Grading Complicity in Rwandan Refugee Camps

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Abstract

Complicity with wrongdoing comes in many forms and many degrees. We distinguish subcategories cooperation, collaboration and collusion from connivance and condoning, identifying their defining features and assessing their characteristic moral valences. We illustrate the use of these distinctions by reference to events in refugee camps in and around Rwanda after the 1994 genocide, and the extent to which international organizations and nongovernment organizations were wrongfully complicit with the misuse of refugees as human shields by the perpetrators of the genocide who were allowed to run those camps.

In any complex case of grievous wrongdoing, the wrongdoers usually have help. Other people instigate and encourage, aid and abet, facilitate, permit or overlook the wrongdoing. By contributing in such ways, those people can themselves become complicit in that wrongdoing. At law, they might (at least in
some jurisdictions) even be treated the same as the principal wrongdoers.\footnote{In England, the Accessories and Abettors Act of 1861, 24 & 25 Vict. c. 94 stipulates 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'. French and American law is generally similar in that respect, German and Russian different; G. P. Fletcher, \textit{Basic Concepts of Criminal Law} (New York: Oxford University Press, 1998), p. 189. Our interest is in complicity as a moral rather than legal phenomenon. But the most careful analyses of the concept have come from lawyers, upon whom our discussion will draw, particularly: S. H. Kadish, 'Complicity, cause and blame', \textit{California Law Review}, 73 (1985): 323-410; C. Kutz, \textit{Complicity} (Cambridge: Cambridge University Press, 2000); J. Gardner, 'Complicity and causality', \textit{Criminal Law and Philosophy}, 1 (2007): 127-141. For excellent textbook treatments, see G. Williams, \textit{Criminal Law, the General Part}, 2nd edn (London: Stevens & Sons, 1961), ch. 10 and A. Ashworth, \textit{Principles of Criminal Law}, 5th edn (Oxford: Oxford University Press, 2006), ch. 10.} It is little wonder, then, that allegations of 'complicity' are hotly contested.

Where the stakes are so high, disputes are perhaps inevitable. But when it comes to complicity, they are more like dialogues of the deaf that is necessary. This is for two reasons, which we hope here to rectify. First, the stakes are being seen as higher than they should be. Complicity should be seen, not as an all-or-nothing matter, but instead as a more graded notion. Its badness comes in degrees. Sometimes being complicit with wrongdoing might even be morally the right thing to do on balance. How much blame attaches to an act of complicity is not decisively settled (as it would be in those courts alluded to) by the sheer determination that it was indeed a case of complicity. Second, 'complicity' is itself an unhelpfully imprecise descriptor. Many ways of contributing to the wrongdoing of others can be identified more precisely using other terms that carry a more unequivocal (sometimes greater, sometimes lesser) moral valence. Better conceptual housekeeping can thus lead to clearer moral thinking on these matters.

These are matters of enormous practical consequence, not mere academic interest. We propose to show that by developing them through discussion of an extended example of complicity where the stakes were very high indeed. The case arises in the backwash of the Rwandan genocide, and concerns what responsibilities humanitarian organizations might have for being complicit with perpetrators of
that genocide in exploiting people in refugee camps for their own protection and profit.\(^2\) We focus on questions of complicity surrounding humanitarian organizations, thus limiting our discussion to actors whose collective agency is beyond doubt.\(^3\)

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\(^2\) This might be regarded as a humanitarian-assistance analogue to discussions within just-war theory concerning which (if any) civilians are sufficiently complicit with the perpetrators of an unjust war as to render them liable to harm in the course of that war, even though they are not themselves combatants. See, e.g., C. Fabre, 'Guns, food and liability to attack in war', *Ethics*, 120 (2009): 36-63 and J. McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), pp. 214-8.

\(^3\) Humanitarian organizations have relatively well-specified internal mechanisms for collecting information, assessing information, weighing options and coming to authoritative decisions, which are then enacted by agents in the field who take action on behalf of the organization. They thus clearly qualify as collective agents in the sense of, e.g., P. A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984) and P. Pettit, 'Responsibility, Inc.', *Ethics*, 117 (2007) 171-201. Matters may look different, as regards complicity and much else, where such structure is lacking, as among unorganized groups of actors. But the humanitarian organizations we shall be focusing upon are indisputably moral agents, despite being collective in form.
Having first committed genocide against the Tutsi, the FAR (Rwandan Armed Forces) soon began using the refugee (mainly Hutu) population in various ways: as a source of income and power in their own right; as a lure for international assistance and legitimation; and as protection against those who might punish or retaliate against FAR for the genocide. Among the many wrongs committed over the course of the Rwandan genocide and its aftermath, we shall for purposes of this article concentrate on that one in particular: the wrongful manipulation of civilians for war purposes, particularly using civilians as a human shield. Various actors other than the FAR were involved, both in the original genocide and in those subsequent events. For the narrowly philosophical purposes of this article, we will not elaborate on the complex network of actors committing that wrong. For expository convenience we will discuss only 'FAR groups' as the collective organized agent using civilians for war purposes.\(^4\) Those in search of a fuller and more rounded account of the events and agents upon which we so selectively draw are referred to the authoritative report of the UN High Commissioner for Human Rights.\(^5\)

Under the influence of FAR (and others), Hutu fled Rwanda and massed in unhealthy refugee camps. The FAR spread fears of retaliation by the RPF (Rwandan Patriotic Front, the pro-Tutsi rebel militia that seized power in Rwanda during the genocide) and myths that Hutu were internationally hated. Through a combination of propaganda, fear and direct threats, the FAR pressured that population to move around them during their flights and regroupings in neighboring countries, creating refugee camps in Zaire, Tanzania, and Burundi. Those refugee camps constituted, not only at the outset but throughout their two years’ existence, a terrible and consistent example of a human shield for the

\(^4\) Of course in the refugee camps themselves the FAR militias did not call themselves 'FAR', and it is an open question just how much collective organization there was among FAR militias in different camps; but within any given camp at least, the militia was certainly sufficiently centrally organized to qualify as a moral agent capable of being blamed for wrongdoing, with which humanitarian organizations could be complicit.

military and political perpetrators of the genocide. The use of human shields is, of course, explicitly prohibited as a war crime under international law.⁶

In July 1994, a cholera epidemic hit the 850,000 refugees of Goma camp in Zaire, causing more than 80,000 deaths in ten days and ravaging the camp for months. The proliferation of aid actors trying to respond to such an overwhelming emergency further strengthened the political and military power of the FAR. Empowered by the recognition of UN camp management and humanitarian organizations, FAR groups took leadership of the newly created refugee camps. Having done so, they set about diverting aid, using camps as military recruitment and training centers, killing opponents and further spreading genocidal propaganda.

