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Cooperation With Past Evil and Use of Cell-Lines Derived From Aborted Fetuses

by

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1. Introduction

The production of a number of vaccines involves the use of cell-lines originally derived from fetuses directly aborted in the 1960s and 1970s. Such cell-lines, indeed sometimes the very same ones, are important to ongoing research, including at Catholic institutions. The cells currently used are removed by a number of decades and by a significant number of cellular generations from the original cells. Moreover, the original cells extracted from the bodies of the aborted fetuses were transformed to produce the cell lines, since otherwise they would be incapable of the kind of culturing that is required.

It is generally acknowledged by ethicists, including many Catholic ones generally considered to be orthodox, and by the U.S. bishops, that the use of the cell-lines in connection with the production of vaccines is morally permissible. It does not appear that there is a relevant qualitative difference between the use of the cell-lines in vaccines and in research. One might argue that there is certainty of benefit from a vaccine while the benefits of research are uncertain. However, in any given case of the administration of a vaccine to an individual, it is far from certain that such administration will be of benefit to that individual. After all, the individual might never come in contact with someone infected with the disease in question, particularly if the disease is now uncommon in the individual's locale. Yet, it is morally certain that *some* of the administrations of the

vaccine will be beneficial. This is parallel to the fact that while any one research project might not be beneficial, the history of biomedical research makes it extremely probable, indeed morally certain, that *some* project involving the use of such cell-lines will be beneficial. There may, of course, be quantitative difference between the cases—the probabilities and benefits may not be equal—but the difference does not seem to be a qualitative one. Therefore, if one accepts the use of the cell-lines in vaccines, one should accept the use in research in at least some conceivable and perhaps actual circumstances.

The main argument I am interested in, in favor of the use of the cell-lines, proceeds by first granting that the initial abortion and extraction of cells from the deceased fetus was morally gravely illicit. However, the connection between the currently used derived cells and the abortion and original derivation is sufficiently remote that the use becomes licit. Not all fruit of a poisoned tree is poisoned: it can be morally acceptable to profit from a remote evil act. The currently used cells are temporally and generationally far removed from the originally extracted cells. Moreover, they are ontologically removed by the initial transformation which rendered them capable of the unlimited growth needed for culturing. Furthermore, at least in the case of some of the research projects, though perhaps not in the case of some of the vaccine projects, neither the individuals nor the companies involved in the initial illicit act profit economically from the continuation of the research. Those making use of the cell-lines may be quite unaware of their origin, or may have been unaware at the beginning of the use thereof, and hence cannot be said to be tacitly or overtly approving the illicit source. Finally, it can be argued that as a matter of fact the continued use of these cell-lines, unlike perhaps in the case of stem-cell lines, does not increase the market demand for new cell-lines, and therefore the use of such cell-lines does not encourage further illicit acts.

The arguments in favor of the use of these cell-lines are powerful and I believe largely convincing. But nonetheless, those who have a strong belief in the illicitness of the initial abortion and cell-line derivation, feel a *discomfort* with the use of the lines, even if they are convinced by the arguments. For instance, Dr. Edmund Pellegrino, in conversation, talked about the need for us to sometimes get our "hands dirty". Yet it appears that if the arguments are sound, the hands of the researcher need not get at all dirty: the researcher is doing something morally quite unobjectionable, it appears. Any discomfort, thus, appears to be mistaken and irrational, a confusion between an arguably rational disapproval of the initial illicit acts of abortion or derivation and an irrational distaste for the use of biological material ultimately produced by these acts.

It is this discomfort that I wish to analyze in this paper. I will argue that there is indeed a rational source for the discomfort. Now, there are two

radical positions one can hold vis-à-vis the use of cell-lines as described. First, one might think that such use is intrinsically wrong, and hence cannot be tolerated no matter the benefits or distance from the original illicit activity. This is the “radically restrictive” position. Second, one might think that given the distance from the initial derivation, current use of the cell-lines is permissible for *any* beneficial purpose, no matter how small, providing that such use does not lead to other bad results. This is the “radically permissive” position. Obviously, anyone who holds that the initial abortion and derivation were morally licit will take the radically permissive position, but it appears that by the above arguments *everyone* should take this position. And indeed there are Catholic ethicists convinced of the grave wrongfulness of the initial acts who take the radically permissive position. The qualifier that the use does not lead to other bad results is there in part because these ethicists may, however, think that knowing about some uses of the cell-lines may cause a third party unjustifiably to come to the mistaken belief that, say, abortion is morally permissible.

