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Not an Excessive Claim, Nor a Divisive One, But a Traditional One: A Response To Lawrence Welch on Immediate Material Cooperation

by

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Here I respond to Dr. Lawrence Welch's critique¹ of my essay² on immediate material cooperation and its application to a particular case of direct sterilization which appeared in this journal. I focus on four topics: the quality of his representation of my views, the concept of immediate material cooperation, the application of that concept, and the notion of division

I. The Quality of His Representation of My Views

In beginning, I acknowledge that the quality of representation is central to any debate. I appreciate the care with which Welch read and presented my essays. Above all, I appreciate the time he spent on the case that I used which concerns the only Catholic health care facility, in an American city of about 100,000 people, which will lose its remarkable obstetrics staff who are observant of the *Ethical and Religious Directives (ERD)*, if the facility does not cede to their one demand that contradicts the *ERD*: namely in the few cases where a woman has a cesarian delivery and requests a subsequent tubal ligation, the staff would honor that request for what they claim are a variety of compelling medical and ethical reasons. A further condition of the case is that the facility could not replace this staff; on the contrary, the staff is capable of establishing its own services elsewhere.³ This case could then be a rare instance of immediate material cooperation, if the bishop and the CEO were to judge prudentially that the loss of these services would compromise

the facility's mission.

Nonetheless, there are a few points that he implicitly or explicitly attributes to me that need, however, to be corrected. Let me note them. Welch makes much of the fact that I wrote "duress appears repeatedly" in both the 1975 *Responsum* from the *Congregation for the Doctrine of the Faith (CDF)* on sterilizations in Catholic Hospitals and the USCC-NCCB commentary on it. He correctly points out that the word doesn't appear in the former.⁴ However, it is implicitly in the former, as it is explicitly in the latter. It must be: if there is no duress, there can be no legitimate material cooperation. Absent duress, cooperation is formal. My ascribing duress to the *Responsum* was simply to acknowledge that the *Responsum* foresaw the possibility of legitimate cooperation regarding sterilization (something which he acknowledges) and I added that the possibility could only be due to duress. I cannot imagine the *Responsum* making sense without the notion of duress.

Later Welch ascribes to me a presupposition that is unfounded, that is, by extension I claim that the *Responsum* mentioned duress in connection with immediate material cooperation, that the *Responsum* "teach(es) even implicitly that duress somehow turns implicit formal cooperation into a permissible form of immediate material cooperation," and that the *Responsum* refers "even implicitly to immediate material cooperation under duress in the case of direct sterilization."⁵ I never made any of those claims. I claimed simply that the *Responsum* allows for material cooperation in sterilization. But I never suggested that the *Responsum* makes the type of technical distinctions that Welch seems to think I did.

II. The Concept of Immediate Material Cooperation

How do I ground the concept immediate material cooperation? Years ago, I wrote the first of several articles on material cooperation. In doing research on it, I found that under extreme circumstances, manualists recognized a difference between implicit formal cooperation and immediate material cooperation. Like myself, they did not believe that the former "turned" into the latter, though Welch rhetorically admonishes me for doing just that. Rather, they recognized that an immediate involvement with the object of an intrinsically wrong action might not necessarily be implicit formal cooperation. That is, if a person were compelled into the immediate involvement, then the cooperation was not necessarily formal. I originally found these cases in Merkelbach and Noldin,⁶ and later in sixteenth century case handbooks, like the one by Dr. William Allen and Robert Persons.⁷ None of these casuists ever made a general explanation of this distinction, nor did they systematize their thoughts, but they did recognize that on rare

occasions we should not call someone's immediate material cooperation implicit formal cooperation.

I take exception then to Welch's rhetorical comment about duress "turn(ing) implicit formal cooperation into a permissible form of immediate material cooperation." Generally speaking, immediate material cooperation would be implicit formal, why else would there be immediate involvement? But in some rare instances, from those concerning matters of justice to the exchange of marital dues, casuists and manualists saw that immediate material cooperation was not considered implicit formal. Thus, it is not, as Welch suggests, an abuse of casuistry: we are not looking for excuses to do what we want to do nor are we trying to "turn" sinful cooperation into permitted cooperation. Rather for centuries moralists have occasionally asked, whether, when there is something we definitively oppose because it is counter to church teaching, must Church members always refrain from cooperating in that activity even when their failure to do so would mean the demise of their life, facility, or department? Here, I hasten to add that we would never ask the question about an activity that destroyed human life; both the *ERD* and *Evangelium vitae* have rightly pointed out that such activity could never be a matter of legitimate cooperation.

Regardless of Welch's charges, I have never found nor claimed that magisterial documents address the distinction between immediate material and implicit formal. (Welch even suggests that I say that the NCCB commentary does.⁸) Rather I found it, as most moralists find traditional insights, in the writings of "approved theologians" in the casuist and manualist traditions. That location is where, normally, we find complicated methodological principles.

Moreover, I think that critical reflection helps us to recognize that these theologians were right. Logically speaking, we could imagine as others in previous times have, that immediate material cooperation could be distinguishable under extreme duress from formal cooperation. The insight enjoys both internal and external certitude. Regarding the former, the claims are evidently cogent; regarding the latter, the claims have been supported by significant voices both historically and contemporaneously.

