

MOORE ON COMPLICITY AND CAUSALITY

JOHN GARDNER[†]

In response to Michael S. Moore, *Causing, Aiding, and the Superfluity of Accomplice Liability*, 156 U. PA. L. REV. 395 (2007).

Causal wrongs are those wrongs that one commits only if one makes a causal contribution *c* to some result *r*, where both *c* and *r* form part of the wrong. It is because *c* and *r* form part of the wrong that *r* is called a “result” rather than a “consequence” of the wrong. Consequences follow; results constitute.¹

Professor Moore believes, as I do, that causal wrongs exist, and that they exist not only in morally justified law, but also in morality outside the law—not only in captivity, as it were, but also in the wild.² Moore also seems to believe, as I do, that moral and legal wrongs are paradigmatically causal, that one needs to understand the causal examples in order fully to understand the noncausal examples (or at least many of them).³ Moore and I part company, however, when we turn to the question of which moral and legal wrongs are causal wrongs. Naturally, we agree about some of them. We agree that murder and manslaughter are causal wrongs, for example; and so are torture, and extortion, and wounding; and so are the common law torts of negligence and nuisance and inducing breach of contract. Nevertheless, there are various wrongs that Moore classifies as causal that I would classify as noncausal. There are also some that I classify as causal that he would classify as noncausal. Let me say something about these two contrasting areas of disagreement in turn.

Moore classifies rape, assault, burglary, and theft as causal wrongs on the ground that “there plainly are causal requirements for such

[†] Professor of Jurisprudence, University of Oxford; currently Visiting Professor in the Philosophy Department at Princeton University.

¹ This handy and widely adopted terminology is owed to GEORG HENRIK VON WRIGHT, *NORM AND ACTION* 39-41 (1963).

² Michael S. Moore, *Causing, Aiding, and the Superfluity of Accomplice Liability*, 156 U. PA. L. REV. 395, 407 (2008).

³ Michael S. Moore, *The Independent Moral Significance of Wrongdoing*, 5 J. CONTEMP. LEGAL ISSUES 237, 244 (1994); John Gardner, *Obligations and Outcomes in the Law of Torts*, in *RELATING TO RESPONSIBILITY* (Peter Cane & John Gardner eds., 2001).

[wrongs].”⁴ True enough. Whenever any of these wrongs is committed, there is something that makes a causal contribution to something. Consider a rape of *V* by *D*. Doubtless, *D*’s intentions make some sort of causal contribution to *D*’s bodily movements, and, doubtless, *D*’s bodily movements make some sort of causal contribution to something involving *V*’s body. What does not follow, as Moore claims it does, is that it must be *D* himself that makes these (or any other) causal contributions.

Moore’s own proposal about rape helps us to see why. He says that rape is committed only if *D*, “by his bodily movements, causes penetration” of a body cavity of *V*’s.⁵ But this is topsy-turvy. If we ask what exactly it means for a penetration of a body cavity of *V*’s to take place, such that *D* could have caused such a penetration, the answer is that a penetration of a body cavity of *V*’s takes place, in the relevant sense, only if a body cavity of *V*’s is penetrated. And a body cavity of *V*’s is penetrated, in the relevant sense, only if someone penetrates a body cavity of *V*’s. In short, we need to know the sense in which *D* penetrated in order perspicuously to explain in what sense there was a penetration. That being so, it cannot also be the case that we need to explain in what sense there was a penetration in order to explain the sense in which *D* penetrated. Yet this inversion is exactly what Moore’s rendition of the *actus reus* of rape requires. It requires us somehow to see the act of penetrating as the act of causing a penetration, even though we already need to understand what the act of penetrating is in order to provide a sound analysis of the act of causing a penetration.

Moore anticipates this well-known circularity objection by trying to offer an agency-free account of penetration and the like, an account that does not mention what any agent does. This works for the innocuous example he uses (“To move a table does require that it move”⁶) for here we can understand the table’s moving (intransitive) without (yet) understanding what it means for someone to move it (transitive). But this does not work for the case of rape. There is no intransitive variant of “penetrate,” either in language or in thought. We cannot understand what it means for there to be a penetration in the relevant sense—for *V* to have been penetrated—without first understanding what it means for someone to do the penetrating. The

⁴ Moore, *supra* note 2, at 397.

⁵ *Id.* Here, Moore is summarizing part of the explanation of action defended in his book, MICHAEL S. MOORE, *ACT AND CRIME* 189-213 (1993).

