 Complicity and Its Conceptual Cousins*

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Abstract: Colloquially, "complicity" embraces a wide variety of ways in which one agent might contribute to another's wrongdoing. Here we separate out several more precise terms – connivance, collusion, collaboration, condoning and conspiring – from that catch-all category. Each of them has more precise characteristics that morally matter. Some involve joint plan-making with the principal wrongdoer, whereas others involve merely acting or allowing others to act on a plan for wrongdoing. In some of those categories, the contributory act is itself partially constitutive of the principal wrongdoing; in others it is causally essential to the wrongdoing; in still other of the categories, the contribution is at most potentially essential or even completely inessential. We thus show that complicity comes not merely in different degrees but also in different kinds, and that some those kinds are systematically worse than others from a moral point of view.

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I am responsible for what I do, and you are responsible for what you do. But on any credible view I need to give attention, in what I do, to what you will do in consequence. And you need to give attention, in what you do, to what I will do in consequence. In that sense, there are two parts of morality. There is what I should do simpliciter, and then there is what I should do by way of contribution to what you do. -- John Gardner

I. Introduction

“People using air conditioners are complicit in global warming.” “People eating at McDonalds are complicit in the oppression of animals.” “Those who pay taxes are complicit in the unjust actions of their government.” "Civilians who shelter soldiers waging an unjust war are complicit in that unjust war.” We hear such statements all the time.

"Complicity" is often employed indiscriminately as a catch-all term to describe the whole multitude of sins that, in Gardner's phrase, "I ... do by way of

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2 Recall Thoreau's 1848 remarks on "Civil disobedience": "if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn" (reprinted in Civil Disobedience: Theory and Practice, ed. Hugo Adam Bedau [New York: Pegasus, 1969], pp. 27-50 at p. 35).
3 Which is not to say that they should be liable to attack in consequence, of course; Cécile Fabre, "Guns, food and liability to attack in war," Ethics, 120 (2009): 36-63.
contribution to what you do." It is used to refer, variously, to situations that we will here characterize more precisely as "connivance," "collusion," "collaboration," "condoning," "conspiring" or "full joint wrongdoing." Those terms are hardly interchangeable. Each of them point not only to different degrees but also to different kinds of contributory actions, which carry importantly different moral valences.

Here we will unpack the too-casual ordinary use of the term "complicity," separating out each of those other more precise notions, adducing distinctions among them, identifying and illustrating the sorts of cases to which each might be appropriately applied. Drawing variously on etymology, ordinary language, and legal usage, we reconstruct their meanings in ways that render moral differences among them clearer and sharper. We will be left with a restricted sense of "complicity" that is still something of a residual catch-all category, with genuine moral ambiguities attached to it. Spring-boarding off of our partial, sketchy and itself slightly tidied up assay of related concepts, we will offer a more general analysis of the dimensions along which those distinct ways of contributing to wrongdoing differ in ways that matter morally. Separating out all cognate phenomena from complicity provides not only a much more circumscribed term,

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4 As Larry May says in Genocide: A Normative Account (Cambridge: Cambridge University Press, 2010), p. 158, "Complicity is a vague concept in criminal law as well as in common parlance, but the vagueness of this concept is in my view an important part of its meaning." Our concern here will be with complicity understood from a moral point of view. Inevitably, there is considerable overlap between moral and legal treatments of this topic. Most previous philosophical work on the subject has been done from a legal standpoint; see, e.g., Christopher Kutz, Complicity (Cambridge: Cambridge University Press, 2000) and May, Genocide, ch. 9. The present article abstracts from more specific legal to more general moral applications of the term.
but also precise dimensions along which to assess the inevitable ambiguities remaining. That is the main aim of the article; the conceptual inventory is in service of that aim.

Any given act of contributing to wrongdoing may be morally more or less bad, depending mostly upon its consequences – and those can vary greatly within the categories we will here distinguish. Whether any given act is right or wrong on balance, and if wrong just how wrong, is something that must be evaluated on a case-by-case basis. Nonetheless, we can make some moral generalizations concerning the distinctive modes of contributing to wrongdoing that we will here identify. Some of those modes are systematically worse than others, due partly to their characteristic consequences and partly to the greater certainty and directness of their association with bad consequences.

The terms we shall be analyzing here share a common etymological root, the Latin prefix “cum"("together with"). They all apply to things (actions, plans, projects) that one does together with someone else. The terms differ in the kinds and degrees of contribution that an agent is making to the principal’s actions, plans or projects. Through a discussion of the extent (and indeed in some cases even existence) of responsibility across these very different kinds of contributions, we will

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come to a more nuanced way of assessing their differential moral blameworthiness, in a way that the catch-all label "complicity" elides.

II. Definitions

We shall be discussing various terms denoting different sorts of complicity-like contributory actions. They display what Wittgenstein terms a "family resemblance." What links them is that they are acts all in which principals and contributory agents are engaged "together" (in varying senses) with one another. They differ however in (among other things) the ways in which one is contributing, the extent to which one is contributing, the willingness with which one is contributing and the extent of common planning among the agents involved.

We will refer to the wrong committed by the agent(s) whom we call the "principal(s)" as the "principal wrongdoing" and the wrong committed by the contributory agent as the "secondary wrongdoing." Notice that the principal wrongdoing is always wrong in itself, whereas the secondary wrongdoing might be wrong in itself or it might be wrong only by virtue of its contribution to the principal wrong. Talking in terms of "principal" and "secondary" wrongdoing is not meant to prejudice our judgment as to the relative moral blameworthiness of each.

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Secondary wrongdoing can be as wrong as (or more so than\(^7\)) the primary wrongdoing. Nor are those terms meant to prejudice our judgment as to the relative importance of each in bringing about the wrong; secondary wrong-doings can sometimes be essential to (causally strictly necessary for the performance of) the principal wrong-doing.\(^8\) Nor, again, are those terms meant to imply anything about the act's place in the temporal sequence of wrongdoing.

Note too that people can be guilty of more than one form of wrongdoing. Perhaps in ordinary conversation (as in legal proceedings\(^9\)) we tend to focus only on the "worst form" of which a person is guilty, when there may in fact be several others of which she is also guilty. Thus, when we say someone is "guilty of X" there is ordinarily something of a conversational implicature that that's the worst she's guilty of. Here we explicitly repudiate any such implication. Conceptually, it is important to appreciate that people can be simultaneously guilty of many different wrongs.\(^10\) In describing them as being guilty of one, we do not imply that they are not guilty of other (perhaps greater) wrongs as well.

\(^7\) "An accessory sometimes may be the guiltier, as Lady Macbeth was"; Glanville Williams, *Criminal Law, the General Part*, 2nd edn (London: Stevens & Sons, 1961), p. 404. For another example, a policeman who connives in petty theft has arguably done something worse than the thief herself. Or for yet another example, in Morgan's case the husband who persuaded three friends to rape his wife, assuring them her screams of protest would be just part of the game to heighten her pleasure, arguably has done something worse than the rapists themselves; E.M. Curley, "Excusing rape," *Philosophy & Public Affairs*, 5 (1976), 325-60.


\(^9\) Where one and the same act constitutes both "the principal wrong and the wrong of complicity" a criminal indictment seeing conviction of a person for both would at common law be "void for duplicity." Under English law, however, the prosecution in such cases can seek "the two convictions in the alternative" (Gardner, "Complicity and causality," p. 435).

\(^10\) And thus be in "double trouble," in the felicitous phrase of Gardner, "Complicity and causality," p. 435.
We will call the person who executes the principal wrongdoing the "principal" agent. A contributory agent is defined as a “co-principal” if her actions are partially constitutive of the principal wrongdoing, i.e., they are part and parcel of the principal wrongdoing that is constituted by the combination of actions performed by all co-principals. We will call a person who is acting "together with" the principal in any subsidiary way a “purely contributory-agent.”¹¹ The actions of the principal(s) and co-principals are constitutive of the wrong being done; and to count as "wrongs" the acts must be performed by the principal(s) with wrong-making intentions. The acts of what we shall call "purely contributory agent(s)," in contrast, are not in themselves part of the wrong being done but instead (at most) contribute in a causal way to that wrong's being done.¹²

People are not necessarily blameworthy for all outcomes to which they causally contributed.¹³ To be morally blameworthy, those contributory actions must be performed in awareness of the existence and the wrongfulness of the principal

¹¹ We use the term “purely contributory agent” to include accomplices, accessories, secondary agents, derivative agents, agents involved in inchoate offenses, etc. The term can acquire differential moral charge depending on the nature of the contribution, as we elaborate in Section III and V.
¹³ The mayor who cuts the ribbon, intending to open the new shopping mall but accidentally cutting the tripwire on a bomb a terrorist had planted there, is not to blame for the ensuing deaths – although his cutting the ribbon has indeed caused them.
wrong and in awareness of the fact that those acts do indeed contribute to that
principal wrong.14

To foreshadow, we shall here be focusing upon the two components that are
crucial in either sort of contribution to wrongdoing. One concerns the "doing" – the
actus in the venerable language of the law. The other concerns the "planning," the
mens component that is distinctively involved in joint or contributory actions.15
After surveying various sorts of contributory acts, we will provide in Section V an
analysis of the dimensions along which they differ grouped under those two
fundamental headings.