When providing aid, organizations were obliged to acknowledge, interact with and contribute to those perpetrators of genocide. Even nongovernmental organizations that intervened on a purely humanitarian basis thus ended up contributing to FAR’s power, from a symbolic and sometimes material point of view.⁷ All international aid organizations faced the same dilemma: continue working in the camp, thereby further strengthen the power of genocidal perpetrators over the refugees; or withdraw from the camps, abandoning a population that was in extreme distress. This dilemma – the bounds of acceptable complicity – forms the subject of this article.

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⁶ The Rome Statute establishing the International Criminal Court lists, among ‘war crimes’ over which the ICC has jurisdiction, ‘Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations’ (art 8.2.b.xxiii). The Geneva Conventions proclaim, ‘The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations’ (art 51.7, Additional Protocol I). The Geneva Conventions further state, ‘The presence of a protected person may not be used to render certain points or areas immune from military operations’ (art 28, Convention IV). For present purposes, we assume that the same moral principles should apply throughout the duration of the camps’ existence, regardless of the legal status of the conflict.

II. The Complexities of Complicity

Despite (or perhaps because of) the intricate intertwining of multiple international, regional and local geopolitical factors, the case of the Rwandan refugees can be seen as emblematic of many types of contributory actions commonly lumped under the umbrella of 'complicity'.

There is a clear wrongdoing: the use of a civilian population as a human shield to protect the perpetrators of genocide being the one upon which we here concentrate. There is a clear group of agents – FAR and associated militias being the one upon which we here concentrate – engaged in committing that 'principal wrong'. There are various other agents contributing to a greater or lesser extent and in various different ways to that wrong. The differing sorts of contributory acts we shall be distinguishing appear in Table 1.

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Table 1: Varieties of Contributory Acts

Co-operation: X co-operates with principal wrong-doer Y insofar as:

(i) X adopts the plan guiding Y's wrong-doing as X's own, and acts interdependently with Y to ensure the plan is fulfilled; and

(ii) X is a co-principal in that wrong-doing, whose own contributory act partially constitutes the principal wrong-doing.

Collaboration: X collaborates with principal wrong-doer Y insofar as:

(i) X complies with the plan guiding Y's wrong-doing without adopting it as X's own or acting interdependently with Y to ensure its success; and

(ii) X does not become a co-principal whose acts are even partially constitutive of the principal wrong-doing.

Collusion: X colludes with principal wrong-doer Y insofar as:

(i) X secretly co-operates or collaborates with Y

(ii) to trick others

(iii) for the mutual benefit of X and Y.

Connivance: X connives in the wrong-doing of principal wrong-doer Y insofar as:

(i) X does not take any part in the wrong-doing plan: X does not adopt the plan as X's own, X does not facilitate the plan nor adjust X's actions in accordance to the plan;

(ii) X does not become a co-principal in relation to the principal wrong-doing; and
(iii) X turns a blind eye to Y’s wrong-doing in a way that X knows (or could and should have known) would contribute to Y’s wrongdoing.

Condoning: X condones the wrong-doing of principal wrong-doer Y insofar as:

(i) X does not adopt the plan as X’s own, X does not facilitate the plan nor adjust X’s actions in accordance to the plan;

(ii) X does not become a co-principal in relation to the principal wrong-doing; and

(iii) X forgives Y’s wrong-doing.

Complicity: X is complicit (in the restricted sense) with the wrong-doing of principal wrong-doer Y, insofar as:

(i) X is not a co-principal in that wrong-doing whose own acts are in any way constitutive of the principal wrong-doing; and

(ii) X does not make any of the other more specific sorts of contributions to the principal wrong-doing catalogued above.\(^9\)

\(^9\) Or the others contained in the somewhat longer list in Lepora and Goodin, ‘Complicity and its conceptual cousins’. 
A. Differentiating Forms of Complicity

By analogy to the common law principle of criminal liability, '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), we can distinguish moral responsibilities of co-principals and contributory agents through analysis of both their mental states and physical actions.

We will apply the term 'principal' (or 'co-principals', where there are multiple ones acting together) to agents whose actions constituted the wrong (here, abuses of civilian populations for war purposes, especially to shield perpetrators of genocide). Other actors, such as neighboring or historically connected governments, did (or failed to do) things both during and after the genocide that were causally related to harming the Rwandan civilian population. But while those acts contributed to the wrongdoing in a causal way, they did not themselves constitute the wrongdoing. For that reason we call such actors 'contributory agents' but not 'co-principals'.

Within the realm of mens, the principal agents act with the intention of doing something they know (or could and should have known) is wrong. Contributory agents act knowing (or they could and should have known) that their act will contribute to the principals' action, which they know (or could

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10 Strictly speaking co-principals whose acts are partially constitutive of the wrong are making contributions to it too. But when in this article we refer to 'contributory agents' we mean those whose contributions are at most purely causal.
and should have known) is wrong.\textsuperscript{11} In addition to these standard features of \textit{mens}, there is another element distinctively associated with the mental activity of crafting joint action. Co-principals and contributory agents alike can be either 'plan-makers' or 'plan-takers'. 'Plan-makers' are those who participated in formulating the plan for the principal wrongdoings. 'Plan-takers' did not; they simply follow the plans laid out by others. Plan-takers can be of importantly different sorts, however. Some plan-takers willingly 'adopt' the plan as their own (and in some cases impose it on others). Others disapprove of the plan (and the state of the mind behind the principal wrongdoing) but nonetheless reluctantly 'comply' with it for various reasons, as we shall describe.

