Complicity and Its Conceptual Cousins*

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

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I. Introduction

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

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

"Complicity" is often employed indiscriminately as a catch-all term to describe the whole multitude of sins that, in Gardner's phrase, "I ... do by way of contribution to what you do." It is used to refer, variously, to situations that we will here characterize more precisely as

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2 Recall Thoreau's 1848 remarks on "Civil disobedience": "if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn” (reprinted in Civil Disobedience: Theory and Practice, ed. Hugo Adam Bedau [New York: Pegasus, 1969], pp. 27-50).
3 Which is not to say that they should be liable to attack in consequence, of course; Cécile Fabre, "Guns, food and liability to attack in war," Ethics, 120 (2009): 36-63.
4 As Larry May says in Genocide: A Normative Account (Cambridge: Cambridge University Press, 2010), p. 158, "Complicity is a vague concept in criminal law as well as in common parlance, but the vagueness of this concept is in my view an important part of its meaning." Our concern here will be with complicity understood from a moral point of view. Inevitably, there is considerable overlap between moral and legal treatments of
"connivance," "collusion," "collaboration," "condoning," "conspiring" or "full joint wrongdoing."
Those terms are hardly interchangeable. Each of them (and others we shall also discuss) point
not only to different degrees but also to different kinds of contributory actions, which carry
importantly different moral valences.

Here we separate out each of those other more precise notions, drawing distinctions
among them and identifying and illustrating the sorts of cases to which each might be
appropriately applied. We will still be left with something of a residual catch-all category of
"complicity," with genuine moral ambiguities attaching to it. Still, the role for that inevitably
ambiguous term will be much more circumscribed, once all those other cognate phenomena
have been separated out.

The terms we shall be analyzing here share a common etymological root, the Latin prefix
"cum"("together with"). They all apply to things (actions, plans, projects) that one does
together with someone else. The terms differ in the kinds and degrees of contribution that an
agent is making to the principal’s actions, plans or projects. All these terms carry a moral
charge, if only because (in the applications that here concern us) they apply to cases where
some principal agent is engaged in wrongdoing; and the contributory agent’s acting "together
with" that wrong-doer in his wrong-doing confers moral blameworthiness of some sort on her
in turn. Through a discussion of the extent (and indeed in some cases even existence) of

responsibility across these very different kinds of contributions, we will come to a more nuanced way of assessing their differential moral blameworthiness, in a way that the catch-all label "complicity" elides.

II. Definitions

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

We will refer to the wrong committed by the agent(s) whom we call the "principal(s)" as the "principal wrongdoing" and the wrong committed by the contributory agent as the "secondary wrongdoing." Notice that the principal wrongdoing is always wrong in itself, whereas the secondary wrongdoing might be wrong in itself or it might be wrong only by virtue of its contribution to the principal wrong. Talking in terms of "principal" and "secondary" wrongdoing is not meant to prejudice our judgment as to the relative moral blameworthiness of each. Secondary wrongdoing can be as wrong as (or more so than) the primary wrongdoing. Nor are those terms meant to prejudice our judgment as to the relative

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7 For example, a policeman who connives in petty theft has arguably done something worse than the thief herself.
importance of each in bringing about the wrong; secondary wrong-doings can sometimes be essential to (causally strictly necessary for the performance of) the principal wrong-doing. Nor, again, are those terms meant to imply anything about the act's place in the temporal sequence of wrongdoing (more of which in Sec. I.B below).

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

We will call the person who executes the principal wrongdoing the "principal" agent. A contributory agent is defined as a “co-principal” if her actions are partially constitutive of the principal wrongdoing, i.e., they are part and parcel of the principal wrongdoing which is constituted by the combination of actions performed by all co-principals. We will call a person

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

who is acting "together with" the principal in any subsidiary way a "contributory-agent."\textsuperscript{11}

Whereas the actions of the principal(s) and co-principals are constitutive of the wrong being done, the acts of the contributory agent(s) are not in themselves part of the wrong being done but at most causally contribute to that wrong's being done.\textsuperscript{12}

To foreshadow, there are two crucial components in contributions to wrongdoing. One concerns the "doing" – the "actus" in the venerable language of the law.\textsuperscript{13} The other concerns the "planning," the "mens" component of joint or contributory actions.\textsuperscript{14} After surveying various sorts of contributory acts, we will provide in Section I.C an analysis of the dimensions along which they differ grouped under those two fundamental headings.

When we talk of a "plan," we simply mean an intended sequence of actions designed to achieve a certain goal. The various terms we discuss point to different roles that contributory agents might play in the planning, to different stances contributory agents might take toward the plan, and to different roles they might play (and different stances they might take toward their assigned roles) in its implementation. When we talk of an agent "adopting" (or as we shall sometimes say "embracing") a plan, we shall mean that the agent "approves of it and intends to act upon it as required."\textsuperscript{15}

\begin{itemize}
\item We use the term "contributory agent" to include accomplices, accessories, secondary agents, derivative agents, etc. The term "contributory agent" is intended as a morally neutral term that can acquire differential moral charge.
\item Jackson, "Group morality," p. 212. Gardner, "Complicity and causality."
\item "Actus non facit reum nisi mens sit rea" (an action does not make a person guilty of his crime unless his mind be also guilty)
\item Strictly speaking, planning involves actions too (meeting together, talking, agreeing, etc.). So, more precisely, our distinction might be described as being between actions aimed at aligning mental states around some joint plan of further action, and actions then aimed at implementing that plan.
\item I.e., has what Kutz, \textit{Complicity}, ch. 3, calls "participatory intention." 
\end{itemize}
Note that it is not necessary, in order to blame agents for contributing to some planned wrongdoing, for the planned wrongdoing actually to occur. Attempted wrongdoing can be wrong, even if the attempt fails. Planning wrongdoing can be wrong, even if the planners (oneself or others) fail to act on the plan.