When we talk of a "plan," we simply mean an intended sequence of actions
designed to achieve a certain goal. The various terms we discuss point to different
roles that principals and contributory agents might play in the planning, to different
stances contributory agents might take toward the plan, and to different roles they

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14 That is to say, awareness that your act contributes to the principal wrong (without necessarily acting
with the purpose or intention of contributing to the principle wrong) suffices for complicity. In its
initial draft of the Model Penal Code, s. 2.06(3)(b), T.D.4, p. 20 (1960), the American Law Institute
similarly defines someone as complicit if, "acting with the knowledge that such other person was
committing or had the purpose of committing the crime, he knowingly provided means or
opportunity for the commission of the crime, substantially facilitating its commission." Lawyers often
opt for a stronger intentionality requirement; indeed, the ALI altered its final Official Draft of 1962 to
define complicity as acting "with the purpose of or facilitating the commission of the offense." The
desire for a stronger intentionality requirement is understandable where, as in many jurisdictions,
people who are complicit are punished the same as if they were the principal offender. But as we
argue below, that too is also a mistake, refusing to distinguish between degrees of blameworthiness
of contributory agents. See Paul H. Robinson and Markus D. Dubber, "The American Model Penal
Code: a brief overview," New Criminal Law Review, 10 (2007), 319-41 at p. 337 and, more generally:
Williams, Criminal Law, pp. 378-80; Andrew Ashworth, Principles of Criminal Law (Oxford: Oxford
15 Strictly speaking, planning involves actions too (meeting together, talking, agreeing, etc.); and arguably
mental actions are actions too. However, we retain the ordinary actus/mens distinction for purposes of
our analysis.
might play (and different stances they might take toward their assigned roles) in its implementation. When we talk of an agent "adopting" (or as we shall sometimes say "embracing") a plan, we shall mean that the agent "approves of it and intends to do what he can to make it succeed." When we talk of an agent "accepting" (or as we sometimes say "complying with") a plan, we shall mean that the agent "acts on it as required, without necessarily approving of it or wishing it to succeed."

Note that it is not necessary, in order to blame agents in some ways for contributing to some planned wrongdoing, for the planned wrongdoing actually to occur. Attempted wrongdoing can be wrong, even if the attempt fails. Planning wrongdoing can be wrong, even if the planners (oneself or others) fail to act on the plan.17

Note, too, that agents can only be morally blameworthy for contributing to wrongdoing if they know (or could and should have known) about the planned wrongdoing. That is to say, they must either be aware of the principal wrongdoing; or if they are unaware of it, they must be culpably so, in the sense that they should have made themselves aware of it and practically they could have done so.18

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16 I.e., has what Kutz, *Complicity*, ch. 3, calls “participatory intention.”
18 Or if in prospect, they could and should have anticipated that some such wrongdoing was unacceptably likely to occur (as when a recklessly negligent explosives dealer sells explosives to anyone who walks through the door, not knowing which purchaser will use them for terrorist purposes but pretty sure one of them sooner or later will). See, e.g., Sanford H. Kadish, "Reckless complicity," *Journal of Criminal Law and Criminology*, 87 (1997), 369-94.
III. A cluster of concepts

What follows is a conceptual and etymological reconstruction of the way in which various concepts often conflated with “complicity” are employed in ordinary language and moral and legal discourse. To bring the distinctions among them into high relief, we will begin by coining a novel term to describe the “limiting case” with which those various other concepts can then be compared.

A. Full joint wrongdoing

We coin the term "full joint wrongdoing" to describe the limiting case of complete jointness in wrongdoing. This is the case in which two or more agents deliberately contribute, through their identical individual actions, to the pursuit of a plan of wrongdoing that each of them has also played an identical role in designing and adopting.

What is peculiar to a case of full joint wrongdoing is that it involves every joint wrongdoer doing exactly the same thing as of every other. Each person engaged in full joint wrongdoing is fully and equally accountable for the wrongdoing, because they all jointly conceived, adopted and implemented the plan. Not only did they fully intend to contribute practically to the implementation of the plan in the ways it required of them; per our definition of full joint wrongdoing they actually did so, and in identical ways. When making, adopting and implementing a plan is fully joint among all the wrongdoers in this way, each takes "full ownership" of the plan. Partnerships, at law, are treated "as if" all of this were the case.
By definition, each agent engaged in full joint wrongdoing is a co-principal in the principal wrongdoing. Their acts, taken together, constitute the wrongdoing. We further stipulate in our definition of "full joint wrongdoing" that each co-principal is essential to both the planning and the performing of the principal wrongdoing. That is to say, the plan of wrongdoing could not have been designed or implemented without each of those identical contributions from each of those co-planners and co-principals. And since each is fully a "principal" in her own right in acting on the plan, none is purely a contributor to someone else's wrongdoing.

B. Co-operation

The term "co-operation" combines the prefix “cum” with the verb “operare,” “to operate” or “to ensure the functioning.” Agents who co-operate with one another are all co-principals who all share the same plan and all share in its execution (albeit in different ways). Co-operation can of course be morally good if it aims at something good, and morally indifferent if it aims at something morally indifferent; but here we shall be talking about co-operating in wrongdoing, which is itself wrong.

Co-operation in wrongdoing implies the existence of a plan that is shared among the co-principals. The co-operators might or might not have actually formulated the plan together with one another. Regardless of how the plan came
about, co-operators at the very least all adopt the plan as their own and orient their behavior around it.\footnote{This describes the limiting case of “full co-operation.” “Partial co-operation” can occur when a co-operator adopts only part of the plan in this way. Someone who simply “goes along and gives help when asked without knowing anything of the larger plan” is better described as a “collaborator,” as discussed in Section III.C below.}

Within the realm of action, co-operators are co-principals whose actions taken together constitute the principal wrongdoing. In the case of full joint wrongdoing, we stipulated that the actions to be performed are identical among the all co-principals involved. In the case of people co-operating in wrongdoing, in contrast, the actions to be performed by different people can be altogether different from one another, just as long as they are (and it is common knowledge among co-operators that they are) part of the same plan, and just so long as taken together they are constitutive of the principal wrongdoing (more of which below in Section V.A). They are cooperating equally, and are morally equally culpable for that fact, even if they are acting differently in pursuit of their plan of cooperation.

Furthermore, co-operators act interdependently. They monitor one another's behavior in pursuit of the plan and adjust their own behavior accordingly. If one person fails to perform the actions required of her by the plan, other co-operators (being co-principals) will try to step into the breach in an attempt to ensure that the plan is fulfilled. What each does depends on, and changes in response to, what each other does. They tend in that sense to be "mutually responsive" to one another's actions and choices in respect of the plan.
C. Collaboration

Etymologically, collaboration combines “cum” with the verb “laborare,” meaning “to work.” One conspicuous case of collaboration is collaborating with an enemy, where the wrong in view is of a very specific sort (betraying one’s country or family or organization). Think of the case of Marshall Pétain, whose collaboration in Nazi’s wrongdoing involved a traitorous contribution to the evil plans of Hitler, who should have been every Frenchman’s sworn enemy.

In the realm of actions, a collaborator is not a co-principal. At most, the actions of the collaborator contribute causally to the principal’s wrongdoing. They are not in any sense constitutive of the principal wrongdoing. That is another way in which collaboration differs from other concepts such as full joint wrongdoing, cooperation and collusion.

In the realm of mens, the collaborator contributes to the principal’s plan coming to fruition, without taking any active role in the planning itself. The relationship between the collaborator and the principal is purely that of follower to leader, in regard to the plan. The collaborator takes instructions from the plan and

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20 The term can of course be used in various contexts, including cases of collaboration (such as Lerner’s with Lowe) involving wholly praiseworthy or morally neutral plans. Such uses of the term "collaboration" are not our concern here, however. Here we focus exclusively on collaboration in wrongdoing.

21 An element of “partiality” – or minimally, special duties not to contribute in certain ways to certain actions of certain other people – is thus often more to the forefront in accusations of collaboration than with the other contributory terms considered.
adjusts his own actions to it. Collaboration involves the active and practical engagement of a contributory agent in with a plan which in some way he accepts and acts upon. But while accepting the plan as a basis for his actions, he need not actually adopt the plan as his own. The collaborator’s stance toward the plan might be far more equivocal than that. Like the film *Casablanca*’s Captain Renault, a collaborator may simply conform to the plan pragmatically and provisionally.

D. Conspiracy

A "conspiracy" is defined as an "agreement, a private accord between two or more co-principals to do something wrong." They are co-principals in that the wrong of conspiracy is constituted by the deliberate aligning their individual intentions with one another’s. Note, however, that it is the agreement to do wrong, rather than the further wrongdoing itself, which is of the essence in a conspiracy.

Etymologically, “conspire” combines the root "cum" ("with") with the verb "spirare," meaning "to breath." The latter verb is used as a metaphor for thoughts, agreements, and more broadly for the joint willingness that may “breathe life into” a common plan. Regardless of how insignificant a single breath would be, it is the communion of the various co-planners “breathing together” that vivifies the plan.

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22 But he does not necessarily adjust his own actions in response to others’ actions in such a way as to facilitate the success of the plan. He may purely do what the plan strictly requires of him, no more, no less – perhaps secretly hoping the plan does not succeed.

23 Or wrongfully omit to do something that is morally required.
The object of conspiracy is to produce a plan of wrongdoing designed and agreed jointly by different co-planners. The co-planners must jointly aim at a certain wrongful goal, and jointly define a sequence of actions designed to achieve that goal. In this sense, conspiracy may be regarded as a sub-set of co-operation – one that involves only the planning part, and not the implementation. Strictly speaking, a group of people who first plan together a certain wrongdoing and then implement that plan “conspire” only in the planning phase; they are “co-operators” (or “colluders” in the sense we shall describe below in Section III.E) when they act upon the plan. While conspirators must necessarily all plan together, the plan that they concoct may require that they each perform different and separate actions in pursuit of the plan. It is the joint planning, explicit among the conspirators but hidden (or attempted to be hidden) from anyone else, that makes a conspiracy.