The leadership of the FAR militias, certainly within and to some extent across different camps, certainly acted as plan-making co-principals, devising and implementing schemes for maintaining and strengthening their power over the population through the diversion of aid and public attention. Not every FAR leader did do exactly the same thing as every other, in every respect. Nonetheless, they were very robust \textit{co-operators} sharing both in the making of the plan and the actions necessary to put it in practice.

The Zairian government has been accused of contributing substantially to the legitimacy, protection and material support of the FAR/Hutu leadership.\textsuperscript{12} The Zairian government allowed perpetrators of the genocide to cross its borders; it allowed them to enter the country with heavy

\textsuperscript{11} We follow Williams, \textit{Criminal Law}, pp. 378-80 in advocating this 'knowledge without purpose' standard for contributory agents. See similarly L. May, \textit{Genocide} (Cambridge: Cambridge University Press, 2010), pp. 158, 169. Some lawyers insist on more, i.e., that the contributory agent not only know that their acts will contribute to the other's wrongdoing but also that they so act with that intention and purpose. That stronger standard might be appropriate if we were holding contributory agents equally responsible with principals for the wrongdoing – but as we have foreshadowed, we will be arguing for a more graded approach to responsibility for complicity than that.

\textsuperscript{12} It is not alone in this. France, in particular, has come under particular criticism; see e.g. P. Schmitt, 'The future of genocide suits at the International Court of Justice: France's role in Rwanda and implications of the Bosnia v. Serbia decision', \textit{Georgetown Journal of International Law}, 40 (2009): 585-623 and sources therein. But the same could probably be said, to greater and lesser extent, about other foreign governments politically, military and economically active in Rwanda (USA, China, Belgium, etc.). Again, we are not here trying to tell the complete story; we are merely selecting out elements of the larger story for illustrative purposes.
artillery and other weapons; and it facilitated FAR's economic transactions with countries providing them with additional weapons. None of its actions, however, constitute the wrong in question, i.e., use of human shields. Those were the acts of the FAR, not the Zairian government, which is therefore better described as a collaborator in the FAR groups' misuse of refugee camps as military and humanitarian sanctuaries.  

The use of media was a powerful means of diffusing and reinforcing Hutu propaganda. Journalists working for radio stations (like Radio Milles Collines) could be said to have been co-operating with the FAR leadership's use of civilian population for military purposes, inasmuch as they approved of the plan and aligned their actions in such a way as to help it function, both during and after the genocide. Political leaders of the self-proclaimed 'government in exile' may better be seen as colluders with the FAR leadership and their policy of using civilians to protect themselves and legitimize their power, despite the exile. They are colluders insofar as that they participated, if only implicitly, both in making and in executing the FAR's plan of wrongdoing while profiting from it.

Clearly, humanitarian NGOs were not at any point plan-makers of the abuse of civilian populations. Nor could they, at any time, be said to have been co-principals in that abuse. Providing food, shelter and medical care could not be considered 'constitutive' of civilian's abuse. This precludes many of the contributory concepts mentioned above from being applied to NGOs in refugee camps.

14 Those of them who participated as well in formulating the plan should be described as conspiring as well as co-operating.
16 It might well be, in fact, that the political leadership maintained throughout full control of the plan and the FAR were colluding with it.
They were not conspirators or co-operators or colluders in abuse of civilians, since all those require one to be a co-principal (one’s actions being partially constitutive of the principal wrongdoing) and in some cases also a plan-maker (one’s mens being thus implicated in planning the principal wrongdoing).

How about collaboration, though, or connivance? Did international humanitarian organizations contribute to the FAR’s abuses in either of these ways? Collaboration requires the collaborator to conform his actions to the wrongful plan laid down by the principals. The activities of the Zairian government described above do arguably meet that description. But the actions of the NGOs do not. Certainly NGOs framed their interventions in the context of the sphere of influence determined by the FAR militias’ camp leadership. But it is difficult to imagine that any of them did anything remotely resembling 'knowingly adopting' (co-operating) or even 'willingly complying' (collaborating) with the plan of abusing the civilian population.

'Connivance' might seem to be a more fitting description of the behaviour of humanitarian NGOs – or anyway of the behaviour of their functionaries on the ground, if not the organizations themselves. Consider these statements from NGO workers: (1) 'Christine Pliche, a nurse evacuated from Rwanda, is uneasy. "But I work in medicine and I have my professional code of ethics" she says. "I close my eyes and I treat people."' (2) 'Water specialist Joel Boulanger operates on a purely professional basis, "I bring the equipment, I show them how to use it and I’m done."'\(^{17}\) Shutting eyes and tacitly accepting are precisely the types of contribution described by the term 'conniving'.

That, however, seems to be inadequate as a way of describing the action of NGOs from a larger organizational perspective. After all, humanitarian organizations were well aware of the ongoing political and military manipulation in the camps, and they could recognize the misuse of civilians and the diversion of aid for these purposes. Governmental and non-governmental humanitarian actors were not

merely occasional visitors or passive bystanders. Far from shutting their eyes, humanitarian organizations could well see that they were providing material support (health care and sanitation equipment, etc.) that was vital both for refugees and for the maintenance of the refugee camps. Humanitarian organizations knew, given the way those camps were established and allowed to operate, that provision of both health care and sanitation would have to operate through the FAR groups' camp leadership. Humanitarian organizations knew (or certainly could and should have known) that that would allow FAR to divert resources and strengthen its position vis-a-vis civilians in the camps.

Humanitarian organizations mostly omitted even to express disapproval of the FARs' abuses. However reluctantly, they provided FAR groups with direct or indirect material support that they knew would facilitate those abuses. Humanitarian organizations knew (or certainly could and should have known, however much they regretted) that FAR groups would be empowered and protected in its abuse of civilians in the camps by resources that FAR would inevitably siphon off from the assistance that they provided.