I will argue, however, that both of the extreme positions are mistaken. The right position is that one may use the cell-lines for *sufficiently beneficial* purposes but not for other purposes. I will argue for this claim without making use of the “scandal” argument that the use of the cell-lines may cause people to come to mistaken beliefs about, say, the morality of abortion or to be encouraged to commit other illicit acts. Neither am I interested in arguments that such use of cell-lines may create a demand for more cell-lines in the future. My lack of interest in these arguments is purely analytic: these arguments may indeed be sound for all I know, in which case a more restrictive position is appropriate. What I would like to examine, however, is what we can say *solely* on the basis of the facts about cooperation with past evil.

Moreover, while there are very important bioethical issues at stake in the concrete issue of cell-lines, what interests me most is not the actual case but the general issue of cooperation with past evil. It is by analyzing cooperation with evil that I shall arrive at my “moderate” position. Moreover, surprisingly, this analysis may throw light on what *prima facie* seems a completely different but no less thorny issue: the problem of the justification of retributive punishment.

2. The Radically Restrictive Position

I take it for granted, both for the purposes of the argument and *in persona propria*, that intentional abortion is a morally illicit act of killing a juridically innocent human person. Moreover, one can argue that extracting tissue or organs from the body of a dead person is only permissible with the

permission of that person or of a responsible proxy—this is because appropriate respect for the bodies of deceased persons is called for. An aborted fetus does not give implicit or explicit permission for such extraction. On the contrary, one might argue that one can always presume non-cooperation between the non-willing victim of an illicit killing and the person involved in the killing. If so, then even without considering the question of proxies, we might argue that no one complicit in the killing would be permitted to extract the tissue.

And, in any case, no one complicit with the abortion counts as a “responsible proxy” if abortion is an illicit killing of a human person. For instance, our society rightly takes a parent to lose his or her parental rights after intentionally attempting to inflict grave harm on a child. Since abortion is such a grave harm, those parents complicit in the abortion cannot count as responsible parties, and hence their permission for the use of tissue or organs would be irrelevant. Furthermore, there does not appear to be any other responsible party around to authorize such extraction. The two exceptions would be a case where either the mother is coerced into undergoing the abortion and consents to the use of the tissue or organs, and a case where the father disapproves of the abortion and consents to the tissue or organ extraction. Nonetheless, I am not aware of any evidence that any of the cell-lines generally under discussion originate in one of these two exceptional circumstances. Thus, it seems, the initial extraction was wrong. Moreover, this extraction was almost surely done in close cooperation with the person performing the abortion, and that gives further reason to think it wrong, and indeed seriously so.

But it does not follow from the fact that something is the product of a gravely illicit action that we are not permitted to make good use of it. One can licitly live in a building originally built by slave labor. If an ethnic group were entirely wiped out through genocide, there would be no moral imperative to keep their land vacant until the end of history. A policeman only makes a living because of the immoral actions of criminals.

Now, one might make a specific argument that in the case at hand, the use of the cell-lines is illicit. For instance, if one believes that the end result of the derivation process is still a part of the body of the deceased fetus, then one may think that the argument that prohibited the derivation continues to prohibit the use of the cell-lines. However, such reasoning would be incorrect. First, as has been pointed out by Kevin Fitzgerald,¹ the cells have been biologically transformed after the extraction, and we do not consider tumor-cells, being similarly transformed, to be a part of the body of the individual. Second, if an organ is transplanted from one person to another, new cells grown from the organ in the body of the recipient are surely no longer the donor’s cells.