A necessary condition for actions to count as conspiracy is the wrongness of either (or both) what is planned or the planning itself. For example, we might regard it as wrongful conspiring for business competitors even so much as to talk with one another about the prices they are going to charge, regardless of whether the plan under discussion is to raise prices or lower them.

Even planning to plan or attempting to plan can constitute a conspiracy. To count as a conspiracy, it is irrelevant whether or not you actually succeed in coming up with a joint plan; it is irrelevant whether or not the plan is actually put into action; and it is irrelevant whether or not the plan, if implemented, actually
succeeds in producing its intended effects. Similarly at the individual level, it is irrelevant whether or not any (still less all) of the conspiring members actually end up acting on the plan. All of those things matter greatly in other ways, of course: but conceptually they are unnecessary for the case to constitute one of conspiracy. A conspiracy is constituted purely by the act of planning (or even just planning to plan) itself.

E. Collusion

“Collusion” derives from the verb “to play” (“ludere”). To collude is, according to the Oxford English Dictionary, "To act in secret concert with, ... in order to trick or baffle some third person or party; to play into one another's hands; ... to play false." Paradigm cases of collusion include money-laundering, price-fixing and match-rigging.

"Collusion" is "co-operation" or "collaboration" of a particular kind – secretly, implicit rather than explicit, to trick others to the mutual benefit of each colluder. Although just a subset of those other categories, those features that mark it off as a distinct subset may themselves be of independent moral interest.²⁴

Co-operation in or collaboration with wrongdoing can be perfectly public. Think for example of those co-operating or collaborating in conducting an unjust war of aggression. Collusion in contrast is necessarily secret. Of course many of the constituent acts are public: the boxer drops to the mat (as if knocked out), the

²⁴ Sissela Bok, Secrecy: On the Ethics of Concealment and Revelation (New York: Oxford University Press, 1982).
laundered money changes hands (as if part of an ordinary commercial transaction).

What is crucially kept secret, in cases of collusion, is that those acts form part of a joint plan.

Colluders are co-principals in the attempt to wrongly trick some third party in ways intended to work to the colluders’ own mutual benefit.\(^{25}\) Among conspirators and co-operators, the focus is on the wrong itself, planning and/or committing it together. Among colluders, the focus is on the mutual benefits; the wrongs that colluders commit by tricking third parties are seen merely as a mean to those benefits.\(^{26}\)

Sometimes, as in the case of price-fixing or match-rigging, the jointness of action on the part of colluders is the very thing that constitutes the wrong. Coordinated play among those who are supposed to be (and who are pretending to be) competing against one another is a violation of the rules of the competition, and constitutes a wrong against those who are counting on the competitive game being played as it is supposed to be.\(^{27}\) In such cases, each person's action will typically be perfectly blameless, to all external appearances. The wrongness lies in the colluders' deliberate alignment of their actions with one another's in a way designed to mutually benefit them by wrongly tricking someone else.

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\(^{25}\) “Wrongly trick,” because not absolutely all instances of trickery are necessarily wrong. Think of the stage magician, for example.

\(^{26}\) Of course conspirators and co-operators typically expect to benefit from what they are doing as well, and colluders by definition commit wrongs in the course of their trickery. Still, the emphasis and focus differ.

Other times, the action would be wrong independently of the collusion itself. Thus, for example, it would be wrong for anyone to launder stolen money all by himself (through a slot machine) or with the unwitting assistance of some innocent other person (at the blackjack table). When two people (the thief and the casino operator, for example) collude with one another to launder the stolen cash, they thus commit an act that would be wrong for either of them to commit independently of the collusion. It nonetheless counts as a case of collusion, insofar as they try to trick public authorities who are searching for the stolen money, and insofar as they expect mutual benefits from the trick if it comes off. And it counts as a distinct joint wrong (“colluding to money-launder”) over and above the separate wrongs (of money-laundering) that each of the agents performed independently pursuant to that plan.

In either case, the essence of collusion consists in acting in secret concert with one another: jointly planning or anyway adopting the same plan to trick some third party, and jointly acting on that plan, in a way designed for the colluders to derive mutual benefits from wronging the third party.

F. Connivance

The "conniving" agent contributes in yet another way to a principal's carrying out a wrongful act. The action performed by the conniving agent is described by the verb "nivere," meaning "to wink at, to nod with the eyes, to
twinkle the eyelids, to shut the eyes." Its meaning thus ranges from ignoring another’s wrongdoing (shutting one's eyes to it) to tacitly assenting to it (winking, nodding, twinkling). In the words of the *Oxford English Dictionary*, connivance amounts to: “overlooking or ignoring (an offence, fault, etc.); often implying secret sympathy or approval: tacit permission or sanction; encouragement by forbearing to condemn.”

Connivers take no part in making the plan. Neither do they necessarily themselves adopt it nor even perhaps know any of its details. (This is how connivance differs from co-operation or collusion.) Furthermore, connivers do not adjust their own actions in light of the requirements of the plan. They merely stand aside to allow others to act on it (which itself may of course have been part of that original plan of others to do wrong). (This is how connivance differs from collaboration.)

At a minimum, connivance involves accepting the wrongdoing, and in that way contributing to it (to some greater or lesser extent). Sometimes the presence of conniving on-lookers might actually causally contribute to a wrongdoing that would not have occurred in their absence.\(^{28}\) Obviously, however, when no other option exists there can be no moral blameworthiness; and this may well be more commonly the case with connivance than with cases of people engaging in conspiracy or collusion or co-operation.

\(^{28}\) As one nineteenth-century English judge remarked, "Spectators really make the fight; without them, and in the absence of any one to look on and encourage, no two men ... would meet together in solitude to knock one another about for an hour" (quoted in May, *Genocide*, p. 161).
The analysis of moral charges of connivance might seem to turn on philosophical debates over acts and omissions, whether equal responsibility should attach to an action as to the absence of an action when they lead to the same outcome. Doctors and bioethicists for example debate whether a moral difference exists between killing and letting die.\(^29\) At first glance, connivance might seem to amount to an omission (omitting to act against wrongdoing when one could have done so). But notice that all the ways of characterizing conniving in the definition we quoted – nodding, winking, even shutting the eyes – involve active verbs. When conniving, you are actively doing something (albeit as a secondary agent), not merely passively letting something happen.\(^30\)

But in any case, omissions can sometimes count as causal contributions, particularly where you could and should have done something and did not.\(^31\) When the chairman of a meeting asks if there are any objections, and you say nothing, your omitting to act caused the motion to pass and (if it was an evil motion) whatever evil flowed from its passing. Likewise when Kitty Genovese's assailant first flees, and then seeing that none of the on-lookers intervened, comes back to

\(^{29}\) Jonathan Glover, *Causing Death and Saving Lives* (Harmondsworth, Mddx.: Penguin, 1977). Of course there's the opposite view, famously expressed by Eldridge Cleaver, "You're either part of the solution or you're part of the problem."

\(^{30}\) Whether those acts (nodding, etc.) are themselves wrong depends on how they are intended and/or standardly understood, whether for example the "nodding" is regarded as a "sign of assenting" to the wrongdoing (in which case the act might better be described as "assenting-by-nodding").

\(^{31}\) The cleaner who intentionally omits to relock the back door of the bank as he leaves in order that his co-conspirators can rob it has made a causal contribution to the robbery through his omissions; Ashworth, *Principles of Criminal Law*, p. 418; see more generally Williams, *Criminal Law*, pp. 360-2.
murder her: there, too, by doing nothing the passive on-lookers connived in and causally contributed to her murder.\textsuperscript{32}

\textbf{G. Condone}

When principals perform wrongful actions, agents who "condone" them contribute to those wrongs by pardoning them. Thus, when the IMF is accused of condoning defaults on repayments of sovereign debt, the accusation is that it is in effect forgiving those defaults.

In both conniving and condoning, there is a principal agent who commits a principal wrong, and there are other "purely contributory agents" who witness that wrongdoing and either connive in (overlook) it or condone (pardon, forgive) it. Those are separate actions from the principal wrong committed by the principal agent, in a way the actions involved in conspiring and colluding were not (there, conspirers and colluders were co-principals whose actions were, taken together, actually constitutive of the principal wrongdoing).

The etymology helps differentiate condoning from conniving. Combined with the root "cum" ("together with"), the verb "donare" is translated as "to donate, to bestow, to give." It is thus a conspicuously active verb, which implies a transfer of something owned by the agent to the principal. In a first instance the condoning agent gives the wrongdoing his attention, and in the end he gives it his pardon.

\textsuperscript{32} May, \textit{Genocide}, pp. 258-63 would says the same of by-standers who did not intervene when they could have done to prevent genocide in Rwanda.
What in "connivance" is obliquely accepted is in "condoning" the object of direct acknowledgment and explicit pardon.

Thus, condoning cannot happen passively or inattentively. It requires the acknowledgement (and hence knowledge) of the wrongdoing, and its active forgiveness. Neither can condoning be coerced, because "forgiveness" by its nature must be freely given. Neither is condoning ever literally unavoidable: the condoner always has the power (morally, at least) to withhold what he "owns" in this respect, viz., his pardon.

