

# Silence as Complicity and Action as Silence

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## 0. Abstract

Silence sometimes constitutes moral complicity. We see this when protestors take to the streets against racial injustice. Think of signs with the words: “Silence is complicity.” We see this in instances of sexual harassment, when we learn that many knew and said nothing. We see this in cases of wrongdoing within a company or organization, when it becomes clear that many were aware of the negligent or criminal activity and stayed silent. In cases like this we consider agents morally complicit in virtue of their silence. Flagrant injustices cry out for action, and sometimes remaining silent amounts to complicity in those injustices. What philosophy owes us is an account of how it could be that silence constitutes complicity. In this paper I argue that one possibility is an account grounded in problematic deliberative contribution. The core idea of “deliberative complicity,” as I call it, is that agents have moral duties concerning the moral deliberation of other agents, and failures in these duties can amount to moral complicity. For example, an agent aware that a colleague is sexually harassing his students has a deliberative obligation to report the misconduct, and their silence in failing to report constitutes a failure to fulfill their deliberative obligation, a failure that grounds their moral complicity in the harassment. If my argument is successful, it provides a distinctive reason to prefer a deliberative account of moral complicity: it can capture cases of silent complicity that other views of moral complicity cannot. And further, by turning our attention toward our interpersonal deliberative obligations, a deliberative account of complicity can incorporate helpful resources from recent work in social epistemology and speech act theory as we set out to determine when and why silence amounts to complicity. And when it does, we cannot stay silent. We must speak.

*There comes a time when silence is betrayal.*

- Martin Luther King, Jr., *Beyond Vietnam – A Time to Break Silence* (1967)

## **1. Introduction**

Silence sometimes constitutes moral complicity.<sup>1</sup> We see this when protestors take to the streets against racial injustice. Think of signs with the words: “Silence is complicity.” We see this in instances of sexual harassment, when we learn that many knew and said nothing. We see this in cases of wrongdoing within a company or organization, when it becomes clear that many were aware of the negligent or criminal activity and stayed silent. In cases like this we consider agents morally complicit *in virtue of their silence*. Flagrant injustices cry out for action, and sometimes remaining silent amounts to complicity in those injustices. What philosophy owes us is an account of how it could be that silence constitutes complicity.

But two major extant philosophical views of moral complicity are based on (1) causal contribution, on the one hand, and (2) intentional participation, on the other.<sup>2</sup> And silence is difficult to classify as either of these. It doesn’t seem that one of the silent bystanders to sexual harassment needs to causally contribute to the harassment through his silence in order to count as complicit. Nor does it seem that he needs to participate intentionally in order to count as complicit. Of course *sometimes* an agent might remain silent as a way of participating intentionally in wrongdoing, such as when a museum security guard purposefully fails to sound an alarm as a thief passes by. But these sorts

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<sup>1</sup> Throughout, I will be focused on *moral* and not legal complicity. Though the categories are not unrelated, they are distinct (Mellema 2011; 2016, 1–2). My focus is the moral category.

<sup>2</sup> For examples of causation-based accounts, see Gardner (2004; 2007), Petersson (2013), and Jensen (2020). For examples of intentions-based accounts, see Kutz (2000; 2007), Lepora and Goodin (2015), and Barzagan (2013).

of explanations won't cover *all* cases of silent complicity. Sometimes we are complicit in virtue of our silence even though we do not intend to participate in or support anything at all by staying silent.

Since views of complicity based on intentional participation and causal contribution can't explain silence as complicity, philosophy has work to do: we need an account of moral complicity that can make sense of silence. What might such an account look like? In this paper I argue that one possibility is an account grounded in problematic deliberative contribution. The core idea of "deliberative complicity," as I call it, is that agents have moral duties concerning the moral deliberation of other agents, and failures in these duties can amount to moral complicity. For example, an agent aware that a colleague is sexually harassing his students has a deliberative obligation to report the misconduct, and their silence in failing to report constitutes a failure to fulfill their deliberative obligation, a failure that grounds their moral complicity in the harassment.

In addition to providing a promising explanation of how silence can amount to moral complicity, deliberative complicity allows us to extend in a novel way recent research in speech act theory and social epistemology to the ethical domain of moral complicity. For instance, Jennifer Lackey argues that there is a duty to object when others assert content that we take to be false or misleading (2018; 2020; 2021a; 2021b). Sanford Goldberg argues that we are entitled to assume that those who are part of a conversation and remain silent in the face of an assertion don't object to the content of that assertion (2020). Ishani Maitra argues that silent observers can grant authority to speakers in cases of hate speech (2012). Mary-Kate McGowarn argues that speech acts can themselves

not only cause but also *constitute* harm (2004; 2009; 2012).<sup>3</sup> A. G. Holdier argues that some silences—particularly silences he calls *slurring silences*—can harm *directly* (2024). Insights from these areas of philosophy have not been taken up by moral complicity researchers, though, who have often focused not on speech, content, and our responsibility for the beliefs of others but rather our causal and intentional participation in the world.<sup>4</sup> Taking my view of moral complicity, one based on deliberation instead of causation or intention, can help us to see that these insights from other areas of philosophy have much to say about when and why we are complicit, when we are.<sup>5</sup>

A deliberative account of moral complicity faces an important and distinctive problem, though, a problem that does *not* face the two extant philosophical views I dismissed so quickly above. Namely, our complicity in wrongdoing often seems to have *nothing whatsoever* to do with speech or deliberation. On the contrary, it seems that *many* cases of complicity are ones in which our *actions*, rather than our speech, ground our complicity. And it is at least not obvious that a deliberative account of moral complicity, grounded in what I am calling our interpersonal deliberative obligations, can handle cases of action. This seems to leave us at an impasse, with one reason to prefer a deliberative conception of moral complicity—namely, that it can handle cases of silent complicity—and one reason to prefer the alternative conceptions of either casual contribution or intentional

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<sup>3</sup> Other important examples of the kind of work I have in mind include Saul (2021) and Hannon (2021). But of course this list should not be taken to be exhaustive.

<sup>4</sup> One important exception that has inspired my own work in this area is Ayala and Vasilyeva (2016). In this paper, I hope to build on and extend their argument, fleshing out the details of why we should agree that silence amounts to complicity in the kinds of cases they consider.

