

# Complicity, Fetal Tissue and Vaccines<sup>1</sup>

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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 when they are of age: 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, though 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 nonetheless there are a number of duties that healthcare institutions have in this case, duties that it appears are not being fulfilled, most notably including 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 in a way that seems 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 as the evil-doer, fail to criticize the deed, fail to work against the evil, neglect to punish it or help the evil-doer escape with impunity.<sup>1</sup> By "evil-doing," I mean simply the performance of something that is objectively morally wrong, and an "evil-doer" is someone who engages in evil-doing. No claim is made about the subjective state of the evil-doer, who may not be culpable for the evil-doing.

Traditionally, many of these forms of involvement have been handled by Catholic ethicists in the elaborate framework of "cooperation with evil" originating 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."<sup>2</sup> It would be a stretch to suppose

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that a scientist now using data derived from immoral Nazi medical experiments 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 sight of the salient features of the case.<sup>3</sup> For it is not just because of the promotion of future illicit research that use of immorally gathered data is problematic. It is problematic because by appropriating an evil the scientist who uses the data is putting herself 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*, insofar as one will no doubt strive to deny as long as possible that seepage has taken place and rationalize one's activity.<sup>4</sup> 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 with the evildoing of others which is morally problematic, indeed *prima facie* wrong.<sup>5</sup> "Cooperation" then is a special case. When we assist the evildoer in the evil, the evildoer is a primary agent and we are auxiliary agents. Cooperation in 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, and hence is an appropriator, but this is no reason to leave the force, since there is no downstream cooperation, and indeed it seems that such profiting from evil without downstream cooperation 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 display, since by displaying the antiquities, the museum is downstream cooperating 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 we must use the information obtained.

On the other hand, "upstream cooperation" is when one is contributing causally to the evil itself, rather than simply the drawing of 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 engaging in downstream cooperation in using the vaccine to promote health depends on whether the original agents involved in the abortion can be said to have 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.<sup>6</sup> 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.

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.<sup>7</sup> Being medical personnel, they can be assumed to 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.

Now 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 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 whose primary purpose is to gain him 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 one's 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.

Now it is plausible that typically 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.<sup>8</sup> 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.<sup>9</sup> In order to encourage oneself to do something emotionally difficult, one is likely to situate one's action in a motivational context that paints the action in a good light. Believing that fetal tissue may lead to improvements in human health is thus likely to enter into the motivations of a medical practitioner when the tissue will be used for research, and hence can be reasonably assumed to be a part of his 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 was 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 an evil smaller 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 good in mind. Someone who intentionally procures the death of the patient is not an appropriate proxy.<sup>10</sup>

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.<sup>11</sup>

### **The Principle of Double Effect**

It follows that even apart from all considerations of moral danger to self or others, there is *prima facie* reason not to use or manufacture vaccines that involve cell-lines derived from voluntary abortion, since in doing so one is likely 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 non-consensual post-mortem 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 at most 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 evil actions are not one of our means—they are the circumstances of our action.

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. If genocide comes to be banal, how much more does a hidden evil such as the use of cell lines deriving from the fetal tissue. 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 more likely to put away at the back of his mind. This is particularly true in the case of a professional working together with less conscientious professionals who 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, but eventually he may become quite unconcerned about it. It is morally dangerous to apply the PDE without actually trying to prevent the bad effect.<sup>12</sup>

Observe, too, that the use of the vaccine falls into the more morally dangerous category of downstream cooperation where one not only happens to further an evildoer's good goal, but one actually shares that goal, which makes it easier for one to identify with the evildoer's action. This makes it necessary, for moral self-defense, that one 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 primarily done for the sake of the 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, say, a rubella vaccine that necessitates that it have a deliberate abortion in its causal antecedents, and the problematic causal origins barely affect the actions of the practitioners administering the vaccine.<sup>13</sup> Consequently, it is easier for practitioners to distance themselves morally from the illicit origins of the vaccine, and hence 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).

But of course the best way of distancing oneself from an evil is not to reflect with satisfaction on how far one is from it, but to actively counter that evil, e.g., 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 professionals is indeed likely to pose a moral danger to others. Consider the case of a parent who has a pediatrician he morally respects. The pediatrician recommended to him the use of the MMR vaccine without any comments about the moral issues, as if it were entirely routine. The parent later finds out that this vaccine’s causal antecedents include induced abortions. The parent may start to think that either there is nothing morally problematic about downstream cooperation or that abortion is less morally problematic than he had previously thought, or else his 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 be making routine use of a vaccine developed by German doctors using tissue taken from Jews murdered at Auschwitz, and certainly would have moral qualms about such use and doubts about the practitioner’s morals.<sup>14</sup> 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 commentary, since it 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 incidence 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 goods of vaccination. The moral evil of abortion, after all, exceeds the non-moral 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 near-certainty of a 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 vaccination would clearly save lives. To stand by and do nothing to prevent death is surely deeply morally hazardous to self and deeply damaging to one's witness to others.