⁶ Moore, *supra* note 2, at 398.

same is true of abusing,⁷ attacking, driving, threatening, offering, publishing, promising, conspiring, appropriating, accepting, entering, and countless other actions of moral and legal import. Inasmuch as there are wrongs committed by performing these actions (and not as part of more complex actions that include the consequences of these more basic actions among their results), these are noncausal wrongs.⁸ They do not consist in *D*'s making any causal contribution *c* to any result *r*, even though there are obviously various causal things going on in the course of their commission. This is because there is no independently specifiable result *r*, or no result *r* that consists of anything other than the action in question having been performed.

So much for the cases in which I see noncausal wrongs where Moore sees causal ones. What about the converse cases? The main disagreement between us, or, at any rate, the one that is mainly at issue here, concerns the wrongs of accomplices. I say that the wrongs of accomplices are all causal wrongs, while Moore says that many of them—inasmuch as they can be distinguished from the wrongs of principals—are noncausal wrongs.⁹ Yet Moore and I agree that debates over this question have long been mired in confusion. As Moore shows, many bad arguments have been advanced on both sides. Some of the bad arguments, as well as some disagreements between myself and Moore, are nicely revealed by considering the following line of argument, which I will call the “master argument”:

(1) *D1* commits a causal wrong (as a principal) by causing result *r1*.

(2) *D2* commits a causal wrong (as an accomplice) by causing result *r2*, where result *r2* is *D1*'s causing result *r1*.

(3) If *D2* causes *D1* to cause result *r1*, then *D2* also causes result *r1*.

Thus (4) *D2* commits (as a principal) the same causal wrong as *D1*.

Thus (5) there are no accomplices to causal wrongs, for all are principals.

This master argument is plainly invalid. For a start, (4) plainly does not follow from (1), (2), and (3). It needs an “all else being

⁷ Moore explains “abusing” as “causing abuse,” paralleling his topsy-turvy error about penetration. *See id.* at 397.

⁸ Criminal lawyers call them “conduct crimes” as opposed to “result crimes.” *See, e.g.,* Glanville Williams, *The Problem of Reckless Attempts*, 1983 CRIM. L. REV. 365, 366.

⁹ Moore, *supra* note 2, at 449.

equal” proviso to allow for the possibility of other unmentioned differences between *D1* and *D2* that make a difference to which wrong each commits. Maybe accomplices and principals are distinguishable in some noncausal respect, for example, with respect to the mens rea element of their respective wrongs. I will not pursue this line of thought here, as our immediate interest is in the existence or nonexistence of causal differences, not other differences, between principals and accomplices.

More interesting, for present purposes, is the fact that (5) plainly does not follow from (4). Why can't there be accomplices to causal wrongs, contrary to (5), even though such accomplices are also principals, in line with (4)? Why isn't *D2* in the doubly bad predicament of having committed two wrongs, one as principal in his own right and the other as accomplice to *D1*? I will call this the “double trouble” view. There is much to be said for it as a moral view. Indeed, I believe it to be the correct view in some (but not all) cases of complicity. Moore, however, frames his whole discussion in a different way—a more legalistic way—which helps to conceal the attraction of the double trouble view. Rather than talking about wrongdoing, he talks about “liability” and calls *D2*'s accomplice liability “superfluous” in cases where *D2* could equally be convicted as a principal.¹⁰ This is a misleading way to talk; it not only avoids the moral issue but distorts the legal one.

We can both agree, I think, that a criminal indictment seeking *D2*'s conviction for the two crimes cumulatively—both for the principal wrong and for the wrong of complicity—would be (as the common law puts it) “void for duplicity.” But the same does not apply if the prosecution seeks the two convictions in the alternative. It is often acceptable for the law to provide alternative ways of charging, indicting, prosecuting, trying, and convicting a single defendant with respect to the same action. The main English legislation on this subject, the Accessories and Abettors Act of 1861, provides for the prosecution to hedge its bets in this way.¹¹ Moore, it seems, regards this as a gratuitous complication in the law, perhaps even slightly comic.¹² He there-

¹⁰ *Id.* at 395.

¹¹ Section 8 allows, for example, “murder” to be the charge and the conviction, while permitting the prosecution's proof to be of either murder as a principal or murder as an accomplice without prior election. Accessories & Abettors Act, 1861, 24 & 25 Vict., c. 94, § 8 (Eng.) (amended 1977).

