

Complicity, Fetal Tissue, and Vaccines

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Several commonly used vaccines are cultured on human diploid cell strains (HDCSs) derived from voluntarily aborted human fetuses, and at least one (rubella) is based on a virus sample from a voluntarily aborted human fetus. This generates a moral problem for conscientious pharmaceutical company employees, medical personnel, parents, and patients: Is the continued production and use of the vaccine morally licit, given the grave evil involved in the production? It appears, after all, that the use of the vaccine is a morally problematic type of cooperation in evil.

I shall argue, following M. Cathleen Kaveny, that the traditional category of cooperation is not the most salient for analyzing this question. Nonetheless, the use of the vaccine probably does constitute complicity in the abortion. Not all complicity in evil, however, is morally illicit, although the complicity here is *prima facie* wrong in the sense that (a) there is a presumption against it that can only be overridden for proportionate reasons, (b) it is a bad thing that the complicity occurs, (c) one should strive to avoid the complicity, and (d) it is only by the principle of double effect (PDE) that it can be tolerated. Moreover, the complicity poses significant moral dangers for the agents involved, especially the professionals. I shall argue that the complicity in the vaccine case can be justified, but that there are a number of duties that health-care institutions have in this case, duties that it appears are not being fulfilled, such as the duty to inform patients or their proxies of the issue.

Modes of Complicity

There are many ways one might be involved in someone else's evil-doing that seem in some sense supportive of the evil-doing. For instance, one might encourage or help commit the evil, reward or praise it, profit from it, be a part of the same joint venture, fail to criticize the deed, fail to work against the evil, neglect to punish it, or

help the evildoer escape with impunity.¹ By evildoing, I mean simply the performance of something that is objectively morally wrong, and an evildoer is someone who engages in the act. No claim is made about the subjective state of the evildoer, who may not be culpable for the evildoing.

Traditionally, many of these forms of involvement have been handled by Catholic ethicists in the elaborate framework of “cooperation with evil” that originated with St. Alphonsus Liguori. However, in a recent ground-breaking article, M. Cathleen Kaveny has persuasively argued that at least one of these items, profiting from evil, is best understood in a new category, “appropriation of evil.”² It would be a stretch to suppose that a scientist now using data derived from immoral Nazi medical experimentation is somehow *cooperating* with the Nazis. It is, of course, remotely possible that such a scientist is somehow promoting future Nazi-like activities, but to focus on this problem is to miss the salient features of the case.³ For it is not just because of the promotion of future illicit research that the use of immorally gathered data is problematic. It is problematic because by appropriating an evil the scientists who use the data are putting themselves in two moral dangers that Kaveny carefully discusses: *seepage*, where the values and goals of the evildoers gradually become one’s own and one becomes less willing to work against these goals; and *self-deceit*, where one strives to deny as long as possible that seepage has taken place, and rationalizes one’s activity.⁴ The problem arises because of one’s complicity in the *past* evil, not just in hypothetical future evils.

Thus, “complicity” rather than “cooperation” is a better general term for the forms of involvement in the evildoing of others that are morally problematic, indeed *prima facie* wrong.⁵ Cooperation, then, is a special case. When we assist an evildoer in an act, the evildoer is a primary agent and we are auxiliary agents. Cooperation in

¹ Especially for the case of joint venture, see C. Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000).

² M. Cathleen Kaveny, “Appropriation of Evil: Cooperation’s Mirror Image,” *Theological Studies* 61 (2000): 280–313.

³ See also Kaveny’s critical discussion, in “Appropriation of Evil,” of the apparent misapplication of the concept of cooperation in Russell E. Smith, “The Principle of Cooperation in Catholic Thought,” *The Fetal Tissue Issue: Medical and Ethical Aspects*, eds. P. J. Cataldo and A. S. Moraczewski (Braintree, MA: Pope John XXIII Center, 1994): 81–92.

⁴ Kaveny, “Appropriation of Evil,” 305–306.

