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Seumas Miller

Corruption and Anti-Corruption in Policing—Philosophical and Ethical Issues

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Introduction

Recent and not so recent commissions of inquiry into police corruption, including the Knapp Commission (1972) and the Mollen Commission (1994) into the New York Police Department, the Rampart Inquiry (2010) into the Los Angeles Police Department, Independent Police Complaints Commission (2015) inquiries into the London Metropolitan Police, the Fitzgerald Commission (1989) into the Queensland Police Service and the Wood Commission (1996) into the New South Wales Police Service, have uncovered corruption of a profoundly disturbing kind. Police officers have been involved in perjury, fabricating evidence, protecting pederast rings, taking drug money and selling drugs. In South Africa, police have been involved in murder, armed robbery and rape, as well as theft, fraud, fabrication of evidence, and the like (Burger 2011). In many police stations in India police corruption and human rights abuses, including torture, are endemic (Lamani and Venumadhava 2013). High levels of police corruption have been a persistent historical tendency in many police services throughout the world (Skolnick 1967; Kappeler et al. 1994; Newburn 1999; Sarre 2005). Corruption in policing is neither new nor especially surprising. Moreover, a number of causes of police corruption have been identified (Skolnick 1967; Wilson 1968; Newburn 1999; Sarre 2005).

In order to do their job effectively, police have been given a number of legal rights and de facto powers, including rights to use coercive force and instruments for doing so (e.g. handcuffs, handguns, tear gas), and wide discretion in the exercise of these rights and powers (e.g. to decide whether or not to embark on a criminal investigation). Moreover, police have many opportunities to abuse these rights and powers; for example, opportunities to harass the innocent with threats or trivial charges, or to turn a blind eye to serious crime (Klockars et al. 2004).

Police officers also face considerable temptations to avail themselves of these opportunities. They may be offered material inducements, such as the offer of money or favours in return for protection, or dropping of charges, for example. They may be tempted by the opportunity to express some personal prejudice, against (say) a particular racial group. Or they may be influenced by the chance to avoid what we could think of as the costs of police work. After all, a lot of police

work is dangerous, tedious or time-consuming. The temptation to take shortcuts to avoid these costs, or to seek benefits to offset these costs, is considerable.

The general concern in this book is with police corruption and the methods used to combat it. The principal institutional arrangement for preventing, combating and reducing corruption is a so-called integrity system (Alexandra and Miller 2010). Integrity systems can be contrasted with regulatory frameworks. A regulatory framework is a structured set of explicit laws, rules or, regulations governing behaviour, issued by some institutional authority and backed by sanctions. It may serve to ensure compliance with minimum ethical standards (namely those embodied in a law, rule or regulation), but this is only one of its purposes. There are numerous laws, rules and regulations that have little or nothing to do with ethics. An integrity system, by contrast, is an assemblage of institutional entities, mechanisms and procedures, the purpose of which is to ensure compliance with minimum ethical standards—notably requirements not to engage in corrupt activity—and to promote the pursuit of ethical ideals. So integrity systems have a regulatory component, but they involve more than this.

The key ethical notion underpinning integrity systems is that of collective moral responsibility (Miller 2006). All or most members of an institution or organisation are collectively morally responsible for seeing to it that ethical behaviour and attitudes are promoted and unethical behaviour, notably corruption, is prevented, eliminated or at the very least contained within reasonable limits. The notion of collective moral responsibility in play here is complex and operates at multiple levels, e.g. managers of anti-corruption units have specialist responsibilities others might not have.

An integrity system for a police organisation (Prenzler 2009) would consist in such things as:

1. Recruitment vetting process to exclude persons predisposed to crime, violence and other ethical misconduct;
2. Ethics training of recruits and ongoing professional ethics programmes for all officers;
3. Ethical leadership emphasis in training and promotion processes;
4. Fair and reasonable remuneration, promotion and other rewards processes;
5. Complaints and discipline system;
6. Welfare support systems, e.g. resilience building and stress management, substance abuse;
7. Risk management, intelligence gathering and early intervention systems;
8. Internal investigations department;
9. Pro-active anti-corruption intervention systems, e.g. targeted integrity testing;
10. Well resourced, independent, external oversight body with powers of investigation.

While the general area of concern in this book is with police corruption and anti-corruption, the focus is on certain key philosophical and ethical (or moral—these terms are used more or less interchangeably) issues that arise for police organisations confronting corruption. So the book is not a criminological work on

the specific varieties, contexts and causes of police corruption, nor is it an extended treatment of integrity systems for police organisations or best practice in anti-corruption methods.

The key philosophical and moral issues in question, and the chapters in which they are discussed, are as follows. In Chap. 1 a normative theory of policing is elaborated. It turns out that the principal institutional purpose of policing is—or, since this is a normative and not merely a descriptive theory, *ought to be*—the protection of moral rights, such as the moral right to personal security (e.g. not to be assaulted or killed) and the moral right to property. These moral rights are ones embodied, or ones that ought to be embodied, in the criminal law; these moral rights are, or ought to be, legal rights. Hence the close relationship between policing and the criminal law. This normative theory provides the framework within which police corruption can be identified and assessed. For ultimately unlawful and/or immoral failure on the part of institutional actors, such as police officers, is corruption precisely because it undermines institutional processes and purposes; and the more serious and widespread the corruption the greater the institutional damage.

Chapter 2 begins with an analysis of institutional corruption (Miller 2011). Corruption is at bottom a species of immorality, or so it is argued. Moreover, corruption needs to be distinguished from other forms of ethical misconduct. An analysis of police corruption, in particular, is then proffered; an understanding of police corruption being the necessary precursor to what follows in later chapters.

In Chap. 3 a very important species of police corruption is identified and elaborated, namely, the so-called noble cause corruption. This is corruption undertaken to achieve a good purpose, e.g. police planting additional 'evidence' on a suspect they know to be guilty in order to ensure a conviction. The phenomenon of noble cause corruption is a morally complex one and this complexity is often not well understood by police practitioners, lawyers, heads of commissions of inquiry, social scientists and others. Yet it is important that it be well understood if anti-corruption measures taken against it are to be successful.

Chapter 4 provides an account of integrity systems and, especially, those elements of integrity systems specifically concerned with anti-corruption. What is referred to as a holistic integrity system is argued for, and the various elements of such a system are identified. This chapter sets the scene for the remaining ones, since the moral issues to be discussed in these chapters arise from a number of the key elements of an integrity system for police organisations. The elements in question are internal investigations, integrity testing and professional reporting. As stated earlier, the key moral notion informing integrity systems is that of collective moral responsibility. Accordingly, Chap. 4 begins with an elaboration of that notion before applying it to the account of the holistic integrity system for police organisations.

Chapter 5 discusses the matter of the morality and rationality of professional reporting; police reporting on the corrupt behaviour of their fellow officers. Historically, the question of police reporting on police ('ratting'?) has been fraught. The so-called 'blue wall of silence' has been a barrier to such reporting and, therefore, to combating corruption in police services. The chapter includes a

discussion of the rationality underpinning the reluctance to report and identifies the problem as being in part a collective action problem. Framing the problem in this manner suggests an approach to dealing with it.

Chapter 6 is concerned with internal investigations and identifies the criteria for good internal investigations. This is especially important given the crucial role that internal investigations play in combating police corruption and given, also, that historically many internal affairs investigations have been highly problematic. On some occasions internal affairs investigations have been compromised by, for example, negligence or the leaking of confidential information; on other occasions, investigations have developed into politically driven exercises in scapegoating or into private vendettas.

The focus in Chap. 7 is on integrity testing of police officers; roughly, setting 'traps' for police officers suspected of corruption. This practice raises the important moral issue of entrapment; when are such traps morally impermissible (and when, therefore, should they be unlawful)? The chapter ends with an outline of the conditions under which integrity testing might be morally justified.

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Chapter 1
Criminal Law, Morality and the Institution of the Police

Abstract In this book a number of central philosophical and moral issues that arise in relation to police corruption are examined. In this chapter I elaborate a normative theory of policing according to which the principal institutional purpose of policing ought to be the protection of justifiably enforceable, legally enshrined, moral rights. Hence the close relationship between policing and the criminal law, on the one hand, and the protection of moral rights on the other.

At the core of policing is the criminal law; police have a key role in the enforcement of the criminal law. Accordingly, it is important to provide a theoretical or philosophical (as opposed to a purely descriptive or legal) understanding of the source, nature and function of the criminal law prior to providing a theoretical account of the institution of the police. This chapter begins with a discussion of the nature of criminal law and its relationship to social morality, in particular (Hart 1961). The second section describes the relation between law and fact. A normative theory of police institutions is then proffered. In the final section the notion of police independence is discussed.

1.1 Criminal Law and Social Morality

Since the theory or philosophy of criminal law is a large area of academic inquiry in its own right, this chapter will necessarily be introductory and somewhat selective in its focus.[1] Topics covered in this chapter include the relationship between the criminal law and morality, and the extent to which the criminal law has an objective basis. The objective basis in question pertains not only to the objectivity or otherwise of the moral principles the criminal law typically enshrines (as in the case of laws proscribing murder), but also to objectivity more broadly construed (such as the objectivity or otherwise of the scientific theory underpinning recent

[1]Earlier versions of the material in this chapter appeared in Chaps. 1 and 2 of Miller and Gordon (2014), Miller et al. (2005), Chap. 2, and Miller (2001), Chaps. 4 and 6.

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developments in DNA research). As will become clear, it is important for police to attend to the question of the objectivity or otherwise of the criminal law, since police are a critical element of the system of its enforcement. That is, police should only be enforcing the criminal law if it has an objective basis; merely subjective or fanciful prescriptions should not be enforced. But now the question arises: What is this objective basis?

Criminal laws, like other laws, are enacted by a legislature. Moreover, in a democracy by virtue of being laws passed by the duly elected representatives of the polity, criminal laws, like other laws, reflect the will of the citizenry.[2] However, it is often held that criminal laws, unlike many other laws, not only reflect the will of the legislators and those who elect them but also embody core *moral norms* of the community, i.e. socially accepted, morally significant, regularities in action. Here I need to draw attention to two sets of distinctions. The first distinction is between *subjective* social morality and *objective* morality. Subjective social morality is simply the moral principles and values that the members of some social group happen to believe in and comply with, e.g. the social morality of contemporary western society or that of cannibalistic tribes in Papua and New Guinea. Objective morality is the structure of moral principles and values that the members of a given society *ought to* believe in and comply with because it is *objectively correct* (in the circumstances that the members of the society in question find themselves in[3]).

Here I note that the notion of objectivity pertains to the truth/falsity or correctness/incorrectness of judgments, beliefs, claims, statements, principles, theories and the like, and stands in contrast with the notion of subjectivity (or relativism). Roughly speaking, subjectivism or relativism holds that there is no truth or correctness to be had in relation to some class of judgments, claims etc. Such classes of statements might include moral statements, empirical statements, mathematical statements and so on. As we will see some social scientists, for example, reject the objectivity of moral statements but accept the objectivity of empirical statements made by scientists.

The second distinction is between the descriptive claim that criminal laws *in fact* embody core socially accepted moral norms of a community (its basic social morality) and a related normative one, namely, that they *ought to* do so. Certainly, there are many criminal laws which embody widely held moral attitudes, e.g. laws against murder, assault and theft, and it is agreed on all hands that such socially accepted moral principles do play a central role in the criminal law.

However, in the light of these two sets of distinctions we can now differentiate between two *normative* claims that are sometimes conflated. The first of these is the one just mentioned, namely, that the criminal law ought to embody (subjective)

[2]At least ideally or by the lights of standard democratic theory. In practice, of course, many laws are in part reflective of powerful sectional interest groups who successfully lobby, or are otherwise able to influence, democratically elected governments.

[3]Widely different circumstances might require (objectively speaking) different social norms. This relativisation of norms to context is consistent with objectivity and, therefore, needs to be distinguished from relativism with respect to truth. See main text below.

social morality. The second helps itself to the notion of objective morality and states that the criminal law ought to embody *objective* morality.

These preliminary remarks suggest that the relationship between the criminal law and morality is a complex one and warrants further exploration. As we have seen, the criminal law and morality are closely related. Indeed, many people conflate the criminal law and morality—they think that every act of compliance with a criminal law is morally right, and every act that is morally right is an act of compliance with the criminal law. So if A assaults B without justification then A's act is both unlawful and immoral. And if C bribes D to win a large government contract then this act of bribery is both unlawful and immoral. Moreover, it is held that what makes such acts immoral is the fact that they are unlawful, rather than the other way around. This view is perhaps particularly common among people whose task it is to administer or enforce the criminal law, such as lawyers and police officers. It is, however, a view which should be resisted: first, because law and morality are not the same things and, second, because law to a great extent reflects morality rather than the reverse.