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

A. A cluster of concepts

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

1. Full joint wrongdoing

We coin the term "full joint wrongdoing" to describe the limiting case of complete jointness in wrongdoing. This is the case in which two or more agents deliberately contribute, through their identical individual actions, to the pursuit of a plan of wrongdoing that each of them has also played an identical role in designing and adopting.
What is peculiar to a case of full joint wrongdoing is that it involves every joint wrongdoer doing exactly the same thing as of every other. Each person engaged in full joint wrongdoing is fully and equally accountable for the wrongdoing, because they all jointly conceived, adopted and implemented the plan. Not only did they fully intend to contribute practically to the implementation of the plan in the ways it required of them; per our definition of full joint wrongdoing they actually did so, and in identical ways. When making, adopting and implementing a plan is fully joint among all the wrongdoers in this way, each takes "full ownership" of the plan. Partnerships, at law, are treated "as if" all of this were the case.

By definition, each agent engaged in full joint wrongdoing is a co-principal in the principal wrongdoing. Their acts, taken together, constitute the wrongdoing. We further stipulate in our definition of "full joint wrongdoing" that each co-principal is essential to both the planning and the performing of the principal wrongdoing. That is to say, the plan of wrongdoing could not have been designed or implemented without each of those identical contributions from each of those co-planners and co-principals. And since each is fully a "principal" in her own right in acting on the plan, none is a "mere accessory" to someone else's wrongdoing.

2. Co-operation

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

Co-operation in wrongdoing implies the existence of a plan that is shared among the co-principals. The co-operators might or might not have actually formulated the plan together with one another. Regardless of how the plan came about, co-operators at the very least all adopt the plan as their own and orient their behavior around it.

Within the realm of action, co-operators are co-principals whose actions taken together constitute the principal wrongdoing. In the case of full joint wrongdoing, we stipulated that the actions to be performed are identical among the all co-principals involved. In the case of people co-operating in wrongdoing, in contrast, the actions to be performed by different people can be altogether different from one another, just as long as they are (and are mutually known to be\(^{16}\)) part of one and the same plan, and just so long as taken together they are constitutive of the principal wrongdoing (more of which below in Section III.A). They are cooperating equally, and morally equally culpable for that fact, even if they are acting differently in pursuit of their plan of cooperation.

Furthermore, co-operators act interdependently. They monitor one another's behavior in pursuit of the plan and adjust their own behavior accordingly. If one person fails to perform

\(^{16}\) That is to say, for co-operation to occur it must be the case that all the co-operators know that they are co-operating with all the other co-operators, who know that they are co-operating with them in turn. Note that the "common knowledge" condition pertains only to knowledge of who is co-operating; it does not necessarily extend to complete knowledge among all the co-operators of all the details of the plan.
the actions required of her by the plan, other co-operators (being co-principals) will try to step into the breach in an attempt to ensure that the plan is fulfilled. What each does depends on, and changes in response to, what each other does. They tend in that sense to be "mutually responsive" to one another's actions and choices in respect of the plan.

3. Collaboration

Etymologically, collaboration combines “cum” with the verb “laborare,” meaning “to work.” The term can of course be used in various contexts, including cases of collaboration involving wholly praiseworthy or morally neutral plans. Such uses of the term "collaboration" are not our concern here, however. Here we focus exclusively on collaboration in wrongdoing.

One conspicuous case of collaboration is collaborating with an enemy, where the wrong in view is of a very specific sort (betraying one’s country or family or organization). Think of the case of Marshall Pétain, whose collaboration in Nazi’s wrongdoing involved a traitorous contribution to the evil plans of Hitler, who should have been every Frenchman's sworn enemy.17

In the realm of actions, a collaborator is not a co-principal. The actions of the collaborator contribute causally to the principal's wrongdoing, but they are not in any sense constitutive of the principal wrongdoing. That is another way in which collaboration differs from other concepts such as full joint wrongdoing, co-operation and collusion.

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17 An element of "partiality" – or minimally, special duties not to contribute in certain ways to certain actions of certain other people – can thus be involved in accusations of collaboration that may not be with the other contributory terms considered.
In the realm of mens, the collaborator contributes to the principal’s plan coming to fruition, without taking any active role in the planning itself. The relationship between the collaborator and the principal is purely that of follower to leader, in regard to the plan. The collaborator takes his instructions from the plan and tailors his own actions to it. Collaboration involves the active and practical engagement of a contributory agent in with a plan which he accepts and acts upon. But while accepting the plan as a basis for his actions, he need not actually adopt the plan as his own. The collaborator's stance toward the plan might be far more equivocal than that. Like the film Casablanca’s Captain Renault, a collaborator may simply conform to the plan pragmatically and provisionally.

4. Conspiracy

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

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

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

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

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

5. Collusion

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

Co-operation in or collaboration with wrong-doing can be perfectly public. Think for example of those co-operating or collaborating in conducting an unjust war of aggression. Collusion in contrast is necessarily secret. Of course many of the constituent acts are public: the boxer drops to the mat (as if knocked out), the laundered money changes hands (as if part of an ordinary commercial transaction). What is crucially kept secret, in cases of collusion, is that those acts form part of a joint plan.

Colluders are co-principals in the attempt to wrongly trick some third party in ways intended to work to the colluders’ own mutual benefit.19 Among conspirators and co-operators, the focus is on the wrong itself, planning and/or committing it together. Among

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19 “Wrongly trick,” because not absolutely all instances of trickery are necessarily wrong. Think of the stage magician, for example.
colluders, the focus is on the mutual benefits; the wrongs that colluders commit by tricking third parties are seen merely as a means to those benefits.  

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

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

20 Of course conspirators and co-operators typically expect to benefit from what they are doing as well, and colluders by definition commit wrongs in the course of their trickery. Still, the emphasis and focus differs.


22 In addition to being a co-principal colluding in the wrong of money-laundering, the money-launderer may – or may not – be morally implicated in some different way in the wrong that was committed by the person who stole the money. We reserve discussion of this until section III.B.2 below.
joint wrong ("colluding to money-launder") over and above the separate wrongs (of money-laundering) that each of the agents performed independently pursuant to that plan.

