

# homiletic & pastoral review

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*Since my critique never employs the notion of cooperation, McCormick misinterprets my view when he recasts it in terms of cooperation.*

## Public funding of abortion: A reply to Richard A. McCormick

*By Germain Grisez*

■ The July 1984 issue of this review included my "Critique of Two Theological Papers."<sup>1</sup> The papers were by Charles E. Curran and Richard A. McCormick, S.J. In a recent article, "Medicaid and Abortion," McCormick has published a rebuttal to my critique.<sup>2</sup> In his rebuttal, McCormick claims that my analysis "invalidates the distinction between formal and material co-operation, and thus the entire traditional doctrine on co-operation."<sup>3</sup> This serious charge requires a reply. While giving it, I shall answer a few other objections McCormick makes.

The part of my critique concerned with the public funding of abortion is what evokes McCormick's grave judgment upon the impact of my analysis on the traditional doctrine of cooperation. I argue that

while there are important differences between personal morality and public policy, someone who sincerely considers abortion immoral cannot (if clearheaded) rightly support public funding:

However, one cannot erect a wall of separation between personal morality and public policy. The public funding of abortions is not simply a system of reimbursing poor women for their medical bills; rather, it is a system of procuring abortions for poor women in order to reduce public welfare expenditures. Anyone who advocates or supports public funding of abortions understands that fact and wills that abortions be done with these public funds. This willing of abortion is a personal moral act of the advocate or supporter of public funding.<sup>4</sup>

McCormick quotes from this paragraph

continued on page 45

## PUBLIC FUNDING OF ABORTION

continued from page 32

part of one sentence "Anyone who advocates or supports public funding of abortions . . . wills that abortions be done with these public funds."<sup>5</sup> Although he constructs an argument for me by quoting and paraphrasing bits and pieces of other portions of my critique, McCormick here excises an important factual claim: that the purpose of public funding is to reduce public welfare expenditures. Nowhere does he mention this premise.

By ignoring this premise, McCormick's rebuttal makes my critique seem arbitrary. This false impression is reinforced when he begins to make his case by saying:

First, does support for Medicaid payments necessarily involve wanting (i.e., approval of) the abortions? This is Grisez's key assertion, repeated many times. Equivalently Grisez is asserting that support for Medicaid funding is unavoidably formal co-operation; for that is the meaning of formal co-operation.<sup>6</sup>

Besides treating my argument as if it were a groundless assertion, McCormick here introduces the notion of cooperation, which my critique never employs. He also begins to recast the argument in a form susceptible to his attack by translating my "wanting" into his "approval." Later, he further recasts my critique by reducing my "advocates or supports public funding of abortions" to his "approves public funding for abortions."<sup>7</sup>

The reason why my critique never employs the notion of cooperation is that I do not consider it necessary for the moral evaluation of the act of advocating or supporting public funding of abortion.<sup>8</sup> On my view, this act is not cooperation with abortion, but procurement or promotion of it in order to reduce public welfare ex-



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penditures. Whatever their legal status, those who promote or procure abortion—or any other killing—morally are not cooperators, whether formal or material, in others' acts of killing. Rather, they themselves are prime moral agents of the killing they bring about.

This point is clear in the case of a Mafia boss who puts out a contract on a rival gangster. In thus procuring a murder, even though he takes care to be out of town when the contract is carried out, the Mafioso morally is himself a murderer, not merely a cooperator in the executioner's act. While I do not judge the

hearts of those who advocate abortion funding, and while their act differs in various ways from that of the Mafia boss, I think they are procurers of killing just as truly as he is. Public funding of abortion is a contract on the lives of the unborn.

Since my critique never employs the notion of cooperation, McCormick ministerprets my view when he recasts it in terms of cooperation. Hence, his objections entirely miss the point insofar as they are based upon my supposed misunderstanding and misapplication of the traditional teaching on cooperation. My critique in no way invalidates the distinction between formal and material cooperation, and with it the entire traditional doctrine on cooperation, as McCormick supposes.<sup>9</sup>

#### **One motive: Saving welfare money**

I would not have been surprised if McCormick had attacked rather than excised the factual premise of my argument: that public funding of abortion is a system of procuring abortions for poor women in order to reduce public welfare expenditures. If that is a correct statement of the purpose of public funding, those who advocate and support such funding clearly are among the primary agents of abortions, since they do not achieve their purpose unless at least some potential welfare recipients are eliminated. Those pursuing this end may find abortion repugnant. They may not “approve” of it as they would if they regarded it favorably in itself. Indeed, considered in and by itself, they may “desperately disapprove” of it. But they do want abortions done for the sake of their ulterior policy goal.

