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Moral Complicity: An Expressivist Account

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ABSTRACT

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In this project, I argue that moral complicity is best conceptualized as conduct that expressively aligns one with another agent’s wrongdoing. Expressive alignment occurs as a result of one agent expressing a positive desire, attitude, or belief toward another agent’s (a primary agent’s) wrongdoing. I use William Alston’s account of illocutionary acts to elucidate the notion of complicit expression. I go on to argue that causal facilitation can also function as a form of positive expression toward a primary agent’s wrongdoing. I then compare and contrast the expressivist account with accounts of complicity put forth by Sanford Kadish, Judith Kissell, and Christopher Kutz. I then argue that the wrongness of complicit conduct stems from the fact that it expresses antipathy and disregard for the moral law. Finally, I use the expressivist account to analyze three different cases of purported complicity: stem cell research, referrals for physician-assisted suicide, and the bombing of Dresden.
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# Table of Contents

**Introduction** ...................................................................................................................... 1

**Chapter 1: An Expressivist Account of Complicity** ................................................................. 10

1. Introduction
2. Definition of Complicity
3. Explication of the Definition
   a. An account of expressive alignment
      1) Expressive alignment occurs through illocutionary acts
      2) Positive P-states and a revised definition of complicity
      3) Complicity and corruption
      4) Expressively aligning oneself as a form of self-identification
      5) Complicity, context, and silence
   b. Complicity is a violation of a *prima facie* duty
   c. Complicity involves conduct
   d. Complicity is voluntary
   e. Complicity is not a reflexive relation
   f. Summary
4. Complicity and Time
   a. Accepting a benefit
5. Intentional and Negligent Complicity
6. Differentiating Complicity from Blame, Punishment, and a General Duty to Intervene
7. Objections to the Expressivist Account
   a. A challenge to the claim that complicity is non-reflexive
   b. A challenge to the claim that complicity always involves conduct
8. Conclusion

**Chapter 2: Causal Complicity** ................................................................................................. 70

1. Introduction
2. Causal Responsibility
   a. The objects of causal responsibility
   b. Causal responsibility, wrongness, and blame
   c. Causal responsibility as credit for action and effects
3. Causal Complicity versus Causal Facilitation
4. The Causal Neutrality Thesis
5. Two Important Types of Causal Relationships within Complicity
6. A Special Type of Non-causal Complicity—Failed Causal Complicity
7. Conclusion
Chapter 3: Other Views of Complicity................................................................. 99

1. Introduction
   a. Derivative Liability
2. Sanford Kadish’s Account of Legal Complicity
   a. Blameworthiness, responsibility, and causality—the rationale behind derivative liability
   b. Derivative liability in the legal account
   c. Two important questions
      1) How does one differentiate between a complicit agent and a primary agent?
      2) How does one differentiate between a complicit and a non-complicit agent?
   d. Comparison and contrast
3. Judith Kissell’s Account of Moral Complicity
   a. Kissell’s definition of complicity
   b. Two important questions
      1) How does one differentiate between a complicit agent and a primary agent?
      2) How does one differentiate between a complicit and a non-complicit agent?
   c. Kissell’s response to objections
   d. Comparisons, contrasts, and criticisms
4. Christopher Kutz’s Account of Complicity
   a. Kutz’s account
   b. Comparison and contrast
5. Conclusion

Chapter 4: The Normativity of Complicity.................................................... 132

1. Introduction
2. The Prima Facie Wrongness of Complicity
   a. Expressive complicity: duty violation or vice?
      1) Hurka’s views on vice
   b. Complicit conduct, act descriptions, and wrongness
   c. Blame and complicity
3. Degrees of Prima Facie Wrongness: Three Axes of Evaluation
   a. Wrongness of the primary act
   b. Degree of intentionality
   c. Strength of the positive P-state
4. Conclusion

Chapter 5: Applications.................................................................................... 157

1. Introduction
2. Complicity in Research Medicine: Stem Cells
3. Complicity in Clinical Medicine: Referrals
4. Complicity in the Bombing of Dresden
5. Conclusion
Introduction

We live in a world with others. Sometimes those around us act wrongly. What, if any, are our obligations regarding their violations of the moral law? To ask this question is to begin to think about complicity. At its core, complicity is conduct that aligns us with another agent’s wrongdoing. It involves wrongfully taking a pro-stance toward wrongdoing and standing on the side of wrongdoing. In this dissertation, I will give an account of what complicity is and why complicity is wrong. My goal will be to capture and organize our intuitions regarding complicity. Unlike other accounts of complicity, the account I will lay out does not define complicity in terms of a causal or quasi-causal relationship. Rather, complicity is a type of expressive conduct through which an agent can come to identify himself with the wrongdoing of others.

Before I go on, however, I need to say a word about the methodology that I have chosen to use in this project. As I began the project, I started with certain core intuitions about what is involved in complicity. Then, throughout the project, I used my judgments about various cases to modify these initial core intuitions. As the theoretical account developed, explaining and unifying my intuitions, it influenced and was influenced by my judgments made in the particular cases. The goal was to arrive at a dynamic equilibrium between judgments in particular cases and a theory that explained these judgments.¹

Obviously, such a methodology makes certain epistemological assumptions regarding the manner in which we come to know moral truths. While I will not attempt to defend these assumptions, I will say that I think that they are reasonable and essential to the development of a moral theory. In what follows, I will give a brief overview of each of the chapters of the
dissertation, focusing in particular on Chapter 1 in which I lay out the bulk of the expressivist account.

In Chapter 1, I begin by giving a definition of complicity: Complicity is a violation of a \textit{prima facie} moral duty not to voluntarily and either intentionally or negligently expressively align oneself with the wrongdoing of a primary agent by expressing a positive psychological state (a P-state) toward that wrongdoing.

Throughout the rest of Chapter 1, I explicate and revise this definition as I look at various cases. I begin by explaining what I mean by expressive alignment. I argue that expressive alignment in complicity involves a willing self-identification with another person's wrongdoing. This self-identification occurs as a result of the complicit agent expressing a positive psychological state, which might be a belief, desire, or attitude, toward that agent's wrongdoing. This latter agent is designated as the primary agent and is defined relationally with regards to the complicit agent: The primary agent is the agent whose wrongful conduct is that toward which the complicit agent expresses a positive psychological state.

I then go on to make use of a recent account of illocutionary acts by William Alston to explain what I take to be involved in expressing a positive psychological state.\textsuperscript{2} On Alston's account, an illocutionary act is a rule-governed linguistic act. The particular rule that governs \textit{expressives} is as follows: A speaker expresses P in uttering some sentence if and only if in uttering that sentence, the speaker takes responsibility for it being the case that he has P.\textsuperscript{3} An important idea that is captured by Alston's account is that an agent can express a

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\textsuperscript{1} For a work that uses a similar methodology, see Baruch Brody, \textit{Life and Death Decision Making} (New York: Oxford University Press, 1988).


\textsuperscript{3} Alston, 109.
psychological state P, without actually having P. In such a circumstance, his expression may be faulted for being insincere, but it still counts as an expression.

This is important in regards to my account of complicity because I argue that an agent can be complicit with a primary agent’s wrongful act even in circumstances in which he does not actually have a positive attitude, belief, or desire toward that act. The complicit agent’s self-identification with the primary agent’s wrongdoing is not dependent upon the complicit agent actually having a particular mental state; rather, it is dependent upon the complicit agent’s conduct and whether it can be said to be an instance of taking responsibility for it being the case that he has such a mental state.

I go on to argue that a complicit agent can also express P when his conduct is negligent. In such a circumstance, an agent expresses P when he is held responsible for it being the case that he has P. I then explain under what circumstances one takes responsibility for having P or is held responsible for having P. On my account, one takes responsibility for P when one intentionally acts in a way that would give a third party warrant to infer that one has P, and one is held responsible for P when one unintentionally but negligently acts in a way which would give a third party warrant to infer that one has P. An agent acts in a way which would give a third party warrant to infer that he has P if he performs an act that is conventionally used to indicate the presence of P or if he performs an act that is non-conventional but a reliable indicator of P.

I then go on to use various cases to defend and specify the account. Using these cases, I argue that it is not necessary for expressing P that an agent actually have P (case 1.2), that simply giving a third party warrant to conclude that one has P is not in itself sufficient for expressing P—the act must be intentional or negligent (case 1.3), that others need not
actually conclude that one has P in order to express P (case 1.4), and that it is necessary for expressing P that one's act be either a conventional device or a non-conventional but reliable sign which could function to give a third party warrant to conclude one has P (case 1.5).

In the next section, I examine more closely that which is the object of the complicit agent's expression. I argue that this object is not simply the primary agent's conduct but his wrongful conduct. This leads me to modify the original definition of complicity. On the modified definition, complicity is a violation of a prima facie moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of another moral agent (a primary agent) or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent.

On this definition there are at least five possibilities: 1) An agent can intentionally expressively align himself with what he believes to be and actually is a primary wrong (complicity), 2) an agent can unintentionally and non-negligently align himself with a primary wrong that he might or might not believe is wrong (not complicity), 3) an agent can intentionally expressively align himself with a primary wrong that he non-negligently believes is not wrong (not complicity), 4) an agent can intentionally expressively align himself with a primary wrong that he negligently believes is not wrong (negligent complicity), and 5) an agent can negligently expressively align himself with a primary wrong that he either believes is wrong or negligently believes is not wrong (negligent complicity).

Numbers four and five represent two different ways that an agent can be negligently complicit. First, an agent can be negligent in forming a belief that the primary act is not wrong and thus intentionally express a positive P state toward a primary act that he negligently believes is not wrong. Second, an agent can be negligent in expressing P and
thus *negligently* express a positive P-state toward a primary act that he either believes is wrong or negligently believes is not wrong.

From this definition, I go on to distinguish between complicity, which I take to be a willful alignment with what one believes to be and actually is wrong and corruption, which I take to be a serious character flaw characterized by a moral epistemic disability involving expressive alignment with an obvious wrong that one does not see as wrong. I finish the section on expressive alignment by discussing the notion of a complicit context. A complicit context is one in which silence or non-action counts as an expression of a positive P-state toward a primary agent's wrongdoing. I go on to discuss certain contextual features of a situation that might identify it as a complicit context.

I then go on to defend the claims that complicity is a violation of a *prima facie* duty, that it necessarily involves conduct, that this conduct must be voluntary, and that complicity is not reflexive—that is, an agent cannot be complicit with himself.

In the final sections of Chapter 1, I note that on the expressivist account of complicity, complicity is neutral with respect to the timing of the primary agent's wrongdoing. Thus, an agent, who is not currently complicit, can become complicit with an act that is about to occur, is occurring, or has already occurred. I also differentiate complicity from other species of conduct directed at the wrongdoing of others including blame, punishment, and a general duty to intervene. In the last section of Chapter 1, I raise and respond to two objections to the expressivist account. First, I respond to the objection that complicity, in some cases, is a reflexive relation; and second, I respond to the objection that complicity, in some cases, does not involve conduct.
In Chapter 2, I examine causal complicity. I argue that causal complicity is complicity that involves causal facilitation of a primary agent’s act in a context in which the causal facilitation is a reliable indicator of a positive P-state toward the primary agent’s act. Conduct that is causally complicit is not complicit because of its causal properties per se; rather, it is complicit because the causal conduct, like linguistic behavior, functions as an expression of a positive P-state toward the primary agent’s wrongdoing. The causal conduct in these cases, while not necessarily involving a convention, does serve as a reliable sign of a pro-stance toward the primary agent’s wrongdoing. Thus, cases of causal complicity are simply a species of expressive complicity in which the causal conduct functions as an expression.

In this chapter, I also give an account of causal responsibility. I argue that causal responsibility involves both objective and subjective criteria and can be thought of in terms of giving causal credit for a particular act and its effects. This account is used to make sense of the fact that in some cases we are willing to assign members of a group who jointly bring about some effect different degrees of causal responsibility. I go on to argue for a causal neutrality thesis in regards to complicity: A complicit agent may have a greater, lesser, or equal degree of causal involvement with a joint act of wrongdoing than another agent who is also causally involved in the joint act of wrongdoing and who is the primary agent toward whom the complicit agent is expressing a positive P-state. I emphasize in this chapter, that while it is expressive properties and not causal properties that are constitutive of complicity, the causal properties of a complicit action are an additional moral consideration that must be taken into account in making an all-things-considered judgment regarding the wrongfulness of the primary agent’s conduct. I finish Chapter 2 by examining a special type of non-causal
complicity—failed causal complicity. In such a case, an agent attempts to causally facilitate a primary agent’s wrongdoing but fails. I argue that it is a positive feature of the expressivist account that it can handle such cases.

In Chapter 3, I compare and contrast the expressivist account of complicity with three other accounts. First, I examine an account of legal complicity given by Sanford Kadish. I then look at an account of moral complicity given by Judith Kissell. In both these accounts, complicity is defined in terms of a causal or quasi-causal relationship with a primary agent’s wrongdoing. Finally, I look at an account of moral complicity given by Christopher Kutz. On Kutz’s account, complicity is defined in terms of participating in a group wrong.

On each of these accounts, the notion of derivative liability is central. The complicit agent, because of his own conduct, is held liable for the wrongdoing of the primary agent. That is, that for which the complicit agent is liable is derived from the primary agent’s wrongdoing. In contrast, on the expressivist account, the complicit agent is only liable for his own conduct—that conduct which expressively aligns him with the primary agent—and not the conduct of the primary agent. I argue that it is a positive feature of the expressivist account that it is not committed to a notion of derivative liability.

In Chapter 4, I give an account of the normativity of complicity. I begin this chapter with the question of whether complicity is better conceptualized in terms of a prima facie duty or a vice. I argue for the former conceptualization over the latter. Briefly, I argue that conceptualizing complicity in terms of a prima facie duty better accommodates judgments regarding certain cases, helps to explain complicity’s action-guiding features, and better accounts for the linkage between the complicit agent and the primary agent.
I then explore the question of why expressing a positive P-state toward a primary agent’s wrongdoing is itself prima facie wrong. I begin by comparing complicity to blame. I argue that when one agent blames another he is acknowledging that a moral duty has been violated and that he is expressing his own commitment to the moral law as an overriding system of action-guiding principles. I treat complicity as the opposite moral phenomenon. I argue that the wrongness of complicity stems from the fact that in expressing a positive P-state toward a primary agent’s wrongdoing, the complicit agent also expresses antipathy and indifference toward the moral law and sets himself against the moral law and the moral way of life. Thus, the reasons that underlie our practice of blaming are analogous to the reasons we have for avoiding complicity.

In the last part of Chapter 4, I explore the question of whether the prima facie wrongness of complicity can vary in degree. I argue that it can vary in degree and point out three different axes along which it might vary. First, I argued that the more wrong the primary act, all things being equal, the worse the complicity. Second, I argued that all-things-being-equal complicity is worse if it involves conduct that is intentional rather than negligent. Finally, I argued that complicity varies with the strength of the complicit agent’s expression and that the strength of the expression involves both its intensity and the certainty with which it is expressed.

Finally, in Chapter 5, I take the expressivist account of complicity developed in the first four chapters and apply it to three different cases. First, I examine the case of the stem cell researcher who uses stem cells derived from the destruction of an embryo. Second, I examine the case of a clinician who is asked to refer a patient for physician-assisted suicide. Finally, I examine a case put forward by Christopher Kutz involving the bombing of Dresden
during World War II. In each case I analyze how the conduct involved might or might not expressively align the involved agents with the primary agent’s wrongdoing.
Chapter 1
An Expressivist Account of Complicity

1. Introduction

Complicity is conduct through which one agent creates or allows to be created a relationship between himself and another agent’s wrongdoing which is *prima facie* wrong and which makes the complicit agent a candidate for blame. It is common to explicate this relationship in causal or quasi-causal terms. In this chapter, I will offer an alternative account.

The account that I will defend identifies complicity with expressive conduct that either itself aligns one with another agent’s wrongdoing (this agent, the agent with which the complicit agent is complicit, from now on will be identified as the primary agent) or offers no resistance to one’s alignment with another agent’s wrongdoing. What is meant by *align* here is to be in a position of *standing with or supporting* the primary agent’s wrongdoing and thereby *identifying oneself* with that wrongdoing.

In section 2, I will give a more formal definition of complicity that will form an outline of the discussion that will take place in section 3. In section 3, I will explicate each part of the definition given in section 2 but will focus especially on what it means to expressively align oneself with a primary agent’s wrongdoing. In doing so, I will make extensive use of

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4 See for instance Sanford H. Kadish, “Complicity, Cause and Blame: A Study in the Interpretation of Doctrine,” *California Law Review* (March 1985): 329-409 and Judith Lee Kissell, “A Comprehensive View of Complicity as Positive Collaboration and Toleration of Evil” (Ph.D. diss., Georgetown University, 1996). Usually, on these accounts the complicit agent is not “the cause” of the wrongdoing, however. The causal connection between the complicit agent and the primary agent’s wrongful act is different from the causal connection between the primary agent and his own wrongful act. On these accounts usually the primary agent alone is “the cause” of the wrongdoing, and the complicit agent has a different, weaker causal or quasi-causal role.
William Alston's recent work on illocutionary acts. I will explain expressively aligning oneself with a primary agent's wrongdoing in terms of a particular illocutionary act—expressing a positive or pro-psychological state (P-state) toward that wrongdoing. I will use various cases to explicate, defend, and revise the definition given in section 2. Toward the end of section 3, I will give a revised definition that emphasizes the importance of the complicit agent's beliefs regarding the primary agent's conduct. I will also discuss certain situations in which, because of the agent's external relation to a primary agent's wrongdoing, an intentional or negligent failure to expressively distance himself from that wrongdoing (e.g., silence), results in the agent de facto aligning himself with that wrongdoing.

In section 4, I will discuss how on this account, complicity is neutral with respect to time. That is, an agent, who is not now complicit, may expressively align himself with an act that has yet to occur, is occurring, or has already occurred. I will also discuss a special type of complicity that occurs after the primary wrongful act has been done—accepting a benefit that causally derives from a primary agent's wrongdoing.

In section 5, I will discuss the terms intentional and negligent as applied to complicity. I will discuss how intentionality and negligence can enter in at the level of expression and at the level of prima facie wrongness.

In section 6, I will briefly discuss the similarities and differences between complicity and the related ideas of blame, punishment, and a duty to intervene. In section 7, I will address two objections to the account that I have laid out. Finally, in section 8, I will give a brief conclusion.

6 Technically, a primary act must occur before an agent can be complicit. That is, there must be an act with which the complicit agent is complicit. My point here is that the complicit agent's conduct can occur before the primary agent performs his wrongful act.
2. Definition of Complicity

In this brief section, I will give a more formal definition of complicity. Before I present this definition however, I need to make a clarification about the relationship between complicity and causality. As I mentioned in section 1, the account of complicity that I will be presenting and defending does not require a causal connection between the complicit agent and the primary agent. However, by this I do not mean to imply that complicity does not many times involve a causal relationship with the primary agent’s wrongdoing. In fact, many cases of what I call expressively aligning oneself with a primary agent’s wrongdoing involve an act that causally facilitates the primary wrong and also expresses a positive P-state toward the primary wrong. In Chapter 2, I will deal specifically with this special type of complicity. That being said, what I am presenting in this chapter is not meant to be an account of one type of complicity. It is meant to be a general account of complicity. My claim is that all acts of complicity share common features that make them complicit. These common features are given below:

Def. 1.1

Complicity is a violation of a prima facie moral duty not to voluntarily and either intentionally or negligently expressively align oneself with the wrongdoing of a primary agent by expressing a positive psychological state (a P-state) toward that wrongdoing.

3. Explication of the Definition

In this section, I will carefully explicate the various parts of the definition of complicity just offered. I will begin by giving an account of expressive alignment that will form the bulk of section 3. I will then consider the claims that complicity involves conduct, that this
conduct must be voluntary, that this conduct involves a relationship with another agent’s wrongdoing (a primary agent), and that this conduct is a violation of a *prima facie* duty.

*An account of expressive alignment*

In this section, I will begin by offering an account of the kinds of acts that expressively align a complicit agent with a primary agent’s wrongdoing. These, I will suggest, are illocutionary acts involving the expression of a positive psychological state (or P-state) toward the primary agent’s wrongdoing. I will then offer a rough categorization of the various types of P-states that are expressed in complicity. I will also discuss the requirement that a complicit agent be aware (or negligently unaware) of the normative character of the act with which he is expressively aligning himself. I will then offer a revised definition of complicity that formalizes this requirement. Next, I will contrast complicit conduct with a situation in which an agent who is non-negligently unaware of the normative character of the primary agent’s act expresses a positive P-state toward that act. I will argue that sometimes this latter situation involves a deformation in character, which I will call corruption. Next, I will argue that expressively aligning oneself with a primary agent’s wrongdoing by expressing a positive P-state toward that wrongdoing is a form of self-identification with the primary agent’s conduct. Finally, I will discuss instances of an agent finding himself in a context which creates an affirmative obligation to expressively distance himself from the primary agent’s wrongdoing. In such a context, which I will call a *complicit context*, non-action (e.g., silence) results in the agent *de facto* aligning himself with the primary agent’s wrongdoing and becoming complicit with that wrongdoing.
EXPRESSIVE ALIGNMENT OCCURS THROUGH ILOCUTIONARY ACTS

What follows is what I take to be a straightforward case of moral complicity. I present it now in order to use it as a heuristic in explaining the nature of expressive alignment.

Case 1.1

Al is waiting to be initiated into a violent street gang with whom he has been recently associating himself. The gang regularly threatens local business owners with violence unless they pay “protection money” each month. When one local business owner refuses, the gang kidnaps his daughter. In order to send a message to this owner and any others who might be thinking of standing up to them, the gang members beat and rape the young woman repeatedly. However, since Al is a new member, he is not allowed to participate in the kidnapping, rape, or beating. Al stands close by where the gang members can hear and see him, cheering as each takes his turn raping the young woman. Afterwards, Al congratulates each of the gang members.

In this case, Al does not causally participate in the kidnapping, the rape, or the beating. Moreover, let us stipulate that his cheering and congratulating does not have any causal effect on the gang members. They would have kidnapped, beaten, and raped this woman even if Al had not cheered them on and even if he had begged them not to. In spite of this fact, my judgment is that Al has done something wrong, and that the wrong he has done is an act of complicity. On my account, he is complicit with the rapists because he expressively aligns himself with their wrongdoing. He stands with the rapists in their act, and he expressively supports their act. In so doing, he identifies himself with that act.

But what is Al doing in this case? He cheers on the rape and congratulates the rapists after the fact. Both of these acts involve using language and/or non-verbal conventions or signs to do something. The something that Al is doing, I think, is best captured by the term expressing. And expressing, at least the sense of it that I am concerned with, is a type of illocutionary act.
Since J. L. Austin introduced the notion of an illocutionary act in his work *How to Do Things with Words*, several writers have attempted to explicate and refine this notion. I have found William Alston’s recent account of illocutionary acts—especially his account of *expressives*—particularly helpful in making sense of the type of act that expressively aligns a complicit agent to a primary agent’s wrongdoing.

On Alston’s account, all illocutionary acts are essentially rule-governed linguistic acts. The role of illocutionary rules is at least two-fold. First, these rules must be followed if the illocutionary act that is performed is to come off as non-defective. According to Alston, the fundamental illocutionary rule that governs *expressing* is as follows: *Have* those attitudes, beliefs, or desires that one *conveys* through linguistic acts. Suppose, for example, that at a party, A overhears B telling C that A’s sculpture is an eyesore and then later B tells A, “Your sculpture is quite beautiful”. In this case, A would be correct to think that B’s expression of praise for his sculpture is defective (in this case the defect is insincerity) because B broke the illocutionary rule by conveying a positive attitude or belief that he did not have.

There is, however, a second and more fundamental role for illocutionary rules. These rules also play a constitutive role. For Alston, what it means to express some psychological state P is *to take responsibility* for it being the case that the illocutionary rule is followed—to take responsibility for it being the case that one actually has P. To be clear, Alston is not saying that one does not express P if one does not follow the illocutionary rule (does not actually have P). Rather, one does not express P if one does not take responsibility for it.

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9 For Alston, linguistic acts are to be construed broadly enough to cover cases of non-verbal communication. However, while Alston limits illocutionary acts to conventional acts, I will expand the scope of acts that can function as a vehicle of expressing to include those that are non-conventional, reliable signs of an agent’s
being the case that one has P. One can express P even while violating the illocutionary rule; however, in so doing, one’s expression is defective, and one becomes a legitimate object of blame, criticism, or correction.\textsuperscript{10} For example, one might express contempt for a person without actually possessing a contemptuous attitude toward that person. Alston writes,

Provided I say the right things (realizing what I am saying) I have expressed contempt for A, whether or not I am actually contemptuous. If it turns out that I did not feel contempt for A, I can be upbraided for expressing contempt when I didn’t actually feel that way. That would be a natural way to charge insincerity, and it presupposes that I did express contempt.\textsuperscript{11}

Alston goes on to give an explicit account of “all illocutionary acts that consist in the expression of some psychological state”.\textsuperscript{12} He defines expressives as follows: “U [a speaker] expressed a P (some psychological state [which could be a belief, desire, or an attitude]) in uttering S [some sentence] iff in uttering S, U takes responsibility for it being the case that U has a P”.\textsuperscript{13}

For Alston, to take responsibility means something akin to knowingly using a linguistic device to convey something.\textsuperscript{14} In another part of his discussion, however, Alston does allow for unintentional illocutionary acts. He writes,

But if we do recognize unintentional illocutionary acts, how could they be treated in my theory? They don’t involve R’ing [taking responsibility for] the relevant conditions. Nevertheless, a simple modification will accommodate them. In such cases one’s utterance becomes (prima facie) subject to incorrectness in case of not-p, even though one doesn’t deliberately make it so. In terms of rules, it falls under a certain rule because of the character of the sentence and the nature of the context, even though the speaker hasn’t knowingly put it under that rule. Hence we can bring out what makes an unintentional illocutionary act the act it is by specifying that the utterance has the normative status that the speaker would have intentionally given it had the act been intentional. We can define a variant of ‘R’; call it ‘R-U’ (‘U’ for ‘unintentional’). If R’ing that p is deliberately psychological state. In the next chapter, I will argue that intentional or negligent causal facilitation functions as just such a non-conventional sign.

\textsuperscript{10} This is not necessarily moral blame, criticism, or correction.
\textsuperscript{11} Alston, 107.
\textsuperscript{12} Alston, 109.
\textsuperscript{13} Alston, 109. Brackets added. Again, Alston also allows for non-verbal linguistic acts.
\textsuperscript{14} Alston, 134-142.
putting oneself in such a position that one is subject to correction in case of not-\( p \), then R-U’ing that \( p \) is being in such a position by virtue of one’s utterance, though not by deliberately putting oneself in that position. By substituting ‘R-U’ for ‘R’ throughout we can transform any analysis of an illocutionary act concept into an analysis of a concept that applies indifferently to intentional and unintentional performances.\(^{15}\)

On Alston’s account, an agent takes responsibility for it being the case that he has some psychological state \( P \) when he deliberately puts himself in a position such that he is subject to correction in the case he does not have \( P \), and the agent can sometimes be held responsible for it being the case that he has \( P \) when his act, done in the context in which it is done, puts him in a position such that he is subject to correction in the case he does not have \( P \).\(^{16}\)

What kind of position is this? While I am not sure exactly how Alston would answer this question, for the purposes of this account of complicity, I take this position to be one in which knowledge of the agent’s performance of the act would provide a third party with epistemic warrant for the belief that the agent has \( P \). And I take it to be the case that such a warrant would exist in cases in which the agent’s act is conventionally used to indicate the presence of \( P \) or is a reliable sign of the presence of \( P \) and in which there are minimal or no epistemic defeaters.\(^{17}\) Thus one expresses \( P \), one takes responsibility or is held responsible for having \( P \), when one intentionally or negligently performs an act, in the absence of

\(^{15}\) Alston, 142.

\(^{16}\) Ibid. I will argue that an agent is only held responsible (as opposed to the agent taking responsibility) for it being the case that he has \( P \) when he is somehow negligent in performing an act knowledge of which would provide a third party with epistemic warrant for the belief that the agent has \( P \).

\(^{17}\) By epistemic defeaters, I mean conditions that would give one reason to think that the act performed is either being used in some non-standard way or in a way other than a natural indicator of \( P \). For example, one might say, "I think that your outfit is beautiful" in a sarcastic manner which the listener understands as sarcasm. Since in this case, the sarcastic tone undermines the conclusion that the speaker actually has a positive belief about the outfit, then it is not the case that the speaker can be said to have taken responsibility for it being the case that he has such an attitude, and it is not the case that the speaker actually expresses a positive attitude in this case. It may be the case, that in some situations there may be both reasons to think the linguistic act is being used in a standard, conventional manner to express a positive \( P \)-state toward a primary agent’s wrongdoing and reasons to think that it is not. In cases like this, I am inclined to think that it might be indeterminate whether or not the agent actually expressed a positive \( P \)-state toward the primary agent’s wrongdoing. Moreover, if it is indeterminate whether or not the agent actually expressed a positive \( P \)-state, then it is indeterminate whether or not the agent is complicit. I think that this is consistent with our epistemic intuitions that in some complicated
epistemic defeaters, that *would* provide a third party with warrant to believe one has P (none actually need to infer that one has P in order to perform the act of expressing P; there only need be the appropriate warrant for inferring that one has P).

In the case 1.1, in cheering on the rapists and congratulating them after the fact, Al takes responsibility for expressing a positive P-state\(^{18}\) toward their activity. Case 1.1 does not state whether Al did, in fact, have such a positive P-state. However, even if Al did not *have* a positive P-state, on Alston’s account, Al’s act would still be an instance of *expressing* a positive P-state. Suppose, for example, that Al actually had a negative attitude toward the rape (perhaps he thought it was a waste of time or that it was unnecessarily messy) and cheered on the rape not because he had a positive attitude, belief, or desire toward it but because he wanted to be accepted by the gang (call this case 1.2). One might have a complaint against Al that his expression was insincere but his act would still be an expression.

To express P is to take responsibility (or to be held responsible) for having P, and in this case, Al surely takes on this responsibility even if he does not have P. Al can be said to have taken on this responsibility because he acts with the knowledge that what he is doing will provide others with warrant to infer that he has a positive P-state toward the rapists’ activities.\(^{19}\) The warrant comes from the fact that his act conforms to conventions that are indicative to others that he has the positive P-state.\(^{20}\)

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\(^{18}\) A positive P-state toward X is a belief, desire, attitude, or some other psychological state that is positively oriented toward X. An example of a positive belief toward X would be a belief that X is good or valuable. An example of a positive desire toward X would be a desire for X to be done. Examples of positive attitudes toward X would include being pleased by X, enjoying X, liking X, etc. I will discuss this topic more in what follows.

\(^{19}\) Alston does not put this in terms of knowingly acting so as to provide others with warrant for an inferring that one has P, but I’m not sure that he would object either.

\(^{20}\) See Alston, 28-30.
Suppose, however, that this was not the case. Suppose that AI did not know that his acts would provide others with warrant to infer that he has a positive P-state toward the rapists’ activities. Is it the case that simply providing others with such a warrant is enough to make one responsible? Under such circumstances, does one express a positive P-state? I think not. Consider the following case:

**Case 1.3**

Shelby is an ardent bird watcher and has always wanted to see firsthand, in its natural habitat, an example of a certain rare species of parrot. This particular species of parrot, however, is native only to a certain South American country in which there is a considerable amount of social and political unrest. Shelby, who is not very informed about such matters, decides to travel to this country anyway to see the rare bird. Shelby has been told by experts that the bird is attracted to bright colors, so on the day that he goes out into the jungle to look for the bird, Shelby wears a bright red shirt with bright yellow pants which he bought in a local second hand clothing store. As it turns out, Shelby is lucky enough to observe the rare parrot and even gets pictures. When Shelby returns from the jungle on his way to his motel he sees a large group of people all of whom are wearing bright red shirts and bright yellow pants. Intrigued by the crowd, Shelby wanders over and finds that all of the people seem to be celebrating. In a festive mood himself because of the success of his bird-watching expedition, Shelby joins in the celebration. However, after about an hour of celebrating, a young angry-looking man wearing a bright red shirt and bright yellow pants appears on a nearby stage and starts shouting. The crowd responds to the young man with wild cheering. Shelby, who doesn’t speak the native language, is so giddy about having seen the rare parrot that he joins in the cheering as well. All of sudden two other young men drag an older man on stage and the angry looking man pulls out a pistol and shoots the man repeatedly in the head. As the old man slumps to the ground, the crowd cheers wildly. As they cheer, some of the crowd pick Shelby up and carry him around the local square. When they finally put Shelby down he returns in shock and disgust to his motel where he learns that the crowd was part of a movement to overthrow the government, that the old man was the father of an influential member of the national parliament who had been kidnapped by leaders of the revolutionary movement, and that the party was to celebrate his execution. Because Shelby had come to the rally dressed in the garb of the revolutionaries and had celebrated with them, they had concluded that he had come to support their cause. The members of the crowd that carried him around on their shoulders did so out of gratitude for his support.

In this case, members of the crowd infer from Shelby’s conduct (e.g., the wearing of the group’s colors, the partaking in the celebration, and the cheering during the speech) that he has a positive P-state toward their movement and toward the killing of the old man. In
addition, I think that they are warranted in inferring this from Shelby's actions. I don't think, however, that Shelby actually expressed a positive P-state in this case. Shelby did not intend his actions to be interpreted the way that they were. He was ignorant of how the members of crowd were interpreting his actions. In this case, Shelby did not take on the responsibility for following the rule implicit to expressing a positive attitude. He didn't agree to play the same language game that the crowd was playing. Alston writes about the game-like character of illocutionary acts. He writes,

The Rules alluded to . . . are more likes rules of games than like traffic regulations. Traffic regulations apply to one's driving willy-nilly, whatever one might choose. If one is stopped by a policeman for speeding, it will cut no ice to say, "I didn't choose to subject my driving to that regulation". But rules of games are or can be, different. One has the latitude, within limits, to decide when one is playing a game and, hence, to decide when the rules of the game apply to him. Think of the rule in tennis that requires that in serving one's feet must be back of the baseline before one's racket touches the ball. This rule applies only when one is playing a point for score-keeping purposes. It does not apply when one is warming up. Consider a situation in which it is up to the players when they are playing for points and when they are just hitting the ball. Here it is up to the players when the foot-faulting rule applies to what they are doing. Illocutionary rules, as I will call them, have that kind of status. In formulating the rules, we will have to stipulate that the conditions they lay down are necessary for permissible utterance only within a certain sphere of activity, only when U is playing the appropriate "language-game". And it will be up to U whether she is doing that at a given moment. For example, no matter what the "standard" illocutionary act potential of a sentence, it is always possible for a speaker to use the sentence to practice pronunciation or test a microphone. Moreover, many sentences have more than one standard illocutionary act potential. 'He got a good hand' can be used to report that he received a lot of applause or that he hired a good worker. Thus it depends on the intentions of the speaker just what rules apply to a particular utterance of the sentence.21

As I mentioned earlier, negligent conduct can sometimes make an agent complicit. However, while Shelby's actions unintentionally gave others a warrant for concluding that he supported their cause, I do not think that Shelby's actions were negligent. One way to be negligent and as a result be held responsible for expressing P is to perform an act that gives others warrant for inferring that one has a positive P-state when one should have known that
the effect of the conduct would be to provide such a warrant. In case 1.3, however, I do not think that Shelby should have known that his conduct would give the impression that it did. Shelby seems to have been in the wrong place at the wrong time with no reason to expect that there would be a public assassination or that his behavior was giving the strong impression that he was in favor of the public assassination.