Law and morality are not the same thing. Laws have properties that moral principles and values do not necessarily have. Thus, for something to be a law, whether it be a criminal law or some other kind of law, it must have certain institutional properties not necessarily possessed by moral principles and values. For example, laws are enacted by some institutional authority, (e.g. a parliament), in accordance with some valid institutional process, (e.g. the legislative processes of the Australian parliament), and laws typically have an explicit formulation in a specified location, (e.g. a law which is an explicit directive in the English language in the statute books of the Australian parliament).

The criminal law to a considerable extent reflects morality rather than the reverse. Certain acts are made unlawful—specifically, count as breaches of criminal codes—because they are regarded by the community as being serious forms of immorality; that is, the criminal law reflects (subjective) social morality. Thus murder, rape and assault are unlawful in large part because they are regarded as profoundly immoral. Again, bribery is unlawful because it is regarded as a serious moral infraction. Further, at least some of these criminal laws not only reflect *subjective* social morality, they also reflect *objective* morality; presumably murder is a case in point.

Some forms of serious moral wrongdoing are not unlawful in some jurisdictions, even though they ought to be. Bribery is a case in point. Bribery is not unlawful in some jurisdictions; this might be because it is not regarded as a serious moral wrong in those jurisdictions, but rather as a practice that facilitates commerce or as a legitimate form of gift-giving or some such. On the other hand, arguably bribery in commercial dealings is, objectively speaking, a serious moral wrong because—let us assume—it actually undermines free and fair competition in the economic sphere and, as a consequence, does great economic harm. If so, then enacting laws against bribery would reflect objective morality, but not necessarily subjective social morality.

Because law and morality, specifically, objective morality, are conceptually distinct notions we find that not all laws are morally right. This is probably most clear in the case of repressive states such as Nazi Germany or South Africa in the apartheid era. In these states laws were enacted which discriminated against people on racial grounds. For example, blacks could not vote or own property. These regimes passed many laws that were valid qua laws, e.g. passed by the legislature according to the proper procedures, yet morally abhorrent. We also find that not all morally good actions are legally enforced and, indeed, not all morally good actions should be legally enforced. Parents should be kind to the children, but there is no law to this effect—nor should there be.

So law and objective morality are not the same thing; nor, for that matter, are law and subjective social morality the same thing. From this it follows that sometimes the requirements of law and morality can pull us in opposite directions. This potential conflict between the criminal law, on the one hand, and social morality and/or objective morality, on the other, raises issues of profound importance. Consider the laws prohibiting voluntary euthanasia or ones instigating mandatory sentencing of juveniles for minor crimes. Notwithstanding that it might be unlawful, should doctors engage in voluntary euthanasia in some cases, (e.g. terminally ill patients suffering great pain), especially if there is a widespread view in the community that they should? There is evidence that some doctors do just this, and do so in violation of the law. What of judges, lawyers and police in relation to crimes that they know are subject to mandatory sentencing? Should police officers on occasion turn a blind eye to an offence subject to mandatory sentencing, if they know that the outcome of making an arrest in such an instance will be far worse for all concerned, including the community? More generally, should police themselves on occasion breach the law for the greater good?

Notwithstanding the fact that law and morality are not necessarily the same thing, it is nevertheless true, at least in the case of the criminal law, that law and morality often coincide. Here I have in mind the coincidence not only between the criminal law and subjective social morality, but also between the criminal law and objective morality. For example, there are laws against theft, fraud, assault and murder, and theft, fraud, assault and murder are both widely believed to be morally wrong and morally wrong as a matter of objective truth.

This coincidence or overlap between much of the criminal law and central moral principles suggests that an important purpose of the criminal law is to maintain a community's minimum moral standards (Devlin 1968). Naturally, some of these are contentious, and as society undergoes change some of these hitherto socially accepted, moral norms change. For example, moral attitudes in relation to homosexuality have changed. However, there is evidently a core of widely accepted, moral norms that there is reason to believe will never change or ought not to change, e.g. the right to life and physical security, and freedom of thought and speech; presumably, these are in part constitutive of objective morality. But how do we demarcate those moral norms which ought to be criminalised from those which ought not; and do so on an objective basis?

One historically important attempt within the liberal tradition to delimit on an objective basis the sphere of moral norms which ought to be enshrined in the criminal law does so by recourse to the principle not to harm others famously espoused by J.S. Mill (Mill). Here it is assumed with some plausibility that the notion of harm can be objectively specified. Certainly physical harm can be objectively specified, as can some forms of psychological harm. Thus a form of behaviour, on this view, ought to be criminalised only if it consists in harming others and, specifically, seriously harming others and doing so deliberately (or at least recklessly or negligently).[4] Naturally, others might consent to being harmed, e.g. professional boxers, or the harming in question might be morally justified, e.g. harming in self-defence. If so, then the harming in question presumably ought not to be criminalised. So let us restrict the 'Don't harm others' principle to acts of moral wrongdoing which consist of seriously harming (non-consenting) others without adequate justification, albeit we cannot here embark on the project of specifying what counts as serious harm or an adequate justification (Feinberg 1987).

This view has been subjected to various criticisms including the need to criminalise behaviour which consists in failing to assist others who are suffering severe deprivations (as opposed to harming them), e.g. behaviour which consists in refraining to pay taxes the purpose of which is to provide medical and other welfare benefits to the needy.[5] In short, the criminal law should attend not simply to serious harm causing but also to omissions in respect of serious deprivations.

Accordingly, another way to delimit the sphere of moral norms which ought to be enshrined in the criminal law is by recourse to the notion of moral rights with respect to serious harms and deprivations, specifically so-called basic moral rights (Shue 1984). Basic rights are those moral rights the enjoyment of which is necessary for an ordinary human being to be able to exercise their basic liberties and satisfy their basic needs in a social setting; basic rights would include the right to physical security, food, water, shelter, essential medical assistance, elementary education, access to work opportunities that would enable a person to provide for themselves and their children, freedom of movement, thought, communication, and of association with others etc.

[4]The idea, roughly speaking, is that (other things being equal) one's action is morally wrong if one intentionally harms another (and one's intention is under one's control) or one knowingly causes harm to another (and could have done otherwise) or one unknowingly causes harm to another, could have done otherwise and should have known that one's action would cause the harm in question. For a detailed recent account of causation and responsibility in the law and morality see Moore (2009). On the more specific notion of collective moral responsibility see Miller (2006).

[5]Taxes typically provide for goods to which the citizenry have basic rights and goods to which they do not. On the view under consideration there would presumably be a different moral justification for the enforcement of taxes to provide for goods in respect of which the citizens did not have basic rights, i.e. to pay taxes above and beyond those required to ensure basic rights are respected.

Notice that the moral rights in question include many enshrined in human rights legislation and like documents, including the Universal Declaration of Human Rights. Here I need to stress the above-described distinction between the moral and the legal and, in this instance, between moral rights and legal rights. Although something might be a legal right and, indeed referred to as a legal *human* right—for example, in some legal instruments workers have what is referred to in these documents as a *human right* to a paid holiday (Article 24, Human Declaration of Human Rights)—it is a further question as to whether it is in fact a moral right. Moreover, as will become evident below there is a distinction to be made within moral rights between human (moral) rights—moral rights one has qua human being, such as the moral right not to be tortured—and institutional (moral) rights—moral rights one has in part by virtue of institutional arrangements, such as the right to a fair trial (Nickel 2007, Chap. 1).[6]

Notice further that the rights in question are not restricted to rights not to be harmed by others; they include rights to assistance of various kinds when one is suffering severe deprivations, e.g. rights to food when one is starving. Notice further that the rights in question can plausibly be given an objective basis in terms of the notion of harm (as we saw in relation to the 'Don't harm others' principle) and also the notion of the basic needs of a human being in a social setting. This can be done notwithstanding the vagueness of the boundary between basic and non-basic; after all, there is a perceptual distinction between the colour black and the colour white notwithstanding the existence of the colour grey. The idea here would be that behaviour which consists in the violation of basic moral rights ought to be criminalised. In so far as the violation of basic rights typically involves harming someone then this conception captures a central moral intuition of the earlier 'Don't harm others' view. However, it is wider than this in that it includes rights to assistance when one is suffering severe deprivations.[7]

This rights-based view will be open to criticism from those who object for a variety of reasons to positive rights and, especially, to the enforcement of positive rights. Elsewhere I have elaborated a normative theory of institutions which tries to deal with this kind of objection (Miller 2010). This rights-based view can also be criticised for making the standard for criminality too restrictive; surely there is behaviour above and beyond that which violates basic rights which ought to be criminalised. For example, should not the wilful destruction or damaging of cultural objects, such as ancient cave paintings, be criminalised? Evidently, the notion of a moral right in play here needs to be extended to include moral rights above and beyond basic rights.

On the other hand, if this view is adjusted so that it includes all moral rights then it can be criticised for making the standard for criminality too permissive. For there are some moral rights the violations of which ought not to be criminalised;

[6]The terminology used to refer to these various categories of legal and moral rights can be confusing.

[7]Or at least rights to such assistance when it can be relatively easily provided.

specifically, moral rights the violations of which do not consist in causing serious harm and/or do not entail serious deprivation. Perhaps under a university's rules governing a series of public lectures on controversial topics the main speaker has a right of reply to his or her commentator/critic. Suppose a particular speaker agrees (informally) to do her public lecture only on condition that she can exercise her right of reply. Suppose further that the chairperson arbitrarily refuses to allow the speaker to exercise their right of reply. Surely we would not want to criminalise such a minor rights violation.

What criterion ought we to use to adjudicate between moral rights the violations of which ought to be criminalised and those for which this is not the case? We have already helped ourselves to the notion of rights violations which consist of causing serious harms and/or ones which entail serious deprivations. Accordingly, the question becomes: What criterion can be use to demarcate rights violations involving serious harms/deprivations—ones which, therefore, warrant criminalisation—from less serious ones (ones which do not warrant criminalisation)?

Ultimately, the harms/deprivations in question will have to be subject to scrutiny on a case by case basis. However, one possible general criterion is morally justifiable enforcement (understood as coercive enforcement). If the violations of a right are regarded as sufficiently egregious to warrant coercive enforcement then the right in question is, at least prima facie, of sufficient moral weight for violations of it to warrant criminalisation.

Here there are three points to be made. First, the level of coercive force that is morally justified is on a sliding scale depending on the moral weight that the right has. For example, the right to life justifies the use of lethal force in its enforcement, but minor property rights might only justify the use of non-lethal force in their enforcement. Second, aggregated violations of a right might justify a high level of coercive enforcement, even though one-off single violations do not, (e.g. the use of rubber bullets against a mob engaged in looting might be justified, but not such use against a single offender). Third, an agent might perform an action which is not in itself a direct rights violation but which is, nevertheless, an action that the agent knows, or should know, will indirectly cause harmful or other rights violations, (e.g. provoking others to commit unjustified violence). Various acts which cause damage to institutions, such as bribery and abuse of authority, evidently fit into this category. Use of coercive force in relation to such indirectly harmful actions might well be morally justified.

Here I note the distinction between moral rights and other kinds of moral or ethical consideration. An obvious contrast here is between behaviour in compliance with rights and behaviour expressive of virtue. Kind or generous behaviour is an expression of the virtue of kindness or generosity. One person does not necessarily have a moral *right* to another person's kindness or generosity, notwithstanding that it is a good thing to be kind or generous. Another contrast is between moral rights and intended or otherwise aimed at good outcomes. Perhaps it is a bad thing not to assist one's profligate friend by assisting with their rental payments; a bad thing because the friend will be forced to seek accommodation with his ageing parents

who already live in cramped quarters. But surely one's friend does not have a moral *right* to such financial assistance.

I have distinguished between basic moral rights and (in effect) non-basic moral rights. A further distinction which cuts across this one is that between human rights and institutional rights (some basic rights are human rights but some are evidently institutional rights, e.g. the right to an elementary education). Human rights are moral rights that individuals possess solely by virtue of properties they have as human beings, e.g. the right to life and the right to freedom of thought (Miller 2003).[8] Institutional (moral) rights are moral rights that individuals possess in part by virtue of rights-generating properties that they have as human beings, and in part by virtue of their membership of a community or morally legitimate institution, or their occupancy of a morally legitimate institutional role with specific moral purposes definitive of it. Thus the right to vote is an institutional right, since it exists in part by virtue of possession of the rights-generating property of autonomy, and in part by virtue of membership of a political community. Again, the right, indeed duty, to arrest and detain someone for assault is a moral right and duty possessed by police officers which is not necessarily possessed by ordinary citizens in the same circumstances. This institutional right and duty is derived from the moral purpose definitive of the role of a police officer, namely, to protect the rights of citizens and, in this particular case, to protect the right of the victim not to be assaulted. This latter right of the victim is not merely a legal right but also a moral right and, indeed, a human right (in the sense of a moral right possessed by virtue of being a human being[9]).

