

Topic Description

Introduction

The purpose of this course is to explore a recalcitrant ethical dilemma which I call the “problem of marginal contributions”. Suppose each of many individuals contributes intentionally but marginally to a harm. Each individual contribution is quite small; given that each individual is responsible for no more than what she causes (a principle which I’ll call “strong individualism”), it follows that each of the contributors is liable only to miniscule preventive or compensatory deprivations, concomitant with the extent of her contribution. This means that individuals can cooperate together in a way that causes catastrophic harms, with impunity. This is a difficult consequence to accept. Yet imputing individual liability for more than what the individual causes means abandoning the precept that an individual’s liability is limited by her causal reach; hence the dilemma. We will be exploring this problem by investigating three different literatures: the literature on joint action, the literature on group agency, and the literature on accomplice liability.

Given limited time, there is much related to this topic we will *not* be discussing. For instance, we will not consider here the application of the problem of marginal contributions to ‘unstructured’ groups, such as the group consisting of everyone who drives a polluting vehicle. Neither will we consider the complicity for collective *inaction* or for a failure to form a structured group capable of concerted action.

The Joint Action Approach

The first approach to addressing the problem of marginal contributions is to analyze intentional cooperative activity in terms of the interrelated intentions and actions of the cooperators. These relations, in turn, can provide a fertile ground of liability beyond the constraints imposed by strong individualism. There have been two approaches to making sense of joint action. The first method involves analyzing such cooperative activity by positing a *sui generis* intention unique to such activity. This approach was first suggested by Wilfrid Sellars who argues that though all intentionality belongs solely to individuals, it is intentionality of a special sort. But we will be focusing on a different approach which denies that the intentions of cooperating individuals are *sui generis*. Instead, the *objects* of these intentions refer to a jointly caused event. Michael Bratman famously develops this sort of account. Seumas Miller similarly argues that individual actions compose a cooperative act just in case each individual acts (not contingently but by design) to bring about one and the same collective end. Each individual thereby bears joint moral responsibility for what they together do. In large organizations many individuals simply have no intention to bring about what they together do or are otherwise alienated from those ends. Christopher Kutz, aware of this problem, develops an account of cooperative activity according to which individuals, in virtue of harboring participatory intentions vis-à-vis a collective end, are “inclusive authors” of that end and consequently bear moral responsibility for it, over and above their individual contributions.

The Group-Agency Approach

Some have attempted to dissolve the problem of marginal contributions by arguing that in certain sorts of cooperative projects the participants together compose a collective agent which is itself morally responsible for the aggregate of what its constituent participants do. This approach has faced a battery of challenges from individualists, such as early criticism by H. D. Lewis and J. W. N. Watkins, and more recent challenges posed by Stephen Sverdlik, J. Angelo Corlett, and Jan Narveson, who all argue

that collectives *per se* do not have mental states necessary for moral responsibility. We will focus on Philip Pettit's and Christian List's joint attempt to respond to this challenge; their approach is inspired by Peter French's later work in which he combines a functionalist account of moral agency with a planning model of intention to argue for the existence of group agents. Philip Pettit and Christian List together argue that collectives exhibiting certain kinds of rationality (necessary to overcome what's known as the "discursive dilemma") count as intentional agents. After addressing metaphysical criticisms of this approach as well as criticisms from the philosophy of mind and action theory, we will investigate if and how a collective's culpability redounds to the individuals composing it – an issue that Pettit and List as well as Margaret Gilbert separately address. If it does not, it is questionable whether this approach is fruitful in resolving the problem of marginal contributions.

Complicity as Accomplice Liability

The last approach borrows from Anglo-American criminal law, according to which each of many contributors cooperating to achieve a collectively caused crime (such as a group of thugs kicking an innocent to death) can be fully inculpated for that crime (they would all count as co-principals guilty of murder) even if the criminal act was causally over-determined by the individual contributions. Likewise, in certain cases, accomplices who merely lend assistance to a criminal act, but who do not actually commit the act in question, can be fully inculpated for the wrongs committed by principal wrongdoers, even if the accomplice's assistance was inessential to the crime. But attempts to provide a principled foundation for these doctrines, are wanting. The major accounts of complicity in Anglo-American criminal and tort law, as developed by H.L.A. Hart and Tony Honoré as well as Sanford Kadish, are problematic as moral doctrines since they are tailored to defeat the standing presumption that intervening agency eliminates the responsibility of any 'causally upstream' parties. This presumption, in turn, is based on the scientifically suspect notion of agent-causation. Michael S. Moore's criticism of accomplice liability in the law will prove instructive here. We will also consider more recent skepticism regarding the role of accomplice liability by Robert Weisberg and John Gardner – and whether complicity requires causation at all. If not, this might serve as a key to resolving the problem of marginal contributions to collectively committed harms in cooperative activity.

Grading and the Structure of the Class

The grading for this course will be based in part on a single term paper which will be due during finals week. At some point, I will meet with each of you individually to discuss the progress of your paper. In addition, each student will be required to present a detailed synopsis and commentary of at least two assigned readings (excepting those covered in the first week) over the course of the quarter. The synopsis should cover the entirety of the reading, though your commentary can be on the reading as a whole or just on a particular part of it. You should expect your presentation to last about 45 minutes. It will be followed by class discussion.

Schedule of Readings (tentative)

Introduction

Jan. 5

- Jonathan Glover - 'It Makes No Difference Whether or Not I Do It'
- H.D. Lewis - 'Collective Responsibility'
- Joel Feinberg - 'Collective Responsibility'

Part I. The Joint Action Approach

Jan. 12

- Michael Bratman - 'Shared Cooperative Activity'
If you're interested:
 - David Velleman - 'How To Share An Intention'
 - Michael Bratman - 'I Intend that We J'
- Seamus Miller - 'Collective Responsibility'

Jan. 26

- Christopher Kutz - chptrs. 3, 4, 5 of Complicity (selections)
- Brook Jenkins Sadler - 'Shared Intentions and Shared Responsibility'

Part II. The Group-Agency Approach

Feb. 2

- Philip Pettit & David Schweikard - 'Joint Actions and Group Agents'
- Philip Pettit - 'Groups with a Mind of Their Own'

Feb. 9

- Abraham Roth - 'Indispensability, the Discursive Dilemma, and Groups with Minds of Their Own'
- David Copp - 'On the Agency of Certain Collective Entities: An Argument from 'Normative Autonomy''

Feb. 23

- Philip Pettit & Christian List - chptr. 8 in Group Agency
- Margaret Gilbert - 'Who's to Blame? Collective Moral Responsibility and Its Implications for Group Members'

Part III. Complicity as Accomplice Liability

Mar. 2

- Michael S. Moore - The Metaphysics of Causal Intervention
If you're interested:
 - Sanford Kadish - 'Complicity, Cause and Blame - A Study in the Interpretation of Doctrine'
- Robert Weisberg - Reappraising Complicity
If you're interested:
 - R.A. Duff - 'Is Accomplice Liability Superfluous?'
 - Sanford Kadish - 'Reckless Complicity'

Mar. 9

- Christopher Kutz - Causeless Complicity
- John Gardner - Complicity and Causality