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

6. Connivance

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

At a minimum, connivance involves assenting in the wrongdoing, and contributing to it in that way (to some greater or lesser extent). Sometimes the presence of conniving on-lookers might actually causally contribute to a wrongdoing that would not have occurred in their
absence.\textsuperscript{23} Obviously, however, when no other option exists there can be no moral blameworthiness.\textsuperscript{24}

The analysis of moral charges of connivance might seem to turn on philosophical debates over acts and omissions, whether equal responsibility should attach to an action as to the absence of an action when they lead to the same outcome. Doctors and bioethicists for example debate whether a moral difference exists between killing and letting die.\textsuperscript{25} At first glance, connivance might seem to amount to an omission (omitting to act against wrongdoing when one could have done so). But notice that all the ways of characterizing conniving in the definition we quoted – nodding, winking, even shutting the eyes – involve active verbs. When conniving, you are actively doing something (albeit as a secondary agent), not merely passively letting something happen.\textsuperscript{26} But in any case, omissions can sometimes count as causal contributions, particularly where you should have done something and did not.\textsuperscript{27}

Another distinctive feature of connivance concerns the way in which it might foreclose future options. If one connives with a wrong being committed by another, one's capacity to denounce or disapprove the same wrong afterwards can be compromised. Consider for example the case of a wife cheating on her husband. Suppose that the husband is aware of this...

\textsuperscript{23} As one nineteenth-century English judge remarked, "Spectators really make the fight; without them, and in the absence of any one to look on and encourage, no two men ... would meet together in solitude to knock one another about for an hour" (quoted in May, \textit{Genocide}, p. 161).

\textsuperscript{24} This may well be more commonly the case with connivance than with cases of people engaging in conspiracy or collusion or co-operation.

\textsuperscript{25} Jonathan Glover, \textit{Causing Death and Saving Lives} (Harmondsworth, Mddx.: Penguin, 1977). Of course there's the opposite view, famously expressed by Eldridge Cleaver, "You're either part of the solution or you're part of the problem."

\textsuperscript{26} Whether those acts (nodding, etc.) are themselves wrong depends on how they are intended and/or understood, whether for example the "nodding" is regarded as a "sign of assenting" to the wrongdoing (in which case the act might better be described as "assenting-by-nodding").

\textsuperscript{27} As May, \textit{Genocide}, pp. 258-63, thinks bystanders' non-intervention did in the Rwandan genocide. A less dramatic case might be when the chairman asks if there are any objections and you say nothing.
and decides to avoid any intervention in the hope of being able to restore marital harmony. Legally, at least, the husband’s connivance in his wife’s cheating would impede him (at some times and in some jurisdictions) from at some later date using the wife's cheating as grounds for divorce. In such cases the law accepts one’s decision to indulge one another’s personal wrongdoing, but would not allow one to retract one's indulgence. Connivance differs in this respect from both collusion and conspiracy, in both of which cases past collusion or conspiracy does not commit you to continuing collusion or conspiracy.

7. Condone

When a principal agent is carrying out a wrongful action, an agent who is said to "condone" it contributes to the wrongful action by pardoning it.

In both conniving and condoning, the distinction between principal and contributory agents is clear. The principal agent commits a principal wrong, and the conniving or condoning agent witnesses that wrongdoing and either connives in (overlooks) it or condones (pardons, forgives) it. Those are separate actions from the principal wrong committed by the principal agent, in a way the actions involved in conspiring and colluding were not (there, conspirers and colluders were co-principals whose actions were, taken together, actually constitutive of the principal wrongdoing).

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

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

Furthermore, whereas connivance can (and typically does) occur while the wrongdoing is in progress, condoning can only occur retrospectively. You can only pardon what has already been done. You can "agree to pardon" or "promise to pardon," but until the act has occurred there is nothing yet to be pardoned. That feature sets condoning aside from the other contributory terms analyzed. If the action of condoning happens only after the wrongdoing, and its agent did not in any way participate in the planning or implementation of the wrongdoing, that agent's act of condoning cannot occupy any place in the causal chain leading up to that specific wrongdoing: causes must come before effects. Of course condoning a wrongdoing might encourage wrongdoings of a similar sort in future, but that is a matter of causing subsequent wrongdoing not this one. Or again, the wrongdoer's expectation of being condoned can encourage his wrongdoing in this instance, but what is at work there is the wrongdoer's expectation rather than the condoner's condoning.

28 When we talk of "condoning on-going acts," what we condone are wrongful acts that are immediately past that are embedded in an on-going practice that will cause similar acts to recur.
Suppose instead, however, the "condoner" conspired from the start. Suppose one agent (call him "Nixon") committed a wrong that the other (call him "Ford") promised in advance to pardon. Then the "condoning" that is subsequently done in furtherance of the plan that both Nixon and Ford share would indeed be partly constitutive of (literally, part of) the principal wrongdoing. That would be a case of conspiracy in addition to condoning, rather than of condoning alone.

8. Complicity

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

As we foreshadowed at the outset, complicity is ordinarily employed as something of a catch-all term. It is often used to describe cases that would more appropriately be described using one of the other terms analyzed above. Instead of using complicity to describe contributing to a wrongdoing in any manner whatsoever, we shall here provide a more restrictive analysis. Having separated out those other more precise forms of contributory wrongdoing, we will here specifically equate complicity with being an accomplice or an accessory.
Excluded from this restrictive analysis of "complicity" will be all cases involving co-principalship, which can be better described in those other terms ("full joint wrongdoing," “co-operation,” “conspiracy” or “collusion”). A co-principal's acts are (taken together with those of other co-principals) themselves constitutive of the principal wrongdoing. Accomplices and accessories are complicit agents, in our restrictive sense, because they alone can truly be said to be “contributing to another's wrongdoing” – as distinct from "doing wrong together," which happens in cases involving co-principals.

Although accessories' or accomplices’ secondary acts causally contribute to the implementation of the principal wrongdoing, they do not in any way “constitute” the principal wrongdoing. (An accomplice who procures a victim to be raped is an accomplice, not a rapist.) Whereas the awareness and voluntariness of an accomplice may be fully on a par with that of a co-principal, that of an accessory is typically less. While an accessory also acts in secondary ways that contribute to (without constituting) the principal wrongdoing, the accessory's secondary acts tend to be less essential to the implementation of the principal wrongdoing, and the awareness of the accessory is typically less than that of an accomplice. Complicity (even in our restrictive manner of speaking) involves accessories and accomplices arrayed across the whole range of these dimensions.

Restricting our definition of “complicity” to those who are accomplices or accessories focuses on cases of contributory acts that can “give access” to the principal wrongdoing. "Giving access" here should be understood in causal terms of "making possible" (enabling, facilitating). Accessories or accomplices can provide contributions that are or might have been
essential to the execution of the principal's wrongdoing. Whereas condoning can only come after the principal wrongdoing itself, acts of complicity can come before, during or after.