<sup>5</sup> Note that none of these scholars, Lackey included, argue that the entitlements and obligations they defend ground attributions of moral complicity. Lackey argues that we have a duty to object that is both epistemic and moral, but she does not argue further, as I do, that violations of this duty constitute moral complicity (2020). My argument here builds on her ideas about our obligations to object and takes them further. See §5 and especially footnote 11.

participation—namely, that they can handle cases of moral complicity that arises through agents’ actions.

The problems and challenges for theorists of moral complicity are clear. In this paper, I have two main goals. In the first half of the paper, I will explain in more detail how the deliberative view of moral complicity can vindicate silence as complicity and show that the deliberative view can extend important research from social epistemology and speech act theory into the moral complicity space in a way that the other views cannot. In the second half, I will argue that the deliberative view of complicity can apply to and explain cases it seems to miss, including cases of action. If my argument is successful, it provides a distinctive reason to prefer a deliberative account of moral complicity: it can capture cases of silent complicity that other views of moral complicity cannot. And further, by turning our attention toward our interpersonal deliberative obligations, a deliberative account of complicity can incorporate helpful resources from recent work in social epistemology and speech act theory as we set out to determine *when* and *why* silence amounts to complicity.

And when it does, we cannot stay silent. We must speak.

## **2. Competing Conceptions of Complicity**

Let me begin with an example, often thought to be a core case of complicity.

### *Bank Robbery*

Betsy is the getaway driver at a bank robber; Adam robs the bank.

Suppose each is aware of what the other is doing and why. In this case, Adam is the primary agent, and

Betsy is the secondary agent.<sup>6</sup> Betsy seems complicit in Adam’s bank-robbing. Why?

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<sup>6</sup> I follow legal discussions of criminal complicity and refer to complicit agents as *secondary* wrongdoers, in contrast with the primary wrongdoers who commit the primary wrong (the wrong in which the secondary wrongdoer is complicit).

One intuitive answer is that Betsy causally contributes to Adam's bank-robbing. Betsy's driving is part of the causal explanation of how Adam came to rob the bank, and so Betsy is complicit in Adam's bank-robbing in virtue of her causal contribution to his robbing.<sup>7</sup> So a theory of moral complicity grounded in causal contribution seems well-positioned to capture Betsy's case and others like it. It offers a simple, plausible, and compelling explanation of Betsy's complicity: Betsy is complicit in Adam's bank-robbing because her *driving Adam* constitutes a causal contribution to that bank-robbing.

Another answer—also quite intuitive—is that Betsy is morally complicit in Adam's robbing because she intentionally participates in that robbing.<sup>8</sup> She drives Adam *in order* to help him rob the bank. So a theory of moral complicity grounded in intentional participation seems well-positioned to capture Betsy's case and others like it. It offers a simple, plausible, and compelling explanation of Betsy's complicity: Betsy is complicit in Adam's bank-robbing because her *driving Adam* constitutes an intentional participation in that bank-robbing.

In the end, I think that both causal contribution and intentional participation accounts fail as accounts of moral complicity, *if they are understood as both necessary and sufficient conditions*. But it is worth highlighting that they do seem to be powerful explanations of complicity in cases like Betsy's before we turn to cases that they seem less well-positioned to handle.

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Discussions of criminal complicity also sometimes call the primary wrongdoer the *principal* and the secondary wrongdoer the *accomplice*. See Gardner (2007), among others.

<sup>7</sup> Something like causal contribution seems to be what Gardner thinks is necessary for moral complicity (2004; 2007). Kutz, on the other hand, argues that causal contribution is *not* necessary for moral complicity (2000; 2007).

<sup>8</sup> See Kutz (2000), Lepora and Goodin (2015), and Bazargan (2013) for accounts of moral complicity grounded in intentional participation.

### **3. Silence as Complicity**

As I noted in the introduction, sometimes cases of moral complicity have a structure that seems very different from *Bank Robbery*. We have already noticed cases of marching against racial injustice (or, rather, failing to march) and remaining silent in the face of sexual harassment (of which one is aware).

Some more examples:

#### *Silent Friend*

Bernadette and Alice are friends. Alice is in a monogamous relationship and tells Bernadette that she is cheating on her spouse and lying to them about it. Bernadette says nothing to Alice about why Alice's actions are wrong.

#### *Silent Board Member*

Benedict sits on the board of a major corporation. The corporation is engaged in activities that are seriously wrong, and Benedict is aware of those activities. He does not say anything in opposition to those wrongful activities to his fellow board members, regulatory institutions, nor the media.

In these cases, Bernadette and Benedict seem complicit in wrongful actions or activities in virtue of their silence. That is, they seem morally complicit because they failed to speak up when they should have.

But notice that neither causal contribution nor intentional participation seem particularly well-suited to capture these cases. Bernadette and Benedict's silences do not obviously causally

contribute in any way to the wrongdoing in which they are complicit.<sup>9</sup> And though it could be that, say, Benedict's silence is a form of intentional participation—we could certainly imagine that he is silent in order to promote the wrongful activities—it also seems very possible that he is just... silent, with no plan to participate nor to interfere. Similarly, while we can certainly imagine that Bernadette's silence is among the causes of Alice's continued cheating pattern, we can also imagine that her silence made no difference to Alice's cheating. Perhaps if Bernadette had spoken up nothing about Alice's behavior would have changed. So views based on intentional participation also do not seem to fare well here.

These considerations give us good reason to look elsewhere for a satisfying account of moral complicity—to a view that can directly tackle the interesting phenomenon of silence as complicity.