This case helps to make clear the role that I see intentionality and negligence playing in my account of expressive alignment. An agent expressively aligns himself with a primary agent’s wrongdoing when he expresses a positive P-state toward that wrongdoing. He expresses a positive P-state toward a primary agent’s wrongdoing when he takes responsibility for it being the case that he has P or he is held responsible for it being the case that he has P. An agent takes responsibility for it being the case that he has P when he intentionally performs an act in the absence of epistemic defeaters that conforms to a convention that indicates he has P or that functions as a nonconventional yet reliable sign that he has P. An agent is held responsible for it being the case that he has P when he unintentionally and negligently performs an act in the absence of epistemic defeaters that conforms to a convention indicating that he has P or that functions as a nonconventional yet reliable sign that he has P. Both performing an act that is a convention indicating P or an act that is a nonconventional yet reliable sign of P function as ways one can give a third party warrant to conclude that one has P.

As the last paragraph indicates, I make negligence a condition of expressing P when one does not take responsibility for it being the case that he has P. Therefore, since Shelby’s conduct was not negligent, even though it did provide the members of the crowd with

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21 Alston, 62.
warrant to conclude that he had P, Shelby did not express P. The addition of negligence here is my own modification to Alston’s account.

What are we to make of a different kind of case in which an agent actually tries to make use of a convention to convey a positive P-state toward a primary agent’s wrongdoing but is thwarted because those around him aren’t aware of the convention? Is it necessary for others to correctly draw the warranted inference in order for one to express a positive P-state? Surely not. One can, for example, express disgust at something and be out of earshot of anyone else or express surprise at the amount of one’s holiday bonus even if no one is around to hear. We use the term *express* in a way that allows us to express a P-state even if no one is around to receive what is expressed. However, what if there is someone there to interpret the linguistic act? Consider another case involving the same South American country.

**Case 1.4**

*Tom is a student at a local university who hears about the radical revolutionaries in the South American country from his biology professor, Shelby. Tom is attracted to their anarchist views and wants to go to the country and demonstrate his solidarity with their cause. When he arrives in the country, he makes his way to a small village not far from where Shelby stayed and tries to find out information about the group’s next rally. Since killing the father of the MP, the group has recruited numerous new members. Tom finds out that they are holding a secret rally in a jungle clearing to celebrate their cause by killing a child of another influential MP. Excited about attending their event, Tom tries to find out how he can best show his support for the group. At a local bar, he meets two men who are members of the group, and he asks them what he should do. The men tell Tom to just show up at the meeting wearing a red shirt and yellow pants and shouting the group’s secret slogan, which they tell Tom. Tom, full of excitement, makes his way to the meeting and arrives just as a man on stage is about to shoot the child. He walks up to the outer edge of the crowd smiling and shouting the slogan he had been taught. To his surprise, some members of the crowd grab him, beat him, and tie him upside down to a tree. About a day later, other members of the revolutionary group find Tom and untie him. They apologize and tell him that the people who assaulted him were new members of the group and did not yet know the secret slogan. Since Tom was a foreigner, they attacked him.*

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22 By negligence here I mean that the agent did not take due care before he acted to consider whether or not his act would give those around him warrant to conclude that he had P.
In this example, Tom surely takes responsibility for it being the case that he has a positive P-state in regards to the anarchists’ wrongful activities. Not only does he take responsibility for it being the case that he has a positive P-state—he actually has a positive P-state. The problem here is that Tom’s attempt to convey his P-state doesn’t get through to those members of the crowd that attack him. In this case, I want to say that Tom still expresses a positive P-state and still expressively aligns himself with the wrongdoing. Tom uses the right conventions, and he takes responsibility for it being the case that he has a positive P-state; however, the new members of the group that attack Tom are not familiar with those conventions. In case 1.4, I am inclined to say that Tom expressively aligned himself with the killing of the child, but those around him didn’t know it.

This leads us into another question: Under what circumstances would one’s attempt to express a positive P-state toward a wrongful act be so deformed that it just didn’t come off? I don’t think we want to say that simply taking responsibility for it being the case that one has P is by itself sufficient for any utterance whatsoever to count as expressing P. For example, suppose that instead of going to the South American country and doing what he did, Tom stayed at home and purported to expressively align himself with the anarchists’ wrongful acts by reciting out loud names and numbers from the local telephone directory (call this case 1.5). Suppose Tom really thought that this was an act of expressing a positive P-state toward the anarchists’ activities. Wouldn’t Tom be mistaken?

I think so. Reading the listings out of a phone book does not express a positive P-state toward the anarchists’ activities because this act neither conforms to a convention nor is a reliable sign that could provide a third party with a warrant for inferring that Tom actually
does support the anarchists. The thought here is that in order to express P one must make use of a system of conventional meaning or at least an act that is a reliable indicator of P.

In case 1.4, Tom does make use of a conventional system. The new members of the group haven’t learned their own conventions yet so Tom’s expression of a positive P-state is not understood. However, in the case in which Tom reads phone book listings, such an act would not provide others with a warrant to conclude that he has a positive P-state toward the anarchists’ activities. There isn’t any conventional relationship between expressing support for someone and randomly reading phone listings out of a phone book, nor does reading listings out of a phonebook reliably indicate the presence of positive P-state toward some object. In order for there to be an illocutionary act of expressing, an agent must either take responsibility for it being the case that he has P or be held responsible for it being the case that he has P. It is my claim that in order for an agent to be responsible for expressing, whether intentionally or unintentionally, the agent must either make use of a conventional system or a non-conventional yet reliable indicator that would provide warrant to a third party to conclude something about one’s psychological state.\footnote{I will argue in the next chapter that causally facilitating another’s wrongful acts is a type of reliable sign that provides others with warrant for concluding that an agent’s has a positive P-state toward a primary agent’s wrongful act.} Otherwise, there is no expression, and if there is no expression, there is no complicity.

Alston writes about the importance of the conventional nature of illocutionary acts in the following paragraphs:

So far I have ruled that sentential acts can be performed by the use of derivative sentence surrogates. But why the restriction to derivative ones? To be sure, it is an important fact about human life that language has been the primary form of communication. All other human systems of communication, at least within historical times, have been based on language. Smoke signals as well as conventionally significant gestures have arisen as substitutes for speech, ones that are more convenient in certain situations. But this is a contingent fact about the way the things have developed. It is
conceivable that human beings, or other intelligent agents, might develop some nonlinguistic system as their basic, underived conventional means of communication. If so, shouldn’t we say that for those folk the production of nonlinguistic vehicles would underlie illocutionary acts in an underivative way? I cannot see why we shouldn’t. But then the category of sentence surrogate will have to be enlarged to include any perceptible device that has the kind of communicative role that some sentence in a language might be given, whether any sentence in any language has that role or not . . . .

Alston goes on to argue, however, that illocutionary acts should be restricted to conventional linguistic vehicles that serve as a sentence surrogate. As he puts it, “Our widened notion is still restricted to devices that are fitted by a rule or convention to have the same communicative function some sentence might”. Alston thinks that “illocutionary acts cannot be performed save by ’conventional devices’”. Here Alston argues against a position taken by Schiffer. Alston writes,

On his account of illocutionary acts . . . to perform an illocutionary act of a certain type is to do something with a certain kind of intention of affecting the beliefs or behavior of one’s auditor(s). So long as one does what one does with the right kind of perlocutionary intention, one has performed a certain illocutionary act, whatever the character of the more basic act. On his view it is no part of the concept of, for example, asking someone for a match, that one employs a device that is conventionally tagged for that job.

It will help to consider this issue between Schiffer and myself to think about situations he and I would categorize differently. Consider cases in which persons, who share no common language, or other conventional symbol system, attempt to communicate with each other. Suppose that Christopher Columbus, on landing in the West Indies, was short on drinking water and wanted to obtain some from the natives. He might attempt to look and act very thirsty, following by going through the motions of drinking and then making imploring gestures to the natives. He has exploited no conventions, even of the temporary ad hoc sort. Or, to use Schiffer’s favorite example, in the absence of a common language I might utter ‘Grr’ to convey to someone that I am angry. Here I imitate a natural expression of the state I want my audience to realize that I am in.

Now consider whether we would use illocutionary act terms to report these doings. Suppose that Columbus, when giving his report of the voyage to Queen Isabella, said at this point in his narrative, “And then I asked them for some water”, or “I told them that we were very thirsty”, or “I expressed a desire for water”. The Queen might well have

24 Alston, 28.
25 Alston, 28.
26 Alston, 29.
cried out in surprise "You mean that they could speak Spanish!". This indicates that when an illocutionary act term is used we take it that the user is reporting the activity as involving the use of language, or at least the use of some conventional surrogate for language. What Columbus should have said is that "he tried to get across to the natives that he and his men were thirsty", or that he "put on a pantomime in the attempt to bring them to realize . . .", or that he attempted to communicate to them that . . .". In the absence of conventional devices what went on is describable as an attempt at a certain effect, rather than as an illocutionary act. I would make the same negative judgment about the claim that the person who went "Grr!" was "telling his companion that he was angry". These attempts to get some idea across to someone by natural, nonconventional means are much further removed from natural characterization in IA terms than the conventional use of gestures in a special code illustrated above.28

In these paragraphs, Alston describes the importance of rules or conventions in order for a linguistic act to be an illocutionary act. Unless a purported expression is covered by a rule or convention then one cannot be said to have expressed an attitude, desire or belief. Here I part company with Alston although I am not quite sure how substantive the disagreement really is.

It is my position that one can express a positive P-state toward an agent using a nonconventional (or natural) but reliable sign. For example, suppose that when Columbus landed he sees a native about to be eaten by a wild animal and saves the native from the beast. Suppose then that the native comes back with a whole group of natives, and they offer Columbus gifts, food, and water. These acts, although non-conventional, would be reliable signs of positive attitudes and beliefs toward Columbus's act. Now we might not get much more specific than this, but it seems that we can say rightly that the natives expressed positive attitudes and beliefs toward the act—even if we are not sure exactly what these positive attitudes and beliefs are. That is, it seems clear that an agent can express the directionality (positive or negative) of a P-state through non-conventional yet reliable signs even if the specific form (happiness, thankfulness, etc.) of the P-state is opaque.

28 Alston, 28-29.
While I am not sure if Alston would accept this view, I don’t think that simply claiming that the use of reliable signs are ways to express a pro-stance puts me all the way into Schiffer’s camp. As I understand Schiffer’s position, what matters is that the agent has a particular perlocutionary intent when he attempts to express. On my account, however, one need not have any perlocutionary intentions, and even if one does have a perlocutionary intention, one’s act might not count as an expression if the act one performs is not a reliable indicator of having a certain P-state.

Suppose, for example, that Columbus upon landing had wanted to express his puzzlement to the natives over the fact that they wore little clothing. Suppose that in order to express this puzzlement he stood and scratched his head. It seems to me that his act would not count as an expression of puzzlement because in such a context merely scratching one’s head is not a reliable sign of puzzlement. The natives could have reasonably thought that Columbus simply had an itch, for example.

In the next chapter, I will use the fact that one can express a positive P-state through non-conventional yet reliable signs to argue that the expressivist account can bring within its scope paradigm cases of causal complicity as well as non-causal complicity. I will argue that intentional causal participation in another’s wrongful activity, in addition to its causal properties can function as an expression of a positive P-state toward that wrongful activity and result in complicity. Causal facilitation then, is another way that an agent can take responsibility (or be held responsible) for it being the case that he has a positive P-state toward the primary agent’s wrongdoing.

Let me take a moment to sum up the discussion thus far. To expressively align oneself with another agent’s wrongdoing involves performing the illocutionary act of expressing. I
have used William Alston’s account of illocutionary acts to help clarify what I mean by expressing. For Alston, expressing, along with all illocutionary acts, is a rule-governed, linguistic act. Illocutionary acts are governed by rules in the sense that if the rules are not followed then one’s illocutionary act is defective, and the agent performing the illocutionary act is liable for criticism, blame, or correction. The important illocutionary rule governing expressing is that one should have the P-state (psychological state) that one is expressing. Thus, if one expresses contempt for X without be contemptuous of X, then one’s illocutionary act is defective and one is liable for blame, criticism, or correction (in this case for being insincere). In order to perform the illocutionary act of expressing P, however, one need not actually have P; one only must take responsibility or be held responsible for having P.

On the expressivist account, one takes responsibility for P when one intentionally acts in a way which would give a third party warrant to infer that one has P, and one is held responsible for P when one unintentionally but negligently acts in a way which would give a third party warrant to infer that one has P. Performing an act that conventionally indicates one has P or performing an act that is a non-conventional but reliable indicator of P are means through which one’s act could provide warrant to a third party.

On the expressivist account, it is not necessary for expressing P that an agent actually have P (case 1.2), it is not sufficient for expressing P that an agent’s act simply gives a third party warrant to conclude that he has P—the act must be intentional or negligent (case 1.3), it is not necessary for expressing P that others actually conclude that an agent has P (case 1.4), but it is necessary for expressing P that the agent’s act be either a conventional device or a
non-conventional, reliable sign which could function to give a third party warrant to conclude that one has P (case 1.5).

**POSITIVE P-STATES AND A REVISED DEFINITION OF COMPLICITY**

In the last section, I gave an account of complicity as expressive alignment and described expressive alignment as a type of illocutionary act—an act of *expressing*. In doing so, I made use of William Alston’s account of *expressives*. On Alston’s account, an agent expresses when in performing a linguistic act he takes responsibility (or is held responsible) for it being the case that he has a particular psychological state such as an attitude, desire or a belief.

These states all have intentional objects associated with them. One has an attitude *about* something, or a desire *for* something, or a belief *about* something. In the context of complicity, the intentional object of the P-state for which one is responsible is the wrongdoing of another agent. Thus, to expressively align oneself with the wrongdoing of a primary agent is to be responsible for having a positive attitude, desire, or belief, which has as its object the primary agent’s wrongdoing.

What kinds of attitudes, desires, or beliefs about another agent’s wrongful act X count as *positive*? Attitudes that fit this description include *liking* or *enjoying* X, *being ecstatic* about X, *being committed* to X, *being satisfied* about X, etc. These are just some of what I will call positive or favorable attitudes which when expressed by an agent about another’s wrongdoing can result in complicity. The group varies in degree and kind. Liking, enjoying, and being satisfied about X are positive attitudes of a lesser degree than being ecstatic about X. Being committed to X is an attitude of *readiness* to defend the doing of X, assist in the doing of X, or encourage those doing X. Unlike the others mentioned, it is an attitude that
almost demands exemplification through action. Without much energy, we could add more examples to this list.

Desires that are favorably inclined toward the doing of X include wanting X to be done or, what is slightly different, wanting some person to do X. Like attitudes, desires for something to be done can vary in regards to intensity. One can have stronger or weaker desires for something to be done or for someone to do something.

The types of favorable beliefs that I think come into play with regard to complicity involve positive evaluations of the wrongful act. For example, one might express the belief that the wrongful act is permissible or obligatory or the belief that the wrongful act is not as wrong as it really is.

These beliefs by definition are false. This fact leads us to an interesting question. Does it matter whether or not an agent who expresses a positive belief about a primary agent’s wrongful conduct believes that the conduct is wrong? That is, is an agent that sincerely believes that a primary agent’s wrongful act is permissible, complicit with that wrongful act if he expresses his mistaken belief? Or must the agent actually believe that the primary agent’s wrongful act is wrong? The question can be generalized further: Is an agent who sincerely believes that a primary agent’s wrongful act is permissible complicit with that wrongful act if he expresses a positive P-state toward it?

My judgment here is that an agent who expresses a positive P-state toward a primary agent’s wrongful act but non-negligently believes that the primary agent’s wrongful act is not wrong, is not complicit with that wrongdoing. My reasons for this judgment stem from a particular understanding of what it means to align oneself with the wrongdoing of another. The agent, who believes that the primary agent’s wrongful act is morally permissible and
expresses a positive P-state toward that act, is not expressing a positive P-state toward the act’s wrongfulness. By hypothesis, the agent does not realize that the act has this property. And it is an alignment with this property of the primary agent’s act that I think is constitutive of complicity. The complicit agent intentionally or negligently aligns himself with the wrongfulness of the primary agent’s act. He makes a decision to identify himself with the wrongfulness of the primary agent’s act.

This understanding helps us to make sense of how someone can express admiration for a thief’s ingenuity in stealing but still not be complicit with that thief’s act. As long as the expression of admiration is for some sub-set of properties belonging to that act, and this set does not include the property of wrongfulness, the expression does not identify the agent with the wrongfulness of the thief’s act.  

But to go back to the case involving the expression of beliefs, why would a complicit agent express what he believes to be false? A complicit agent might express what he believes to be false evaluations of an act to affect how others view the act or in an attempt at self-deception. That is, the agent might want to change his own belief that the act really is wrong and use the illocutionary act of expressing the false belief as a tool to help him change his own mind about its wrongness. The point here is that complicity is not an epistemic mistake; it is a failure to attach the appropriate respect and value to the moral law. I will discuss this

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29 This same question could be asked in regards to the degree of wrongness.

30 An interesting question arises at this point. What if the agent expresses a positive P-state toward a property such as the violent nature of the act, which may, in fact, be the property upon which the property of wrongfulness supervenes, yet the agent, still does not see the act as wrong? I am still reluctant to make this a case of complicity. Unless the underlying property toward which the agent expresses a positive P-state is somehow constituted by the property of wrongfulness (such as if someone understood harm to be a wrongful, set back of someone’s interest and then expressed a positive P-state for the harmfulness of an act), I don’t think that expressing a positive P-state toward that property is the same as expressing a positive P-state toward the wrongfulness of the act. One might, for example, think that violence is sometimes morally permissible and this particular case represents such a permissible instance. Expressing a positive P-state toward violence does not equate toward expressing a positive P-state toward wrongfulness.
idea in more detail in Chapter 4; however, for now we need to modify our definition in the following manner in order to capture this claim:

Def. 1.2

Complicity is a violation of a prima facie moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of another moral agent (a primary agent) or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent.  

COMPLICITY AND CORRUPTION

Nevertheless, what are we to make of those people who don’t believe that the conduct toward which they express a positive P-state is wrong when, in fact, it is? As with much of ethics, there are cases and there are cases. It seems clear that in some cases it is hard to know whether or not the primary act is wrong. One might mistakenly believe that the act of the primary agent is permissible when in fact it is not. In those cases, if one has carefully thought through the situation and winds up expressing support for an act that turns out to be wrong, I don’t think that the agent is complicit. In addition, in these cases, I am not even sure that the agent has done anything wrong.

Consider, however, a more troubling case:

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31 As I will discuss in a latter section, an agent can be negligent in two different ways. First, an agent can be negligent in forming a belief that the primary act is not wrong, and thus intentionally express a positive P state toward a primary act that he negligently believes is not wrong. Second, an agent can be negligent in expressing P, and thus negligently express a positive P-state toward a primary act that he either believes is wrong or negligently believes is not wrong.

32 On this definition there are at least five possibilities: 1) An agent can intentionally expressively align himself with what he believes to be and actually is a primary wrong (complicity), 2) an agent can unintentionally and non-negligently align himself with a primary wrong that he might or might not believe is wrong (not complicity), 3) an agent can intentionally expressively align himself with a primary wrong that he non-negligently believes is not wrong (not complicity), 4) an agent can intentionally expressively align himself with a primary wrong that he negligently believes is not wrong (negligent complicity), and 5) an agent can negligently expressively align himself with a primary wrong that he either believes is wrong or negligently believes is not wrong (negligent complicity).
Case 1.6

Sam is traveling abroad in a country that has a long and violent history of ethnic and religious conflict between two groups. We'll call them the Abs and the Jeb's. While visiting a small town, Sam notices a crowd of young men surrounding an elderly man beating him with bats and throwing rocks at him. Sam, who is a very large, muscular, and intimidating man, makes his way over to the crowd to try to drag the old man away from the assault, but before he gets there, one of the young men kills the old man with a blow to the back of the head while the others cheer. Sam, angered by the killing, grabs one of cheering young men, throws him to the ground, and asks, "What has this man done to you? Why are you celebrating his murder?" The young man answers, "He is a Jeb. He does not have to do anything. He deserves to die because of what he is. It is no more wrong to kill him than to kill a rodent that comes into my house. I celebrate because there is one less Jeb alive."

Let's assume, as horrific as it may be, that the young man really does believe what he says. He really believes that it is not wrong to kill the old man simply because he is a member of a hated race. In this case, I am inclined to say that his expressive alignment with the killing is wrong but wrong in a way that goes beyond complicity.

The young man in case 1.6 is corrupt and his linguistic acts express that corruption. His act exemplifies a character that is severely diminished. Whether intentionally or unintentionally, he has become morally deformed. He is unable to recognize a clear case of wrongdoing. The epistemic apparatus that moral agents have to discern wrong from right is profoundly warped in this young man. In a case like this, I am more inclined to locate the moral problem in his character. Part of what it means to be virtuous is being able to discern what is permissible and what is not. What has happened in this case is a complete conflation of right and wrong. As we will see later in Chapter 4, I am inclined to argue that the prima facie wrongness of complicity involves deontological considerations. Complicity involves an intentional or negligent failure to comply with an obligation to be on the side of morality. In a case of corruption however, the agent has lost the ability to discern what side that is. It
may be the case that, at least sometimes, there is a continuum here. Repeated acts of complicity may result in corruption. However, I’m not sure that this need be the case.

One way to distinguish the idea of complicity from corruption is to invoke a subjective/objective distinction. In complicity, an agent’s act expressively aligns the agent with what he subjectively believes to be wrong and with what is objectively wrong. In a case of corruption, an agent, who is not negligent, expresses support for what he subjectively believes to be permissible when in fact the conduct is objectively wrong. Further, the wrongness of the act is of such a degree that it would be obvious to a normally functioning moral agent. The former case involves recognition of what is right and what is wrong and a decision to be for what is wrong (objectively). In complicity, there is a willful defiance of what is good and right in favor of what is evil and wrong. The latter involves a decision to be for what is wrong (objectively); however, it flows from an agent whose moral epistemic apparatus so radically deformed that he views conduct that is morally horrific as permissible.\(^{33}\)

The act that flows from the corrupted agent is still wrong; however, it is a wrong different from that of complicity, and it is a wrong that is intimately associated with a pernicious epistemic vice. In corruption, there is not a willful defiance of what is good and right \(qua\) good and right but a radical failure to appreciate what is good and right. It is a lack of moral epistemic insight rather than willful defiance. This is not to excuse an act of expressively aligning oneself with what believes to be permissible but is objectively and obviously wrong. Such acts are still wrong and make one a candidate for blame; however, they are wrong and

\(^{33}\) I think that the apostle Paul has something like this in mind in his epistle to the Romans, chapter 2.
make one a candidate for blame for a reason that is different from the reason that complicity is wrong and makes one a candidate for blame.34 I will return to these issues later in Chapter 4.

Before I move on, let me give a brief summary. In the last section, I examined the types of positive P-states for which an agent is responsible when expressively aligning himself with the wrongdoing of a primary agent. I then explored the question of whether a non-negligent, complicit agent must believe that the primary agent’s conduct is wrong in order to be complicit with that conduct. I concluded that it is necessary for him to believe that the conduct is wrong. I then gave a revised definition of complicity that takes into account this judgment.

In this section, I differentiated complicity from a closely related concept—moral corruption. Complicity involves a decision to side with what one believes is wrong. It involves recognition of an objectively wrongful act as wrong. Corruption involves a decision to side with what is an objectively horrendous wrong; however, the corrupted agent, unlike the complicit agent, conflates wrong and right in his own mind. He chooses to side with what he believes to be right, but expressively aligns himself with what any normally functioning moral agent would be able to recognize as wrong. The latter reflects a profoundly deformed moral sense, while the former does not.

EXPRESSIVELY ALIGNING ONESELF AS A FORM OF SELF-IDENTIFICATION

At the heart of complicity is the idea that one agent aligns himself with the wrongdoing of another. In this section, I will argue that this alignment involves a self-identification with the primary agent’s wrongdoing.

In complicity, expressing a positive P-state toward another agent’s wrongdoing is the means through which the complicit agent identifies himself with that wrongdoing. An analogy can be drawn here with a sports fan. The sports fan identifies himself with his team. He appropriates their activities unto himself. In conversation, he may refer to himself as a Duke fan or a Carolina fan or a Rice fan. He may use the collective pronoun “we” to describe his team such as if he were to say, “We played terribly today”. In doing this, the fan is not under some delusion that he actually causally participated in the game or that he is a member of the team. The fan, in constructing his own sense of self, incorporates the team into his view of himself. Moreover, it is not just that he sees himself this way—this is part of his identity. This isn’t to suggest that he can’t change this part of who he is. Fans can cease to be fans. However, it is to suggest that being a fan of something involves a self-identification with that something that has a real effect on one’s own personal identity.

While the example of a fan is a useful heuristic for giving us a sense of the type of non-causal, self-identification that is constitutive of complicity, it is not a perfect analogy. Usually, a fan has a positive attitude toward that of which he is a fan. However, a complicit agent need not actually have a positive P-state toward the wrongdoing of the primary agent. The complicit agent, when performing a linguistic act, need only be responsible for it being the case that he has such a positive P-state. One might wonder whether self-identification really is possible without having the positive P-state.

I am inclined to say that it is. In complicity, an agent identifies himself with the wrongdoing of another through his actions. It is primarily a volitional rather than an affective self-identification. Consider, for example, when we choose to do what is right because it is right not because we particularly want to or because it is what is best for us. In
such cases, we choose to identify ourselves with what is right. Ideally, with continual practice this volitional self-identification will include affective identification as well; however, it need not. In choosing to identify ourselves with certain projects and actions, we mold and shape our identity. The idea here is that an important part of who we are is wrapped up in who and what we choose to identify ourselves with, and when an agent expressively aligns himself with the wrongdoing of another agent by expressing a positive P-state toward this wrongdoing, this represents a choice to be a certain kind of person.

COMPPLICITY, CONTEXT, AND SILENCE

In this section, I want to enlarge the notion of expressive alignment to include cases in which an agent is silent or does nothing. Sometimes external circumstances may create a situation in which it is not an agent’s overt act but rather, his failure to act, that provides others a warrant to conclude that he has a positive P-state directed at a primary agent’s wrongdoing. Such a situation is a complicit context. In a complicit context, an agent becomes linked to the primary agent’s wrongdoing by external circumstances. However, even then, the agent is not complicit until he actually aligns himself to that wrongdoing.

What is different about the complicit context is that an agent can expressively align himself to the primary agent’s wrongdoing by intentionally or negligently doing nothing to dissociate himself from the wrongdoing. That is, even in a complicit context, complicity is not something that simply happens to the agent; it is something that he decides to do—namely, remain silent. The complicit agent brings it about because in intentionally or negligently doing nothing to dissociate himself from the primary agent’s wrongdoing when

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35 I take this to be Aristotle’s advice on how to develop actual virtue as opposed to just doing what the virtuous person does.
he is in a complicit context, he expresses a positive P-state toward that wrongdoing.

Silence in a complicit context is itself an expression of a pro-stance toward the primary agent’s wrongdoing. In order to avoid complicity, an expression of a negative P-state toward the wrongdoing is necessary.

What kinds of situations count as complicit contexts? While the following list is not exhaustive, it is, I hope, illustrative of the types of situations that I have in mind. First, if an agent is the leader of a group or has some degree of power over a group of others and one of the members of the group is a primary agent, then the leader is in a complicit context. To say nothing is tantamount to an expression of support for the primary agent’s wrongdoing.

Consider the following case:

Case 1.7

During an interrogation, a police officer named Jim beats up a murder suspect. His sergeant, knowing what Jim has done asks him how the suspect got his bruises. Jim tells the sergeant that he fell down while they were bringing him into the station. The sergeant, knowing that Jim is lying, says nothing and tells Jim to carry on.

In this case, the sergeant has power and authority over Jim in regards to police affairs yet says nothing about Jim’s wrongdoing. The sergeant’s conduct conveys a positive attitude toward what Jim has done.

In this case, the sergeant also has a duty to punish Jim for what he has done and intervene to stop him from doing it again. These duties, however, are conceptually different from his duty to avoid complicity. Suppose that the sergeant denounced Jim’s conduct but trusted Jim when Jim said that he would not hit the suspect again. Now suppose Jim beat up the suspect again. We might think that the sergeant was negligent in not protecting the suspect, but he wasn’t complicit with Jim’s evil.
A second type of complicit context involves being a member of a group of which a fellow member is a primary agent. Consider case 1.7 again. Suppose that a group of officers are involved in the case and that there is a news story about Jim's conduct. Now suppose Ked, an officer involved in the case, is asked by someone what he thinks of Jim's conduct, and Ked, knowing what Jim did was wrong, says, "Well, I wouldn't do it myself, but I support what Jim did". This type of attempt at a neutral position when Ked is member of the group of officers involved in the case expressively aligns Ked with Jim's wrongful conduct. In order to avoid being complicit with Jim's wrongdoing, Ked must expressively reject Jim's conduct.

A third type of complicit context occurs when one has supported the primary agent in the past. Consider the following case:

Case 1.8

*Norman, the mayor of a large city, is caught in a bribery scandal. His long time chief of staff, friend, and supporter, Neal, is asked by the press to comment about the mayor's conduct. Neal refuses to say anything.*

In a case like this in which one is closely connected to the primary agent because one has formerly supported him, one cannot be neutral with regard to his wrongdoing when confronted about it. Not expressively rejecting the conduct expresses a pro-stance toward the conduct.

In cases like this, however, one might have an obligation to separate the conduct of the primary agent from his character. Neal might denounce Norman's conduct but still speak well of Norman's character and still be loyal to his friend. The key here is that in order to avoid complicity, Neal must not sacrifice the moral truth about Norman's conduct on the altar of friendship.
Finally, a complicit context might arise when one holds a minority opinion about the acceptability of a colleague’s conduct. Consider the following case:

Case 1.9

Ed is an older surgeon who believes it is okay to sexually harass female surgical residents. The other surgeons on staff see nothing wrong with Ed’s behavior. They believe that it is just a normal part of their culture. However, Zack, a bright new attending knows that Ed’s conduct is wrong. One day during a morning report, Ed tells several degrading jokes about women. The residents and surgeons laugh; the lone female surgical resident says nothing but turns red. Zack, however, interrupts Ed’s talk and says that he thinks Ed’s comments are wrong. The older surgeons dismiss Zack’s interruption with a huff.

In this case, Zack is in the midst of a majority that considers the evil conduct of the primary agent acceptable. To be neutral in such a situation, to sit by and say nothing, is to allow oneself to become expressively aligned with Ed’s evil.

In this section, I have discussed a type of complicity that arises when an agent finds himself in a context in which silence or non-action would provide a third party warrant to infer that one has a positive P-state toward a primary agent’s wrongdoing. I called this situation a complicit context. I then presented four different types of complicit contexts. The first three types involve a relationship with the primary agent that provides warrant for inferring support for the primary agent’s conduct unless there is an affirmative rejection of that conduct. The last type of context involves a situation in which the majority expressively supports a primary agent’s evil and neutrality provides warrant for the inference that one supports the majority. In the first type of context in which one has power over the primary agent, I am inclined to think that there is a general duty to express rejection of the primary agent’s behavior. In the last three types however, it seems that the duty arises particularly when one is questioned about one’s view of the primary agent’s conduct, although this does not seem to be a hard and fast rule. For example, if Ed’s sexual harassment was unchecked
and rampant, then Zack may have a duty to go to Ed and confront him about it even if there is not a particular incident at which Zack is present.

**SUMMARY**

In this section, I began by arguing that expressive alignment occurs through illocutionary acts—namely, the act of expressing—and used William Alston’s account of illocutionary acts as a starting point. On the expressivist account, an agent expressively aligns himself with the wrongdoing of a primary agent when he expresses a positive P-state toward that wrongdoing. An agent expresses a positive P-state toward the primary agent’s wrongdoing when he either takes responsibility for it being the case that he has P or is held responsible for it being the case that he has P. An agent takes responsibility for it being the case that he has P when he intentionally performs an act that provides a third party with warrant to conclude that he has P. An agent is held responsible for it being the case that he has P when he negligently performs an act that provides a third party with warrant to conclude that he has P. Acts that provide such a warrant include either an act (verbal or nonverbal) conventionally indicating possession of P or an act that is a non-conventional but reliable sign indicating possession of P. I argued that it is not necessary for expressing P that an agent actually have P (case 1.2), that it is not sufficient for expressing P that an agent’s act simply gives a third party warrant to conclude that he has P—the act must be intentional or negligent (case 1.3), that it is not necessary for expressing P that others actually conclude that that the agent has P (case 1.4), but that it is necessary for expressing P that the act is either a conventional device or a non-conventional but reliable sign of P (case 1.5).

I explicated the types of positive P-states that are expressed in complicity—namely, desires, attitudes and beliefs—and went on to argue that a condition necessary for complicity
is that the complicit agent believe that the primary agent’s act is wrong or that he negligently believe that it is not wrong. This led to a revision of my definition of complicity (Def. 1.2). I then explored the case of an agent who expressively aligns himself with an act that is a gross evil but does so non-negligently believing that the act is morally permissible. I suggested that this type of situation rather than being an instance of complicity is a deeper moral problem that I called moral corruption. Moral complicity is different from moral corruption in that the former primarily involves a volitional problem (willing to expressively align oneself with what one believes is wrong) while the latter involves primarily an epistemic problem (willing to align oneself with what one believes is permissible but in actuality is an horrendous evil).

Next, I discussed the idea of a complicit context and defined this as a situation in which external factors are such that if an agent intentionally or negligently fails to take overt action to expressively reject the primary agent’s wrongdoing then this failure (e.g., silence, non-action, equivocation, etc.) is itself an expression of a positive P-state toward the primary agent’s wrongdoing and expressively aligns the agent with the primary agent. I then noted four situations that would seem to qualify as complicit contexts. First, if an agent is the leader of a group or has some degree of power over a group of others and one of the members of the group is a primary agent, then he is in a complicit context. Second, if an agent is a member of a group, a fellow member of which is a primary agent, then he is in a complicit context. Third, if an agent has supported the primary agent in the past and is then asked to give an account of the primary agent’s wrongful conduct, then he is in a complicit context. Finally, if an agent holds a minority opinion in a group about the acceptability of another agent’s conduct and silence would be interpreted as holding the majority opinion,
then he is in a complicit context. In the next sections, I will explicate several other components of the definition of complicity.