Moreover, we are assuming the following properties of the moral rights in question.[10] First, moral rights generate concomitant duties on others, e.g. A's right to life generates a duty on the part of B not to kill A. Second, human rights and some, but not all, institutional moral rights, are justifiably enforceable, e.g. A has a right not to be assaulted by B, and if B assaults or attempts to assault A, then B can

[8]The intuitive idea is that there are certain properties that individual human beings possess that are at least in part constitutive of their humanity. Naturally there is room for dispute as to what these properties are; indeed, some putative properties might be criteria rather than defining properties. Moreover, while some putative properties, e.g. the capacity to reason, are more salient than others, e.g. the capacity for bodily movement, I do not have a worked-out theory to offer. However, the main point to stress here is that the properties in question are ones that are held to have *moral* value, e.g. individual autonomy or life. This conception is consistent with a view of human beings as essentially social animals.

[9]Note that a human right in my sense is not merely a right enshrined in human rights documents, such as those promulgated by the United Nations.

[10]Typically, a distinction is made between so-called claim rights (e.g. one's right not to be killed) and so-called liberty rights (e.g. a right to sit on a park bench in a public area). If A has a claim right to x then B has no right to x and, indeed, B has a duty to refrain from taking x (or otherwise interfering with A's enjoyment of x). If A has a liberty right to x then B may well also have a liberty right to x. However, B has a duty to refrain from preventing A from exercising A's right to x (other than incidentally by B exercising B's right to x).

legitimately be prevented from assaulting A by means of coercion.[11] An example of a justifiably enforceable institutional moral right is the right to vote; it ought to be a criminal offence to prevent someone from exercising their right to vote. Again, it ought to be a criminal offence to commit perjury in a court of law, even in a civil case in which the matter in dispute involved no criminal behaviour. Arguably, the underpinning moral rights in play here are those of the citizenry with respect to those who appear before their courts. Third, bearers of human rights, in particular, do not necessarily have to assert a given human right in order for them to possess it, and for the right to be violated, e.g. an infant may have a right to life even though it does not have the ability to assert it (or for that matter to waive it).

Above I distinguished between law and morality (and within morality between moral rights and other moral phenomena). Moreover, I have argued that the criminal laws can usefully be understood as embodying justifiably enforceable moral rights not to be seriously harmed or suffer serious needs-based deprivations, and that the latter moral rights are objective in character. It follows that I have provided, at least in principle, an objective basis for the content of the criminal law. However, this is not the end of the matter, since the criminal law has various other dimensions, (e.g. a semantic dimension in so far as laws need to framed in a language and interpreted), and relies for its application on non-legal considerations, (e.g. testimonial evidence), and these, it might be argued—being necessarily subjective in character—continue to threaten any claim that the criminal law is objective, even in principle. Accordingly, I need to further discuss the (alleged) subjectivity of the criminal law, notably in relation to so-called facts, and the important distinction made by the courts between law and fact. Given the already established relation between criminal law and morality, this will in turn raise the question of the distinction between morality and fact.

1.2 Law, Morality and Facts

Thus far I have explored the relation between the criminal law and morality, including the extent to which the moral principles typically enshrined in the criminal law are objective and, therefore, the extent to which the criminal law might have an objective basis. A good deal of our discussion has centred on the notions of moral rights, harms and severe deprivations as potential sources of objectivity in this regard. It is now time to bring in other dimensions of the criminal law, notably the relations between laws and facts (so-called), albeit once again with an eye to the objectivity or otherwise of the criminal law.

[11]Note that we are here asserting a *normative* conceptual connection between *human* rights and enforcement. We are not making the more familiar (and controversial) claim that for something to be a moral right, it must be able to be enforced. Here it is also useful to distinguish between different orders of rights and duties. For example, arguably the right to life gives rise to the duty not to kill, but also the duty to protect someone from being killed.

The distinction between fact and law is a familiar one made in a variety of criminal justice contexts. Thus in jury trials juries are supposed to adjudicate on questions of fact, judges on questions of law (and give direction to juries to enable the latter to arrive at their final verdicts). Of course in one sense the existence of a law is itself a fact of sorts, and so perhaps the distinction is really between legal and non-legal facts.

Here I need to distinguish further between, on the one hand, a legal fact in the sense of a law or other legal instrument which actually exists (as opposed to, for example, an imaginary law or one that some person falsely believes to exist) and, on the other hand, a state of affairs which is not in itself a law (or other legal instrument) but which is specified, or otherwise referred to, by a law, e.g. lawful or unlawful behaviour. What, then, is this distinction?

On the one hand, there are particular (as opposed to general), concrete (as opposed to abstract) facts. An example is the fact (let us suppose) that John J. Jones III is driving his red Ford Fiesta with licence number ABC123 at 55 m.p.h. in the built-up area of downtown Boston, USA on Monday 1st January 2012 at 11 am. On the other hand, there is the content of laws, including with respect to driving motor-vehicles. Consider, for example, a law that states that car-drivers ought to drive under 60 m.p.h. in built up areas.

The first point to notice is that the form of this law is normative (as opposed to descriptive). Accordingly, it does not just describe or refer to some fact or facts with respect to driving behaviour; it prescribes or proscribes certain forms of driving behaviour. The second point is that the content of this law refers not simply to a particular, concrete fact, such as the one mentioned above involving John J. Jones III. Rather the content of the law is general and abstract. As such it refers to a whole set of potential concrete facts involving different drivers, cars, locations and times. The third point is that the law divides this set of potential concrete facts into two categories, namely, lawful states of affairs and unlawful ones, depending on whether the drivers in question are driving above or below 60 m.p.h.

If the content of a law is able to categorise particular, concrete facts in this manner then it must do so in large part, if not wholly,[12] by way of the semantic meaning of this law in a particular language, such as English. Notice that the same facts could be referred to by a law in French as well as a law in English. This raises the question of the interpretation of laws: what is the precise meaning of the law (in some language) in some specific context of application?

This is a complex issue which cannot be dealt with in any detail here. Suffice it to say that although there is some room for vagueness in respect of the meaning of given laws, there needs to be a verifiable fact of the matter in relation to what any given law states and, in particular, what the legislators who enacted the law *intended* it to mean; that is, there must be verifiable semantic and associated psychological facts. The associated psychological facts in question include *intended*

[12]No doubt the legal context, including other laws, plays a role here.

meanings, e.g. the meaning of the law that was intended by the legislators who enacted the law. For if this were not so then citizens would not have a common and correct understanding of the content of laws and, therefore, could not reasonably be expected to comply with the law. So on pain of the citizenry not being able to comply with the law there must be legal facts in the sense of objectively verifiable interpretations of the law.

Notice that for the same reason there must also be objectively true statements of logic or reason. For if the citizenry is to be able to comply with the law, then each citizen must not only be able to understand the meaning of given laws, each must be able to apply the law to him or herself on particular occasions. Such application involves a process of deduction or logical inference-making, albeit often of a quite straightforward kind. Here is an example: (1) The law proscribes persons with a blood alcohol level above 0.5 from driving; (2) I now have a blood alcohol level above 0.5; Therefore, (3) The law proscribes me from driving at this time. So on pain of the citizenry not being able to comply with the law there must be objectively true statements of logic and, specifically, logical inferences that are objectively true (or objectively false).

Thus far in this section I have discussed the distinction between laws and fact, yet seen that laws are in a range of important ways themselves factual. Let me now turn more directly to a consideration of the notion of a fact. Facts are often contrasted with theories. Facts are also contrasted with values—moral values, in particular. What is this contrast or set of contrasts? Roughly speaking, factual statements supposedly describe independently existing states of affairs that are, at least in principle, verifiable (and/or falsifiable); these states of affairs exist independently of anyone's judgement, belief or statement that they exist or do not exist. Accordingly, a factual statement is objectively true (if the state of affairs exists) or false (if it does not). The paradigm cases are statements about ordinary, middle-sized, physical objects and their causal relations with one another, e.g. the gun discharged a single bullet which entered the head of the victim killing him instantly. Such states of affairs obtain (or do not obtain) quite independently of whether or not anyone judges, believes or states—let alone desires or hopes—that they obtain (or do not obtain). Indeed, the truth or falsity of any such judgement, belief or statement itself depends on the obtaining (or not obtaining) of the state of affairs in question.

Earlier we distinguished between objectivism and subjectivism with respect to truth and falsehood. If someone holds that a class of statements is objectively true or objectively false then that person is an objectivist with respect to that class of statements. Subjectivists hold the contrary view, namely, that with respect to a given class of statements there is no objective truth or falsehood. So most people are objectivists with respect to statements about the ordinary physical world. Moreover, we have seen reason to hold that moral beliefs can be provided with an objective basis, e.g. by recourse to the notion of harm and/or of needs-based moral rights. Accordingly, moral beliefs can be true or false, and the behaviour that they prescribe or proscribe, can be objectively correct or incorrect. That said, many

people, especially social scientists, claim to be subjectivists with respect to moral beliefs and statements of moral value.

I cannot pursue these philosophical issues here (Alexandra and Miller 2009, Chap. 2). Nevertheless, it is important to understand what is potentially at stake for criminal investigations in these controversies between objectivists and subjectivists. If subjectivism with respect to facts about the ordinary physical world were true then presumably investigators could simply make it up as they go along; there would be no fact of the matter for them to discover. Criminal investigation would simply be a species of 'creative writing'; the distinction between fact and fiction would have been extinguished. Perhaps this obvious 'downside' of subjectivism with respect to facts about the physical world explains why its advocates are few and far between. What is perhaps less obvious is that subjectivism with respect to theories (theory subjectivism), and ultimately moral value claims (moral subjectivism), is also problematic.

Theoretical claims are likely to be regarded as objectively true to the extent that they are based on, for example, objectively true empirical, e.g. observational, claims about the ordinary physical world. So scientific theories in relation to DNA, for example, are at least in large part based on empirical evidence. More generally, if there are physical *and* psychological statements of fact (e.g. with respect to human intentions and beliefs), and if there are logically valid processes of reasoning (as we saw above), then there is no barrier to there being objectively verifiable theories, namely, theoretical claims that are derivable from physical and psychological facts on the basis of principles of logical reasoning (including not only deduction but also induction). If so, then subjectivism with respect to theoretical statements is false, and objectivism is true.

Of course, subjectivism with respect to theoretical claims, but not observational claims, seeks to sever the connection between the theoretical and the empirical and, thereby, undermine the objectivity of theoretical claims. If it were to succeed there would be profound implications for criminal investigations. For example, the use of DNA evidence by investigators and courts would no longer be tenable, if the scientific theories upon which this use is based were no longer regarded as being objectively true.

In the last section I outlined some candidates for providing an objective basis for the criminal law, namely, the notions of harm and that of needs-based deprivations (in so far as these harms and needs-based deprivations are ones that generate enforceable moral rights). I am not going to revisit those arguments here. Rather I conclude this section by pointing to the implications of moral subjectivism for criminal investigations, given the relationship between the criminal law and moral principles outlined in the last section. Specifically, moral subjectivism threatens to undermine the authority of criminal law by undermining the objectivity of the moral principles upon which the criminal law is based.

If, for example, the moral principle that it is wrong to kill the innocent is not objectively true, indeed no more true than the contrary principle that it is morally right to kill the innocent, then the legitimacy of the law prohibiting the killing of the innocent is called into question. Now consider penal sanctions, such as

imprisonment. Unlike many social rules, non-compliance with criminal laws is intended to have, and often does have, quite profound consequences, notably loss of freedom. It is surely problematic, to say the least, to hand out a lengthy prison sentence for non-compliance with a law proscribing some form of behaviour unless there is an objective basis for enacting that law in the first place. If there is no objective basis for believing the behaviour in question to be morally unacceptable, how can we reasonably take away someone's freedom for engaging in that behaviour? Fortunately, as we saw above, there are objective bases, e.g. the behaviour in question is extremely and verifiably harmful, and to this extent we can justifiably enact laws proscribing such behaviour and apply sanctions to those who breach these laws.

1.3 A Normative Theory of Policing

Thus far I have distinguished law and morality, and have discussed the relationship between, in particular, the criminal law and moral principles. In doing so I have offered some candidate objective bases for criminal law and, therefore, the enforcement of the criminal law, namely, harms and needs-based deprivations which generate enforceable moral rights. I now need to turn to a consideration of the role of the police with respect to the criminal law (and, therefore, with respect to those moral principles that are and ought to be embodied in criminal law).