#### **4. Silence as Problematic Deliberative Contribution**

The solution I want to suggest centers on the idea that Bernadette and Benedict are complicit precisely in virtue of not speaking up when they ought. That is, they fail to fulfill an interpersonal deliberative obligation they have to speak up, and it is in virtue of that failure that they are complicit in wrongdoing. More precisely, according to what I call the *deliberative view of moral complicity*, an agent

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<sup>9</sup> A proponent of the view that omissions can be causes might object here and argue that Bernadette and Benedict *do* causally contribute in these cases in virtue of causally efficacious omissions. For arguments that omissions are causes see McGrath (2005) and Thomson (2003), among others. Throughout my discussion here, I remain agnostic about whether omissions are causes. The proponent of the view that omissions *are* causes can understand my argument as pointing toward a challenge for a causation-based theorist: *which* omissions ground agents' moral complicity? Any view of omissions as causes will require understanding *some* (and not all) of agents' omissions as those for which they are morally responsible. On this understanding, the deliberative view will not be fully non-causal in nature but will still be importantly informative: it will direct agents' attention to which of their omissions they must pay attention lest they risk complicity in wrongdoing.



is complicit in a wrongdoing when and because she fails to fulfill a deliberative obligation she had with respect to that wrongdoing. Here's a statement of the view:

**Deliberative View:**

B's failure in her deliberative duty regarding A's  $\phi$ -ing is *sufficient for* and *explains* B's complicity in A's  $\phi$ -ing if A  $\phi$ 's and A's  $\phi$ -ing is wrongful.

For example, Blanca might fail in her deliberative obligation with respect to Alex's theft by encouraging Alex to steal from a friend. According to the deliberative view, Blanca will then be complicit in Alex's theft precisely in virtue of that failure to fulfill her deliberative obligation. Encouraging others to act wrongly is one way to fail with respect to our interpersonal deliberative obligations concerning their activity. So Blanca's encouragement grounds her moral complicity. But notice that Blanca might *also* fail in her obligation by staying silent in the face of Alex's wrongdoing if he, say, steals Connor's wallet right in front of Blanca, and she says nothing.

This means that the deliberative view of moral complicity can help to make sense of the slogan "Silence is complicity" and the moral force it carries. How could silence make one complicit? Because staying silent, when one has a duty to speak up, violates that duty, constituting a failure in one's deliberative obligation with respect to the relevant wrongdoing and so moral complicity in that wrongdoing. Recall our examples, *Silent Friend* and *Silent Board Member*—Bernadette is complicit in Alice's wrongful treatment of her spouse because once Alice makes the moral content of her behavior salient between them Bernadette has an obligation to speak out. Benedict is complicit in the corporation's wrongful activities because his role as a board member entails an obligation to say something about why the corporation should not be involved in those activities.

Of course, if the deliberative view is going to work, we will need to know much more about the content of the interpersonal deliberative duties. And if it is going to work in the case of silence we will in particular need to know much more about when speaking up is required. Fortunately, once we turn our moral attention to our *deliberative* obligations rather than focusing narrowly on what we causally contribute to or intentionally participate in, we can incorporate resources from recent work in social epistemology and speech act theory to help us make progress. Though I won't attempt to answer all of these questions—a full explanation of our deliberative duties, including their content, scope, and grounding is outside the scope of this paper—I will show how adopting a deliberative view of moral complicity can point us in the right direction as we work to answer them *and* how it holds promise for building on these insights from other areas of philosophy in ways that causation and intention based accounts cannot. I think that the really interesting work of moral complicity lies in this space, in determining precisely the shape of our deliberative duties. Adopting a deliberative view of moral complicity allows us to see where we should look to make further progress.

### **5. When Must I Speak?**

The deliberative view of complicity holds that an agent is complicit in a wrong if she fails in a deliberative duty she has with respect to that wrong. If this is right, the real work of complicity is in determining the content of our deliberative duties. What do they require of us? That is, what are our obligations with respect to the practical deliberation of *other* agents? At first, we might harbor skepticism that we have any such duties: others' deliberation and activity are their affair, not mine. I am not responsible for how others act or think. But further reflection reveals that this initial instinct is

overly simplistic.<sup>10</sup> After all, most of us agree that we have *some* duties with respect to the deliberation of other agents. Generally, lying to them is off the table. And most of us think that at least some forms of manipulation, including those that function through another agent's deliberation, are wrong. So the view on one extreme, that we have no duties with respect to the deliberation of other agents, is mistaken. The problems facing a view on the other extreme, though, are clear: it cannot be true that we are responsible for all of what others decide or do. At least sometimes, they will make mistakes of deliberation that are on them, not us, and a view that counted us responsible for all of their actions and practical deliberation would be problematic in (at least two ways). It would be both overly demanding (of us) *and* require that we overly invade others' space (into which we shouldn't insert ourselves).

What our interpersonal deliberative duties require, then, must be in between these two extreme possibilities. Importantly, my proposal here does not depend on any particular understanding of our interpersonal deliberative duties. My proposal claims a *connection* between failures in those duties and moral complicity, but it does not depend on understanding those duties as having a particular strength, scope, source, or even content.<sup>11</sup> What my proposal *does* entail, though, is that recent arguments in social epistemology and speech act theory have significant implications for moral complicity. I think we have a *duty of due care with respect to the beliefs of others*, a duty that requires that we take reasonable care to ensure that others' false beliefs are not formed nor confirmed on the basis of our conduct, including our behavior, speech, and omission. This idea is not original to me: others have defended similar duties, both moral and epistemic. Adopting a deliberative view of moral complicity will allow

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<sup>10</sup> Gardner makes a similar point, though he isn't speaking about deliberative duties: "On any credible view I need to give attention, in what I do, to what you will do in consequence" (2007, 132). See also Lepora (2012, 14).

<sup>11</sup> I am grateful to an anonymous reviewer for *Philosophical Studies* for bringing the significance of this point to my attention.

us to build on their work and reveal some of the moral upshots of the duty they have considered and defended. In this section, I explain how it can do just that.