But is my factual premise true? Per-

haps not entirely. While there is evidence that cutting welfare expenditures is an important motive of public funding of abortions, I admit that someone *could* advocate and support abortion funding wholly on the basis of some policy consideration, so that any saving in welfare expenditures would be *praeter intentionem*—a mere side effect.<sup>10</sup>

However, if my factual premise is not true of every proponent of public funding, still I think my argument is sound when I say:

The issue of public funding involves no abstruse problem of application. All that is required is the specification of the general principle by referring to the method of paying for the abortions: Since it is wrong to want abortions done, it is wrong to want them done by means of public funding. This specification is just as straightforward as: Since it is wrong to want abortions done, it is wrong to want them done by D & C, by saline, or by some other method.<sup>11</sup>

In his summary of my critique, McCormick reports part of this argument.<sup>12</sup> But he mistakenly thinks that I suppose (what would be obviously false) the two specifications to be *identical*, while I only say they are equally straightforward.

In developing his objection in terms of cooperation, McCormick denies that those who “approve” public funding want (in his sense, meaning “approve”) abortion, but he offers no reason to think that those who advocate and support public funding of abortions can do that without wanting (in my sense, meaning “will as end or as means”) abortions done with public funds.

This objection in terms of cooperation fails for two reasons.

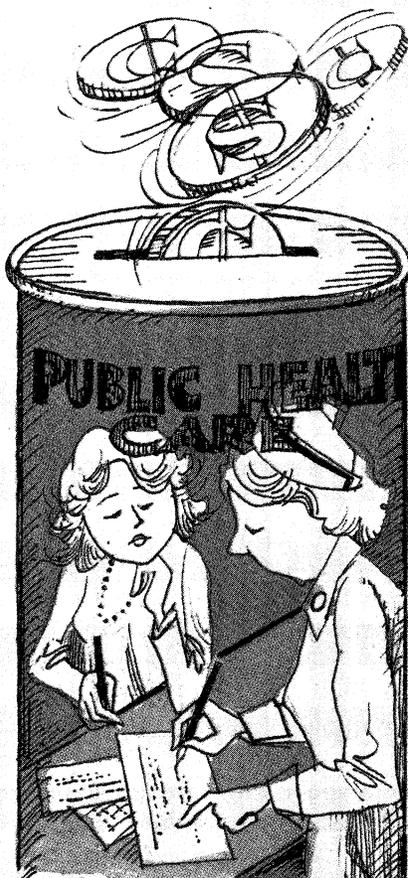
In the first place, McCormick errs in thinking that approval is necessary for formal cooperation. People sometimes do wrongful acts, whether by their own

performance or by procuring others to do them, without approving of what they do, although they often rationalize to justify or excuse such acts. For example, people in medical training who are pressed to do (not merely cooperate in) operations they consider immoral sometimes choose to do what they are required to do, disapprove of it, and rationalize their choice as a “lesser evil” than the likely consequences of refusing to do what they disapprove. Since people can *do* wrongful acts of which they do not approve, a fortiori they can formally cooperate in wrongful acts of which they do not approve.<sup>13</sup>

#### **Justification: Lesser of 2 evils**

In the second place, while I thought the point too obvious to need explanation, it is not hard to elucidate further that those who advocate and support public funding of abortions want (in the morally relevant sense of “will either as an end or as a means”) abortions done with public funds.

Whoever engages and pays someone to do something, wants it done—that is, chooses to procure it. A public program for supplying health care—such as Medicaid and state programs related to it—is a system by which governments provide certain groups of people with certain health care services by engaging and paying health care providers on a case by case basis to provide these services for these people. The provision of a service generally is triggered by a patient’s request (or, at least “informed” consent), and payment generally is made after the fact. Nevertheless, when a government engages a health care provider by a public program such as Medicaid, the performance of the service is procured. This is clear both because any



such program pays only for certain specific services, not for any and every service to the poor, and because anyone paying or receiving such public funds for anything but a specified service would be punishable.

