

TOPIC DESCRIPTION

Introduction

The purpose of this course is to determine whether an individual who intentionally works toward a common aim with others can be responsible for more than his or her own individual contribution to that aim. Call the view which says that each individual is responsible for no more than her own causal contribution, “strong individualism”. Such a view is likely to yield unpalatable results. In cases where each individual’s contribution is miniscule, it follows that she is morally liable only to 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 virtual 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 can be liable only for what is within her causal reach.

We will explore this problem by investigating two different literatures: the literature on joint action and shared agency, and the literature on accomplice liability. The hope is that these literatures can help us provide grounds for an account of *complicitous liability*. This is, put roughly, the view that an individual in a cooperative scheme can be held accountable for what her cohorts do.

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. Nor will be discussing the possibility that intentional cooperators can together constitute a bona fide group agent.

Joint Action & Shared Agency

The first approach to the ethics of intentional cooperative activity analyzes this phenomenon 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 the view that we are responsible only for the differences we make. We will be focusing on Michael Bratman’s and Margaret Gilbert’s approaches to making sense of joint action and shared agency.

On Bratman’s reductionist account, individuals engages in intentional cooperative activity when they together coordinate their actions in furtherance of achieving a mutually intended and jointly caused event. The participating individuals possesses intentions dovetailing with one another, where these intentions are the same in type as ordinary intentions guiding one’s activities over time. Gilbert, however, argues that this reductionist approaches fails to explain the mutual obligations she takes to be partly definitive of intentional cooperative activity. The participants are obligated to one another to do their share of the cooperative activity. To accommodate this feature, she posit an irreducibly collective notion of a ‘joint commitment’.

After exploring the ethical implications of these two approaches, we turn to a more ‘minimalist’ account of cooperative activity – one which can accommodate cases in which the contributors are largely alienated from the ends which they are together tasked with bringing about. The paradigm case here is not two individuals painting a house together (as it is for Bratman) or two individuals walking together (as it is for Gilbert) but rather individuals working together in a large corporation. With an eye to that sort of case, Christopher Kutz develops an account of cooperative activity according to which individuals, in virtue of harboring participatory intentions vis-à-vis a collective end, count as “inclusive authors” of that end and consequently bear moral responsibility for it, over and above their individual contributions.

Complicity as Accomplice Liability

The second approach borrows from Anglo-American criminal law, according to which each of multiple 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 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 an intentionally cooperative activity.

GRADING AND THE STRUCTURE OF THE CLASS

The grading for this course will be based on three short papers (about 2500 words each), each worth 25% of your final grade. 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 no more than 25 minutes, which will be followed by discussion.

SCHEDULE OF READINGS (TENTATIVE)

All readings can be found [here](#).

Part I. Joint Action and Shared Agency

Week 1 - Sept. 26

- Overview of Bratman’s account
 - i. Michael Bratman - ‘Shared Cooperative Activity’ [1992]
 - ii. David Velleman - ‘How To Share An Intention’ [1997]

- iii. Michael Bratman - 'I Intend that We J' [1999]

Week 2 - Oct. 3

- Overview of Gilbert's account
 - i. Margaret Gilbert - 'Two Approaches to Shared Intention' [2008]
 - ii. Margaret Gilbert - *A Theory of Political Obligation*, Ch. 7 [2008]
 - iii. Abraham Roth - 'Shared Agency and Contralateral Commitments' [2004]

Week 3 - Oct. 10

- Ethical implications
 - i. Margaret Gilbert - 'Who's to Blame: Collective Moral Responsibility and its Implications for Group Members' [2006]
 - ii. Brook Jenkins Sadler - 'Shared Intentions and Shared Responsibility' [2006]
 - iii. Marion Smiley - 'From Moral Agency to Collective Wrongs Re-Thinking Collective Moral Responsibility' [2010]

Week 4 - Oct. 17 [first paper due]

- Christopher Kutz - *Complicity*, Ch. 3 [2000]
- Christopher Kutz - *Complicity*, Ch. 4 [2000]

Week 5 - Oct. 24

- Christopher Kutz - *Complicity*, Ch. 5 [2000]
- Christopher Kutz - *Complicity*, Ch. 6 [2000]

Part II. Accomplice Liability in the Law

Week 6 - Oct. 31

- Sanford Kadish - 'Complicity, Cause, and Blame - A Study in the Interpretation of Doctrine' [1985]

Week 7 - Nov. 7

- Michael S. Moore - 'The Metaphysics of Causal Intervention' [2000]
- Sanford Kadish - 'Reckless Complicity' [1997]

Week 8 - Nov. 14 [second paper due]

- Robert Weisberg - 'Reappraising Complicity' [2000]

Week 9 - Nov. 21

- Michael S. Moore - 'Causing, Aiding, and the Superfluity of Accomplice Liability' [2007]
- R.A. Duff - 'Is Accomplice Liability Superfluous?' [2007]*

Week 10 - Nov. 28

- Gideon Yaffe - 'Moore on Action and Complicity' [2012]
- Christopher Kutz - 'Causeless Complicity' [2007]
- John Gardner - 'Complicity and Causality' [2007]

Week 11 - Dec. 5

- [catch-up]

Finals Week - Dec. 12 [third paper due]

* This reading is only nine pages; it does not count toward a presentation.