form, known as "EBSA Form 700," and submit it to the entity providing its employees' insurance. This entity was in turn required to arrange for women to be provided with the contraceptives free of charge.

The original form contained the sentence, "This certification"—that is, the form itself—"is an instrument under which the plan is operated." The Little Sisters objected to signing such an "instrument"—and with good reason, for it would have been an act that Thomas, in *ST 2-2.62.7*, would describe as an act "moving [others] toward" by "ordering" and "expressly consenting"; it would, in other words, be a direct cause of the funding of immoral activity. The form underwent a number of changes, including one that required only that the Little Sisters provide notice to the Secretary of HHS that they have a religious objection to providing the coverage—this notice too being described internally as "an instrument under which the plan is operated." The Sisters' objection to the "accommodation" remained the same.

In a *New York Times* opinion piece published in March of 2016, one of the Little Sisters, Sister Constance Veit, countered HHS's contention that the "accommodation" is an "opt-out." "Rather," she wrote:

what Health and Human Services is calling an "opt-out" is really an "opt-in"—a permission slip where we authorize the use of our religious health plan to offer services that violate our beliefs and waive our protections under federal civil rights laws. That's why they need our signature.<sup>28</sup>

Sister Constance is saying, in effect, and with reason, that initiating the process that would provide funding for immoral acts would constitute an immoral action. Even though the Little Sisters would be acting under strong pressure—that is, although they would not be sharing the intention of those performing the acts they regard as immoral—even still, signing one of those forms only makes sense as a human act in that its end is to provide the means to perform those immoral acts.

Under the Trump administration, HHS altered its policy and granted to the Little Sisters of the Poor an exemption rather than the "accommodation." That, however, was

---

<sup>27</sup>See *ST 2-2.62.7 ad 2*: "...principaliter tenetur restituere ille qui est principalis in facto, principaliter quidem praecipiens, secundario exequens, et consequenter alii per ordinem."

<sup>28</sup>Constance Veit, "Obamacare's birth-control 'exemption' still tramples on rights," *New York Times*, March 18, 2016. "The government," Sister Constance continues, "says this isn't a problem because it will pay for the services that violate our religious beliefs. But for us this is not a money question; it is a moral question about what we offer in our plan."

merely an administrative reversal, which itself is likely to be reversed under the Biden administration.<sup>29</sup> The legal battle continues.

Would signing the "instrument" initiating the process that finishes possibly in abortions—or, in any case, in impeding the natural progress of sexual intercourse—constitute formal cooperation with evil? In the commentary on this case, it is often suggested that it does. But in attempting to apply the traditional theory of cooperation with evil, one sees that the details of the moral situation do not correlate easily with the terms typically employed in that theory. In that theory, the person effecting—or, at least, risking—the killing of a child would be the primary evil-doer. But here—should they sign the instrument—the sisters or their congregation would appear to be the primary evil-doer. In any case, they are certainly not mere cooperators since they are initiating the chain of events. As noted earlier, Thomas holds that the person who orders that harm be done bears even more guilt than the one who carries out the order. Even if the person issuing the order does so reluctantly, in order, for instance, that his business enterprise might remain active, he is the primary agent in that event. Hospital administrators under pressure to allow abortions or sex-change operations to be performed within his hospital's facilities should bear this in mind. As should university presidents ordering and consenting to insurance policies providing abortion services.

#### Conclusion.

To conclude, then, and that very briefly, as useful as it can sometimes be, there is no reason why every moral case involving evil actions and also relationships (connections) among various agents has to be analyzed by means of the traditional theory of cooperation with evil. At the very least that theory can be supplemented with ideas and concepts from other sources—and there is no source more promising in this regard than the writings of Thomas Aquinas, drawing as they do upon Aristotle.

---

<sup>29</sup>On July 8, 2020, candidate Joseph Biden issue a statement including the sentence: "If I am elected, I will restore the Obama-Biden policy that existed before the Hobby Lobby ruling: providing an exemption for houses of worship and an accommodation for nonprofit organizations with religious missions"

[<https://www.nationalreview.com/corner/biden-says-he-would-rescind-exemption-for-little-sisters-of-poor/>].