⁵ The term “complicity” occurs earlier in the context of the use of fetal tissue, in *Donum vitae* (1987), and has been prominently used in discussion of President Bush’s compromise on federal funding of embryonic stem cell research. See, for example, Archbishop Justin Rigali, Archdiocese of St. Louis press release, August 13, 2001; V. Branick and M. T. Lysaught, “Stem Cell Research: Licit or Complicit?” *Health Progress* 80.5 (September–October 1999): 37–42; and J. C. Heller, “Complicity in Embryonic and Fetal Stem Cell Research and Applications,” *Stem Cell Research*, eds. J. M. Humber and R. F. Almeder (Totowa, NJ: Humana Press, 2004): 123–147. For a general study of complicity that takes a less individualistic view than the one I will generally adopt, see Kutz, *Complicity*.

evil further subdivides into *formal* cooperation, where the intention is to promote the evil, and *material* cooperation, where there is no intention to promote the evil. Kaveny notes, however, that in our appropriation of the evil deed of another, it is the evildoer who is the auxiliary agent, while we are the primary ones, and so appropriation of evil and cooperation in evil are mirror images. The parallel to the formal/material subdivision of cooperation on the side of appropriation is a distinction between endorsing and not endorsing the evil from which one profits.

Appropriation for Kaveny seems to simply be profiting from evil. But going beyond her work, we may further distinguish one variety of appropriation as particularly problematic. This is when the appropriation furthers a purpose for which the evildoer intended the evil, and so one is helping the evildoer achieve his plan, even though one's help is causally downstream from the evil deed itself. There is typically a presumption against a form of appropriation if and only if the appropriation involves such downstream cooperation. A police officer benefits financially from the existence of crime, but since there is no downstream cooperation, it seems that such profiting from evil is not even a case of complicity. But if a museum's employee has illegally imported Egyptian antiquities for display, then this fact creates a presumption against such a display, since by displaying the antiquities, the museum is cooperating downstream in the employee's illicit action. At the same time, the presumption can be overridden for sufficiently strong reasons. If a police officer tortures a terrorist to find the location of a ticking bomb in a populated area, we should discipline the police officer but nonetheless must use the information obtained.

On the other hand, upstream cooperation is when one is contributing causally to the evil itself, rather than simply drawing the goods out of that evil. The presumption against upstream cooperation, even when one does not intend the evil, appears even stronger than that against downstream cooperation.

Vaccines and Appropriation of Evil

In currently using or manufacturing a vaccine whose production and development causally depended on voluntary abortions, one is plainly not engaging in any upstream cooperation with the abortion. One is instead appropriating the evil of the abortion. The question of whether one is complicit through downstream cooperation in using the vaccine to promote health depends on whether the original agents involved in the abortion had the promotion of health as part of their plan.

The abortions in question occurred before the widespread adoption of standards of informed consent in the western medical community. Thus, it is quite possible that the parents of the fetuses did not know, and *a fortiori* did not intend, the eventual medical use of the fetal tissue.⁶ If so, then there is no downstream cooperation with the parents. One's use or manufacturing of the vaccine was not a part of their plan.

⁶ See E. Norrby, e-mail response to a message from R. Leiva on January 20, 2006, cited by Leiva in "A Brief History of Human Diploid Cell Strains" on p. 450 of this issue.

However, at least some of the medical personnel involved in the abortion must have known about the research plans in order to have ensured the needed “maximum sterility” of the tissue.⁷ Being medical personnel, it can be assumed they have at least approved of the use of the tissue for research in order to promote human health. But this is not sufficient to show that such use was part of their plan. To ascertain that it was, we would have to establish that the subsequent use of the tissue was one of their *purposes* in assisting with the abortion.

It seems unlikely that the use of the tissue would have been a primary purpose of the abortion, and we can charitably assume that the medical personnel would not have participated in an abortion intended solely to yield “research material.” However, an outcome does not have to be a primary or sufficient motivator in order to be part of a plan. We often perform actions with a large number of goals in mind. A researcher might perform research with the primary purpose to gain tenure, and it might be that the usefulness of the research to science would not have been sufficient to motivate him, but nonetheless it *is* a part of his plan that science should benefit. Something is a part of one’s plan provided that the plan counts as at least in part a failure if this goal is not achieved, whether or not it is a primary or sufficient motivator for the action.