*Complicity is a violation of a prima facie duty*

In the definition I have been advocating, complicity is a violation of a *prima facie moral duty*. In making such a claim, I make room for the possibility that conduct might be complicit but also *all-things-considered* morally permissible or even obligatory.36 There may be cases, for example, when competing moral claims are overriding. For example, an act, which on one description is complicit, might also be consequence maximizing and rights respecting. Thus, simply identifying a course of action as complicit does not necessarily provide an immediate answer to the question of whether someone should pursue that course. However, it does add an important piece to the mix—a piece that cannot simply be neglected. In making these claims, I do not think that complicity is especially different from other moral claims that we face. In most complicated moral decisions, we face competing moral claims. Many times, it is just this fact that makes the matter complicated. This just seems to be a fact about the moral life.

In claiming that complicity is a violation of a *prima facie* duty, I do however, seem to part company with others who have written on this topic. For example, Judith Kissell writes,

> “That a cooperating act itself would ever be considered wrong results from conflating the description of the act with the justification of blame for that act. Blameworthy cooperating conduct as cooperation does not violate the norm, and its blameworthiness must come from elsewhere. The act is *suspect* if the breaching of one of the other conditions justifies blame (either the agent directly intends the harm and contributes to it or the agent’s participation is not proportionate to the harm). The act is suspect then, not

because of the kind of act it is, but because of failure to satisfy one of the other conditions that warrant blame for complicity".\textsuperscript{37}

I interpret Kissell to be saying that complicit acts, while blameworthy, are not themselves wrong, only the primary acts (wrongful acts done by the primary agent) are wrong. On Kissell’s account, as we will see later, the blameworthiness of the complicit agent is “derived” from the norm violation of the primary agent. That is, blame is laid at the footstep of the complicit agent for a wrong done by a primary agent because the complicit agent “contributes” to this wrong.

On the expressivist account, however, this is not the case. The complicit agent’s conduct can be wrong itself, and when it is wrong, its blameworthiness derives from the fact that the complicit agent has violated a moral norm different from the primary norm violation.\textsuperscript{38}

When this norm is violated in a context in which the norm is overriding, then the complicit conduct is a violation of an all-things-considered moral duty and is wrong. As I will explain shortly, I do accept something of Kissell’s derivativeness condition but not in the full sense she suggests here.

\textit{Complicity involves conduct}

On the expressivist account, complicity occurs when one acts in a way that expressively aligns oneself with the wrongdoing of another. I take it to be a conceptual requirement of expressing that it involves some sort of conduct. This is different from those accounts of complicity that maintain that it is sufficient for complicity that an agent simply have certain


\textsuperscript{38} Actually, as I will argue later, the complicit agent can also violate the same norm that the primary agent violates. However, the property of the complicit agent’s conduct that is essential to that conduct being complicit (an expressive property) is different from the property that makes it the same norm violation as the primary agent (a causal property).
attitudes toward another agent’s wrongdoing or bear a certain geographical or historical relationship to that wrongdoing.

Since conduct is a necessary condition for complicity, certain forms of unavoidable complicity are ruled out. For example, simply being born in Germany does not make one complicit in the atrocities of the Nazis. As we have just seen, an agent may sometimes find himself in situations in which, in order to avoid expressively aligning himself with a primary agent’s wrongdoing, he cannot simply be silent but has to actively express a rejection of the wrongdoing (a complicit context). However, this is different from simply making geographical location sufficient for complicity. For example, suppose that during the height of the Nazi atrocities, there was a German hermit who lived in a deep wood in Germany and knew nothing of the war or the atrocities. I do not think that such a hermit would be complicit with the Nazi atrocities. Simply being located near wrongdoing is not enough to make one complicit with it.

*Complicity is voluntary*

The expressivist account of complicity necessitates that the complicit agent’s conduct must be both voluntary and either intentional or negligent.\(^{39}\) By saying that the accomplice must act voluntarily, I am saying that his act must not be forced or severely coerced. A person who is forced or severely coerced to act in a way that otherwise would indicate a pro-stance toward the primary agent’s conduct is not complicit with his wrongdoing but is a victim of it. The agent here does not take responsibility for it being the case that he has a positive P-state toward the wrongdoing, nor is he negligent. As a result, he does not

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\(^{39}\) Kissell, 18-21. Kissell has three subjective conditions that the accomplice must meet. He must act voluntarily; he must be aware; and he must act either intentionally or negligently. I am including awareness as a part of acting intentionally.
expressively align himself with the primary agent’s wrongdoing. For example, if a bank robber brandishes a gun and threatens to shoot me if I don’t drive him away from the scene of the crime, I am not complicit with the bank robber but am a victim of the bank robber. To be complicit is to freely choose to align oneself with another agent’s wrongdoing.

*Complicity is not a reflexive relation*

The definition of complicity presented earlier in this chapter requires that there be another agent who performs a wrongful action. I take it to be a necessary condition for conduct to count as complicit that there be a primary act of wrongdoing with which the complicit agent is aligned and that the primary agent must be someone other than the complicit agent. Simply put, to be complicit is to express an attitude toward another agent’s wrongdoing. The complicit relationship is not reflexive. This is one reason why the primary agent is primary. Without the primary agent, there could be no complicity. As we will see in Chapter 3, this is similar to but also somewhat different from what has been called the *derivativeness condition* of complicity.

As mentioned in the definition, the primary agent must perform a wrongful action. On the expressivist account, the primary agent does not have to have any *specific* kind of causal relationship to the wrong that he does. It is not necessary for him to be “the cause” of the norm violation or even to bear a “high” degree of causal responsibility for the norm violation.

Further, while in order to violate a moral norm the primary agent must have some sort of causal connection to the wrongdoing, this causal relationship does not necessarily distinguish the primary agent from the complicit agent. The complicit agent might have the same causal relationship to the wrongdoing as the primary agent. This might occur in a case in which there are two co-perpetrators, and each expresses a positive P-state toward the others’
wrongdoing. Each would be a perpetrator, individually responsible for his own causal contribution, and each would be complicit, individually responsible for expressing acceptance of another’s wrongdoing.

4. Complicity and Time

In this section, I want to discuss an important implication of the expressivist account of complicity. Recall that complicity involves expressively aligning oneself with another agent’s wrongdoing. However, an agent can express a positive P-state toward a wrongful act that a primary agent is about to do, is doing, or has already done. Therefore, on my account, complicity is neutral with respect to time.

This feature makes the expressivist account different from other conceptions of complicity and reflects the fact that causal relations are not treated as an essential feature of complicity. On causal accounts, in order to be complicit, an agent must have a causal or quasi-causal relationship with a primary agent’s wrongdoing. In so far as we think that a cause must precede its effect, on these accounts a complicit act must precede a primary act of wrongdoing.

I take the fact that the expressivist account of complicity is temporally neutral with respect to the primary agent’s wrongdoing as a positive feature of the account that helps us make sense of certain cases in which an act of purported complicity occurs after the primary wrongdoing has occurred. Consider the following case:

Case 1.10

Silas, who throughout his lifetime hoards an incredible amount of money, adopts a small orphan girl who has no family or relations. The two live together, happy and peaceful, and come to depend upon one another for love and support. One day Tom kills Silas and the little girl and steals his money. Tom then goes to Frank’s house, tells him what he has done, and invites him to go out on a wild binge of drinking and partying to celebrate Tom getting
the money. Frank agrees and the two spend the next two weeks drinking, eating, and gambling.

In this case, Tom kills and steals and Frank has nothing to do with the commission of those acts. However, he does go with Tom afterwards using the money that Tom had stolen to celebrate by eating, drinking, and gambling. My judgment in this case is that Frank acts wrongly. I think that he acts wrongly because he expressively aligns himself with Tom’s wrongdoing.

By going with Tom on a profligate spending spree after knowing how Tom got the money, Frank expresses a positive P-state toward Tom’s act. His conduct gives ample warrant to anyone who knows the facts of the situation to conclude that Frank has a positive attitude or belief toward Tom’s act. Frank may have known that this is the case and may have taken responsibility for it being the case that he has a positive P-state toward Tom’s wrongdoing, or he may have been negligent and not have adequately thought through how his conduct would be perceived. In this latter case, because of his negligence, he would be held responsible for having a positive P-state. In either case however, Frank’s conduct occurs after Tom committed his wrongful acts. His complicity is temporally distal to the primary act.

At this point, I need to reemphasize an earlier point. In order for an agent to be complicit, there must be some act with which he is complicit. Therefore, in cases in which an agent expressively aligns himself with a wrongful act that another agent is going to do but never does, there is no complicity. There are cases in which an agent is complicit when the primary agent attempts to do a wrongful act and fails; however, in these cases, there is a wrongful act that has been done—the attempt. This wrongful act is different, however, than the wrongful act that would have been done had the attempt been successful.
An implication of my account is that the scope of complicity becomes much broader. An agent can be complicit with wrongful acts that happened even before he was born. For example, a group of neo-Nazis that gather together to celebrate Hitler’s mass murder of the Jews are complicit with Hitler’s evil deeds even though they were not even born when those deeds were done. Complicity is used to designate acts that agents use to align themselves with another’s wrongdoing. Sometimes we may align ourselves through causal acts that express a positive P-state—but this need not be the case. As human beings, we can project ourselves into the past in order to align ourselves with either good or evil. We can choose to identify ourselves with other agents’ morality or immorality. Complicity captures the conduct that aligns an individual with the latter.

Surely, one might argue, a soldier who served under Hitler is more complicit than a neo-Nazi a generation later who celebrates Hitler’s deeds. How do we explain this if simply expressively aligning oneself with another agent’s wrongdoing makes one complicit? I think that in this case we are probably reacting to things other than merely expressively aligning oneself with Hitler. A soldier serving underneath Hitler may, in addition, to expressively aligning himself with Hitler have also causally engaged in immoral acts such as killing, stealing, terrorizing, etc. I think that the causal component is a separate and additional moral component that must be taken into account in making a total evaluation of the act. We think that a soldier who carried out Hitler’s orders has done something more wrong than a neo-Nazi who simply celebrates what has been done because his conduct has additional wrong-making properties. I will explore this idea further in the next chapter when I discuss causality and complicity.
Accepting a benefit

A special type of complicity that occurs temporally distal to the primary wrongful act involves accepting a benefit that is a direct causal result of the wrongful act. Consider the following case:

Case 1.11

Al is an assassin for hire and is very good at his job. Throughout the years, Al has killed many people and has been paid very well for his services. He enjoys his job and is completely unrepentant about killing innocent people for money. Al’s mother, Cynthia, happens to go to church where Bob is the preacher. Cynthia has a terminal disease and is confined to a hospital bed. Bob goes to visit Cynthia every day in order to minister to her. Bob’s daily visits and encouragement make Cynthia’s last days much more bearable. Al is extremely touched by Bob’s devotion to his mother. When Cynthia dies, Al makes a $1,000,000 contribution to Bob’s church in memory of his mother. Bob knows that the money came from payments given to Al for killing innocent people, but Bob accepts the money on behalf of the church anyway.

It is my judgment that in simply accepting the money from the assassin, Bob is doing something prima facie wrong and the prima facie wrongness of it relates to complicity. However, in this case, Bob does not explicitly express support for Al’s wrongful acts. For instance, he doesn’t tell Al that it was good or permissible that he murdered people. Bob simply accepts money that Al obtained by killing people.

How are we to explain the complicity in this case? Perhaps one way to make sense of it is to recall our discussion about complicit contexts. A complicit context occurs when external circumstances and not an agent’s overt actions create a context in which the agent’s inaction provides others with warrant to conclude that he has a positive P-state toward the primary agent’s wrongful acts. Sometimes when an agent accepts a benefit that is a causal result of a primary agent’s wrongdoing the agent himself creates a complicit context. That is, instead of external contextual circumstances, the agent’s non-expressive act of accepting the benefit creates a complicit context. Moreover, once in a complicit context, non-action or
silence becomes expressive of a positive P-state toward the primary agent’s wrongdoing. In case 1.11, Bob’s acceptance of the money from Al creates a complicit context. The acceptance of the money itself is not necessarily an expression of a positive P-state toward the wrongful act; however, it creates a context in which a failure to expressively reject the wrongful act is an expression of a positive P-state. Thus, Bob’s *simply* accepting the money, without an explicit rejection of what Al had done, is an expression of a positive P-state toward Al’s acts. In a complicit context, there is no neutral position. Conduct will either expressively align an agent with the primary agent’s wrongdoing (the default position) or expressively dissociate him from the primary agent’s wrongdoing.

According to this line of thought, an agent can avoid complicity but still accept a benefit even when doing so places him in a complicit context if he explicitly rejects the primary agent’s wrongdoing. This strategy works because by explicitly rejecting the primary agent’s wrongdoing the agent explicitly lets it be known that he does not take responsibility for it being the case that he has a positive P-state toward the wrongful act—that he is not intentionally expressing a positive P-state.

However, is it enough for Bob to simply express a rejection of what Al has done? Does this really make the act of accepting the money non-complicit?\(^{40}\) It may be the case that in some situations the act of accepting a benefit itself may not just create a complicit context, but may itself express a positive P-state toward the primary agent’s wrongdoing. Accepting a benefit from a primary agent may in some circumstances give others warrant to conclude...

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\(^{40}\) Notice here that I am concerned primarily with whether Bob’s act is *complicit* not necessarily *permissible*, and whether or not complicity can be avoided. One might argue that even if accepting the money is an act of complicity, complicity is only *a prima facie* moral obligation and can be overridden by other important moral concerns—such as doing lots of good with the money. While this might be true the more one can do to defuse the claim of complicity the better. For instance, while explicitly denouncing Al’s acts might not completely *eliminate* complicity, it may make the act of accepting the money *less complicit* than it would have been otherwise.
that one believes that the primary agent’s act is somehow legitimate or should be tolerated because of its good effects despite one’s verbal protestations. In a case like this, in order to avoid complicity, the agent will have to decline the benefit.

It is not always clear where this line is to be drawn—when accepting the benefit simply creates a complicit context in which an agent must expressively reject the primary agent’s act in order to avoid complicity and when accepting the benefit itself is an expression of a positive P-state toward the act. And sometimes, it seems, accepting a benefit does neither. For example, a person who accepts an organ that is the result of a murder does not necessarily seem to create a complicit context or express a positive P-state toward the murder.

Contextual circumstances seem to play a determinate role here. In the case of the organ transplant, it matters that the murderer didn’t offer the organ to the organ recipient, and it matters generally in accepting a benefit that results from wrongdoing whether you are accepting the benefit from the wrongdoer.

It also seems to matter whether or not the primary agent is repentant or not. Suppose, for example, that Al wants to give the money to the church because there are no victims to compensate and because he wants to atone in some way for what he admits was horrendous wrongdoing. In such a case, it seems that by accepting the money Bob, at worst, only creates a complicit context and by explicitly denouncing Al’s acts, he would avoid complicity. In such a case, both the agent who offers the benefit and the agent who accepts it, denounce the primary act as wrong.

It seems to be different, however, in a case in which a non-repentant wrongdoer offers an agent a benefit derived directly from his wrongdoing. Recall case 1.10. In this case, Tom is
unrepentant about his killing—he may have thought it was wrong but in the end, he doesn’t care. Frank, in accepting Tom’s invitation to enjoy the spoils of Tom’s killing and stealing, expresses a positive P-state toward those acts and is complicit. This is not a case in which Frank’s silence expresses the positive P-state; in this case, Frank’s acceptance of the benefit expresses the positive P-state. In addition, I don’t think merely denouncing what Tom did and then enjoying the spoils would be adequate to avoid complicity.

Perhaps a way to understand why this is the case is to go back to our discussion of illocutionary acts. In that discussion, we talked about how an agent’s expression can be defective and as such, can make the agent liable for criticism. Expressing rejection is an illocutionary act, and in this case, accepting the benefit provides substantial warrant to others to conclude that he does not actually have a negative P-state toward the wrongdoing. As a result, in this case, his expression of rejection would be defective and as a result ineffective in avoiding complicity.

Thus, the principle at play may be that accepting a benefit that results from wrongdoing does not express a positive P-state toward that wrongdoing when contextual factors do not give others a warrant to conclude that one has a positive P-state toward that wrongdoing. When those contextual factors are present accepting a benefit that results from another’s wrongdoing may either 1) create a complicit context or 2) actually express a positive P-state toward the wrongdoing. The former is created only in those cases in which accepting the benefit itself does not make the illocutionary act of expressively rejecting the primary wrongdoing defective (give sufficient grounds for others to judge that expression was insincere). Otherwise, accepting the benefit actually expresses a positive P-state toward the wrongdoing.
While I do not believe that the conditions I have suggested in distinguishing these types of cases approach anything like necessary or sufficient conditions, I do think that they can give insight into making what ultimately is an intuitive call about whether accepting a benefit 1) does not express a positive P-state toward the wrongdoing, 2) creates a complicit context in which an agent must expressively reject the wrongdoing in order to avoid complicity, or 3) itself expresses a positive P-state toward the wrongdoing.

To sum up, in this section I began by discussing how the expressivist account of complicity is neutral with respect to time. I then argued that this is a positive feature of the account because it helps to accommodate cases like 1.10 and that what may at first appear to be counterintuitive implications (e.g., a Nazi soldier seems to have done something worse than Neo-nazis now that celebrate Hitler’s wrongdoing—but both are complicit) can be explained by noting that sometimes an act can have both causal and expressive properties and that these two properties combined can make the act worse than an act that only has expressive properties.

I then discussed a special type of temporally distal complicity—accepting a benefit that causally results from another agent’s wrongdoing. I argued that sometimes accepting such a benefit is not wrong at all, sometimes it creates a complicit context requiring expressive rejection of the primary agent’s wrongdoing, and sometimes it is itself expressive of a positive P-state toward the primary agent’s wrongdoing. I then noted some general features that may be help to distinguish the different cases.
5. Intentional and Negligent Complicity

In definition 1.2, I characterized complicity as “a prima facie moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of another moral agent (a primary agent) or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent”. In this section, I want to explain in more detail what I mean by the terms intentionally and negligently.

Concerning complicity, intentionality first enters at the level of the expression. In order for an agent to express a positive P-state, he must either intentionally act in such a way so as to give others warrant to conclude that he has P—that is, he must take responsibility for it being the case that he has P—or he must negligently act in such a way. Here, to act intentionally is to act with a certain belief—a belief that one’s act provides warrant for the claim that one has P.

However, the complicit agent’s intention is specified further. The intentionally complicit agent not only intends to express a positive P-state, he intends to express a positive P-state toward another agent’s wrongful act. The complicit agent believes that the primary act is wrong. Thus, in intentional complicity, the complicit agent’s intention is not simply to express a positive P-state toward a primary agent’s act. Rather, it involves expressing a positive P-state toward a primary agent’s wrongful act (an act that is wrong and that the complicit agent believes to be wrong).

One might wonder whether in order for an act to be complicit, the agent must also believe that his own act of expressing, not merely the primary act, is wrong. Consider the person who stands by and cheers while another person is raped. Suppose that he understands that
the rape is wrong and that his actions express support for the rapist’s wrongful act, but
suppose in spite of the knowledge, the spectator honestly does not realize that his standing by
and cheering such an evil act is itself wrong. He does not understand the normative character
of what he is doing.

What are we to make of this last requirement? In most cases, ignorance of the wrongness
of an act does not make that act any less wrong. We might blame the person less for the
wrongful act if he did not know that he was doing something wrong, but we don’t say that he
hasn’t done something wrong. Normally, to do an act that is wrong is to do something that
one should not have done even if it was done in ignorance. In a sense, however, the spectator
who cheers on the rapist does not intend to be complicit. He does not intend to *illicitly*
express a positive P-state toward the rapist’s act. That is, even though he intends to express
support for a wrongful act, he does not intend to *wrongly* express support for someone doing
a wrongful act. The spectator does not do an act, knowing that the act is wrong even though
he does intentionally do an act that is wrong.

The answer to the question of whether knowledge of the illicit nature of a complicit act is
necessary for the act to be complicit depends upon how we view the concept of complicity.
Consider the concept of murder. One might define murder as intentionally and illicitly
killing a human being. The normative component is built into the concept in the form of
“illicitly”. The concept “kill” however, can be taken to be normatively neutral. One might
define killing as simply ending the life of a living being. A person who intentionally kills a
person without justification but does not know that killing is wrong would still be a murderer.
His action however, would not be an intentional murder, because he did not intend to do an
act that was illicit, because he did not know that his action was illicit. Likewise, a person
who is complicit but does not know that his action is illicit might not be intentionally
complicit but might do an act intentionally the intentional doing of which is itself complicit.

What about negligence? Negligent complicity involves a failure to take due care to
discover knowledge the possession of which would make the same act an intentional act of
complicity. While the phrase "due care" screams out for more explication, I will not say
anything more about it because it would take me far a field from the topic of complicity.
Suffice it to say that while this criterion points in the direction of what we want in a theory of
negligence it needs to be filled out and defended.

As with intentionality, negligence can occur at the level of expression. One expresses P
when one is responsible for it being the case that one has P. One is held responsible for
having P when one negligently performs an act that is a conventional or natural indicator of
having P in the sense that the act would provide warrant to a third party to conclude that one
has P. Here the agent fails to take due care to discover whether or not his act functions as a
conventional or natural indicator of having P. One can negligently express P—but here P
need not necessarily be a positive state toward a wrongful act but any psychological state.

Negligent complicity occurs in at least three different ways. First, an agent might be
negligently complicit if he did not take due care to consider whether or not he is expressing a
positive P-state toward an act that is wrong and that he either believes is wrong or negligently
believes is not wrong. In this case, the agent fails to take due care to consider how his own
conduct will be interpreted by a third party. Note, however, that even in this case, an agent is
not complicit if he non-negligently believes the primary act is permissible.

A second type of negligent complicity occurs when an agent intentionally expresses a
positive P-state toward a primary act that he negligently believes is permissible. In this case,
the complicit agent has failed to take due care to consider the nature of the primary agent’s conduct.

A third type of negligence can occur within a complicit context if an agent fails to take due care to discover that he is in such a context and, as such, must offer an affirmative rejection of the primary agent’s wrongdoing in order to avoid complicity. Here the negligence is not at the level of the expression, but it does not necessarily involve a failure to discover the wrongness of the primary agent’s act—for one might believe that a primary agent has acted wrongly. Here the negligence is a failure to grasp one’s own situation and as a result, one’s own obligation to expressively reject the primary agent’s wrongdoing.\(^{41}\)

To sum up, intentional complicity occurs when an agent intentionally expresses a positive P-state toward a primary agent’s wrongful conduct that he believes is wrongful. Negligent complicity occurs when an agent negligently expresses a positive P-state toward a primary agent’s wrongful conduct that he believes is wrongful or negligently believes is not wrongful; when an agent intentionally expresses a positive P-state toward a primary agent’s wrongful conduct that he negligently believes is not wrongful; or when an agent is in a complicit context and negligently fails to expressively distance himself from the primary agent’s wrongdoing.

6. Differentiating Complicity from Blame, Punishment, and a General Duty to Intervene

Complicity involves a response to another agent’s wrongdoing. In this regard, it is like blame, punishment, and intervening in another agent’s wrongdoing. However, it is also different from each of these as well.

\(^{41}\) This being said, in a complicit context if the agent non-negligently believes that the primary agent’s act is permissible then a failure to expressively distance himself is not complicity.
Blame is essentially an attitude that one has toward wrongdoing. It can manifest itself in conduct, but it need not. It is not necessarily limited to others for one can "blame oneself" when one acts wrongly just as one can blame another when he acts wrongly. Further, blame involves a negative attitude toward a purported act of wrongdoing. Complicity, unlike blame, essentially involves conduct not attitudes. It may reflect an attitude, but as we have seen earlier, this may not always be the case. In addition, unlike blame, complicity is never a reflexive relation. It is essentially directed at the wrongdoing of another. Finally, complicity involves expressing a positive P-state toward an act of wrongdoing. Therefore, its orientation toward the wrongdoing is the opposite of blame.

Punishment, like complicity, involves conduct directed at wrongdoing. However, punishment usually involves some sort of repayment of harm upon the wrongdoer, and it is essentially an attempt to give the wrongdoer what he deserves for his wrongdoing.\(^{42}\) Complicity does not involve repayment of harm and neither does avoiding complicity. One might expressively reject a wrongdoer's conduct without causing the wrongdoer any harm at all. The agent who acts to avoid complicity is not primarily concerned with harming the primary agent or giving him what he deserves. Avoiding complicity is more self-centered. The focus is not on the wrongdoer but on the agent who stands to be linked to the wrongdoer. An agent acts to avoid complicity in order to avoid acting wrongly himself—not because he wants to give the wrongdoer something he deserves. In addition, as with blame, the orientation toward wrongdoing in punishment is the opposite of what is found in complicity.

\(^{42}\) I am assuming here a retributivist view of punishment.
Finally, in some situations an agent may have a duty to intervene. In fact, sometimes intervening to stop someone from doing wrong simultaneously expresses a rejection of the wrong and severs complicit links. However, avoiding complicity is not identical to intervening in the primary agent’s wrongdoing. In some cases, in which it is impossible to intervene (when the wrongdoing has already been done for instance), it is still possible to avoid complicity by not expressively aligning oneself with the primary agent. Similarly, sometimes an agent might have a duty to intervene even when not intervening does not entail complicity. Consider case 1.8 again. Suppose that the sergeant enters the room while Jim is beating the suspect and rebukes Jim for the beating. Suppose further that Jim doesn’t stop. Even though the sergeant has expressed a rejection of Jim’s wrongdoing, he would still have an obligation to intervene and causally stop Jim from beating the suspect.

To sum up then, complicity is like blame, punishment, and a general duty to intervene in that it involves one agent’s response to another agent’s wrongdoing. Unlike blame, complicity essentially involves conduct and is always other-directed. Unlike punishment, complicity does not involve repaying someone for the wrong that he has done. Moreover, unlike both blame and punishment complicity has a positive orientation toward the wrongdoing not negative. Complicity is also different from a general duty to intervene. One can avoid complicity even when one cannot intervene, and one may still have a duty to intervene even when not intervening does not entail complicity.

7. Objections to the Expressivist Account

In this section, I will examine two different objections to the expressivist account of complicity. First, I will raise and respond to an objection to the other-directedness of the expressivist account. Second, I will raise and respond to an objection to the conduct
requirement of the expressivist account. Interestingly, neither of these features is unique to the expressivist account of complicity.

A challenge to the claim that complicity is non-reflexive

Consider the following case:

Case 1.12

Bob has been selected to be one of the first passengers on a new rail system just purchased jointly by two cities. Bob sits in the front of the train with Al, the conductor, as it starts out in city X and heads toward city Y where there is a crowd of people, including Bob’s family, waiting to celebrate the technological advancement. However, something goes wrong as the train nears city Y, and Al is unable to control the train as it comes into the station. As the train nears the station, both men see that unless the emergency lever is pulled allowing the train to jump its track, 100 citizens will be killed. However, if the lever is pulled and the train jumps its track then Bob’s family, who is standing in a designated spot beside the track, will most certainly be killed. Al tries to pull the lever, but it is jammed and only with Bob’s help can he lower it.

In this case, let’s suppose that it would be permissible for Al to pull the lever and send the train into Bob’s family, but that it would not be permissible for Bob to help because he has an agent-relative obligation to protect his family which overrides his agent-neutral obligation to save the most lives. Now suppose that Bob did help Al pull the lever and as a result, the train killed his family. Would we describe this as a case of complicity? Moreover, if so, wouldn’t this show that complicity does not necessarily involve cooperation with another’s wrongdoing? Bob acts wrongly by cooperating with Al’s act, but Al’s act is not wrong.

While intuitions about this case may differ, my own intuition is that this is not a case of complicity. Bob might be violating a duty by cooperating with Al’s act; however, I do not think that this violation of duty represents complicity because the wrongfulness of Bob’s act
is fully his own. Bob is not expressively aligning himself with another’s wrongful act because Al’s act is not wrongful.

Cooperation can be wrong because it violates any number of moral duties we have. Suppose for example, A promises B that he will not cooperate with C even though without making such a promise it would not be wrong for A to cooperate with C. If A were to cooperate with C, then he would be breaking his promise and then cooperation would be wrong. That is, the act description in this case does not just involve cooperating with C but also involves breaking a promise.

In the run-away train case, Bob’s cooperation is wrong because it also violates a duty that he has to his family to protect them and act in their best interest. I think that this is different, however, from complicity. A central conceptual intuition that I maintain is that the wrongness of complicit action results from violating a duty to avoid aligning oneself with another’s wrongdoing. In this example, Bob, in helping Al, is not aligning himself with another’s wrongdoing. We could take Al off the train, and Bob’s pulling of the lever would still be a violation of his agent relative duty to protect his family from harm. Al’s cooperation is needed to bring about the final result, but it is not the case that Bob’s expressive alignment with Al’s wrongful act is what makes Bob’s act wrong—Al’s act is morally legitimate in this case. What makes Bob’s act wrong is that he violates an overriding duty to avoid harming his family.

Suppose that it was just Bob in the control center and that the train had a sophisticated computer that sensed the malfunction and started to automatically lower the lever that causes the train to jump the tracks. Further, suppose that as the lever was coming down it got stuck
on a crate. Now if Bob kicks the crate out of the way and allows the lever to go down automatically, is he somehow complicit?

I think not. I think that perhaps Bob has violated a duty and acted wrongly, but he is not complicit because there is no wrongful act with which he is complicit. One might think that complicity simply involves wrongfully aligning oneself to another agent’s act, and that Bob, in the original example, would be complicit if he helped Al pulled the lever. I think complicity is more specific, however. I think complicity involves wrongfully aligning oneself to another agent’s act when the wrongfulness of the alignment stems from the fact that the conduct to which one is aligning oneself is wrong.

*A challenge to the claim that complicity always involves conduct*

On the expressivist account, complicity essentially involves expressive conduct. One might object that complicity need not involve any type of conduct. Complicity could be conceptualized in terms of a *purely passive* relationship. In what follows, I will respond to this way of conceptualizing complicity.

**Purely passive relationships with evil**

One could argue that there is at least one type of complicity that simply consists in an agent *being* in intimate association with wrongdoing or evil. For example, one could imagine the great great-grandson of a Southern slave owner harboring feelings of guilt about the slavery of the South or a present day German citizen harboring guilt about being a member of the nation that brought about the Holocaust. Does this guilt, however, indicate that these people are some how *complicit* in the evil done by their relatives and countrymen? Is simply
being the relative of a slave owner or a citizen of Germany enough to make these people complicit? I will argue that it is not.

First, it seems to me that while complicity involves some sort of relationship (which I think is best understood as an alignment) between oneself and the wrongdoing of another, not just any type of relationship will do. In order for the relationship to be complicit, it must violate some normative standard. In particular, the relationship must violate a normative standard that would leave the complicit agent at least prima facie blameworthy. By prima facie blameworthy, I mean that the agent is blameworthy unless there are other moral or non-moral considerations which may be overriding and eliminate the blameworthiness. Why must the linkage leave the complicit agent prima facie blameworthy? This is the case because in common moral discourse we use judgments of complicity as a warrant for blame. If we want a theory of complicity that reflects how the concept functions in common moral discourse, it must take into account this fact or explain why people are mistaken when they use it as a warrant for blame.

If it is the case that complicity properly serves as a warrant for blame, what does that tell us about the concept of complicity? If we are going to be committed to the view that complicit agents can be blamed for their relationship to another's wrongdoing then it seems that a necessary condition for such blame is that this relationship be in some sense properly attributable to the complicit agent. George Sher writes,

... in blaming someone for something, we take its moral defects to reflect badly on him; and the necessary condition for blame that follows is that no one can deserve blame for anything unless it stands in a close enough relation to him to reflect badly on him. Although this necessary condition could obviously be refined, anyone sympathetic to blame must accept some version of it.43

My claim is that the relationships between one agent and another agent's wrongful conduct for which the first agent can be properly blamed only occur when the first agent chooses to create or maintain the relationships through his own conduct.

Another argument can be raised against the passive view of complicity, however. Complicity is a concept that is used in common moral discourse to guide our actions. To say that an agent is complicit is to say that he is engaged in a relationship with evil that he should have avoided and should avoid in the future. In order for the concept to help us decide how we are to act, however, there must be some act or failure to act which it is helping us judge whether or not to do. Passive accounts of complicity do not guide our actions in any meaningful way. If simply being a German citizen is to be complicit in the Holocaust, then there is no action the German citizen can do to avoid complicity. Thus, to call the German citizen complicit in this sense is not really helpful to him in terms of living a better moral life.

It seems to me that when we make judgments of complicity we are claiming that 1) there is something that the complicit agent can do/could have done in order to avoid complicity and 2) that he should/should have done it. The passive account denies the former proposition. On this account, simply finding oneself in a relationship with evil which one has done nothing to bring about and from which one can do nothing to remove oneself is sufficient for complicity. If, however, the passive account entails a denial of the first proposition, which I think it does, then it also entails the following dilemma: Either the proponent of the passive account must give up the second proposition as well, and as a result deny the normative character of complicity judgments, or he must give up the intuitive moral claim that a moral ought implies an actual can. Neither result is very appealing.
What I think the passive account is really trying to capture is not complicity, but the fact that sometimes mere proximity with evil can damage us in certain ways—perhaps, even moral ways. For instance, (call this case 1.13) consider a refugee caught up in a civil war between two evil dictators each of whom commit horrendous atrocities in their respective bids for political dominance. Suppose further that the refugee is linked to the evil of both men through his geography, culture, nationality, and history but not through his acts. Let us suppose that he denounces both sides and prays daily for peace in his country. As we fill out the story a little further, we can see how his relationship with evil, although beyond his control, might damage the refugee. Suppose that this person sees hundreds of his fellow villagers tortured, raped, and murdered by both sides. Suppose further, that as a result of his experience his outlook is changed. He finds it hard to trust; he finds it hard to avoid constant despair and the judgment that morality is absurd. I would say that his relationship to evil has damaged him. And this result is bad. It is a bad outcome that may lead this person to be less moral then he would have been otherwise. However, we would not blame the refugee for being related in this way to the evil around him. We would not blame him because he did not support the evil and worked against this evil. It happened to him, around him, and affected him, but it was not something with which he voluntarily aligned himself or tolerated. The refugee in this case is a victim of evil not complicit with it. However, if geographical or racial factors are sufficient to make an agent complicit with another’s wrongdoing, then it seems that even victims of the wrongdoing will also be complicit.

To sum up, in this section I have examined and responded to two different objections to the expressivist account of complicity. First, I responded to the objection that complicity is sometimes a reflexive relation. I claimed that being related to the wrongdoing of another was
a conceptual requirement of complicity. In so doing, I noted that while complicity involves being wrongly related to another agent’s act, a feature it shares with other instances of wrongful action, in complicity the wrongfulness of the relationship depends upon the wrongfulness of the primary agent’s act. I then went on to examine the objection that complicity need not involve conduct. I argued that passive accounts of complicity have a difficult time accounting for the *prima facie* blameworthiness of complicit conduct and its action-guiding features. I then offered a possible explanation for what the passive account is trying to capture in terms of the moral damage proximity to evil can sometimes cause.