In the case of an isolated, one-off wrong, condoning cannot contribute causally to that principal wrongdoing. The reason is simple: condoning by its nature can only occur retrospectively; until a wrong has occurred, there is nothing yet actually to be pardoned. Time's arrow points resolutely forward. There can be no backward causation, no causation of earlier things by those that happen later. Condoning of isolated, one-off wrongs may contribute to the wrongdoing in some non-causal way (such as aiding, abetting, providing support and relief to the wrongdoer). But those are contributions of a distinctly non-causal sort.

There are, however, ways in which an act of condoning can qualify as a genuine causal contribution. One is if what is condoned is an ongoing practice of wrongdoing. In condoning a specific act of wrongdoing now past (a particular instance of spousal abuse, for example), the condoner is at the same time
condoning an ongoing practice (of domestic violence) and thereby contributing in a causal way to subsequent instances of it.

For another sort of case, suppose that the condoning forms part of a larger plan committed jointly by the condoner together with the principal wrongdoers. Suppose, for example, that one agent (call him "Nixon") commits a wrong that the other (call him "Ford") promises in advance to pardon. Then the "condoning" that is subsequently done would be partly constitutive of (literally, part of) the principal wrongdoing, understood as the whole plan of action that they have jointly conceived and acted upon. If we have some reason (as provided in this example by the conspiracy) for seeing the principal wrongdoing and the subsequent condoning as part of a larger "consolidated" wrongdoing of that sort, then later parts of that wrongdoing do indeed contribute in a constitutive rather than merely causal way to that wrongdoing.33

Even in the absence of overt conspiracy, one can “intend” or "plan" ahead of time to forgive a wrong, thus contributing to a wrongdoer’s expectation of being condoned were she to commit that wrong and thereby encouraging her to do so. But what is causally at work in that case is the wrongdoer’s expectation about the prospective condoner's disposition to condone, rather than the condoner’s condoning as such.

33 We elaborate on this in Section IV.A below.
As before, the condoner may be morally blameworthy for contributing to wrongdoing only if certain further conditions obtain. To be blameworthy, it must be the case that the condoner knows (or could and should have known) that her act or attitude will contribute to the causation of wrongdoing, or else that she anticipates (or could and should have anticipated) that that was unacceptably likely to be the case.

H. Complicity

Complicity is broadly defined as being implicated in another’s wrongdoing. The root "cum" is followed in this case by the verb "plico," meaning not only "to enwrap" (to complicate), but as well "to magnify it." The term thus characterizes contributory action that is “wrapped up” in another’s principal wrongdoing: deeply involved in it, making it more effective and/or magnifying its effect.

As we said at the outset, complicity is ordinarily employed as something of a catch-all term, used to describe cases that would more appropriately be described using one of the other terms analyzed above. We shall here provide a more restrictive analysis. "Complicity," in that restricted sense, will refer to any "purely contributory agent" who does not fall into any of those other more precise categories already discussed.

Specifically excluded from this restrictive analysis of "complicity" are all cases involving co-principalship (“full joint wrongdoing,” “co-operation,” “conspiracy” or “collusion”). A co-principal's acts are (taken together with those of
other co-principals) themselves constitutive of the principal wrongdoing. Those who are complicit in our restrictive sense “contribute to another's wrongdoing” – as distinct from "doing wrong together," which happens in cases involving co-principals. The secondary acts of agents who are complicit in our restrictive sense may causally contribute to the implementation of the principal wrongdoing. But they do not in any way “constitute” the principal wrongdoing. (Someone who procures a victim for others to rape is complicit in rape, but not a rapist himself. 34)

Like accessories (a more specific concept, at law) those who are complicit in our restrictive sense often perform contributory acts that “give access” to the principal wrongdoing, facilitating it or perhaps even making it possible. Their contributions, although only ever causal (at most), may be more or less essential to the implementation of the principal wrongdoing. Or they might induce or incentivize the wrongdoing (a thief would not have stolen the painting if there had not been anyone prepared to fence it) or encourage it (bank robbers would not have robbed the bank if there were not anyone to drive a getaway car) or make it easier to perform (only four men are strictly required to carry the stolen safe away, but the assistance of the fifth accomplice makes it much easier). Acts of complicity can come before, during or after the principal wrongdoing. 35

34 Although at law he might be treated that way, in some (but not all) jurisdictions. Morally, a "purely contributory agent" might be worse than the principal wrongdoer, as we have already said.

35 For analysis of how secondary acts can make an after-the-fact contribution to a wrongdoing, see the discussion in Section IV.A and V.A. below.
In the *mens* dimension, agents who are complicit in our restrictive sense may act with more or less (but at least a minimal degree of) awareness of the details of the principal's plan of wrongdoing. They might actually approve of the plan, or even participate in making it; they might adopt it as their own, and adjust their actions in response to it.\(^{36}\) But although full involvement in planning the wrongdoing is not excluded, it is not a necessary feature of an agent who is complicit in our restrictive sense. In order to qualify as complicit, all that is necessary is that the complicit agent "knows, or should have known, that by [so acting] he or she will advance whatever intentions the principal has."\(^{37}\)

### IV. Illustrating the Distinctions

To illustrate the interplay of these distinctions, we now examine some classic cases of contributory actions that, depending upon the particulars, would fall into one or another of the different categories – and which would seem importantly different from a moral point of view, depending on which they fall into. The first case is chosen particularly to illustrate how after-the-fact contributors might sometimes nonetheless be seen to be contributing to a larger scheme of wrongdoing in which their contribution is set. The second case is chosen to illustrate how seemingly causally redundant agents might nonetheless be seen as contributing to a wrongdoing.

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\(^{36}\) Had they been full participants in the formulation of the plan, that would be better characterized more precisely as "conspiring."

\(^{37}\) May, *Genocide*, p. 169, argues that this, rather than any stronger "coincidence of purpose," is all that is required even for complicity at law.
A. Getaway driver

Imagine a bank robbery. Several people play a role in it. First and foremost are the robbers themselves, who enter the bank, point sawed-off shotguns at the tellers and demand the money. They are co-principals in the wrongdoing, who co-operate with one another in robbing the bank. They conspired with one another and various others (including, imagine, a disgruntled bank employee who gave them the combination to the safe but who took no further role in the robbery) in planning the robbery. A teller held hostage collaborated (perfectly blamelessly, we hasten to add: after all she had a gun to her head) in facilitating their escape by serving (however unwillingly) as a "human shield." The pensioner who could have tripped them with her cane thus ensuring their arrest, but who did not stick out her cane, connived in their escape (again, perhaps blamelessly if she reasonably feared being shot). The person we want to focus upon primarily, however, is the driver of the getaway car. Can he rightly be described as a secondary agent contributing to the robbery, and if so of which sort?

There are various different ways of telling the tale of the getaway driver. We might imagine him a co-conspirator with the robbers from the start, who co-operates with them in the robbery by keeping the car's motor running ready for a quick getaway. Or we might imagine him as being hired by some other planner of the robbery. In that case, the getaway driver is in no way responsible for planning of the

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38 Suppose the robbery goes wrong and (contrary to their plans) someone is killed in the course of it. Even though all that they had planned to do is rob the bank, all the co-operators would be guilty of complicity with (being an accessory to) murder being an accessory to murder because they could and should have foreseen that that might well be the consequence of their undertaking an armed robbery. Ashworth, *Principles of Criminal Law*, pp. 428 ff.
robbery but he agrees to facilitate the robbers’ escape for his own profit, in that way colluding in the robber' escape if not in the robbery itself\(^39\). Much the most interesting case, however, is one in which the getaway driver is an accomplice recruited to the task of driving the getaway car only after the robbery has already taken place. Imagine, for example, he is a taxi driver cruising for a fare; imagine he sees the robbers running down the street, money sticking out of their brief cases, guns in hand, police chasing them; imagine the taxi driver stops, picks them up, and agrees to drive at breakneck speed to escape the pursuers in exchange for an equal share of the loot. What sort of contribution does the driver make to the robbery? At law he would be an accessory after the fact to the robbery. He aids and abets the robbers in their escape. In many jurisdictions that would be regarded as being as bad as robbing the bank himself. But even if as bad, "facilitating robbery" in that way should logically (and legally\(^40\)) be regarded a distinct offense from "robbing the bank" himself. In the story as told, the taxi driver joined the criminal gang only after the robbery. And, as we have said, before, a contribution that occurs only after a wrong

\(^{39}\)To be collusion, they must attempt to keep the fact they were colluding secret. But given how taxi drivers drive, nothing much would be naturally inferred the fact that one is driving recklessly and at high speed. But if you prefer, make it a case where the robbers told the driver, "Drive normally, just blend in with traffic."

\(^{40}\)As Sanford H. Kadish, "Complicity, cause and blame," California Law Review, 73 (1985), 323-410, at p 337, when he says, "It is important not to misconstrue derivative liability as imparting vicarious liability. Accomplice liability does not involve imposing liability on one party for the wrongs of another solely because of the relationship between the parties." Following Ashworth, Principles of Criminal Law, p. 428, we call the secondary offense "facilitating robbery" to distinguish it from "assessary" which has become so encumbered with such confusions, dating to the English Accessories and Abettors Act of 1861, 24 & 25 Vict. c. 94, stipulating that anyone who "shall aid, abet, counsel or procure the commission of any indictable offence ... shall be liable to be tried, indicted and punished as a principal offender." Most US jurisdictions have adopted such a rule as prescription or permission; for a survey see American Law Institute, Model Penal Code, T.D. No. 1 (1953), pp. 40-50.
cannot cause the wrong: fantasies of time-travel apart, there can be no backward causation; later things cannot cause earlier things. Of course it can wrongfully contribute to the principal wrongdoing in all sorts of other ways, helping people who have done wrong. But those subsequent contributions cannot play any causal role in the earlier wrongdoing.\(^4\)

But that may be too quick in cases like this. There are two important considerations that need to be borne in mind. One is about how exactly to identify the principal wrongdoing. Another is about how to treat temporally extended things like plans.\(^4\) And, as we shall proceed to analyze them, they turn out to be connected.