On the account proffered above, the criminal law exists to protect certain moral rights and, therefore, arguably the central and most important moral purpose of police work is to protect these same moral rights, albeit a purpose whose pursuit ought to be constrained by the law (Miller 2010, Chap. 9; Miller and Blackler 2005, Chap. 1, Miller et al. 2006, Chap. 3; Miller and Blackler 1995, Chap. 3). So while police institutions have other important purposes that might not directly involve the protection of moral rights, such as to enforce the adjudications of courts in relation to disputes between citizens, or indeed themselves to settle disputes between citizens on the streets, or to ensure good order more generally, these may well turn out to be purposes derived from the more fundamental purpose of protecting moral rights, or they may well turn out to be (non-derivative) secondary purposes. Thus laws against speeding derive in part from the moral right to life, and the restoring of order at a football match ultimately in large part derives from moral rights to the protection of persons and of property. On the other hand, service of summonses to assist the courts is presumably a secondary purpose of policing.[13]

This conception of policing is a teleological conception; it is a conception in terms of the ends or goals of policing (Miller 2001, Chap. 6, 2010, Chap. 9). Moreover, it is a teleological conception according to which the most important end

[13]Naturally I acknowledge that many laws do not derive from moral rights, and also that those that do often do not do so in any straightforward manner.

or purpose of policing is the protection of moral rights. On this view while police ought to have as a fundamental purpose the protection of moral rights, their efforts in this regard ought to be constrained by the law. In so far as the law is a constraint, at least in democratic states, then my view accommodates "consent" as a criterion of legitimacy for the police role (Kleinig 1996, Chap. 2).[14] However, on my view legality, and therefore consent, is only one consideration. For I am insisting that police work, including police investigations, ought to be guided by moral considerations, namely, moral rights, and not simply by legal considerations. This enables me to avoid the problems besetting normative theories of policing cast purely in terms of law enforcement, or protection of the State, or even peace-keeping (Kleinig 1996, Chap. 2; Bittner 1980; Neyroud and Beckley 2001, Chap. 2). Such theories are faced with the obvious problem posed by authoritarian states, or at times even democratic states, that enact laws that violate human rights, in particular—human rights being, as we saw above, a species of moral rights. The police officers in authoritarian states simultaneously violate human rights, and abrogate their primary professional responsibility as police officers to protect human rights. Here we need to keep in mind the distinction between normative and descriptive accounts. *Normatively* speaking, the professional role of police officers, whether they be in liberal democracies or in authoritarian states, is to protect human rights. Of course, in practice in authoritarian states (and, on occasion, in liberal democratic states) the de facto police role is to repress rather than protect human rights; in these states repression rather than protection is the correct *description* of what police in large part actually do. However, the point to be stressed here is that the police role morally ought not be to repress; it morally ought to be to protect, including in authoritarian states.

Further, I reiterate that on the view that I am advocating, police engaged in the protection of moral rights ought to be constrained by the law, or at least ought to be constrained by laws that embody the will of the community in the sense that: (a) the procedures for generating these laws are more or less universally accepted by the community, e.g. a democratically-elected legislature, and; (b) the content of the laws are at least in large part accepted by the community, e.g. they embody general policies with majority electoral support or reflect the community's moral beliefs.[15]

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[14]I acknowledge that in common law countries the law reflects tradition, and therefore perhaps "consent" in another sense.

[15]Here I am assuming that large fragments of a legal system can consist of immoral laws, and yet the system remain recognizably a legal system. See Dworkin (1998, p. 101). I am also assuming that for a legal system to express the admittedly problematic notion of the will of the community, it is at least necessary that the overwhelming majority of the community (not just a simple majority) support the content of the system of laws taken as a whole—even if there are a small number of individual laws they do not support—and support the procedures for generating laws, e.g. a democratically-elected legislature. (See Miller 2001, pp. 141–151.) Finally, I am assuming that the fact that a party or candidate or policy or law secured (directly or directly) a majority vote is an important (but not necessarily decisive) consideration in its favour, and a consideration above and beyond the moral weight to be given to the existence of a consensus in relation to the value to be attached to voting as a procedure.

So I am in part advocating a broadly contractarian moral constraint on policing, namely the consent of citizens; although by my lights consent is not the *raison d'être* for policing, rather it provides an additional (albeit necessary) condition for the moral legitimacy of police work. Moreover, I am refraining from providing police with a licence to pursue their (possibly only individually) subjective view of what counts as an enforceable moral right. What counts as an enforceable moral right is an objective matter. Nevertheless, some particular person or group has to specify what are to be taken to be enforceable moral rights and what are not to be so taken; and in my view ultimately this is a decision for the community to make by way of its laws and its democratically-elected government. Here I take it that in a properly constituted democracy, the law embodies the will of the community in the sense adumbrated above. Moreover, I can further distinguish between local, regional and national communities, especially in states that have sub-national elected bodies such as local councils. This enables me to give substance to notions of community-based policing or partnerships between police and local communities. For at the sub-national level, and especially the local level, it becomes feasible for police to consult and work with communities to address law enforcement issues in a consensual manner (Goldstein 1990; Brandl and Barlow 1996: 86).[16]

There is a further point to be made here. The law concretises moral rights and the principles governing their enforcement, including human rights as well as institutional moral rights. To this extent, the law is very helpful in terms of guiding police officers and citizens in relation to the way that abstract moral rights and principles apply to specific circumstances. For example, there is a human right to life that can be overridden in accordance with certain moral principles, such as self-defence or defence of the lives of others. However, it is the laws governing the use of deadly force by police officers that provide an explicit and concrete formulation of these moral rights and principles, and thereby prescribe what is to be done or not done by police officers in specific circumstances.

In short, in my view police ought to act principally to protect certain moral rights, those moral rights ought to be enshrined in the law, and the law ought to reflect the will of the community. Should any of these conditions fail to obtain, then there will be problems. If the law and objective (justifiably enforceable) moral rights come apart, or if the law and the will of the community come apart, or if objective moral rights and the will of the community come apart, then the police may well be faced with moral dilemmas. There are no neat and easy solutions to all such problems. Clearly, if the law and/or the citizenry require the police to *violate* moral rights, or at least not to uphold them (e.g. health and safety legislation forbidding personnel to put themselves at risk to save the lives of others under some circumstances) then the law and/or the citizenry will be at odds with the fundamental purpose of policing. Accordingly, depending on the circumstances, the police may well be obliged to disobey the law and/or the will of the community.

[16]Moreover, community-based policing might reconstitute itself as problem-based policing, and thereby be more effective.

On the other hand, what is the appropriate police response to a citizen violating someone else's objective moral right in a community in which the right is not as a matter of fact enshrined in the law, and the right is not supported by the community? Consider, in this connection, the moral right of girls not to suffer female genital mutilation in a community in which this practice has widespread support and is lawful; or consider women's rights to freedom of movement and to education under an extremist fundamentalist religious regime such as the former Taliban regime in Afghanistan or ISIS (Islamic State in Iraq and Syria) (Rashid 2001, Chap. 8). Under these kinds of circumstance, an issue arises as to whether police are morally obliged *qua* police officers to *enforce* respect for the moral right in question, notwithstanding that the moral right in question is not legally enshrined or socially accepted; indeed, police officers in such jurisdictions might be instructed by their superiors, or even legally required, to intervene to ensure that these moral rights are violated, e.g. to ensure that female genital mutilation takes place and to enforce restrictions on womens' freedom of movement and access to education. Again, I suggest that police officers may well be morally obliged not to violate these moral rights and, indeed, to intervene to enforce respect for these moral rights.

Normatively speaking then, the protection of fundamental moral rights—specifically those *justifiably enforceable* moral rights enshrined in the criminal law—is the central and most important purpose of police work, including police investigations. As it happens, there is increasing recourse to human rights legislation, in particular, in the decisions of domestic as well as international courts. For example, in accordance with the European Convention on Human Rights and its enabling UK legislation, the Human Rights Act of 1998, police in the UK are now *explicitly* required to comply with the principle of proportionate use of force and this principle is enshrined in their use of firearms guidelines.

Recourse to human rights legislation is an interesting development. However, it must also be pointed out that the criminal law in many, if not most, jurisdictions already in effect constitutes human rights legislation. Laws proscribing murder, rape, assault and so on, are essentially laws that protect human rights, as are longstanding domestic laws governing the rights of suspects, e.g. with respect to police use of force. So, for example, prior to the above-mentioned UK Human Rights Act of 1998, there was an understanding and (at least) implicit commitment of UK police to the principle of the proportionate use of force.

I also note that whatever the historical importance of the "Statist" conception of human rights—human rights as protections of the individual against the State—such a conception is inadequate as a *general* account of human rights. As laws against murder, rape, assault and so on illustrate, human rights in particular, and moral rights more generally, also exist to protect individual citizens from their fellow citizens, and individual citizens from organisations other than the organisations of the State.

1.4 Police Independence

Evidently, police need to have a considerable degree of operational autonomy, if they are properly to discharge their functions of investigating crime. This is partly a matter of efficiency and effectiveness; the police are, or should be, not simply competent practitioners but (so to speak) the experts. It is also in part a matter of the need for institutional independence. Politicians, for example, need to be subject not only to an independently adjudicated law, but also to an independently enforced law. If a powerful politician, or powerful group of politicians, act unlawfully, the police must investigate, arrest and charge them. In order to ensure that the police effectively carry out these investigative tasks in relation to government, the police need to have a substantial degree of institutionally-based independence from government. Naturally, what must go hand in glove with independence is accountability; police must be held accountable for the exercise of their independence. In short, there are four interconnected notions: (1) operational autonomy; (2) competence (indeed, expertise); (3) institutional independence; (4) accountability.

An important complicating factor in relation to this four way nexus is the need for police organisations to be responsive to government; after all, government will have, and need to have, security policies and it is a function of police organisations to implement these policies. The point to be made here is that this need for responsiveness to government is in some tension with the need for operational autonomy and police independence.

If independence is a key requirement for police investigators and police organisations then it is presumably also a requirement for investigators in other sectors. In recent times there has been a rebirth of private policing, most prominently in the security arena but also in the investigations area. For example, in the important area of fraud investigation, many corporations are employing their own investigators. The increase in the numbers of non-police investigators raises some important ethical issues in relation to investigative independence.

On the one hand, specialised non-police investigators may be better placed than police investigators to investigate cases where complex organisational and technical issues are involved. Also, this growth in non-police investigators reflects the inability of the police resources to cover all areas. On the other hand, non-police investigators may well be less accountable than public police. Specifically, there is the possible conflict of interest that can arise for the non-police investigator when the interests of the employing private company or corporation are held to be of greater importance than those of bringing the wrong doer to justice. This situation is particularly acute when the investigator reports directly to the manager of a company.

The extent to which an institution—as distinct from an individual member of an institution—ought to have independence from government turns in large part on the function of that institution, and the extent to which it is necessary for that institution to have independence in order to properly carry out its function(s) or end(s). For example, the judiciary needs a high level of independence from the legislature and

the executive, if it is to properly carry out its specialised tasks of interpreting and applying the law (Miller 1998; Miller and Blackler 2005, Chap. 2).

Institutional independence needs to be seen in the context of the so-called "separation of powers". Specifically, the executive, the legislature and the judiciary ought to be kept separate; otherwise too much power is concentrated in the hands of a unitary state agency. It is highly dangerous for those who make laws also to be the ones who apply those laws. Politicians, for example, need to be subject to laws adjudicated by judges who are institutionally independent of politicians, on pain of undue influence on judicial processes and outcomes.

Police services in contemporary liberal democracies provide a somewhat different kind of example (Bryett et al. 1994: 39–57). Certainly there is an important and difficult issue in relation to the institutional independence of the police. Evidently police need to have a considerable degree of operational autonomy, if they are properly to discharge their functions of upholding the law, maintaining the peace, and thereby securing the moral rights of citizens. As mentioned above, this is partly a matter of efficiency and effectiveness and partly a matter of the separation of powers.

The police must not simply come to be the instrument of government policies. For the priority of the police is to serve the law, and on our account, to protect moral rights enshrined in the law. The police states of communist Eastern Europe, Nazi Germany, Iraq under Saddam Hussein, and the like, are testimony to the importance of a substantial degree of police independence from government in favour of serving legally enshrined moral rights.

The need for independence from government explains the quasi-judicial character of policing. In this respect importantly distinguished its function from that of the military and from agencies engaged in foreign intelligence-gathering (espionage). The latter serve the national interest in the international arena—as opposed to upholding domestic law—and are, or ought to be, under the control of the country's political leadership which in a democracy is the elected government of the day. Moreover, the constraints operative in ordinary law enforcement are substantially loosened in, for example, espionage activities directed at foreign authoritarian regimes or international terrorist groups, and reasonably so.

However, recent developments, notably counter-terrorism initiatives in the US, have blurred this institutional demarcation between domestic law enforcement and foreign espionage, and done so in ways that are potentially problematic, I suggest, for the institutional integrity of law enforcement agencies and their institutional independence of government, in particular. In this connection let us consider the recent controversies surrounding the operations of the US-based security agency, the National Security Agency (NSA). The NSA's PRISM program involves agreements between NSA and various US-based Internet companies such as Google, Facebook and Skype, to enable NSA to monitor the on-line communications of non-US citizens based overseas (New York Times 2013).

Such activity is governed by the FISA (Foreign Intelligence Surveillance Act) Amendments Act of 2008 (Kelinig et al. 2011; Walsh and Miller 2015; Miller 2016) which: (i) approves: monitoring of/data gathering from foreigners outside

USA by the NSA; (ii) albeit data gathered but found not to be relevant to the foreign intelligence gathering purpose of, say, counter-terrorism is not to be retained; (iii) however, there is no probable cause/reasonable suspicion requirement in relation to this monitoring/data gathering unless the persons in question are US citizens.