In the "acting" dimension, our definition requires that in order to be "complicit" agents must act in compliance with the principal's plan of wrongdoing. But again, there is a broad spectrum in the extent of causal contribution: the complicit agent's acts might be causally essential along just one of many paths, or they might be essential along many, most or even all of those possible paths. While the acts of complicit agents are not in any sense constitutive of the primary wrongdoing, complicit acts can nonetheless be casually essential to the implementation of the plan to some greater or lesser extent (corresponding to the proportion of the possible paths to its success in which they are implicated).

To be complicit, agents must at a minimum comply with the principal's plan of wrongdoing. They might do far more than that: they might actually approve of it, or even adopt it as their own. But in order to qualify as complicit, all that is minimally necessary is that the complicit agent "knows, or should have known, that by [so acting] he or she will advance whatever intentions the principal has."  

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29 Of course, as it happens, some other scenario might have actually played out, not making any use of any given complicit agent's own contribution (indeed perhaps not requiring any actual contribution from him at all).

30 Had they been full participants in the formulation of the plan, that would be better characterized more precisely as "conspiring."

31 May, *Genocide*, p. 169, argues that this, rather than any stronger "coincidence of purpose," is all that is required even for complicity at law.
B. Illustrating the Distinctions

Let us now illustrate the interplay of these distinctions. We will do so by examining some classic cases of contributory actions that, depending upon the particulars, would fall into one or another of the different categories – and which would seem importantly different from a moral point of view, depending on which they fall into.

1. Back-up assassin

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

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

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

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

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

2. Fencing Turner
Here is another example. This one concerns the July 1994 theft of the famous painting “Shade and Darkness” by J.M.W. Turner from a Frankfurt gallery, where it was on loan from the Tate Gallery. The two thieves were arrested a few weeks afterwards, but they never revealed who ordered the theft nor where the painting was hidden. Fortunately, though, “Shade and Darkness” was brought back to the Tate in 1999, thanks to a convenient deal that the Tate Gallery struck with the fence ("convenient," because the Tate had already received insurance compensation for its loss). Although it is unclear to this day who ordered the theft, we do know the identity of the fence: a well-known mafia figure named Stevo, who met with the undercover agent of the Tate Gallery and handed back the painting in return for payment of an undisclosed sum of money.32

The issue we shall focus on from this example is whether Stevo can rightly be described as a contributing agent to the theft, and if so of which sort. There may be reason to doubt that he was a contributing agent at all. After all, the contribution of a fence like Stevo necessarily comes after the theft has already occurred, and necessarily so (assuming anyway that there is no futures market in stolen Turners). And as we said in connection with condoning, a contribution occurring after a wrong cannot be said to be causally related to the wrong because (time-travel apart) there can be no backward causation. Later things cannot cause earlier things.

But that may be too quick an answer in cases like this. There are two important considerations that need to be borne in mind. The first one is about how exactly to identify the

principal wrongdoing. The second one is about how to treat temporally extended things like plans.\textsuperscript{33}

Individuated in a very fine-grained way, several distinct wrongs seem to have taken place in the "Shade and Darkness" case: theft; receiving stolen goods; secreting stolen goods; trafficking in stolen goods; and profiting from a criminal act (to mention only a few major ones).

For a first sort of case, let us suppose that Stevo took no direct part in the theft itself. He was not party to the planning of the theft. Indeed, he did not know of the existence of the would-be thieves; nor, let us suppose, did they know of his existence in particular (they merely knew there were people like him around who would fence stolen goods, and they knew how to get in touch with them through friends in the mafia). On this scenario, Stevo the fence could not be said to be co-operating, collaborating or colluding in that particular theft. On the charge of "theft," Stevo might (in this fine-grained way of individuating the wrongs) may be completely in the clear.\textsuperscript{34} Be that as it may, Stevo would nonetheless be directly responsible for the wrong of "receiving" and "trafficking in stolen goods." And even if he did not commission the theft or collaborate in the theft itself in any way, he nonetheless colluded in the separate wrong of "profiting from a criminal act," together with the thieves (as well as, ironically, the Tate Gallery itself, thanks to the insurance pay-out).

For a second sort of case, suppose that the still-mysterious principal actually planned the theft in all its particulars. The thieves and Stevo simply adopted the plan the mystery-man

\textsuperscript{34} Morally, anyway. At law, he may be counted as an "accessary after the fact," and hence "complicit" in some legal usages of the term.
laid out for them, intending to profit from it. Even though they took no part in its planning, Stevo and the thieves would all nevertheless be co-principals colluders in the wrong of "profiting from theft." As regards the “theft” itself the thieves alone would be co-principals. As regards “receiving stolen goods” Stevo alone would be the principal. As regards "trafficking in stolen goods," Stevo and the mysterious principal are colluding co-principals.

If Stevo participated in formulating and designing the plan with the mysterious principal, he would be guilty of conspiring in first place. Furthermore, he could be said to be complicit in the theft, even if he happened not to take part in it, insofar as he was ready to act on the plan come his turn by fencing the painting. As regards the wrong of “profiting from a criminal act,” the mysterious principal, the thieves, Stevo, the special undercover agent and conceivably even the Tate Gallery might all be said to be colluders if there were any plan shared and enacted among them for tricking the insurers out of benefits from which all the colluders would profit.

That is how the case looks, individuating the component wrongs in a very fine-grained way, and thinking in terms of separate wrongs of "theft," "receiving stolen goods," "secreting stolen goods," "trafficking in stolen goods," "profiting from criminal acts" and so on. Instead, however, we could think of the wrongdoing in question as the consolidated wrong of "stealing-secreting-selling-and-profiting." Seen that way, all of the more specific wrongs would be part and parcel of one big wrong. All of the contributory agents would be co-principals of that wrong because all of their acts, taken together, constitute it.