Jennifer Lackey has recently argued that there is a duty to object to things that people say when what they say is false, unwarranted, or harmful (2018; 2020; 2021a; 2021b) and that this duty is imperfect, sharing features with another duty many already recognize as imperfect, the duty of charity. While Lackey's focus has mainly been on the *epistemic* component of the duty to object, she also thinks that the duty has a moral component (2020, 35). I think she is right that we have a duty to object, that its shape is close to what she defends, that it is imperfect, that it "does not depend on the likelihood of acceptance" (of the objection offered) (Lackey 2020, 36) and that whether in a given instance "we are obligated to object is directly influenced not only by what other relevant members of the conversational context or community do, but also by the social status of the agent in question" (2020, 35). Here I aim not to defend Lackey's argument nor her particular understanding of the duty to object but rather to explore what happens if we attempt to extend her account into the domain of moral complicity. I aim to show that the deliberative view of complicity holds promise for incorporating insights from Lackey's argument but that causation and intentions-based view of moral complicity do not.<sup>12</sup>

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<sup>12</sup> A parallel argument could be made for other recent work in social epistemology and speech act theory, such as the work of Goldberg (2020), Maitra (2012), Langton (1993; 1998; 2018), McGowan (2004; 2009; 2012), Hannon (2021), and Saul (2021). I am grateful to an anonymous reviewer for *Philosophical Studies* for pointing out the relevance of this work to my own. There are, of course, important areas of disagreements and differences amongst these authors, and my grouping of them here is not meant to undermine the importance of these differences. What I contend they have in common, however, is an important insight that cannot be shared with causation and intentions-based views of moral complicity: namely, that much more is relevant to our duty to object than what we intend and / or what the outcomes of our actions are. Understanding complicity in a duties-based way allows us to capture the importance of this varied nuance, about which these authors disagree. The Deliberative View of complicity allows us to notice the importance and significance of these disagreements *to moral complicity*.

Suppose Beverly has failed in her duty to object as Lackey understands it. If Lackey is right about how the duty to object functions, then it simply follows that Beverly has failed in one of her interpersonal deliberative duties. If I am right that deliberative duty failure grounds moral complicity, then Beverly will be morally complicit in the wrong with respect to which she failed in her duty to object. This is because deliberative complicity understands interpersonal deliberative duty failure as grounding moral complicity attribution. Part of what makes this connection philosophically fruitful is that it allows us to see that determinations of violations of one's duty to object are *directly relevant* to determinations of moral complicity.

How might a causation-based or intentions-based account of moral complicity handle Beverly's case? It won't be enough that Beverly has failed in her duty to object. Rather, we would need to know whether Beverly's failure to object causally contributed to the relevant wrongdoing (in the case of an account based on causation) or whether Beverly intended through her failure to participate in the wrongdoing (in the case of an account based on Beverly's intentions). Of course, it is indeed possible that either or both of these are true. But, importantly, on these views it won't actually matter to the determination of moral complicity whether Beverly failed in a duty she had to object. What will matter to Beverly's complicity, if these accounts are correct, is just whether either of those other two things are true of Beverly's case. Further, such accounts can't allow space for some of the other important features of the duty that Lackey points out, such as the fact that the shape of the duty is influenced by the social position of the potential objector. If a fact like this matters at all, it matters only because the potential objector is less likely to be taken seriously and thus be successful in virtue of their social position and not because objecting is riskier for them (2020, 35, 42–45). Accounts based in

causation or intentional participation, then, are less able to take advantage of the fruitful insights of Lackey's work and other work like it.

## **6. Taking Stock: Where are we?**

I have argued that views of moral complicity based on causal contribution or intentional participation seem well-suited to handle seemingly core cases of complicity, such as *Bank Robbery*, but that they struggle to handle cases of silent complicity, such as *Silent Friend* and *Silent Board Member*. I then introduced a new account of complicity—an account based on problematic deliberative contribution and argued that it is (1) well-positioned to handle cases of silence and (2) able to vindicate the significance of recent work in social epistemology and speech act theory to attributions of moral complicity. But this leaves us at a seeming impasse: the scope of deliberative complicity seems quite narrow, perhaps so narrow as to be philosophically uninteresting or *ad hoc*.<sup>13</sup> After all, *many* cases of complicity seem like cases in which it really matters to us what the complicit agent *did*, not some discussion she had or failed to have with the agent who acted wrongly. And if the scope of deliberative complicity is limited enough, it may even fail as an explanation of *silence* as moral complicity since it can seem like there isn't really a unified phenomenon of interest here. Complicity through deliberative duty failure might just be a completely different concept than the moral complicity we have in mind in the very cases we sought out to explain at the outset.

I think this is a formidable objection. Indeed, I think it is the most difficult worry facing an advocate of a deliberative view of complicity. But what if we could show that the deliberative account

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<sup>13</sup> I am grateful to an anonymous referee for *Philosophical Studies* for pressing me on this point.

*can* explain cases like *Bank Robbery*, contrary to first appearances? That would put the deliberative view of moral complicity on better footing than its competitors, since they cannot handle (many) cases of silence as complicity but the deliberative view *can* handle the cases they originally seemed to get right. Unfortunately, it isn't obvious how one might argue that the deliberative view can explain *Bank Robbery*. Recall that Betsy is complicit in Adam's bank-robbing because she *drives* him to the bank, not due to some conversation she had or failed to have with Adam about why robbing is fine to do. She is complicit because of her *act* of driving them. And her act of driving does not seem to be a failure in any deliberative obligation she has. We can even imagine that Betsy had an extended conversation with Adam in which she tried to convince him not to rob the bank. And yet if she drives the car, her driving seems to ground her complicity, regardless of whether their discussion fulfills her deliberative duty. The deliberative view of complicity does not seem like it is well-positioned to explain this sort of moral complicity, the kind that is grounded in an agent's action rather than her speech.

In the next section, I will argue that the deliberative view *can* explain such cases, contrary to appearances. It can do so by pointing to the ways in which our *actions themselves* communicate our stances on moral issues.

### **7. Acting-as-Though: Action as Silence**

As we have already seen in §5, we have a duty of due care with respect to the contents of the minds of others. But this doesn't just extend to our speech and our silence: it also extends to our actions.<sup>14</sup> This

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<sup>14</sup> Lackey notices this, too: "In particular, I might have the duty to object to *what you're doing*, and the normative pressure can be either moral or epistemic" (2020, 36, footnote 3). Though she limits her discussion to speech for the sake of clarity, she does not think the duty to object applies only to the propositional content of what was said. My argument here can be understood as an extension of her ideas to the domain of actions as well.

is because we can predict that others will impute stances to us based not only on our speech but also our actions. In the course of trying to decide who to vote for, we might try to ascertain the candidates' positions. Such an effort involves more than looking only at what they say: their actions are also relevant. If a candidate says she cares about income inequality but has regularly voted against worker protections and in favor of tax cuts to the wealthy, we understand her as opposed to governmental intervention to combat income inequality, despite her claims to the contrary. Similarly, we are skeptical someone is a vegetarian, even if he claims he is, if he regularly eats meat. I might doubt a friend who attests she values my friendship if she never calls nor writes and regularly declines invitations to spend time together. In each case, what the agent says isn't the final word on what we understand their take on the world to be.