¹² It is in this connection that he cites BLONDIE, *One Way or Another*, on PARALLEL LINES (Chrysalis Records, Inc. 1978). See Moore, *supra* note 2, at 409 & n.35.

fore accepts (a version of) the inference from (4) to (5), albeit one mediated by implicit intervening premises.

Moore does not, however, accept the master argument in its entirety. Although he defends (a version of) the inference from (4) to (5), he does not defend either (4) or (5) as they stand, and that is because he has concerns about the earlier premises. He has many interesting things to say, in particular, about premise (2).

The master argument is most often deployed as a *reductio*. Since (5) is an intolerable conclusion, the thinking goes that, conceding that the argument is valid, at least one of the premises must be rejected. The premise most often rejected is (2). Many people, inside and outside the law, point to “aiding,” “abetting,” and “counseling” as modes of complicity that already undermine (2). Aiders, abettors, and counselors, it is said, often do not cause the acts of those whom they aid, abet, and counsel. After all, their aiding, abetting, or counseling is, in many cases, unnecessary for the principal’s wrong. Often the principal would have gone ahead with her wrong anyway, with or without the accomplice’s help or encouragement. And if the accomplice’s help or encouragement was not necessary for the principal’s wrong, it is said, the accomplice therefore did not cause that wrong. A cause is a *sine qua non* of whatever it causes. By this line of reasoning, or something very like it, many conclude that (2) is false.¹³

Moore points out that this is a bad argument for rejecting (2). It rests, he says, on an inadequate theory of causation.¹⁴ Causation neither consists in, nor depends on, a *sine qua non* or necessity relation of the advertised kind. I agree with Moore on this point. But I do not share the rest of his reasoning. I think that aiding, abetting, and counseling are all straightforward ways of making a causal contribution to the wrongs that are aided, abetted, or counseled (as the case may be). For me, it is an adequacy-condition for any analysis of causality that it classifies these cases correctly as cases of causal contribution. I also think that there are more subtle counterfactual analyses of causality (invoking a combination of necessity and sufficiency) that meet this adequacy-condition as well as meeting, when combined with various other criteria, all the further applicable adequacy-conditions. In short, I think that there can be an adequate partly counterfactual

¹³ See, e.g., CHRISTOPHER KUTZ, *COMPLICITY* 216-18 (2000); Joshua Dressler, *Reassessing the Theoretical Underpinnings of Accomplice Liability: New Solutions to an Old Problem*, 37 *HASTINGS L.J.* 91, 124-25 (1985); Daniel Yeager, *Helping, Doing, and the Grammar of Complicity*, 15 *CRIM. JUST. ETHICS* 25, 29-30 (1996).

¹⁴ See Moore, *supra* note 2, at 403-08.

analysis of causality. Moore, by contrast, has blanket objections to all attempts to analyze causality in even partly counterfactual terms. He therefore repudiates the proposed argument against (2) without needing to come clean on whether he thinks that, in the cases under discussion, the aiding, abetting, and counseling do indeed make causal contributions to the principal's wrong. (He comes clean later and says that, in his view, they often—but not always—do.¹⁵)

In the course of objecting to all counterfactual or partly counterfactual analyses of causality, Moore spells out one of the adequacy-conditions that *he* attaches to analyses of causality. He says that any adequate analysis of causality must respect the *transitivity* of causality. In other words, it must be consistent with the proposition that “if *C* causes *E* and *E* causes *F* then *C* causes *F*.”¹⁶ Let's call this “Moore's Transitivity Axiom,” or “MTA” for short:

MTA: If *x* causes *y* and *y* causes *z* then *x* causes *z*.

You can see right away that premise (3) of the master argument is none other than an application of MTA to the case of *D1* and *D2*. However, it seems to me that MTA is mistaken, and so correspondingly is premise (3). MTA takes whatever plausibility it has from the ease with which it is confused with the following true, but weaker, proposition, which I will call “Gardner's Transitivity Axiom,” or “GTA” for short:

GTA: If *x* makes a causal contribution to *y* and *y* makes a causal contribution to *z* then *x* makes a causal contribution to *z*.