The only other argument that comes to mind here is that each human being has some special right, perhaps akin to "copyright" or "patent right", to his genetic code. And indeed laws to that effect have been passed in some locales and there are societal attitudes that might make this somewhat plausible. Thus, many people would object to the research use of DNA extracted without the person's permission from items that are no longer a part of person's body and indeed that no longer are even the person's property, such as hair clippings left behind in the hair-dresser's shop. The one exception they might make would be in the case of DNA thought to possibly originate from a guilty party, such as DNA extracted from items left at a crime scene. I must confess that I do not have a convincing response to this argument apart from the autobiographical statement that it has little traction on me. I see no reason why I should have ownership over the information contained in my DNA, if this is information that neither was created by me nor was created by someone else who has ceded title to me. My parents did not create my DNA in the way that an artist creates a painting: the process involved apparent randomness. The only candidate for a creator of the DNA is God, and I have no evidence that God has ceded ownership over this information to the individuals in whom it is embodied, or, for that matter, that God prohibits the use of this information.

3. The Poisoned Tree

3.1. Formal and material cooperation with evil

Traditionally, cooperation with evil is divided into the formal and the material.² You formally cooperate in someone's illicit action provided the achieving of the same illicit object of activity is a part of your action plan. Here, I am assuming that agents have action plans that stipulate both final goal and intermediate sub-goal, each of which I call an "object", and each of the goals is something intended, either as an end or as a means. An action is said to be "intrinsically wrong" provided some object of it—say, someone's being humiliated (as opposed to humbled, which would be a good thing)—is such that it is always wrong to intend it. One formally cooperates with an illicit action if and only if one cooperates in such a way that one intends to achieve that object which is illicit. Any other kind of cooperation is material. It analytically follows from the above that formal cooperation in an intrinsically wrong action is intrinsically wrong, since it involves intending a goal the intending of which is intrinsically wrong.

Cooperation in evil can be understood in many ways. We can understand it as helping the agent achieve his illicit goal, or we can understand it as being "an accessory after the fact", say, by praising the

agent or by helping the agent avoid the just consequences of the action. Each of these can be formal or material: on the formal side we can praise the agent in such a way as to express our standing behind his illicit intention, or on the material we can praise the agent in a more general way, for instance by saying: "I respect your character." Finally, we are only interested in cases of *conscious* cooperation: if I leave a broom outside my door for five minutes and you use it to break a window, typically I will not have cooperated in any morally interesting way.

Now we have a fairly clear handle on what merely material cooperation before the agent's action is like: it is engaging in activity that I know helps the agent do his nefarious deeds, even though I do not intend to help him do the nefarious deeds *qua* nefarious. Thus, if I own a cutlery store and know that some tiny percentage of customers will use the knives for immoral violent purposes, I am materially cooperating with evil. But as this example shows, material cooperation need not be wrong. However, observe that there is a *presumption* against such cooperation. One needs a sufficiently serious reason to engage in it. If the only licit use knives had was something completely trivial, I would not be justified in such cooperation with evil. But there are many important morally licit uses of knives, and so I am justified.

Material cooperation after the fact is a much more hazy affair. Helping a criminal escape may count as such. Again, note that such cooperation can be licit. For instance, if a child has stolen a candy bar in a state that punishes every theft with death, I would be justified in helping the child escape punishment. (Note that the alternative of imposing punishment myself would not be available if I wasn't authorized by the child's parents.) The cooperation would be merely material unless thereby I expressed my sharing in the child's illicit intention. Nonetheless, there would be a presumption against such cooperation. One would need to have a sufficiently serious reason for it.

3.2. *Profiting from evil*

Almost everything I said so far is well-known material. But it is now that things get interesting. The question before us is whether *profiting* from the effects of an evil act counts as cooperation with evil after the fact. I shall assume that the profiting does not constitute *formal* cooperation. The cooperation is not a part of a plan of action of one's own that includes the same intended illicit goal as the evildoer had.

Consider five cases of profiting from evil:

THE VIOLINIST – You are a world-famous violinist and need a new kidney to survive. One of your fans, without consulting you, kills Jones, whom he knows to be a good genetic match for you and to have signed an organ donor card. The

murderer is caught. The hospital finds that Jones's kidneys match you and only you. No one but you would benefit from Jones's kidney and so you accept the kidney.