The greatest direct moral dangers are to those who are routinely administering or producing the vaccines, though there is some danger to the parents and even to those receiving the vaccine (knowing that the occurrence of an abortion was part of the causal antecedents of one's life being protected 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 as to 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 in manufacturing the vaccine one 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 at least 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 an empirical question as to how grave 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 Pontifical Academy of Life reflections published in this issue by Luño (2006) would prohibit the continuing manufacture of the vaccines until such time as unproblematic alternatives are available. Luño argues that "[t]he preparation and commercialization of vaccines that were developed thanks to the use of biological material resulting from voluntary abortion should be considered *in many cases* as ethically illicit"<sup>15</sup> (emphasis added), but the coverage of the "in many cases" leaves a loophole. One might argue that the pharmaceutical companies, by their past illicit activity, have placed itself in the position of having two moral duties: (1) to develop morally unproblematic alternatives, and (2) to continue the manufacture of vaccines whose development involved illicit complicity with evil. Presumably, the doctrine of restitution implies that any profits arising from the second item should be immediately directed towards the first as well as towards fighting abortion. Even if a pharmaceutical company fails to engage in developing morally acceptable alternatives, it might be permissible, and sometimes maybe 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 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.<sup>16</sup>

### **Moral Duties of Healthcare Providers**

Particularly in light of the grave moral dangers of engaging in downstream cooperation while doing nothing to thwart the plans of the original evildoers, several positive moral recommendations can be made, however.

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.<sup>17</sup> At the same time, it seems that making the public aware of the downstream cooperation of a medical practitioner in past abortion may lead the public to a greater acceptance of abortion. Nonetheless, hiding of truth is not a good long-term strategy.

Moreover, it is a part of the doctrine of informed consent that a patient or proxy 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 non-trivial. It thus appears that it may be required for informed consent that the decision-maker be told about the way that the vaccines causally depend on abortion, with the medical practitioner explaining why the vaccination appears (assuming it does) morally licit despite this evil antecedent which the practitioner deeply deplors. If this is done with genuine sincerity, it may counter many 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.<sup>18</sup>

Because of both the intrinsic *prima facie* badness of continuing downstream cooperation with the abortion and derivation of tissues, and because of the need for giving a clear witness to the truth, medical institutions, particularly Catholic ones, have a number of duties vis-à-vis vaccines causally dependent on past abortions. The first we have already discussed, and 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 involved in 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 in the case of rubella, but are not approved in the country, medical institutions should contribute to the approval of these, by helping promote 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 their mind if offered a guarantee that every Catholic medical institution in the United States would exclusively (except when contraindicated in particular cases, e.g., due to allergies) use the unproblematic vaccine 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 available abroad, when these are judged by the institution to be medically safe.

1. For this case, cf. 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 (2000) critical discussion 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*, ed. P. J. Cataldo and A. S. Moraczewski (Braintree, MA: Pope John Center, 1994): 81–92.
4. M. Cathleen Kaveny, "Appropriation of Evil: Cooperation's Mirror Image," *Theological Studies* **61** (2000): 305–306.
5. The term "complicity" occurs earlier in the context of the use of fetal tissue in the Congregation for the Doctrine of the Faith's 1987 *Donum Vitae* document, and has been prominently used in discussion of President Bush's compromise on federal funding of embryonic stem cell research, for instance by Archbishop Justin Rigali (Archdiocese of St. Louis press release, August 13, 2001). See for instance V. Branick and M. T. Lysaught, "Stem Cell Research: Licit or Complicit?" *Health Progress* (1999): 37–42 and Jan C. Heller, "Complicity in Embryonic and Fetal Stem Cell Research and Applications," *Stem Cell Research*, ed. 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 (2000).
6. Erling Norrby, email communication (2006), cited in Rena Leiva, "A Brief History of Human Diploid Cell Strains," *National Catholic Bioethic Quarterly* (Fall 2006) [insert page reference].
7. Norrby, email communication (2006), cited in Rena Leiva, *National Catholic Bioethic Quarterly* (2006) [insert page reference].
8. Cf. Norrby, email communication (2006), cited in Rena Leiva, *National Catholic Bioethic Quarterly* (2006) [insert page reference].
9. See Rachel M. MacNeir, *Perpetration-Induced Traumatic Stress: The Psychological Consequences of Killing* (Westport, CT: Praeger, 2002), Chapter 6.
10. If the consent were given by a father who opposed the abortion, the consent 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," *American Journal of Diseases of Children* 118.2 [August 1969]: 372–381), and in any case one suspects that if consent were sought, it would be sought from the mother. If the consent were given by a father who opposed the abortion, the consent might have been valid.
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.
12. Michael Walzer (*Just and Unjust Wars* [New York: Basic Books, 1977], pp. 151–156) thinks that double effect can only be applied if one is doing something to counteract the bad effect. 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 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.

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 towards their victims, and that ignorance about the dignity of a human fetus is more likely to have a moral excuse than ignorance about the dignity of an adult Jew who looks and sounds very much like the perpetrator. Moreover, on the objective side, the Holocaust in addition to being an attack on millions of particular individuals is also an attack on their nation as a whole, while the abortionist, unless driven by radical population control ideas, is not trying to contribute to the destruction of all unborn human life.

15. Angel Rodriguez Luño, “Ethical Reflections on Vaccines Using Cells from Aborted Human Fetuses” trans. Michael J Miller, *National Catholic Bioethics Quarterly* 6.3 (Fall 2006): [pg. numbers]. Originally published in Italian as “Riflessioni etiche sui vaccini preparati a partire da cellule provenienti da feti umani abortiti,” *Medicina e Morale* 3 (2005): 521–530.

16. 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.

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

18. A Zogby International poll in April, 2004, found that 56% 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.)