

The Clash of Values in Institutional Alliances

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It is easy to deal with bad people doing bad things. The line of demarcation is clear, the course of action is evident, and consciences are at peace. It is much more difficult when good people differ with regard to basic values. And so it is with institutional alliances involving, say, a Catholic health care facility and a non-Catholic institution, be it secular or one with non-Catholic religious affiliation.

Individual physical persons who are Catholic know rather well what is expected of them living as Catholic Christians in a secular world. Clearly, neopaganism is largely the moral medium of the Western world today. This neopagan world is worse than the pagan world in which Christianity was born and reared because that world was once Christian but subsequently abandoned the Christian faith. The present condition is seven times worse than the first, a reflection of one of Jesus' parables (see Mt 12:43–45).

The following case study is directed to illustrate the problem and process of dealing with the formation of an alliance or collaborative relationship between a Catholic health care facility and a non-Catholic entity, e.g., a community-owned hospital. The following is reported as a hypothetical scenario, and is the conflation of several actual cases. (Names and details have been changed.)

Background to the Case

In a typical Midwest town of some 100,000 persons, a Catholic hospital, St. Mary's (with 400 beds), co-exists with a non-Catholic facility (Community Hospital) of some 300 beds. Because of the current economic conditions, including sharply reduced Medicare and private insurance reimbursements, plus the need to maintain high standards of medical care involving expensive medical equipment and large payrolls, the two hospitals have entered into negotiations with an aim of forming an alliance which would benefit both and the community they serve. Good progress was being made until they met some ethical issues arising, in part, from the Catholic health facility's requirement to adhere to the *Ethical and Religious Directives for*

Catholic Health Care Services (ERDs) if it wanted to retain its Catholic identity and status in the Church.

Representatives from the two hospitals met in the Board Room of St. Mary's hospital to review the ERDs and identify the problem areas. From the introductory material (namely, The Preamble, General Introduction, and Introduction to Part One) of the ERDs, it was clear to the members of the committee that the basic principle of the *Directives* is human dignity based on man's creation in the image of God (as well as being redeemed by Christ and invited to eternal life with the Holy Trinity). It is generally agreed that this principle—being created in the image of God—is acceptable to the three major Abrahamic religions, namely, Judaism, Christianity, and Islam.

Yet, the group recognized that there were significant differences of interpretation and application. It was suggested by one member that the discussion could move more quickly and fruitfully if they identified, first, the possible problem areas in light of previous experience, and then move on to focus on the most difficult of the problem areas.

Several areas of possible concern were quickly identified: treatment of sexual assault victims (ERD no. 36); provision of reproductive services (ERDs nos. 40–42, 49, 52–54); determination of death (ERD no. 62); termination of treatment (ERD nos. 56–59); euthanasia (ERD no. 60) and physician-assisted suicide (PAS). Certainly, abortion (ERD no. 45) was a “hot-button” issue, but the representatives of Community Hospital thought that they would discontinue doing abortions if that was a necessary requisite for forging an alliance.

However, among the reproductive procedures there were some that, they initially thought, could not be omitted from the repertoire of a full-service hospital. These included contraceptive sterilization (e.g., tubal ligations, the prescribing and provision of oral contraceptives); reproductive technologies such as *in vitro* fertilization (IVF); the use of sperm or oocyte donors; surrogate mothers; artificial insemination (involving the collection of sperm by masturbation); stem cell research and therapy which use the stem cells from very early embryos resulting in the death of the embryos.

Finally, several members of the group suggested that the termination of artificially provided nutrition and hydration was another potential source of conflict. (A partial transcript of the discussion follows.)

Discussion and Dynamics

“And what about the determination of death by brain related criteria?” one member interjected rather loudly. “I heard that a Catholic hospital in California would not accept brain-related criteria for the purposes of organ transplantation.” Several others shouted “not so.” But the group agreed to look at the matter more closely. Before proceeding any further, the Chairperson, Sr. Mary Agnes, saw that their staff ethicist, Fr. Morales, wanted to say something. She nodded to him to speak up.

“I want to make one brief point about brain death criteria and the Church. In August of this year (2000), Pope John Paul II, in addressing the International Con-

gress on Transplants, stated that neurological criteria (brain death) is an adequate means for arriving at moral certainty with regards to the determination of death.”¹

After some discussion it was concluded that the most challenging value conflict was related to contraceptive sterilization. It was evident to all that the Catholic hospital could not perform such surgical or chemical procedures in its own facility or be directly responsible for them in another facility. Here the group’s cohesion and trust was tested. On the one hand, the representatives of the Community hospital were convinced that they were honoring a woman’s moral right to make decision about her body (it’s her body after all, right?). On the other hand, the members from St. Mary’s were equally sure that while any person, male or female, has the responsibility and the right to make decisions regarding life and health, these decisions have to be made in the light of objective truth and values.