Such monitoring/data gathering raises the issue of the privacy and confidentiality rights of ordinary non-US citizens, notably of liberal democratic states allied with US, e.g. EU citizens. These moral rights are being violated by the US, given its non-adherence to the probable cause/reasonable suspicion requirement in undertaking these activities; indeed these activities are presumably violations of EU human rights legislation. So with respect to its foreign intelligence gathering activities the NSA is over-reaching normal law enforcement powers with respect to ordinary citizens of liberal democratic allies of the US not themselves suspected of any crime or anti-US activity. However, this activity is presumably not in breach of US laws and, indeed, one might regard it as predictable, given the nature and function foreign intelligence gathering, i.e. espionage, as opposed to law enforcement. However, in addition to its foreign intelligence gathering activities, the NSA is an organisation concerned with domestic law enforcement, e.g. in relation to terrorism and, as the Verizon controversy has revealed, the NSA has also arguably been violating the privacy of US citizens by engaging in large scale collection of metadata. This domestic activity may well be in breach of US laws.

A further point in relation to PRISM is that the FISA court operates in secrecy and there is a concern that it has crossed the line between making adjudications in relation to the lawfulness of actions (e.g. in the issuance of warrants) and interpreting the law in a manner that amounts to making the law. What is problematic about the latter form of activity on the part of FISA is that law is being made in secret, i.e. the law in question is not transparent to the citizenry (or, at the very least, it is not transparent to the citizenry whether or not there are such secret laws).

What are the implications of these various controversies surrounding the NSA for the institutional independence of police institutions? These controversies suggest that there has been a blurring of the law enforcement and the military/foreign intelligence gathering functions and associated legal/moral standards. Moreover, the question arises as to whether security organisations focussed on counter-terrorism and the like, such as the NSA, have become hybrid institutions. If so, there is a grave risk that the institutional integrity of law enforcement agencies, and their institutional independence of government and commitment to upholding the law (including, the protection of individual rights), in particular, has been compromised. Certainly, the NSA's violation of the privacy rights of ordinary citizens in the US and elsewhere suggests that this may well be the case.

I have been discussing institutional independence in the context of the interface of police and the government of the day. Enough has been said by way of demonstrating that the notion of the police as simply the instrument of government is unsustainable. On the other hand, determining the precise nature and extent of police independence has turned out to be extremely difficult. I have emphasised the importance of maintaining a degree of police independence from government.

However, it is equally important to point to the dangers of high levels of police independence. After all, the police are the coercive arm of the State, and historically the abuse of their powers has been an ever-present threat. Specifically, the police institution as the coercive arm of the State does need to be subjected to (at least) the constraint and influence of the community via democratically-elected bodies, notably the government of the day.

As is the case with the independence of other institutions, there is a need to strike a balance between, on the one hand, the independence of the police, and on the other hand, the need for: (a) community and government control of the police, and; (b) police accountability for their methods and actions. If an institution has substantial independence from other institutions, and if that institution has a very hierarchical structure, then (other things being equal) those who occupy the upper echelons will have a relatively high degree of discretionary power.[17] Military commanders, especially in time of war, are a case in point. Police Commissioners in times of emergency are a further case in point. But now consider the extraordinary powers possessed by police in authoritarian regimes, such as former Soviet Union. Indeed, the power of the one-time head of the secret police, Beria, became so great as to be thought to be a threat to the de facto head of state, Stalin, who had Beria murdered as a consequence.

Evidently the power of the police needs to be constrained, and there are a number of ways to achieve this. One way is to devolve police authority in a quasi-federated structure, as had been the case in the UK (Neyroud and Beckley 2001: 97),[18] where the police were, to an extent, a function of local government with no national police force as such. This accountability structure changed with the direct election of Police and Crime Commissioners (PCCs) in November 2012 when 41 new commissioners were elected to hold police forces (except the Metropolitan Police[19] and City of London Police[20]) to account across England and Wales. PCCs have the power to hire and fire chief constables and set police budgets and crime-fighting strategies, but the legitimacy of their mandate was questioned after only 15 % of the public voted in the first elections. Elections for Police and Crime Commissioners did not take place in Scotland or Northern Ireland, where there are single police forces, as policing and justice powers are devolved to the Scottish Parliament and Northern Ireland Assembly.

Another way is to delimit their sphere of operational autonomy in favour of the policies, including policies in relation to police methods, of democratically-elected government; although, as we have seen, this can be counterproductive. A third, and

[17]This point is consistent with lower echelon personnel, such as police constables, having a high degree of discretionary power vis-à-vis those subject to their authority, e.g. ordinary citizens.

[18]In fact, in England and Wales police are subject to central government via the Home Office, as well as to local government via the Police Authority. However, the authority of local government has been diluted by the 1995 requirement that the Police Authorities have a significant number of members nominated by the Home Secretary.

[19]The elected Mayor of London is the PCC.

[20]Court of Common Council undertakes the role of PCC.

much favoured, method is to ensure accountability by way of oversight bodies, such as Ombudsmen, Police Boards, and the like.

Concerning oversight bodies in policing, the first point to be made is that the need for external review of corruption investigations conducted by the police themselves, notably by internal affairs departments, is by now well established. The further issue to be resolved is the extent of direct external involvement and control in corruption investigations bearing in mind that it might not be a matter of 'one size fits all'. Certainly, there is a need for a well-resourced and independent external body with the capacity and legal duty to undertake intrusive corruption investigations itself as appropriate—in addition to reviewing corruption investigations conducted by the police themselves. It might be thought that investigations of police corruption should be wholly taken over by external bodies. In this connection I note that external oversight bodies were originally established in a context in which police internal investigations, including by internal affairs departments, were too often compromised by the natural tendency to close ranks and cover up misconduct. However, arguably the police themselves should retain the capacity and duty to conduct their own corruption investigations and, thereby, ensure that they 'own the problem'. Certainly, this is now the prevailing view (Prenzler 2009).

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Chapter 2
Police Corruption

Abstract Institutional corruption, including police corruption, consist in actions which undermine institutional processes, purposes and persons (qua institutional actors). Moreover, corruptors and the corrupted could have done otherwise and are, therefore, typically (but not necessarily) morally responsible for their acts of corruption.

In this chapter I analyse the phenomenon of police corruption (Newburn 1999; Skolnick 1967; Klockars et al. 2004; Ivkovic and Haberfeld 2015). I begin with an analysis of the concept of corruption (Sect. 2.1) before moving on in the second section to discuss the causes of police corruption, in particular (Wilson 1968; Kappeler et al. 1994; Sarre 2005; Ivkovic and Haberfeld 2015). The third and final section is concerned with the general strategy for combating police corruption (Giuliani and Bratton 1995; Prenzler 2009).

2.1 Corruption

Providing an acceptable definition of corruption has proved to be an elusive goal.[1] Many of the available definitions are in terms of the abuse of power on the part of public officials e.g. 'Corruption is the abuse of power by a public official for private gain'. Doubtless the abuse of public offices for private gain is corruption. But what of so-called noble cause corruption; corruption undertaken for the public good rather than private gain? Consider the police officer who fabricates evidence to secure the conviction of a known drug dealer. Noble cause corruption is particularly prevalent in policing (see Chap. 3). And what of private citizens—as opposed to public officials—who lie when they give testimony in court and, thereby, corrupt the judicial process?

Failure to provide a theoretical account of the concept of corruption might lead one to simply identify corruption with specific legal and/or moral offences, such as (say) bribery.

[1]Material in this section is derived from Miller (2010a, b, Chap. 4, 2011), Miller et al. (2005).

S. Miller, *Corruption and Anti-Corruption in Policing—Philosophical and Ethical Issues*, SpringerBriefs in Ethics, DOI 10.1007/978-3-319-46991-1_2

However, paradigmatic cases of corruption include police fabrication of evidence, perjury, abuse of authority, fraudulent use of travel funds by politicians, stuffing ballot boxes with false voting papers to win an election, falsifying experimental results to enhance one's academic status, and so on and so forth. So the list of legal and/or moral offences is going to be a very long one, indeed, indeterminately lengthy. In any case, naming a set of offences that might be regarded as instances of corruption does not obviate the need for a theoretical, or quasi-theoretical, account of the concept of corruption.

Corruption is fundamentally a moral, as opposed to a legal, phenomenon. While many corrupt acts are unlawful—or ought to be unlawful—this is not necessarily the case. Thus, historically in many jurisdictions bribery has not been unlawful. For example, prior to the 1977 Foreign Corrupt Practices Act it was not unlawful for US companies to pay bribes when engaging in business overseas. Moreover, evidently not all acts of immorality are acts of corruption; corruption, it seems, is only one species of immorality. Consider a suicide bomber who murders innocent children. Surely this is not an act of corruption since neither the victim nor the perpetrator remains alive, let alone in a state of corruption. Rather it is a human rights violation and, as such, serves to illustrate the distinction between human rights violations and corruption. This is, of course, not to say that human rights violations might not on occasion also be acts of corruption, e.g. a leader who unjustly and unlawfully incarcerates his or her political opponent (a human rights violation) might also be corrupting the political process.

I conclude that corrupt actions are merely one species of immoral actions, albeit an important species. What further features do corrupt actions possess, bearing in mind that I am restricting myself to cases of institutional corruption. More specifically, what further features do corrupt actions possess which warrant, at least in some cases, their being criminalised?

If a serviceable definition of the concept of a corrupt action is to be found—one that does not collapse into the more general notion of an immoral action—then attention needs to be focussed on the moral *effects* that some actions have on persons and institutions. An action is corrupt only if it corrupts something or someone—so corruption is not only a moral concept, but also a *causal* or quasi-causal concept (Hindess 2001).[2] That is, an action is corrupt by virtue of having a *corrupting effect* on a person's moral character or on an institutional process or purpose. If an action has a corrupting effect on an institution, undermining institutional processes or purposes, then typically—but not necessarily—it has a corrupting effect also on persons qua role occupants in the affected institutions. So an action is an act of institutional corruption only if it has the effect of undermining an institutional process or of subverting an institutional purpose or of despoiling the character of some role occupant qua role occupant. Let us refer to this as the *causal character of corruption*.

[2]This kind of account has ancient origins, e.g., in Aristotle.

In this regard, note that an infringement of a specific law or institutional rule does not in and of itself constitute an act of institutional corruption. In order to do so, any such infringement needs to have an institutional *effect*, e.g., to defeat the institutional purpose of the rule, to subvert the institutional process governed by the rule, or to contribute to the despoiling of the moral character of a role occupant qua role occupant. In short, we need to distinguish between the offence considered in itself and the institutional effect of committing that offence. Considered in itself the offence of, say, lying is an infringement of a law, rule, and/or a moral principle. However, the offence is only an act of institutional corruption if it has some effect (or, more precisely, if it is of a kind that tends to have the undermining of an institutional process or purpose), e.g., it is performed in a courtroom setting and thereby subverts the judicial process.

However, the undermining of institutional processes and/or purposes is not a sufficient condition for institutional corruption. Consider internal affairs investigators in some large jurisdiction who as a result of cutbacks in funding become less numerous and progressively less well trained in the context of a gradually increasing workload of cases. As a consequence, there may well be a diminution over the years in the quality of the investigations of these investigators, and so the police investigative processes are to an extent undermined. This is institutional corrosion, but it is not necessarily police corruption, notwithstanding the institutional damage that is being done.

Evidently, an act or policy might undermine an institutional process or purpose without the person who performed it intending this effect, foreseeing this effect or even being in a position such that they should have foreseen this effect. Such an act may well be an act of corrosion, but it would not necessarily be an act of corruption. Consider our internal affairs example again. Neither the government and other officials responsible for resourcing and training the investigators, nor the investigators themselves, might intend or foresee this institutional harm; indeed, perhaps no-one could reasonably have foreseen the harmful effects of their actions, or done anything about it if they had. So this is institutional corrosion, but not corruption.

Because persons who perform (avoidable) corrupt actions (corruptors) do so intentionally or knowingly—or at least such persons should have known the corrupting effect that their actions would have—these persons are blameworthy, *generally speaking*. This is an important respect in which corruption is different from corrosion. Moreover, those who are corrupted (the corrupted) have to some extent, or in some sense, allowed themselves to be corrupted; they are *participants* in the process of their corruption. Specifically, they have *chosen* to perform the actions which ultimately had the corrupting effect on them, and they could have chosen otherwise.[3] In this respect, the corrupted are no different from the corruptors.

[3]This holds even when people are corrupted through coercion, so long as they could have chosen to resist the coercion. On the other hand, if the action they performed was, for example, drug induced or otherwise not under their control, then they cannot be said to have chosen to perform it in my sense.