In presenting GTA as weaker than MTA, I am setting out my stall that causing something is not the only way of making a causal contribution to it. Perhaps causing is the simplest way; perhaps it is also the paradigmatic way; and perhaps it is, in some contexts, the most important way. But there are other ways. I foreshadowed this in my characterization of causal wrongs at the start of this Response, where I allowed for causal wrongs to vary among themselves in (at least) two dimensions, with respect to result *r* and with respect to causal contribution *c*. In doing so I was already making logical space for my view that *D2* (as an accomplice) sometimes makes a different kind of causal contribution from that made by *D1* (as the principal), and thereby commits a different causal wrong, even though both wrongs have, in

¹⁵ See Moore, *supra* note 2, at 423-24 (discussing *Wilcox v. Jeffrey*, (1951) 1 All E.R. 464 (K.B.)).

¹⁶ *Id.* at 404.

the end, the same result, *r1*. Indeed, I was making logical space for my view that *D2* (as an accomplice) sometimes makes a different causal contribution from that made by *D1* (as the principal) precisely because *D2* makes his contribution through *D1*.

So this causal pluralism, as we may call it, already sows the seeds of a new objection to the validity of the master argument to (4). Consider the revised premises that it forces upon us:

- (1') *D1* commits a causal wrong (as a principal) by making a causal contribution *c1* to result *r1*.
- (2') *D2* commits a wrong (as an accomplice) by making a causal contribution *c2* to result *r2* (where *r2* is *D1*'s making a causal contribution *c1* to result *r1*).
- (3') If *D2* makes a causal contribution to *D1*'s making a causal contribution to result *r1*, then *D2* also makes a causal contribution to result *r1*.

These revisions lay waste to whatever is left of the master argument. They are consistent with *D2*'s making the same causal contribution to *r1* as *D1* does, but also with *D2*'s causal contribution to *r1* being different from *D1*'s. This preserves the possibility that *D2* does not commit the same causal wrong as *D1*, even though both causal wrongs have the same (eventual) result in *r1*, and this invalidates the inference to (4). In particular, this framework preserves the possibility that *D2*'s causal wrong is a wrong of *indirect* causal contribution to *r1*, whereas *D1*'s is a wrong of *direct* causal contribution to *r1*, where the indirectness of *D2*'s causal contribution to *r1* lies precisely in the fact that *D2*'s only relevant direct causal contribution is to *r2*, which is the result that *D1* makes a direct causal contribution to *r1*.

Moore resists these possibilities by claiming that causing is the only possible kind of causal contribution, that is, by rejecting causal pluralism. GTA, he thinks, boils down to MTA; *c1* and *c2* are both causal contributions by way of causing, for that is the only kind of causal contribution there is; so my so-called "revisions" of premises (1), (2), and (3) are only harmless reformulations. Causal contribution varies only by degree, says Moore, and not by kind.¹⁷ Causal contributions can be more or less "substantial," but they cannot be direct or indirect. Or rather, causal contributions can be direct or indirect, but this is not truly a distinction between them qua causal contributions. It can only be a noncausal distinction. Moore's reasons for

¹⁷ *Id.* at 410.

thinking this are spelled out in more detail elsewhere¹⁸ and only sketched out briefly in the article under discussion here, but, if I understand them right, they come down to the following two reasons. First, there is the official objection: a distinction between *DI* and *D2* drawn in terms of directness could be interpreted as a causal distinction only by adopting a “panicky” metaphysics in which *DI* is somehow the “uncaused cause”¹⁹ of *rI*, or is at any rate “not subject to the [full] necessitation of causal laws.”²⁰ Second, there is the subtext: whatever constitutes a causal distinction must be instantiated “in science”²¹ (i.e., experimental or “natural” science), and no causal distinction between direct and indirect causal contributions is so instantiated. Both of these objections are weak, and I will address them in reverse order.

I know of no reason to think that all causal distinctions must be instantiated in the experimental sciences, and I know of no reason to privilege, as Moore does, writings in the “philosophy of science” as having some special jurisdiction over the subject of causality.²² I can, however, think of some good reasons not to do so. The most important is that the theory of causality is part (but only part) of the theory of agency, and the philosophical study of it belongs (if we must make these petty demarcations) to the philosophy of action, not the philosophy of science. To cause (or facilitate, or occasion, or allow, or procure, or inflict, or induce . . .) is to act and can only be understood as a constituent of action. Notice that this returns us to the criticisms I made earlier of Moore’s own theory of action. Moore tries to explain what an action is by explaining what a causing is, when really it must be the other way around. But be that as it may, the truth remains that if one studies only relatively simple agents—planets and stars, electrons and neutrons, winds and waves, proteins and enzymes, gases and liquids, genes and chromosomes, bodies and brains and even minds—then necessarily one uncovers only relatively simple causal contributions. These simple agents each have a relatively short list of actions that they are capable of performing, and notably a relatively short list of possible interactions with other agents. The list is short relative to the list of actions and interactions that can be performed by more complex agents, such as human beings. Human beings are, however, absent from the experimental sciences. There they

¹⁸ See Michael S. Moore, *The Metaphysics of Causal Intervention*, 88 CAL. L. REV. 827 (2000).