Individuated in a very fine-grained way, several distinct wrongs seem to have taken place: conspiracy to rob; possession of illegal firearms; robbery; hostage-taking; reckless driving; profiting from crime; and so on. Looking at things this way, the taxi driver who got involved only after the robbery was already over could not be causally responsible for the robbery. He did something else wrong in helping the robbers escape, no doubt. He collaborated with the robbers in effecting their escape; accepting a share of the loot, he co-operated with them in "profiting from a criminal act." But on the charge of "committing robbery" itself, the driver would (on this fine-grained way of individuating the wrongs) be completely in the clear.

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\(^4\) As American Law Institute drafters say of their Model Penal Code, T.D. No. 1, p. 13 (1953), "The field of accessories after the fact is not included, in the view – now generally held – that such behavior is an interference with the course of justice and should be dealt with as such, not as a basis of complicity in crimes that, by hypothesis, have been committed" already. See similarly Williams, Criminal Law, pp. 409-15.

There is, however, another way of looking at the wrongdoing in question. Instead of individuating the component wrongs in a fine-grained way, we might look at them as one big consolidated wrong: "pulling off a successful heist." Seen that way, all of the more specific wrongs would be part and parcel of that one big wrong. All of the contributory agents would be co-principals of that wrong because all of their acts, taken together, constitute it.

Which is the right way to look at it? In our view, the proper place to look for guidance in deciding that is the plan of wrongdoing and each agent's acts in relation to that plan. If it were just a case of "one thing leading to another" in a wholly unplanned (and perhaps unanticipatable) way, then it may seem more natural to consider the wrongs separately. But if instead it were the case that all those wrongs were seen by the agents involved as components of one big plan ("pulling off a successful heist") which they adopt as their own, and they tailor their own actions in a mutually-responsive way designed to ensure the success of that plan, then the consolidated way of looking at the wrongdoing seems more appropriate for assessing the contributions of those who regard it in that way. Suppose the robbers had a plan to rob the bank, get someone to drive them away in exchange for an equal share of the loot, and together to profit from the crime. Suppose taxi driver did not know of the plan in advance; he first learned of it once the thieves

\[43\] Which is to say, looking at it as a consolidated wrong is correct in judging the contributions of those who adopt the plan under that description and act on it in a mutually-responsive manner. Other agents who do not do so, but nonetheless (even knowingly) play their assigned role in it (such as the little old lady who does not trip the robbers with her cane), are still "purely contributory agents" and not co-principals in the principal wrongdoing (the robbery).
hopped into his car and told him to "get us out of here, and we'll give you a share of the loot." The taxi driver did not intend the robbery (he knew nothing about it in advance); he did not causally contribute to the robbery itself in any way. But by willingly and knowingly driving away robbers with money that he knows they have stolen in exchange for a share of it, he collaborated with the robbers in a larger consolidated plan. That is simply to say, the robbery is not over the moment the robbers exit the bank; and what justifies us in regarding events on either side of the stickup itself as "part of the robbery" is the plan of actions in which that ensemble of acts is embedded.

As Frank Jackson says, “temporally extended objects may be viewed as aggregates of their temporal parts.” Seen in this light, we can view a wrongdoing as a temporally extended entity that is the aggregate of its temporally-separate parts, regardless of whatever time has elapsed in between them, and regardless of which one came first. In the sort of case here in view, all the contributory actions are part of a plan that is constituted by all of those acts, taken together. The wrongdoing is not each agent's act taken by itself, but rather the entire ensemble of wrongdoings as laid out in the plan upon which they act in a mutually-responsive fashion. Hence, the appropriate principle of individuation of wrongdoings would lump together all the acts constituting the plan of wrongdoing that all the contributory agents adopt and act upon.

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44 Which is the best way of making sense of the practise of courts in treating accessories-after-the-fact whose contribution come very soon after the principal offence as co-principals in the robbery. See e.g., Williams, Criminal Law, p. 355
45 Jackson “Group morality."
Note that the point about “no backward causation” remains. Within the consolidated wrong, the relations between its component parts are constitutive, not causal. Instead of one wrong (driving the getaway car) causing another wrong (the prior robbery), the consolidated view would have us see both wrongs as constituent constitutive parts of one and the same big consolidated wrong (pulling off a successful heist).

B. Back-up assassin

Consider now the case of someone who occupies the role of "back-up assassin" in a murder plot. Her job is to kill the victim, should the "first assassin" fail in his assigned task. But of course if the first assassin's bullet proves fatal, the back-up assassin need do nothing.

Suppose, for a first type of case, that the back-up assassin is fully a party to the murder plot. She was a full participant in conceiving the plan jointly with the others. Further suppose, for this case, that the first assassin fails and the back-up assassin also misses the victim. The back-up assassin is then a co-principal in the attempted murder. She would be said to be co-operating with the first assassin in it.

For a different sort of case, suppose the first assassin succeeds in killing the victim, and the back-up's gun is never fired. Even though, as things transpired, the back-up assassin did nothing, we would still want to say she was responsible for
contributing in some way to the murder. One contribution she might have made was by being fully a party to the plot from the start, actually contributing to conceiving and planning the murder herself. Then we could describe her as a conspirator in the murder plot. She will be guilty of conspiracy to murder, notice, regardless of whether or not the planned murder ever takes place. She would be guilty of conspiracy to murder regardless of what role, if any, she is assigned to play in the plan. And she would be guilty of conspiracy to murder, whether or not she actually acts to perform whatever role was assigned to her under the plan.

But conspiracy doesn’t say it all. If the back-up assassin acted pursuant to the plot, got her gun, loaded it, and waited in the appointed place ready to fire should the need arise, she did something more than merely conspiring. Her acts cannot be said to be causally related to the murder, since her contribution was (as things turned out) wholly inessential. Nonetheless, one might argue, her role was essential in some sense in ensuring the success of the murder plot. In terms of the apparatus deployed in relation to the case of the getaway driver above, we could say that the back-up assassin is co-operating in the murder plot understood as a consolidated wrong.

Suppose, for a third type of case, that the back-up assassin was simply a hired gun. Certainly she was aware of the plan. Indeed, she fully adopted the plan as her own, and she would have pulled the trigger herself if necessary. But she took no part in formulating the plan. In those circumstances the back-up assassin would,
from the perspective of a consolidated wrong, be said to be a **collaborator** in ensuring the success of the murder. She would be a collaborator regardless of whether or not, as things transpire, she had any occasion to act on the plan. Obviously, had the first assassin failed and the back-up ended up performing the murder herself, she would have been guilty of two wrongs: firstly, murder; and secondly, collaboration in a murder. But she would be guilty of collaboration, even if the first assassin succeeded and her role proved to be redundant.

Consider, by way of analogy, a redundant system built into the space shuttle's landing systems. Suppose the shuttle lands safely using just the ordinary landing system, without any need to call upon the backup device. In that case the backup system would be said to have contributed to the "safety of the landing," even though it did not contribute to (that particular) "safe landing."

**V. Dimensions of moral difference**

We have now described several terms related to complicity – conspiracy and collusion, connivance and condoning, collaboration and co-operation, full joint wrongdoing – and shown how they differ. Clearly, there is a family resemblance among all those terms. They are all related type of contributory actions, with full joint wrongdoing at one extreme and with others diverging from that central paradigmatic concept along a range of different dimensions. There are both marked similarities and striking differences among the concepts, suggesting a family resemblance more akin to cousins than siblings.
Some of those differences clearly matter morally, while others do not (or not nearly so much). For an example of the latter, consider the cases of connivance and condoning: the latter is explicitly accepting the wrongdoing, the former merely implicitly accepting it. Or, for another example, collusion differs from co-operation or collaboration in (among other things) being secretive. Clearly, those are differences. But those differences may not matter terribly much, morally. Here we concentrate on identifying the dimensions along which the terms we have been discussing differ that systematically matter the most, morally.

“Actus non facit reum nisi mens sit rea” (an action does not make a person guilty of his crime unless his mind be also guilty) represents the standard common law principle of criminal liability. Moral responsibility, while importantly different in many respects, can be thought of in that same broad framework. Legally, criminal liability attaches only to the performance of a wrong action (actus rea) by someone who has a wrong state of mind (mens rea), i.e., criminal intent. Some of the contributory concepts canvassed above require a strong conjunction of actus and mens, while others require only a weaker one or none at all.

These two main fields, actus and mens, can be used to map some of the most basic distinctions among the terms under discussion. One important dimension of difference among these concepts relates to the way in which the acts contribute to or constitute the wrong. Another important dimension of difference relates to the plan (the

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46 Or they may, particularly if they have distinctively different consequences.
47 Conceptually, one can be unknowingly complicit or unwillingly conniving. Morally, one is excused in such cases.
mens) underlying the wrongful action, and the attitude that the contributory agents adopt in relation to that plan and contribution toward formulating it.