It is at this point that Catholics differ from other Christian believers. Catholics hold that the Church is the authorized teacher of faith and morals, and the official interpreter of the Bible and Christian tradition. Consequently, the Catholic hospital adheres to the moral teaching contained in the ERDs because it reflects the authentic teaching of the Church’s moral tradition as it applies to the medical arena. The Church does not seek to make medical decisions as such. For example, Pope Pius XII and the present Pope have taught that the determination of death is a medical issue, but the Church requires only that whatever criteria are used, there must exist reasonable certitude that a person declared to be dead is in reality dead and that a dead person is not declared to be alive.

The group pondered these words for a few moments and decided to return to the hot-button issue of tubal ligation. One member, a lawyer, John Barrister, reminded the group of an old legal adage, “Hard cases make bad law.” One does not fashion a law, or moral principle, on the basis of a difficult case. Rather the law is formulated in light of what occurs for the most part. The difficult cases are then considered in light of that general principle (or law) and treated as an exception or, depending on the nature of the matter, as falling within the parameters of the principle or law. Thus the question, may instances of contraceptive sterilization be treated as exceptions to the moral principle prohibiting such procedures? Can any circumstances, rare as they may be, justify exceptions? Here the Catholic Church has been most emphatic in her teaching: there can be no exception because to do so would be to violate a most basic human good (value): the power of procreation.

One member of the group, a family practice physician, said, “I can visualize some situations where it seems better for the woman to have a sterilization done after C-section delivery because she has already four, now five, small children and her husband is out of work. It is an opportune time for such surgery.” A number of others in the group nodded their head in assent. Fr. Morales quickly spoke up and noted that “the Catholic Church has clearly stated that there are acts to which there are no exceptions.”² Among these is direct sterilization. It is not simply a disciplin-

¹“Address of the Holy Father to the International Congress of Transplants,” August 29, 2000. [See Verbatim section (pp. 89–92) in this issue—Ed.]

²See *Veritatis splendor*, nos. 80–1.

ary law which would admit of exceptions; rather, it is a moral principle which reflects the profound moral evil done by impeding the function of, or destroying, human procreative powers.” He added, of course, that there are intentions and circumstances which may lessen the moral culpability of a person, but an objective moral evil act can never be converted into a morally good one.”

These statements generated about fifteen minutes of heated discussion. The Chairperson realized that while the conversation was animated, it did not move the discussion forward. She suggested a fifteen-minute coffee break. And so it was done.

When the group reconvened, the Chairperson asked for suggestions as how to get around this impasse since both parties were adamant about their respective positions. There was silence. Then the ethicist, Fr. Morales, raised his hand to make a suggestion. Several members felt that a lecture was about to begin. The Chairperson, Sr. Mary Agnes, said simply to Father, “please be concise.”

After taking a sip of water from his glass, Fr. Morales began, “In the Church’s moral tradition there has developed a means by which one party, the ‘cooperator,’ can justifiably assist another, the ‘principal agent,’ whose action is considered by the potential cooperator as objectively evil. The principal agent may or may not have a noble intention and may consider his own action to be morally good.” The speaker paused to allow his statement to be absorbed.

“For this principle to be invoked,” continued the ethicist, “certain conditions need to be met: 1) the cooperator, in this case, St. Mary’s Hospital, may not concur with the intention of the other party, Community Hospital, in the direct sterilization of a patient, female or male; 2) there should be a sufficient reason, distinct from that of the principal agent, for the cooperator’s act; 3) the act of the cooperator must be morally good (or at least indifferent, i.e., neither good nor bad); and 4) the cooperation may not entail involvement directly with the action itself, but only with some circumstance leading up to or proceeding from that morally evil action; and 5) steps must be taken to prevent or minimize any scandal, i.e, actions which lead others to sin because of the perception by the staff or public that the Catholic hospital has compromised its stated moral principles and is participating in a morally evil act.”

Having stated that, the ethicist paused and asked for questions. Several hands went up and the Chairperson began to recognize each in turn.

“Does not this approach accuse the principal agent of being a sinner, a bad person? Are we not told by Jesus not to judge others?” asked the CEO of Community Hospital, Jane Presider.

The Chairperson suggested that several questions be posed first and then Fr. Morales would be given the opportunity to respond.