It is plausible that when we perform some action and see that the action would promote some goal that we strongly believe in, the furthering of that goal is a part of our plan. What reason could we possibly have for *not* making it a part of our plan, after all? Moreover, a sign of the goal’s being a part of the plan is the willingness to modify one’s action, even if only in a minor way, so as to make it more congenial to that goal. Maintaining higher standards of sterility in the tissue could count as such a sign, and it is reasonable to assume that this was done in light of the recognition of the need for the sterility.⁸ Thus, we have good reason to suppose that at least some of the medical personnel participating in the abortion considered future medical benefits part of their plan.

Moreover, abortion is an emotionally difficult procedure for many medical professionals, who cannot help but feel that they are killing a human being.⁹ In order to encourage oneself to do something emotionally difficult, one is likely to situate the action in a motivational context that paints it in a good light. Believing that fetal tissue may lead to improvements in human health is thus likely to enter into the motivations of medical practitioners when the tissue will be used for research, and hence can be reasonably assumed to be a part of their plan of action.

Thus, probably, the production and use of the vaccine constitutes downstream cooperation in the abortion itself. Moreover, if we take current western standards of consent as morally normative in regard to the use of the body after death, then there

⁷ Ibid.

⁸ Ibid.

⁹ See Rachel M. MacNair, *Perpetration-Induced Traumatic Stress: The Psychological Consequences of Killing* (Westport, CT: Praeger, 2002), ch. 6.

is a second evil involved: the extraction of tissue after the death of an individual without due permission. This extraction was done expressly to further medical research, and presumably thus to lead to improved medical interventions in the future. Hence, if this extraction was morally wrong, the production and use of the vaccine constitutes downstream cooperation in an evil, albeit a lesser evil than abortion. Even if the mother gave consent to the extraction, the consent was not valid. Proxy consent needs to be given by someone who can be presumed to have the patient's well-being in mind. Someone who intentionally procures the death of the patient is not an appropriate proxy.¹⁰

The wrongfulness of the extraction of tissue without permission appears to follow from the dignity of the human body, which is not just a set of clothing, but which expresses one's person, and presumably continues to express it to some degree at the very least as long as it bears significant resemblance to the person. One may donate one's body after death, but one's body should not simply be taken.¹¹

The Principle of Double Effect

It follows that even apart from all considerations of moral danger to self or others, there is a serious *prima facie* reason not to use or manufacture vaccines that involve cell lines derived from voluntary abortion, since in doing so one is likely to be cooperating downstream in the evils of abortion and of extraction of tissue without valid patient or proxy consent. The cooperation in the evils of abortion is, of course, a much more serious matter than the cooperation in nonconsensual postmortem tissue extraction, but on the other hand the morally problematic cooperation in abortion is diminished by the fact that the use of the tissue to promote human health was probably a minor aspect of the plans of the agents involved in the abortion.

It seems quite reasonable, given these facts, to say that if downstream cooperation were the only issue, the cooperation would be proportionate *vis-à-vis* the laudable public health goals served by vaccines, as long as no ethically unproblematic alternatives are available. The intended effect is the protection of life; the bad effect is the furthering of an evildoer's plan; proportionality holds. Hence, double effect applies. The evildoer's original actions are not one of our means—they are the circumstances of our action. The *prima facie* reason against cooperation now seems to be overridden.

¹⁰ If the consent had been given by a father who opposed the abortion, it might have been valid. But at least in the case of WI-38, both parents seem to have supported the abortion. "Gamma Globulin Prophylaxis; Inactivated Rubella Virus; Production and Biologics Control of Live Attenuated Rubella Virus Vaccines" [no authors given], *American Journal of Diseases of Children* 118.2 (August 1969): 372–381. In any case, one suspects that if consent were sought, it would be sought from the mother.

¹¹ There is also the question of the isolation of the rubella virus from the body of an aborted fetus. While the extraction and use of tissue is morally problematic, the isolation of the virus, even if it necessarily involves the extraction of a small amount of tissue, does not seem as problematic, even without consent. It is not the body that is used, but the body's enemy.