THE POLICEMAN – You became a policeman in order to make money for your family. You would not make enough money for your family were there no crime, since as it happens being a policeman is the only job you would be able to get.

THE TOURIST – You walk on pavement in Rome, originally built by slaves.³ It would be less comfortable to walk on bare earth, and so you profit from the fact that ancient Romans forced people into slavery.

THE HISTORIAN – Using historical records, you reconstruct the dynamics of prisoner-guard interaction at Auschwitz, and on that basis you come up with a new sociological theory that explains many things, and has application to making our society a better one.

THE TYPHUS RESEARCHER – You discover that some of the gravely immoral typhus experiments done at Auschwitz produced data that is scientifically valuable. You use this data in your own research, building on it.

I think that in each of these five cases, the actions described are defensible. Nonetheless, I believe that there are significant differences between the cases. I believe that the cases of THE VIOLINIST and THE TYPHUS RESEARCHER trouble us most. The case of THE TOURIST may trouble us: we may and I believe should feel a discomfort walking on the paving stones and thinking of the blood of the slaves killed while building Rome. But I think that neither THE POLICEMAN nor THE HISTORIAN needs to trouble us at all. You may not share these intuitions, but they appear quite plausible to me. I hope you will find these intuitions even more plausible when I finish.

Now, we could say that the discomfort felt about the cases of THE VIOLINIST, THE TYPHUS RESEARCHER and THE TOURIST is simply due to confusion. The people feeling the discomfort have not been able to internalize the fact that *clearly* by accepting the organ, using the data and treading on the pavement they are not in any way contributing causally to the bad things done or expressing approval for them. Or perhaps transference is at fault: we transfer the moral disapproval of the building of the pavement onto our walking on that pavement, albeit in attenuated form. But the idea that the discomfort is confused is not plausible, I believe. Arguments that imply that it is confused are missing an important moral dimension that really is there.

I think it is fairly clear that the Aristotelian prudent agent *would* feel discomfort about THE VIOLINIST, THE TYPHUS RESEARCHER and THE TOURIST. But not about THE POLICEMAN and THE HISTORIAN. Yet all five cases are cases of profiting from evil actions in the past. Observe, too, that the distance that the evil actions are removed from the present is not what makes for the difference between the problematic and unproblematic cases. After all, the policeman and the violinist both deal with very recent evils, while our historian and typhus researcher both profit from an evil that is equally far back. And the paving stones are much older than the crimes the policeman solves or the structure of institutionalized evil that the historian studies.

Rather, the difference, I submit, is that our violinist, tourist and typhus researcher all profit from evil in more or less the way that the malefactor intended for the evil to be profited from. The violinist's fan killed Jones in order for the violinist to have Jones' kidney. The "owners" of the slaves intended to build a pavement that people could walk, maybe even hoping it would be part of the appeal of an "eternal" city. It is plausible that the Nazi doctors did research on typhus in part to promote the scientific understanding of the disease (and in part to further the war effort on the Eastern Front). But the criminal rarely commits crimes in order to encourage us to employ policemen, and Rudolf Höss certainly did not serve as the commandant at Auschwitz in order to provide historians with a case study of a radically unjust society. I think this difference is significant. And I hope to soon show why.

3.3. Frustrating evildoers

There is a particular satisfaction people get from seeing evil punished and an indignation at seeing the wicked prosper. Traditionally, the problem of evil included *both* the sufferings of the innocent *and* the apparent good fortune of the wicked. The latter is no longer felt to be as problematic nowadays—such a concern is felt to be too "vengeful". Nietzsche offered us the idea that the satisfaction we got from seeing people suffer was what made sense of retributive punishment: Fred has hurt Bob and since Fred cannot undo Bob's pain he repays Bob by giving him the joy of seeing Fred suffer. Nietzsche is wrong, I think. If he were right, then society would sufficiently do justice by lying to Bob that Fred is suffering, and surely that is not sufficient for justice.