8. Conclusion

In this chapter, I presented, explicated, and defended an expressivist account of complicity. In section 2, I began by giving a definition of complicity: Complicity is a violation of a *prima facie* moral duty not to voluntarily and either intentionally or negligently expressively align oneself with the wrongdoing of a primary agent by expressing a positive psychological state (a P-state) toward that wrongdoing.

In section 3, I explicated and defended the various parts of this definition. I began by giving an account of expressive alignment. I argued that expressive alignment occurs when one performs a particular illocutionary act—expressing a positive P-state toward the wrongdoing of a primary agent. I then used William Alston’s account of illocutionary acts as a starting point to explicate the notion of expressive alignment further. Later in section 3, I argued that an agent who non-negligently believes that the primary agent’s act is not wrong is not complicit. This led to a revision of the definition of complicity: Complicity is a violation of a *prima facie* moral duty not to voluntarily and intentionally expressively align oneself with *what one believes to be and actually is* the wrongdoing of another moral agent.
or voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent. I then contrasted complicity with the related notion of moral corruption that involves expressively aligning oneself with an act that one non-negligently believes to be permissible but is objectively a horrendous evil. Finally, I ended the account of expressive alignment by discussing the notion of a complicit context and defined this as a context created by external circumstances in which an agent’s failure to expressively reject the wrongdoing of the primary agent is itself an expression of a positive P-state toward the primary agent’s wrongdoing. I then went on to discuss and defend the claim that complicity is a violation of a prima facie duty, that complicity involves conduct that is voluntary, and that complicity is not a reflexive relation.

In section 4, I discussed the fact that on the expressivist account, complicity is neutral with respect to time. I then examined a special type of temporally distal complicity—accepting a benefit that is causally derived from the wrongdoing of a primary agent. I argued that sometimes accepting such a benefit is not wrong, that sometimes it creates a complicit context requiring an expressive rejection of the primary agent’s wrongdoing, and that sometimes it is itself an expression of a positive P-state toward the primary agent’s wrongdoing. I then noted some general contextual features that help to differentiate the different situations.

In section 5, I discussed the different ways that the notions of intentionality and negligence enter into judgments of complicity.

In section 6, I differentiated complicity from the related notions of blame, punishment, and a general duty to intervene in wrongdoing. Finally, in section 7, I raised and responded to two different objections to the expressivist account of complicity. First, I responded to the
objection that complicity could, in some cases, be a reflexive relation, and second, I responded to the claim that complicity does not necessarily involve conduct.

In the next chapter, I will take the account of complicity developed here and apply it to those special situations in which the complicit agent is also a causal participant in the primary wrongdoing.
Chapter 2
Causal Complicity

1. Introduction

In the last chapter, I laid out an expressivist account of complicity. I argued that complicity is a violation of a prima facie moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of another moral agent or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent. I then explicated the notion of expressive alignment in terms of performing the illocutionary act of expressing and used William Alston’s account of expressives as a starting point in the discussion. On the expressivist account of complicity the complicit agent expresses a positive P-state (belief, desire, or attitude) toward the primary agent’s wrongdoing when, in performing an act, he either takes responsibility for having P or is held responsible for having P. The complicit agent takes responsibility for having P when he intentionally performs an act that would give a third party warrant to conclude that he has P. He is held responsible for having P when he negligently performs an act that would give a third party warrant to conclude that he has P. And as I laid out in Chapter 1, the types of acts that can function to provide such a warrant include both conventional acts that indicate one has P and non-conventional acts that function as a reliable sign that one has P. A special example of this latter type of act will be the focus of this chapter.

More specifically, I will argue that causal facilitation of another agent’s wrongdoing, in the absence of epistemic defeaters, is a reliable sign of P. That is, it provides warrant for the conclusion that one has a positive P-state toward the primary agent’s wrongdoing. Causal facilitation can function as an expressive vehicle through which an agent either takes
responsibility for having P, if the causal facilitation is intentional, or is held responsible for having P, if the causal facilitation is negligent. Thus, through causal facilitation, an agent can expressively align himself with a primary agent’s wrongdoing resulting in complicity.

In section 2, I will begin by discussing the relationship among causal responsibility, wrongness, and blame. I will then lay out an account of causal responsibility. When agents cooperate to bring about a joint act, we sometimes intuitively differentiate the degree of each agent’s causal participation. We may judge, for instance, that one agent plays a more important role and another agent plays a less important role in bringing about an effect but also judge that both agents’ roles are in some sense causal. The purpose of giving this account is to provide a framework for thinking about cases of complicity in which two or more agents together are jointly the cause of an act of wrongdoing.

In section 3, I will explicate more carefully the difference between causal complicity and mere causal facilitation. I will argue that causal complicity is best thought of as causal facilitation (an act for which the agent bears some degree of causal responsibility) of a primary agent’s act in a context in which the causal facilitation is a reliable indicator of a positive P-state toward the primary agent’s act. Mere causal facilitation, however, is causal facilitation that takes place in a context in which there are epistemic defeaters that lower the probability that the agent has a positive P-state toward the primary agent’s act and defeat the inference from causal facilitation of a primary agent’s act to a positive P-state toward that act.

In section 4, I will argue for what I call the causal neutrality thesis in regards to complicity. This thesis is that an agent’s causal complicity in a joint act of wrongdoing for
which the agent bears *some* degree of causal responsibility is not dependent on the agent bearing any *particular* degree of causal responsibility for the joint act.

In section 5, I will lay out two general types of causal roles that have traditionally been assigned to complicit agents and will argue that the expressivist theory can account for these judgments. On the expressivist account, however, these agents are not complicit simply because of the causal properties of their conduct. Rather, they are complicit because their conduct expresses a positive P-state toward a primary agent's wrongdoing.

In section 6, I will discuss a special type of non-causal complicity—failed causal complicity and argue that a positive feature of the expressivist account of complicity is that it can capture our judgments about this type of case. Finally, in section 7, I will give a brief conclusion.

2. Causal Responsibility

Causal complicity involves one agent expressively aligning himself with a primary agent's wrongful act by performing an act that causally facilitates the doing of the primary agent's wrongful act. I take it that this claim, one agent causally facilitates another agent's act, entails that both the one whose act causally facilitates and the one whose act is causally facilitated in some way share in the doing of the wrongful act. In addition, oftentimes there are important differences in the degree of causal contributions of individual members of a group in which it is only the combined effort of two or more of the members that is sufficient to bring about some wrongful act. In this section, I want to give a rough account of judgments regarding differing degrees of causal involvement in a joint act of wrongdoing.

In so doing, I will explicate and make extensive use of the notion of causal responsibility. First, I will explain what I take to be the objects of causal responsibility. These objects are
the types of things for which agents can be causally responsible. Then, I will explain what I take to be the relationship between causal responsibility and two moral properties—wrongness and blameworthiness. Finally, I will argue that we can construct a rationale to explain why we sometimes judge that different agents bear different degrees of causal responsibility for their contributions to a joint effect. The rationale that I will suggest understands causal responsibility in terms of causal “credit for” conduct and effects of that conduct, and how much “credit” a given type of contribution is given is determined in part by the presence or absence of certain properties that society has chosen to treat as more or less significant.

The objects of causal responsibility

In saying that an agent is causally responsible for something, we attribute that something to the agent. Another way of putting it is that we record the something on the agent’s account or give the agent credit for it.\(^\text{44}\) But what sort of something are we talking about here? There are at least two different sorts of things for which persons are causally responsible.\(^\text{45}\) First, we are causally responsible for our basic conduct. By basic conduct, I mean instances of intentionally moving or not moving one’s body. For example, after a performance, I may intentionally clap or refuse to clap my hands.

Contrast the case of a person intentionally moving his hands to applaud a performance with the case of a person moving his hands because of a seizure. In the latter case, we would be hard pressed to call the epileptic’s seizure his conduct. To attribute basic conduct to a


person—to say that he is causally responsible for it—is to make a claim that the person had some control over the bodily movement.

Persons are also causally responsible for the effects of their basic conduct. So for example, if Al takes his fists and hits Bob repeatedly in the head and as a result Bob dies, Al is not just causally responsible for hitting Bob, he is also causally responsible for the effects of the hitting—namely, Bob’s death.

Sometimes the words that we use to describe conduct include both basic conduct and its effects. For example, to say that Al murdered Bob is to say that Al’s intentional and wrongful basic conduct resulted in Bob’s death. Murder then, is a concept that includes both basic conduct (an intentional moving or refraining from moving one’s body) and the effects of that conduct which may be either direct or mediated through some sort of causal chain.46

*Causal responsibility, wrongness, and blameworthiness*

We may seek to identify agents that are causally responsible for any number of reasons. One important reason, however, has to do with making accurate moral judgments—especially judgments about whether an agent has acted wrongly or is blameworthy.

“Wrongness” is a property that attaches to conduct—either basic conduct or combinations of basic conduct and effects. In order for conduct to be wrong, it must violate a moral rule that governs the particular situation. Such moral rules are sometimes called all-things-considered judgments. All-things-considered judgments are imperatives to act in certain ways or to refrain from acting in certain ways. These judgments take into account all of the relevant moral rules of thumb, *prima facie* moral rules, and give an account of what is morally permissible or morally required for the agent to do in the particular case. Thus, all-
things-considered moral judgments take the following linguistic form: “In context T, do X” or “in context Q, do not do Y”. These judgments direct our behavior so that when behavior conforms to an all-things-considered judgment, it is morally permissible or not wrong.47

It is my claim that the linguistic forms, “in context T, do X” or “in context Q, do not do Y”, can be translated using the concept of causal responsibility. Thus, the rule “in context T, do X” can be translated as “in context T, act so that you are causally responsible for X”, and the rule “in context Q, do not do Y” can be translated as “in context Q, do not act so that you are causally responsible for Y”. One’s conduct is wrong if, in context T, you are not causally responsible for X and if, in context Q, you are causally responsible Y.

As I said earlier, we oftentimes judge that there are differing degrees of causal responsibility for an effect that is the result of a joint effort. If this is the case, then it seems that there can also be degrees of wrongness when agents in a group have different degrees of causal responsibility for bringing about some effect, the bringing about of which is contrary to an all-things-considered moral judgment. Consider the following example:

Case 2.1

Al has held a grudge against Bob ever since Bob was promoted to the job that Al wanted. Al decided that if Bob were to die, then he would be assured of getting Bob’s job. Al hires Doug, a hit man, to kill Bob. Al tells the hit man when Bob will be working late and alone in his office and provides a driver, Fred, to take Doug to the office. When Fred picks up Doug, Doug’s friend, Sam, is with him. Sam has never been on a hit before and is fascinated by the whole idea and so asked to go along with Doug to watch. Doug agreed. Fred, who knows that Sam and Doug are up to no good but does not know they are planning to murder Bob, drops the two off in front of the office building and waits. Sam and Doug walk up to Bob’s office and knock. When Bob opens the door, Doug shoots Bob once in the stomach, and Bob collapses on the floor. However, at that point, Doug’s gun misfires and explodes in his hand. Doug is not harmed; however, the gun is now unable to be fired. Doug stops and ponders about Bob on the floor. On the one hand, Bob will probably die of blood loss. On the other

46 In addition to containing a basic cause and effect, the concept of murder also contains a normative component—that the killing was wrongful.
47 I will not attempt to answer here the important question of what makes a moral rule, moral. I only want to claim that the property of “wrongness” makes reference to such rules.
hand, he might not. He could hit him in the head with a lamp, but instead he asks Sam, who has been watching the whole affair with a morbid curiosity, if he could borrow his gun. Sam agrees and tosses Doug his gun. Doug then shoots Bob several times in the head, killing him. Afterwards, Fred, who does not know that Doug and Sam have murdered Bob, drives the pair back to Al's house. There, Al pays Doug and Fred for their services.

This case presents us with a complicated picture. We have multiple agents who are each in some way causally responsible for Bob's death. Al instigates and coordinates the murder by hiring Doug, giving him information he needs to successfully shoot Bob, and paying Fred to drive Doug and Sam. Doug shoots Bob in the chest and head and is the agent whose causal contribution is temporally proximate to the killing. Sam provides Doug with the gun that he uses to insure Bob's death, and Fred also seems to play some sort of causal role in bringing about Bob's death.

Each agent seems to bear some degree of causal responsibility for Bob's death. However, some of the agents bear higher degrees of causal responsibility, and as a result, these agents' actions are more wrong. For example, Doug seems to bear more causal responsibility for the murder than Fred, and Doug's conduct seems to be more wrong than Fred's.

Differing from the question of whether and to what degree an agent's conduct is wrong is the question of blameworthiness. Blameworthiness, unlike wrongness, is a judgment about the agent not the conduct of the agent. To be blameworthy is to deserve blame for one's conduct. One condition that must be met in order for an agent to be blameworthy is as follows: Whatever it is for which the agent deserves blame must be intimately associated with the agent.48 One common way that this condition is met is by being causally responsible for conduct that is wrong. That being said, wrong conduct by itself need not be

considered either a necessary or sufficient condition for blameworthiness. In addition to an agent’s conduct being wrong, it must also be either intentional or negligent. Moreover, there are other conditions such as voluntariness that must be met as well.

Thus, the relationship among causal responsibility, wrongness, and blameworthiness that I am advancing is as follows: Conduct has the property of wrongness when it fails to conform to an all-things-considered imperative. An all-things-considered imperative can have either of the following linguistic forms: 1) “in context T, act so that you are causally responsible for X” or 2) “in context Q, do not act so that you are causally responsible for Y”. An agent’s conduct is wrong to the degree that the agent is causally responsible for an act that is a violation of an all-things-considered moral imperative. An agent is blameworthy for wrongful conduct when certain other conditions are present in addition to the wrongful conduct.

Causal responsibility as credit for action and effects

Thus far, I have discussed the types of things for which an agent can be causally responsible, and the relationship among causal responsibility, wrongness, and blame. But what is causal responsibility? An agent is causally responsible for X when 1) his conduct is at least part of the explanation for the existence of X and 2) his conduct has additional properties because of which society gives the agent some degree of credit for X.

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49 Some argue, for instance, that an agent can be blamed for bad traits. See George Sher, “Blame for Traits,” *Nous* 35, no. 1 (March 2001): 146-161.

50 This understanding of degrees of wrongness might be in addition to other ways of understanding degrees of wrongness. I will discuss this topic in more detail in Chapter 4.

51 While being part of the explanation for X seems to entail being at least an insufficient but necessary part of an unnecessary but sufficient set of conditions (an INUS condition), being an INUS condition does not necessarily entail being part of the explanation for X. See John Mackie, “Causes and Conditions,” in *Causation* ed. by Ernest Sosa and Michael Tooley (New York: Oxford University Press, 1993).
The first part of this description maps on to what Joel Feinberg has called an explanatory causal citation. In an article entitled "Sua Culpa", Feinberg examined the various things we sometimes mean when we say that one or more factors of a larger set of factors sufficient for some effect is "the cause" of the effect. He calls such a claim a causal citation, which he describes as "a judgment that cites one of the numerous eligible causal conditions for an event as 'the cause'".\footnote{Feinberg, 202.} For Feinberg, these judgments are made relative to a set of aims or purposes. He writes,

The point of a causal citation is to single out one of the certified causal candidates that is especially interesting to us, given our various practical purposes and cognitive concerns. These purposes and concerns provide a convenient way of classifying the 'contexts of inquiry' in which causal citations are made. The primary division is between explanatory and nonexplanatory contexts.\footnote{Feinberg, 202.}

Explanatory citations single out abnormal interferences with the normal course of events or hitherto unknown missing links in a person's understanding. They are designed to remove puzzlement by citing the causal factor that can shed the most light. Hence, we can refer to the criterion of selection in explanatory contexts (for short) as the \textit{lantern criterion}.\footnote{Feinberg, 204.}

The second part of the description, however, is a claim that causal responsibility for X is in part a social construct. When an act has certain properties, we link the agent who performs the action to its effects in a special way. These properties function as grounds for giving the agent credit for the effect. In the context of a joint action, all of the agents whose acts may in some way together explain the effect may not all be causally responsible because some of these agents' acts may not have the additional properties that justify giving them causal credit for the effects. For example, suppose a person watches a television documentary about serial killers and uses information gained from the documentary (how to

torture a victim, how to dispose of bodies, etc.) while killing his own victims and that without this information he would not have gone ahead and killed his victims. Is the producer of the documentary causally responsible for the death of the victims? What about people who happen to have invested in a mutual fund that holds stock in the company that produces the show? It seems to me that while one might make the case that the producer and the mutual fund purchasers are in some distant sense causally related, I do not think that they are in any sense causally responsible for the deaths. To make causal responsibility reach this far would undermine one of its main functions—helping to identify agents with effects for which we want to give them credit. It is through such judgments that we individuate others and ourselves.

In what follows, I will briefly discuss some of the credit-grounding properties that I think affect whether and to what degree an agent is causally responsible. Consider the following cases:

**Case 2.2**

*One day while studying advanced physics, Doug figures out a way to make cold nuclear fusion work. He designs a nuclear plant and then solicits financial help from some wealthy entrepreneurs to build it. Thousands of engineers and workers put in countless hours constructing the plant.*

In this example, Doug deserves more “credit” for the existence of the nuclear fusion plant than either the financial investors or the thousands of engineers and workers who worked on the plant. We point to Doug because he was the originator or discoverer of the idea for the nuclear plant and instigated the process leading to its completion. Further, it was his plan that governed the joint effort to bring about the plant.
Case 2.3

Al, Bob, Cynthia, and Edward work together on a group project for their philosophy class—a paper analyzing the moral philosophy of Immanuel Kant. As it turns out, Al, Bob, and Cynthia are not that good at philosophy, so Edward writes the entire paper. The other three randomly divide the other tasks. Al looks up various references for the paper and writes the bibliography section. Bob buys a nice transparent folder and makes a spiffy title page for the paper, and Cynthia agrees to give a short presentation of the paper in class.

In this case, Edward deserves more of the credit because of the importance of his contribution to the project. Why was his contribution important? His writing the paper was important because the project could not have come off without his contribution (without the title page and folder the project might not have been as good, but it would still have come off), and his contribution was the most difficult of the tasks to complete. Even though in order for the project to be complete, someone had to read the paper in class and look up the bibliographical information, these are not as difficult as actually writing the paper.

Case 2.4

Tom is trapped in an underground cave in a remote part of a jungle with a bleeding leg and will die unless he receives appropriate medical care. Sam, Dave, and Katie, all medics, hike together into the jungle carrying the supplies necessary to save Tom's life. When they reach the cave, they find that only Katie is small enough to fit through the opening to get to Tom. Katie crawls through the cave with the supplies and treats Tom, coming back to get additional supplies when necessary from Sam and Dave. Katie then hooks a harness around Tom and herself, and Sam and Dave pull them out.

In this case, Katie gets more of the causal credit for the saving Tom's life because of the temporal proximity of her conduct to the effect. She is the medic that actually treated Tom and actually got the harness around him to pull him out.

This last property—causal interaction temporally proximate to the effect—has a special place in attributions of causal responsibility. Some writers, such as Hart and Honoré, hold that when one agent intentionally intervenes in a causal chain that involves another agent, the intervening agent is “the cause” of the effect. For example, they write,
If unusual quantities of arsenic are found in a dead man's body, this is up to a point an explanation of his death and so the cause of it: but we usually press for a further and more satisfying explanation and may find that someone deliberately put arsenic in the victim's food. This is a fuller explanation in terms of human agency; and of course we speak of the poisoner's action as the cause of the death; though we do not withdraw the title of cause from the presence of arsenic in the body—this is now thought of as an ancillary, the 'mere way' in which the poisoner produced the effect. Once we have reached this point, however, we have something which has a special finality at the level of common sense: for though we may look for and find an explanation of why the poisoner did what he did in terms of motives like greed or revenge, we do not regard his motive or speak of it as the cause of the death into which we are inquiring, even if we do (as is perhaps rare) call the poisoner's motive the 'cause' of his action. The causal explanation of the particular occurrence is brought to a stop when the death has been explained by the deliberate act, in the sense that none of the antecedents of that deliberate act will count as the cause of death. This is not to say that causal inquiries may not be pursued further. We may, for example, discover that someone provided a reason or opportunity for the poisoner to do the deed, e.g., by persuading him not to hesitate or by supplying an appropriate dose of poison. In that case, a causal relationship of some sort may indeed be established between the conduct of the person who supplies the advice or means and the death of the victim. The latter can properly be described as a consequence of the persuasion or the provision of poison. But the fact that what is here unearthed is not the central type of causal relationship but something more tenuous is marked by the fact that we would not happily say that the accomplice had either 'caused' the death or 'caused' the poisoner to kill. We do not therefore trace the central type of causal inquiry through a deliberate act.  

As I interpret Hart and Honoré, when they argue that we do not trace the central type of causal inquiry through a deliberate act, they are saying that the intervention of a voluntary act breaks the "central causal chain". The agent that exerts a causal influence temporally proximate to an outcome represents the central type of causal influence.

Other writers, such as Joel Feinberg, deny this claim and hold that one agent can be "the cause" of an effect even if there is an intentional intervening causal interaction more proximate to the effect. Part of their disagreement involves what each means by "the cause".

My use of the temporal proximity condition agrees in some ways with both Hart and Honoré and Feinberg. I want to say that conduct that involves intentionally intervening in a

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causal chain to exert a causal influence temporally proximate to an effect is a reason to judge that the intervening agent bears a high degree of causal responsibility for the effect. However, I also want to say that other agents who causally cooperate in a joint undertaking may also bear a high degree of causal responsibility.

In these three cases, there were at least four different factors that weighed in favor of one member of the group receiving more causal “credit” for the joint act: 1) Originating the plan that governs the joint effort, 2) instigating the plan through conduct intended to start a causal chain leading to the effect, 3) contributing an important causal part toward the actualization of the effect, and 4) being the temporally proximate actor to the jointly produced effect.

Paying attention to these factors can help us to make decisions about whether a given agent is strongly or weakly causally responsible for an effect that a group of agents together brings about. In our original case, for example, Al is strongly causally responsible for the effect because he originates and instigates the plan that subsequently governs the assassination. In addition, Doug is strongly causally responsible because he is the agent whose intentional conduct is temporally proximate to the murder. Sam’s contribution seems less important because even though he gave Doug a gun to complete the assassination, it is not clear that Bob would not have died without the extra bullets, and if Sam had decided not to give Doug the gun, Doug could have found another way to finish the job. What about Fred? We may think that because he knew that Doug and Sam were going to do something wrong and because he provided them transportation to do that wrong, he is causally responsible to some degree for the killing; however, comparatively it seems that this degree is less than that of Doug, Sam, and Al.
To sum up, in section 2, I began by discussing the possible objects of causal responsibility. I argued that agents could be causally responsible for their basic bodily acts and effects that result from those acts. I then went on to discuss what I take to be the relationship between causal responsibility, wrongness and blame. I claimed that causal responsibility is partly constitutive of wrongness and that wrongness is a necessary but not sufficient condition to rightly blame an agent for an action but not to blame an individual generally.\footnote{This leaves open the possibility of blaming an individual for a character flaw. See George Sher's "Blame for Traits".} I then gave an account of causal responsibility as both an explanatory concept and a concept that reflects our intuitions about rightful claims of credit for effects to which an individual is causally linked. Finally, I gave four examples of properties the possession of which seem to generate a stronger claim to credit for effects that are caused by a joint act constituted by several individual acts.

3. **Causal Complicity versus Causal Facilitation**

In Chapter 1, I argued that complicity is a violation of a \textit{prima facie} moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of another moral agent or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of another moral agent. I then argued that a person expresses a P-state toward wrongdoing when he either takes responsibility for having P or is held responsible for having P. A person takes responsibility for having P when he intentionally performs an act that would provide warrant to a third party to conclude that he has P, and a person is held responsibility for having P when he negligently performs an act that would provide warrant to a third party to conclude that he has P. The types of acts that
can provide such warrant include conventional acts signifying the presence of P or non-conventional yet reliable indicators of the presence of P.

In this section, I will argue that causally facilitating another agent’s wrongdoing is a non-conventional yet reliable indicator of a positive P-state toward that wrongdoing. When I say that act X done by agent A is a non-conventional yet reliable indicator of P, I mean that X does not have an explicitly agreed upon meaning in a society but does have a high degree of correlation with the presence of P in A. Over time, we come to associate certain states with certain actions. We are further aided by contextual clues that increase the probability that an agent performing a certain act has P. Consider the following case:

**Case 2.5**

*Tom, a sophomore at the local state university, informs the parents of his girlfriend, Alice, a freshman in high school, that he has impregnated their daughter. Without saying a word, Alice’s mother starts crying hysterically, and Alice’s father picks up a large sledgehammer, walks outside and starts destroying Tom’s van (plush interior included).*

Given this context, with these actions and without any words being spoken at all, it seems that with a high degree of probability, we could conclude that Tom’s parents have a negative belief or attitude toward Tom’s conduct.

Now, of course, the probability here would not be 1 because it is possible that Tom’s parents could be that strange family who have positive attitudes and beliefs about their young daughter being impregnated by her boyfriend and demonstrate this by crying hysterically and smashing things. However, this scenario seems to me to be highly unlikely, and if Tom, upon witnessing the actions of Alice’s parents, were to go up to Alice’s father, hug him warmly, and tell him how relieved he is that he is not upset over the fact that he impregnated Alice, we would think Tom had not gotten the right message. We would think that because
given the context, the actions of Tom’s parents are a reliable indicator of a negative attitude toward his action.

It seems to me that causally facilitating another’s act is like Alice’s father smashing Tom’s van. Causal facilitation of another’s act, as a rule, functions as a reliable indicator of a positive P-state toward that act. For example, one might causally facilitate another’s act because one desires that the act be done or because one has a positive attitude toward the doing of the act. Consider the following example:

**Case 2.6**

*Kyle works at a local bank as a teller. His friend Lyle is a bank thief. Lyle approaches Kyle to help him with a bank robbery. In exchange for 1/3 of the take, Kyle gives Lyle the combination to the safe and a copy of the key to the front of the bank. Lyle easily robs the bank. He then plants minor explosives on the vault door that go off hours later in order to avoid casting suspicion on Kyle. Lyle is never caught and Kyle gets 1/3 of the take.*

In this example, Kyle’s act of giving Lyle the key and the combination causally facilitates the bank robbery and makes Kyle to some degree causally responsible for the robbery. However, in addition, through his act of giving Lyle the key and combination Kyle expresses a positive P-state for Lyle’s part of the bank robbery. Given the context and Kyle’s act, a third party would be warranted in inferring that Kyle has a positive P-state toward Lyle’s conduct. And more than likely, if Kyle were asked what others might think if they knew that he had given Lyle the key and the combination, he probably would admit that they would think he wanted Lyle to rob the bank.

I think that the judgment in case 2.6 is generalizable to a large number of cases. Most of the time when one person causally facilitates another person’s act, the causal facilitation is a reliable indicator of a positive P-state toward the person’s act. Generally speaking, one

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57 This positive P-state may be the belief that the wrongful act is permissible, the desire to actualize the wrongdoing, or any number of positive attitudes toward the wrongdoing.
doesn’t help another person do some act if one doesn’t desire to see the act done or has a positive attitude toward the doing of the act. Now this is not always the case, of course.

Sometimes, contextual clues make it clear that the causal facilitator does not have a positive P-state toward the primary agent’s wrongdoing. I will call these contextual clues epistemic defeaters because they defeat the normal inference from causal participation in an act to the conclusion that an agent has a positive P-state toward the act. In the presence of epistemic defeaters, the context plus causal facilitation does not provide a reliable indication of P; therefore, in the presence of defeaters there is no expression of P and no complicity.

This is what I take to be the main difference between causal complicity and mere causal facilitation. Causal complicity is causal facilitation of a primary agent’s act in a context in which the causal facilitation is a reliable indicator of a positive P-state toward the primary agent’s act.\textsuperscript{58} Mere causal facilitation is causal facilitation that takes place in a context in which there are epistemic defeaters that significantly lower the probability that the agent has a positive P-state toward the primary agent’s act and defeat the inference from causal facilitation of a primary agent’s act to a positive P-state toward that act.

One type of context that I think functions as an epistemic defeater is non-voluntariness. For example, an agent may be coerced or forced into cooperating with the primary agent. The non-complicity in these cases is over-determined because not only does the non-voluntariness function as a contextual defeater that eliminates the expression, it also violates an independent, necessary condition for complicity. Consider case 2.7:

\textsuperscript{58} There is also a second type of causal complicity that involves both a causal act that merely causally facilitates and a conventional act that expresses support for P. In this type of causal complicity, the conventional act of expressing is what makes the conduct as a whole complicit. Rather than the causal component being the vehicle through which the complicit agent expresses, the causal component is in addition to a conventional component through which the complicit agent expresses.
Case 2.7

Same as 2.6 except that Lyle doesn’t offer Kyle any of the money and threatens to kill Kyle’s wife and children if he doesn’t give Lyle the combination and the key.

In this case, the context of non-voluntariness undermines the inference from the act of causal facilitation to the conclusion that Kyle has a positive P-state toward what Lyle is doing. In this case, it is clear that while Lyle causally facilitates the robbery, he does not express a positive P-state toward the robbery.

Specific types of conduct can also function as an epistemic defeater. An example of such conduct is an agent explicitly and convincingly denouncing a group act that he causally facilitates. Consider the following example:

Case 2.8

Sam’s brother, Jed, is an arrogant loudmouth. One day while the two are in a bar, Jed insults a large, bald, tattooed man who is missing several teeth. Jed and the man throw several punches when Sam steps in and says, “Look, I apologize for my brother; he’s a loudmouth idiot. How about we just let this whole thing go?” Jed, however, jumps on the large, bald, tattooed man who then starts beating Jed senseless. Sam, out of loyalty to his brother, enters the fray and helps Jed knock the man unconscious. Sam then yells at Jed and hits him in the mouth.

In this case, Sam causally facilitates Jed’s beating of the bald, tattooed man; however, given the context, it is clear that Sam did not have a positive P-state toward Jed’s conduct. The epistemic defeater here, I think, is Sam’s clear expression of repugnance for Jed’s conduct. While these two examples of epistemic defeaters are not exhaustive, they are illustrative of the type of context and conduct that can defeat an inference from an act that causally facilitates a primary agent’s wrongdoing to the conclusion that the causal facilitator has a positive P-state toward the primary agent’s wrongdoing.

In addition to epistemic defeaters, the general considerations of expressing discussed in Chapter 1 also come into play. In Chapter 1, I argued if an agent acts unintentionally and
non-negligently in a way that would provide a third party with warrant to infer that he has P, the agent does not express P (see case 1.3). The act in a case like this would be unintentional and non-negligent in the sense that the agent would not know and did not violate any duty in not knowing that his causal facilitation actually gave others warrant to conclude that he has P. This could occur, for instance, if an agent did not know and violated no duty in not knowing that his conduct was actually causally facilitating the primary agent’s act. Consider for example case 2.9:

Case 2.9

*Jim thinks up a diabolical scheme to get Janet to help him kill her own family. Jim kidnaps Janet’s family and injects them with compound A. He then tells Janet what he has done and tells her that compound A is a poison that will kill her family in 24 hours if Janet does not find the antidote. Janet, who is a brilliant detective, after much work discovers where Jim lives and where he has kidnapped her family. She also finds a formula on his computer for an antidote to the poison. Using her home chemistry lab (she is also a brilliant chemist), Janet synthesizes the antidote and races to where her family is being held. Just minutes before the 24 hours are up, Janet, to the relief of her family, injects each one with the antidote. However, minutes later they all die. Janet then finds a letter written by Jim in which he tells her that, in fact, compound A was not a poison but an inert ingredient of one. The compound Janet synthesized and injected into her family members was needed to activate the poison. Once Janet injected her family members, the two compounds came together to form a poison that killed them.*

In this case, even though Janet knows that Jim is trying to kill her family and Janet causally facilitates this killing, she does not know and did not violate any duty in not knowing that her act causally facilitated this killing. As a result, her act does not express a positive P-state toward Jim’s conduct and is not complicit.

I want to end this section by briefly discussing what I think is a positive feature of this account of causal complicity. One might think that cases of causal complicity (or even cases of complicity plus mere causal facilitation are more wrong generally than non-causal complicity. The expressivist account of causal complicity gives us a natural way of
understanding why we generally tend to think that this is the case. Causally complicit conduct has two wrong-making properties: an expressive component and a causal component. While only the expressive component is essential to an act’s being complicit, the causal component adds another wrong-making property to the act and makes it, all things being equal, more wrong.\footnote{See Chapter 4 for further discussion of degrees of all-things-considered wrongness.}

To sum up, in this section I have discussed what causal complicity is and how it differs from merely causally facilitating. I began by arguing that causally facilitating another’s act can function as non-conventional yet reliable indicator of a positive P-state toward that act (case 2.6). I then argued that sometimes, however, contextual components, which I called epistemic defeaters, defeat the inference from an agent causally facilitating a primary agent’s act to the conclusion that the agent has a positive P-state toward that act. I then gave two examples of such defeaters: non-voluntariness and an explicit rejection of the primary agent’s act. I then noted that as a general part of the expressivist account, if the purported expressive act is done unintentionally and non-negligently but still provides warrant to a third party to conclude that one has a positive P-state toward a primary agent’s wrongdoing, then the act is not an expression of P. Finally, I argued that a positive implication of this account of causal complicity is that it readily explains why we may think that all things being equal a case of causal complicity is more wrong than a case of non-causal complicity.

4. The Causal Neutrality Thesis

One of the central claims of this project is that complicit conduct is essentially expressive, not causal. In cases of causal complicity, however, both expressive and causal components play important roles in our overall assessment of the complicit agent’s conduct.
Both properties give us different reasons to think that the conduct, all-things-considered, is wrong. Further, if the conduct is wrong, then each property adds to the over-all degree of blame warranted by the act. Wrongful conduct that is merely expressive without making a causal contribution is not as blameworthy, all things being equal, as conduct that has the same expressive component and makes a causal contribution. To see this point, consider the following cases:

Case 2.10

Bob and his gang trap Cynthia in an old warehouse and begin taking turns beating and raping her. As each member takes his turn, the other members hold Cynthia down. Al, a fellow member of the gang who arrives late, slaps his fellow gang members on the back, proclaims that the rape was a great idea, and then helps to hold Cynthia down and ultimately rapes her himself.

Case 2.11

Same as case 2.10, except that when Al arrives late he slaps his fellow gang members on the back and proclaims that the rape was a great idea, but does not help to hold Cynthia down or rape her himself.