That may nonetheless have been the right thing to do, if there was no other way to get urgently needed assistance to the refugees and doing that was of greater moral importance than avoiding collaborating with FAR's abuse of the civilians. We return to this below. For now the point we wish to emphasize is merely that the acts of the humanitarian organizations themselves (if not perhaps all the workers in them) counted as something more than connivance with the abuse of the civilians.

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18 Only Oxfam, Care and MSF took public positions against the FAR and the ongoing diversion of aid. It is an open question whether publicly protesting the abuses, without doing anything more, would in itself be sufficient to exonerate agents from charges of complicity altogether (McMahan, Killing in War, p. 216 seems to suggest it would, in the case of civilians protesting an unjust war of their government.) But protesting is at least mitigates blame.

19 For that reason, we might regard the assistance being provided in the camps as akin to 'dual-use infrastructure' that has figured so largely in just-war discussions of permissible targeting: you cannot destroy it for military purposes without depriving civilians of it as well. See H. Shue and D. Wippman, 'Limiting attacks on dual-use facilities performing indispensable civilian functions', Cornell International Law Journal, 35 (2002): 559-79 and McMahan, Killing in War, p. 220.
Might 'connivance' be attributed to some of the refugees themselves? We do not for a moment deny or downplay the horrors and unacceptable circumstances to which refugees were exposed. Nevertheless, there is no denying the fact that the refugee population in this circumstance had a substantial causal role in their abuse, both in going into exile following incitements of the genocide perpetrators in the first place, and in the exactions happening within the camps. Of course, the duress to which they were exposed both before, during, and after the exile would excuse their actions. Our point is merely that the term 'connivance' would apply, even though that connivance is excused because coerced or unavoidable.  

B. Assessing Degrees of Complicity  

Many of the activities of both UN agencies and nongovernmental organizations contributing in various ways to the consolidation of refugees as human shields would fall under a less specific term. They were complicit in more undifferentiated – but not necessarily any less morally problematic – ways. 

Terms like collaborating, colluding or conniving are either inappropriate or insufficient for describing the type of contribution UN agencies and NGOs provided. They did not commit the principal wrongdoing themselves; they were not complicit in the genocide itself, nor were they using the refugees as human shields to protect perpetrators of genocide. But neither were the NGOs and UN agencies merely overlooking the FAR militias' doing so. Instead, their contributions causally enabled FAR militias'  

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20 Note however that among the refugees there was huge variability of capacities and attitudes towards their circumstances. The refugees group included some people pressured through propaganda into exile and abuse in the camps, others supporting FAR leadership and their political agendas, and yet others truly fearing FPR reprisal and ethnic revenge.
wrongful abuse of the refugees. They knowingly contributed to maintaining control of FAR militias over refugee populations in the camps, and thus causally contributed to civilians being immorally used as human shields. It is thus in terms of 'complicity' of a more undifferentiated sort that humanitarian organizations should truly be judged.

Both UN agencies and the numerous humanitarian actors present in the refugee camps actually intended to help the Rwandan population, in the dramatically non-ideal condition of those camps. Nevertheless, over the two years of the refugee camps' existence, all of them sooner or later came to acknowledge the contributory role that they played in supporting war criminals through the services they were providing. Throughout the period, for example, around a quarter of the food donated to refugees was diverted and re-sold to support the camp leadership; between 7 and 30% of the salaries of the staff locally hired was taxed, providing a continuous and lucrative income stream (around $11,000/month, for example, from only one of the hundreds of organizations working in the region); all services used by foreigners in the camps (transport services, money changing and import/export offices, bars, etc.) were managed or controlled by the same political and military leadership. Paradoxically, humanitarian activity supported the same criminals who abused the population it was trying to help. Legitimacy, protection and material support were among the unintended but clearly foreseeable benefits conferred by humanitarian actions on the FAR groups that were hiding behind the civilian refugee population in the camps for which they were allowed to provide leadership.

Between 1994 and 1996, more than two dozen NGOs and virtually every branch of UN agencies were working in the Rwandan refugee camps. To say that they were all complicit in the use of civilians for war purposes may seem to smack of a moral whitewash. If all were complicit, then none were doing

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21 This was, at least, the intention of most of them. Perhaps a few organizations had other interests, but we will here focus on the ones motivated by the best of humanitarian intentions.

anything especially wrong – or so it might seem.\textsuperscript{23} But not all were equally complicit, and not all acts of complicity are equally bad. What factors should weigh in our moral judgments in these complex situations? We can draw one set of morally important distinctions among the various actors involved in providing humanitarian relief while supporting the abuse of refugee populations for war purposes by differentiating 'definitely essential' from 'potentially essential' from 'completely inessential but nonetheless helpful' actions. As we will also show, complicit actors vary enormously in terms of their centrality, proximity, and reversibility in relation to the wrongdoing.\textsuperscript{24}

One event performed by humanitarian organizations can be seen as causally 'definitely essential' to the exploitation of civilian population, without being remotely constitutive of it. That is the initial setting up of refugee camps in a way that did not differentiate between militias and civilians.\textsuperscript{25} Had the camps been set up otherwise – had militias been excluded from refugee camps, as international law requires\textsuperscript{26} – it would have been impossible for the FAR groups to use their positions of authority within the camps to divert humanitarian aid to military purposes or shield behind civilians in the camps.