Notwithstanding that those who corrupt and/or are corrupted are generally morally blameworthy, this is not necessarily the case. For one thing it might be morally justifiable all things considered for someone to perform an act of corruption. Consider the payment of a bribe to an official to save the life of the member of one's family. For another thing, those who are corrupted and those who corrupt may be different in respect of their intentions and beliefs concerning the corrupting effect of their actions and this might make a difference to the blameworthiness of the corrupted, in particular. Specifically, it may not be true of those who allow themselves to be corrupted that they intended or foresaw or should have foreseen this outcome. This is especially likely in the case of the young and other vulnerable groups who allow themselves to be corrupted, but cannot be expected to realise that their actions, or more likely omissions, would have this consequence. Consider the case of young recruits into a corrupt police organisation who are inducted into the practice of 'cutting corners', are compromised and, thereafter engage in more serious forms of corruption. At least initially, perhaps these naïve young recruits did not, and perhaps should not have been expected, to foresee the effect of their actions on themselves and others. If so, perhaps they are not blameworthy for becoming corrupted. Here we need to note the existence of a sub-class of corruptors who are: (a) corrupt, but not morally responsible for being so, and; (b) whose actions are an expression of their corrupted characters and also have a corrupting effect.

In this connection consider two sorts of would-be bribe-givers whose bribes are rejected. Suppose that in both cases their action has no corrupting effect on an institutional process or other person. Now suppose that in the first case the bribe-giver's action of offering the bribe weakens his disposition not to offer bribes; so the offer has a corrupting effect on his character. However, suppose that in the case of the second bribe-giver, her failed attempt to bribe generates in her a feeling of shame and a disposition not to offer bribes. So her action has no corrupting effect, either on herself or externally on an institutional process or other person. In both cases, the action is the expression of a partially corrupt moral character. However, in the first, but not the second, case the bribe-giver's action is corrupt by virtue of having a corrupt effect on the bribe-giver himself.

I have argued that the corrupted are not necessarily morally responsible for being corrupted. I have also argued that typically corruptors are morally responsible for performing their corrupt actions. This seems correct so far as it goes. However, some of those who are not morally responsible for having been corrupted are, nevertheless, morally responsible for not now trying to combat their corrupt characters. To that extent they might be held morally responsible for their corrupt actions, even if not for having been corrupted.

In the light of the above account of corruption let us return to our earlier question concerning the criminalisation of corruption. Some acts of corruption might not be sufficiently serious to count as crimes, e.g. minor conflicts of interest in the allocation of workloads. However, many acts of corruption, at least when taken in aggregate, constitute a serious threat to central institutions. Consider in this connection widespread vote-rigging in elections. In the area of policing, corruption by police officers often constitutes a rights-violation in addition to undermining the

institution of the law and its processes. Consider fabrication of evidence which makes a mockery of the moral right to a fair trial.

So while the investigation of police corruption is not necessarily the investigation of serious moral rights violations which are also crimes; it often is. Moreover, the investigation of those acts of corruption which are not in themselves rights violations typically involves moral rights violations indirectly. For such acts being acts of serious corruption undermine central institutions and, in particular, the institution of the police. However, as was argued in Chap. 1, the institution of the police has as its fundamental purpose the protection of justifiably enforceable, legally enshrined, moral rights. Accordingly, police corruption, even when it does not directly involve the violation of moral rights, nevertheless, does so indirectly via undermining the processes and/or purposes of the institution of the police.

2.2 Causes of Police Corruption

As noted in the Introduction, over the years many commissions of inquiry into police corruption, such as the Mollen Commission into the New York Police Department and the Wood Royal Commission into the NSW Police Service, have uncovered corruption of a profoundly disturbing kind (Mollen 1994; Wood 1996).[4] Police officers have been involved in perjury, fabricating evidence, protecting pederast rings, taking drug money and selling drugs. Moreover, these commissions and numerous other studies have identified a number of causes of police corruption. Further, as also mentioned in the Introduction, in order to do their job effectively, police have been given a number of legal rights and de facto powers and wide discretion in the exercise of these rights and powers; and police have many opportunities to abuse these rights and powers. Police officers also face considerable temptations to avail themselves of these opportunities. They may be offered material inducements, such as the offer of money or favours in return for protection, or dropping of charges, for example.

A further contributing factor to police corruption is the inescapable use by police officers of what in normal circumstances would be regarded as morally unacceptable activity. The use of coercive force, including in the last analysis deadly force, is in itself harmful. Accordingly, in normal circumstances it is morally unacceptable. So it would be morally wrong, for example, for a private citizen to forcibly take someone to his house for questioning. Similarly, locking someone up deprives them of their liberty, and is therefore considered in itself morally wrong. Again, deception, including telling lies, is under normal circumstances morally wrong. Intrusive surveillance is in itself morally wrong—it is an infringement of privacy. And the same can be said of various other methods used in policing.

[4]Earlier versions of the material in this section and the following one appeared in Miller (1998a, b, 2010a, b, 2014).

Coercion, depriving someone of their liberty, deception and so on are harmful methods; they are activities which considered in themselves and under normal circumstances are morally wrong. Therefore they stand in need of special justification. In relation to policing there is a special justification. These harmful and normally immoral methods are on occasion necessary in order to realise the fundamental end of policing, namely the protection of moral rights. However, the fundamental point that needs to be made here is that the use of these harmful methods by police officers—albeit methods which in the right circumstances are morally justifiable—can have a corrupting influence on police officers. A police officer can begin by engaging in the morally justifiable activity of telling lies to criminals, and engaging in elaborate schemes of deception as an undercover agent, and end up engaging in the morally unjustifiable activity of telling lies and deceiving innocent members of the public or his fellow officers. A police officer can begin by engaging in the morally justifiable activity of deploying coercive force to arrest violent offenders resisting arrest, and end up engaging in the morally unjustified activity of beating up suspects to secure a conviction.

It might be suggested that such methods could be wholly abandoned in favour of the morally unproblematic methods already heavily relied upon, such as rational discourse, appeal to moral sentiment, reliance on upright citizens for information, and so on. Doubtless in many instances morally problematic methods could be replaced. And certainly overuse of these methods is a sign of bad police work, and perhaps of the partial breakdown of police-community trust so necessary to police work. However, the point is that the morally problematic methods could not be replaced in *all* instances. For one thing, the violations of moral rights which the police exist to protect are sometimes violations perpetrated by persons who are unmoved by rationality, appeal to moral sentiment, and so on. Indeed, such persons, far from being moved by well-intentioned police overtures, may seek to influence or corrupt police officers for the purpose of preventing them from doing their moral and lawful duty. For another thing, the relevant members of the community may for one reason or another be unwilling, or unable, to provide the necessary information or evidence, and police may need to rely on persons of bad character, or methods such as intrusive surveillance. So unfortunately, harmful methods which are in normal circumstances considered to be immoral are on occasion necessary in order to realise the fundamental end of policing, namely the protection of moral rights.

The paradox whereby police necessarily use methods which are normally morally wrong to secure morally worthy ends sets up a dangerous moral dynamic. The danger is that police will come to think that the ends always justify the means; to come to accept the inevitability and the desirability of so-called "noble cause corruption" (discussed in Chap. 3) (Delattre 1994; Miller 1999). From noble cause corruption, they can in turn graduate to straightforward corruption; corruption motivated by greed and personal gain (Sherman 1985). Further, as a matter of sociological fact, police display a high degree of group identification and solidarity. In many ways, such solidarity is a good thing: without it, effective policing would be impossible. But it can also contribute to police corruption. Police who refrain

from acting against their corrupt colleagues out of a sense of loyalty are often compromised by this failure, and ripe for more active involvement in corrupt schemes.

A particularly significant contributing factor to police corruption is the widespread use in contemporary societies of illegal drugs such as heroin, cocaine and Ecstasy. Police officers, especially detectives, are called on to enforce anti-drug laws in circumstances having the following features: (a) there are large amounts of money, and a willingness on the part of drug-users, and especially drug-dealers, to bribe police; (b) there are no complainants—the "victims" are not persons who would come to the police and report that they have been the victim of a criminal act; (c) corrupt police officers can accept bribes or steal drugs or drug money with relative impunity, given (b); (d) there is a feeling in some sectors of the community that drug addiction is not so much a crime as a medical condition, and that therefore drug-taking should not be regarded as a crime; (e) young police officers typically share the attitudes of their peers outside policing, and thus may regard the use of illegal drugs as a relatively minor offence, and; (f) police officers who are especially vulnerable, such as young police officers or those working in drug investigations, may out of fear turn a blind eye to drugs, or even succumb to drug-taking themselves, and thereby enter the spiral of corruption which moves from moral vulnerability to moral compromise, and thence to corrupt activities.

Let me now list some of the general conditions which contribute to police corruption. These conditions include: (a) the necessity at times for police officers to deploy harmful methods, such as coercion and deception, which are normally regarded as immoral; (b) the high levels of discretionary authority and power exercised by police officers in circumstances in which close supervision is not possible; (c) the ongoing interaction between police officers and corrupt persons who have an interest in compromising and corrupting police; (d) the necessity for police officers to make discretionary ethical judgements in morally ambiguous situations, and; (e) the operation of police officers in an environment in which there is widespread use of illegal drugs and large amounts of drug money.

In addition to these causes of police corruption, there are some less obvious ones. Firstly, lack of competence can be a contributor to, and even a species of, corruption. Normally we do not think that incompetence is morally blameworthy, even where it contributes to a bad outcome, since someone cannot be blamed for not bringing about what they did not have the capacity to bring about. However, we can blame people for failing to act to equip themselves with necessary skills or knowledge when they have been provided with the opportunity. For example, a police officer who out of laziness or indifference fails to acquaint himself sufficiently with certain aspects of the law, and then through ignorance of the law proceeds to make unlawful arrests, is engaging in a form of corrupt activity. His actions are wrongful, and the reason that he is performing those actions is self-interest, or at least self-indulgence.

We can also blame people for continuing on in a job when they know they do not possess, and cannot acquire, the necessary skills or aptitude for the job. This kind of moral failure is illustrated by a police officer who continues on in the job

knowing that he is too fearful to make arrests which he should have been making. Weakness is a moral failing, and he is weak. But weakness is not in itself corruption. What makes such a police officer corrupt is that even though he knows he is weak, and therefore lacking in the ability to adequately function as a police officer, he continues in the job for reasons of self-interest.

Secondly, police can count as corrupt even where they use their expertise for the achievement of the right ends, when they do so by making use of bad means. The officer who "verbals" someone he knows to be guilty of violent crime, in order to secure the conviction which would otherwise not happen, achieves such good ends as the punishment of the guilty, as well as the protection and reassurance of the public. These are ends which police should try to achieve, indeed ends which are partially constitutive of their role. As we have already said, this kind of corruption is known as "noble cause" corruption.

Having discussed the causes of police corruption we now turn to a discussion of the general strategy for combating police corruption. More specific aspects of this strategy, e.g. internal affairs investigations, use of integrity tests, and, indeed, the primary institutional vehicle by means of which this strategy might be realised, namely, an integrity system for police organisations, will be discussed in later chapters.

2.3 Combating Police Corruption: A General Strategy

In this final section, I turn to the question of combating police corruption (Giuliani and Bratton 1995; Prenzler 2007). I do so in the context of: (a) my assumption that policing ought to be conceived as having the (teleologically understood) moral foundations outlined in Chap. 1, and; (b) the proposition that moral vulnerability is a fundamental defining feature of police work, and that in the case of the profession of policing, the tendency to corruption ought to be regarded as a basic occupational hazard and treated accordingly (Miller 1995; Miller et al. 2005).[5] The general strategy for combating police corruption needs to attend to four basic areas, namely recruitment, reduction of opportunities for corruption, detection and deterrence of corruption, and reinforcing the motivation to do what is morally right.

It is obvious that if there is a tendency to corruption in policing, it is crucial that those who are recruited have the highest moral character. If there is a good chance that even those of good character can be corrupted, there is obviously no chance of those of bad character being reformed by undertaking police work. It is also important to recruit those who are capable of becoming competent. For the incompetent will find it difficult to identify strongly with the collective ends of the profession, and they can easily become disaffected and cynical. They are therefore

[5]Earlier versions of the material in this section appeared in Miller (1995) and Miller and Blackler (2005, Chap. 5).

susceptible to corruption. Consider, in this connection, the recruitment of South African *Kitskonstabels* in the 1980s, and the attendant corruption, indeed mayhem, that followed.

An important institutional device which ought to go hand-in-glove with recruitment based on general suitability is a vetting process. Adequate vetting processes attend in essence to the moral character of applicants and the ethical risk which they might pose. Accordingly, vetting processes check for criminal records, criminal associations and the like. Moreover, the greater the level of sensitivity of a police officer's role the more stringent the vetting process needs to be. A vetting process appropriate for new recruits is not necessarily sufficient for more senior positions in internal affairs, for example.

While it is important to try to reduce the opportunities for corruption the very nature of police work militates against massive reduction in the opportunities for corruption. Probably the greatest reduction in the opportunities for police corruption have occurred not as a result of policies directed at police, but rather as a result of legislative and other policies directed at offences and offenders. For example, decriminalisation, including the decriminalisation of so-called victimless crimes, such as prostitution and homosexuality, has arguably had the effect of reducing the opportunities for police corruption. On the other hand, in policing as elsewhere, opportunities for corruption can be reduced by a variety of methods such as target hardening e.g. locks, encryption, firewall etc., and segregation of duties and regular rotation of personnel in high risk areas, e.g. drug investigations.