On the expressivist account, Al would be complicit in both case 2.10 and 2.11; however, in case 2.10, Al would warrant a greater over-all degree of blame because his conduct not only expresses a positive P-state toward the gang rape, it actually causally contributes to it. This added property of Al’s act makes it worse than his act in case 2.11 and provides warrant for blaming Al to a greater degree in case 2.10 than in case 2.11.60

One might, however, accept the claim that complicity sometimes occurs in the absence of a causal connection between the complicit agent and the primary agent’s wrong and that

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60 In some cases, the reason that the complicit agent may express a positive P-state but not causally participate in the wrongdoing is because he is prevented from doing so by some external event (see section 6 for a discussion of failed causal complicity). Even in these cases, however, I think that the property of causally contributing makes a difference in the complicit agent’s degree of blameworthiness. This commits me to the view that moral luck can make a difference in an agent’s blameworthiness. That is, if Agent A fully intends to do a wrongful act X, but is prevented from doing so by some chance external event, then A is less blameworthy than if he had actually done X.
causal properties add another moral consideration to all-things-considered judgments but want to maintain that if there is a causal connection between the complicit agent and the primary agent’s wrongdoing then that causal connection must be different than the causal connection between the primary agent and the wrongdoing. For example, one might think that a primary agent must bear a high degree of causal responsibility for the wrongdoing and a complicit agent must bear a lower degree of causal responsibility for the wrongdoing. While I do think that it is the case that sometimes the causal relationships are different, I will argue that this need not be the case. Sometimes an agent can be complicit with a primary agent’s wrongful conduct and have the same causal relationship to the wrongful act that the primary agent does. I will argue for a causal neutrality thesis with regard to complicity: A complicit agent may have a greater, lesser, or equal degree of causal involvement with a joint act of wrongdoing than another agent who is also causally involved in the joint act of wrongdoing and who is the primary agent toward whom the complicit agent is expressing a positive P-state.

To make this clearer I need to distinguish between two different acts for which a complicit agent is causally responsible when his act is part of a group of acts that together are sufficient to bring about some effect. This is best done through an example. Suppose, for example, that we have three agents A, B, and C who together act to bring about some effect, E. Suppose that A does act a, B does act b, and C does act c and that a, b, and c are each an insufficient but necessary conditions of an unnecessary but sufficient set of conditions (or INUS conditions) for E. Suppose further that a, b, and c are each described in such a way so that each description only includes effects that result from this one act. Now, recall our discussion about the fact that some concepts include both basic acts and effects that follow
from the basic acts. In this example, let’s define $\beta$ as the concept that designates both the set of acts (a, b, and c) and the effect $E$ that flows from the combination of these acts. I will call $\beta$ a joint act because its act description includes an effect that results from a set of other acts. In this example, $A$ is causally responsible for two different acts. First, $A$ is fully causally responsible for the individual act $a$. Second, $A$ is causally responsible to some degree for $\beta$.

Now say that $A$ is complicit with $B$. According to the causal neutrality thesis, agent $A$ may have a greater, lesser, or equal degree of causal responsible for the joint act $\beta$ as $B$ and still be complicit with $B$’s wrongdoing. $B$’s wrongdoing here consists of two different acts, the individual act $b$ and the joint act $\beta$. To say that $A$ is complicit with $B$’s wrongdoing is to say that $A$ has expressed a positive $P$-state toward $B$’s two acts—one of which is individual, $b$ and one of which is joint, $\beta$. However, $\beta$ is also an act for which $A$ bears some degree of causal responsibility. Therefore, $A$ is causally complicit with $B$’s wrongful acts and also bears some degree of causal responsible for one of those acts—the joint act $\beta$.

There is an important point here about the function of a primary agent. While it is the case that in order to be a primary agent, an agent must in some degree be causally responsible for an act of wrongdoing (in this case a joint act of wrongdoing), the agent need not have any particular degree of causal responsibility for the act of wrongdoing. Primary agency on the expressivist account is not a designation that is constitutively based on one’s causal relation to the wrongful act. Rather, it is a designation that is made relative to an agent who expresses a positive $P$-state. The primary agent is simply that agent whose wrongful act is the act toward which the complicit agent expresses a positive $P$-state regardless of whether or not the wrongful act is a joint act in which the complicit agent shares some causal
responsibility. Given these points we can roughly characterize the various types of causal relationships that exist in causal complicity as follows:

Table 1

<table>
<thead>
<tr>
<th>Primary agent’s relationship to joint wrongdoing</th>
<th>Complicit agent’s relationship to joint wrongdoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>High degree of causal responsibility</td>
<td>Complicit agent (high degree)/Primary agent (high degree)</td>
</tr>
<tr>
<td>Low degree of causal responsibility</td>
<td>Complicit agent (low degree)/Primary agent (low degree)</td>
</tr>
</tbody>
</table>

One important reason to accept the causal neutrality thesis is that it helps explain a special case of complicity—that involving a complicit agent who bears a high degree of causal responsibility for a wrongful joint act and a primary agent who bears a low degree of causal responsibility for the same wrongful joint act. Consider the following case:

Case 2.12

*Sam is the leader of a vicious gang and wants to test the loyalty of a new member, Carl. In order to do so, Sam plans to kill a local business owner, Ted, who has refused to pay the gang’s “protection” money. Sam comes up with a plan in which he and Carl enter the business at night, Carl pretends to be sick in order to lure Ted out of his office in the back, and then Sam will shoot Ted. Carl executes his part of the plan perfectly, luring Ted out of his office. Sam is impressed and openly congratulates Carl just before he shoots and kills Ted.*

In this case, the joint act is murder. Both Carl and Sam are INUS conditions for the murder. Both commit individual acts (luring and shooting) and both commit a joint act of murder. Carl’s causal responsibility for the joint act of murder is less than Sam’s, but it seems that Sam’s conduct in congratulating Carl for playing his part in the joint act links him
to Carl’s wrongful acts (both the individual and joint act) in a complicit fashion. In this case then, Sam not only bears a high level of causal responsibility for the murder, he also is complicit with Carl’s wrongdoing, and this wrongdoing involves a lower degree of causal responsibility for the same murder.

To sum up, in this section I have argued for a causal neutrality thesis for causal complicity: A complicit agent may have a greater, lesser, or equal degree of causal involvement with a joint act of wrongdoing than another agent who is also causally involved in the joint act of wrongdoing and who is the primary agent toward whom the complicit agent is expressing a positive P-state. I argued that this thesis can help capture certain intuitions we have about complicity and that the best way to understand this thesis is to think of individuals who causally cooperate to perform a wrongful act as performing two different acts—one individual act and one joint act. One can be causally complicit with a primary agent’s act of wrongdoing and bear a greater degree of causal responsibility for that same wrongful act when the wrongful act is a joint act. In this case, the complicit agent expresses a positive P-state toward a joint act of wrongdoing for which a primary agent is causally responsible to a lesser degree and for which the complicit agent is causally responsible to a greater degree.

5. Two Important Types of Causal Relationships within Complicity

It is commonly thought that there are two main types of causal conduct that qualify as complicit—providing (or failing to remove) the means through which a primary agent acts and providing (or failing to remove) the motive upon which the primary agent acts—and each of these types has various sub-types. However, on an expressivist theory of complicity,
complicity is not limited to these two types of conduct, and it also not the case that in providing the means or motive an agent always bears a lower degree of causal responsibility.

Sometimes a person who provides the means or motive will bear a high degree of causal responsibility. Oftentimes, for example, an agent that provides the primary agent with a motive to act also is an instigator or originator of the plan to bring about some effect. For example, when an agent, in authority, commands another to perform a wrongful act, then the commanding agent instigates a causal chain that the other agent completes and both seem to bear a high degree of causal responsibility for the outcome.\textsuperscript{61} Other times, an agent who merely provides the means through which the primary agent acts may make an important contribution to bringing about the effect.

In the following table, I list various ways one agent can causally participate with a primary agent in bringing about some effect by providing the means through which the primary agent acts or by providing the motive upon which the primary agent acts. Through each of these types of causal facilitation, an agent may express a positive P-state for the wrongful act of the primary agent. Recall however, that it is not the case that merely causally facilitating the primary agent in these ways is sufficient for complicity. In order for there to be complicity involved when an agent provides the means or motive for a primary agent, the causal act itself must expressively align the agent with the primary agent or there must be, in addition to the causal act, an expressive act that aligns the complicit agent with the primary agent.

\textsuperscript{61} Note there are two things to keep in mind here. First, just because an agent bears a high degree of causal responsibility does not necessarily mean that he deserves a high degree of blame. Acting on orders may be a situation in which the blameworthiness of the acting agent is diminished. Second, simply ordering someone to do something wrong may not necessarily be an instigation. For example, a general may order a sergeant to order a private to do something wrong. In this case, the general may bear a high degree of causal responsibility while the sergeant may bear a lesser degree.
Table 2
Subtypes of providing the means through which a primary agent acts and providing the motive upon which a primary agent acts

<table>
<thead>
<tr>
<th>Providing the means through which a primary agent acts</th>
<th>Materials</th>
<th>Opportunity</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Providing physical materials which a primary agent uses</td>
<td>Providing opportunity which a primary agent uses</td>
<td>Providing information which a primary agent uses</td>
</tr>
<tr>
<td></td>
<td>Failing to remove physical materials which a primary agent uses</td>
<td>Failing to remove an opportunity which a primary agent uses</td>
<td>Failing to provide information to thwart a primary agent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Providing the motive upon which the primary agent acts</th>
<th>Incentive</th>
<th>Provoke</th>
<th>Command</th>
<th>Threaten</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provide a motivating incentive upon which a primary agent acts</td>
<td>Inciting a primary agent to act</td>
<td>Failing to calm down a primary agent bent on acting</td>
<td>Commanding a primary agent to act</td>
</tr>
<tr>
<td></td>
<td>Failing to remove a motivating incentive upon which a primary agent acts</td>
<td>Failing to calm down a primary agent bent on acting</td>
<td>Encouraging a primary agent to act</td>
<td>Failing to command a primary agent bent on acting not to act</td>
</tr>
</tbody>
</table>

6. A Special Type of Non-causal Complicity—Failed Causal Complicity

In this section, I want to briefly discuss a special type of non-causal complicity that occurs temporally prior to a primary agent’s wrongdoing—failed causal complicity. In this type of complicity, the complicit agent attempts to causally participate in the primary agent’s wrongdoing but fails. Consider the following case:

Case 2.13

*Al is about to kill Doug but mistakenly thinks that he has left his gun in the car. Al asks Bob to borrow his gun. Bob eager to help Al agrees and gives Al his gun. Al has Doug in his sights and is about to shoot when he realizes that his own gun is in his jacket pocket. Not wanting to needlessly use up Bob’s ammunition, he thanks Bob for the offer and uses his own gun to kill Doug.*

In this case, Bob’s offer of his gun would have made him a causal contributor to Doug’s death had Al not found his own gun. Clearly, such an act expresses a positive P-state toward
Al’s activity. However, Bob does not causally facilitate Doug’s death. Bob may have intended to play such a role but circumstances prevented this from occurring. In these cases of failed causal contribution, complicity occurs before the primary agent’s act and is an expression of a positive P-state for the primary agent’s intended conduct.

Another positive feature of the expressivist account of complicity is its ability to deal with cases of failed causal complicity and other complex cases of causal interaction, such as cases of causal over-determination that are not adequately explained by causal theories. On the expressivist account, an agent would still be complicit in these cases even if because of inadequacies in current accounts of causality, it is difficult to say whether or not the agent actually causally participated in these acts.

7. Conclusion

In this chapter, I have presented an expressivist account of causal complicity. On an expressivist account, an agent is causally complicit when he performs one act that both causally facilitates a primary agent’s wrongdoing and expresses a positive P-state toward that wrongdoing. In section 2, I gave an account of causal responsibility in which I discussed the objects of causal responsibility, acts and act-effect combinations; discussed the relationship among causal responsibility, wrongness, and blame; and explicated causal responsibility as a notion that reflects both objective causal criteria and social priorities with regard to identifying agents with those effects for which we want to give them causal credit. In section 3, I discussed the notion of causal complicity and contrasted it with mere causal facilitation. I argued that causal complicity is causal facilitation of a primary agent’s act in a context in which the causal facilitation is a reliable indicator of a positive P-state toward the primary agent’s act. Mere causal facilitation is causal facilitation that takes place in a context in
which there are epistemic defeaters that significantly lower the probability that the agent has a positive P-state toward the primary agent’s act and defeat the inference from causal facilitation of a primary agent’s act to a positive P-state toward that act. In section 4, I argued for the causal neutrality thesis and claimed that this thesis was best understood if a distinction is made between individual and joint acts. In section 5, I briefly explored two types of causal relationships that are sometimes thought to be constitutive of complicity—providing the means and providing the motive. I argued that these two types of causal relationships to a primary agent could be complicit; however, they are complicit, if and only if, they expressively align the agent to the primary agent’s wrongdoing. In section 5, I briefly discussed a special type of non-causal complicity—failed causal complicity—and argued that it was a positive feature of this account that it could accommodate it.
Chapter 3
Other Views of Complicity

1. Introduction

In Chapter 1, I laid out and defended an expressivist account of complicity. In Chapter 2, I argued that the expressivist account of complicity could account for the judgment that causal facilitation of another agent's wrongdoing, in many cases, involves complicity. In this chapter, I will compare and contrast the expressivist account with three different accounts of complicity and point out what I take to be advantages of the expressivist account.

In section 2 of this chapter, I will examine the legal doctrine of complicity as articulated by Sanford Kadish. In section 3, I will examine an account of moral complicity put forth by Judith Kissell that is similar to Kadish's legal account. In both Kadish's and Kissell's account, the complicit relationship is defined in quasi-causal terms. In section 4, I will examine an account of complicity put forth by Christopher Kutz in which the complicit relationship is defined in terms of participation in wrongdoing. Finally, in section 5, I will give a brief summary of Chapter 3 and a preview of Chapter 4. Before I begin however, I want to briefly describe a feature shared by each of these accounts that is not a part of the expressivist account.

Derivative liability

In each of the following accounts, a central conceptual claim is that complicity involves liability for another agent's wrongdoing. To be complicit on these accounts is to be liable for the conduct of a primary agent because of one's own conduct. That is, liability for the
primary agent’s wrongdoing is also laid at the complicit agent’s feet because of what the
complicit agent does.63

On the expressivist account however, the complicit agent is not liable for the wrongdoing
of the primary agent. Rather, he is held accountable for his own conduct.64 To be complicit
on the expressivist account is to express a positive P-state toward another agent’s
wrongdoing, and it is for this expressive conduct that the complicit agent is liable, not the
conduct of the primary agent.

I take it to be an advantage of the expressivist account of complicity that it is not
committed to a notion of derivative liability because such a notion is in tension with certain
highly intuitive principles of moral accountability. I will discuss these principles in more
depth in section 4 when I analyze Christopher Kutz’s account of complicity. Now however, I
will turn to Sanford Kadish’s account of legal complicity.

2. Sanford Kadish’s Account of Legal Complicity

In this section, I will present and comment on Sanford Kadish’s account of the legal
doctrine of complicity. Central to the legal doctrine of complicity is the notion of derivative
legal liability. As Kadish notes in the first line of his study of the doctrine of complicity,
“This is a study of a body of doctrine, the doctrine of complicity, that determines when one

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62 On Kutz’s account, participation is not defined in causal terms. Agent A can participate in B’s wrongdoing (where B can be an agent or a group of agents) even if A’s conduct makes no difference in bringing about that wrongdoing.

63 Francis Kamm, in a provocative and interesting article, argues that in some situations, liability for the primary agent’s conduct is completely laid at the feet of the complicit agent and that in these situations, this fact might give the primary agent a reason to engage in the conduct. See Fances Kamm, “Responsibility and Collaboration,” Philosophy and Public Affairs 28, no. 3 (Summer 1999): 169-204.

64 If the complicit agent is also a member of a group which together brings about a group wrong, he is also held accountable for the group wrong but only to the degree that he is causally responsible for the group wrong.
person is liable for a crime committed by another.” Derivative liability means holding one person (a complicit agent) liable for conduct done by another agent.

I will begin by reviewing Kadish’s rationale for derivative liability. This will involve an exploration of the relationships among blameworthiness, responsibility, and causality. I will then briefly discuss Kadish’s account of how derivative liability helps to make sense of legal precedents involving complicity. Next, I will review Kadish’s answers to two important questions regarding complicity: 1) How do we differentiate the primary agent from the complicit agent, and 2) how do we differentiate the complicit agent from the non-complicit agent? Finally, I will compare and contrast the legal doctrine of complicity as presented by Kadish with the expressivist account of complicity.

*Blameworthiness, responsibility, and causality—the rationale behind derivative liability*

Kadish describes blame as a “judgment of disapproval” of some human action. He writes, “It is an internal evaluation that need not be expressed. Blame is the sentiment of disapproval itself”. And, according to Kadish, “blame entails a judgment of responsibility”. That is to say that an agent is blameworthy for some action is to be committed to the claim that the agent is responsible for that action.

For Kadish, a basic requirement for responsible action is that the agent freely chooses that action. Kadish does not specify what he means by “freely chooses” but gives the impression that he is after some minimal condition of not being determined by an external

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66 Kadish, 329.
67 Kadish, 329.
68 Kadish, 330. Blame entails responsibility at least in as far as we are talking about blame for actions. One might argue that blame is also appropriate for character traits for which one is not responsible. See G. Sher’s “Blame for Traits”.
force. Such a condition would be satisfied on both libertarian and compatibilist views of freedom. He writes,

The notion of responsibility that underlies the concept of blame is an elusive one. Without attending to a variety of subtle complications that inhere in the concept, or arguing any particular philosophical position we may say generally that blame imports the notion of choice. We perceive human actions as differing from other events in the world. Things happen and events occur. They do not occur anarchically and haphazardly, but in sequences and associations that have a necessary quality about them. We express this quality in terms of causation and we understand it in terms of laws of nature that are beyond our power to alter. Human actions stand on an entirely different footing. While man is total subject under the laws of the natural world, he is total sovereign over his own actions. Except in special circumstances, he possesses volition through which he is free to choose his actions. He may be influenced in his choices, but influences do not work like wind upon a straw; rather, they are considerations on the basis of which he chooses to act. He may also be the object of influence in the larger sense that he is the product of the forces that shaped him. But his actions are his and his alone, not those of his genes or his rearing, because if he had so desired he could have chosen to do otherwise. This is the perception that underlies the conception of responsibility which, in turn, is central to the conception of blame. We blame a person for an action that violates some approved norm of conduct. We not only disapprove of the conduct, we blame the person for it because he is a responsible agent with the power to choose to do otherwise.\(^69\)

According to Kadish, there are at least two different types of things for which a responsible agent can be blamed. First, an agent may be blamed for the acts that he does. Second, an agent may be blamed for the consequences that follow from those acts. These are different and sometimes separable grounds for blaming.\(^70\)

In addition, the consequences that can flow from an agent’s act can also be differentiated into two different types. First, the consequences of the act may be that a series of natural events follows that is governed by physical laws. Kadish give the following example:

\(^{69}\) Kadish, 330.
\(^{70}\) Kadish, 332; I say sometimes separable because certain act descriptions include both an act and a consequence. For example, to say that A’s act was an act of murder is to say that A intentionally and wrongfully acted in a way that resulted in the death of another person. If there is no resultant death, a specific consequence, then there is no act of murder.
If I light a match in an area containing explosive vapors that ignite, starting a fire that burns down a building, I may be blamed for the burning of the building because I can be said to have caused it. I started a chain of events that led to the burning of the building through cause and effect relationships governed by laws of nature.  

However, another type of consequence involves the acts of other people. For example, one agent might help or influence a second agent to act. In these situations, if the primary agent voluntarily acts, then according to Kadish it is not correct to say that the secondary agent “caused” the primary agent’s act. Causation is blocked by the voluntary act of the intervening agent. The secondary agent’s relationship to the consequence of the primary agent’s act is not defined in terms of causation but complicity. This is because the law begins with the strong assumption that individuals are responsible for their own acts and the natural consequences of those acts, and to say that one person “caused” another to act is to violate this assumption. Kadish writes,

But a consequence of a person’s action may also consist of the actions of other people. I may have persuaded another responsible person to light the match or helped him by giving him a match for the purpose. The other person then caused the burning of the building. But whether I am to be blamed for the other person’s action would not be assessed by asking whether I caused his action in the same sense that his lighting the match caused the fire. **Rather my responsibility would be determined by asking whether my persuasion or help made me accountable for the other person’s actions and what they caused** [bold face added]. Responding to these common perceptions of the relationship between actions and consequences, the criminal law has developed two separate doctrines for fixing blame. The doctrine of causation deals with fixing blame for natural events. The doctrine of complicity deals with fixing blame for the criminal action of another person.

For Kadish, the strong assumption rules out the possibility of a complicit agent being “the cause” of a primary agent’s action, for in making such a claim we seem to deny the primary

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71 Kadish, 332.
73 This is not to say that this assumption is non-violable. The law does recognize cases in which one agent may use another agent as an instrument. Kadish discusses this doctrine, called the innocent agency doctrine, at length and notes that it supplements the doctrine of complicity by helping to accommodate certain problematic cases.
agent's responsibility. That is, on this view to say that agent A “caused” agent B to do X, is to say that agent B did not “freely choose” to do X. And to say this is to say that B is “not responsible” for X nor “blameworthy” for X. It is clear, however, in most cases in which person A influences or helps person B to do X, we do think that B is responsible for X which implies that we think B chose freely, and B’s act was not “caused”. Kadish writes,

At the outset, it is important to develop more fully why both in common usage and in law we use different concepts to determine when a person may be blamed for things that happen and when he may be blamed for what other people do. . . . We regard a person’s acts as the products of his choice, not as an inevitable, natural result of a chain of events. Therefore, antecedent events do not cause a person to act in the same way that they cause things to happen and neither do the antecedent acts of others. To treat the acts of others as causing a person’s actions (in the physical sense of cause) would be inconsistent with the premise on which we hold a person responsible.\footnote{Kadish, 332-333.}

This view of volitional human action has two relevant implications for understanding the doctrine of complicity. First, when we examine a sequence of events that follows a person’s action, the presence in the sequence of a subsequent human action precludes assigning causal responsibility to the first actor. What results from the second actor’s action is something the second actor causes, and no one else can be said to have caused it through him. This is expressed in the familiar doctrine of novus actus interveniens. Second, when we seek to determine the responsibility of one person for the volitional actions of another, the concept of cause is not available to determine the answer. For whatever the relation of one person’s acts to those of another, it cannot be described in terms of that sense of cause and effect appropriate to the occurrence of natural events without doing violence to our conception of a human action as freely chosen.\footnote{Kadish, 333.}

To sum up then, the legal doctrine of complicity presented by Kadish gets started as a result of a certain understanding of the conditions under which an agent can be held responsible for effects that follow from his actions. When an agent’s conduct results in a consequence through a natural series of events, the relationship between the agent and the consequence is that of causality. However, when an agent’s helping or motivating another agent to act in a certain way results in a consequence, the relationship between the agent and

\footnote{Kadish, 334-335.}
the consequence is that of complicity. Kadish’s argument for why causality is not the relationship in this latter case can be summarized as follows:

1) When A helps or motivates B to do X, his relationship to X is either causal or non-causal.
2) If A causes B to do X, then it is not the case that B chooses freely to do X.
3) If it is not the case that B chooses freely to do X, then B is not responsible for X.
4) If B is not responsible for X, then B is not blameworthy for X.
5) However, by hypothesis, B is blameworthy for X.
6) Therefore, it is not the case that A causes B to do X.
7) Therefore, A’s relationship to X is non-causal.

And Kadish calls this non-causal relationship—complicity.

Derivative liability in the legal account

As mentioned earlier, the central idea behind the legal doctrine of complicity is that a person A who helped or influenced but did not cause person B to commit crime X is liable for crime X. How does this work? First, the complicit agent must do something to make him liable even though what it is that he does is not the same as what the primary agent does.

Kadish writes,

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. Liability requires action by the secondary actor—as we shall see, intentional action designed to persuade or help—that makes it appropriate to blame him for what the primary actor does.77

The idea here is that in order to be responsible and blameworthy for an act, an agent must act. In normal circumstances, however, the act for which an agent is responsible is his own not another's. This leads us to an important second point—the notion of derivativeness.

77 Kadish, 337.
A complicit agent does not commit the same wrong as the primary agent. This is precluded by the voluntary intervening act of the primary agent. The complicit agent commits another wrong—namely, influencing the primary agent to commit a crime or helping him commit the crime. The complicit agent’s wrong, however, is such that it makes him liable for the crime of the primary agent. Thus, we have a primary agent who commits a wrong X (in the sense of being causally responsible for X), is blameworthy for that X, and is liable for punishment for doing X; and we have a complicit agent who commits a different wrong, Y, namely, influencing or helping the primary agent do X but is liable for doing X.

As Kadish puts it,

\[ \ldots \text{the doctrine of complicity (sometimes referred to as the law of aiding and abetting, or accessory liability) emerges to define the circumstances in which one person (to whom I will refer as the secondary party or actor, accomplice, or accessory) becomes liable for the crime of another (the primary party or actor, or the principal)} \ldots \text{The secondary party’s liability is derivative, which is to say, it is incurred by virtue of a violation of law by the primary party to which the secondary party contributed.} \]

As I interpret Kadish, the complicit agent is held liable because of his own act of influencing or helping the primary agent but for the primary agent’s act. The liability of the complicit agent is derived from the primary agent’s act.

Kadish’s goal in giving this account involves reconstructing a rationale that underlies the actual law regarding complicity. Derivativeness explains important features of the law. First, because a complicit agent’s liability is derived from the liability of the primary agent, a complicit agent can be held liable for a crime that he is incapable of committing. Kadish gives the following examples,

An unmarried man, for example, cannot himself commit bigamy, because that crime extends only to those who, already married, marry again. But he can be convicted of bigamy as an accomplice for aiding or influencing a married person to commit the crime. Where a husband is incapable of raping his own wife, he may nonetheless be liable for

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78 Kadish, 337.
her rape by another if he helps or encourages the other to do the act. Liability in these
cases follows logically from the premise that the liability of the secondary party rests on
the liability of the primary party. Since the secondary party could not be held for
violating the law himself, his liability must be derivative.\footnote{Kadish, 338-339.}

Second, in order for an agent to be complicit there must be a crime done by a primary
agent with which he is complicit. That is, to be complicit is to act in such a way such that
one is held liable for the crime of a primary agent. If there is no crime done by a primary
agent, then there is no way one can act so that one is liable for that crime. This explains why
courts will not find someone guilty of complicity unless there is a primary agent with whom
he is complicit.\footnote{Kadish does note that courts may still find someone complicit even if the primary agent is found not guilty. In some cases for instance, a primary agent may have immunity from prosecution or, in other cases, important evidence that would be needed to convict the primary agent may be excluded from the trial.}

Third, while the primary agent’s liability for a crime can be greater than the complicit
agent’s because the primary agent “may have acted with a \textit{mens rea} that makes him more
culpable than the secondary party”, the complicit agent’s liability can never be greater than
the primary agent’s liability.\footnote{Kadish, 339-340.} Again, this stems from the fact that the complicit agent’s
liability is derived from the primary agent’s liability.\footnote{As Kadish notes, in some cases it seems counterintuitive to say that the complicit agent’s act is not more culpable than the primary agent’s act. He notes the case of Othello, in particular. Later in the paper, Kadish discusses ways to attempt to solve this problem. One way is to supplement the complicity doctrine with what is called the \textit{innocent agent doctrine}. In this doctrine, the secondary agent would be liable as the primary agent when the primary agent’s acts are less than voluntary, and he is being used as a tool by the secondary agent to bring about some result (see Kadish, 342; 362). Another way of attempting to deal with this problem is by using the distinction of innocent wrongdoing and holding the complicit agent liable for the wrong done by a primary

To sum up, a complicit agent is liable for the conduct of the primary agent when he acts
to help or motivate the primary agent. The complicit agent must act in order to be liable;
however, he is not liable for just this act—he is also liable for the act of the primary agent.

The notion of derivative liability helps to explain three features of the law. First, it explains
how a complicit agent can be held liable for a crime that is impossible for him to commit. Second, it explains why it is not the case that an agent can be found guilty of complicity unless there is a primary agent. Third, it explains why a complicit agent's liability is not greater than the primary agent's liability.

_two important questions_

As I mentioned earlier, two important questions that are raised by the legal doctrine of complicity are 1) How does one differentiate between a complicit agent and a primary agent?, and 2) how does one differentiate between a complicit agent and a non-complicit agent? In what follows, I will examine each of these questions in turn.

How does one differentiate between a complicit agent and a primary agent?

Kadish distinguishes two different types of complicit acts— influencing a primary agent to commit a crime and helping a primary agent to commit a crime. By helping, he means providing the primary agent with the physical means or opportunity to commit the crime. Kadish, however, wants to distinguish complicit helping from a helping that makes one a co-primary agent in the crime. In particular, there are three situations in which the helper would also be a co-primary: 1) A helper and a co-primary both do all the acts constituting the crime; 2) a helper does some of the acts of the crime, and a co-primary does all of the acts of a crime; and 3) a helper does some of the acts of the crime, and a co-primary does some of the acts of a crime. He writes,

In some cases where two or more actors contribute to a criminal act, the problem of secondary-party liability does not arise. For example, when each of the parties does all the acts constituting the crime, each has committed the crime and is liable as a principal in his own right. Nor does the issue of secondary party liability arise where one does all

agent (as opposed to his guilt) even when that agent is excused from blame and not liable for the wrong himself (see Kadish, 380).
and the other some of the acts constituting the crime—as where two men hold a victim at
gunpoint and one of them takes his wallet. Both are primary parties committing the
crime of robbery. The same is true where neither of the parties commits all the acts
constituting the crime but together they do, as where one holds a victim at gunpoint while
the other, unarmed, takes his wallet. So long as each person commits some of the actus
reus of the crime and, acting jointly, they succeed in committing the crime, each is liable
as a co-principal.\textsuperscript{83}

In contrast, to these instances of co-perpetration, complicity occurs, according to Kadish
when “one of the parties commits all the acts necessary for the crime and the other does none
of these acts but renders some assistance, typically by providing the means or opportunity”.\textsuperscript{84}
The key here is that the law requires that the complicit agent’s act, while not an element of
the crime, make some successful contribution to the crime. Therefore, a primary agent (or
co-primary agent) commits some element of the crime and a complicit agent does not.

**HOW DOES ONE DIFFERENTIATE BETWEEN A COMPLICIT AND A NON-COMPLICIT AGENT?**

If a complicit agent makes a successful contribution to the primary agent’s crime, then in
order to differentiate between a complicit agent and a non-complicit agent, we must know
what counts as a successful contribution. Kadish is careful to reject the idea that a successful
contribution must be an act “but-for” which the crime would not have occurred (a necessary
condition). Instead he attempts to make sense of the legal doctrine by appealing to a much
weaker variant of the “necessary” condition—namely, the “possibly, necessary” condition.
Kadish feels that this weaker yet analogous condition would make sense of two conflicting
situations that have arisen in court cases. In some cases, courts have held that the complicit
agent’s act need not make a difference to the successful completion of the crime. However,
in other cases, the courts have ruled that it must make a difference in the commission of the
crime. Kadish writes,

\textsuperscript{83} Kadish, 344.
In *State v. Tally*, Tally’s responsibility for a killing committed by two others turned on his attempted aid. Tally had sent a telegram that instructed a telegraph operator not to deliver a telegram previously sent by one of the victim’s relatives warning the victim of the killers. The operator did not deliver the warning telegram, and the killers were unaware of Tally’s attempt to help them. The court found these facts sufficient to establish Tally’s liability as an accomplice...  

In this case the court found that “the assistance given... need not contribute to the criminal result in the sense that but for it the result would not have ensued. It is quite sufficient if it facilitated a result that would have transpired without it”. However, as Kadish notes,

In at least one class of cases, the same requirement of a sine qua non that prevails in causation also prevails in complicity. There is no accomplice liability where the attempted contribution demonstrably failed to achieve its purpose because it never reached its target. So, for example, if an individual shouts encouragement to another to attack a third person and the attacker is deaf or otherwise unaware of the encouragement, the putative accomplice could hardly be held liable for the assault as a secondary party. He might be held for the independent crime of incitement or solicitation, which by definition does not require success of the inciter’s efforts. But he is not liable for the assault because his contribution could not possibly have been effective.

In order to make sense of seemingly contradictory standards within the law, Kadish reconstructs the “possibly, necessary” standard. He writes,

In order to make sense of the apparently conflicting indications the cases give of the requirement of a successful contribution, we need an interpretation of success that accommodates both sets of cases. An interpretation that would do this is one that takes a successful contribution to be one that could have contributed to the criminal action of the principal. By “could have contributed,” I mean that without the influence or aid, it is possible that the principal would not have acted as he did. In complicity cases unlike causation cases, the prosecution need not prove a but-for relationship. But that does not mean accomplice liability can be imposed if the secondary party fails to influence or aid the principal. When he could not have been successful in any case, there is no liability. But it is enough if the facts establish a possibility of success.

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84 Kadish, 345.
85 Kadish, 357.
86 102 Ala. 25, 15 So. 722 (1894) as quoted in Kadish, 357.
87 Kadish, 359.
88 Kadish acknowledges that like causation, which requires a but-for relationship, the contribution of a complicit agent cannot be too remote. He writes, “Complicity and causation are cognate concepts. They fix blame for a result characterized by a but-for relationship to the actor’s contribution, although complicity allows a weaker version of that relationship” (366).
89 Kadish, 359.
In addition to the "possibly, necessary" criterion, Kadish also recognizes that other factors such as the remoteness of the act or its accidental nature would also play a role in determining whether or not an agent's act was complicit. As Kadish notes, "Since that relationship [but-for relationship] is not sufficient to establish legal causation when the result is too remote or accidental, or too dependent on the volitional act of another, we should expect the same to be true of complicity". 90

In addition, unlike a primary agent, in order for a complicit agent to be held legally accountable for the primary agent's act he must act intentionally. Kadish writes,

"Whether the mode of involvement in another's criminal act is influence or assistance, the law of complicity generally requires that the secondary actor act intentionally; that is, he must act with the intention of influencing or assisting the primary actor to engage in the conduct constituting the crime. Thus, courts have held that if a person spontaneously shouts approval to one committing an assault, without really intending to encourage him, he cannot be held as an accomplice in the crimes committed. . . . Here again complicity doctrine differs from that of causation, which permits a person to be held liable for a result even if he did not intend it." 91

Finally, the intentionality requirement is separate from the mens rea requirement that must also be met by the complicit agent. The complicit agent must have the mental state required for the crime for which he is to be held liable. Kadish writes,

"It is important to observe that the intention requirement is independent of the mens rea requirement for the underlying crime. The latter requirement means that to be liable as an accomplice in the crime committed by the principal, the secondary party must act with the mens rea required by the definition of the principal's crime. Thus, if the principal commits larceny by taking another's property with the required intention of permanently depriving its owner of it without consent or claim of right, the secondary party cannot be held as an accomplice unless he influenced or helped the principal intending (or knowing) that the principal would so deprive another of his property. If he believed the principal had a rightful claim to the property, for example, he could not be held for larceny." 92

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90 Kadish, 366.
91 Kadish, 346-347.
92 Kadish, 349.
To sum up, a primary agent commits some element of the crime while a complicit agent does not commit an element of the crime but helps or motivates the primary agent. A complicit agent is different from a non-complicit agent in that a complicit agent with the same mens rea as the primary agent, intentionally makes a "possible difference" to the crime being done without this contribution being accidental or too remote.