The point here may seem radical, and in a way it is: sometimes we should constrain our actions out of a concern for the mental contents of others. And there are ways of understanding such an obligation that would certainly make it overly demanding.<sup>15</sup> I do think this obligation is more stringent and demanding than we often take it to be, but I don't think it is so demanding as to be implausible. It is of course right that we are not on the hook for all inferences, reasonable and unreasonable, that others may draw on the basis of our actions.<sup>16</sup> But this is the nature of any duty to take *due care*: just as we are not responsible for *any* sort of accident someone might have in our driveway, we are not responsible for *any* sort of mistake someone might make in their reasoning based on our activity. Rather, we are responsible for exercising *due care* over the mistakes it would be

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<sup>15</sup> Jennifer Lackey points this possibility out in the case of her "duty to object" as well, noting that it bears similar character to the imperfect duty of charity (2020).

<sup>16</sup> Thanks to an anonymous reviewer for *Philosophical Studies* for pushing me on this point.



reasonable to demand that we notice are likely to result. The difficulty is in sorting out and getting a good grip on precisely what it is that due care consists in.<sup>17</sup>

Settling precisely the bounds of our duty of due care is outside the scope of this paper, but if deliberative complicity is going to be made to work, it places some constraints on that duty. Namely, that duty must at least sometimes extend to our actions. Further, if deliberative duty failure is to serve as a necessary and sufficient condition for moral complicity, the duty of due care must extend to our actions and speech in all and precisely those cases in which we are morally complicit.<sup>18</sup> So we will need to investigate whether this matching is plausible. If it seems clear that there is moral complicity in cases in which there is no interpersonal deliberative duty failure, or duty failure in which there is no complicity, then deliberative complicity fails as a complete explanation of moral complicity.

To sum, we impute stances to agents on the basis of more than just their direct speech. We impute stances to them based on their non-speech conduct, including their action, omission and the implications of their direct speech. And I think this practice is justified.<sup>19</sup> In other words, I think we do and *should* understand agents' conduct as expressive, as expressing their take on the world. And the fact that this practice exists and is justified means that sometimes we must be careful about what our actions express, lest they mislead others.

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<sup>17</sup> The duty of due care and the corresponding failure of negligence are quite undertheorized in modern moral philosophy, which tends to focus on actions and intentions (to its detriment, in my view). For some notable exceptions that have influenced my own work, see Raz (2010), Shiffrin (2017), and Herman (2022).

<sup>18</sup> I am grateful to an anonymous reviewer for *Philosophical Studies* for bringing the significance of this point to my attention.

<sup>19</sup> The *practice* is justified. This does not mean every *instance* of such imputation is justified. Cf. Owens (2012; 2022). The idea that "actions speak louder than words" is of course not original to me. For philosophical uses and investigations of the idea, see, among others, Hieronymi (2001), Helmreich (2015), Anderson and Pildes (2000), and Goldberg (2020).

I'll emphasize this core idea by saying that when agents act they *act-as-though* certain things are true. By this I mean that they *express* that those things are true. For example, an agent may *act-as-though*  $\phi$ -ing is permissible when she  $\phi$ 's. This doesn't mean that she *believes* that  $\phi$ -ing is permissible: we can (and do!) act in ways that we believe are wrong. We treat others poorly, miss deadlines, fail to recognize needs that we ought to notice and address. And sometimes we do these things even though we would agree that we shouldn't. But just as we can literally say with words something that we don't believe, we can express through our conduct that an action is permissible even if we don't believe that it is.<sup>20</sup> Our actions themselves, independently of our speech and independently of our beliefs, express our stance on issues: when we do what we shouldn't, we express that what we shouldn't do is permissible, for us, under those circumstances.

How does this connect with the duty of due care to the contents' of others' minds? If an agent *acts-as-though* some action is permissible even though it is not, such expression can constitute a failure to exercise reasonable care to ensure that others' false beliefs are not formed nor confirmed on the basis of her conduct.

Working through an example may help to clarify. Betsy is complicit in Adam's bank-robbing. Why? Because Betsy's driving the getaway car *deliberatively supports* Adam's bank-robbing, expressing that bank-robbing is permissible. Her driving the car expresses her stance not only that her driving is permissible but also that Adam's bank-robbing is permissible.

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<sup>20</sup> Callard makes a similar point: "But I, who did it, evidently saw it as a perfectly fine thing to do, having judged the action to be a good thing for me to do" (2020).

This raises several questions: how, when, and why does one agent's action express that another agent's action is permissible? How do we move from Betsy's driving to her expressing a stance about robbing? This is a bit complicated, so let us turn to these questions in the next section.

### **8. A Worry for *Acting-as-though*: Is there circularity here?**

I said that in virtue of her driving, Betsy *acts-as-though* Adam's bank-robbing is permissible. If this is right, then she violates the duty of due care she has to express the truth—that bank-robbing is wrong. And then it is in virtue of Betsy's driving, because her driving counts as *acting-as-though* and so as a failure in her duty of due care, that the deliberative view holds her complicit.<sup>21</sup> But is this first step right? Why does Betsy's driving constitute *acting-as-though* Adam's bank-robbing is permissible? And can the deliberative view explain why it does without a worrisome sort of circularity? The question we are faced with is whether what Betsy counts as expressing through her action (call this the "content" expressed by her *acting-as-though*) can be independently determined without *already* assuming she is complicit in Adam's bank-robbing.

For suppose we thought that the reason Betsy's driving amounts to *acting-as-though* Adam's bank-robbing is permissible were because driving Adam makes Betsy complicit in the bank-robbing and so amounts to an *acting-as-though* it is permissible to be complicit in bank-robbing and so for *that* reason amounts to an *acting-as-though* it is permissible to rob a bank. Then the deliberative view would provide a circular explanation of Betsy's complicity, since in order to explain her complicity I

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<sup>21</sup> Another way to understand this idea is that there is a third feature (call it Context) of the duty to object, in addition to the two Lackey recognizes: Others and Social Status (2020, 42, 44). Or we could understand this third feature as a sub-feature of Social Status. Betsy's duty to object is directly influenced by her relationship to Adam, including the actions she takes concerning his bank-robbing.

appealed to her *acting-as-though* but in order to explain her *acting-as-though* I appealed to her complicity.