Thus, if there is public funding of abortions, a government procures the doing of abortions. This is true even if a particular abortion would be done were there no government funding, just as it is true that a Mafioso procures a killing when he places a contract even if the executioner for reasons of his own would have gunned down the intended victim had he received no contract.<sup>14</sup>

*While there are important differences between personal morality and public policy, anyone who sincerely considers abortion immoral cannot rightly support public funding.*

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One who advocates and supports public funding of abortions wants public health care systems to do in respect to abortion what they do in respect to other services—that is, to engage physicians to perform abortions—and thus to procure these abortions. But one who wants the system to procure abortions wants abortions done with public funds. Therefore, those who advocate and support such abortion funding want abortions done with public funds.

Those who advocate and support abortion funding may have various reasons for wanting abortions done. But whatever their ends in view, they choose to procure abortions by getting the government to procure them. Thus, as I argue in my critique:

Any attempt to justify public funding of abortions is an argument that some good end

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(reducing welfare costs and giving the poor services available to the wealthy) justifies an immoral means (procuring the death of the unborn).<sup>15</sup>

When McCormick quotes this argument, he excises—without indicating its deletion—the material in parentheses.<sup>16</sup> Thus, he saves himself the trouble of trying to disprove my point: that governments want abortions, not without reason, but as a means to some end.

In my critique I also argue that faithful Catholics may not dissent from the the norm excluding direct abortion, because that truth is infallibly taught by the ordinary magisterium. McCormick objects vigorously to this thesis. He denies that the Church's teaching on this matter can possibly be infallible, and he claims "this is a common conviction of theologians."<sup>17</sup>

**Direct abortion outlawed**

McCormick's objections on this point are almost entirely drawn from or based on a recent book by Francis A. Sullivan, S.J.<sup>18</sup> My detailed critique of the relevant part of Sullivan's work has been published already.<sup>19</sup> Therefore, I here pass over all but one of the points to which I otherwise would reply in this part of McCormick's rebuttal.

In support of my thesis that the norm excluding abortion is infallibly taught by the ordinary magisterium, I say: "Generally, this teaching on abortion has been proposed as part of the revealed truth that innocent human life ought never to be taken by human authority," and I then go on to point out that "faithful Catholics have rightly accepted this truth as part of their faith in God's law: 'Thou shalt not kill': 'The innocent and just thou shalt not slay.'"<sup>20</sup>

McCormick, passing over my reference to Scripture, challenges the claim that the Church's teaching on abortion *has been proposed as part of the revealed truth*:

What is the evidence for that? *Casti connubii*, in condemning abortion, says that it is "praecepto divino contrarium." But that is not the same as saying "revealed."<sup>21</sup>

To support this, McCormick reports in a note an argument of Sullivan's about the meaning of "divine law" in *Gaudium et spes*.

What Pius XI actually says in *Casti connubii* is that the killing of either the mother or her unborn child "contra Dei praeceptum est vocemque naturae: 'Non occides!' — that is, "is against the precept of God and the voice of nature: 'Thou shalt not kill!'"<sup>22</sup> Inasmuch as the Ten Commandments not only were stipulations of the old covenant but were reaffirmed by our Lord and St. Paul, and used as the framework of Christian moral teaching ever since, they belong to revelation if any moral truth does. Hence, it is understandable that McCormick neither mentions Pius XI's reference to Scripture nor offers to show that the commandment forbidding killing is *not* revealed.

#### Commandments belong to Revelation

But I am well aware that hardier theologians argue that revelation contains no specific moral norm whatsoever, that all of the moral norms in the Bible were simply accepted for those times, not revealed by God for all time. But the point I wish to make is a different one, for the premise of my argument is not exactly that the moral norm excluding the killing of the innocent *is* revealed, but that the magisterium has taught it *as* revealed.