¹⁹ Moore, *supra* note 2, at 410.

²⁰ *Id.* at 413.

²¹ *Id.* at 410.

²² See *id.* at 405-07.

are not studied as such, but rather reduced to other agents, such as minds and brains and bodies, that are more easily adapted to the restricted metaphysics and methodology of the experimental scientist.

In particular, all rational action (action-for-reasons) is filtered out of the scientific picture. Reasons are not visible to the experimental sciences, because none of the simpler subagents studied by the experimental sciences answer to them. Brains and bodies and minds and genes are agents, but they are not rational agents. It follows that the experimental sciences do not see the causal distinctions that are structured by reasons and that can only be understood by considering the actions and interactions of rational agents. What we need, in order to distinguish and analyze the full range of possible causal contributions, is to locate our study of causality with one foot in the humanities, that is, with human agents—the most highly developed rational agents known to us—among our core examples of causal contributors. If we do so, we will find causal distinctions not found elsewhere in nature, such as the distinction between causing and occasioning, the distinction between both of these and failing to prevent, the distinction between all of these and inflicting, and so on. Some writers resist this causal humanism (as we might call it) because they imagine that, as soon as one takes an interest in distinctions that are found only in human agency, one draws distinctions that are driven by human purposes and needs rather than by the reality of causality.

Of course this is, in one way, a false contrast. As Moore points out, it is one of our human purposes and needs to find out who *really*—that is, in causal reality—made which causal contribution to what, for this is frequently a matter of moral or legal importance.²³ What is worrying is only the intrusion of *other* purposes and needs, leading to the drawing of noncausal distinctions that are only *presented* as causal. Surprisingly, this worry is enough to turn many writers away from causal humanism and toward what one might call causal scientism. Is this what turns Moore in the same direction? That is not so clear. His causal scientism seems undermotivated.

Moore's wider resistance to causal pluralism is not, however, undermotivated. It is motivated by the belief that one can only distinguish GTA from MTA if one adopts a partly libertarian metaphysics, in which human beings are partly exempt from causality. At any rate, he says, such libertarian reasons are "the only reasons given to support

²³ See *id.* at 407 ("Causation is one of those doctrines adopted by the criminal law because of its role in determining moral responsibility.").

the existence” of variations among types of causal contributions involving human beings.²⁴ So when I talk of the causal distinctions to be found in the structure of rational agency, do I presuppose some such libertarianism? I doubt it. I am fairly sure that I have never had a metaphysically libertarian thought in my life. The explanation that I give for the variety of causal contributions instantiated in human agency, an explanation that Moore cites but does not discuss, focuses on the structure of rational agency.²⁵ As rational agents, each human being has a relationship with all the actions of every human being (and indeed every rational agent). It is rationally important for each of us what every other one of us does. Rationally, we are always to factor everyone’s actions into our thinking about our own actions, inasmuch as by our own actions we contribute to those other actions (and subject to the constraints of rational efficiency). Yet this already shows that we have a special relationship with our own actions, including their results. We are responsible directly for our own actions (including their results) and indirectly for the actions of others (only inasmuch as they figure among the results of our actions). This explains both the existence and the importance of causal contributions that are distinguished, *causally* distinguished, with respect to their directness and indirectness. These distinctions are built into the structure of rational agency, and since they are built into the structure of rational agency, they belong to the metaphysics of agency, where we also find the metaphysics of causation.