What the deliberative view owes, then, is an explanation of why Betsy's driving constitutes *acting-as-though* Adam's bank-robbing is permissible that isn't itself grounded in or based on an assumption of Betsy's complicity.

Here is a try: Betsy had to settle the question of whether to drive.<sup>22</sup> This means that she ought to have considered whether driving was permissible. And this means that it made sense for Betsy to ask whether *what* she was driving Adam to do was permissible for him to do.<sup>23</sup> Given her involvement in his activity—her supporting it by his driving—the permissibility of *his* activity is a consideration that bears on the question *for her* of whether to drive. Another way to put this idea is to notice that when Betsy drives, she *acts-as-though* she has settled the question of whether to drive in the affirmative. But because the permissibility of Adam's driving bears on whether her driving is permissible, her *acting-as-though* her driving is permissible *also* constitutes *acting-as-though* his activity is permissible. This point is even clearer if we contrast it with cases in which Betsy is (innocently) unaware of what Adam plans to do or even deceived about it. If it would be unreasonable to demand that Betsy know what Adam is up to, then we cannot understand her driving as *acting-as-though* Adam's bank-robbing is permissible. If she is fully informed about his activity, though, or easily could and should have

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<sup>22</sup> Cf. Hieronymi (2005, 444–45).

<sup>23</sup> This step is admittedly complicated and a bit controversial. I will say more later in this section, but a full exploration of this bit of Betsy's reasoning and the problems it raises is outside the scope of this paper. I pursue a more detailed inquiry into that line of reasoning in (Donohue 2021).

known what he was up to—and only, say, purposefully failed to inquire to as to maintain plausible deniability—then her driving counts as *acting-as-though* Adam’s bank-robbing is permissible.<sup>24</sup>

So far, so good. But is it right to think that it makes sense for Betsy to inquire about the permissibility of Adam’s action? To help us decide, it can be useful to think about a different sort of case in which what Adam is being driven to do is permissible or even good—perhaps meet his daughter at the airport. In this kind of case, notice that the fact that Betsy’s driving is a *helping* Adam to meet his daughter is a reason to drive. That is, it counts in favor of the driving that the driving is a helping. But this is only the case because what Adam is up to is permissible. If we return to the robbing case, it *could* be that the fact that Betsy’s driving is a helping to rob is a reason to drive. But this could only be true if it were permissible to rob, since it won’t count as a reason to drive that the driving is a helping to do something that is impermissible. So driving that can be taken as an *acting-as-though* helping were a reason to drive is thus *acting-as-though* robbing were permissible. And *that* is why the driving is an *acting-as-though* robbing is permissible.

In other words, it is not the *very fact* that the bank-robbing is impermissible that makes the driving impermissible. Rather, the moral landscape is more complicated. The driving constitutes complicity in the bank-robbing because the driving is a violation of Betsy’s deliberative duty to take reasonable care that others’ false beliefs are not formed nor confirmed on the basis of her conduct. The driving is a failure with respect to *that* duty because it amounts to *acting-as-though* robbing is

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<sup>24</sup> What about a case in which Betsy understands herself as driving Adam not to help him to rob a bank but only to, say, protect him from harm? Will she still count as *acting-as-though* Adam’s bank-robbing is permissible? I think we are unlikely to be able to make a determination in the abstract. The context of their relationship will matter, among other things. But one thing is certain: the content expressed by her action is not settled by her intention. So though she may only intend to protect Adam from harm, she may still *act-as-though* his bank-robbing is permissible. I am grateful to an anonymous reviewer for *Philosophical Studies* for pushing me on this point.

permissible. And it amounts to *acting-as-though* robbing is permissible because of the deliberative relevance of the permissibility of robbing to the decision about whether to drive. And finally, the permissibility of robbing is deliberatively relevant to the decision about whether to drive because driving could be understood as a helping, were helping something one had reason to do in this case. (And so driving communicates that one takes oneself to have reason to help and thus to think that the thing being helped is permissible.)

This is a significant step toward understanding moral complicity, but it also brings with that advance significant questions. Most centrally, *when* is it that the question of the permissibility of another agent's potential action is a consideration that bears on my own practical question of what to do or of whether to perform some particular action? Some core cases seem obvious, but cases at the margins are hard. More difficult still are cases in which the potentially complicit agent's actions send mixed messages. For example, imagine Betsy drives Adam to the bank-robbing but does so while talking to him the whole drive about all of the reasons bank-robbing is wrong. Here, Betsy still strikes me as complicit, but others have different intuitions. In fact, though, mixed intuitions about a case like this actually count in *favor* of the deliberative view. It is *both* difficult to generate agreement about Betsy's complicity *and* about her deliberative duty failure in a case like this, which is evidence that deliberative duty failure and complicity rise and fall together. It is not at all gray whether Betsy intentionally participates in or causally contribute to the robbing in a case like this: she definitely does.

Cases in which the primary action is one about which there is significant moral disagreement seem to raise their own sorts of difficulties, and I think this is because the disagreement itself makes it less clear what the action expresses. For example, suppose meat-eating is wrong, Betsy believes it is

wrong, and she drives Adam to pick up his lunch that includes meat. Is she complicit in his meat-eating? According to the deliberative view, this comes down to whether or not her driving him to pick up his lunch constitutes a failure in her deliberative duty. And it seems like her driving may or may not count, depending on the case and some of its features, such as the background of their deliberative relationship. Are they close friends? Are they in the habit of discussing moral issues with one another? If they *do* have a standard of such discussions, then an omission here may constitute a failure of Betsy's deliberative duty. But if they are not close, and they don't normally have such discussions, I expect that just a simple driving wouldn't constitute *acting-as-though* and so wouldn't constitute a deliberative duty failure. In future work I hope to think more explicitly about the question of how the content of the wrongful action can make a difference to complicity, including how wrongful it is and whether it is an area of substantive societal moral disagreement. Again, I expect that many will disagree about whether a particular case involves *acting-as-though* or deliberative duty failure. But note that this kind of substantive disagreement doesn't bear on the structural contention that deliberative duty failure is where we should look when considering questions of complicity.<sup>25</sup> In fact, if the very cases where we are unsure as to whether there is a deliberative duty failure are the same ones where we find it hard to tell whether there is complicity, that will actually serve as evidence in the deliberative view's favor.

