CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Complicity

We live in a morally flawed world. Our lives are complicated by what other people do, and by the harms that flow from our social, economic, and political institutions. Our relations as individuals to these collective harms constitute the domain of complicity. This book examines the relationship between collective action and individual accountability. It presents a rigorous philosophical account of the nature of our relations to the social groups in which we participate, and uses that account in a discussion of contemporary moral and legal theory.

Christopher Kutz shows that the two dominant theories of moral philosophy, Kantianism and consequentialism, both have difficulties resolving problems of complicity. He then argues for a richer theory of accountability in which any real understanding of collective action not only allows but demands individual responsibility.

Grounded in philosophical analysis and examples from literature, history, and law, this book provides an ethics of collective action that reattaches individuals to their collective deeds, while accommodating differences in choice, power, and psychology. It should be of interest to students of philosophy, political theory, and law, especially those interested in the problem of retaining accountability in times of social consolidation.

Christopher Kutz is Assistant Professor of Law in the Jurisprudence and Social Policy Program, Boalt Hall School of Law, University of California at Berkeley.

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Cambridge Studies in Philosophy and Law

GENERAL EDITOR: GERALD POSTEMA
(UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL)

ADVISORY BOARD
Jules Coleman (Yale Law School)
Antony Duff (University of Stirling)
David Lyons (Boston University)
Neil MacCormick (University of Edinburgh)
Stephen Munzer (U.C.L.A. Law School)
Phillip Pettit (Australian National University)
Joseph Raz (University of Oxford)
Jeremy Waldron (Columbia Law School)

Other books in the series:

Jeffrie G. Murphy and Jean Hampton: *Forgiveness and Mercy*
Stephen R. Munzer: *A Theory of Property*
R. G. Frey and Christopher W. Morris, eds.: *Liability and Responsibility: Essays in Law and Morals*
Robert F. Schopp: *Automatism, Insanity, and the Psychology of Criminal Responsibility*
Steven J. Burton: *Judging in Good Faith*
Jules Coleman: *Risks and Wrongs*
Suzanne Uniacke: *Permissible Killing: The Self-Defense Justification of Homicide*
Jules Coleman and Allen Buchanan, eds.: *In Harm's Way: Essays in Honor of Joel Feinberg*
Warren F. Schwartz, ed.: *Justice in Immigration*
John Fischer and Mark Ravizza: *Responsibility and Control*
R. A. Duff, ed.: *Philosophy and the Criminal Law*
Larry Alexander, ed.: *Constitutionalism*
Robert F. Schopp: *Justification Defenses and Just Convictions*
Anthony Sebok: *Legal Positivism in American Jurisprudence*
William Edmundson: *Three Anarchical Fallacies: An Essay on Political Authority*
Arthur Ripstein: *Equality, Responsibility, and the Law*
Heidi M. Hurd: *Moral Combat*
Steven J. Burton: *"The Path of the Law" and its Influence*
Jody S. Kraus and Steven D. Walt: *The Jurisprudential Foundations of Corporate and Commercial Law*

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Complicity

Ethics and Law for a Collective Age

CHRISTOPHER KUTZ
University of California at Berkeley

CAMBRIDGE
UNIVERSITY PRESS

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521594523

© Christopher Kutz 2000

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2000
This digitally printed version 2007

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data
Kutz, Christopher.
Complicity : ethics and law for a collective age / Christopher Kutz.
p. cm. – (Cambridge studies in philosophy and law)
Originally presented as the author's thesis (doctoral) – University of California, Berkeley.
Includes bibliographical references.
ISBN 0-521-59452-9 (hb)
1. Law and ethics. 2. Guilt (Law) 3. Responsibility. 4. Collectivism. I. Title. II. Series.
K247.6.K88 2000
340'.112 – dc21 99-057892

ISBN 978-0-521-59452-3 hardback
ISBN 978-0-521-03970-3 paperback

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

For my mother

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Contents

Acknowledgments *page* xi

1 Introduction 1

2 The Deep Structure of Individual Accountability 17
- 2.1 Introduction 17
- 2.2 Social accountability as an example of the fundamentally relational nature of accountability 20
- 2.3 The relational bases of moral accountability: conduct, consequences, and character 25
- 2.4 A complication: the dynamics of accountability 46
- 2.5 The irreducibility of accountability 49
- 2.6 Ethical functionalism without consequentialism 53
- 2.7 Nietzsche's challenge 56
- 2.8 Legal accountability and the limits of response 59
- 2.9 Conclusion 64