A. Actus

We are dealing with situations where there is a principal action that is wrongful, by definition.\(^{48}\) Secondary actions contribute to the principal wrong in various ways (ranging from winking at it, making it happen, working for it, elaborating and extending it, forgiving it and abetting it, all the way to jointly performing it).

One dimension of difference among contributory actions concerns how essential or inessential the secondary action is to executing the plan, to making what is planned actually occur. A contributory action can be said to be "definitely essential" in either of two cases. One is if it is "(partially) constitutive" of the principal wrongdoing. That is the case if the principal wrongdoing is constituted by the combined performance of the various secondary wrongdoings. Consider a "gang rape," as the principal wrongdoing in view. Each man's act of raping the victim is of course also wrong in itself. But there is a further wrong, the "gang rape," over and above those individual wrongs. The rape that each perpetrates on the victim is not something apart from the "gang rape" and merely causally related to it. Instead, the “gang rape” is itself literally constituted by each

individual’s act of rape together with each other’s. Among the categories of
contributory acts we have been discussing above, the contributory act is "constitutive"
in this way in cases of full joint wrongdoing, co-operation, conspiracy and collusion.

A second way in which a contributory action can be "definitely essential" to the
principal wrongdoing is by being a necessary condition for the execution of the wrong in
every one of the possible ways in which the wrong might be executed. (All necessary
conditions might be satisfied and still not be jointly sufficient to cause the plan actually
to succeed, of course.) The contributory action in this case is causally rather than
constitutively essential. But if it is causally essential in every possible way in which the
plan might be successfully executed, then it can nonetheless still be said to be "definitely
( causally) essential." There is of course a plethora of possible worlds, some very distant
from our own. For purposes of moral assessment, it is with nearby rather than far-
FETCHED possible worlds that we should be concerned. When we say "every possible
way" we thus mean, strictly speaking, "in every way in every suitably nearby possible
world."

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49 Note that we are talking here about what is constitutive of this specific wrongdoing (the token, not the
type of wrongdoing). If one of the dozen rapists had not participated in the gang rape, it would still
have been a gang rape – but it would have been a different gang rape.

50 As well as in all cases of contributing knowingly to a consolidated wrongdoing of the sort described in
Section IV.A.

51 Putting the point in terms of Mackie’s INUS conditions, a contributory act can be said to be essential if it
is an insufficient but necessary part of an unnecessary but sufficient condition of the plan succeeding;
J.L. Mackie, Cement of the Universe (Oxford: Clarendon Press, 1974). Note that an agent’s
contributory act might be an essential part of a planned assassination (there is no way the plot would
succeed without that agent playing that part), while the assassination plot is inessential or even
irrelevant to the target’s death (he is certain to die of something else first). Being essential to the
plan, however, relates to mens, not to actus.

52 "It is more possible for a dog to talk than for a stone to talk, since some worlds with talking dogs are
more like our world than is any world with talking stones"; David Lewis, Counterfactuals (Cambridge,
A contributory act can be said to be "potentially essential" if it is a necessary condition of the wrong occurring, along some (but not all) possible paths by which the wrong might occur. An act that is "potentially essential" in this way may not be essential in the actual course of events, if the actual path we are on is not one in which it is a necessary condition of the principal wrongdoing. (Think for instance of the back-up assassin who, as it happens, proves to be redundant or of a fifth person helping to pull a car that can be pulled by four but who would be causally essential if one of the four fell.) But it is an enduring feature of the act, true of it whichever path we happen actually to be on, that that act is "potentially essential" by virtue of its being actually essential along one or more of the possible paths.\(^{53}\)

A contributory action will be said to be "inessential" if it is not a necessary condition of the execution of the wrong in any of those respects. Acts that are causally inessential might nonetheless be contributions in other ways to the principal wrongdoing, and perhaps wrong for that reason (over and above being possibly wrong in and of themselves). The otherwise-uninvolved hotelier who provides the bank robbers with a comfortable bed, knowing that they had just robbed a bank, is utterly inessential to the robbery (there are plenty of other hotels in which they could have found lodging), but he nonetheless aided and abetted the robbers afterwards.\(^{54}\) The extra member of the clean-up crew which hides evidence of a crime may have been superfluous, causally inessential so far as hiding the evidence before the police arrive; but she nonetheless wrongfully contributed by helping, however unnecessary her help.

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\(^{53}\) At law, too, that a contributory agent \textit{might} have made a difference is sufficient for responsibility. "[I]n complicity, the possibility of a but-for relationship suffices"; Sanford H. Kadish, "Complicity, blame and causation," p. 360.

\(^{54}\) Accessaries after the fact can often be like that – at least when we are thinking in terms of fine-grained individuation of the component wrongs, rather than in the consolidated way also discussed in Section IV.A. above.)
"Definitely essential," "potentially essential" and "inessential" are modal notions. You are definitely essential if your contribution *constituted* the wrongdoing, or if your contribution is *a necessary condition* of the execution of the wrongdoing in every possible world in which it is executed. You are potentially essential if your contribution is a necessary condition of the execution of the wrongdoing in some but not all possible worlds in which it is executed. You are inessential if your contribution is not a necessary condition of the execution of the wrongdoing in any possible world in which it is executed. In the cases of collaboration, connivance and complicity, the contributory act might be definitely essential or potentially essential or it might simply accompany the wrong without being essential to it. Condoning of isolated one-off wrongs is definitely inessential, on grounds that later events like that cannot cause prior events (the principal wrongdoing).

Within the category of "potentially essential" we can make further distinctions of a more scalar sort, employing measures over possibility space. Suppose that the contributory act in view is a necessary condition of the execution of the wrong along $M$ of the $N$ possible ways in which the wrong might be executed. Weight each possible way according to the probability $p$ of it occurring. A contributory act will be said to be more "central" the larger the ratio of $pM$ to $pN$, i.e., the larger the proportion of probability-weighted possible paths along which it is essential.

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55 By which we mean "materially inessential." Materially, the bank robber clearly *could* have robbed the bank without having had a getaway driver lined up in advance. Maybe he *wouldn't* have. But such motivational considerations fall on the *mens* rather than *actus* side of the ledger.
Imagine, for example, a terrorist trying to build an atomic bomb by acquiring enriched uranium. If there is only one possible supplier of the uranium, that supplier is "definitely essential" to the terrorist's plan – as central as you can get. If there are multiple alternative suppliers, each is "potentially essential," i.e., essential along one possible path of bomb-building. But if there are only two alternative suppliers, each of them would be much more "central" to the plan – and morally more responsible for it coming to fruition or not – than if there were two hundred.\(^{56}\)

In terms of "centrality," the contributory acts of full joint wrongdoers, co-operators, colluders and conspirators are utterly central for the same reason that they are "necessarily essential": they are "constitutive" of the wrongdoing.\(^{57}\) Moving beyond those limiting cases, however, it becomes hard to generalize. The contributory acts associated with complicity or connivance often seems less central, in the sense that any of a great many other agents' similar acts would have sufficed just as well. But logically it is perfectly possible that, in certain circumstances, the complicity or connivance of some very specific individual might indeed be essential for the execution of the plan. That seems often true in the case of collaborators, who can be very central to the principal's plan of wrongdoing.

\(^{56}\) As the drafters of the American Law Institute say, "A vendor who supplies materials readily available upon the market arguably does not make substantial contribution to commission of the crime since the materials could have as easily been gotten elsewhere"; *Model Penal Code*, T.D. 1, pp. 30-1 (1953).

\(^{57}\) I.e., of that *particular* wrongdoing. We might also be interested in how central co-principals are to a wrongdoing of that *type*, in which case we might perform a calculation analogous to the one above: ask what proportion of probability-weighted wrongdoings of that type involves each of the agents as a co-principal. The same can be said for all knowing contributions to consolidated wrongs of the sort discussed in Section IV.A
A contributory act that is "definitely essential" (either constitutively or causally) is obviously a *sine qua non* of the principal wrongdoing. Anyone whose contributory act is definitely essential in either of those ways to the execution of the plan will be an "individual difference-maker" in the sense that, had he acted differently, the outcome would have been different. Notice, however, that the notion of individual difference-making lies at the heart of the notion of "potentially essential" contributory acts as well. A contributory agent's act is called "potentially essential" precisely because there is some suitably nearby possible world in which his act does indeed individually make a difference, and the outcome in that world would have been different had he acted differently.\(^{58}\) Recall the case of the back-up assassin: his role is potentially essential (his firing will be essential to the success of the assassination – indeed, it will be constitutive of it – if the first assassin's gun jams), even if that potential is not as it happens actualized (the first assassin's shot proved lethal).

Christopher Kutz deals with such cases through his notion of "participatory intention."\(^{59}\) It is certainly true and important that the back-up assassin has that as well. But more can be said. Couching the point in terms of "counterfactual individual difference-making" seems a much better way of handling such cases in general. Consider a standard case of causal overdetermination: e.g., the firing squad where four marksmen fire simultaneously, their bullets striking the victim's heart and killing him.

We would not say of any one of them that he is an individual difference-maker: had he

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\(^{58}\) We are inclined to treat similarly cases in which a person's contribution merely "facilitates" rather than literally "enables" another's wrongdoing.

\(^{59}\) "Jointly intentional action is primarily a function of the way in which individual agents regard their own actions as contributing to a collective outcome" (Kutz, *Complicity*, p. 74).
not fired, the bullets of other three would still have killed the victim. But each of their contributory acts can nonetheless be regarded as potentially essential (a counterfactual individual difference-maker), in that there is some possible scenario (e.g., the other three's guns jammed) in which any one of them would have been an individual difference-maker.