The third area is detection and deterrence of police corruption. Detection and deterrence of police corruption is achieved in large part by institutional mechanisms of accountability, both internal and external, and by policing techniques such as complaints investigation (Landau 1994; Maguire and Corbett 1991; Prenzler and Lewis 2005), use of informants, auditing and surveillance (Miller 1998a, b). Here the above-described constitutive tendency to corruption in police work can be used to justify an extensive system of accountability mechanisms—a system more extensive than may be necessary in other professions—and used also to justify the deployment of techniques of detection and deterrence that might not be acceptable in some other professions, e.g. integrity testing (see Chap. 7).

In most police services, there is an array of accountability mechanisms, including internal accountability on the part of individual members of police services to their superiors and to departments of internal affairs. Indeed the existence of departments of internal affairs implies that police services realise that the tendency to corruption is a constitutive feature of policing. Typically, there are also mechanisms to ensure external accountability of a police service to government and the community. It is generally agreed that a well-resourced, independent, external oversight agency with intrusive powers to investigate police corruption is a key element of an effective integrity system for police organisations (see Chap. 4). However, this should not be regarded as an alternative to an internal affairs department. As mentioned in Chap. 1, it is important that police "own" the problem; hence the need to retain an internal affairs department notwithstanding the need for an external oversight body.

Sometimes mechanisms of accountability are less successful than they might be, due in part to the tendency for such mechanisms of accountability to come to embody and to reinforce the "us-them" mentality that sometimes exists between lower-echelon police officers and the police hierarchy on the one hand, and between police officers and departments of internal affairs on the other (see Chap. 5). Part of the solution to this problem may lie in the introduction of mechanisms of peer accountability to supplement existing mechanisms. Accountability mechanisms whose members include lower-echelon police officers may be more successful because peers may have a more precise knowledge of what is actually going on at street-level in a particular place at a particular time, but, more generally, because such mechanisms may be more acceptable to lower-echelon officers due to the fact that they are "owned" by them. This is especially the case in the context of the assumption that policing ought to be conceived as an emerging profession functioning in terms of collegial systems of accountability, rather than in terms of top-down hierarchical systems.

Mechanisms of accountability ought to include joint police/community institutional structures. Such structures allow communities to make known problems and to hold police to account—say, via ministers of police—in relation to police responsiveness to these problems. More generally, it is widely accepted among scholars that cooperation between that police and the community being policed is necessary for successful policing in many, if not most, areas of criminal activity. An ambivalent community will shield law-breakers and contribute to an us-them mentality between police and the policed. Moreover, an ambivalent community may well lead to a hostile, inward-looking and secretive police force in which police corruption is more likely to flourish.

Techniques of detection and deterrence that may be appropriate for an occupation with a constitutive tendency for corruption include not only routine procedures such as complaints investigation, but also techniques such as granting indemnity to corrupt officers in order to get them to implicate others, testing for drug use, and elaborate testing for corruption (Chap. 7). If corruption is an occupational hazard in policing, then extraordinary methods may have to be used to combat it. Some of these methods raise important ethical and other problems. For example, it is not unknown for criminals who have been granted indemnity to provide evidence which turns out to be false.

The final area that can be looked at in relation to reducing corruption is that of the motivation to do what is morally right. Obviously it is important to reduce where possible the opportunities for corrupt practices. Equally obviously, there will always be police officers who desire to do what is illegal or otherwise immoral, and so there will always be a need for mechanisms and techniques of detection and deterrence.

However, it is not enough to try to reduce opportunities for corruption, and to introduce an elaborate system of detection and deterrence. For one thing, systems of detection and deterrence have significant costs, and not only in terms of resources, but also in terms of the autonomy of individual police officers and the institutional independence of the police service. For while accountability is not the same thing as

commandability, the logical endpoint of increasing accountability is a huge corpus of regulations, and ongoing and intrusive investigative and regulatory activity, all of which stands in some tension with individual professional autonomy and institutional independence.

Most important, reliance on detection and deterrence alone bypasses the issue of moral responsibility which lies at the heart of corruption. In the last analysis, the only force strong enough to resist corruption is the moral sense—the desire to do what is right and avoid doing what is wrong. In what remains of this chapter, I want to briefly explore this notion of moral responsibility in policing.

If most police officers, including members of departments of internal affairs and of the police hierarchy—the ones who investigate corruption—do not for the most part know what is right and what is wrong, and do not have a desire to do what is right, then no system of detection and deterrence, no matter how extensive and elaborate, can possibly suffice to control corruption.

Knowledge of right and wrong, and the desire amongst police officers to do what is right, is importantly connected to issues of professionalisation in policing. I have argued elsewhere that professions typically exist to secure some fundamental end which is a human good or goods (Alexandra and Miller 1996). For doctors the end or goal is health, for lawyers justice, for academics knowledge, and for police—as argued above—protecting the moral rights of citizens. The achievement of this fundamental end (or ends) requires specialised skills, knowledge and individual—and especially discretionary ethical—judgement. Ideally, members of professions internalise the fundamental ends which define their particular profession.

The paradigm of a corrupt professional is one who not only abandons the fundamental end or goal of his or her profession, but also uses this professional position—or the skills and knowledge associated with it—for self-interested or immoral ends. The corrupt professional thereby undermines the ends of the profession. For example, the academic Cyril Burtt fabricated evidence to support his psychological theories and thereby achieve academic fame.

The paradigm of a corrupt professional organisation, or section of an organisation, is not simply one in which individual practitioners exploit their position or skills for self-interested or immoral ends and ultimately suffer no loss of self-esteem. It is not simply one in which, on an individual basis, the ends of the institution have been abandoned in favour of the attractions of the corrupt life. Rather, in such institutions, or sections of such institutions, corrupt individuals engage in interdependent corrupt activity—and do so quite often at senior levels. Moreover, in a corrupt institution, or section of an institution, the fact that corrupt individuals cooperate enables them to powerfully influence those who are not corrupt; the corrupt compromise and intimidate those who desire to avoid becoming corrupt themselves, and especially those who seek to expose corruption. Corruption has become an institutional phenomenon; there is systemic corruption.

There is an important relationship between systemic corruption and social norms, in the sense of regularities in action which embody moral attitudes and principles (Miller 1997). Corruption is a species of moral wrongdoing, and therefore typically infringes social norms. So all corruption is moral wrongdoing, but not all moral

wrongdoing is corruption (as noted above). For example, murdering one's spouse out of revenge is a morally wrongful action, but it is not necessarily corrupt. One feature of corrupt actions that distinguishes them from many other species of immorality is that corrupt actions are typically motivated by felt self-interest. Another feature is that corrupt actions are not one-off actions, as is the above-mentioned act of murder. Rather, a corrupt action typically results from a disposition to perform that kind of action; corrupt actions are typically habitual actions.

Systemic corruption involves a large number of (typically institutional) actors engaging in cooperative corruption. So systemic corruption typically consists of a large number of individuals cooperatively and habitually engaging in wrongful actions that infringe social norms, and doing so out of believed collective self-interest. Given this relationship between corruption and social norms, it is not surprising that systemic corruption flourishes in contexts in which social norms are not robust; and systemic corruption is corrosive of social norms. Systemic corruption also undermines mechanisms of detection and deterrence. Effective systems of detection and deterrence rely in part on transparency. But transparency works as an anti-corruption measure only if those to whom corruption is made transparent are themselves committed to morally upright conduct, and have a clear grasp of what morally upright conduct consists in. Ultimately then, control of corruption relies on robust social norms. Since systemic corruption undermines social norms, it undermines the possibility of controlling corruption.

Given the importance of the desire to do what is morally right, and given this connection between corruption and social norms, what impact, if any, can professionalisation have on police corruption? Arguably—other things being equal—members of the professions are potentially less open to corruption than some other occupational groups, by virtue of the (well-founded) self-image many of the professions have that the fundamental collective end of professional work is a human good realised by the exercise of creative expertise, and that true professionals possess creative expertise and internalise this good. On the other hand, the elitism, and strong and closed cultures of many professions, in conjunction with the need to develop specific virtues and apply moral principles in specific professional settings, is fertile ground for corruption. Lawyers can end up with an addiction to legalistic procedures and winning in the adversarial system at the expense of substantive justice, police can end up routinely breaking the law in the service of noble ends, and doctors clubbing together to avoid one of their number from being successfully sued for malpractice. And minor corrupt actions can, over time, turn into major corruptions of character.

Professional expertise, individual autonomy, and internalisation of the moral ends of policing are important in terms of developing and sustaining the desire on the part of police to do what is right. However, focusing on police officers as individuals is not enough. The desire to do what is right needs to be reinforced by utilising the intrinsically collective nature of policing, and in particular, by stressing that police officers are collectively responsible for controlling corruption. It is a mistake to simply undermine police solidarity and loyalty, leaving only isolated individuals who are responsible only for their own actions and who do what is right

only because they fear to do what is wrong. It is equally a mistake to rely wholly on the individual heroism of the likes of Frank Serpico, Philip Arantz and Michael Drury. Serpico was a New York police officer who refused to be corrupted in 1966 and indeed reported corruption to reluctant superiors. He finally went to the *New York Times*. Subsequently, the Knapp Commission into corruption into the NYPD was established. Arantz and Drury were New South Wales police officers who blew the whistle on corruption. In the case of Arantz, in 1971 he disclosed NSW crime figures to the press—they contrasted sharply with the official ones. An attempt was then made to discredit him; the Police Commissioner ordered he be taken to a psychiatric ward. In the case of Drury, in 1982 he was approached by a corrupt detective to change his evidence in a forthcoming trial. When he refused to do so, he was seriously wounded by a "hitman".

It is obvious that police officers are collectively responsible for ensuring that the moral ends of policing are realised. Law enforcement, maintenance of order and so on, cannot possibly be achieved by individual police officers acting on their own. Policing is a cooperative enterprise. However, police corruption undermines the proper ends of policing. Moreover, police corruption depends in part on the complicity or tacit consent of the fellow officers of the corrupt. So controlling police corruption is a collective moral responsibility. Accordingly, the notion of collective moral responsibility is fundamental to the design of an integrity system for police organisations (see Chap. 4). It also follows that not only is loyalty to corrupt officers misplaced, it is an abrogation of duty. Collective responsibility entails selective loyalty—loyalty to police officers who do what is right, but not to those who do what is wrong. The loyalty of police officers is only warranted by those who embody the ideals of policing, and in particular by those who are not corrupt. Indeed, collective responsibility also entails such actions as professional reporting, and support for, rather than opposition to, well-intentioned professional reporting (see Chap. 5).

The collective effort to ensure that the fundamental ends of policing are pursued will contribute to the internalisation by police officers of those ends, and of the morally appropriate means for their realisation. More importantly, such a collective effort will ensure that police officers identify with those ends, so that self-respect, as well as the respect of others, depends on the pursuit of those ends in accordance with acceptable shared moral principles, and on the collective opposition to corruption. In short, successful combating of corruption in policing crucially depends on the establishment and maintenance of an objectively morally-desirable structure of robust social norms. Such a structure includes norms prescribing the pursuit of the moral ends of policing, as well as norms prescribing the methods of policing. What specific policies could contribute to a robust structure of social norms in policing that resists, and indeed combats, corruption?

A structure of objectively morally-desirable social norms can be reinforced by ensuring a just system of rewards and penalties within the police organisation. Unjust systems of promotion, unreasonably harsh disciplinary procedures for minor errors, unfair workloads and so on, are all deeply corrosive of the desire to do one's job well and to resist inducements to do what is illegal or otherwise immoral.

Morally-desirable social norms can further be reinforced by ensuring an appropriate system of command and control, including for the purposes of accountability; appropriate, that is, to the kinds of responsibilities that attach to the role of police officer. It may be that very hierarchical militaristic/bureaucratic systems of command and control are inappropriate in most areas of modern policing, albeit not in all (e.g. not in policing riots), given the nature of the role of police officer. Police officers have considerable powers—including the power to take away people's liberty—and they exercise those powers in situations of moral complexity. It is inconsistent to give someone a position of substantial responsibility involving a high level of discretionary ethical judgement, and then expect them to mechanically and unthinkingly do what they are told. Moreover, mechanisms of peer accountability are more appropriate to autonomous professional practitioners than top-down hierarchical mechanisms.

The desire and ability to do what is right do not exist independently of the habit of reflection and judgement on particular pressing ethical issues. This is so not only for individual reflective practitioners, but also when it comes to developing reflective organisations or groups. Moreover, the nexus between the desire and ability to do what is right, and the habit of ethical reflection, is especially important in policing. This is because of the moral vulnerability of police. Police confront a variety of temptations, they typically operate in unsupervised settings, they deploy harmful and normally immoral methods in the service of morally worthy ends, and they necessarily confront morally charged situations requiring the exercise of discretionary ethical judgement. Accordingly, the desire and ability to do what is right needs to be continuously reinforced by ensuring that ethical issues in police work, including the ethical ends of policing itself, are matters of ongoing discussion and reflection in initial training programs, further education programs, supervision, ethics committees and in relation to ethical codes. Since a desire to do what is morally right, and the attendant capacity for ethical reflection and judgement, are in fact important in policing—far more important than in many other professions—ethical discussion and deliberation ought to have a central place in policing.