What are these distinctions? They vary enormously. Sometimes *D2* occasions *r1* when *D1* causes *r1*, or *D2* procures the infliction of *r1* when *D1* actually inflicts *r1*. Sometimes *D2* causes *D1* to allow *r1* or allows *D1* to cause *r1*. Sometimes *D2* actually causes *D1* to cause *r1*, although it does not follow, contrary to MTA, that *D2* too causes *r1*. And it is also true, in spite of the falsity of MTA, that sometimes *D2* causes *r1* through *D1*. There are often interdependencies hidden in these distinctions, such that what contribution *D2* makes to *r1* depends, in some cases, on what contribution *D1* makes to *r1*. Nevertheless, all the distinctions are causal distinctions. They are distinctions among causal contributions, and they distinguish them qua causal contributions. Qua causal contributions, of course, they are all to be analyzed in similar (partly counterfactual) terms. But, beyond that,

²⁴ *Id.* at 413.

²⁵ The explanation is set out in John Gardner, *Complicity and Causality*, 1 CRIM. L. & PHIL. 127 (2007), reprinted in JOHN GARDNER, OFFENCES AND DEFENCES 57 (2007). Moore cites this article for other propositions in Moore, *supra* note 2, at 413 n.43, 418 n.59.

they all differ and call for separate analyses, just as all other possible actions call for separate analyses once we have gotten beyond the common features that make them all actions.

This view is complicated, and I have only sketched its main themes here. Nevertheless, there are some obvious differences between it and the views that Moore criticizes. Moore discusses only causal dualism (the view that there are two and only two possible kinds of causal contribution), which he associates (I am not sure correctly) with Hart and Honoré.²⁶ My causal pluralism is obviously much more pluralistic. Moreover, Moore assumes that causal dualists hold that human beings cannot cause other human beings to act, or cannot cause results through other human beings—that their causal contributions, on the dualist view, must be something short of causing.²⁷ I assume no such thing. I think the types of causal contributions made by accomplices to and through the acts of their principals vary, and sometimes include causing. Sometimes, the accomplice is thereby also turned into a principal with respect to the same or another wrong; at other times not. It depends on the causal wrong committed by *D1* and the type of contribution made to it by *D2*. Most importantly, *pace* Moore, my proposals have no glimmer of metaphysical libertarianism about them. Like all metaphysics, they work back from how things are to how things must be. Things are as I explain them with rational agency, and that is why things must be as I explain them with causality.

I have not had an opportunity, within the confines of this Response, to discuss Moore's own rival analysis of complicity and his eventual replacement for the master argument in which he preserves modified versions of (4) and (5). But one feature of Moore's own analysis demands comment. His resistance to causal pluralism, in spite of his energetic prosecution of it, turns out to be in some measure nominal. He allows that there are various ways of being an accomplice that are not "truly causal,"²⁸ but each of which has something in common with the truly causal way of being an accomplice. They include, notably, complicity by failing to prevent a wrong.²⁹ But this

²⁶ See Moore, *supra* note 2, at 413 ("[T]here are 'two types of causal connections,' or two 'varieties': a central type (or variety) that is broken by the intervening act of a guilty principal, and a secondary type (variety) that is not.") (quoting H.L.A. HART & TONY HONORÉ, CAUSATION IN THE LAW, 186, 388 (2d ed. 1985)).

²⁷ See *id.* at 413 ("[H]uman beings are not billiard balls, but are free and not subject to the necessitation of causal laws.").

²⁸ *Id.* at 420-48.

²⁹ *Id.* at 440.

supposedly noncausal way of being an accomplice is straightforwardly causal. It is an adequacy-condition of any analysis of causality that it shows how one can make causal contributions by failing to act, including by failing to prevent actions by others. Moore does not agree that this is an adequacy-condition of an analysis of causality, and his analysis of causality proudly and consistently does not meet it. But interestingly, his catalogue of the varieties of complicity includes certain ways of contributing—including failing to prevent—that were jettisoned from his analysis of causality as noncausal.³⁰ I find this telling, and what it tells me is that these ways of contributing should not have been jettisoned from his analysis of causality. For there is no way of contributing to any result, directly or indirectly, except causally. That is the only kind of contribution to results that exists, and since the only kind of complicity is complicity by contribution to results, complicity is always a kind of causal wrong.³¹

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³⁰ *Id.* at 441.

³¹ Moore suggests some additional varieties of complicity that we both agree are noncausal because they have no results. *See id.* at 440-42 (discussing nonoperative chance-raising); *id.* at 442-46 (discussing unheard encouragers). My reaction is that these suggested varieties of complicity are not really varieties of complicity; they are, at most, failed attempts at complicity. The U.S. law that treats them as varieties of complicity, cited by Moore, is either confused or deliberately stretches the category of complicity for the sake of some ulterior objective.