However, we also need to take into account the contingent, extrinsic dangers of appropriation. Even for an initially conscientious medical practitioner or employee of the pharmaceutical company, what one routinely does is apt to seem morally routine. The fact that the actions involve *prima facie* evils that are only tolerated by virtue of the principle of double effect is one that the professional is likely to eventually push to the back of his mind. This is particularly true in the case of a professional working with less conscientious professionals if his own concerns do not find much expression in actions or words. He may initially be unable to do anything to prevent the bad effect of downstream cooperation, and eventually he may become quite unconcerned about it. It is morally dangerous to apply the principle of double effect without actually trying to prevent the bad effect.¹²

Observe, too, that the use of the vaccine falls into the morally dangerous category that kind of downstream cooperation where one not only happens to further an evildoer's good goal, but actually shares that goal, which makes it easier to identify with the evildoer's action. This makes moral self-defense necessary, to distance oneself from the evildoer—if one cannot do so, then the use of the vaccine is morally deleterious and unacceptable. Thinking about the time elapsed since the evil was committed is one way of distancing oneself psychologically, but this may also involve self-deceit—a way of closing one's eyes to the evils of the past, similar to the way we close our eyes to starvation on other continents. The indirectness of the cooperation is a more helpful consideration: the gravest of the past evils, abortion, was surely not done primarily for the sake of vaccine use, though the improvement of human health may well have been part of the plan of some of the agents directly involved in the abortion.

Moreover, it appears that vaccines could have been made by morally licit means, either using miscarried fetal tissue or using monkey cells. Thus, although the abortions were not entirely incidental to the vaccine production—they were important for the development plan that was in fact chosen—there is nothing about the idea of a rubella vaccine that requires it to have a deliberate abortion in its causal antecedents, and the problematic causal origins barely affect the actions of the practitioners now administering the vaccine.¹³ Consequently, it is easier for practitioners to distance themselves morally from the illicit origins of the vaccine, and hence to protect themselves from some of the moral dangers. Not so for those involved in the *production* of the vaccine, since the continued use of the HDCSs emphasizes the problematic origins. Observe, too, that a similar argument cannot be made in favor of research of embryonic stem cells for which morally unproblematic sources are *not* currently available. (And if they were available, then they would need to be used instead.)

¹² Michael Walzer thinks that the principle of double effect can only be applied if one is doing something to counteract the bad effect. *Just and Unjust Wars* (New York: Basic Books, 1977): 151–156. I think he is wrong about that, but it is clear that if one is not doing something to counteract the bad effect, the application of double effect at least may become mere verbiage.

¹³ The fact that human cells are used in the culture as opposed to, say, chick cells may affect the allergenic properties of the vaccine.

But of course the best way of distancing oneself from evil is not to reflect with satisfaction on how far one is from it, but to actively counter that evil, for example, by promoting ethical alternatives. More shall be said on this topic later. But let us move on to the moral dangers to others.

Responsibility of Medical Professionals

The outwardly untroubled attitude of otherwise conscientious medical professionals is indeed likely to pose a moral danger to others. Consider the case of parents who have a pediatrician they morally respect. The pediatrician recommended to the parents the use of the MMR vaccine without any comments about the moral issues, as if it were entirely routine. The parents later find out that this vaccine's causal antecedents include induced abortions. They may start to think that either there is nothing morally problematic about downstream cooperation or that abortion is less morally problematic than they had previously thought, or else their moral respect for the pediatrician may decrease, thereby harming the pediatrician's moral witness in other areas.

Most ordinary people would not expect their medical practitioner to routinely use a vaccine developed by German doctors using tissue taken from Jews murdered at Auschwitz, and they certainly would have moral qualms about such use and doubts about the practitioner's morals.¹⁴ Seeing a medical practitioner's routine and apparently morally untroubled use of a vaccine developed using aborted fetal tissue is apt to make one think that this practitioner does not think of abortion as homicide. The same or greater danger is present when a Catholic hospital routinely administers such a vaccine with no comment, since this may make a patient believe that the Catholic Church's opposition to abortion is inconsistent. Furthermore, the mere fact of seeing good arise from abortion may increase the incidences of abortion, given the need of both mothers and medical practitioners participating in an abortion to find self-justification.