Comparison and contrast

There are several important areas of agreement between the expressivist account of complicity and the legal doctrine of complicity articulated by Kadish. First, both accounts require conduct from a complicit agent in order for complicity. Second, both accounts require a primary agent. Third, both accounts allow for the possibility of non-causal complicity (Kadish’s account, read one way, seems to necessitate it). Fourth, both accounts recognize the importance of intentionality to complicity.

There are, however, many important differences between the two accounts. First, while both accounts require conduct from a complicit agent, the type of conduct required is different. The legal doctrine requires such activities as helping (providing means or opportunity) or influencing a primary agent to commit a crime. Both of these activities are temporally prior to the wrongdoing and seem to be "quasi-causal" in nature. By quasi-causal, I mean that these acts are defined in terms of properties that are analogous to those that characterize causal acts.

In contrast, the expressivist account maintains that helping and influencing certainly can constitute complicit activities but are not exhaustive of these activities. Any act, whether it is temporally proximal or distal to the wrongdoing that expressively aligns an agent to the wrongdoing of another, can make that agent complicit with the wrongdoing. Thus, the
expressivist account is broader in the sense that it includes many more types of activities within the scope of complicity.

Further, the expressivist account does not disregard the causal properties (if one accepts something like the account of agent causation proposed in Chapter 2) or quasi-causal properties (if one accepts something like Kadish’s account of agent causation) of the complicit agent. Rather the expressivist account conceptualizes complicity as involving properties fundamentally different from causal or quasi-causal properties. The causal and quasi-causal properties are still a source of wrongness on the expressivist account; however, their wrongness consists in something distinguishable from and in addition to simply aligning oneself with another’s wrongdoing. I think that the wrongness of “helping” and “influencing” consist in their playing a causal role in bringing about a group wrong; however, the expressivist account of complicity is neutral with regards to understandings of agent causality.

A second area of disagreement that follows from the fact that the expressivist account of complicity is neutral with regard to theories of agent causation is that the expressivist account allows for the possibility of causal complicity and complicity that is temporally after the primary act. In regards to the former, as Kadish has articulated the doctrine, a complicit agent cannot be a “cause” of a primary agent’s wrongdoing. Strictly speaking then, the complicit agent’s relationship to the wrongdoing of the primary agent is non-causal. However, there may be an ambiguity here. Kadish may allow that the complicit agent’s action can be in some weaker sense causal; however, it is not in a legal sense causal. Since Kadish is reconstructing a legal position, I will assume that the “cause” he is discussing is a
“legal cause,” and that there is no problem with discussing weaker forms of causal relationships and causal responsibility.

A third and fundamental difference between the two accounts involves how the complicit agent becomes liable or blameworthy for his wrongdoing. On the legal account, a complicit agent does a wrongful act X which is different from the primary wrongful act Y, yet is held liable for Y. The primary agent is the “cause” of the crime and is therefore responsible for the crime; the complicit agent is not the “cause” of the crime but either helps or influences the primary agent to commit the crime. Because the complicit agent helps or influences, he is held liable for the crime of the primary agent. The complicit agent’s liability is derived from the primary agent.

The expressivist account is not committed to derivative liability. On the expressivist account, the complicit agent is liable for his own conduct not the conduct of the primary agent. There is no transfer. I am also inclined to say that in cases in which the complicit agent also plays a causal or quasi-causal role in the primary agent’s wrongdoing that the complicit agent is responsible for the expressive component of his conduct—that which makes it complicit conduct—and for any causal components of his own conduct as well. However, as I just said, the expressivist account is neutral on this point. One could hold an expressivist account of complicity and also hold a view about causal involvement with another’s wrongdoing that utilized the concept of derivative liability. However, I am not inclined to accept the idea of derivative liability. The idea that one person could be liable for another person’s actions violates a basic intuition that an agent is responsible for what he and he alone does.93

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93 Christopher Kutz in his book, *Complicity: Ethics and Law for a Collective Age*, discusses the deep structure of individual accountability. He formulates two different principles of individual accountability. First, the
A fourth difference between the legal account and the expressivist account is how each understands the primary agent. On the expressivist account, the primary agent is simply that agent with whose wrongful conduct the complicit agent expressively aligns himself. The designation of primary agent on this account, as with the designation of the complicit agent, is neutral with regard to causal relationships. Thus, on the expressivist account, if A helps B do a wrongful act and if B expresses gratitude or admiration for A’s help, then B would be complicit with A’s act of wrongdoing, and A would be the primary agent with whom B was complicit. On the legal account, this type of case seems ruled out because the role of both the primary agent and the complicit agent are differentiated by their respective causal (or quasi-causal) relationships to the wrongdoing.

A final difference between the legal account and the expressivist account of complicity is the way that each conceptualizes what complicity is. The expressivist account starts with the idea that complicity involves an alignment with the wrongdoing of another that results in a self-identification with that wrongdoing. On the expressivist account, this self-identification is not limited to causal (or quasi-causal) facilitation or influence but can occur through any act that expressively aligns one with another’s wrongdoing.

In the next section, I will examine an account of complicity put forth by Judith Kissell. Kissell’s goal, unlike Kadish’s, is to present an account of moral complicity. Her account of the standard doctrine of complicity, however, is similar to the legal theory Kadish reconstructs.

Individual Difference Principle which says “I am accountable for a harm only if what I have done made a difference to the harm’s occurrence” and “I am accountable only for the difference my action alone makes to the resulting state of affairs”. Second, the Control Principle that says, “I am accountable for a harm’s occurrence only if I could control its occurrence, by producing or preventing it,” and “I am accountable only for those harms over whose occurrence I had control”. Kutz goes on to argue for an account of complicity, which gives up these principles. However, on the expressivist account of complicity, one need not give up either. On the expressivist account, A could be complicit with B’s wrongdoing as well.
3. **Judith Kissell’s Account of Moral Complicity**

In this section I will present and comment on Judith Kissell’s account of moral complicity as laid out in her work, “A Comprehensive View of Complicity as Positive Collaboration and Toleration of Evil”. Kissell adopts an account of moral complicity similar to the legal account reconstructed by Sanford Kadish. As with the legal doctrine of complicity, the notion of derivative liability is fundamental to Kissell’s account. Kissell’s project, however, is different from Kadish’s project. Her project is to produce an account of *moral* complicity, while Kadish’s project is to reconstruct the rationale underlying *legal* complicity.

I will begin by presenting Kissell’s definition of complicity. I will then examine her answers to the same questions raised by the legal doctrine of complicity: First, how does one differentiate between a primary agent and a complicit agent? Second, how does one differentiate between a complicit agent and a non-complicit agent? I will then present and respond to Kissell’s responses to some objections that Kissell herself raises. Finally, I will make some comparisons and contrasts between Kissell’s account and the expressivist account.

*Kissell’s definition of complicity*

Kissell develops a comprehensive view of complicity which encompasses both what she calls the standard doctrines of complicity that are similar to the legal account of complicity, and what she calls complicity as toleration of evil. This latter type of complicity is supposed to capture cases in which an agent finds himself within a systematic evil and fails to distance himself from that evil even when distancing would not affect whether the evil continues. According to Kissell, the two types of complicity are different in the type of response that
each warrants. The standard type of complicity warrants blame; complicity as toleration warrants censure—something like blame but more like moral disappointment over a failure to live up to a moral ideal.\textsuperscript{95}

On Kissell’s account, both types of complicity are captured underneath the same definition, and this definition is composed of three parts. First, the conduct of the complicit agent must be “voluntary, aware, and intentional”.\textsuperscript{96} Second, an agent different from the complicit agent must commit “a norm-violation, a voluntary harm-causing act”, and the liability of the complicit agent must be “derived” from this act.\textsuperscript{97} Third, the complicit agent’s conduct “contributes” to the harm that the perpetrator “causes”.\textsuperscript{98} With this condition, Kissell makes complicity essentially causal, for on her account, “contributing” is also a causal notion.\textsuperscript{99}

\textit{Two important questions}

In this section, I will discuss Kissell’s answers to the same questions that I raised in regards to Kadish’s account. First, how does one differentiate between a complicit agent and a primary agent? Second, how does one differentiate between a complicit agent a non-complicit agent?

\textbf{How does one differentiate between a complicit agent and a primary agent?}

In her account of complicity, Kissell differentiates between the perpetrator that “causes” a harm (or wrong) and the complicit agent that “contributes” to that harm. In drawing this


\textsuperscript{96} Kissell, “A Comprehensive View of Complicity,” 18. Later Kissell seems to make room for negligent complicity as well.

\textsuperscript{97} Kissell, “A Comprehensive View of Complicity,” 22.

\textsuperscript{98} Kissell, 18-24.
distinction, Kissell relies on the works of Kadish, Feinberg, and Hart and Honoré. Kissell invokes Hart and Honoré’s temporal proximity principle which roughly says that the agent whose intentional contribution is temporally proximate to the effect is “the cause” of that effect\textsuperscript{100} and adds a criterion elaborated by Joel Feinberg in order to separate “causing” from “contributing”. The “causal” relationship defines the perpetrator. The “contributing” relationship defines the complicit agent. Unlike Kadish, however, Kissell explicitly says that “contributing” is a type of causal relationship—just not the central type.

Kissell first lays out an account of perpetrating causality. The perpetrator interrupts the chain of causality through a voluntary and intentional act (Hart and Honoré) and has control over the final production of an act (Feinberg). Kissell writes,

The perpetrator, then, knowingly and voluntarily intends to bring about harm (or allows harm to occur). He intervenes in the normal course of events by manipulating objects or by “facilitating control” as with a “handle.” He makes a substantial—crucial, important and direct—difference, exercising final control over whether or not the harm occurs. An action satisfying these requirements terminates the causal inquiry for accountability, although not the contributory inquiry. The perpetrator is thus linked culpably to the harm as its cause”\textsuperscript{101}

Kissell differentiates the primary causal agent from the complicit agent by pointing out the former’s temporal proximity and \textit{sine qua non} relationship to the wrongdoing.

\textbf{HOW DOES ONE DIFFERENTIATE BETWEEN A COMPLICIT AND NON-COMPLICIT AGENT?}

For Kissell, the complicit agent “contributes” to the wrongdoing that the primary agent “causes”. On Kissell’s account, contributing is a type of causal relationship but in a weaker, more peripheral sense than perpetrating causality or “the cause” of the wrongdoing. She

\textsuperscript{99} Kissell, 16.
\textsuperscript{100} For example, suppose that A intentionally fires a projectile at F but B intentionally deflects it at C, and D intentionally deflects it at E, and E intentionally deflects it at F killing F. According to the temporal proximity principle, E would be “the cause” of F’s death.
\textsuperscript{101} Kissell, “A Comprehensive View of Complicity,” 49.
argues, following Sanford Kadish, that to contribute to a harm caused by a perpetrator is to make a possible difference to the harm occurring. She writes,

A contribution has a relationship to the harm, but it is not a necessary factor: it is not a member of the set of conditions that jointly suffice to produce the harm. According to Kadish, to qualify as complicity, a contribution need only have the possibility of making a difference in the occurrence of harm. The making of a possible difference is the key characteristic of a contribution. Because the accomplice need only make a possible difference, a contribution cannot be explained as some indirect or remote—though still necessary—condition. As possibility, contributions sometimes actually aid, and sometimes they do not; they sometimes actually influence, and sometimes they do not.

The reason that contributions need make only a possible difference is that the accomplice does not exercise direct control over whether or not the harm finally occurs, or whether or not his own aid or influence is actually efficacious. This characteristic of the accomplice definitively eliminates his being merely a co-perpetrator. Only the perpetrator exercises final control over the harm-causing on the one hand, and over the efficacy of the accomplice’s assistance, on the other . . . . Complicity does not depend upon whether the perpetrator actually employs the accomplice’s aid or influence. The conduct is complicit as long as it makes a possible difference.102

Kissell’s answer to the second question then is that a complicit agent, while not “the cause” of the wrongdoing”, causally “contributes” to the wrongdoing in the sense of making a possible difference.

**Kissell’s responses to objections**

Kissell raises some objections to her own account and then offers some responses. One objection that she discusses is the use of the “possibly, necessary” criterion for delineating the contributory relationship definitive of complicity on her account. Kissell writes:

> The tenuousness of mere readiness to aid or capacity to influence seems an odd criterion for justifying censure. Indeed, because they need make only a possible difference, contributions appear unsuited to qualify as causally significant factors. However, the possibility criterion is standard for determining accountability. For instance, an agent is culpable for conduct that he suspects to be harm-causing or to contribute to harm. Likewise, he is culpable when, although he does not intend a harm, a reasonable person would contemplate the harm to be a plausible result of his conduct. In these cases, the agent is culpable for making a possible difference to a harm-causing. Moreover, an agent straightforwardly causes harm by disregarding his obligation to

intervene when his doing so could be reasonably expected to obstruct the harm. In this case, too, the agent’s “reasonably being expected” is equivalent to making a possible difference to harm, and he is culpable.103

My main response to Kissell here is that “mere readiness” to aid might justify blame, and it might be blameworthy as a type of complicity, but this does not seem to be the point. Does “mere readiness to aid” actually causally contribute to the outcome even in a weak sense of causally contribute? It seems better just to say that some types of complicity are non-causal. I think that in cases in which an agent attempts to offer aid to someone who is engaged in wrongdoing but obviously fails, we do not blame this person because the agent has done something causally, albeit in some weak or attenuated sense of “causally,” to further the act; rather, we blame the person because he has chosen to align himself with wrongdoing. He has, through his actions expressively identified himself with the wrongdoing of another.

A second argument that Kissell gives involves the case of Aegisthus and Clytemnestra. In this case, Aegisthus encourages Clytemnestra to kill Agamemnon.

Furthermore, to deny the possibility condition would be implausible, because to insist upon the stronger necessity condition would contradict a significant tradition and leave important cases unresolved. Such denial would imply that Aegisthus’ influence must make more than a possible difference to Clytemnestra’s decision to murder, or he is not an accomplice. In many such cases, neither the alleged accomplice nor the perpetrator himself can determine how efficacious such influence is. Moreover, the perpetrator may be ignorant of the accomplice’s assistance, but the accomplice still makes a possible difference to the harm-causing. Complicit conduct consists of aid or the making eligible—and not efficacious—someone else’s harm-causing.104

A first point involves differentiating epistemic concerns from normative concerns. Just because it may be easier to recognize cases of possible causal influence than cases of actual causal influence, does not mean that possible causal influence makes a normative difference. I agree with Kissell somewhat here. However, I do not think that we have to call “making a

103 Kissell, 54.
possible difference” a causal contribution in order to resolve this case. I think that providing encouragement to someone who does an evil act, even if that encouragement is not causally linked to the performance of the act, represents complicity—albeit complicity that does not have a causal component.

Comparisons and contrasts

In this section, I want to briefly make some comparisons and contrasts between Kissell’s account and the expressivist account. First, as with the legal doctrine, Kissell’s account requires that there be another agent’s wrongful conduct with which the complicit agent is complicit. Second, Kissell’s account attempts to make sense of the commonsense moral intuition that sometimes a failure to distance oneself from the evil of others makes one complicit.

There are also, however, several basic points of difference between the two accounts. As I have pointed out, Kissell’s theory makes a causal connection, albeit what can only be considered a weak causal connection, between the complicit agent and the perpetrator’s harm, essential to an act being complicit. I think that this is not the case, that there is non-causal complicity, and that Kissell’s account gets into trouble because she makes this move. It gets into trouble in two ways. First, her account cannot handle cases of complicity that take place temporally distal to the primary act of wrongdoing. Since “contribution” is a causal relation and causal relations are generally thought to be temporally asymmetrical, an agent cannot “contribute” to an act that has already occurred.

Second, in order to handle some of the cases which involve complicity but no obvious causal connection (think failed causal attempts, for example), Kissell has to use the concept of contribution and, following Kadish, she defines this as “making a possible difference”. I
am a bit skeptical about the claim that “making a possible difference” is “causal” in any sense (even in an extremely attenuated sense). On some accounts of causality, a factor must be something like a necessary condition.\textsuperscript{105} On other accounts, a factor must at least increase the probability of an outcome. I don’t see how merely making a possible difference without making an actual difference makes any \textit{causal} difference at all.

A second point of difference between the two accounts involves the notion of derivative liability. Kissell’s definition makes derivative liability a constitutive part of complicity. In keeping with the legal doctrine, Kissell demands that the liability of the complicit agent be “derived” from the wrongful act of the primary agent or perpetrator. She writes,

In other words, to be derivative, a perpetrator’s norm violation or harm causing, must occur before the question arises of the alleged accomplice’s being accountable for the harm. For my theory seeks to explain how the alleged accomplice can be accountable for an offense committed by, and a harm caused by, another agent. The alleged accomplice may intend harm in the appropriate way, and he may himself act, but if the perpetrator does not act, the would-be accomplice is something other than complicit.\textsuperscript{106}

Like Kadish when Kissell says that the complicit agent’s liability is “derived” from the perpetrator’s norm violation, she seems to suggest that there must be someone other than the complicit agent with whom the complicit agent is complicit, that this primary agent must have done something wrong, and that the complicit agent is liable for the wrong done by the primary agent. While the expressivist account of causal complicity is committed to the idea that there must be a primary agent with whom a complicit agent is complicit, it is not committed to the idea of derivative liability. On the expressivist account, the complicit agent’s moral liability is not derived from the primary agent.

\textsuperscript{106} Kissell, “A Comprehensive View of Complicity,” 23.
To sum up then, I think Kissell’s account shares some common features with the expressivist account. Both accounts require a primary agent with which the complicit agent is complicit, and both accounts attempt to make sense of the commonsense intuition that sometimes a failure to distance oneself from the evil of others, even if doing so would not stop the evil, is morally wrong. However, I also pointed out what I thought to be some deficiencies with Kissell’s account that stem from the fact that her account makes a causal connection, albeit a weakened sense of causal connection, an essential element of a complicit act.

4. Christopher Kutz’s Account of Complicity

In this section, I will present and comment on an account of complicity recently put forth by Christopher Kutz in his work *Complicity: Ethics and Law for a Collective Age*. I will begin by giving a brief summary Kutz’s account and will then compare and contrast his account with the expressivist account.

**Kutz’s account**

Kutz’s account unlike Kadish and Kissell’s does not define complicity in terms of a quasi-causal relationship between a complicit and primary agent. Rather, Kutz defends the following principles of complicity: “I am accountable for what others do when I intentionally participate in the wrong they do or the harm they cause” and “I am accountable for the harm or wrong we do together, independently of the actual difference I make”.

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108 Kutz, 122.
Kutz begins his book by discussing and critiquing the traditional, individualistic model of accountability. This model can be captured by the following three principles: The Individual Difference Principle (IDP) states that “I am accountable for a harm only if what I have done made a difference to that harm’s occurrence”, and “I am accountable only for the difference my action alone makes to the resulting state of affairs”.\textsuperscript{109} The Control Principle (CP) states that “I am accountable for a harm’s occurrence only if I could control its occurrence, by producing or preventing it”, and “I am accountable only for those harms over whose occurrence I had control”.\textsuperscript{110} The Autonomy Principle (AP) states that “I am not accountable for the harm another agent causes, unless I have induced or coerced that agent into performing an act”.\textsuperscript{111}

Kutz finds this model problematic when it comes to making sense of complicity because it leads to what he calls an \textit{evaluative solipsism}. He writes,

\begin{quote}
This evaluative solipsism has two elements, \textit{relational} and \textit{causal}. Evaluation is relationally solipsistic in the sense that questions of accountability are resolved without reference to the nature of the agent’s relations to particular others, whether fellow actors, victims, or bystanders. Rather, individuals are evaluated exclusively according to the content and effects of their wills and the relation of that content and those effects to highly general normative standards. Considerations of what others do, or of how they may be warranted in responding to what the agent does, play no role in the evaluation. \ldots Such a conception of accountability is essentially retributivist or desert-based: its primary question is what treatment the agent deserves in virtue of what that agent has done, rather than how others ought to respond to the agent’s actions.

The causally solipsistic element consists in the presumption that the object of evaluation is solely what an individual has caused or meant to cause, as captured by the Individual Difference Principle. States of affairs to which an individual has made no significant contribution lie outside the bounds of assessment. Thus, causal relations that depend upon sets of individual acts, but upon no particular individual act, fall outside the bounds of individual normative evaluation as well.\textsuperscript{112}
\end{quote}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{109}] Kutz, 116.
\item[\textsuperscript{110}] Kutz, 117.
\item[\textsuperscript{111}] Kutz, 3.
\item[\textsuperscript{112}] Kutz, 4-5.
\end{itemize}
\end{footnotesize}
The evaluative solipsism that is entailed by the individualistic conception of accountability leads to problems in dealing with I-We problems that, for Kutz, are constitutive of many cases of complicity. Because of its inability to deal with these cases, the individualistic conception is unable to fulfill what Kutz sees as an accountability system’s primary role: Contributing to the sustenance of social interests. Kutz writes,

Practices of accountability comprise a system for protecting and maintaining social interests, and these underlying interests are routinely violated so long as the accountability system remains solipsistic. These violations are frequently the products of what can be called I-We problems, in which I participate in a harm caused by something we do, but am not personally accountable for that harm, because of the insignificance of my contribution. The individualistic conception drives a wedge between me and us, between private and public. Since individuals are only accountable for local effects, responses aimed at individuals are inappropriate. But since there is no legitimate moral subject corresponding to the we, responses to collective harms find no proper target.¹¹³

For Kutz, the problem of complicity is trying to explain how an individual agent whose participatory act may have not made any or only a negligible causal contribution to a group act can be accountable for that group act, and he sees the individualistic system of accountability that is entrenched within commonsense morality as a hindrance to providing such an explanation. In providing such an explanation, Kutz avoids the temptation to turn to a communitarian understanding of accountability. Rather, he seeks to enlarge the extension of those acts for which an individual can rightly be held accountable to include participation in group acts. He writes, “The trick lies, then, not in modifying the fundamental bearer of accountability, but in expanding the scope of individual accountability by including an assessment of what an individual does with others”.¹¹⁴

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¹¹³ Kutz, 5.  
¹¹⁴ Kutz, 7.
To do this Kutz utilizes the notion of participation. As noted above Kutz, defends the claim that an agent is accountable for a group act when he intentionally participates in that act. Kutz writes,

...individuals act collectively when they intentionally do their parts of what they conceive as a collective project, and when their conceptions of that group project overlap sufficiently. When these minimal conditions obtain, we can ascribe actions both to a group and to the members of that group. Collectively acting agents render themselves the authors of their group’s actions.\textsuperscript{115}

According to Kutz, when an individual agent intentionally acts to help bring about a group harm, he is the \textit{exclusive} author of his own individual actions and the \textit{inclusive} author of the group’s actions.\textsuperscript{116} The intention to contribute to the group goal regardless of whether or not one’s intention translates into any actual causal difference makes one accountable for the harm caused by the group. One becomes an inclusive author of that harm.

One might think that this description leaves out an important element in our judgments about complicity—namely the differing degrees of accountability had by the individual agent’s participating within a group act. Kutz argues that the different degrees of accountability are best understood if we take a positional view of accountability. A positional view of accountability holds that the warranted responses to a harm vary with regards to one’s position to that harm. So, for example, a victim would be warranted in a certain degree of response to a harm which would be different than that warranted by a third party. I take it that Kutz also wants to say that an agent’s self-conception of his relation to a group goal provides some of the basis upon which responses to his participation are warranted. To the extent, therefore, that agents have different relations to harm and this is

\textsuperscript{115} Kutz, 138-139.
\textsuperscript{116} Kutz, 105-106.
reflected in their own self-conceptions, then different responses to those agents’ participation is warranted. He writes,

I have stressed, however, that while the Complicity Principle answers the threshold question of individual moral accountability in a broad array of shared activities, it must be supplemented by a positional theory of complicitous accountability. Therefore, I have also attempted to provide the grounds for the distinctions we make between exclusive and inclusive accountability. These distinctions are especially important when some participants are unaware of the specific nature of the wrong or harm, or when some would prefer that aspects of the shared project go unrealized. I have argued that agents are accountable even in these circumstances, but that the responses due them must reflect the nature of their conceptions of their role and identity within the shared project.\footnote{Kutz, 165}

To sum up, Kutz’s sees the individualistic system of accountability inherent within much of commonsense morality as inadequate in regards to making sense of claims of complicity. It is inadequate because it leads to an evaluative solipsism that makes it difficult if not impossible to understand how an agent is accountable for a group harm to which he makes no definitive causal contribution. The individualistic system also makes it difficult to understand how our responses to agents who help to bring about a group harm are a function of both our own relationship to the harm and the relationship of the agent to the harm where the latter involves the agent’s self-conception of his role in the group act. Kutz attempts to remedy the inadequacies created by the evaluative solipsism of the individualistic system by reconstructing an accountability system in which individuals can be held responsible for the acts of groups with which they participate. Kutz argues that an individual is exclusively responsible for what he does himself but is inclusively responsible for what the group with which he participates does. To participate in a group act, according to Kutz, is to share with others certain intentions about bringing about a goal. As Kutz writes,

\[\text{\textls{collective actors are merely agents with overlapping participatory intentions. Bombers, planners, infantrymen, harmless torturers, picnickers: Each engages in collective action because each intends to do his or her part in together destroying cities,}}\]
winning wars, inflicting suffering, passing the afternoon. Each is an inclusive author of
the group’s deeds.\textsuperscript{118}

Finally, Kutz goes on to argue that while each participating member in a group wrong is
complicit with that wrong, the degree of response warranted for particular participation
depends upon individual differences. He writes,

Ethical evaluations based upon individual intentions rather than causal contributions
might seem in danger of failing to take seriously morally significant differences among
individuals. All members of a collective may will the same end, while each makes very
different contributions to its realization, because of differences in power, knowledge, or
causality . . . I drew upon the positional and relational nature of individual accountability
to show the similarly positional and relational nature of complicitous accountability.
Responses to individual participants depends upon the nature of their cooperation in a
collective wrong. While guilt and resentment may only be appropriate in cases of direct
wrongdoing, peripheral agents bear various normatively freighted relations and reparative
duties to the victims of harms in which they participate.\textsuperscript{119}

\textit{Comparison and contrast}

The expressivist account and Kutz’s account share the feature of not defining complicity
in terms of a causal or quasi-causal relationship with another agent’s wrongdoing. Kutz’s
account, like the expressivist account, allows for cases of non-causal complicity. For Kutz,
non-causal complicity occurs when an agent participates in a group harm, but his
participation does not make any causal difference to the outcome.

There are also many differences between the two accounts. I want to briefly comment on
two. First, Kutz’s account explicitly rejects an individualistic conception of accountability—
an account that is deeply embedded in commonsense morality. He does this in order to
accommodate the notion of derivative liability—namely, that complicity involves
accountability for acts that are done by another entity (in Kutz’s case this entity would be a
group with which the complicit agent participates). The expressivist account does not have

\textsuperscript{118} Kutz, 144.
to reject the individualistic conception of accountability in order to make sense of complicity. On the expressivist account the complicit agent is accountable for his own behavior not for the behavior of some other agent or group of agents. What makes an agent complicit on the expressivist account is that for which he is held accountable—his own conduct which expressively aligns him with the wrongdoing of the primary agent. To use Kutz's terminology, on the expressivist account, the basis for liability is identical to the object of liability—that which makes one accountable is that for which one is accountable.

Another difference between Kutz's account and my own involves the nature of accountability. For Kutz our practices of accountability are justified by the role they play in maintaining important social interests and relationships. I conceptualize accountability, especially when it takes the particular form of blame, differently. I believe that our practices of accountability generally, and blame in particular, reflect our deeply held commitments to the moral law. We blame others when they do wrong not because it is somehow constitutive and productive of social well-being, but rather because living according to the moral law is important to us and should be important to others. To blame another for wrongdoing is to acknowledge that the moral law has been transgressed, and that we are against such conduct because we are committed to following the moral law as a way of life. I will spend more time discussing this idea in the next chapter, but I think that the expressivist account of complicity does a better job of capturing this notion of accountability. To express a positive P-state toward another's wrongdoing is to also express a lack of commitment to the moral

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119 Kutz, 257.
120 I have generally used examples in which the primary agent is an individual agent; however, one could conceptualize the primary agent as a group and the primary wrong as a group act.
121 It may be the case that both the expressivist account and Kutz's account are neutral with respect to accounts of accountability but each may seem to fit more naturally with one account or another. In Chapter 4, I will address the issue of blame again in regards to the question of why complicity is a prima facie wrong.
law. The underlying value that animates our practices of accountability—commitment to living a moral life—is flouted in complicit conduct.

To sum up, while the expressivist account and Kutz’s account share the feature of allowing non-causal complicity, they differ in important ways. First, they differ in regards to the object of blame. Kutz’s account like Kadish’s and Kissell’s makes the complicit agent liable for the wrongdoing of another. The expressivist account makes the complicit agent liable for his own wrongdoing. A second way in which Kutz’s views differ from my own involves his understanding of the nature of our accountability practices. Kutz views these as part of what constitutes a harmonious social structure and views their justification as being derived from that function. I view our accountability practices as acknowledgements of the moral law and expressions of commitment to the moral life.

5. Conclusion

In this chapter, I have analyzed three different views of complicity, comparing and contrasting them with the expressivist account defended in Chapters 1 and 2. In section 2, I looked at the legal doctrine of complicity as articulated by Sanford Kadish. I noted that the legal doctrine represents a “quasi-causal” understanding of complicity and that it is committed to the notion of derivative liability. In section 3, I looked at a moral account of complicity put forth by Judith Kissell which is closely aligned to the legal account. Kissell’s account like the legal doctrine is also strongly committed to the notion of derivative liability, and her account also defines the complicity in “quasi-causal” terms. Finally, in section 4, I looked at a recent account of complicity put forth by Christopher Kutz in which he defines the complicit relationship in terms of participation with wrongdoing where participation for Kutz is defined in minimalist terms of sharing overlapping participatory intentions or goals.
Kutz’s account, like the legal doctrine and Kissell’s account, also makes use of the notion of derivative liability although in Kutz’s case, the complicit agent’s liability is derived from a group that acts wrongly with which the complicit agent participates. As I noted throughout the chapter, the expressivist account is not committed to the notion of derivative liability in order to explain complicity. In the next chapter, I will take up a discussion hinted at in section 4 regarding why complicity is a prima facie wrong.
Chapter 4
The Normativity of Complicity

1. Introduction

In Chapter 1, I laid out and defended an expressivist account of complicity. In Chapter 2, I argued that the expressivist account could accommodate complicity involving causal facilitation of another agent’s wrongdoing. In Chapter 3, I briefly analyzed three different accounts of complicity, comparing and contrasting these accounts to the expressivist account laid out in Chapters 1 and 2. In this chapter, I will examine two different questions pertaining to the normativity of complicity.

In section 2, I will consider the basic question of why one should think that expressive complicity is a *prima facie* wrong. In the first part of section 2, I will discuss whether expressive complicity is best conceptualized as a violation of a *prima facie* duty, or as the expression of a vice, or as a vice itself. I will argue for the first of these three ways of understanding expressive complicity. However, I will also discuss a recent account of virtue and vice put forth by Thomas Hurka in which he offers a recursive account of virtue and vice that is broad in scope and congenial in many ways to the account of expressive complicity laid out in Chapters 1 and 2.

In the latter part of section 2, I will discuss various questions that arise when expressive complicity is conceptualized as a *prima facie* wrong. In the second part of section 2, I will discuss the relationship among complicit conduct, that conduct’s various act descriptions, and the property of wrongness. I will argue that complicit conduct, like any other conduct, might have various act descriptions many of which do not involve the conduct’s expressive features but which nonetheless contribute to an all-things-considered judgment regarding the
conduct's wrongness. In the third part of section 2, I will discuss the more fundamental question of why expressing a positive P-state toward a primary agent's wrongdoing per se is a prima facie wrong. I will argue that the reasons that underlie the prima facie wrongness of complicity are similar to those that justify expressions of blame for wrongdoing.

In section 3, I will discuss the question of what underlies judgments about the degree of prima facie wrongness of any particular instance of complicit conduct. I will begin by discussing the question of whether and how one can make sense of the claim that both prima facie wrongs and all-things-considered wrongs vary in degree. I will then suggest three different axes along which the degree of prima facie wrongness of complicit conduct varies. All-things-being-equal complicity is worse, more of a prima facie wrong, when the primary act is worse, when the complicit agent acts intentionally instead of negligently, and when the strength of the positive P-state expressed toward the primary agent's wrongdoing is greater.

Finally, in section 4, I will offer a brief conclusion and a preview of Chapter 5.

2. The Prima Facie Wrongness of Complicity

Expressive complicity: duty violation or vice?

Throughout this project, I have argued that complicity is a violation of a prima facie duty. However, one might alternatively view complicity as the expression of a vice or as a vice itself. In this section, I will discuss my reasons for preferring the former view to the latter two views.

Oftentimes virtues and vices are thought of as dispositions to act and feel certain ways over some wide range of situations. Thus, if complicity were an expression of vice, it would be an expression of a disposition, over some wide range of situations, to both act to
express positive P-states toward the wrongdoing of others and to feel positively about doing so. However, on most virtue accounts what would be bad regarding complicity would not be the actual expressing of a positive P-state toward the wrongdoing of another agent, rather it would be the possession of a disposition to express such a state and feel positively about doing so. The actual expression would merely be evidence of the disposition. The point here is that virtue accounts tend to be concerned with the evaluation of agents on the basis of their character traits rather than with the evaluation of actions. As such, it is not clear what a virtue account would say normatively about a mere expression of a vice.

One might, then, attempt to redefine complicity as a vice, a disposition both to express positive P-states toward the wrongdoing of others and to feel positively about doing so. The problem with this move is that there seem to be obvious counter examples that involve an agent that acts in a way that we would identify as complicit that does not involve a disposition to do so over a wide range of situations. For example, consider that following case:

Case 4.1

Pete is a morally conscientious person who despises cruelty. However, Pete really likes Charlene and occasionally Charlene is cruel to others. He thinks that she is the most beautiful person in school and wants her to like him back. One day while in the lunchroom Deborah, who is extremely shy and self-conscious, sits alone across from Charlene and Pete. Charlene, who has low self-esteem, decides it would be funny to play a joke on Deborah. Charlene invites Deborah to come over and sit in an empty seat beside Pete and herself. However, Charlene has filled the seat with ketchup. Deborah, who is wearing a white pair of pants, nervously unsuspecting sits down in the chair. Once she sits down Charlene starts laughing hysterically at Deborah. Pete, thinking that this was wrong of Charlene to do, laughs at Deborah anyway because he wants Charlene to like him. Other students nearby join in the laughter. Deborah realizes what Charlene has done, breaks down crying, and runs out of the lunchroom. Pete then tells Charlene that it was a great joke. Afterwards, Pete feels terrible.