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<sup>25</sup> We may, for example, disagree about individual cases and whether a particular content is salient in a particular context and between two particular agents. Scanlon makes a similar point about objections to his arguments defending contractualism. An objector might disagree with Scanlon's evaluation of what principles people could reasonably reject, but this would not be an objection to contractualism as such but only to Scanlon's evaluation of a particular case. Scanlon calls this kind of disagreement a "substantive disagreement," and I follow his use of the phrase (2000, 186, 205, 238).

What *is* a problem for the structural contention of the deliberative view, though, is if there are cases where we find complicity and no deliberative duty failure or deliberative duty failure and no complicity. For such cases would serve as counterexamples to the main contention of deliberative complicity—that deliberative duty failure is necessary and sufficient for moral complicity.<sup>26</sup> Recall *Silent Friend* from §3.

*Silent Friend*

Bernadette and Alice are friends. Alice is in a monogamous relationship and tells Bernadette that she is cheating on her spouse and lying to them about it. Bernadette says nothing to Alice about why Alice's actions are wrong.

I claimed above that in saying nothing, Bernadette failed in a deliberative duty she has to speak up against Alice's cheating. But one might object that Bernadette has no such duty. In some cases, it might be clear that Bernadette *does* have such a duty, such as when she has information Alice doesn't have or when it is clear that Alice is failing to appreciate the force of the information she does have. But there are not-unusual cases in which neither of these things is true. For example, in some cases, Alice will have just as much information as Bernadette does, already know that cheating is wrong, already know *why* cheating is wrong, and already know the force of that information. Further, Bernadette will know all of this about Alice. Or Bernadette may know that Alice will fully disregard any deliberative contributions she makes on the matter. In cases of either kind, an objector might worry, why should we suppose that Bernadette still has an obligation to contribute, even if she knows her contribution will be futile? In particular, the objector I have in mind here agrees that Bernadette is complicit in this second class of cases but *disagrees* that she has an interpersonal deliberative obligation

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<sup>26</sup> I am grateful to an anonymous reviewer for *Philosophical Studies* for pushing me on this point and for raising some of the cases I discuss in what follows.



to speak out against Alice's cheating. That is, the objector does *not* think that in cases like these interpersonal deliberative duty failure and moral complicity rise and fall apart. Rather, moral complicity is present but deliberative duty failure is lacking. If they are right about that, such cases raise a problem for understanding interpersonal deliberative duty failure as a necessary condition on moral complicity.<sup>27</sup>

I think it is a natural thought that we have no duty to speak up when we know that our speaking will not make a difference. But I think it is mistaken. I think that sometimes we *do* have an interpersonal deliberative duty to speak up or to object even if we know it will not make a difference. While fully exploring this idea is outside the scope of this paper, let me give some reasons for why I think the natural thought is mistaken. First, let me note that Lackey, too, thinks that the duty to object holds even when we know speaking up will not make a difference (2020, 36). Even if the views of those we are talking with are strong and unlikely to change, sometimes we should note our dissent anyway. Second, I think that often it is wrong of us to predict that those around us will act badly. That is, we should often hold open, in our own reasoning about what to do, how others will go on to act.<sup>28</sup> Of

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<sup>27</sup> And I *do* think that deliberative duty failure is both necessary and sufficient for moral complicity. But a reader who finds my response to this objection unconvincing need not despair of deliberative complicity altogether. If complicity is present in such cases without deliberative duty failure, deliberative duty failure could still be a sufficient condition for moral complicity. Then the best account of moral complicity would need to be some sort of disjunctive account between causal contribution, intentional participation, deliberative duty failure, and perhaps other conditions as well. I am a bit skeptical such an account can be made to work: for one thing, it is unclear that these different bases of complicity can be convincingly unified under a single concept. For another, I struggle to see how any of the *other* bases of complicity are well-positioned to capture Bernadette as complicit in the *very cases* about which the objector is concerned: she doesn't seem to intentionally participate, and it is hard to see how to count her (in a non-*ad hoc* sort of way) as making a causal contribution.

<sup>28</sup> Spelling out all of my reasons for thinking this would take us too far afield of the main argument. I have in mind that we should think of other people as *agents*, who can act for the reasons they have, rather than just as objects in the world whose behavior we can predict. This is a version of *Possibilism*, and these themes can also be found in the work of Julius (2013), Marušić (2015), Basu (2019), Shiffrin (2014) and Strawson (1962). To treat another person as an agent is part of what it is to adopt the subjective stance towards her.

course, sometimes others will act badly, and sometimes we are in a position to know this and need to take steps to mitigate the damages. But often we are *not* in a position to *know* (with certainty) that our saying something will not change their minds. Perhaps it will, to our surprise. So we should speak up, hoping that we might help them to see something they did not before. Third, sometimes fulfilling our duties has no obvious advantages that we can see. Sometimes it leads to seemingly no good consequences.<sup>29</sup> Sometimes we should tell the truth even though lying seems like it would make everyone happier.<sup>30</sup> Sometimes we should keep our promises even when our doing so is in no one's interests.<sup>31</sup> And sometimes we should object to the words or actions of others even when we expect that our objections are likely to fall on deaf ears. I expect not everyone will share my intuitions here, and I certainly haven't given much of an argument for them, but nonetheless I think that sometimes we do have a duty to speak up even if we know that speaking up will not make a difference.

But suppose one remains unconvinced and thinks that no such duty is in place and yet there is complicity in such cases. If one finds oneself in that position, it is true that the deliberative view of moral complicity will be unattractive. After all, it posits that deliberative duty failure and moral complicity rise and fall together, and these are cases where there seems to be complicity but no deliberative duty failure. Notice, though, that the competing accounts of moral complicity do not fare better with respect to these cases than the deliberative view. If it is true that the (potentially complicit) secondary agent knows that her speaking up will not affect the behavior or reasoning of the primary agent, it is hard to see how she can be understood to contribute causally to their wrongdoing.