I think there is *something* right about the feeling that it is appropriate that the wicked should be punished, that they should suffer, not just *pour encourager les autres*, but that justice might be done. It is a feeling too deeply tied to our notions of justice to go away. The main argument

against this is just that the idea is too vengeful for it to be appropriate for us, that there can be no rational justification for it. I will argue that there *is* a rational justification that has a surprising connection with our attitudes towards profiting from evil, though I am aware that my story does not exhaust what is to be said about retributive punishment—I know that there are cases where the story is insufficient.⁴ As a general methodological point, when we have a deep-seated affective ethical intuition, one not obviously rooted in a vice but connected with a virtue (in this case, that of justice), there is a presumption in favor of a project of justifying rather than explaining away this intuition.

Observe that it is not just *any* suffering of the wicked, or just any suffering that is causally connected with the crime, that gives the most satisfaction. We want an eye for an eye and a tooth for a tooth, but not a tooth for an eye or an eye for a tooth. This need not be judicially imposed for us to be satisfied. If the fan goes deaf shortly after killing Jones in order to save the violinist's life and therefore can never hear the violinist's music for the sake of which he killed Jones, we consider this "poetic justice." If the plantation goes broke while the slaves are employed, we find this deeply appropriate, though we sympathize with the slaves who will bear the brunt of this failure.

If Nietzsche were right, it would be the greatest possible degree of suffering in the evildoer that would satisfy our instinct for justice. But, rather, it is the greatest possible *appropriateness* of the malefactor's suffering that satisfies us. And it appears that we take it to be very appropriate when the malefactor suffers by being deprived of precisely that which he sought to achieve: The fan who wanted to listen to more music and committed murder who goes deaf and the exploiter who loses money. Observe, interestingly, that we find the second case rather satisfying even though the sufferings of the slave "owner" through bankruptcy are incomparably smaller than those that he had imposed on the slaves. We may feel that justice demands *more* suffering from the master, but the appropriateness of the suffering imposed is indisputable. This, I think, is sufficient to show that our notion of "poetic justice" is not just vengefulness. Appropriate retributive justice *does* seem to restore the order of the universe.

If I am right, then one rationale for retributive justice is that it *frustrates* the intentions of the malefactor. She wanted money: she gets bankruptcy. He wanted music: he never hears any anymore. This is true even when the frustrated intentions of the malefactor are *good* ones. After all, it is good that a person enjoys music, and the more people enjoy music the better it is, in so far as this goes. Conversely, we are indignant when an evildoer achieves that goal which he did the illicit action for—the

professor who becomes famous because of a paper plagiarized from an obscure third-world journal, the fan who kills to be able to hear the violinist's music and who spends the rest of his life enjoying the violinist's concerts, the slave "owner" who grows in wealth.

This suggests that it is *prima facie* a good thing to frustrate an evildoer's designs, to disrupt his action plan, and it is *prima facie* a bad thing to cooperate in the action plan that the illicit action is an integral instrumental part of. Now one can cooperate in the action plan long after the illicit action was done, by promoting that goal which the malefactor wanted promoted and promoting it in the way in which he wanted it promoted, indeed when one's action was implicitly or explicitly a part of that malefactor's action plan. This is cooperation in evil, and it is opposed to the *prima facie* good, a good of justice, of disrupting the action plan. Note that it need not count as cooperation in evil *at all* when one promotes the same goal that the malefactor had by a means *different* from those the malefactor intended. There was no *prima facie* wrongness in acting for the amelioration of the condition of the German people in the aftermath of the First World War, even though this was the same goal Hitler had set for himself, as long as one proceeded by causally independent means. Likewise, if those philosophers and theologians who claim that in some way each person always seeks beatitude in every action as an ultimate end are right, it does not follow that it is wrong to help the evildoer achieve *that* part of his illicit action plan, but we would like to depart from his planned means for achieving this.

If this is right, then the same kinds of considerations that show up when analyzing our intuitions about retributive justice are relevant to the question of profiting from evil. Plainly, the policeman is acting to *frustrate* the action plans of the criminals, and the money he receives enables him to make a vocation of doing so. There is no presumption of any sort against this.