When Pius XI says that abortion is against a "precept of God" and enunciates this precept as he does, he clearly claims that the norm is revealed. How else could we know that it is a "precept of God?" Moreover, if some theologians today are willing to try to show that not even the Ten Commandments are revealed moral norms, no Catholic theologian in Pius XI's time was hardy enough to try to show such a thing, even if any had the "vivid and rather uncontrolled theological imagination"<sup>23</sup> to think it. Thus, to suppose that Pius XI did not mean to propose "Thou shalt not kill" as revealed would be "to deny the historical character of ecclesiastical pronouncements." McCormick makes it clear that anyone doing that would be incompetent indeed.<sup>24</sup>

If the norm excluding abortion is proposed by the ordinary and universal

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magisterium as revealed, one need not establish independently that it is revealed to be sure that it must be accepted with divine and Catholic faith. For not only Vatican II (which did not teach definitively) but Vatican I (which did) teaches on the infallibility of the ordinary magisterium:

Further, all those things are to be believed with divine and Catholic faith which are contained in the word of God, written or handed down, and which the Church either by a solemn judgment or by her ordinary and universal magisterium proposes for belief as divinely revealed.<sup>25</sup>

It follows that even if some theologians—who McCormick assures us only wish to restrict the object of the infallible magisterium and “nuance” *Lumen gentium*, 25, not nullify it—nuance to their hearts’ content, still, if they deny what has been proposed by the ordinary and universal magisterium as divinely revealed, they reject what every faithful Catholic believes.

The final section of McCormick’s response chides me for criticizing the theological boot-strapping of his theological party, whose members treat one another’s theological authority as a prime theological locus: “And it is safe to say that this is a common conviction of theologians.”<sup>26</sup> But he does not show that my theological method is faulty. In my book on fundamental moral theology, the last two chapters deal with such questions and criticize efforts to justify dissent.<sup>27</sup> Perhaps there is a “common conviction of theologians” that the less said about this critique, the better. Thus far, none of the theological party whose views McCormick shares has replied to it.

<sup>1</sup> “A Critique of Two Theological Papers,” *Homiletic and Pastoral Review*, 84 (July 1984),

10–15. This article is hereafter cited as *Cttp*. The two papers were included in a packet of papers bearing on the case of Agnes Mary Mansour circulated in November 1983 by the Secretariat of the Leadership Conference of Women Religious.

<sup>2</sup> Richard A. McCormick, S. J., “Medicaid and Abortion,” *Theological Studies*, 45 (1984), 715–21. This article is cited hereafter as *M&A*.

<sup>3</sup> *M&A*, 718.

<sup>4</sup> *Cttp*, 11.

<sup>5</sup> *M&A*, 715.

<sup>6</sup> *M&A*, 716. McCormick also errs in saying I dealt with Medicaid; I dealt with public funding in general. Medicaid is only part of the system. For the significance of McCormick’s shift from general to specific, see note 14 below.

<sup>7</sup> *M&A*, 717. McCormick offers no proof that approval of an action is a necessary condition for formal cooperation in it.

<sup>8</sup> This is not to say that a faithful moralist could not work out a sound treatment of public funding of abortion using the notion of formal cooperation. Anyone who wants to cast the problem in these terms can take what follows as an argument that advocates and supporters of abortion funding are formal cooperators in the abortions they want done with government funds. However, analysis in these categories of the morality of supporting abortion funding will be strained, because classical moral’s treatments of cooperation were almost entirely about the problems of individuals—especially servants, employees, and other subordinates—called on to help superiors. Hence, the acts of governments and of individuals involved in them were not usually dealt with as instances of cooperation. For my own treatment: Germain Grisez, *The Way of the Lord Jesus*, vol. 1, *Christian Moral Principles* (Chicago: Franciscan Herald Press, 1984), 300–303. The book is cited hereafter as *Christian Moral Principles*.

<sup>9</sup> McCormick himself undermines classical doctrine on cooperation when he reduces formal cooperation to approval. This reduction is related to his proportionalism and its impact on received uses of the direct/indirect distinction. See Richard A. McCormick, S. J., in *Doing Evil to Achieve Good: Moral Choice in Conflict Situations*, ed. Richard A. McCormick, S.J. and Paul Ramsey (Chicago: Loyola University Press, 1978), 254–62. This book is cited hereafter as *Doing Evil*.

<sup>10</sup> Supporters of abortion funding now avoid blunt cost-benefit arguments. But see Leo Pfeffer, *God, Caesar, and the Constitution: The Court as Referee of Church-State Confrontation* (Boston: Beacon Press, 1975), 95–104. In the late 1970s, such arguments were widely used. E.g., Senator Charles Percy, *Congressional Record*, 6 May 1975, S 7466; 29 June 1977, S 11032; Rep. Geraldine Ferraro, *Congressional Record*, 27 June 1979, 17024; Robert A.