Although some of the camps (the Tanzanian ones, for example) predated the arrival of international aid organizations, others were literally prepared and established by UNHCR, the UN agency responsible for the protection of refugees.\textsuperscript{27} The decision to accept indiscriminately into the camp

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\item \textsuperscript{23} Indeed, one might infer that there was no viable alternative. But as Rony Brauman points out, refusal is always a viable alternative; quoted in R. Brauman and P. Petit, \textit{Humanitaire, le dilemme: entretien avec Philippe Petit} (Paris: Editions Textuel, 1996), p. 18.
\item \textsuperscript{24} More of which below: and elaborated yet more fully in Lepora and Goodin, 'Complicity and its conceptual cousins'.
\item \textsuperscript{26} Convention Relating to the Status of Refugees, G.A. res. 429 (v), Article 1, F (1967).
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anyone, regardless of their civilian or military status, had two irreversible effects, one practical, the other legal. The practical one concerns the impossibility of separating militias from civilians after they settled in the camp, and the almost inevitable empowerment of a military leadership by aid actors looking for efficient and willing local agents of coordination. The legal one concerns the status of "refugee" that was automatically conferred upon anyone entering the camps. Once a person is declared a refugee, he benefits from legal protection; he cannot be sent back to his country of origin; and his status (thus the protection he benefits from) cannot be revoked. Legally, someone who committed war crimes or crimes against humanity is not supposed to be able to benefit from refugee status. However, this distinction was not implemented by UNHCR in this case, and thus genocidal perpetrators paradoxically came to profit from the legal protection of the United Nations rather than being condemned by it.

In June 1994, insecurity increased steadily in Benaco, a refugee camp on the Tanzanian-Rwandan border. It led to the killing or fleeing of the few Tutsi present in the camps and of Hutu opposed to the Hutu political and military hegemony within the camps. UNHCR hired 300 people to counteract the worsening security situation, and provided them with police authority to arrest suspects. The 300 staff were left to be selected by the camp leader, thus strengthening the leadership’s control over the refugees. Although it is surely difficult to identify any specific event that constituted the 'last clear chance' to avoid abuses, increasing the control of the camp leader over the refugees in this way arguably sealed the fate of refugees in the Benaco camp once and for all as human shields.

In all camps, food distribution was organized by means of a list of beneficiaries compiled at the request of UNHCR. Once more, the leaders of the FAR militias were put in charge of compiling such lists,

29 Perhaps no alternative was feasible at the time the camps were established. We do not intend to accuse UNHCR of misconduct here, necessarily.
giving them an easy means of diverting and misappropriating food. Entire trucks of donated food were
diverted and sold for weapons, at the same time as there was growing malnutrition in the camps.
Letting the FAR leadership compile those lists might look like a simple operational error. But it was a
particularly important one, by virtue of its irreversible further ramifications, in that the UNHCR lists were
then utilized by all aid agencies for any type of distribution, creating a sort of cascade effect of aid
mistakes.

Other contributions were 'potentially essential' to the final wrongdoing performed. That is to
say, other contributions were necessary conditions for the execution of the wrong, along some (but not
necessarily all) possible paths by which the wrong might have been executed.\textsuperscript{30} Humanitarian
organizations providing food and water in the refugee camps during cholera epidemics should be
deemed 'potentially essential' in the abuse of civilian populations only if: (a) FAR militia diverted that aid
and profited from it with the aim of misusing it for war purposes; and (b) on some scenario or another,
those diverted resources were strictly necessary for the success of those war purposes. Clearly, there is
some possible scenario by which that would be true of any food aid. Among cases of food aid that are all
potentially essential contributions to abuses, though, we could further distinguish degrees. Although
part of any food donation was always diverted for military purposes, in 1994 and 1995 Caritas decided in
some Congolese camps to donate food directly to military personnel, rather than to civilian refugees –
despite well-known higher malnutrition rates among civilians and the well known misuse of food
donations to purchase weapons. However valid their reasons, such a contribution is inherently more
central, proximate and irreversible to consolidate the FAR groups' power than is donating food to
refugee, knowing that some will be diverted to the military.\textsuperscript{31}

\textsuperscript{30} Further analyzed in Lepora and Goodin, 'Complicity and its conceptual cousins'.
\textsuperscript{31} It could be argued that providing food directly to an army does consolidate their power but does not increase
their control of population as human shields. However, in the given circumstances, those two aspects were so
interlinked that such distinction would be practically irrelevant.
An organization providing aid was more 'central' to the abuse, the larger its intervention happened to be, or the more 'divertible' the form of the aid provided. A medical organization working in the camps, for example, would ordinarily have hired more local staff and received more external material than an educational organization working in the same camps; and it could surely make a bigger difference to the abuse because of that fact (besides of course also making a bigger difference to the well-being of refugees).

In the two years of the existence of the camps, the facts that we are describing were sadly well known to the humanitarian actors involved, who felt they had no choice when confronted with the humanitarian imperative of providing much needed help to civilian populations. These facts, however, were also acknowledged by the so-called 'international community' – and the international organizations and national governments that constitute its organizational form – which holds a mandate to intervene militarily in case of genocide and to provide protection to refugees. Both the genocide and the later abuse of refugee populations, consolidated with the reluctant help of international aid, were perpetrated under the eyes of that same 'international community'. Condoning, rather than mere connivance, also took place among some international humanitarian actors involved. For example, after the genocide had finally been acknowledged by everyone, including a reluctant US government, the US ambassador nonetheless deemed it appropriate to advocate 'power-sharing agreements' between the new government in Kigali and the exiled FAR leadership, despite their being perpetrators of genocide.32

Connivance, collaboration, collusion, complicity and condoning are thus all arguably on display among the many international actors and organizations who contributed to the crimes against civilians that took place between 1994 and 1996 in and around Rwanda. They were all contributions to the

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32 Terry, Condemned to Repeat? p.185.
wrongdoing of others, and some were themselves wrong. Nonetheless, some of those contributions were clearly worse than others, in ways that separating out these distinct concepts helps to highlight.

III. Assessing blame for contributory wrongdoing

As John Gardner rightly says, the morality of an action should be distinguished in two parts: responsibility *simpliciter* for what one does oneself, and responsibility for what one does by way of contribution to what another does. The latter – responsibility for contributing to another’s principal wrongdoing – is the focus of the present article.

A. Exacerbating and Excusing Factors

As with the former sort of responsibility so too with the latter: we can identify some conditions that might exacerbate, excuse or even void moral responsibility associated with contributory actions. Let us first set the moral scene by laying out that background, before turning to considerations governing the moral wrongness of contributory actions more specifically.