If all this should indeed increase public acceptance of abortion, the danger of such an eventuality might well be disproportionate to the public health benefits of vaccination. The moral evil of abortion, after all, outweighs the nonmoral evil of death from disease. Nonetheless, it may be licit to accept a risk of somewhat furthering a moral evil for the sake of a nearly certain public health benefit. (In this way, the case of vaccination is different from that of medical research using cell lines derived from voluntarily aborted fetuses, since medical research only has a *chance* of benefiting us.) Furthermore, there are also serious moral dangers in refraining from vaccination when the practice of it clearly saves lives. To stand by and do nothing to prevent death is morally hazardous to oneself and deeply damaging to one's witness to others.

¹⁴ I am not claiming that abortion and the Holocaust are morally on par. While, objectively speaking, both involve the illicit killings of millions of innocent people, there is a subjective difference in that abortion providers do not appear to be driven by malice toward their victims. Moreover, on the objective side, the Holocaust, in addition to being an attack on millions of particular individuals, was also an attack on their nation as a whole, while an abortionist, unless driven by radical population control ideas, is not trying to contribute to the destruction of all unborn human life.

The greatest direct moral dangers are to those who routinely administer or produce the vaccines, although there is some danger to the parents and even to those receiving the vaccine. (Knowing the origin of a vaccine that is protecting one's health may make one more friendly to abortion). The medical practitioners' routine use of the vaccines, in turn, poses a moral danger to others. The question of the degree of moral danger is in large part an empirical one.

One cannot, it seems, be certain in judging that the moral dangers in the appropriation outweigh the moral dangers of not vaccinating. If so, then given the near-certainty of the public health benefits of vaccination, it appears that continuing the use of the vaccinations is appropriate.

Moral Duties of Vaccine Manufacturers

In fact, it appears that even the continued manufacture of the vaccines can be morally permissible, notwithstanding the fact that the manufacturer of the vaccine engages in more immediate downstream cooperation with abortion than does a medical practitioner, parent, or patient. For this downstream cooperation can indeed be justified by the principle of double effect, and the moral dangers to others are actually greater from the actions of respected medical professionals than from the actions of pharmaceutical company employees whom the public does not know. Granted, there is a serious moral danger to the individual pharmaceutical company employees, but given that it is largely an empirical question as to how probably the danger is, it is reasonable that the judgment of this be left to the employees and their spiritual advisors.

It is not clear whether the statement of the Pontifical Academy for Life would prohibit the continuing manufacture of the vaccines until unproblematic alternatives were made available.¹⁵ In an essay commenting on the statement, Msgr. Angel Rodríguez Luño argues that "the preparation and commercialization of vaccines that were developed by the use of biological material resulting from voluntary abortion should be considered *in many cases* as ethically illicit,"¹⁶ but the phrase "in many cases" leaves a loophole. One might argue that the pharmaceutical companies, by their past illicit activity, have placed themselves in the position of having two moral duties: (1) to develop morally unproblematic alternatives, and (2) to continue the manufacture of vaccines whose development had involved illicit complicity with evil. Presumably, the doctrine of restitution implies that any profits arising from the second item should be immediately directed toward the first as well as toward fighting abortion. Even if a pharmaceutical company fails to engage in developing morally

¹⁵ Pontifical Academy for Life, "Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Fetuses" (June 5, 2005), <http://www.academiavita.org/template.jsp?sez=Documenti&pag=testo/vacc/vacc&lang=English>; reprinted in this issue of the *Quarterly* on pp. 541–549.