If, however, I were a temporarily unemployed fireman and a colleague set fire to a forest not to benefit herself but to benefit *me*, there would be a presumption against my profiting from this. Nonetheless, the *prima facie* badness of cooperating materially in this evil would be easily overridden by my need to cooperate in fighting off the bad effects of my colleague's action.

On the other hand, it was part of the action plan of the builders of Rome that people should enjoy the pavement, that they should admire the might of Rome, and so on. The tourist by doing this is materially complicit. Again, this is a defeasible consideration. In this case, like in that of the fireman, it is a consideration defeated in a particularly powerful

way by aspects of the situation closely connected with the evils done. Despite not being justly compensated for their labor and not being given a choice about the work, the slaves were *workers*. They did good work. In enjoying the fruit of their labor after many centuries, one is showing respect to their solid workmanship. Tearing up the pavement would, on the other hand, be disrespectful to these workers.

Go back to the case of THE TYPHUS RESEARCHER. There *is*, I think, a *prima facie* badness in her use of the Nazi research data, insofar as the research was done to further the state of science, and hence the researcher's actions were implicitly a part of the action plan of the Nazi doctors. They intended to produce scientific data (and by and large failed in this, but let us assume that this is a case where they succeeded) that would be used by future scientists. One is playing their game by using the data. Nonetheless, the cooperation is only material. One is furthering some of the Nazi doctors' goals, but this consideration against one's action is defeasible by the significant medical benefits that the data, I am supposing in my fictional case, make possible.

Consider a variant case. Suppose you are a Soviet doctor and you helped liberate Auschwitz. You come upon the data. You realize that you can use the data in order to strengthen the war effort against Nazi Germany, both by a better understanding of the weaknesses of soldiers afflicted with typhus and by ameliorating the condition of Allied soldiers at the front. And so you use the data precisely for this purpose. Here, I think, there should be no discomfort. On the contrary, there should be a just satisfaction that one is acting in a way that the malefactors did not intend and by doing so frustrating one of their intentions for their evil action—helping the German war effort.

An agent's intentions may extend beyond his natural lifespan. Someone who gathers scientific data may do so for the sake of posterity. It is possible to promote or frustrate the goals of a person even after he is dead. There is *prima facie* reason to frustrate these goals by not going along with his action plan, by not being a pawn in his game.

Note, too, how the intuitions here go to some degree along with the intuition that temporal distance from the agent matters. For, apart from megalomaniacs and the truly great (whether for good or evil), our plans peter out in the future. People may have plans for their children and grandchildren and maybe great-grandchildren. Someone might have the intention of producing a continuous line of descendants or of attaining eternal life through religious means, but apart from these kinds of cases the horizons of our intentions is short. The further we are removed from the evil deed, the less likely that we are doing what the malefactors intended us to do.

4. The Cell-Line Research Case

In the case of cell-line research, the researchers illicitly extracting the cells probably saw themselves as *scientists*, as people promoting future scientific research. Insofar as one is scientifically building on their work, one may well be doing exactly what they intended one to do. One is being a cog in their action plan, and hence one is cooperating materially with evil. There is a presumption against that: it is a *prima facie* bad thing to do, assuming of course, as I do, that the initial activity was illicit.

The National Catholic Bioethics Center, when asked to comment, compared the research to two cases. The first is that of receiving organs from a murder victim. We can now see that this analogy is ambiguous between an unproblematic case where the person is killed for a reason independent of the organ donation, in which case the murderer's action plan is not at all furthered by the use of the organs, and there is no *prima facie* consideration again, and the problematic case of the violinist.

The second comparison case was that of anti-abortion advocates using pictures of aborted fetuses. For the pictures to exist prior abortion had to have occurred. However, this fails as an analogy now that we see what the most serious problem with profiting from the proceeds of an evil is. For clearly the use of the pictures does not further any action plan that the abortionist has, but on the contrary is meant to counter the action plans coming from the general maxim that the abortionist was acting on. Thus, there may even be argued to be a *prima facie* presumption in favor of such use if it *frustrates* the illicit goals of the abortionist. (Of course I leave aside the question whether the use of such pictures is prudent and helpful.)