First, the 'exacerbating' factor: If an agent is under a special duty to do some particular thing in some particular circumstance, and she does not do what that duty requires (either by doing something

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33 ‘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’; Gardner, ‘Complicity and causality’.
else, or by doing nothing), she is morally more to blame than someone not under that special duty. In the case of a drowning swimmer at a crowded beach, perhaps all competent swimmers are morally to blame for not rescuing her; but the lifeguard on duty is more to blame, by virtue of her special duty to do so. In a case of contributing to wrongdoing, likewise, the wrongness of so doing is exacerbated if the person so doing is violating a special duty in the process. Conniving or colluding in a crime may always be wrong, but it is morally worse when done by a judge or a police officer. In the case of the refugee camps, the complicity of UNHCR with FAR militias' using the refugees as a human shield was made morally worse by the fact that, under international law, UNHCR had a duty to provide security for the refugees— a responsibility which was virtually ceded to FAR instead.

Next some 'excusing' factors: Acting not out of choice but rather out of necessity excuses wrongdoing in general. So too in the case of contributory action, if the contributory agent had literally no other option, his action is wrong but not blameworthy: the agent is excused responsibility for the wrong. Or if the agent chose the wrongful action as the 'lesser of evils', she might be 'justified' in performing it: it might not be wrong at all, in the circumstances (as when for example a physician treats a tortured prisoner who requests care, thereby becoming complicit in the torture but arguably justifiably so). Or again, an agent who has various options but is coerced into contributing to the wrong might be excused responsibility or blame for her contribution, even if that was essential to the principal’s wrongdoing. In the refugee camp example, we would be reluctant to blame the refugees themselves for their connivance in their being used as a human shield in cases where it was virtually certain they would have been killed had they risen up against the FAR militias; we would be much more inclined to blame them for conniving if they could easily have walked away from the camps at no cost or risk whatsoever.

34 Omissions, when one is under a general duty to do otherwise, can be causal contributions for which one can rightly be blamed, as May, Genocide, p. 258-64, says with respect to bystanders to the original genocide in Rwanda.
35 As did also foreign government signatories of Rome Statute and Geneva Conventions, at least financially.
A second factor that can excuse a wrongful action is unawareness of the wrong. An agent might have committed a wrong unknowingly, either because she did not know that the action would lead to that outcome (ignorance of fact) or because she did not know that that outcome would be wrong (ignorance of the moral standard\(^\text{37}\)). To be excused, the ignorance must be unavoidable rather than deliberate, however. Connivers who willfully turn a blind eye to the wrongdoing to which they contribute are not excused blame for their deliberately-ignorant contributions to the wrongdoing.

Where contributory agents could and should have known about the wrongdoing and about the way in which their action would contribute to it, they are as blameworthy for their contribution as if they had actually known. Where they are non-culpably ignorant, it is not even describable as a case of complicity or any of the cognate notions we have been discussing – all of which, as we said in Section III.A, require that the agent knew, or could and should have known, that his action would contribute to the principal wrongdoing.

Ignorance as an excuse plays out differently in relation to different classes of contributory acts. Take first the case where the act’s contribution is causal. (That includes cases where it is either definitely essential or potentially essential, in a causal sense.) Suppose furthermore that we are dealing with cases in which an agent performs an act not in itself intrinsically wrong, but wrong only because of the way it contributes to the principal’s wrongdoing. If the agent were completely and unavoidably ignorant of the fact that her act would contribute in that way, she is surely not to blame for contributing to the principal’s wrongdoing.

Indeed, it seems hard to imagine that such an agent has done wrong at all, from which she needs to be excused. Those look more like ‘voiding’ conditions (eliminating wrongness) rather than merely ‘excusing’ conditions. Imagine a malicious murderer adding poison to glass of wine that a waiter

\(^{37}\) The rule at law is ‘ignorance of the law is no excuse’, of course. Some may say that the same rule should apply (perhaps all the more strictly, even) in the case of morality. Those who take that view will count only the first sort of ignorance as an excuse. We take no position on that matter here.
then served to the victim. If the waiter did not know about the poison (and did not fail in any of his professional duties to oversee the glass) the waiter could hardly be said to have been conniving or collaborating or complicit in the murder. For contributory actions that are not themselves intrinsically wrong, and are not constitutive of the principal wrongdoing, unavoidable ignorance of the wrong to which they contribute is more than merely an excusing condition. In such cases, the contributory agent has not done anything wrong that requires excusing. Providing food to refugees is in itself praiseworthy. If (contrary to what happened in the case described above) aid organizations doing so had no way of knowing that that aid would strengthen FAR militias and contribute to the wrong of those refugees being used as a human shield, then they would have done no wrong in providing food. Unavoidable ignorance is thus a voiding condition for acts that, while causally contribute to somebody else’s wrongdoing, are not intrinsically wrong. In all other cases (i.e., where the contributory acts are intrinsically wrong or partially constitutive of the wrong) unavoidable ignorance serves merely as a condition excusing an action that is still wrong.

Consider next the case where the contributory act is wrong in itself, independently of any further wrongness associated with its contribution to the principal’s wrongdoing. Suppose that the contributory agents were fully aware of the wrongness of their act itself but unavoidably ignorant of contributing to the principal’s wrongdoing. Then that unavoidable ignorance excuses the agent any blame or responsibility for his contribution to the principal’s wrongdoing. But of course the contributory agent is still responsible and to blame for committing an act that he knew fully well was wrong in itself. Think of an illiterate arms dealer who breached international embargos and sold weapons to FAR, without having any way of knowing anything about the genocide or the war crimes perpetrated in the camps. We might excuse him for his contribution to war crimes, yet hold him accountable for the wrong of illegal arms dealing which he could and should have known was wrong in itself.
Finally consider the case in which the contributory act is (taken together with the contributory acts of others) constitutive of the principal wrongdoing. Examples would be things like conspiracy, collusion or co-operation. If those agents are unavoidably ignorant that what they are doing together will constitute something that is wrong, then they are not to blame for that wrong.