Which is the right way to look at it? The plan of wrongdoing, and each agent's relation to that plan, is in our view the proper place to look for guidance in deciding that. If it were just
a case of "one thing leads to another" in a wholly unplanned (and perhaps unanticipatable) way, then it seems more natural to consider the wrongs separately. If instead it were the case that all those wrongs were seen by some agent as components of one big plan, then the consolidated way of looking at it seems more appropriate. And it seems so, at least in some cases, even where not all the agents involved look at it in that way. Suppose the mysterious principal had a plan to steal the painting, to fence it and to profit from the crime. Suppose Stevo did not know of the plan in advance; he first learned of it after the thieves had stolen the painting and asked him to fence it. He did not intend the theft (he knew nothing about it in advance); he did not cause the theft in any way. But by willingly and knowingly fencing the painting that he knows to be stolen, he arguably takes co-ownership of (adopts and acts on) the principal's larger consolidated plan as a whole either as an accessory or as a co-principal.

Looked at that way, even as a late-comer to the plan Stevo could be seen to be co-operating with the thieves and the mysterious principal in the consolidated plan of stealing-secretting-selling-and-profiting and colluding with some or all them to profit from the proceeds. Stevo has adopted as his own the mysterious principal's plan of which his own fencing the painting forms a constitutive part.

As Frank Jackson says, “temporally extended objects may be viewed as aggregates of their temporal parts.”\(^35\) Seen in this light, we can view a wrongdoing as a temporally extended entity that is the aggregate of its temporally-separate parts, regardless of whatever time has elapsed in between them, and regardless of which one came first. In the sort of case here in view, all the contributory actions are part of a plan that is constituted by all of those acts, taken

\(^{35}\) Jackson “Group morality.”
together. The wrongdoing is not each agent’s act taken by itself, but rather the entire ensemble of wrongdoings as laid out in the plan. Hence, the appropriate principle of individuation of wrongdoings would lump together all the acts constituting the plan of wrongdoing which all the contributory agents adopt and act upon.

This seems the right result, in general. The driver of the getaway car should not be exonerated from responsibility for the theft, merely because her contribution comes only after the heist has occurred. Certainly that is so if she participated in planning the robbery. And arguably that is so even if she didn't, instead merely embracing the plan at some subsequent point, in full awareness of all its ramifications. Her actions still are a constitutive part of the plan that she has subsequently come to adopt. That makes her a co-principal co-operating in the wrongdoing.

Note that the point about “no backward causation” remains valid. It is true that later things (like the fencing of the stolen painting) cannot cause earlier things (like the stealing of the painting). What the consolidated view does is tells us to stop looking at the wrongs in that fine-grained way in which “stealing” is one wrong and “fencing” is a wholly separate wrong. The consolidated view tells us instead to see the wrong as one big consolidated wrong of "stealing-secretting-fencing-and-profiting." Within that big consolidated wrong, the relations between its component parts are not causal but constitutive. Instead of one wrong (fencing) causing another wrong (stealing), the consolidated view would have us see both wrongs as constituent, constitutive parts of one and the same big consolidated wrong.
Let’s add a final twist to the tale. Imagine that the mysterious principal not only planned the stealing, the fencing and the profiting; imagine that, as well, a key component of his plan was that his wrongdoing would be condoned. Suppose for example that he did it all purely to generate money to enable the Tate to improve access for disabled, and given that he expected the Queen to grant him a pardon if his role in the theft were ever discovered. If being condoned were part of his plan in this way, his being condoned might also be said to be a constitutive part of the consolidated wrong. (Note well: constitutive of it, in this case; not causing it.) Of course, it would amount to “condoning” (as opposed to "conspiring") only if the Queen did not know ahead of time of the plot and the role she assigned to her in it, and only if she did not embrace the consolidated plan of wrongdoing once she discovered it.

III. Dimensions of difference

We have now analyzed 8 terms: conspiracy and collusion; connivance and condoning; collaboration and co-operation; full joint wrongdoing and complicity. Clearly, there is a family resemblance among all these terms. They all fall along spectrum of contributory actions, with full joint wrongdoing at one extreme and with others diverging from that central paradigmatic concept along a range of different dimensions. There are both marked similarities and striking differences among the concepts, suggesting a family resemblance more akin to cousins than siblings.
“Actus non facit reum nisi mens sit rea” (an action does not make a person guilty of his crime unless his mind be also guilty) represents the standard common law principle of criminal liability. Moral liability, while importantly different in many respects, can be thought of in that same broad framework. Legally, criminal liability attaches only to the performance of a wrong action ("actus rea") by someone who has a wrong state of mind ("mens rea"), i.e., criminal intent. Some of the contributory concepts canvassed above require a strong conjunction of actus and mens, while others require only a weaker one or none at all.  

These two main fields, actus and mens, can be used to map some of the most basic distinctions among the terms under discussion. One important dimension of difference among these concepts relates to the way in which the acts contribute to or constitute the wrong. Another important dimension of difference relates to the plan (the "mens") underlying the wrongful action, and the attitude that the contributory agents adopt in relation to that plan and contribution toward formulating it.

A. Actus

Philosophers and lawyers alike struggle to define an action.  Here, “action” will be taken to mean simply “something that a person does.” The principal action is wrongful by definition, and the secondary action contributes to the principal wrong in various ways (ranging from winking

36 Conceptually, one can be unknowingly complicit or unwillingly connive. Morally, one is excused in such cases.  
at it, making it happen, working for it, elaborating and extending it, forgiving it, abetting it all the way to jointly performing it).

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

A second way in which a contributory action can be "definitely essential" to the principal wrongdoing is by being a necessary condition for the execution of the wrong in every one of the possible ways in which the wrong might be executed. (All necessary conditions might be satisfied and still not be jointly sufficient to cause the plan actually to succeed, of course.) The contributory action in this case is causally rather than constitutively essential. But if it is
causally essential in every possible way in which the plan might be successfully executed, then it can nonetheless still be said to be "definitely (causally) essential."  

A contributory act can be said to be "potentially essential" if it is a necessary condition of the wrong occurring, along some (but not all) possible paths by which the wrong might occur. An act that is "potentially essential" in this way may not be essential in the actual course of events, if the actual path we are on is not one in which it is a necessary condition of the principal wrongdoing. (Think of the back-up assassin who, as it happens, proves to be redundant.) But it is an enduring feature of the act, true of it whichever path we happen actually to be on, that that act is "potentially essential" by virtue of its being actually essential along one or more of the possible paths. A contributory action will be said to be "inessential" if it is not a necessary condition of the execution of the wrong in any of these respects.  