3 Acting Together 66
- 3.1 Introduction 66
- 3.2 Methodology: generality, reducibility, and functionalism 68
- 3.3 Collective action as intentional participation 74
- 3.4 The contributory content of participatory intentions 81
- 3.5 The reducibility of collective action to individual intention 85
- 3.6 Collective action: the minimalist approach 89
- 3.7 Participation and the perspective of command 96
- 3.8 Ascribing collective actions 103
- 3.9 Attributing collective intentions 107

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

3.10 Conclusion 112
4 Moral Accountability and Collective Action 113
4.1 Introduction 113
4.2 Common sense and the disappearance of moral accountability: Dresden 115
4.3 The inadequacy of moral theory to collective wrongdoing: individual consequentialism 124
4.4 The incompatibility of collective consequentialism and individual accountability 129
4.5 Kantian universalization and marginal contributions 133
4.6 Understanding collective action and individual accountability 138
4.7 Conclusion 144
5 Complicitous Accountability 146
5.1 Introduction 146
5.2 Whether complicit actors are less culpable than direct actors 147
5.3 Conclusion 164
6 Problematic Accountability: Facilitation, Unstructured Collective Harm, and Organizational Dysfunction 166
6.1 Introduction 166
6.2 Complicity without participation 168
6.3 Collective accountability and holistic responses 191
6.4 Conclusion 202
7 Complicity, Conspiracy, and Shareholder Liability 204
7.1 Introduction 204
7.2 Epistemic constraints upon legal accountability 206
7.3 Criminal complicity doctrine and the scope of liability 209
7.4 Justifying complicitous accountability 220
7.5 Against the limited civil liability of shareholders 236
7.6 Conclusion 253
8 Conclusion: Accountability and the Possibility of Community 254
Notes 261
Bibliography 311
Index 325

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Acknowledgments

This book began its life as a doctoral dissertation, and so is itself a project both individual and collective. I am grateful to the members of my graduate advisory committee, Samuel Scheffler, Bernard Williams, Kwong-loi Shun, and Jeremy Waldron, for their keen and generous guidance. Sam Scheffler was an ideal advisor and model of a professional philosopher, unstinting in patience, constructive criticism, and inspiration.

The Department of Philosophy at Berkeley provided an extremely happy environment during my graduate education, both institutionally and personally. Steve Arkonovich, Donald Davidson, Stephen Neale, and John Searle all read and commented upon parts of this book. I am especially grateful to Michael Green, who read most of the manuscript, for his insight and encouragement. My teachers at Yale Law School were kind in harboring a student whose interests ran more to theory than doctrine. I especially thank Jules Coleman and Owen Fiss for offering me their wisdom and mentorship.

I am wealthy in philosophically minded colleagues at Boalt Hall in general, and in the Jurisprudence and Social Policy Program in particular. I have drawn deeply on their counsel, friendship, and criticism. I thank Robert Cooter, Meir Dan-Cohen, Lauren Edelman, Andrew Guzmán, Sanford Kadish, David Lieberman, and Eric Rakowski, who have saved my discussion from many errors, doctrinal, practical, and philosophical. Michael Bratman and Derek Parfit have set another model for me, both in their own work and in the generosity they displayed toward an unknown student who applied to them for their responses. Peter Levine's thoughtful comments have improved Chapter 2. I am also grateful to David Franklin, Mark

© Cambridge University Press www.cambridge.org

CAMBRIDGE

Cambridge University Press
978-0-521-03970-3 - Complicity: Ethics and Law for a Collective Age
Christopher Kutz
Frontmatter
More information

Kingwell, Martin Putnam, Seana Shiffrin, and Kevin Stack for many important discussions. Anonymous referees for Cambridge University Press and *Philosophy and Phenomenological Research* provided exemplary readings, both probing and constructive. Mark Antaki provided crucial help with the index and proofs.

Ruth Kutz has been constantly generous in her support and encouragement, as have Robert Kutz, Daniel Greenberg, Pat Salt, Myra Jehlen, and Carl Riskin. Jessica Riskin has been my most uncompromising critic, felicitous editor, and inspiring interlocutor.

The Charlotte W. Newcombe Foundation provided crucial support during the writing of the dissertation as did the University of California Regents.

Christopher Kutz
Berkeley, California

Material from the following previously published article is incorporated within: Christopher Kutz. "Acting Together," *Philosophy and Phenomenological Research* (July 2000).

© Cambridge University Press www.cambridge.org