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<sup>29</sup> Cf. Kant (1999).

<sup>30</sup> Cf. Shiffrin (2014).

<sup>31</sup> Cf. Owens (2012).

Similarly, it is hard to make out her failing to speak up as instances of intentional participation in that wrongdoing. Since she knows that speaking up would not change anything, it is hard to see her omission to speak as intentional participation or intentional contribution to the wrongdoing. It may be unclear and controversial whether there are deliberative duties in these cases, but it is quite clear that the other accounts fail.

Lastly, I think it is worth noting that the clearer we make it in a given case that there *is* moral complicity the harder it is to agree that the secondary agent has not failed in her deliberative duty. And the clearer we make it that she hasn't failed in her deliberative duty, the harder it is to agree that there is complicity. If Berndette says nothing whilst Alice describes her cheating, but she and Alice have in the past had extended conversations about why cheating on one's partner is wrong, then it isn't clear that she has failed in her deliberative duty. But it is also not clear that she is morally complicit. Those extended conversations in the past seem to constitute *both* deliberative duty fulfillment and a break from complicity.

This concludes my response to this difficult objection. I expect my reply is not wholly satisfying, but I think working through the details have helped to clarify my account. As a final note before I turn to the conclusion, I would like to address a lingering worry one might harbor about the driving case. Even if one is convinced that the permissibility of the robbing is deliberatively relevant to the question of whether to drive, it might still seem significant and important that not only did Betsy *act-as-though* robbing were permissible, she also *participated in* a robbing. In fact, it might even seem like if the deliberative view is right and she has failed in her deliberative duty, that is all well and good, but that just means she has done *two* things wrong: (1) fail in her deliberative duty and (2) participate

in a wrongful action. And isn't participating in a wrongful action worth worrying about, and perhaps even more important to complicity than deliberative duty failure?

Perhaps, but I am actually a bit skeptical. It seems to me that we might have good reason to want *distinct* moral categories when it comes to complicity and cooperation. And if that is right, it would give us one last reason for thinking that the deliberative view is distinctively promising. Suppose we are worried about Betsy's participation but a bit hesitant to call that participation complicity. Suppose instead that it strikes us as *cooperation*, where cooperation is a *distinctive* moral concept. The deliberative view allows us to make this kind of distinction, as between *deliberative complicity* and *cooperation*, and this strikes me as a virtue of the view. It doesn't entail that cooperation would never constitute complicity, since after all cooperation will often constitute *acting-as-though* the thing cooperated in is morally permissible. But cooperation and complicity can be made out as distinct moral concepts on this view, perhaps as moral concepts with different upshots to our moral life.

## **9. Conclusion**

Let's briefly revisit the cases from the beginning of the paper.

Silence sometimes constitutes complicity. We see this in cases of marches against, e.g. racial injustice. Think of signs with the words, "Silence is complicity." We see this in instances of sexual harassment, when we learn that many knew and said nothing. In cases like this we consider agents morally complicit *in virtue of their silence*. Flagrant injustices cry out for action, and at least sometimes remaining silent amounts to complicity in those injustices.

I said that philosophy owes us an account of how it could be that silence constitutes complicity, and I have argued that the deliberative view of complicity is such an account.

How could it be that remaining silent, failing to march, constitutes complicity in racial injustice? At least sometimes, failing to march constitutes complicity because failing to march *expresses* that injustice isn't bad enough to warrant marching, at least not by me, at least not today.<sup>32</sup> And when it *does* express that it isn't so bad *and I had a duty to express that it is so bad*, then failing to march will constitute a failure in one's deliberative obligation. And that failure will ground my complicity.

How could it be that knowing a colleague is engaged in sexual harassment and saying nothing constitutes complicity? Because one had an obligation to speak up and didn't: one failed in one's deliberative duty and so one is complicit.

Notice again that the deliberative view can vindicate the intuition that silence is complicity in these cases even if speaking up would not have changed what happened.

I won't pretend that no questions remain. Rather, it seems to me that they abound. In a good way. If we notice that what matters to complicity is deliberative duty failure, then we know to focus our moral

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<sup>32</sup> One might worry that there is an asymmetry between the case of political action and cases like *Silent Friend* and *Silent Board Member*. In *Silent Board Member*, for example, if Benedict says nothing, it seems quite clear that no one else will, either, and the corporation's bad behavior will continue. Given his unique position to help, we might think that he is obligated to disclose the wrongdoing of the corporation in a way that one is not in a singularly unique position to march against injustice. That is, one might worry that the Context of the two cases is sufficiently different to rule out a parallel analysis. I agree that the cases are different: collective responsibility and collective action cases raise their own sets of questions and problems that I hope to address in future work. I think the deliberative view is more promising for answering such questions than other views of moral complicity, since complicity in structural injustice does not seem to me to require intentional participation, and causation-based views struggle here as well. See, among others, Gardiner (2004; 2013), Hiller (2011), Kingston & Sinnott-Armstrong (2018), and Sinnott-Armstrong (2005). But it does seem to me that those who march against injustice and claim that "silence is complicity" *are* concerned about what their actions of "acting like normal" communicate about the injustice. And I think the deliberative view is well-positioned to capture that commitment.

and philosophical attention on determining our deliberative duties: what grounds them? Under what conditions are they in place? When is failure to fulfill them excused? I hope to address these questions in future work. For example, we might hope to know when it is that failing to march expresses that the relevant injustice isn't so bad. It doesn't seem like we can march every day, and yet sometimes it seems like we should. I hope to have shown that (1) these questions are important to complicity, (2) the deliberative view points us precisely in the direction of their importance, and (3) the deliberative view brings the space and resources to illustrate how social epistemology and speech act theory have implications for ethical theory of moral complicity. The deliberative view, that is, refocuses our energy and attention where they belong, on our obligations to one another to come to know the moral truth. By turning our attention toward our interpersonal deliberative obligations and away from a focus on our causal impact on the world or the consequences of our intentional action, a deliberative view of complicity can provide helpful resources as we set out to determine *when* and *why* silence amounts to complicity.

And when it does, we cannot stay silent. *We must speak.*

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