This notion of "counterfactual individual difference-making" can also help in dispelling many mysteries sometimes surrounding "causation by many hands." Take the case of the firebombing of Dresden. Hundreds of planes were involved in the bombing, contributing to the deaths of 35,000 people. But because of the huge number of contributory actions, it is tempting to regard each pilot’s contribution to the outcome as vanishingly small – so small that we might be tempted to assume the outcome would have been the same had any one of the pilots been sick on that day and unable to fly.

There are various things to be said about such cases. The first is that usually, even if each contributed only a little bit, the contribution of each will have made the outcome just that much worse than it would have been otherwise. Usually, some people who died from this pilot's bombs would not have died from anyone else's bombs, for example – just as it would have been no less of a gang rape (albeit a different one) if six men raped the victim rather than seven, but the seventh's raping her as well made the gang rape that much worse.

61 From Kutz, Complicity, pp. 117-20.
The Dresden case has a second feature worthy of comment. It was the firestorm that was responsible for the vast majority of deaths, and a firestorm can only be ignited by the detonation of a great many bombs simultaneously. In that respect, too, it looks like no particular pilot was causally an individual difference-maker. No single pilot could ignite a firestorm with his own bombs alone. A firestorm can only occur, let us imagine, when 1000 bombs are detonated within 10 meters within 2 seconds of one another. Still, the counterfactual difference-maker point remains. There is some suitably nearby possible world in which each individual pilot were the one who dropped the thousandth bomb. So thinking in causal terms, we could regard each of the Dresden pilot’s bomb-dropping as potentially causally necessary for the firestorm to have occurred, because there is some suitably nearby possible world in which any given one of them dropped the bomb that made the difference to the firestorm’s occurring.

Alternatively, we could – and arguably should – think of this case in constitutive terms as an instance of a consolidated wrongdoing instead. The actions of the pilots all taken together constituted the firebombing, just as the actions of the rapists all taken together constituted the gang rape. Their actions "caused" the firestorm; but their actions "constituted" the firebombing.

Yet another aspect of the causal role of any given contributory act concerns what might metaphorically be dubbed its "proximity" to the principal wrongdoing.

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62 There are of course yet other possible worlds in which every submariner who might have been a pilot instead had become a pilot and dropped the thousandth bomb. While possible, that world is substantially more remote from the actual world – not as remote as Lewis’ talking dogs or talking stones, in footnote 51 above, but still to remote to be of moral interest here.
"Proximity" might be cashed out in any of several ways. One might be temporal. Another might be the place of the contribution in the sequence of contributions. Even if some particular contributory act of mine is necessary for a plan of wrongdoing to succeed, if there are a great many more chance and choice nodes yet to come in the causal chain before the planned wrongdoing occurs, then it is less certain that what I now do will actually eventuate in the wrong; and my moral responsibility is mitigated in consequence.  

Suppose instead that I am a "purely contributory agent" whose contribution is the "last contributory act" required to complete the set of individually necessary and jointly sufficient conditions for the wrongdoing to occur. Then that act is importantly different, in terms of the certitude, obviousness and clarity of its consequences, than if that were not the case. More moral responsibility ought attach to that contributory act in consequence (analogously to the way in which tort law sometimes assigns responsibility to whomever had the "last clear chance" to avoid an accident).

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64 That is to say, there is no further action required from any other in order for the wrongdoing to occur, once I have performed that act. Think, for example, of a principal wrongdoer who has already pushed a child into a pond hoping she will drown, as the child will indeed do if you – the only person nearby – do not wade in to rescue her. Note that being "last" only makes a moral difference for "purely contributory agents"; (co)principals are fully morally responsible for the wrong (partially) constituted by their contributions, regardless of where those acts come in the sequence.

65 Of course, the "last contributory act" is no more the cause of the outcome than any of the other equally necessary contributory acts that came earlier. But given what others have already done, someone performing the "last contributory act" will then be an individual difference-maker. He makes a modal difference, transforming something that was previously "possible" into something that is now "certain."
Another important distinction is whether an act's consequences are irreversible or not. An irreversible action might lock in a sequence of subsequent actions that lead to the principal wrongdoing. Although this action might not be particularly proximate either spatially or temporally to the wrongdoing, its causal influence on the execution of that wrong may still be particularly strong in this way.\textsuperscript{66}

Yet another dimension along which contributory acts differ is in their "temporal relation" to the principal wrongdoing. Most of the sorts of contributory acts we have been discussing occur prior to or concurrently with the principal wrongdoing. Condoning is an exception, in that you can condone (forgive) an act only after it has already occurred. That fact has implications for the possible causal role that condoning might play in relation to isolated, one-off cases of principal wrongdoings, as already discussed – although of course condoning a wrongful action today might causally contribute to the sustaining of a wrongful practice.

\textbf{B. Mens}

So far we have been discussing how contributory acts contribute to a principal wrongdoing. They nod or wink at it, make it happen, work for it, elaborate and extend it, forgive it, abet it or even jointly constitute it. These are all acts.

At law, a second key element in criminal responsibility is *mens rea*. That refers to the "guilty mind," and hence to the understanding on which acts are performed.

Likewise with contributory acts of the sort we are discussing here. If a person unwittingly does something that contributes to the wrongdoing, and there is no way she could or should have known that doing so would contribute to wrongdoing in that way, then she lacks the *mens rea* required to be morally to blame for contributing to wrongdoing. None of the contributory acts we are here discussing are like that. When Captain Renault collaborates with Major Strasse, he collaborates knowingly: he does so reluctantly, perhaps; but he does not do so accidentally or unaware that he is doing what he is doing because the Nazis demand that he do so.\(^67\) And likewise with all the other contributory acts we have been discussing.

That sort of *mens rea* is required for responsibility, quite generally. But there is another element of *mens rea* that is associated with contributions to joint action, more specifically. The principal wrongdoing, as we have characterized it, is based on a *plan*. That plan in turn may itself be formulated, adopted, endorsed, shared in or complied with by different types of contributory agents in various different ways. All of those point, in one way or another, to the states of mind of contributory agents.\(^68\) It is upon that aspect of *mens rea* that is distinctive to contributory actions that we shall concentrate in the rest of this section.

\(^67\) Even if he does so "intending to implement the commands of the Nazis," however, notice that that is still far short of forming a "we-intention" that "we (Captain Renault and Major Strasse) do something together."

\(^68\) We follow May, *Genocide*, p. 125, in tracing the "mens rea" involved in "collective intent" to "intend[ing] to participate in a plan that has as its intent..."
The first and most fundamental respect in which different types of contributory agents are different is in the way in which they relate to the plan of principal wrongdoing. Some contributory agents share in the formulation of the principals’ plan of wrongdoing, and others do not. For helpful terminology to mark this distinction, let us draw an analogy to the way economists talk about price-makers (monopolists, oligopolists) and price-takers (those purchasing from them, or indeed on perfectly competitive markets). We can similarly distinguish “plan-makers” from “plan-takers” among contributing agents. “Plan-makers” are agents who formulate the plan for the particular wrongdoing in question. “Plan-takers” are agents who have no role in designing the plan, and follow the plan as given by others. Maybe they "willingly adopt" it as a guide to their own actions. Or maybe they just "grudgingly accept" and "reluctantly comply" with it. (Price-takers can similarly resent the price but purchase anyway.) Someone who is solely a plan-taker might be absolutely essential to implementing the principal's plan for wrongdoing; she merely does not make the particular kind of contribution involved in "making" (formulating) the plan. 69

Typically, plan-makers both make the plan and then adopt it, internalizing it as a guide for their own subsequent action. There can, however, be other kinds of cases. Imagine for example some hired consultant who is brought in to formulate a plan for others to adopt. Suppose the consultant simply drafts a plan for them, and then departs without in any way adopting it as in any way a guide to his own subsequent conduct.

69 Of course, plans are invariably open-textured and provisional: they almost always require a certain amount of "filling-in" by the person acting on the plan; and they are almost always open to revision in the course of being implemented. Even mere plan-takers have to be plan-makers in this respect.
Despite not adopting the plan himself, such a person has undoubtedly made a contribution that is morally blameworthy in and of itself. (Think for example of a Pentagon medic writing a manual instructing interrogators how to waterboard prisoners.) Such a person would be blameworthy in a way Agatha Christie would not for penning the murder plot in *Ten Little Indians* that someone else then (in ways she could not have anticipated) adopted to commit a murder of his own.\(^7\)

Just as we described co-principals as agents whose actions constitute the principal wrongdoing, so too can plan-makers be described as agents whose planning constitutes the plan behind the principal wrong. Those who are full joint wrongdoers are all, by definition, plan-makers. So too are the agents involved in conspiracy. Co-operators and colluders, although their actions constitute the wrongdoing, are not necessarily plan-makers: some might be nothing more than plan-takers, adopting the plan, tailoring their actions around it, monitoring changes and changing in response.

Agents involved in condoning and collaborating, in contrast, are paradigmatic plan-takers. By definition, they play no part in formulating the plan, or in making that plan become the plan of the principal(s) engaged in the principal wrongdoing. Thus for example Vichy collaborators merely followed without in any way fundamentally affecting Hitler's plan of wrongdoing. Likewise, conniving agents are by definition plan-

\(^7\) Nor is she negligent for not foreseeing this as a real risk, considering the complexity and unrealistic features of the plot.
takers, overlooking a wrong or the plan lying behind it but not in any way contributing to the making of that plan themselves. ⁷¹

Complicity represents more of a jumble in this respect. Complicit agents might be either plan-makers or plan-takers. One scientist could be among those formulating the plan of building a nuclear bomb. Another scientist could be purely a plan-taker, doing a technical job purely for pay and to someone else's specification. Both scientists would be complicit in the production of weapons of mass destruction, despite the very great differences in the roles they took with respect to formulating the plan itself.