Therefore, not every positive reason suffices to justify research on cell-lines derived from abortions. One needs a *proportionately strong* reason. In the case of vaccine production, this strong reason is almost surely present—assuming one is doing the best one can to find alternatives to the use of the illicitly derived cell lines. In the case of research, this has to be analyzed on a case by case basis. If the research is one of how to cure a mild form of acne and the research is extremely unlikely to yield a cure, it seems wrong—apart, of course, from the general wrongness of wasting research resources. If, however, the research is very likely to yield a cure for a fatal form of cancer, then it seems acceptable.

I have no idea what to say about the in-between cases, nor how to draw the line. In general, there are no mathematical formulae for weighing costs and benefits, for weighing different kinds of considerations, though such formulae do exist in specific cases (for instance, if the cost is the doing of an intrinsically wrong action, the cost is always too high). But nonetheless I think that when one does something that has a presumption

against it, that is *prima facie* bad, one has usually reason to feel a certain discomfort. This discomfort is a recognition of the fact that something objectively bad comes from one's action, even though one is not intending it to do so.

For instance, while the researcher is, I shall assume, not intending to promote the action plan of the malefactor *qua action plan of the malefactor*, such promotion is a side-effect of his work: the evildoer is in fact being rewarded, though such rewarding *qua rewarding* is not the researcher's intention. For, intuitively, it rewards someone to causally promote his action-plan—even if the person rewarded does not know about this. This is, quite possibly, another area for the Principle of Double Effect. The good effect is the benefits of the research; the bad effect is the unintended rewarding of evil.

Whenever Double Effect is in play, one can only act for a *sufficiently strong* reason. Hence, the radically permissive view is wrong, just as the radically restrictive view is.

5. Objections

(i) *Extraction of cells in fetuses not aborted for research purposes is not wrong.* One might argue that the requirement of consent for organ donation is not morally required, though it is politically prudent in an individualistic society. Our society's distaste for non-consensual organ transplants should not deceive us into thinking that such transplants are actually wrong.

If this objection succeeds, then my argument in Section 2 for the wrongness of the extraction of fetal cells fails. Note that such extraction need not constitute either formal or material cooperation with the abortion after the fact if the extraction was not one of the reasons for which the abortion was done. Therefore, the rest of my argument would seem to be inapplicable, and revisions of accepted current Catholic medical ethics standards would be called for. Nonetheless, my general analysis of cooperation after the fact would, I think, have plausibility, even if it lacked application to the case at hand.

Two responses are possible. The first is that while such extraction *need* not constitute cooperation, in practice it often does. The researcher has some kind of a formal arrangement with the abortionist and it is unlikely that this arrangement is such as to communicate to the abortionist anything other than approval of the abortion.

Secondly, we should not be unduly skeptical of our moral intuitions about non-consensual use of other people's organs. A human body after death is still something that calls for a respect akin to that which a living

body receives, albeit expressed differently. Even a corpse should not be treated as a mere thing, given its intimate connection with the living body of the person. Now, it is acceptable for a person to give himself to another bodily and it is acceptable for the other to receive that gift, e.g., on personalist grounds that say that the nature of a human person is to be a gift. But it is arguably not acceptable for a person to simply *take and use* another person. And a similar kind of respect is called for for the body of the person even after death: it is not a thing to be merely taken and used, though it may be received as a gift.

(ii) *This analysis implies that it does not matter whether the cells currently used for research are ontologically removed from the original cells.* On this analysis, all that matters, it seems, is the "distance" measured relative to the original malefactor's intentions. Yet when people who were originally opposed to such research find out that a genetic modification took place along the cell-line, their opposition tends to weaken. Thus, my analysis, it seems, does not correctly capture the moral issues involved.

At least four responses are possible. The first is simply for me to dig in my heels. The ontological modification indeed does not affect things. We may *feel* it does because usually significant changes in the things produced from evil also distance the effects from the intentions of the original malefactor. However, in this case, this is only an illusion, akin to that whereby a physically smaller item may seem to be further away, since the original malefactor's intentions included this transformation.