A nurse member, Miss Mary Florense, stated, “I don’t see how St. Mary’s hospital would be involved in cooperating with tubal ligations if the procedure takes place in the Community Hospital’s facility.”

Sr. Mary Agnes said, “one more question before giving Fr. Morales the chance to respond.”

Dr Obgynsky asked, “What is so evil in trying to help a woman in a desperate situation? Are you not subordinating the well-being of a human person to the demands of an abstract moral principle?”

The Chairperson nodded to Fr. Morales indicating that he had the floor.

Clearing his throat, Fr. Morales began: “Thank you for the excellent questions, for they allow me to clarify points that I did not directly treat in my initial presentation. I am making no judgment about the principal agent’s subjective moral status. As I have noted before, the principal agent may very well be in good faith and conscience. What is being judged is the external action, the act by which a person’s reproductive powers are impeded, temporarily or permanently. In the potential cooperator’s evaluation, based on the Church’s clear teaching, that action is morally wrong and consequently the cooperator may not directly be a part of that action.”

Looking around the room, Fr. Morales could see comprehension in the eyes of some but not in all. After pausing for a moment or two, he continued, “The proposed alliance of St. Mary’s and Community Hospitals, I realize, involves complex relationships, and there are variety of possible configurations. For example, if the configuration is such that there is a joint and mutual responsibility for what goes on in both facilities, including direct sterilization, then St. Mary’s could not be involved without violating her basic moral stance. If however, the resulting configuration would be such that the tubal ligations would be carried out in such a way that St. Mary’s would have no administrative, financial, governance, or ownership responsibility, then that alliance could be acceptable, other conditions being met, such as the avoidance of scandal.”

There were a some quiet murmurs in the room as members began to see that an acceptable arrangement might yet be possible.

The Chairperson, Sr. Mary Agnes, thanked Fr. Morales for the presentation but asked him, “what about the doctor’s question?”

Fr. Morales exclaimed, “I guess I had a senior moment; with your permission, I’ll continue and address that question of Dr. Obgynsky.” Reflecting for a moment to recall the question, he responded: “Clearly, it is morally good to help a desperate woman with the problem cited. But the question is, what is truly of benefit to her? Is it the practical solution of her immediate problem? Or, is it the long range solution and attainment of her future well-being? First, let me state an important principle which is located deep in the Christian moral tradition, namely, we may not do evil in order to achieve some good. It is also known as the axiom, ‘the end does not justify the means.’”

“Incidentally, St. Paul was aware of that principle, as evidenced by his remark in his letter to the Romans 3:8: ‘Or why may we not do evil that good may come of it? This is the very thing that some slanderously accuse us of teaching; but they will get what they deserve.’ Yes,” Father Morales added, “no matter how great is the good to be achieved, or how bad is the evil to be avoided, one may never use an evil means to bring about a good end.” He paused for an instant and continued. “We can agree that the goal is a good one, to help this woman with her heavy burden. But what about the means? Does anything go to solve this kind of problem? The Church

has taught for centuries and repeatedly, especially in the past one hundred years, that directly to destroy a person's procreative faculties, even with full consent of the individual, is a grave moral evil. From this perspective, St. Mary's cannot cooperate directly with Community Hospital's performance of tubal ligations in their facility. But please recall my earlier words that it may be possible to make some sort of arrangement where there would be no prohibited cooperation."

Realizing the lateness of the hour, the Chairperson called for a motion to adjourn until the following week. The motion was made, seconded, and approved by the group.

The Issues Revisited

A week later the Working Group met for their second session after having sufficient time for the individual members to consult with their staff and to reflect on the suggestion made by Fr. Morales.

"So," Sr. Mary Agnes said, "are we ready to consider possible configurations which would allow St. Mary's to form an alliance with Community Hospital and which would not violate the conscience of either hospital?" The various members of the group nodded their head in assent.

Dr. Obgynsky raised his hand, and after receiving the nod from the Chairperson, began somewhat hesitantly, "Since I and my staff are the ones most concerned about this issue, please let me suggest that we move promptly on the matter. Too much discussion about theoretical matters does not help me, my colleagues, or our patients. While I don't agree, I do understand from whence St. Mary's is coming; it is a religious conviction dictated by the Catholic Church." With that comment there was some movement on the part of the St. Mary's representative indicating disagreement with that assessment.