"Definitely essential," "potentially essential" and "inessential" are modal notions. You are definitely essential if your contribution is a necessary condition of the execution of the wrongdoing in every possible world in which it is executed. You are potentially essential if your contribution is a necessary condition of the execution of the wrongdoing in some but not all possible worlds in which it is executed. You are inessential if your contribution is not a necessary condition of the execution of the wrongdoing in any possible world in which it is executed. In the cases of collaboration, connivance, complicity, the contributory act might be  

38 Putting the point in terms of Mackie's INUS conditions, a contributory act can be said to be essential if it is an insufficient but necessary part of an unnecessary but sufficient condition of the plan succeeding; J.L. Mackie, *Cement of the Universe* (Oxford: Clarendon Press, 1974). Note that an agent's contributory act might be an essential part of a planned assassination (there is no way the plot would succeed without that agent playing that part), while the assassination plot is inessential or even irrelevant to the target's death (he is certain to die of something else first). Being essential to the plan, however, relates to mens, not to actus.
definitely essential or potentially essential or it might simply accompany the wrong without being essential to it. The only kind of contributory act that is causally inessential to that specific wrong being committed is condoning, on grounds that later events like that cannot cause prior events (the principal wrongdoing).\(^{39}\)

Within the category of "potentially essential" we can make further distinctions of a more scalar sort. Suppose that the contributory act in view is a necessary condition of the execution of the wrong along M of the N possible ways in which the wrong might be executed. A contributory act will be said to be more "central" the larger the ratio of M to N, i.e., the larger the proportion of possible paths along which it is essential. Imagine, for example, a terrorist trying to build an atomic bomb by acquiring enriched uranium. If there is only one possible supplier of the uranium, that supplier is "definitely essential" to the terrorist's plan – as central as you can get. If there are multiple alternative suppliers, each is "potentially essential," i.e., essential along one possible path of bomb-building. But if there are only two alternative suppliers, each of them would be much more "central" to the plan than if there were two hundred.

In terms of "centrality," the contributory acts of full joint wrongdoers, co-operators, colluders and conspirators are utterly central for the same reason that they are "necessarily essential": they are "constitutive" of the wrongdoing. Moving beyond those limiting cases, however, it becomes hard to generalize. The contributory acts associated with complicity or

\(^{39}\) Maybe you were counting on being condoned when planning and executing the wrong, and maybe you would not have done so if you couldn’t count on that: but all that falls on the "planning" ("mens") rather than "actus" side of the ledger. As discussed above, if the condoner conspires with the wrongdoer ahead of time to condone the wrong which the wrongdoer would only do on condition she could count on being so condoned, that before-the-fact contributory act would count as "conspiring" rather than "condoning."
connivance often seems less central, in the sense that any of a great many other agents' similar acts would have sufficed just as well. But logically it is perfectly possible that, in certain circumstances, the complicity or connivance of some very specific individual might indeed be essential for the execution of the plan. That seems often true in the case of collaborators, who can be very central to the principal's plan of wrongdoing.

A contributory act that is "definitely essential" (either constitutively or causally) is obviously a sine qua non of the principal wrongdoing. Anyone whose contributory act is definitely essential in either of those ways to the execution of the plan will be an "individual difference-maker" in the sense that, had he acted differently, the outcome would have been different. Notice, however, that the notion of individual difference-making lies at the heart of the notion of "potentially essential" contributory acts as well. A contributory agent's act is called "potentially essential" precisely because there is some possible world in which his act does indeed individually make a difference, and the outcome in that world would have been different had he acted differently. 40 Recall the case of the back-up assassin: his role is potentially essential (his firing will be essential to the success of the assassination, if the first assassin's gun jams), even if that potential is not as it happens actualized (the first assassin's shot proved lethal).

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40 We are inclined to treat similarly cases in which a person's contribution merely "facilitates" rather than literally "enables" another's wrongdoing. Four bank robbers could have carried away the safe by themselves, with effort; but having a fifth help them makes it a lot easier. But while the fifth accomplice is not as-it-happens essential in the story as told, he could still be seen as potentially essential insofar as he would have been an individual difference-maker in some other possible world (where the safe contained twice as many gold lingots, for example, or one of them injured his back).
Christopher Kutz deals with such cases through his notion of "participatory intention."

It is certainly true and important that the back-up assassin has that as well. But more can be said. Couching the point in terms of "counterfactual individual difference-making" seems a much better way of handling such cases in general. Consider a standard case of causal overdetermination: e.g., the firing squad where four marksmen fire simultaneously, their bullets striking the victim's heart and killing him. We would not say of any one of them that he is an individual difference-maker: had he not fired, the bullets of other three would still have killed the victim. But each of their contributory acts can nonetheless be regarded as potentially essential (a counterfactual individual difference-maker), in that there is some possible scenario (e.g., the other three's guns jammed) in which any one of them would have been an individual difference-maker.

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

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41 “Jointly intentional action is primarily a function of the way in which individual agents regard their own actions as contributing to a collective outcome” (Kutz, Complicity, p. 74).


43 From Kutz, Complicity, pp. 117-20.
There are various things to be said about such cases. The first is that usually, even if each contributed only a little bit, the contribution of each will have made the outcome just that much worse than it would have been otherwise. Usually, some people who died from this pilot's bombs would not have died from anyone else's bombs, for example – just as it would have been no less of a gang rape if six men raped the victim rather than seven, but the seventh's raping her as well made the gang rape that much worse.

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

44 There are of course yet other possible worlds – more distant from our own – in which every submariner who might have been a pilot instead had become a pilot and dropped the thousandth bomb. Similarly, "It is more possible for a dog to talk than for a stone to talk, since some worlds with talking dogs are more like our world than is any world with talking stones"; David Lewis, *Counterfactuals* (Cambridge, Mass.: Harvard University Press, 1973), p. 52. For purposes of moral assessment, it is with nearby rather than remotely possible worlds that we should be concerned.
Alternatively, we could – and arguably should – think of this case in constitutive terms instead. The actions of the pilots all taken together constituted the firebombing, just as the actions of the rapists all taken together constituted the gang rape. Their actions "caused" the firestorm; but their actions "constituted" the firebombing.