Furthermore, the distinction is being well appropriated by a variety of other significant voices. Here I think of three relevant developments. First, the distinction appears in the *ERD* appendix. The appendix was developed by a committee (the *Committee on Doctrine*) of bishops and archbishops who were trained in moral theology and recognized the credibility of the distinction. Second, before the bishops voted on the *ERD*, that committee submitted the directives and the appendix to the *CDF*. After the *CDF*'s approval, the committee presented it to their brother bishops who in turn consulted their advisors in moral theology. After months of consideration,

the chairman of the bishops' committee presented the entire document to the *NCCB* for a vote and the chairman specifically addressed the distinction in his presentation of the *ERD* before the full assembly of bishops. After broad consultation, then, with both *CDF* and the *NCCB*, the bishops voted unanimously for the document. Third, on later occasions, I have been told by bishops from other countries, that no less than Cardinal Joseph Ratzinger has told other national conferences of bishops that the *NCCB's ERD* are worthy of imitation. I cannot imagine the cardinal making these recommendations without implicitly, at least, acknowledging the legitimacy of the distinction.

Thus, regarding the distinction itself, I would be surprised were *CDF* or any official organ of the church to deny the moral intelligibility of the distinction. Likewise, I could not imagine that they would deny its traditional roots. I could imagine, however, that the *CDF* might want to insist on the rare application of the distinction. I have insisted on this point repeatedly. In fact, in the case that I presented, I explained that a bishop might (note: not should!) consider the case as indicative of the rare, but legitimate a type of immediate cooperation. I concluded that it was a case that would eventually belong to prudential judgment of those directly responsible. Thus I oppose any broad use of the distinction. Why? Because I do not believe there are many instances of extreme duress.

Moreover, I add that while some health care facilities have attempted immediate material cooperation on sufficiently coercive grounds, others have not. That is, the latter could have avoided any immediate involvement in the action and still remained open to perform their mission. Thus, I do not deny that some facilities have illicitly used the distinction and those contracts will be recognized as illicit, not because they were instances of immediate material cooperation, but because that type of cooperation was actually avoidable, that is, they lacked sufficient duress.

III. The Application of Immediate Material Cooperation to Direct Sterilization

This brings us then to Welch's claim that regardless of the moral intelligibility of the distinction, its application to direct sterilization is already denied by the *Responsum*. Here Welch's argument depends on his translation of the word "*admissa*." Welch claims the word means "allow." He acknowledges that the translation from *Origins* reads "consents" and writes "The Latin is stronger than the English translation that appeared in *Origins*."⁹ Here, I think that Welch violates an important insight regarding the interpretation of Church documents: laws which prohibit ought never to be interpreted more strictly than the law states. I wonder why, then, he

insists on a more onerous translation than that by *Origins*.

I read the sentence from the *Responsum*: "Any cooperation of the hospitals which approves or consents to actions which are in themselves...directed to a contraceptive end... is absolutely forbidden." This sentence condemns, in my estimation, any formal cooperation in direct sterilization.

Welch notes that the verbs are distinct. I agree: approves is an explicit, positive endorsement, while consent is the acknowledgment of an action as a good; the latter refers to implicit formal cooperation. Both, then, are illustrative of a will that formally cooperates. But Welch wants his alternative, "allows," to connote immediate material cooperation. In the process, then, he interprets the *Responsum* more restrictively than others do.

Welch wants an *a priori* prohibition: regardless of an institution's survival, immediate material cooperation with direct sterilization (even in the very limited instance that I described) is never permissible. I see no warrant for that *a priori*.

IV. Division or Communion

Finally, Welch convicts me of ignoring an ecclesiology of communion. I find this charge overwrought and hardly persuasive.

If Pope John Paul II or Cardinal Ratzinger declares that immediate material cooperation ought never be applied to direct sterilizations, I will submit immediately to that prudential judgment. But, inasmuch as I have never seen any such statement nor do I expect one, I see no need to restrict the Church's tradition now. In a time of enormous pluralism and diversity, the complexity of the principle of cooperation affords us a way of demarcating our positions, so as to protect our values and explain our roles in a variety of collaborative moves. Wisely, at a critical moment in charting the future of our health care facilities, our bishops and boards rely on traditional interpretations of traditional principles.

Thus, I wonder why Welch wants to rule out applying a veritably credible concept that has its limited applicability in the extreme situation of the demise of one's life, facility or department. Surely Welch's *a priori* exclusion means the automatic loss of a facility and/or a department that might otherwise have been protected by the principle of cooperation.

Moreover, I know the distinction has relevance to other national conferences of catholic bishops and their health care facilities. Welch's argument endangers not only the existence of US facilities but also those elsewhere. If the application is still considered legitimate, is not Welch's attempt to foreclose on the concept itself divisive? Where, then, is the division? Is the division due to my interpretation or to Welch's own?

References

1. Lawrence Welch, "An Excessive Claim: Sterilization and Immediate Material Cooperation," *Linacre Quarterly* 66 (1999) 4-25.
2. James Keenan, "Institutional Cooperation and the Ethical and Religious Directives," *Linacre Quarterly* 64 (1997) 53-77.
3. Keenan, at 71.
4. Welch, 8.
5. Welch, 13.
6. See Keenan, "Prophylactics, Toleration and Cooperation: Contemporary Problems and Traditional Principles" *International Philosophical Quarterly*, 29 (1988) 205-221.
7. "The Allen-Parsons Cases," Peter Holmes, ed., *Elizabethan Casuistry* (London: Catholic Record Society, 1981).
8. Welch, 15.
9. Welch, 11.