Let us suppose that in most situations Pete would condemn the kind of act that Charlene did and would certainly not laugh at it or express support of it. In this particular case, Pete acts out of character because he wants Charlene to like him. In this case, Pete does not have a disposition to express support for cruelty. He also doesn’t have a disposition to feel good about expressing support for cruelty, and in this case, he feels terrible about what he has done. However, in expressing a positive P-state toward Charlene’s wrongful act of cruelty, I believe Pete is complicit. The problem here is not with who Pete is but with what Pete does. The complicity in this case does not stem from Pete’s character but his action.

There is a related type of problem that arises when one thinks of complicity as a vice. If complicity involves just a disposition to act and feel in certain ways, one could be complicit without doing anything. A disposition is just a tendency or high probability that an agent will act and feel in a certain way in many situations; it does not require an actual act.

Consider the following case:

Case 4.2

Andre considers himself a rebel. As such, he tends to flout conventional moral standards and likes to express his support for others who do likewise. When he finds himself in a situation in which another agent does something wrong, more often than not he expresses a positive desire, belief, or attitude toward that wrongdoing because this fits his own self-identification as a rebel. However, after Andre’s mother is murdered, he experiences a conversion of sorts. He begins to appreciate the pull of the moral law and vows that he will no longer express support for other’s wrongdoing. One day he meets a former friend who tells Andre that he has just robbed a local convenient store. Upon hearing the news, Andre’s first instinct is to congratulate the man and slap him on the back. However, Andre suppresses that desire because of his stronger desire to avoid expressing support for other’s wrongdoing. Instead, he tells his former friend that he is not impressed with what he has done and that he now thinks stealing is wrong. Andre walks away while his former friend stares at him in amazement.

In this case, Andre still has a strong disposition toward expressing support for wrongdoing that he has to fight against to overcome. However, in this case he does
overcome it and expressively rejects the wrongdoing of his former friend. Is Andre complicit? I think that he is not complicit. However, if complicity just is the possession of a disposition to expressively align oneself with another’s wrongdoing and feel positive about doing so, Andre would be complicit in this case. He still has the disposition to express a positive attitude toward his former friend’s wrongdoing, and he still feels positive about doing so. These facts are what create the moral struggle in Andre. His higher desire to avoid wrongdoing and expressive alignment with wrongdoing competes with his ingrained disposition to act upon his former self-identification as a rebel.

One might argue that, in fact, Andre does not have a disposition or tendency to expressively align himself with other’s wrongdoing. Upon forming a stronger desire to avoid such expressive alignment with wrongdoing, he changed his disposition. I am not so sure about this point, however. It seems to me that Andre is in the midst of transforming his character because he now possesses a strong motivation to do so. I don’t think that because he is strongly inclined to develop a disposition to be against what is wrong he already possesses this disposition.

In addition to its counterintuitive implications, there is another reason to think that complicity is better conceptualized in terms of conduct rather than dispositions. In my judgment, complicity involves an illicit linkage between a complicit agent and a primary agent. This linkage reflects badly on the complicit agent. I think that simply having a disposition toward expressively aligning oneself with another’s wrongdoing isn’t enough to forge such a linkage. Conduct is required; conduct through which one steps out and identifies oneself with the wrongdoing of the primary agent. As I have said throughout the project, I don’t think the conduct has to actually further the primary agent’s end in some
causal way, and I don’t think, *contra* Kutz, that the complicit agent must share a participatory intention with the primary agent. However, the complicit agent does seem to need to *do* something, and I have argued that what this *doing* is, is the illocutionary act of expressing.

Evidence that supports the idea that complicity is fundamentally a property of acts and only derivatively a property of agents (i.e. agents who act complicitly are complicit) can be found in our common usage of the term. Now I realize that I might be treading on thin ice here since many might think that an account of complicity as expressive alignment with wrongdoing isn’t exactly a recapitulation of common usage. However, one important thing that the expressivist account shares with all the accounts mentioned thus far but, which is lacking in the conceptualization of complicity as vice, is its action-guiding features. The expressivist account purports to give moral agents directions on how to act: All-things-being-equal, don’t express positive P-states toward the wrongdoing of others. I think that this action-guiding feature is crucial to an adequate account of complicity. Complicit conduct is itself something to be avoided. As exemplified in case 4.1, dispositional accounts of complicity have a hard time capturing this truth.

Some virtue ethicists might object that virtue accounts of morality are just as action-guiding as deontological accounts. Rosalind Hursthouse writes,

> What grounds might someone have for believing that virtue ethics cannot tell us what we should do? It seems that sometimes the ground is no more than the claim that virtue ethics is concerned with good (and bad) character rather than right (and wrong) action. But that claim does no more than highlight an interesting contrast between virtue ethics on the one hand, and deontology and utilitarianism on the other; the former is agent-centered, the latter (it is said) are act-centered. It does not entail that virtue ethics has nothing to say about the concept of right action, nor about which actions are right and which are wrong.\(^{123}\)

Hursthouse goes on to show how a virtue theory can specify a right action. She gives us three principles:

V₁. An action is right iff it is what a virtuous agent would characteristically (i.e. acting in character do) in the circumstances.
V₁₄. A virtuous agent is one who acts virtuously, that is, one who has and exercises the virtues.
V₂. A virtue is a character trait that . . .

She goes on to point out that for those who are tempted to reduce the preceding account to a deontological account of rightness, “then we must say that V₂ aims to clear that up by saying that the virtues are character traits, assuming it to be obvious that someone’s being of a certain character is not merely a matter of her being disposed to do certain sorts of acts in accordance with a rule”.¹²⁵ Such an account, according to Hursthouse, gives us action-guiding principles such as “Don’t be cruel” or “Be kind” analogous to those found within a duty-based account.¹²⁶

My main objection to Hursthouse’s account is that it seems that the action-guiding part of her virtue theory looks as if it is ultimately derived from rules one would find on a duty-based account of morality. The other features of virtues such as having the proper attitudes, feelings, etc., while proper subjects of moral evaluation and a distinctive and important element of virtue theory, are not in themselves action-guiding except in the sense that they might direct us in a consequentialist manner to act so as to develop these affective states.

Consider the virtue of honesty. Hursthouse argues that honesty does not simply involve refraining from lying or acting deceptively. She writes, “Virtue ethicists want to emphasize the fact that, if children are to be taught to be honest, they must be taught to prize the truth,

¹²⁵ Hursthouse, 23 fn. 4.
¹²⁶ Hursthouse, 27.
and that merely teaching them not to lie will not achieve this end”.

The virtue of honesty, then involves concomitant affective attitudes toward telling the truth (and lying).

Using Hurthouse’s schema we could come up with the following argument for telling the truth.

1. An action is right if and only if it is what a virtuous agent would characteristically (i.e., acting in character) do in the circumstances.

2. A virtuous agent would characteristically act honestly.

3. Therefore, it is right to act honestly.

But what does it mean to act honestly?

4. To act honestly involves telling the truth and not acting deceptively.

5. Therefore, a virtuous agent would characteristically tell the truth and not act deceptively.

6. Therefore, it is right to tell the truth and to not act deceptively.

The action-guiding features of Hurthouse’s account refer to how a virtuous person regularly acts. However, to say that person A regularly acts in a certain way X is to say that he regularly follows the rule: “Act in way X”. That is, the regular action of the honest agent, in so far as he is acting honestly, is best described as rule-governed activity. In the case of the honest agent, the rules that his acts conform to are something like the following: Do not lie, and do not act deceptively. Of course, simply keeping such a rule is not what makes the honest agent honest. Honesty, as we mentioned above, also involves having certain affective states. However, in so far as the honest agent’s actions are a guide to rightness (not virtue), they are so because they conform to these rules.

The question here, I think, is one of priority. Is the honest agent conceptually prior to the rule or is the rule conceptually prior to the honest agent? I think that the latter is the case.

127 Hurthouse, 27.
because the virtue of honesty seems to be defined, in part, in terms of having a disposition to act in a particular rule governed way, namely in conformity with the rule “Tell the truth”. However, the fact that it is right to tell the truth does not seem to be conceptually dependent on the virtue of honesty. Even if there had never been an honest agent because no agent had the proper affective states toward the truth, it would still be the case that it would be right to tell the truth. However, if it were the case that telling the truth were not morally required, it seems that we would not have a virtue of honesty.

For my purposes, however, all I need to say is that complicity does not necessarily involve having a set of affective states toward wrongdoing, and therefore, the only part of a virtue account of complicity that would be applicable to complicity would be its action-guiding part which would be reducible to a prima facie duty, which is how I have conceptualized complicity.

To sum up, in this section I have given some reasons why I think that it is better to think of complicity as a prima facie wrong rather than an expression of a vice or a vice itself. First, I noted that vices are often thought of dispositions to act and feel a certain way in certain circumstances and that the mere expression of a vice, while functioning as evidence of an underlying bad disposition, did not seem to be of any independent disvalue on many virtue accounts. Second, I pointed out several problems with thinking of complicity as not merely an expression of vice but as a vice itself. As case 4.1 exemplifies, one might not have a disposition to expressively align oneself with another’s wrongdoing but still do so on a particular occasion. Case 4.2 points out the fact that one who has a disposition to expressively align oneself may, in fact, not be complicit in a particular circumstance. This latter case also exemplifies the fact that more than mere dispositions seem to be necessary to
link an agent to another’s wrongdoing. I have argued that what is required is conduct.

Finally, I noted that this conclusion is consistent with the fact that complicity is often thought of as an action-guiding concept in that complicit conduct is often thought of as something to be avoided and that this part of complicity is best captured using a duty-based account.

**HURKA’S VIEWS ON VICE**

In this section, I want to briefly compare my account of complicity with a recent account of virtue and vice put forth by Thomas Hurka.128 Hurka attempts to develop an account of virtue and vice that avoids what he calls two “extremes”. The first extreme involves defining virtue as “a disposition to produce what is otherwise good or to produce what is otherwise right, thereby giving it only derivative and instrumental significance”.129 The second extreme involves treating virtue “as primary, so that what is right and even what is good are identified by some relation to virtue”.130 Such an account “makes virtues the central property in a distinctive moral theory called virtue ethics, which is proposed as a fundamental alternative to consequentialism and deontology”.131

Hurka’s account, which he thinks can be accommodated within both consequentialist and deontological accounts, treats virtue and vice as intrinsic goods and evils. According to Hurka, “The account takes virtue to consist in non-causal, and more specifically, an intentional relation to goodness and evil and holds that as this relation, virtue is a further intrinsic good”.132 Thus, virtue and vice have some relation to what is good and evil which satisfies what Hurka sees as minimal conditions for a consequentialist theory and avoids the

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129 Hurka, 3.
130 Hurka, 3.
131 Hurka, 3.
132 Hurka, 11.
second extreme, but the relation that virtue and vice have to what is good and evil is an intrinsic rather than an instrumental good which avoids the first extreme.

Hurka’s account is recursive in nature. He begins with a base-clause which contains various intrinsic goods such as knowledge and pleasure and intrinsic evils such as ignorance and pain. Virtue and vice are then defined in terms of attitudes toward these intrinsic goods and evils which are themselves intrinsic goods and evils. Virtue consists in having a pro-attitude toward intrinsic goods or a negative attitude toward intrinsic evils, and vice consists in having a negative attitude toward intrinsic goods or a pro-attitude toward intrinsic evils. Further, the recursive nature of the account allows for intrinsically good attitudes (virtues) and intrinsically evil attitudes (vices) to be the objects of other attitudes that would then also be virtues and vices.

Toward the end of his discussion, Hurka suggests a way that his account might accommodate non-consequentialist virtues. One such virtue is conscientiousness. Conscientiousness is “love of right actions as right and hatred of wrong ones” and is “directed at rightness and wrongness rather than at intrinsic goodness and evil”. To accommodate such a non-consequentialist virtue, Hurka must modify his account to allow that love of rightness and hate of wrongness can be an intrinsic good even though these intentional attitudes are not directed at an intrinsic good. He writes,

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\ldots \text{capturing the virtue of conscientiousness requires a nonconsequentialist extension to the recursive account, one saying that loving what is right and hating what is wrong as right and wrong are, like loving good and hating evil, themselves intrinsically good. The two forms of conscientiousness, like the other virtues we have discussed, are morally appropriate to their intentional objects and therefore good. This final extension to the account no longer concerns only the account’s base- or lowest-level claims; it makes an additional claim about attitudes. This latter claim cannot itself be recursive, since the property it ascribes to conscientiousness—intrinsic goodness—is not the same as that had by the object of conscientiousness. Instead, it requires a principle saying that love of}
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133 Hurka, 212.
what is right as right has the different property of intrinsic goodness. Once this latter
goodness is established, however, it is subject to recursive principles, so that if acting
from a conscientious motive is good, so are desiring to act from that motive and being
pleased by someone else’s doing so.¹³⁴

Hurka allows then, for a pro-attitude toward rightness or a negative attitude toward
wrongness to be an intrinsic good, a virtue. While he doesn’t mention it explicitly, one could
easily extend Hurka’s account to include a vice that involves a pro-attitude toward wrongness
or a negative attitude toward rightness. The former looks similar to what I have been calling
complicity.

In addition, Hurka’s account unlike many accounts of virtue does not fall prey to some of
the criticisms offered earlier because it does not define virtue in terms of stable dispositions.
Rather, Hurka identifies virtue and vice with particular intrinsically good or evil states—
intentional states directed at intrinsic goods or evils (or rightness or wrongness if the account
is modified accordingly). Hurka writes,

Despite these merits, the definition may be faulted for ignoring another widely
accepted claim about virtue: that it involves stable dispositions. Aristotle says that to
count as virtuous, an action not only must be done from a virtuous motive but must
“proceed from a firm and unchangeable character.” For him, virtues are not short-term
but persisting states, ones realized in long stretches of a person’s life. Our definition, by
contrast, treats virtue atomistically, finding it in occasional desires, actions, and feelings
regardless of their connection to more permanent traits of character.¹³⁵

While I have a tremendous amount of sympathy for Hurka’s account of virtue and vice
and while I think that there are interesting parallels between his discussion of deontological
virtues and expressive complicity, I don’t think expressive complicity is best understood as a
Hurkan deontological vice.

First, Hurka’s definition of virtue and vice explicitly makes these concepts a function of
intentional states toward intrinsic goods or evils (or rightness or wrongness). He writes,

¹³⁴ Hurka, 212-213.
"The moral virtues are those attitudes to goods and evils that are intrinsically good, and the moral vices are those attitudes to goods and evils that are intrinsically evil".\textsuperscript{136} This central claim, I think, makes a virtue account of complicity both too broad and too narrow. It is too broad because one might be complicit with another's wrongdoing simply by having a pro-attitude toward that wrongdoing without any concomitant conduct. As I argued earlier, simply having a pro-attitude toward another's wrongdoing in and of itself does not seem enough to align one to that wrongdoing in a complicit way.

On Hurka's account, vice can be found in actions but given his definition, I interpret this to mean that the conduct reflects the underlying intentional state of the subject. That is, conduct is virtuous or vicious only derivatively when it exemplifies an underlying intentional attitude toward an intrinsically good or evil (or right or wrong) object. This suggests that complicity as a vice is also too narrow, for as I have argued in Chapter 1, an agent can be expressively complicit, either intentionally or negligently, without an underlying positive attitude toward the wrongdoing with which he is complicit.

Second, to say that complicity is a \textit{prima facie} wrong and could be an all-things-considered wrong is to straightforwardly give information about whether or not it should be done; the language of wrongness and rightness is action-guiding. It is not clear to me that the language of virtue and vice is action-guiding except in a derivative sort of way. It seems right to say generally that we should be acting in those ways that help us develop virtuous intentional states and that help us avoid developing vicious states, but to carry this line too far seems to make right and wrong a derivative of virtue and vice. This would effectively eliminate deontological virtues such as conscientiousness and complicity because of

\textsuperscript{135} Hurka, 42 quoting Aristotle \textit{Nicomachean Ethics} 10009a1-2; 1095a32-33.

\textsuperscript{136} Hurka, 20.
circularity. To be complicit would be to have a pro-attitude toward wrongness but to act wrongly would be to act in such a way so as promote such a pro-attitude.

Complicity, as I have envisioned it, is the expression of a positive P-state toward the wrongdoing of another. It essentially involves conduct, albeit conduct of an illocutionary nature. I think that this way of conceptualizing complicity is better able to capture our intuitions about various types of cases. However, I do think that there is a Hurkan vice that is parallel to complicity. I don’t think that simply having a pro-attitude toward another’s wrongdoing is in itself strong enough to link one person to another’s wrongdoing in a complicit fashion; however, I do think that having these attitudes is an evil and as such would qualify as a reason to try to avoid having them.

Complicit conduct, act descriptions, and wrongness

An episode of complicit conduct like any episode of conduct can be described in a number of ways.\textsuperscript{137} Some of these descriptions may be violations of other moral rules in addition to the one proscribing complicity. For example, suppose that A promises B not to help C do a wrongful act X. If A helps C do X, then A’s act may be described as 1) complicity, an expression of a positive P-state toward C’s doing of X, 2) breaking a promise, and 3) causal facilitation of C’s wrongdoing. Each of these act descriptions indicates a different \textit{prima facie} wrong. All of these act descriptions will play a role in our overall judgment of the act as to \textit{whether} helping C do X was wrong. However, only the first act description involves a violation of the \textit{prima facie} duty to avoid complicity.

In this project, I have identified complicity with certain expressive features of conduct. However, in doing so, I do not want to give the impression that acts which are complicit can

\textsuperscript{137} See W.D. Ross, \textit{The Right and the Good}. (Indianapolis: Hackett, 1930), 42.
not also go wrong morally in other ways. To the contrary, I think that they can and often do. The same act can be a violation of a number of different \textit{prima facie} moral duties. For example, it can violate the duty not to be complicit, not to break a promise, and not to causally facilitate another agent’s wrongdoing. In defending an expressivist account of complicity, I am not arguing that an act that is complicit never plays a causal role in bringing about another agent’s wrongdoing. Rather, my main claim is that playing a causal role in bringing about a primary agent’s wrongdoing, although a separate \textit{prima facie} wrong itself, is not constitutive of complicity. Expressive features, not causal features, are what make an act complicit. That being said, expressive features are not the only features of a particular act that can make that act wrong. Causal features enter here at the level of wrongness, all things considered, rather than at the level of complicity.

\textit{Blame and complicity}

But what about complicity? Why should one think that simply expressing a positive P-state toward another agent’s wrongdoing in the absence of any causal influence on that wrongdoing or any other agent’s wrongdoing is itself a \textit{prima facie} wrong?\textsuperscript{138} I think that in answering this question it is useful to consider the justification for blaming.

As I indicated in the last chapter, I differ with Kutz on what blame is. Kutz sees our practices of accountability, including blame, as being constitutive of and contributive to harmonious social relations among agents. However, while blame may play some role in contributing to social relations among agents, I see this as only a fortunate side effect when and if it occurs. I think that when an agent expresses blame regarding another agent’s

\textsuperscript{138} Another \textit{prima facie} duty that a complicit act might violate is the duty to avoid motivating other agents to commit wrongs similar to the one the p-agent is doing. For example, in cheering on a p-agent one may provide encouragement to a third party to do the same wrongful act in which the p-agent is engaged.
conduct he is acknowledging that a moral duty has been violated and is expressing his own commitment to the moral law as an overriding system of action-guiding principles. Conformity to precepts of the moral law embodies a certain way of life—a moral life—and for the agent who expresses blame this way of life is intrinsically valuable. Blame is an expression of loyalty to a way of life marked by conformity to the moral law.

Expressions of blame then, are conceptually different from expressions of anger, pain, or frustration that are directed at the setback of one’s own interests or the interests of another with whom one identifies. One can express anger at a person who acts permissibly; however, this would not be blame. Expressions of blame are oriented at an affront to the moral law. Blame is not simply a reflection of negative emotion at another agent’s acts; rather it is negative emotion at another agent’s acts because those acts represent a violation of the moral law and an affront to the moral life—a life which one values and is committed to emulating.

To the extent that one sees the Right as dependent upon and expressing the Good, one might also say that blame is an expression of loyalty to the Good from which moral duties are derived. One could say this, but one need not. One could think that the domain of the Right represents a completely separate sphere of moral assessment as compared to the domain of the Good. Or one might think that the dependency works the other way. The Right as embodied by one’s moral duties when actualized in conduct is constitutive of a Good state of affairs. My only point here is that blame seems to be an expression of one’s own commitment to the Right, as embodied within a set of overriding, action-guiding principles conformity to which marks out a certain type of life.

Now what about complicity? Complicity, as I have conceptualized it, is an expression of a positive attitude, belief, or desire toward another agent’s wrongdoing that aligns the
complicit agent with that wrongdoing. When an agent expressively aligns himself with another’s wrongdoing, in addition to the first order expression toward the wrongdoing itself (i.e. happiness, glee, desire to help bring about, etc.) he is also expressing something deeper. I think that in complicity, an agent expresses indifference and antipathy for the moral law. It is to set one’s self against the moral law and the way of life that is embodied by conformity to the action-guiding principles that comprise the moral law. Complicity, it seems to me, is the opposite of blame. It is an expression of disloyalty to the moral law. It is an expression of rejection of the moral law and the moral way of life. Thus, the reasons that justify blaming an individual for doing wrong also justify avoiding complicity.

The crucial premise that is missing, of course, is that it is *prima facie* wrong to set oneself against the moral law and moral way of life in this way. Why should one believe this premise? I am inclined to offer the unhelpful comment that one should believe it because it is true—it is just a brute moral fact that one should not reject the moral law and the moral way of life even in a secondary way involving a response to another agent’s wrongdoing. It is right to be for the Right, and it is wrong (all things being equal) to align oneself with what is wrong. Perhaps in the end this is all one can say here.

However, perhaps I can say a bit more. For a moral agent who already sees the moral law as important enough to follow and who expresses blame when others don’t follow it, it seems to me that the same reasons that make the moral law important for him to follow also make it important for others to follow it as well. That is, if there is such a thing as the moral law, then it would not be like a choice to learn to play the piano but rather would be justified by *agent-neutral* reasons, reasons that apply to all agents regardless of whether they value the
moral way of life or not. Ultimately these reasons derive, I think, from the fact that the moral way of life, a life lived in conformity to one’s moral duties, carries with it objective value. And the fact that other people have a reason to follow the moral law coupled with the fact that we have reason to follow the moral law seems to give us a reason to refrain from aligning ourselves with those who don’t follow the moral law. If we have reason to follow the moral law, then we have a reason to be for the following of the moral law and against the breaking of the moral law. Perhaps in the end, however, my account ultimately rests on a strong intuition that it is prima facie wrong to align oneself with what is wrong.

3. Degrees of Prima Facie Wrongness: Three Axes of Evaluation

The degree of prima facie wrongness of complicit conduct can vary from case to case as can its degree of all-things-considered wrongness. The notion of degree, however, is used in different ways when discussing prima facie wrong conduct, such as complicity, and all-things-considered wrong conduct.

First, degree of prima facie wrongness is a property of one particular description of an act that may have multiple descriptions. Degree of all-things-considered wrongness is a property of an act taking into account all its different descriptions. Second, the degree of prima facie wrongness of a particular act description provides a measure of the importance of that particular act description to the judgment of whether the act is all-things-considered wrong. The degree of all-things-considered wrongness of the act provides at least part of the warrant for various responses to the act such as guilt, blame, or punishment, and it also provides a

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139 This is not to say that there are not agent-relative duties, only that each person has agent-neutral reasons to comply with their own agent-relative duties.
measure of the importance of the moral reason for action as compared to non-moral reasons for action that also may be in play.\textsuperscript{140}

The degree of all-things-considered wrongness is at least a function of the \textit{prima facie} wrongness and rightness of the various act descriptions under which the act can be described.\textsuperscript{141} For example, if an act is under only one morally significant act description and that act description has a certain degree of \textit{prima facie} wrongness then the wrongness of the act, all-things-considered will be the same as the degree of \textit{prima facie} wrongness.\textsuperscript{142} The degree of all-things-considered wrongness may also be a function of other factors as well; however, at this point I want to turn my attention to contextual features that influence the degree of \textit{prima facie} wrongness of complicity.

I will examine three different contextual features that tend to make a complicit act more \textit{prima facie} wrong. First, I will examine the degree of wrongness of the primary act. Second, I will examine the presence of intentionality in the complicit conduct. Finally, I will examine the "strength" of the particular expression that aligns the complicit agent with the primary agent's wrongdoing. Before I begin, however, I want to briefly discuss a contextual factor that can influence the \textit{prima facie} wrongness of an act under a description that is commonly correlated but not identical with the act description of complicity. This act description is \textit{causally bringing about a wrong}.

As I mentioned in Chapter 2, an agent's level of causal responsibility for an act affects judgments of the \textit{prima facie} wrongness of that act. It is more \textit{prima facie} wrong to be more

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\item This would be the case if one thinks that these could come into conflict necessitating a judgment between the two types of reasons. I am inclined to think that moral reasons for acting, by virtue of being moral reasons, are overriding and as such have a lexical priority over non-moral reasons.
\item By \textit{prima facie} wrongness, I mean if this act description was the only morally significant one the act was under then the act would be wrong and should not be done. By \textit{prima facie} rightness, I mean if this act description was the only morally significant one the act was under then the act would be right (obligatory or permissible) and either should be done or is permissible to do.
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causally responsible for violating a duty. Thus, for example, consider again case 2.1 in which both Doug and Fred violate the duty not to causally facilitate the death of an innocent human being. In this case, Doug is more causally responsible for the killing of Bob than Fred, and thus Doug’s act, under the act description of causally bringing about a killing, is more *prima facie* wrong than Fred’s act even though Fred’s act can also be described as causally bringing about a killing. While these types of judgments do help us determine the *prima facie* wrongness of duty violations that involve causal connection to some harm or bad effect, since complicity *per se* does not require such causal connections to harm, I don’t think that these types of judgments factor into judgments of the *prima facie* wrongness of complicity.

Complicity is a different *prima facie* wrong than causally bringing about a wrong. The degree of *prima facie* wrongness of the act description, *causally bringing about a wrong*, may play a role in determining the degree of wrongness of an act that is also under the act description of complicity; however, the degree of wrongness of the *prima facie* duty violation involving causal connection to wrongdoing does not directly affect the degree of wrongness of the *prima facie* duty violation of complicity. These are separate reasons for judging the act, all things considered, to be wrong. Let us now move on to consider contextual features that affect the degree of *prima facie* wrongness of complicity.

*Wrongness of the primary act*

The degree of *prima facie* wrongness of a complicit act is proportional to the wrongness of the primary act. Thus, for example, if an agent expressively aligns himself with a mass murder or gang rape, all things being equal, the complicity is worse than if he aligns himself

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142 Thanks to George Sher for this point.
with the theft of a comic book. The degree of *prima facie* wrongness of the former provides a greater influence over the all-things-considered judgment of wrongness than the degree of *prima facie* wrongness of the latter.

This point holds even in cases in which the wrongness of the primary act is not associated with bad effects. Thus, for example, it is more *prima facie* wrong to expressively align oneself with a primary agent who attempts murder than with a primary agent who attempts to shoplift a comic book.

This is another sense in which complicity is derivative from the primary agent’s act. While the expressivist account of complicity is not dependent upon the notion of derivative liability, the degree of wrongness of a complicit act is dependent upon how wrong the primary agent’s act is. The complicit agent is still responsible for his own act of expressing a positive P-state toward a primary agent’s wrongful act; however, a given act of expressing a positive P-state is more *prima facie* wrong when the act toward which one is expressing a positive P-state is more wrong.

*Degree of intentionality*

The degree of *prima facie* wrongness of a complicit act is responsive to the presence of intentionality on the part of the complicit agent. As discussed in Chapter 1, judgments of intentionality can enter in at two different levels. First, it enters in at the level of expression. In expressing a positive P-state toward a primary agent’s wrongdoing, a complicit agent might intend to provide others with a warrant to conclude that he has P. At the level of expressing, an agent can also act negligently. He can act to provide others with a warrant to conclude that he has P without intending to provide such a warrant by failing to take due care to ascertain whether his act would give others such a warrant.
However, the relationship between intentionality and *prima facie* wrongness seems to enter in at a later stage. After one has expressed P, there is still the question as to whether one intended to express P toward a wrongful act. That is, there is a question of whether one intended to express P while knowing that the primary act was wrong. If one did intend to express P toward a wrongful act then this is a different, more specified intention, than simply intending to express P toward another agent’s act. To be clear, there are not two different intentions here—the intention to express P toward another agent’s conduct and the intention to express P toward another agent’s *wrongful* conduct—rather, the original intention can at this level become more specified. An agent can only have this latter, specified intention if he had the original intention to express P toward another agent’s conduct. If the agent was originally negligent in expressing P toward the primary agent’s conduct, he could not intentionally express P toward the primary agent’s *wrongful* conduct. Generally, I think that that all things being equal, intentionally expressing P toward another agent’s wrongful conduct is more of a *prima facie* wrong than negligently expressing P toward that conduct.

*Strength of the positive P-state*

Finally, the degree of the *prima facie* wrongness of complicity will be proportional to the strength of the positive P-state expressed toward the primary act. The strength of the expression varies along two different axes. First, the strength of the expression varies with the intensity of the expression itself. For example, in a complicit context, an agent must affirmatively distance himself from the primary agent’s wrongdoing in order to avoid complicity. In such a context, however, expressing happiness and joy over the primary

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143 Thanks to George Sher for clarification here.
agent’s wrongdoing is more of a *prima facie* wrong than merely failing to express a rejection of the primary agent’s wrongdoing.

Further, in a complicit context, one might fail to express rejection to the appropriate degree. Thus, one might half-heartedly reject a primary agent’s wrongful act when one should have vigorously rejected it. In such a situation, however, half-heartedly rejecting the primary agent’s act would be complicity but less of a *prima facie* wrong than not rejecting the primary agent’s act at all.

The strength of the expression also varies with the certainty that is expressed along with the positive P-state.¹⁴⁴ For example, a complicit agent that expresses his support for a primary agent’s plan to steal a car but also expresses his uncertainty and misgivings about the moral permissibility of such an act has performed an act that is less of a *prima facie* wrong than if he had unhesitatingly and confidently expressed his support for the primary agent’s plan to steal the car. The point here is that moral qualms when expressed seem to matter. Perhaps they don’t matter a tremendous amount when everything is said and done; however, they do matter some.

4. Conclusion

In this chapter, in section 2, I began by discussing advantages of treating complicity as a *prima facie* duty violation rather than an expression of vice or a vice itself. In doing so, I discussed Thomas Hurka’s recent account of virtue and vice and noted similarities with the expressive account of complicity I laid out in Chapters 1 and 2. I concluded that even on Hurka’s account, complicity is best thought of as a *prima facie* duty violation rather than a

¹⁴⁴ Thanks to Baruch Brody for this point.
vice. I did note, however, that there is a Hurkan vice that is similar to what I have called complicity and that this vice should be avoided.

I then argued that a given act of complicity might simultaneously under alternative act-descriptions violate other prima facie duties in addition to the prima facie duty to avoid complicity. In particular, I noted that while causal facilitation of another agent’s wrong is not constitutive of complicity it is often an alternative act description under which episodes of complicit conduct can be put. I noted that while causally facilitating another’s wrongdoing is itself a violation of a prima facie moral duty, it is separable from complicity and comes in at the level of judging whether an act is all-things-considered wrong.

I then attempted to make the case that complicity, conceived of as expressive alignment with another agent’s wrongful conduct, is prima facie wrong. I argued that complicity functions in a way opposite to blame. To blame someone for doing wrong is to acknowledge that wrong has been done and to express one’s commitment to the moral law and the moral life. Complicity involves a first order expression of a positive P-state toward another agent’s wrongdoing but also a second order expression of contempt for the moral law and the moral life. I argued that ultimately the normativity of expressivist conceptions of complicity might rest upon a bedrock intuition that it is prima facie wrong to align oneself with what is wrong.

In section 3, I argued that both prima facie wrongness and all-things-considered wrongness come in degrees. I then focused attention on those contextual factors that play a role in making some cases of complicity more prima facie wrong than others. First, I discussed the effect of the degree of wrongness of the primary agent’s act. The more wrong the primary act, all things being equal, the worse the complicity. Second, I discussed the effect of the presence of intentionality in the complicit agent’s act. All things being equal,
complicity is worse if it involves conduct that is intentional rather than negligent. Finally, I discussed the effect of the strength of the expression on judgments of complicity. I designated two different components of strength of expression. First, if the intensity of the expression toward a primary agent’s wrongdoing is stronger, then the complicit act is worse. Second, if the expression is expressed with more rather than less certainty, then the complicity is worse.

In Chapter 5, I will apply the account laid out in Chapters 1 and 2 to three particular cases that are purported to involve complicity. My goal will be to use the expressivist account to illuminate these claims.
Chapter 5
Applications

1. Introduction

Living a moral life is difficult. Sometimes it is hard to do what is right. Sometimes it is hard to know what the right thing to do is. Issues of complicity present us with especially difficult challenges. In this chapter, I want to explore three different challenging cases of purported complicity using the expressivist account put forth in Chapters 1 and 2. The first two cases are from the sphere of bioethics while the last case involves a more general case of purported complicity.

In section 2, I will examine the claim that a researcher is complicit in killing when he uses stem cells taken from an embryo that is killed in the process of procuring the stem cells. In section 3, I will examine the claim that a clinician is complicit in killing when he refers a patient to another provider for physician-assisted suicide (PAS). Finally, in section 4, I will examine the claim that allied soldiers were complicit in the killing of civilians when they participated in the bombing of Dresden during World War II. In section 5, I will give a brief conclusion. Before I begin, however, I need to make two important points.

First, on the account of complicity that I have developed, complicity is a violation of a prima facie duty. Thus, with each of these different cases, complicity is just one of several moral considerations that must be taken into account in order to determine whether a particular course of conduct is morally permissible or impermissible. Other moral considerations must be identified and then a judgment must be made in regards to the relative importance of each before an all-things-considered judgment can be reached. Knowing
whether or not complicity is involved, however, is an important part of this decision-making process.

Second, with many difficult cases involving complicity the difficulties can enter in at one of two different places. First, an agent may not be clear if his conduct expressively aligns himself with the wrongdoing of another agent. This problem may result from the agent lacking knowledge of the fact that the conduct engaged in expresses a positive P-state, or from an expressive indeterminacy in the conduct itself. That is, in some cases, there may not be a fact of the matter as to whether or not the conduct expresses a positive P-state or not.

Another and probably more common problem, is that an agent may not be clear if the conduct with which he is aligning himself is wrong. And the answer to the question of complicity depends importantly on the answer to the question of the wrongness of the primary act. For example, consider the case of referrals for physician-assisted suicides (PAS). If, in a particular case, it is morally permissible for a physician to aid a patient in committing suicide, then there can be no complicity in the case. In order for there to be complicity, there must be a primary wrong with which an agent is complicit. If the conduct with which an agent expressively aligns himself is permissible for the primary agent, then the expressive alignment is not complicity. Obviously, whether or not the primary act is permissible may be a hotly contested matter. Debates about the complicity of an act may boil down to disagreements about the nature of the primary act itself.