¹⁶ Luño, "Ethical Reflections on Vaccines Using Cells from Aborted Human Fetuses," trans. Michael J. Miller, p. 447 of this issue (emphasis added). Originally published in Italian as "Riflessioni etiche sui vaccini preparati a partire da cellule provenienti da feti umani abortiti," *Medicina e Morale* 55.3 (2005): 521–530.

acceptable alternatives, it might be permissible, and sometimes even obligatory, for a conscientious employee—after duly voicing his view that this development ought to be done—to participate in the morally problematic manufacturing of vaccines, applying the principle of double effect. The grave public health dangers of ceasing production of the vaccine, together with the fact that the manufacturing process presumably includes only genetic descendants of the original illicitly extracted cells, apply here.¹⁷

Moral Duties of Health-care Providers

In light of the grave moral dangers of engaging in downstream cooperation involving vaccines derived from aborted fetuses, several positive moral recommendations can be made.

Jan Heller, in discussing the related question of embryonic stem cell research, argues that complicity can be decreased by open discussion of the moral issues involved.¹⁸ At the same time, it seems that making the public aware of the downstream cooperation of a medical practitioner in past abortions may lead the public to a greater acceptance of abortion. Nonetheless, hiding the truth is not a good long-term strategy.

Moreover, it is a part of the doctrine of informed consent that a patient or proxy must be given all the features of the situation salient to the decision. Given the difficult judgments of proportionality involved, it appears that the moral issues raised by these vaccinations are just as salient as the medical ones. Moreover, the moral issues are highly nontrivial. It thus appears that it may be required for informed consent that the decision maker be told of the origin of the vaccine, with the medical practitioner explaining why it appears (assuming it does) to be morally licit despite this evil antecedent which the practitioner deeply deplors. If this is done with genuine sincerity, it may counter some of the moral dangers in the practice, in addition to helping satisfy the requirements of informed consent.

Even medical practitioners who themselves approve of abortion ought to give information about the origins of the vaccine, for they have a duty to supply their patients with the information that is salient *to the patients*, and most Americans seem to be opposed to most abortions.¹⁹

¹⁷ There may be trace amounts of the original tissue, I suppose. But these trace amounts may not be sufficient to trigger our duties of respect for a deceased person's body.

¹⁸ Jan C. Heller, "Complicity in Embryonic and Fetal Stem Cell Research and Applications," in *Stem Cell Research*, eds. J. M. Humber and R. F. Almeder (Totowa, NJ: Humana Press, 2004): 143–145.

¹⁹ A Zogby International poll conducted in April 2004 found that 56 percent of those surveyed believed abortion should be legal at most in cases of rape, incest, or danger to mother's life. The latter three cases account for only a small percentage of abortions. It is reasonable to suppose that almost all the people who thought abortion should be illegal thought this because they believed it to be immoral. (It is possible that a not insignificant percentage of those who thought it should be legal also personally believed it to be immoral.)

Because of both the intrinsic evil of continuing downstream cooperation with the abortion and the derivation of tissues, and because of the need to give a clear witness to the truth, medical institutions, particularly Catholic ones, have a number of duties vis-à-vis vaccines derived from past abortions. The first we have already discussed, and many of the rest should now be self-evident. The following list is not meant to be exhaustive:

- Information about the moral issues raised by the vaccines must be made available to patients or proxies.
- Given the possibility of disagreement in the judgments of proportionality, all medical personnel concerned with such vaccinations need to be fully informed about the relevant moral issues.
- Where ethically unproblematic vaccines are approved in the country, these must be made available to the patients, and the ethically problematic ones must not, unless they are medically necessary.
- Where ethically unproblematic alternatives exist elsewhere, as for rubella, but are not approved in this country, medical institutions should contribute to their approval by helping promote the necessary clinical trials and lobbying both government and pharmaceutical companies. For instance, a foreign pharmaceutical company that did not believe the clinical trials required by the FDA would be financially worthwhile might change its mind if offered a guarantee that every Catholic medical institution in the United States would exclusively use the unproblematic vaccine (except when counter-indicated in particular cases, e.g., due to allergies) when approved.
- When this is possible by law, Catholic institutions should provide legal and practical guidance for conscientious patients about whether they might be able to gain government permission for private importation of morally unproblematic vaccines that are available abroad, when these are judged by the institution to be medically safe.