B. Moral Assessment of Contributory Acts

With that general background in place, let us now turn to standards for assessing the moral wrongness of contributory acts. A concern with consequences inevitably looms large in our assessment, here, if only because in situations like those of the refugee camps, anything you do (including leaving altogether) would be wrong in one way or another; and when every possible action is wrong, the best basis for choice among them is, in our view, in terms of their consequences. So, the first consideration to be taken into account is the consequences of the contributory act, both directly (in itself) and indirectly (via the principal’s wrongdoing to which it contributes).

Even if the badness of acts contributing to wrongdoing is ultimately to be cashed out in terms of consequences, terms like complicity and the various cognate notions we have been discussing are far from otiose. Recognizing that acts fall under those descriptions can provide useful moral pointers.\(^{38}\)

\(^{38}\) However much consequentialists may wish otherwise, we are boundedly rational agents; and we need in consequence to employ heuristics, rules-of-thumb, triggers and checklists to achieve the best consequences we can. Describing an act as complicit with or otherwise contributing to wrongdoing of another signals to the moral agent that it is generally likely to be wrong itself in consequence, and identifying which of the other specific kinds of contribution it is signals just how wrong it is generally likely to be. Those signals assist boundedly rational agents in knowing which moral checklist to call up, and gives preliminary pointers as to just how strong the presumption against the moral permissibility of the act should be.
Difficulties in the moral evaluation of contributory actions often arise precisely because actions that are morally neutral or praiseworthy in themselves nonetheless contribute to somebody else’s acts in ways that lead to heinous consequences. Providing food in refugee camps is good insofar as it feeds refugees, bad insofar as it perpetuates the refugees being used immorally as a human shield. Whether it is on balance right or wrong to provide food aid in those circumstances depends first and foremost on a comparative assessment of those two sets of consequences (and many other consequences, in any real case).

The contributory act itself might have both good and bad consequences. One and the same action might paradoxically contribute to a wrong but at the same time be effective in mitigating negative consequences of the wrong. Consider for another sort of example the case of genital mutilation: although doctors agree on the negative effects of female genital mutilation, they all also agree that it is better to perform it in professional, sterile and safe conditions if it is sure otherwise to be performed by untrained staff, without anesthesia and in unsterile conditions.

That broadly consequentialist framework further allows two separate interacting sets of considerations to bear on the moral assessment of contributory actions. One relates to degree of contribution the contributory act makes to the principal wrongdoing. The other relates to the degree of wrongness of the principal wrongdoing.

Other things being equal, a stronger contribution to wrongdoing is worse than a weaker one. This aspect can be assessed in large part on the basis of how essential one’s contribution is to the principal wrongdoing. Causal essentialness, as we have said, admits of degrees, which we have characterized first and foremost in terms of 'centrality'. Other things being equal, a contributory action will be worse than another if it is 'more essential' – more central – to the primary wrong doing than the other. In addition to centrality, one causal contribution can be stronger than another by virtue of its
physical or temporal proximity, irreversibility or the extent of difference it makes. All food-distributing organizations were responsible for indirectly contributing to the support of the military operations of FAR militias, since a percentage of the donated food was commandeered for military purposes. Caritas’ contribution though, in providing food directly to the military camp, was a more central contribution since all their food went for military purposes, rather than only a percentage of it; and it went to militias directly, rather than being diverted.39

Notice that there is a morally important difference among 'potentially essential' contributors to a wrongdoing in terms of the individual difference they actually make. We call them 'potentially essential' by virtue of the fact that they are essential along at least one potential path by which the wrong might occur. Making yourself available in this way to facilitate wrongdoing is in itself wrong. But it is even worse, of course, for you to be the one who actually did the wrong. The assassin whose bullet actually kills the victim is guilty of murder, which is a worse offense than that of a back-up assassin who was ready to shoot but in the end did not need to (who is guilty of colluding in, co-operating with, conspiracy to or complicity in murder – but not murder itself).40

None of these factors is in itself decisive for determining which contributory act makes a stronger contribution. Other things equal, contributory acts that are more central, or more proximate, or more irreversible, or in itself make more of an difference are stronger contributions. But in thinking

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39 Giving the food directly to FAR groups makes that contributory act more 'central', in the sense that there are ways in which diverting food aid given for civilian use might go wrong that do not arise when the food is given to the FAR directly.

40 Someone holding a different perspective on 'moral luck' might see no difference between them, of course. Imagine a firing squad; all 5 shoot, 4 bullets are headed for the victim’s heart, any one of which will kill him. One of them gets there a half-second ahead of any other. Is that shooter really more responsible for the death?
about those factors one-at-a-time, we must remember that in the real world all else rarely is equal, and several of those factors may well interact. 41

Finally, we must consider the ultimate wrongness of the principal wrongdoing to which one contributes. Once again, other things being equal, a contributory action will be worse the worse is the principal wrongdoing to which it contributes. Imagine a scientist who constructs an essential component for the atomic bomb and sells it to two different governments, one of which uses it for an atomic test in the middle of the ocean, and the second of which uses it against thousands of civilians in a neighboring country. Other things being equal, selling the bomb component to the bombing government is worse than selling it to the testing government. The contribution provided by media to the FAR leadership, in terms of propaganda and spreading of tendentious information, was comparable during the genocide and during the creation of the refugee camps. Other things being equal, the journalists’ actions are morally to blame for contributing to something less bad when co-operating in the abuse of civilian population as human shields than when co-operating in genocide.

C. Moral Assessment of Contributory Intentions

Within the mens realm, the role of intentions in moral evaluation is a perpetually fraught topic. Without attempting to resolve all those issues in a perfectly general way, let us at least point to some alternative ways of understanding the situation. ‘Participatory intention’ is taken by Kutz to be the defining feature

41 What happens when two are simultaneously in play might not be reducible – in the way the standard one-at-a-time, all Else-equal procedure assumes – to the effects of each of them taken separately.
of contributory actions.\textsuperscript{42} Those tempted by that line of thought might suppose that intentions, rather than actions themselves, are the central subjects of moral evaluation of such actions. But there is another way of characterizing contributory actions – in terms of, among other things, 'potentially essential conditions' as sketched here – that accords intentions a much more limited role.