In this chapter, I will examine each of the three cases with the presupposition that the primary act in question is wrong. Some will readily accept this presupposition; however, others will not. Apart from the question of whether or not the primary act is wrong, it is also an important question as to whether the conduct involved is complicit if the primary act is
wrong. It is of obvious importance to the agent who believes that the primary act is wrong; however, it is also of importance to the agent who does not believe the primary act is wrong. In such a case, an agent may be able to show that his own conduct is not complicit without having to show that the primary act is not wrong.

2. Complicity in Research Medicine: Stem Cells

Recently, there has been a tremendous amount of interest in using stem cells as a therapeutic modality to fight many different kinds of degenerative and incurable diseases. Researchers claim that stem cells hold the key to effective treatments and cures for debilitating illnesses and injuries such as Parkinson’s disease, spinal cord injuries, diabetes mellitus, etc.

However, with the interest in using stem cells in research have also come reservations about the ethical propriety of such research. One argument made against such research is that it involves the researcher in complicity with wrongdoing. In order to avoid issues of complicity, the NIH funds only research on stem cells, not the procurement of the stem cells which necessarily involves the killing of an embryo. Several critics, however, have found such a move insufficient for removing complicity. For instance, Ben Mitchell writes,

That brings us to another ethical problem with the guidelines. Not only does NIH claim to have erected a legal firewall between the funding of the destruction of embryos and the research using those embryos, they purport to have created a moral firewall as well. The problem, however, is that this alleged firewall cannot stand on grounds of moral complicity. When someone assists in or encourages an act, they are in some sense complicit in that act—regardless of whether they directly participate in carrying it out.\textsuperscript{145} Richard Dorflinger concurs. He writes,

Here those who harvest and use the cells are necessarily complicit in the destruction of the embryo. This is illustrated by the fact that, if embryonic stem cell research were

governed by the same legal conditions that now govern the use of fetal tissue from abortions in federally funded research—e.g., harvesting to be done only after death, researchers’ needs may not determine the timing and manner of the destruction of the fetus—the research could not be done at all. These stem cells are taken from embryos while they are still living. In effect, the harvesting of cells is itself the abortion—i.e., it is the act that directly destroys a live embryo—and the method of destruction, using microsurgery to extract the embryo’s inner cells from the outer trophoblast, is determined entirely by the needs of the stem cell researcher.146

Other writers, however, question these claims of complicity and whether the notion of complicity used by opponents of stem cell research is too broad. For instance, John Robertson writes,

Criticism of the HHS Counsel’s position rests on the belief that the derivation and use of ES [embryonic stem] cells cannot be morally or legally separated. If the initial derivation of ES cells from embryos or aborted fetuses is immoral, as many persons believe, then later research uses of those cells do not become morally acceptable merely because the research is separated from the derivation. Under this reasoning, the chain of complicity holds even if the actual ES cells used in research or therapy are the product of many later generations or passages of the original immorally derived ES cells. . . . The later researchers in this case would, of course, be profiting from or making use of that original immoral derivation and, in that sense, benefiting from another person’s wrongdoing. However, a “no benefit from another’s wrongdoing” theory of complicity seems much too broad to be a guide to moral or social practice. If taken seriously, it would mean that the taint of an original alleged immoral action, no matter how attenuated, could never be removed as long as it were still traceable to the original action. Such a view would make us all morally complicit in any immoral action that at several removes still underlies or contributes to economic and social transactions from which we benefit. It would also bar the use of organs for transplant that resulted from a homicide or suicide, because the recipient would be benefiting from another’s immoral action that occurred independently of the recipient’s need for an organ transplant.147

In this section, I will examine the claim that researchers who conduct research on stem cells are complicit in the killing of embryos. In doing so, I will use the expressivist account put forth in Chapters 1 and 2. Before I begin, however, I need to narrow and define the topic a bit more.

Currently, human stem cells are obtained in a number of ways including extraction from adult bone marrow, extraction from fetal tissue, and extraction from embryos. I will be focusing only on stem cells taken from embryos. In addition, I want to put aside the possible case of embryos created for the express purpose of providing stem cells for research. Rather I want to focus on embryos that are created for in vitro fertilization (IVF) treatments which are ultimately not used for implantation and which are destined to be kept in a perpetual frozen state or to be destroyed. Also, the case with which I am interested involves one person who extracts the stem cells and as a result kills the embryo, and a second person who uses the stem cells for research purposes. Finally, let us suppose that the embryo is killed so as not to damage the stem cells in order to utilize them in research. Consider the following case:

**Case 5.1**

*Tom does research on stem cells at a major research university and is currently working on a cure for Parkinson’s disease. He believes embryos have significant moral standing and it is wrong to kill them. However, he feels no qualms about using stem cells obtained from embryos that others have killed. Tom buys stem cells from a man named Clyde. Clyde has a contract with a number of IVF clinics and extracts stem cells from embryos which would have been destroyed otherwise and which have been authorized for use in research by the sperm and egg donors. Clyde is reimbursed for his time and effort.*

Let us assume that Clyde’s killing of the embryos to extract stem cells is wrong. One might think such a thing for various reasons. For example, one might think that the embryo is an entity that has moral standing which makes killing it a morally serious matter and that the hypothetical benefits of stem cell research is not a serious enough reason to justify killing such an entity.

The question that I want to consider is, given the assumption that Clyde’s act is wrong, is Tom, in using stem cells that Clyde extracts, complicit in Clyde’s wrongdoing? Does Tom’s
action of using stem cells obtained by Clyde expressively align Tom with the embryo killings? There is some evidence to suggest that it does not. Consider the following case:

**Case 5.2**

*John, a transplant surgeon, has a patient named Samantha who is in need of a heart transplant in order to survive. During a robbery, Art shoots a woman in the head killing her. Another surgeon who receives reimbursement for the procedure later harvests her organs. John transplants this woman's heart into Samantha.*

In this case, John uses an organ that resulted from a wrongful act, a murder, in order to achieve a worthwhile goal—namely, saving the life of Samantha. However, most people would agree that Tom is not complicit with the murder. John Robertson writes,

> Families of murder victims are often asked to donate organs and bodies for research, therapy, and education. If they consent, organ procurement agencies retrieve the organs and distribute them to recipients. No one would seriously argue that the surgeon who transplants the victim's kidneys, heart, liver, or corneas, or the recipient of the organs, becomes an accomplice in the homicide that made the organs available, even if aware of the source.\(^{148}\)

Using the language of the expressivist account, John is not complicit in Art's killing because John's conduct does not expressively align him with Art's killing. His acts do not provide a third party with warrant to conclude that he supported the murder of the organ donor. Rather, John takes advantage of the wrongful act of another in order to bring about good.

And isn’t this case analogous to what goes on with regard to embryos and stem cells? Tom doesn’t kill the embryo he just takes advantage of Clyde’s wrongful act to bring about some good, right? Despite the similarities between cases 5.1 and 5.2, I am inclined to judge that Tom is complicit with Clyde’s wrongdoing, but John is not complicit with Art’s

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wrongdoing. What explains the different judgments in these similar cases? I want to focus on one important morally significant difference between the two cases.

In case 5.1 in order for Clyde to achieve the end for which he kills the embryo (which may be the furtherance of stem cell research or simply getting paid) a research scientist must be willing to use the stem cells Clyde procures. Cooperation on behalf of a research scientist is required in order for Clyde’s conduct, which involves the wrongful act of killing, to be successful in light of the goals that motivated the conduct. In case 5.2, however, Art’s success in achieving the goals for which he killed is in no way dependent upon John’s willingness to use the organs retrieved from Art’s victim.

What if this changes? Consider, for example, case 5.3:

**Case 5.3**

*John is a transplant surgeon who has a patient, Samantha, who is in dire need of a heart transplant. Samantha’s boyfriend, Todd, goes into the waiting room of the hospital and loudly asks if anyone present is an organ donor. A young woman raises her hand, and Todd shoots her in the head. He then carries the body to John and asks him to quickly transplant the heart into Samantha.*

Given our initial assumptions, case 5.1 is more like 5.3 than 5.2, and in this case, whether John should or should not transplant the heart is far from obvious. I think that the explanation for this ambiguity is that unlike case 5.2, in this case, John would be complicit with a killing while in case 5.2 he would not.

But why is John complicit? In case 5.3, if John were to transplant the organ into Samantha, his conduct would be furthering a goal for which the killing was done—namely, providing Samantha with a new heart. In intentionally acting in a way that furthers the goal for which the wrongdoing was done, John expressively aligns himself with that wrongdoing. His act expresses a positive P-state toward the killing because it is natural sign of a support
for Todd’s entire project including the way Todd pursued his project—which in this case involved a wrongful killing.\(^{149}\)

In refusing to cooperate with Todd by refusing to transplant the heart into Samantha, John would expressively reject Todd’s killing and avoid complicity. In a case like 5.3, John might still use the organs but not for Samantha because it is not using the organs per se that expressively aligns, rather it is using the organs to further the goal of the killer that expressively aligns.

But what about a variation of case 5.3? Consider the following case:

**Case 5.4**

*John is a transplant surgeon who has a patient, Samantha, who is in dire need of a heart transplant. Kyle is a man whose own mother died because she could not get a liver transplant. Kyle decides that there are some people in the world who would do more good as organ donors, so Kyle seeks out people that he thinks are of little benefit to society, kills them, and makes anonymous calls to the police so that the organs can be used by those on waiting lists. John learns of what Kyle is doing and has the opportunity to use a heart of one of his victims for Samantha.*

In this case, the killer’s goal is much more generalized. Kyle just wants to make the world a better place by killing some and giving their organs to others. In this case, I think that John would be complicit if he transplanted any of the organs in any patient. In transplanting any of these organs, his conduct would help Kyle further the goal for which the killings were done. In so doing, he would be expressively aligning himself with Kyle’s killing.

Contra Robertson, a case like 5.4 seems to be more like case 5.1 than case 5.2, and while case 5.2 does not involve complicity, cases 5.1 and 5.4 do. As Andrew Shorr writes,

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\(^{149}\)This is not to say that if John had the goal of saving Samantha’s life and had a separate heart to transplant into her that if he transplanted this heart and not the one Todd procured that he would still be complicit in Todd’s killing simply because he shared the same goal as Todd—namely saving Samantha’s life. In accepting the heart Todd procured, John expressively aligns himself with the way Todd is pursuing the goal.
The compelling response to charges of complicity is found in another analogy. Surely, transplant surgeons are not accomplices to murder simply because they remove organs from homicide victims. A deeper analysis, however, shows this comparison to be inapt. Simply put, it begs the question of the intent of the murderer. What if the physician knew that perpetrator killed the decedent solely to create a source of organs for transplant? In this instance, if the doctor opted to salvage organs from the victim, many would consider him/her to be complicit in the act of murder. 150

Consider also a real life analogy to case 5.4 involving Nazi physicians. James Burtchaell quotes the following account:

There was also a scramble for bodies and bones. When anatomy professor August Hirt set about assembling a collection of body casts for his institute, he requested that captured Russian Jews, both men and women, be brought to Strassburg alive so that he might arrange for a “subsequently induced death” in such fashion “that the heads not be damaged.” They were not; the U.S. Army arrived unexpectedly to find 150 bodies still floating in formaldehyde. 151

One might wonder if Tom is expressively aligning himself with Clyde, then what kind of P-state is being expressed by Tom’s conduct? I think that Tom, in using the stem cells derived from Clyde’s wrongful act, expresses an attitude that the killing of the embryos is acceptable when weighed against the possible advances of the research and that the violation of the moral law that occurred is something to be passed over and ignored in the pursuit of the research.

At this point, a complication arises. In case 5.1, Tom believes that killing embryos is wrong. Many stem cell researchers may not share this belief. In fact, it is easy to imagine a case in which a researcher after careful moral reflection comes to the conclusion that not only is it permissible to kill embryos for research, the potential benefit to victims of debilitating and lethal diseases makes it obligatory to do so. What if the researcher upon careful

reflection, does not believe that killing the embryo is wrong? Given our assumption that the killing is wrong, is the researcher still complicit?

In such a case, the morally conscientious researcher has expressively aligned himself with something that is wrong, but he did so without a belief that it is wrong. In fact, let us suppose that he is involved in the research because he feels a moral obligation to help alleviate sickness and suffering. I am inclined to say that the researcher in such a case is not morally complicit with the killing of the embryo even though there is something morally troubling about his situation.

Why am I inclined to say this? Why does not believing that killing the embryo is wrong eliminate complicity? Consider the following case:

Case 5.5

Sam is good friends with Dave and asks Dave to help him move some furniture out of his parent's house that they had given him. Dave agrees. Later however, Dave finds out that Sam had tricked him into helping him steal his parents' furniture that Sam went on to sell for money.

In this case, my judgment is that Dave is not complicit. He has no reason to think that Sam is stealing the furniture. His conduct, which causally facilitates the theft, normally would be taken as an expression of support for Sam's wrongdoing. Why then isn't Dave complicit in Sam's wrongdoing? I think that he is not complicit because while Dave did align himself with Sam's act of theft, he did not knowingly or negligently align himself with the wrongness of that act. There is a subjective element to complicity that involves a choice to stand with another's conduct believing that the conduct is, in fact, wrong. And the prima facie wrongness of complicity stems, in part, from this subjective element.

In Chapter 4, I contrasted complicity with blame and used suggestive phrases such as "standing against the moral law" and "disloyalty to the moral law and moral way of life" to
explain why complicity is wrong. To expressively align oneself with what one non-negligently believes to be morally permissible seems less like disloyalty and more like a mistake. If the expressive alignment is unintentional and non-negligent then there is no complicity even if there is an objective expressive alignment with another agent’s wrongful act.

The case in which a morally conscientious researcher has non-negligently arrived at the conviction that killing an embryo for stem cell research is morally permissible even if the embryo killing is, in fact, morally impermissible, is similar to case 5.5. The researcher does not knowingly align himself with the wrongness of the embryo killing just as Dave did not knowingly align himself with the wrongness of Sam’s theft. As in case 5.5, the morally conscientious stem cell researcher who concludes that the killing of the embryo is not wrong is not complicit with the wrongdoing of those who procure the embryo. He is, however, in an unfortunate position that he himself would recognize as unfortunate if he could come to see the wrongness of the embryo killing. Unintentionally, he has expressively aligned himself with what is wrong. Thus, in such a situation there is a good that the researcher is prevented from having—namely, being in the right expressive relationship with the moral law.152

To sum up, in this section I have argued that a researcher who uses stem cells obtained by killing an embryo is complicit with the killing of that embryo given the assumption that the killing is morally wrong. I argued that intentionally acting to further the goal of an agent who has engaged in wrongdoing in order to achieve that goal is to expressively align oneself with that wrongdoing. I then argued that this conclusion does not go through if the

152 The basic point raised here is also applicable to the next cases as well.
researcher carefully thought through the ethical aspects of his research and non-negligently reached the conclusion that the killing of the embryo is not wrong.

3. **Complicity in Clinical Medicine: Referrals**

In clinical medicine there is a general ethical imperative for clinicians to help facilitate the health-related goals of their patients. Sometimes, however, the patient may want help in doing something that is morally wrong. Clearly, for instance, if a patient wanted a physician to provide him with a drug so that he could kill his parents in order to obtain an inheritance, then it would be wrong for the physician to give the patient the drug. Doing so would both causally facilitate a murder and expressively align the physician with the murder.

However, this type of case is rare and uncomplicated. Cases that are more complicated involve the provision of assistance in killing a fetus or in killing a consenting terminally ill patient. This assistance can take different forms. One form of assistance that I want to examine involves referring a patient to another physician who then performs the killing. In this section, I will look at the case of one physician referring a patient to another physician for assistance in suicide.

Some argue that if a physician refers a patient for PAS then he is complicit with that killing. Kevin Wildes, for example, in responding to those who argue that referrals for PAS are required even if direct participation in PAS is not, notes that even the act of referral links the physician to the killing. He writes,

> In a recent article, Timothy Quill, Christine Cassel, and Diane Meier recommend that physicians who oppose assisted suicide transfer patients, who make such requests, to physicians who are “more receptive” (p. 105). These authors, like many, fail to acknowledge the nature and depth of the moral opposition to assisted suicide. They write:

No physician should be forced to assist a patient in suicide if it violates the physician’s fundamental values, although the patient’s primary physician should think seriously before turning
down such a request. Should a transfer of care be necessary, the personal physician should help the patient find another more receptive physician (p. 1382).

Such a requirement to refer will for many be collaboration in an evil project, an offense to the conscience of the one who refers. For those who understand suicide to be intrinsically evil, the desire to avoid collaborating in such acts is not simply a matter of taste.\textsuperscript{153}

Since some suicide is an intrinsically evil action, the act of referral, while "not of its nature morally wrong", is a material evil since it is undertaken with the intention that the patient will be able to accomplish an intrinsically evil action. The dilemma posed by Quill \textit{et al.} is somewhat like asking an acquaintance if you could use his house for an adulterous affair. The acquaintance may refuse the request because he thinks such activities to be evil. It would not be permissible under those circumstances for the same acquaintance to give the name and address of another venue where the prospective adulterer could carry out the evil act.\textsuperscript{154}

Wildes' stance on referrals for PAS is consistent with that of the Roman Catholic Church which explicitly prohibits such conduct.

It is necessary to state firmly once more that nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly. Nor can any authority legitimately recommend or permit such an action. For it is a question of the violation of the divine law, an offense against the dignity of the human person, a crime against life, and an attack on humanity.\textsuperscript{155}

In this section, as throughout this chapter, I will continue to assume that killing in these cases is wrong. The question is, given the assumption of a primary wrongdoing, is what the referring physician doing complicity? Consider the following case involving a referral for PAS:


\textsuperscript{154} Wildes, 325.

Case 5.6

David has terminal pancreatic cancer. He has three months to live, and his pain is barely controlled with pain medications. David visits his long time internist, Dr. Hamilton. He knows that Dr. Hamilton is morally opposed to PAS; however, he would like some help finding a physician who is not. David could probably find a physician willing to help him but it would involve a lot of calling and work, and given his condition, he would rather just get a name and number from Dr. Hamilton. He asks Dr. Hamilton to help him set up an appointment with a physician who would be willing to help him commit suicide.

Would Dr. Hamilton be complicit with the killing in this case if he simply referred David to another provider who assisted in the actual killing? In this case, I am inclined to say that Dr. Hamilton would be complicit. On the expressivist account, this means that if Dr. Hamilton referred David, he would expressively align himself with the killing of David because the act of giving David the name and number of a physician who would assist in David’s suicide would express a positive stance toward the killing.

Why, one might ask, would simply referring David to another physician expressively align Dr. Hamilton with the killing? Why would such an act express a positive stance toward the killing? I think that in referring David, Dr. Hamilton knowingly interjects himself into the particular causal process that leads to David’s death. It certainly doesn’t look as if Dr. Hamilton’s referral is a necessary condition for David’s death, but it is the case that, in referring David, Dr. Hamilton intentionally makes himself part of the actual causal process. Generally, knowingly interjecting oneself into a process to help another achieve a goal provides warrant for the conclusion that one takes a positive stance toward that goal even if the conduct’s relationship to the ultimate effect is too attenuated to be called a causal factor in bringing about that goal. Such conduct, then, in this case, expressively aligns Dr. Hamilton with the killing, if it occurs.
At this point, a complication might arise. Suppose Dr. Hamilton refers David to another physician for PAS but before he makes the referral he strongly condemns David’s plan to kill himself.\footnote{Note that this same complication might arise in the embryonic stem cell case and the Dresden bombing case. The discussion that follows is meant to apply to both of these cases as well.} Is Dr. Hamilton complicit in this case? In such a case, we have a verbal expression of a negative P-state toward David’s action and a concomitant action that seems to express a positive P-state toward David’s action.

Complicity, on the expressivist account, is intentional or negligent conduct that expressively aligns one with the wrongdoing of another agent. Expressive alignment is a relationship between the complicit agent and the primary agent’s conduct that results from the complicit agent’s expressions toward the primary agent’s conduct. This relationship is one of “being for”, “standing with”, “taking a pro-stance toward” the wrongdoing of the primary agent. It is a way of identifying oneself with the conduct of the primary agent.

In a case that involves conduct which consists of both an act that counts as an expression of a positive P-state toward the wrongdoing and an act that counts as an expression of a negative P-state toward the wrongdoing, what is needed is some sort of holistic judgment about what the conduct as a whole expresses. I think that this judgment will undoubtedly depend upon the situation. In a complicit context where what is required is a clear expression against the primary agent’s wrongdoing such ambiguity may be enough for complicity. Outside of a complicit context, however, there may be no fact of the matter as to whether there is or is not complicity. In such cases, considerations of complicity would not factor into all-things-considered judgments about the wrongness of the conduct.

I think that in the case described above (call this \textbf{case 5.7}). Dr. Hamilton could avoid complicity with an explicit condemnation of David’s plan even if he did eventually refer
David to a physician who would facilitate David’s suicide. Such an act, as long as it was sincere and convincing would leave David and others with the impression that Dr. Hamilton was against the wrongdoing that he was planning. However, in order to leave such an impression, Dr. Hamilton would have to articulate some reason why, in spite of the fact that he thought that David’s intended action was wrong and in spite of the fact that his referral would mean intentionally interjecting himself into the causal process that would ultimately end in David’s doing a wrongful action, he thought that it was permissible to refer. For example, Dr. Hamilton might make reference to contractual obligations that he has with an institution either to provide legally available services to patients or to refer them to other providers who will. Alternatively, he might make reference to a felt duty to demonstrate a certain degree of loyalty to his patients.

However, it also seems to be the case that the degree of wrongness of the primary act may come into play here as well. In case 5.7, David is terminally ill and in much pain. Suppose, however, that David was perfectly well and wanted Dr. Hamilton to recommend a good assassin that would help him kill his wife (call this case 5.8). Surely, if Dr. Hamilton denounced David’s intended act but went on to tell him about a man named Jo-Jo who would kill his wife cheap, we would think that merely explicitly denouncing David’s intended action was not enough. Why isn’t it enough in case 5.8 but is enough in case 5.7? Perhaps because even though it would be wrong for David to kill himself, it would not be nearly as wrong as David hiring a hit man to kill his wife.

The greater the primary wrong, the harder it is to perform any act that expresses a positive P-state toward that act and still avoid complicity. A useful analogy can be made to a gravitational force. The greater the density of a body, the greater the gravitational pull and
the harder it is for another body to resist that pull. In complicity, the more wrong the primary act is the harder it is for another agent to avoid complicity if he performs any action that expresses a positive P-state toward that action—even if he also performs a separate explicit condemnation of the action.

A further complication arises if we reconsider how the complicit agent’s belief about the primary wrong determines whether he is complicit. An agent is complicit only if he believes that the primary act is wrong or negligently believes that it is not wrong. Suppose, however, that Dr. Hamilton believes that PAS is wrong but does not believe that it is as wrong as it actually is. Suppose that he has conscientiously thought about the question and concluded that while PAS is wrong it isn’t so wrong so that explicitly denouncing David’s intended act won’t eliminate the complicity. If Dr. Hamilton refers under such circumstances he is not complicit for the same reason he is not complicit if he conscientiously looked at David’s action and concluded that David’s action was permissible—namely, he is not demonstrating a disloyalty to the moral law, rather he made a mistake about whether or not he was expressively aligning himself with another agent’s wrongdoing. Whereas in the original case, the mistake involved believing the primary act was permissible when it was not, in this case, the mistake involves believing that the primary act was not as wrong as it actually was and as a result, believing that explicit denunciation even if accompanied by weak causal facilitation eliminated expressive alignment.

Another factor that will undoubtedly affect whether or not an explicit denunciation of a primary wrong is strong enough to counteract the expressive properties of the causal elements of the conduct is the strength of the causal connection with the primary agent’s act. For example, it seems to me that an explicit denunciation would not be enough to extricate
Dr. Hamilton from complicity if he actually gave David the pills to take in order to kill himself. In this scenario, Dr. Hamilton's causal connection to the killing is much closer and as a result has a stronger expressive force. In some cases, the old adage is true—actions speak louder than words.

What if, instead of asking Dr. Hamilton for a referral, David simply came in to discuss the matter with Dr. Hamilton? In such a case, it seems to me that a complicit context might arise. David may take silence by Dr. Hamilton on the moral propriety of what David is planning as a sign of support for his intended action. In such a case, while complicity is less of a problem than if David actually asks for a referral, to be sure to avoid complicity, Dr. Hamilton should explicitly state his moral opinion about David's intention. While this might fly in the face of what is commonly accepted medical etiquette—that one should not judge one’s patients, I think that in cases like this when the physician is confronted with wrongdoing and silence could lead to an expressive alignment with this wrongdoing, explicit, straightforward honesty is the best policy.

To sum up, in this section, I have examined the question of whether or not a physician who refers a patient for PAS is complicit in the killing of the patient. I argued that simply referring the patient would make the physician complicit in the killing because of the expressive force involved with knowingly interjecting oneself into a process in order to help another agent achieve a goal. I then argued that in a case involving both a referral and an explicit rejection of the intent of the patient a degree of moral ambiguity arises and in some cases such an explicit rejection may eliminate complicity in the primary wrongdoing. Whether or not it would depends on factors such as the degree of wrongness of the primary act, the agent's belief about the wrongness of the primary act, and the strength of the agent's
causal connection to the primary act. Finally, I noted that in a case in which a patient comes
to a physician not seeking a referral but tacit approval for wrongdoing, in order to avoid
complicity the physician should explicitly state his objection to the wrongdoing.

4. Complicity in the Bombing of Dresden

In the last two sections I have examine cases from the sphere of research and clinical
medicine. In this section, I will examine a more general case that is discussed by Christopher
Kutz—the bombing of Dresden during World War II. Kutz writes,

The attack on Dresden involved a series of mainly incendiary bombing raids that
combined with meteorological conditions to produce a firestorm that devoured the city’s
residential sectors. The bombing—indeed, much of the Allied strategic bombing
campaign—was seen by many at the time as falling well outside the pale of legitimate
warfare. A figure of 35,000 civilians killed is now generally accepted, although some
estimates have run higher. More significant than the number of deaths was their manner.
The firestorm killed through a combination of intense heat and asphyxiation, the latter
attacking those who had taken refuge in shelters, when the oxygen was sucked out by the
fires. In the words of a German witness to the 1943 Hamburg firestorm, ‘The calamity is
as much perceived in the process of destruction as in the accomplished fact’. Indeed, the
ghastly destruction the survivors witnessed constitutes a second great violence.

The Dresden firestorm was seen by planners as a welcome, if fortuitous,
ocurrence—Bomber Command had been trying to repeat its success in the 1943
Hamburg firestorm raid. However, the decision to bomb the city with incendiaries was
not a singular product of pure malice, but was instead the culmination of the technique of
“Area Bombing,” itself a product of more and less respectable purposes.

... two features make the Dresden bombing peculiarly appropriate for a discussion
of complicity in collective harm. The first is the counterpart to the fraught place the raids
occupy in postwar thought, namely their very ethical complexity. I do not want to take
up systematically the question of whether in the anguish of the circumstances of the war,
British and U.S. authorities should have ordered the targeting of civilian populations. I
accept the general consensus, among both historians and philosophers, that the Dresden
raids in particular, which came after an Allied victory was already assured, were both
strategically valueless and inhumane. I also believe that, despite the difficulties of
thinking clearly in times of war, the wrongfulness of the raids should have been and
almost certainly was apparent to the wartime military and political leadership.

The second apt feature of the Dresden raids is the massive extent of individual
participation in a force of destruction as overdetermined as can be imagined. The city
was bombed in three raids, and at least 1,000 planes and 8,000 crewmen were directly
involved in the raids, in various roles as pilots, navigators, bombers, and gunners. The
firestorm was already raging before many crews dropped their bombs. Each crewman’s
causal contribution to the conflagration, indeed each plane’s, was marginal to the point of insignificance. Many thousands further were involved in planning and support at Bomber Command—what Freeman Dyson, the physicist and peace activist, would later call “a huge organization dedicated to the purpose of burning cities and killing people, and doing the job badly.”

In what follows, I will apply the expressivist account of complicity to this case and compare the results to those reached by Kutz.

Like Kutz, I think that the bombers, planners, and other participants in the Dresden bombings were complicit with wrongdoing. In this case, the primary wrong with which these people were complicit was the killing of civilians and destruction of property. The primary wrongdoer in this case is not an individual, however, but a group to which some of those who were complicit also belonged. A group of agents together brought about the killing and destruction and while individual agents made greater or lesser causal contributions to the killing and destruction it is a group that seems to be causally responsible for the deaths and destruction.

On the expressivist account the bombers and planners and other participants in the bombings are complicit because their conduct expressively aligned themselves with the group’s wrongdoing. This group by definition has ill-defined, vague borders; however, this is not a problem on the expressivist account because complicity is not defined in terms of being a member of the group with participatory intentions but in terms of being expressively aligned with the wrongdoing done by the group whatever its actual constituency.

In this case, it is clear that some of the agents have acted more wrongly than others. For example, the generals who gave the orders to do the actual bombing seem to be more blameworthy than the actual bombers who dropped the bombs. I think that this impression is explained both in terms of complicity and in terms of causal responsibility for the bombings.

The generals who gave the orders both instigated the process of bombing and wielded a coercive power over the individual bombers who actually dropped the bombs. Because of their position within the group and in relation to the outcome of Dresden, their actions expressively align them to the group’s wrongdoing to a higher degree than the individual bombers and they bear more causal responsibility for the outcome of Dresden. As a result, their actions were more wrong.

One might ask, “What could the bombers have done in such a situation to avoid complicity?” One thing that they could have done is spoken out. They could have pointed out that the assault was wrong. This, in and of itself, would not have completely eliminated their complicity because of the expressive force of their actions. However, explicitly rejecting the act because of its wrongness, even if one ultimately participates because of coercion or weakness of will, would lessen one’s complicity with the wrongdoing. In order to avoid complicity, however, a refusal to intentionally act to further the killing of innocent civilians would have been needed. Kutz notes that at least one of the bombers dropped his bombs over the countryside.158 Alternatively, someone involved in the process who knew what was being done could have refused to participate. Such a refusal would, of course, most likely come at a cost.

In comparing this analysis with the one offered by Kutz, the expressivist account is broader in scope. Recall that on Kutz’s account complicity in a group wrong involves sharing participatory intentions with the members of the group. On the expressivist account, one need not be a participant in the group wrong to be complicit with it. For example, if military officials attempted to cover up or minimize the wrongness of the Dresden bombing, they too would be complicit in the killings that took place. Of course, this does not mean that
the officials, through their acts, would somehow derive liability for the killings; rather, the 
officials would be expressively aligning themselves with the killings and would be liable for 
this expressive alignment. As I have argued throughout this project, it is expressive 
alignment that best captures what is at the heart of complicity. Thus, the expressivist account 
would implicate agents in complicity that Kutz’s account would not.

To sum up, in this section I have examined a case put forth by Christopher Kutz 
involving the bombing of Dresden. Like Kutz, I argued that participants in the bombing 
were complicit in the killings of civilians. However, I also argued that the reason for their 
complicity was not the participation *per se* but the expressive alignment with the group 
wrong that such participation brings about.

5. Conclusion

In this chapter, I have applied the expressivist account of complicity to three different 
cases. In each case, I assumed that the primary act was wrong. In the second section, I 
examined the issue of complicity in stem cell research. I argued that researchers who used 
stem cells expressively align themselves with the killing of the embryo because they 
intentionally help the killer of the embryo accomplish the goal for which the embryos was 
killed. I also noted that in cases in which a morally conscientious researcher aligns himself 
with something he does not believe to be wrong, he is not complicit but is in a morally 
unfortunate situation. In the third section, I examined the case of referrals for PAS. I argued 
that a physician that simply referred a patient for PAS expressively aligns himself with the 
killing of the patient because he intentionally interjects himself into the actual causal process 
by which the killing takes place. I also noted that in cases in which the physician explicitly

158 Kutz, 121.
rejects the patient’s intentions to kill himself complicity might in some cases be eliminated. Finally, in the fourth section I argued that planners, bombers, and those who ordered the bombings of Dresden were complicit in the massive killing and destruction that took place because their conduct expressively aligned them with that killing and destruction. I also briefly noted some differences that would result in applying Kutz’s account of complicity compared to the expressivist account.
Conclusion

Complicity is, in a way, a second order moral phenomenon because it presupposes a prior wrong which functions as the object of complicit conduct. It involves wrongfully aligning oneself with another’s wrongdoing. In this project, I have attempted to give an account that captures and unifies our judgments regarding complicit conduct.

In Chapter 1, I laid out the expressivist account. I argued that complicity is a violation of a prima facie moral duty not to voluntarily and intentionally expressively align oneself with what one believes to be and actually is the wrongdoing of a primary agent or to voluntarily, but through negligence, expressively align oneself with the wrongdoing of a primary agent. I argued that expressive alignment with a primary agent takes place as a result of expressing a positive psychological state (P-state) toward that agent’s wrongdoing, and I used William Alston’s account of illocutionary acts as a basis for explaining complicit expression.

In Chapter 2, I enlarged the expressivist account to accommodate cases of causal complicity. I argued that causal complicity involves a causal act that functions as an expression of a positive P-state toward the primary agent’s wrongdoing.

In Chapter 3, I compared and contrasted the expressivist account with accounts put forth by Sanford Kadish, Judith Kissell, and Christopher Kutz. I pointed out that all of these accounts emphasize the notion of derivative liability. I then argue that it was a positive feature of the expressivist account is that it does not emphasize this notion.

In Chapter 4, I argued that the prima facie wrongness of complicity stems from the fact that such conduct expresses disloyalty and indifference to the moral law and the moral way of life. I also argued our commitment to the moral law is what generates the reasons for
which we blame others who act wrongly and that these reasons are analogous to the reasons for avoiding complicity.

Finally, in Chapter 5, I used the expressivist account to examine three different cases: stem cell research, referrals for physician-assisted suicide, and the bombing of Dresden. I argued that it matters whether the agent believes the primary act is wrong and whether he has looked at the primary agent’s act carefully. I also argued that it matters whether the agent explicitly denounces a primary agent’s wrongdoing even if he does causally facilitate that act in some weak way.

I have attempted to give an account of complicity that captures and unifies our intuitions without being too broad or too narrow. The expressivist account of complicity avoids being overly broad by conceptualizing complicity in terms of voluntary and intentional or negligent conduct. Complicity is not a passive relationship with evil. It is not a curse with which one is born. Rather, and I think that this is encouraging, it is something that we as moral agents can avoid if we choose to do so. The expressivist account of complicity also avoids being too narrow in its scope. It avoids narrowness by including within the extension of complicity, conduct that is not causally related to the primary agent’s wrongdoing. It allows us to say of those who stand back and cheer on the evil of others that they act wrongly and that they should stop even if the evil that they are cheering was done long ago. We can say this because it is wrong to be for what is wrong. We can say this because we are committed to the moral way of life and those around us should be also.
Works Cited


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