Notice, second, that there are varying degrees of plan-taking. Plan-making "constitutes" the plan. But plan-takers who played no role in the formulation of the plan might nonetheless adopt the plan as their own. Alternatively, they might merely knowingly accept and comply with it, either willingly or reluctantly (more of which below). ⁷²

Third, notice that plan-takers who "adopt" a plan internalize that plan and take it upon themselves to try to make the plan work. They typically engage in two-way tracking with other plan-takers who also adopt the plan. ⁷³ In the first instance, this is a mental process, each resolving to adjust her own actions in response to changes in

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⁷¹ As with condoners so too with connivers: if they conspired ahead of time with the wrongdoer, promising in advance to condone or connive, that is a case of a plan-making conspiracy rather than a case of condoning or conniving pure and simple.

⁷² If they did not do so "knowingly," it would be hard to see in what sense they were "taking" the plan. All they need to know, however, is that there is a plan and that it requires them to do thus and such. They do not need to know the full details of the plan in order to be fully-fledged plan-takers.

others' action in pursuit of the plan); then (in the \textit{actus} dimension) each acts accordingly, tracking one another's actions in their own. This is what happens in cases of full joint wrongdoing, conspiracy, collusion and co-operation.\footnote{Other sorts of contributory agents might be only (or mostly) "unilaterally responsive," engaged only (or mostly) in one-way tracking. Collaborators for example intentionally monitor what the principal does, and adjust their behaviour accordingly, much more than vice versa (Captain Renault, for example, adjusts his behaviour much more Major Strasser's than the Strasser does his to Renault's).} Plan-takers who do not "adopt" but merely "accept and comply" with a plan do not take that sort of attitude toward the plan or that sort of responsiveness toward one another's actions in pursuit of it. They merely do what the plan stipulates\footnote{Albeit because the plan stipulates it (i.e. they would not have done it had the plan not stipulated it).}; and they continue doing so even when they can clearly see that that will not actually serve (and might sometimes even undermine) the larger purposes of the plan. Plan-takers can fall anywhere along this spectrum between very enthusiastic adopters and very reluctant accepters-and-compliers.

Of course compliance can be either willing or coerced or anything in between (more of which shortly). But if an agent willingly chooses to be compliant with a plan, and changes his behavior in response to changes in the plan and others' actions in pursuit of it, then that choice constitutes adoption of the plan on his part. Contrary to what is sometimes claimed (by Eichmann, for example\footnote{Hannah Arendt, \textit{Eichmann in Jerusalem} (New York: Viking, 1963).}) obedience to a plan of wrongdoing is not without moral blame – although in the case of "mere compliance" that moral responsibility will lay purely in the realm of \textit{actus} and not \textit{mens}. 


A fourth dimension of *mens*, related to but logically distinct from adoption and compliance, is the attitude that stands behind that. People might agree or disagree with (or be indifferent to) the plan. How much contributory agents have to agree with the plan varies across the concepts under discussion. Some of them – full joint wrongdoing, collusion, co-operation and conspiracy, for example – clearly imply complete agreement to the plan. Condoning seems ordinarily to exclude it: to condone an act, you must first acknowledge it was wrong, and thus express at least pro tanto moral disagreement with it. The remaining concepts admit of attitudes of agreement or disagreement. A collaborator was described for example as a plan-taker who made no contribution in formulating the plan but by definition accepts the plan to the extent of tailoring his actions around it: but he can do that without necessarily agreeing with the plan (remember Captain Renault). To say that an agent is conniving in a principal wrongdoing is not to say anything about whether the agent agrees with the plan and its purposes. Of course, what attitude a contributory agent takes toward a plan might or might not have any material impact on either the formulation of that plan or its adoption or implementation by other contributory agents.

A fifth dimension concerns how wilfully an agent makes or adopts or accepts and complies with the plan. With respect to all the contributory acts under discussion here, people might do them more or less willingly or reluctantly. People might have literally

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77 Of course, it is logically possible to acknowledge something as wrong and approve of it on balance, nonetheless.
no choice, or they might be coerced into doing so. People who adopt or comply with a plan willingly presumably ordinarily (although not necessarily invariably) approve of the plan and agree with its purposes. Those who adopt or comply with a plan unwillingly typically (although not necessarily invariably) disapprove of it. As a crude empirical generalization, it is probably more likely that some of the contributory acts are typically done willingly (full joint wrong-doing, collusion, co-operation and conspiracy, for example) and that others are typically done much more reluctantly (conniving, for example). But those are merely empirical generalizations, with no necessity to them. And in other cases there are not even any rough empirical generalizations to be made. A collaborator, for example, might comply willingly or in reluctant deference to force majeure (remember Captain Renault again).

VI. Conclusion

In common parlance the term "complicity" is used indiscriminately to describe all sorts of different ways of being mixed up in some bad business. If the aim is merely to say that you should avoid getting mixed up in bad business if you can, then that indiscriminate term serves the purposes well enough. But sometimes you cannot avoid getting mixed up in some bad business; sometimes you should not (in the sense

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78 Go back to the case of the consultant brought in to write a plan. Suppose he is coerced to do so: his child has been kidnapped and will be murdered if he doesn't produce a plan for the kidnappers. He draws up the plan. But he does not do so willingly.

79 An undercover policeman may, as part of his assignment, willingly adopt a plan of which he disapproves.

80 After all, coercive pressure can be brought to bear to compel you to do what you would have happily done without coercion.
that doing anything else would be even worse); and some people get mixed up in bad business whether they need to or not. For morally assessing those sorts of cases, more precise characterizations of the many more specific ways of contributing to another's wrongdoing of the kinds we have been distinguishing should be employed, not merely for the sake of conceptual clarity but also for the sake of moral clarity.

"Complicity," in the way that catch-all term is commonly deployed in ordinary discourse, is morally pretty uninformative. It amounts to little more than empty name-calling. Differentiating in a more fine-grained manner between various more precise ways of being "complicit" is morally more revealing. Morally, there is a big difference between collaborating in wrongdoing yourself and condoning others' wrongdoing, between conspiring to do wrong and conniving in others' wrongdoing by turning a blind eye to it. Using those more fine-grained concepts to describe what sort of complicity we are talking about gives us a better idea just how bad any given act of complicity is – and why. Ultimately, however, it is not just the finer-grained ways of talking about these cases – the richer vocabulary – but instead the dimensions of moral difference revealed through them that constitutes the larger contribution of this paper.

Most importantly, we have shown how some classes of contributory acts (full joint wrongdoing, co-operation, conspiracy, collusion and contributions to any consolidated wrongdoing) are themselves partially constitutive of the principal wrong itself. People performing such acts are co-principals, full partners in the wrongdoing.
Just as in a legal partnership, each of those partners should morally be held fully responsible for all that is undertaken by the partnership, whether by herself or by any of the other partners. The specific acts that any given actor performs pursuant to the plan of wrongdoing may vary (as it does, for example, with co-operators and colluders), but they are nonetheless full partners in acting mutually responsively in pursuit of the same plan of wrongdoing, equally adopted by each. That is all the more conspicuously true in cases of full joint wrongdoing, where each does exactly the same thing. In evaluating the moral responsibilities of such people, all we need to do is to assess the wrongness of the principal wrongdoing and then assign each agent equal responsibility for that, without any regard to the various more fine grained considerations such as those sketched in Section III.

To decide just how bad contributory acts are when they are not partially constitutive of the principal wrong-doing, we have to make further case-by-case enquiries, bearing in mind the whole battery of considerations to which we there allude: how central the contribution is, how much individual difference it makes, how proximate it is to the principal wrongdoing temporally and in the causal chain, whether it is irreversible, and so on.

In the mens dimension, planning to do wrong is worse than merely falling in with another’s plan for doing wrong. Thus full joint wrongdoing and conspiracy is unequivocally worse (on this dimension, if not necessarily tout court) than connivance, condoning, or other our restricted sense of complicity. Within the actus
dimension, contributions are worse the more causally essential they are to the success of the principal wrongdoing. The co-operation, collaboration or connivance of certain people can sometimes be definitely essential and other times entirely inessential (as some forms of condoning always is), to the success of a plan for wrongdoing. So acting in the former cases is (other things being equal) worse than in the latter cases for that reason. Other contributory acts that are complicit in our restricted sense run the gamut, from definitely causal essential to entirely inessential (and, within the inessential, from the "really helpful" to the "totally useless"). At their worst, acts that are complicit in that restricted sense might in any given case be morally as bad as (or worse than) collaboration, connivance or condoning; at their best, they might be morally as innocuous.

Finally, it bears emphasizing that, on balance, any of the acts we have been discussing might of course have been the right thing to do, given the alternatives.\textsuperscript{81} Although wrong, they might have been the lesser evil. Other things being equal, it is better to avoid contributing to wrongdoing. But in the real world other things (particularly the consequences of the acts in question) rarely are equal, and those other things that feed into our evaluation of any real-world situation tend to be morally much more important than the sheer fact of complicity of some sort or another in coming to a proper assessment of what has been done.