Yet another aspect of the causal role of any given contributory act concerns what might metaphorically be dubbed its "proximity" to the principal wrongdoing. For an extreme example, suppose there is a set of individually necessary and jointly sufficient conditions for the execution of the planned wrong; suppose furthermore that all but one of those necessary conditions is already in place. The person who performs the last contributory act necessary to complete the set and produce the planned wrong has done something qualitatively different from the others. The "last necessary contributory act" seems importantly different in various respects: in terms of certitude or obviousness or clarity.\(^{45}\) Contrast that with the case of someone whose contributory act comes very early in the causal chain. Even if that contributory act were itself among the necessary conditions for the plan to succeed, there are a great many more chance and choice nodes yet to come in the causal chain before the planned wrongdoing can occur. If there are lots of other steps that are required between what I do and the primary wrong occurring, each of which is essential and any of which might not occur, then it is less certain that what I now do will actually eventuate in the wrong.\(^{46}\)

\(^{45}\) Of course, the "last necessary contributory act" is no more the cause of the outcome than any of the other equally necessary contributory acts that came earlier. But given what others have already done, someone performing the "last necessary contributory act" will then be an individual difference-maker. For that reason the law sometimes assigns responsibility among multiple tortfeasors to whichever had the "last clear chance" to avoid the accident.

Another important distinction is whether an act's consequences are irreversible or not. An irreversible action might lock in a sequence of subsequent actions that lead to the principal wrongdoing. Although this action might not be particularly proximate either spatially or temporally to the wrongdoing, its causal influence on the execution of that wrong may still be particularly strong in this way.\footnote{47}

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

A final dimension in which types of contributory acts differ is in the nature of the relationship between different co-contributors' contributory acts. Agents we have been describing as co-principals are "mutually responsive" to one another's actions and choices in pursuit of the plan. They are engaged in "two-way tracking," each monitoring other co-

principals' actions and choices, and each adjusting her own in response. That is what happens in cases of full joint wrongdoing, conspiracy, collusion and co-operation. Other sorts of contributory agents might be only (or mostly) "unilaterally responsive," engaged only (or mostly) in one-way tracking. Collaborators for example intentionally monitor what the principal does, and adjust their behaviour accordingly, much more than vice versa. Captain Renault adjusts his behaviour much more Major Strasser's than the Strasser does his to Renault's.

B. Mens

So far we have been discussing how contributory acts contribute to a principal wrongdoing. They nod or wink at it, make it happen, work for it, elaborate and extend it, forgive it, abet it or even jointly constitute it. These are all acts. The principal wrongdoing, however, is based on a plan that may itself be formulated, adopted, endorsed, shared in or complied with by the different types of contributory agents. All those point, in one way or another, to the states of mind of contributory agents.

The first and most fundamental respect in which different types of contributory agents are different is in the way in which they relate to the plan of principal wrongdoing. Some contributory agents share in the formulation of the principals' plan of wrongdoing, and others do not. For helpful terminology to mark this distinction, let us draw an analogy to the way economists talk about price-makers (monopolists, oligopolists) and price-takers (those

49 We follow May, *Genocide*, p. 125, in tracing the "mens rea" involved in "collective intent" to "intend[ing] to participate in a plan that has as its intent..."
purchasing from them, or indeed on perfectly competitive markets). We can similarly distinguish “plan-makers” from “plan-takers” among contributing agents. “Plan-makers” are agents who formulate the plan. “Plan-takers” are agents who have no role in designing the plan, and follow the plan as given by others. Maybe they "willingly adopt" it as a guide to their own actions. Or maybe they just "reluctantly comply" with it. (Price-takers can similarly resent the price but purchase anyway.) Someone who is solely a plan-taker might be absolutely essential to implementing the principal's plan for wrongdoing; she merely does not make the particular kind of contribution involved in "making" (formulating) the plan. 50

Typically, plan-makers typically both make the plan and then adopt it, internalizing it as a guide for their own subsequent action. There can, however, be other kinds of cases. Imagine for example some hired consultant who is brought in to formulate a plan for others to adopt. Suppose the consultant simply drafts a plan for them, and then departs without in any way adopting it as in any way a guide to his own subsequent conduct. Despite not adopting the plan himself, such a person has undoubtedly made a contribution that is morally blameworthy in and of itself. (Think for example of a Pentagon medic writing a manual instructing interrogators how to waterboard prisoners.)

Just as we described co-principals as agents whose actions constitute the principal wrongdoing, so too can plan-makers be described as agents whose planning constitutes the plan behind the principal wrong. Those who are full joint wrongdoers are all, by definition,

50 Of course, plans are invariably open-textured and provisional: they almost always require a certain amount of "filling-in" by the person acting on the plan; and they are almost always open to revision in the course of being implemented. Even mere plan-takers have to be plan-makers in this respect.
plan-makers. So too are the agents involved in conspiracy. Co-operators and colluders, although their actions constitute the wrongdoing, are not necessarily plan-makers: some might be nothing more than plan-takers, adopting the plan, tailoring their actions around it, monitoring changes and changing in response.

Agents involved in condoning and collaborating, in contrast, are paradigmatic plan-takers. By definition, they play no part in formulating the plan, or in making that plan become the plan of the principal(s) engaged in the principal wrongdoing. Thus for example Vichy collaborators merely followed without in any way fundamentally affecting Hitler's plan of wrongdoing. Likewise, conniving agents are by definition plan-takers, overlooking a wrong or the plan lying behind it but not in any way contributing to the making of that plan themselves.

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

Notice, second, that there are varying degrees of plan-taking. Plan-making "constitutes" the plan. But plan-takers who played no role in the formulation of the plan might nonetheless

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51 As with condoners so too with connivers: if they conspired ahead of time with the wrongdoer, promising in advance to condone or connive, that is a case of a plan-making conspiracy rather than a case of condoning or conniving pure and simple.
adopt the plan as their own. Alternatively, they might merely knowingly comply with it, either willingly or reluctantly (more of which below).\footnote{If they did not do so "knowingly," it would be hard to see in what sense they were "taking" the plan. All they need to know, however, is that there is a plan and that it requires them to do thus and such. They do not need to know the full details of the plan in order to be fully-fledged plan-takers.}

Third, notice that plan-takers who "adopt" a plan internalize that plan and take it upon themselves to try to make the plan work. They typically engage in two-way tracking with other plan-takers who also adopt the plan, each resolving to adjust her own actions in response to changes in others' action in pursuit of the plan. Those who merely "comply" with a plan do not adopt that sort of attitude toward the plan. They merely do what the plan stipulates, and they continue doing so even when they can clearly see that that will not actually serve (and might sometimes even undermine) the larger purposes of the plan. Plan-takers can fall anywhere along this spectrum between very enthusiastic adopters and very reluctant compliers.