Derzon, Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, Memorandum to the Secretary, 4 June 1977, 6–7; Justice Blackmun, joined by Justices Brennan and Marshall, dissenting, in *Beal v. Doe*, *Maier v. Roe*, and *Poelker v. Doe*, 97 S. CT. 2398–99 (1977).

<sup>11</sup> *Cttp*, 13.

<sup>12</sup> *M&A*, 715.

<sup>13</sup> McCormick makes it clear (*M&A*, 717–18) that at present he personally does not favor abortion funding. His position on abortion itself is less clear; see William B. Smith, “The Revision of Moral Theology in Richard A. McCormick, *Homiletic and Pastoral Review*, 81 (March 1981), 19–22. McCormick holds proportionalism: that in conflict situations one should choose the lesser evil (*Doing Evil*, 38). Since there can be no rational way to tell what alternative for choice involves the “lesser evil,” one cannot tell whether McCormick would approve someone in medical training doing the operations in the example. But, if so, one could offer a different example; he surely does not approve of every reluctant decision to do evil that good may come of it. For a critique of proportionalism: *Christian Moral Principles*, 141–71, especially the appendix, 161–64, which deals with McCormick’s narrowest formulation of his version.

<sup>14</sup> McCormick says (*M&A*, 717) in a note: “There are studies that indicate that Medicaid funding or its absence, whether at the federal or state level, does not substantially affect the number of legal abortions actually done” (emphasis added). To support this, he quotes Willard Cates, Jr., “The Hyde Amendment in Action,” *Journal of the American Medical Association*, 246 (4 September 1981), 1112, who says that “the Hyde amendment had only a minor impact on Medicaid-eligible women who wanted to terminate their pregnancies.” But McCormick’s use of Cates overlooks Cates’s estimates (1110) that 65% of these “Medicaid-eligible” women obtained state-funded abortions. Cates estimates that in states continuing funding, 5,000 babies of “Medicaid-eligible” women were carried to term as a result of the Hyde amendment. The estimates that in states restricting funding, of 45,000 “Medicaid-eligible” women, 9,000 or 20% carried their babies to term. If in the period Cates studied all public funding of abortion had been cut off with the same impact everywhere as in those states with restricted funding, that would have saved 45,000 additional babies. One would have thought the 14,000 babies Cates estimates the Hyde amendment saved were a substantial effect. McCormick apparently does not. But 59,000? Of course, McCormick says that even if the number saved by a cutoff is substantial, support of public funding is only material cooperation, which “need not always involve approval of the facilitated morally wrong action” (*M&A*, 717).

<sup>15</sup> *Cttp*, 13.

<sup>16</sup> *M&A*, 715. I agree with McCormick’s remark (716): “One longs for the sunny theological spring when some can state their opposing view without caricaturing in the process.”

<sup>17</sup> *M&A*, 720.

<sup>18</sup> Francis A. Sullivan, S.J., *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist Press, 1983), especially 119–52.

<sup>19</sup> Germain Grisez, “Infallibility and Specific Moral Norms: A Reply to Francis A. Sullivan, S. J.,” *The Thomist*, 49 (April 1985).

<sup>20</sup> *Cttp*, 14.

<sup>21</sup> *M&A*, 718–19.

<sup>22</sup> *AAS* 22 (1930), 563.

<sup>23</sup> McCormick attributes that imagination to me (*M&A*, 719), because I imply (*Cttp*, 14) that the wrongness of direct abortion is a revealed truth. McCormick thinks direct/indirect are “philosophical formulations” which cannot be regarded as revealed. If so, what about dogmas developed using such formulations—for example, that there are two natures and only one person in Christ?

<sup>24</sup> *M&A*, 720.

<sup>25</sup> DS 3011/1792 (translation mine).

<sup>26</sup> *M&A*, 720.

<sup>27</sup> See *Christian Moral Principles*, 831–916; in respect to “consensus theologorum,” 884–85. It is clear that McCormick’s theological party is not solidly in power. Writing—“Notes on Moral Theology: 1983,” *Theological Studies*, 45 (1984), 84—of those who support the Holy See’s defense of Catholic teaching, McCormick admits: “There are growing numbers of reactionary theologians who support this type of thing with insistence on a verbal conformity that is utterly incredible to the modern—and, I would add, open—mind.” Thus McCormick admits that the “common conviction of theologians” is not so common after all.