Secondly, one might argue that the greater the number of steps leading to a given point in a malefactor's plan of action, with only the first step in the plan being intrinsically wrong, the lesser the presumption against cooperation at that point. This, however, seems implausible. For on the account I have given, it is the distance *vis-à-vis* the malefactor's intentions that matters. And the malefactor may just as much intend things many steps away as things closer to himself. Indeed, surely, the malefactor intends the end, which is many steps removed, just as much as he intends the means.

Thirdly, and perhaps most satisfyingly, one might note that there are multiple moral dimensions along which an action can be measured. Thus when I lie to someone that an unsound bridge is sound, I do wrong both by lying and by potentially causing physical harm. It may be that the notion of ownership of one's body and of the genetic descendants of that body is not *completely* flawed. While this is not ownership *simpliciter*, there may be something sufficiently analogous to ownership to produce certain presumptions against use of the descendant material without the person's permission.

This may even be connected in some way to the rights of parents with respect to children. If so, then genetic modification weakens the link

to the original person, and hence weakens the presumptions. Note that this would also strengthen the response to (i), by giving another dimension to the badness of the original derivation, namely the dimension of something analogous to theft.

However, to work out the details here is a difficult, and perhaps impossible, task. Suppose that details cannot be worked out and in the end there is no analogy between one's relationship to one's genetic descendant material and one's relationship to one's property. Nonetheless, there clearly is at least the *appearance* of an analogy, and this appearance would be enough to explain our intuition that genetic modification decreases wrongness, though without justifying this intuition. Our moral feelings can, after all, go wrong.

6. Applications

Are there any practical consequence of this view? There may well be. I do not have a story about how one weighs the benefits of a given research project over and against the *prima facie* badness of cooperating materially with a past evil. The decision probably needs to be made on a case-by-case basis by an Aristotelian *phronimos*. At the same time, it is essential that the *phronimos* when making the decision should be informed by the correct theory of why the cooperation is *prima facie* bad and precisely what is bad about such cooperation. The account given will contribute to such a moral education of the agent.

Moreover, because there is something *prima facie* bad about such cooperation, there is thereby positive reason to pursue methods, whether of producing of vaccines or of doing research, that avoid such cooperation. It might be possible, for instance, to seek sympathetic private donors for such purposes, and this is the sort of thing that research institutions have a reason to pursue.

Finally, because the decision needs to be made on a case-by-case basis, an argument could be made that strong informed consent doctrines require that persons receiving any treatment that involves such cooperation, or proxies of these persons, be informed of the ethical issues involved.

This may mean that parents may need to be informed about the ethical issues in the case of vaccinations, which currently they apparently are not. Given the lack of an objective rule for weighing the issue, especially in the case of vaccinations for diseases that are generally unlikely to be life-threatening, it might be necessary for the individual parent to make the decision. Of course one might think, on paternalistic grounds, that public health considerations override the need for informed consent, and so it is sufficient for the medical personnel to make the decision.

Weakening informed consent requirements in favor of public health leads to a dangerous slippery slope, however, and so probably should only be done when absolutely necessary.⁵

References

1. Kevin Fitzgerald, S.J., panel discussion on research on cell-lines derived from aborted fetuses, Georgetown University, 2004.
2. E.g., Dominic M. Prümmer, O. P., *Handbook of Moral Theology*, transl. G. W. Shelton, Ft. Collins: Roman Catholic Books, 1957, Section 233.
3. This example is due to William May, panel discussion on research on cell-lines derived from aborted fetuses, Georgetown University, 2004.
4. The case below of the slave master who goes broke is one.
5. I am grateful to Dr. Edmund Pellegrino and Fr. Kevin Fitzgerald for enlightening discussions, as well as to my audience at the Works in Progress series at the Center for Clinical Bioethics, Georgetown University Medical Center, for many helpful comments and criticisms. Most of Section 5 is based on that discussion, and I apologize for not individually attributing the views, pro and con, I make use of there.