Contrary to what is sometimes claimed (by Eichmann, for example\footnote{Hannah Arendt, \textit{Eichmann in Jerusalem} (New York: Viking, 1963).}), obedience does not necessarily correspond to "mere compliance." Of course obedience can be either willing or coerced or anything in between (more of which shortly). But if an agent willingly chooses to be obedient to a plan, and changes his behavior in response to changes in the plan, then that choice constitutes adoption of the plan on his part.

A fourth dimension of "mens," related to but logically distinct from adoption and compliance, is the attitude that stands behind that. People might agree or disagree with (or be indifferent to) the plan. How much contributory agents have to agree with the plan varies across the concepts under discussion. Some of them – full joint wrongdoing, collusion, co-
operation and conspiracy, for example – clearly imply complete agreement to the plan.

Condoning seems to exclude it: to condone an act, you must first acknowledge it was wrong, and thus express at least pro tanto moral disagreement with it. The remaining concepts admit of attitudes of agreement or disagreement. A collaborator was described for example as a plan-taker who made no contribution in formulating the plan but by definition accepts the plan to the extent of tailoring his actions around it: but he can do that without necessarily agreeing with the plan (remember Captain Renault). To say that an agent is conniving in a principal wrongdoing is not to say anything about whether the agent agrees with the plan and its purposes. Of course, what attitude a contributory agent takes toward a plan might or might not have any material impact on either the formulation of that plan or its adoption by other contributory agents.

A fifth dimension concerns how wilfully an agent makes or adopts or supports or complies with the plan. With respect to all the contributory acts under discussion here, people might do them more or less willingly or reluctantly. People might have literally no choice except to perform the contributory act in question. Or they might be coerced into performing them. People who adopt or comply with a plan willingly presumably approve of the plan and agree with its purposes. Those who adopt or comply with a plan unwillingly typically (but not necessarily invariably) disapprove of it. As a crude empirical generalization, it is probably

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54 Of course, it is logically possible to acknowledge something as wrong and approve of it on balance, nonetheless.
55 If this seems hard to imagine in the case of plan-makers, go back to the case of the consultant brought in to write a plan. Suppose he is coerced to do so: his child has been kidnapped and will be murdered if he doesn’t produce a plan for the kidnappers. He draws up the plan. But he does not do so willingly.
56 After all, coercive pressure can be brought to bear to compel you to do what you would have happily done without coercion. We are coerced by the criminal penalty attached to murder, even though most of us would not want to commit murder even if not so coerced.
more likely that some of the contributory acts are typically done willingly (full joint wrong-doing, collusion, co-operation and conspiracy, for example) and that others are typically done much more reluctantly (conniving, for example). But those are merely empirical generalizations, with no necessity to them. And in other cases there are not even any rough empirical generalizations to be made. A collaborator might comply willingly or in reluctant deference to force majeure (remember Captain Renault again). In the limiting case, an agent might have had no (or no reasonable) choice except to perform the contributory acts he has performed.

**IV. Drawing Moral Conclusions**

In common parlance the term "complicity" is used indiscriminately to describe all sorts of different ways of being mixed up in some bad business. If the aim is merely to say that you should avoid getting mixed up in bad business if you can, then that indiscriminate term serves that purpose well enough. But sometimes you cannot avoid getting mixed up in some bad business; sometimes you should not (in the sense that doing anything else would be even worse); and some people get mixed up in bad business whether they need to or not. For morally assessing all those sorts of cases, more precise characterizations of the many more specific ways of contributing to another's wrongdoing of the kinds we have been distinguishing should be employed, not merely for the sake of conceptual clarity but also for the sake of moral clarity.
Most importantly, we have identified some classes of cases (full joint wrong-doing, co-operation, conspiracy and collusion) in which the contributory acts are themselves partially constitutive of the principal wrong itself. People performing such acts are co-principals, full partners in the wrong-doing. Just as in a legal partnership, each of those partners should morally be held fully responsible for all that is undertaken by the partnership, whether by herself or by any of the other partners. In cases of co-operation or collusion, the specific acts that any given actor performs pursuant to the plan of wrong-doing may vary, but it will do so as a simple function of practical considerations (the person who can shoot will carry the gun, the person who can pick a lock will do that, etc.). All co-operators and colluders are nonetheless full partners in acting on the same plan of wrong-doing, equally adopted by each, and that is all the more conspicuously true in cases of full joint wrong-doing and conspiracy. In evaluating the moral responsibilities of such people, all we need to do is to assess the wrongness of the principal wrong-doing and then assign each agent equal responsibility for that, without any regard to the various more fine grained considerations sketched in Section III.

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

In the mens dimension, planning to do wrong is worse than merely falling in with another's plan for doing wrong. That makes conspiracy unequivocally worse on this dimension
than connivance, condoning, colluding or other more undifferentiated forms of complicity. Within the actus dimension, contributions are worse the more causally essential they are to the success of the principal wrong-doing. The collaboration or connivance of certain people can sometimes be definitely essential and other times entirely inessential (as condoning always is), to the success of a plan for wrong-doing. So acting in the former cases is (other things being equal) worse than in the latter cases for that reason. Other more undifferentiated forms of complicity run the gamut, from definitely causal essential to entirely inessential. At their worst, acts in that residual category of complicity might in any given case be morally as bad as (or worse than) collaboration, connivance or condoning. At their best, they might be morally as innocuous. (Indeed, on balance, any of the acts we have been discussing might of course have been the right thing to do, given the alternatives: although wrong, they might have been the lesser evil.)

Saying that an act constitutes one of "complicity" does not settle anything very much at all, from a moral point of view. An act that was "more complicit" along any of the dimensions of difference sketched above would indeed be morally worse for that fact, other things being equal. But other things – particularly the consequences of the acts in question – rarely are equal in the real world. Those other things that feed into our evaluation of any real world situation tend to be morally much more important than the sheer fact of complicity in coming to a proper assessment of what has been done.