The Chairperson recognized Fr. Morales who had raised his hand. "With due respect for Dr. Obgynsky, I must protest his stated conclusion. The basic moral principle involved here comes from the natural law and is not merely an arbitrary Church edict, even if the Church does teach it as part of her moral tradition. The natural law holds that a person has a right to act in accordance with one's conscience and that to force one to act against an informed conscience is a violation of that person's right. That is point number one of my response. My second point is that to sterilize a person, whether temporarily or permanently, is a mutilation of a person's procreative powers. Because it is concerned with a basic human right, one which not only pertains to the individual (and spouse), but also to society as a source of new members, the principle has no exceptions; in technical language it is 'an exceptionless norm'."

Having said that, Fr. Morales stopped to see whether there were any questions or comments at this point. Several members fidgeted in their chairs and one said, "Please continue. I want to see where you are leading us with approach before I react."

"Very well," Father said, "then I shall continue. As I mentioned last week, recall that there is in Catholic moral tradition a principle variously termed and which I will call the 'Principle of Material Cooperation'." "Oh yes," exclaimed G. B. Morgan, "I have heard of that principle. Some would describe it as 'How to cooper-

ate with another's evil act and get away with it in good conscience'."

"Please understand that I am trying to respect the conscience of both parties," Fr. Morales quickly added, "but it is necessary for all parties concerned to appreciate what is at stake—on the moral plane. Ideally it would be highly desirable that the procedures in question take place in a separate building which clearly is not part of St. Mary's nor of the Community Hospital. If the hospitals in question are considering an alliance which closely unites them, and are governed with a joint Board of Trustees, then this separate building should not be owned, governed, or administered by the new joint Board of this proposed new entity. None of St. Mary's and Community Hospital staff, physicians, nurses, technicians, etc., should be involved in carrying out the morally prohibited procedures. The financial, administrative, and support functions also should not be shared with the combined hospital's (to be called St. Mary Metro Hospital) corresponding functions."

"Now, that is what I propose to be a starting point for further discussion. I realize that this presents a number of problems for both hospitals, and that would be a reason for continued discussion on this specific suggestion."

Mr. Leader, CEO of the Community Hospital, feeling a little perplexed, raised his hand to catch the Chairperson's attention. "What you propose, Fr. Morales, does seem to solve the problem and keep clean the skirts of St. Mary's Hospital, but there is no such building available on our campus. To construct one just to carry out tubal ligations and possibly some reproductive technologies would exceed our budget by far. So, what other options are there?"

Before Fr. Morales could respond, the Director of the Nursing Department of Community Hospital, Miss Florense, asked, "Is it possible to carve out a section of our building that would be designated as a separate OB/GYN unit for the purpose of providing a full range of reproductive services except, of course, that no abortions would be performed?"

All eyes looked at Fr. Morales for his response. "If it were possible," he said, "for this unit to be truly distinct, and visibly so, by having a separate entrance from the exterior, a clear signage indicating a distinct entity, one not part of either component hospitals, and having a cadre of personnel—physicians, nurses, technicians, etc., who would not be on the payroll of the joint entity, the answer could be 'yes.' But recall that the devil is in the details and these would have to be carefully spelled out."

The chief finance officer from St. Mary's, G.B. Morgan, noted, "We need to put some numbers down on the table. If we assume that neither hospital will experience a sharp drop in annual revenue as a result of the alliance, then the savings from the proposed alliance will permit a favorable balance sheet for both. So here is the report of the subcommittee which was appointed when we began this process." The report was then passed out to the members. After a few minutes of relative silence, a quiet murmur from the members indicated that what they read was favorable.

Dr. Obgynski exclaimed, "I still have a problem, or at least a question, with the proposal. Can I maintain staff privileges with this arrangement?"

Sr. Mary Agnes said "I believe that Fr. Morales can answer that question."

Coming out from a moment of reflection regarding the difficulty of the problem, Fr. Morales responded. "Subject, of course, to the CEO's approval, you may have staff privileges so long as you are not a paid employee of St. Mary Metro Hospital, since it is owned and operated by the joint Board of Governors. That is the point, is it not? St. Mary's cannot be, and is not, responsible for your actions, morally and legally, in this new Reproductive Services Center. And as long as you observe the requirements of the ERDs when treating patients at St. Mary Metro Hospital, you are welcome to practice in either of these two components of St. Mary's—assuming, of course, that the devilish details have been satisfactorily worked out."

The Chairperson, Sr. Mary Agnes, noting that the agreed upon time limit for the meeting had been reached, spoke up saying, "If the Committee has no further questions, we will adjourn, *sine die*. Yet if there should be any questions which may subsequently arise, please contact my office. And thank you all for your patient and tireless cooperation."