In our view, people and their actions should be judged in terms of what those people do, not by their intentions. Of course the two are usually closely connected, insofar as what is intended often transpires. But it is what happens (or more precisely what people knowingly and voluntarily risked happening; or still more precisely, what they knew or could and should have known they were voluntarily risking happening as a result of their actions) for which they should ultimately be blamed. Furthermore, people ought not, in our view, be allowed to carefully craft descriptions of their intentions to avoid responsibility for the foreseeable consequences of their actions. Once an agent has willingly and knowingly contributed to wrongdoing in a causally essential way, he ought not be allowed to appeal to excuses like 'I did not mean any wrong' (or 'I just did what I was told to do' or 'I was just doing my job' or whatever).

That is not to say that intentions have no place in our own analysis of contributory actions. Plan-making is partially constitutive of the wrong, and planning is a quintessentially intentional activity. Co-principal agents, and plan-makers more generally, ought in that sense be judged by both their actions and the intentions underlying them.

With respect to plan-takers, however, the importance of intentions fades. Their 'taking' of the plan and acting on it – even if they enthusiastically adopt it as their own – is not constitutive of the wrongdoing. It is merely causally connected to the success of the plan for wrongdoing. And it is what their taking of the plan leads to, rather than how enthusiastically the embrace the plan, that morally

\textsuperscript{42} Kutz, \textit{Complicity}, p. 74
matters. Of course, enthusiastically embracing the plan might contingently cause the plan to be more likely to succeed. Furthermore, those who enthusiastically embrace a plan for doing one wrong might be more inclined to embrace others for yet more wrongs.\textsuperscript{43} For those contingent sorts of reasons, we might have derivative sorts of concerns about the intentions (desires, goals, enthusiasms) of plan-takers. But they are not the direct subjects of moral concern with plan-takers, in the same way they are with plan-makers (and of course with the principal wrong-doers themselves).

\textbf{IV. Conclusion}

The case of humanitarian assistance in the Rwandan refugee camps richly illustrates the complexity of complicity. Aid groups can often be deemed complicit with the misuse of civilian population as human shields, by virtue of the legitimacy, protection, and material support that their aid provides to the armed groups perpetrating those abuses.

The term 'complicity', however, often seems to amount to little more than name-calling – as if complicity is always necessarily wrong, and fixing that label on an act will decisively settle some moral issue. The term is often used indiscriminately to describe all sorts of very different ways of being mixed up in some bad business. We beg to differ from that usage, and to suggest ways of viewing complicity as a more graded concept.

\textsuperscript{43} Similarly, contributory agents who are more 'mutually responsive' and engage in 'two-way tracking' of one another's acts in pursuit of the plan of wrongdoing are contingently more likely to succeed in bringing about the planned wrong. Such agents are worse than ones who are not so engaged. But there too, the connection is a contingent rather than necessary one.
In that connection, we would make three main points. First, deeming someone complicit with wrongdoing does not automatically imply that their actions were necessarily wrong, all things considered. It was not necessarily wrong for humanitarian organizations to provide assistance to the Rwandan refugees. Certainly we do not think that they should necessarily have refused that complicity for the sake of their moral integrity. Some levels of complicity should sometimes be deemed morally acceptable, because the benefit of an intervention outweighs the wrongness of contributing to wrongdoing. That was true, for example, in the case of the medical and logistical support in the height of cholera epidemic. In other cases, humanitarian organizations should refuse to intervene where the bad done by their complicity with wrongdoing would overwhelm the benefit of their direct aid intervention. Careful evaluation is required to tell which is which.

Second, 'complicity' as used in common parlance is a catch-all term that covers a multitude of quite distinct sins, which we have here distinguished with different labels. Not all of them are morally as bad as the others. Voluntary collaboration or cooperation with abuse of civilian population is, other things being equal, morally worse than connivance with it. Also, because it is causally related to the wrongdoing, connivance with those abuses of civilians is, other things being equal, morally worse than condoning it once it is completely over. Other things being equal (which of course they almost never are in the real world), an act of complicity will be worse the more central, proximate or irreversible it is with respect to the principal wrongdoing. Considerations of the consequences of an intervention, of how essential the aid was to the abuses that were committed, and of the wrongness of those abuses, are paramount in the moral evaluation of humanitarian aid. Whether it was wrong on balance to have

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44 This moral evaluation can be applied to real cases, like the Rwandan one, only if the same actor, under the same constraints and circumstances, made the conscious choice of colluding instead of conniving. Given their different capabilities and circumstances, it may have been morally worse for the UNHCR to connive than for the Caritas to collude in the abuse of civilians in the refugee camps.

45 This evaluation is, however, valid only by reference to the case at hand; condoning might in fact have causal relationship with the repetition of similar crimes perpetrated under the belief that they will subsequently be condoned.
been complicit in that way depends, of course, on just how essential the aid was to alleviating the conditions it was aimed at alleviating: as we have said above, whether complicity is wrong on balance depends on what is on the other side of the scale. Once again, just how bad it is, morally, to be complicit in wrongdoing is as a matter for further case-by-case investigation into the particular types of complicity involved, as well as the alternatives and their consequences.

Third, there often are steps that could be taken to mitigate the badness of complicity when it is a necessary evil. Complicity can be minimized by careful planning and reflection. Separation of military and civilian population at the outset of the camps, for example, would have achieved that. But there might have been other ways even after that crucial error had been made. for example: through international action consistently blocking arm dealing and thus re-armament of FAR imposed by the international community; through involvement of the civilian population in designing a safer return to their own country; and above all through faster and more equitable political processes in re-establishing security in the area.

Our aim has not been to settle a priori those issues surrounding complicity with wrongdoing in the Rwandan refugee camps. It has merely been to provide a framework to assist aid organizations facing similar situations in reflecting on their interventions. Complicity with wrongdoing is a challenge that is intrinsic in much assistance provided in non-ideal conditions. Understanding its various facets is essential in sustaining the aim of the aid operation, which is to provide relief to suffering fellow human beings without exacerbating their burden.

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NOTES