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Chapter 3
Noble Cause Corruption in Policing

Abstract In this chapter a very important species of police corruption is analysed, namely, so called noble cause corruption: corruption undertaken to achieve a good purpose. I argue that while noble cause corruption in policing is a pro tanto moral wrong and typically undermined criminal justice processes and purposes (as well as the moral character of police officers), it might be morally justified all things considered in some instances.

Corrupt practices are often rationalised by those who engage in them. For example, person A might argue that if he, A, does not accept the bribe someone else will. So the world will not be a better place if A refuses the bribe, and A will lose out if A refuses it. So A should accept the bribe. Such rationalisations can make corrupt practices seem reasonable, and thus tend to reinforce rather than undermine them. Rationalisations are particularly potent if they cohere with a personal, community or occupational worldview even it the worldview in question is not objectively sustainable. Accordingly, one important source of rationalisations is an alleged role responsibility. In these sorts of case a person convinces him or herself, or is convinced by colleagues, that a manifestly wrongful act is justified in terms of their professional duty—it is somehow justified by virtue of some larger moral purpose of their institutional office.

Some rationalisations have a basis in reality; they are not mere rationalisations, but rather plausible justifications, or at least excuses. As such, they may not be violations, but only infringements, of moral principles or moral rights. Perhaps A is extremely poorly paid and the main breadwinner for a large extended family; therefore, A must engage in minor forms of corruption (bribery) to avert a morally unacceptable outcome. And there are other rationalisations that are neither plausible justifications nor mere rationalisations. These include ones that arise when a person is put in a very difficult situation that calls for moral courage or even heroism. Suppose Person B is working in a corrupt environment and is offered a bribe. B does not want to accept, but if B does not then B will be ostracised by B's colleagues and subjected to harassment. At any rate, the widespread existence and

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influence of rationalisations for corrupt practices, and the confusion that they create, makes it important to subject them to philosophical scrutiny.

In this chapter I consider in detail noble cause corruption and its attendant rationalisation. Noble cause corruption is corruption in the service of a good end (Miller 1999, 2004, 2007).[1] Consider a police officer seeking to put away a known paedophile. Perhaps the evidence is not quite as strong as it could be, so the paedophile might escape conviction. Accordingly, the police officer 'enhances' or 'loads up' the evidence. In so doing, the officer rationalises his course of action by recourse to the good end that he believes it will realise.

3.1 Noble Cause Corruption

As we saw in earlier chapters, in the paradigm cases corrupt actions are a species of morally wrong, unlawful, habitual, actions. What of the motive for corrupt actions? We saw above that there are many motives for corrupt actions, including desires for wealth, status, and power. However, there is apparently at least one motive that we might think ought not to be associated with corruption, namely, acting for the sake of good. Here we need to be careful. For sometimes actions that are done for the sake of good are, nevertheless, morally wrong actions. Indeed, some actions that are done out of a desire to achieve good are corrupt actions, namely, acts of so-called noble cause corruption (Miller and Blackler 2005).

The notion of noble cause corruption receives classic expression in the film *Dirty Harry* (Klockars 1976). Detective Harry Callaghan is trying to achieve a morally good end. He is trying to find a kidnapped girl whose life is in imminent danger. In the circumstances, the only way he can determine where the girl is in order to save her is by inflicting significant pain on the kidnapper, who is otherwise refusing to reveal her whereabouts. The image of Harry Callaghan inflicting non-lethal pain on a murderous psychopath is emotionally, and indeed ethically, compelling. However, the question that needs to be asked is whether in general fabricating evidence, beating up suspects, "verballing" suspects, committing perjury and so on, to obtain convictions is in the same moral category as Harry's action. The answer is in the negative. For one thing, Harry Callaghan's predicament is a romantic fiction, or at best a highly unusual combination of circumstances. Most instances of police fabrication of evidence, and even excessive use of force, have not been used to save the life of someone in imminent danger, nor have they been the only means available to secure a conviction. For another thing, the ongoing recourse to such methods not only violates the rights of suspects, it tends to have the effect of corrupting police officers. To this extent, the moral harm that results from such

[1]Earlier versions of the material in this chapter are contained in Miller (1999, 2004, 2007).

methods not only harms suspects, it can eventually destroy the moral character of those police officers deploying these methods.

The dangers attendant upon noble cause corruption demand that we provide a principled account of the difference between justifiable use of normally immoral methods and noble cause corruption. We can do so as follows. When police officers act in accordance with the legally enshrined moral principles governing the use of harmful methods, they achieve three things at one and the same time. They do what is morally right; their actions are lawful; and they act in accordance with the will of the community.

It might be argued—and seems to have been argued by Alexandra (2000)—that recourse to the notion of the use of harmful methods in accordance with communally-sanctioned objective moral principles does not remove the theoretical problem posed by noble cause corruption, and specifically the alleged (by Alexandra) immorality of even the lawful use of harmful methods by police. To be sure, a suspect who is guilty of a serious crime has not been treated immorally if he is lawfully—and not unreasonably—harmed by being coerced, deceived or surveilled.[2] But Alexandra asks: What if he is innocent? In *that* case, harmful methods have been lawfully used, but their use is immoral—suggests Alexandra. Let us respond to this argument. Firstly, the person harmed needs to be a suspect, i.e. there is, or should be, some form of evidence that he is guilty. Nevertheless, sometimes persons reasonably suspected of committing crimes are in fact innocent. However, innocent persons wrongly suspected of crimes are not harmed by the police *in the knowledge* that they are innocent. So we do not have intentional harming of persons known to be innocent. Rather we have intentional harming of persons thought likely to be guilty; and we have unintended harming of the innocent as a by-product of police work. Troublesome as this is, it does not put immorality at the core of the police function, as Alexandra seems to suggest. If there are some police methods that do involve intentional harming of those known to be innocent, e.g. intrusive surveillance of a criminal engaged in sexual activity with a woman known not to be a criminal, then perhaps these methods ought not to be deployed.

The moral problem of noble cause corruption arises in policing when moral considerations pull in two different directions, and especially when the law thwarts, rather than facilitates, morally desirable outcomes. But here we need to distinguish types of case. Assume that a police officer breaks a morally unacceptable law, but acts in accordance with the law as it ought to be. For example, suppose a police officer refuses to arrest a black person who is infringing the infamous "pass laws" in apartheid South Africa. Such a police officer is not engaged in noble cause corruption; for breaking a morally unacceptable law is not engaging in corruption, and therefore not engaging in noble cause corruption.

A second kind of case involves a police officer breaking a law which, although not morally unacceptable, is nevertheless flawed, in that it does not adequately

[2]I am assuming here that the law appropriately tracks reason-based ethical principles.

reflect the ethical balance that needs to be struck between the rights of suspects and the rights of victims. For example, assume that a law only allows a suspect to be detained for questioning for a limited period of time; a period which is wholly inadequate for certain kinds of criminal investigations. The law is not necessarily immoral, but it ought to be changed. A police officer who detains a suspect for slightly longer than this period has technically breached the law; but the officer has not violated a suspect's rights in any profound sense. Once again, the term "corruption" is too strong. This is not a case of noble cause corruption; though it is a case of unlawful, and perhaps unethical, conduct.

A third kind of case involves a police officer violating a suspect's legally enshrined moral rights by, for example, using the third degree or fabricating evidence or committing perjury. The point about these kinds of case is that the police officer has not only acted illegally, but also immorally. If a police officer engages in this kind of corrupt activity, and does so in order to achieve morally desirable outcomes, such as the conviction of known perpetrators of serious crimes, then the officer is engaged in noble cause corruption. Let us examine this kind of case further.

3.2 Morally Justifiable Noble Cause Corruption?

Noble cause corruption is obviously not morally justified if there is some lawful means to achieve the morally desirable outcome. But are there cases in which the only way to achieve a morally obligatory outcome is to act immorally? In order to enable us to explore the philosophical issues associated with noble cause corruption further, and to focus our discussion, let us consider the following case study (Miller 1998, 2004; Miller et al. 2005).

Case Study 1—Noble Cause Corruption
A young officer, Joe, seeks advice from the police chaplain. Joe is working with an experienced detective, Mick, who is also Joe's brother-in-law, and looked up to by Joe as a good detective who gets results. Joe and Mick are working on a case involving a known drug-dealer and paedophile. Joe describes his problem as follows:

> Father – he has got a mile of form, including getting kids hooked on drugs, physical and sexual assault on minors, and more. Anyway, surveillance informed Mick that the drug-dealer had just made a buy. As me and Mick approached the drug-dealer's penthouse flat, we noticed a parcel come flying out the window of the flat onto the street. It was full of heroin. The drug-dealer was in the house, but we found no drugs inside. Mick thought it would be more of a sure thing if we found the evidence in the flat rather than on the street – especially given the number of windows in the building. The defence would find it more difficult to deny possession. Last night, Mick tells me that he was interviewed and signed a

> statement that we both found the parcel of heroin under the sink in the flat. He said all I had to do was to go along with the story in court and everything will be sweet, no worries. What should I do Father? – perjury is a serious criminal offence.[3]

In this scenario, there are two putative instances of noble cause corruption. The first one is Mick intentionally unlawfully loading up the evidence and committing perjury in order to secure a conviction. As it is described above, this instance of noble cause corruption is not morally sustainable. For there is a presumption against breaking communally-sanctioned ethical principles enshrined in the law, and this presumption has not been offset by the moral considerations in play here. Indeed, it is by no means clear that in this situation, Mick's unlawful acts are even necessary in order for the drug-dealer to be convicted. Moreover, achieving the good end of securing the conviction of the drug-dealer is outweighed by the damage being done by undermining other important moral ends, namely due process of law and respect for a suspect's moral rights (Cohen 1987: 57).

Nor is there anything to suggest that this is a one-off unlawful act by Mick, and that he had provided himself with what he took to be a specific and overriding moral justification for committing it on this particular occasion. Indeed, the impression is that Mick loads up suspects and commits perjury as a matter of routine practice. Further, there is nothing to suggest that police powers in this area—at least in Australia—are hopelessly inadequate, that police and others have failed in their endeavours to reform the law, and that therefore police officers have no option but to violate due process law, if they are to uphold so-called "substantive" law. Of course, it is a different matter whether or not current Australian anti-drug policies are adequate to the task. Evidently they are not. But this in itself does not justify an increase in police powers in particular. For if anything is clear, it is that a policy of criminalisation is by itself inadequate. Accordingly, Mick, and like-minded detectives, do not have available to them the argument that noble cause corruption is justifiable because there is a discrepancy between what police powers ought to be, by the lights of objective ethical principles, and what they in fact are. In the first place, there is no such discrepancy; although arguably current anti-drug policies are failing. In the second place, loading up suspects, perjury and the like, could never be lawful procedures grounded in objective ethical principles. Lastly, if in fact an increase in police powers were morally justified, then the appropriate response of the police ought to be to argue and lobby for this increase, not engage in unlawful conduct. It might be the case that an irredeemably obstructionist political system—one that consistently failed to provide police with adequate powers in spite of sustained and well-put arguments and lobbying by police and others—might justify police exercise of unlawful de facto powers of a kind that ought to be lawful. An example of this might be police officers detaining a suspect for a period of time that is reasonable

[3]The above case study was provided in a suitably disguised form by Father Jim Boland, Chaplain to the NSW Police.

given the nature of the crime in question and the quantum of incriminating evidence in their possession but a period of time that is, nevertheless, longer than is lawful.

There is a second putative instance of noble cause corruption in our scenario that is more morally troublesome. This is Joe committing perjury in order to prevent a host of harmful consequences to Mick, Joe, and their families. Let us assume that if Joe does not commit perjury, Mick will be convicted of a criminal act, and their careers will be ruined. Moreover, the friendship of Mick and Joe will be at an end, and their respective families will suffer great unhappiness. This second instance is a candidate for morally justified, or at least morally excusable, unlawful behaviour on the grounds of extenuating circumstances. Let us now assume, at least for the moment, that were Joe to commit perjury in these circumstances his action would be morally justified, or at least morally excusable. The question to be asked now is whether it is an act of noble cause corruption.

Certainly, such an act of perjury is unlawful. But here we need to distinguish a number of different categories. Some acts are unlawful, but their commission does not harm any innocent person. Arguably, such unlawful acts are not necessarily immoral. The drug-dealer will be harmed in that he will go to prison, but he is not innocent; he is a known drug-dealer and paedophile who deserves to go to prison.

But the fact that the drug-dealer is guilty of serious crimes does not settle the issue. Consider Joe's actions. Some acts are unlawful, but their commission does not infringe anyone's moral rights. Joe's act will certainly infringe the drug-dealer's moral rights, including the right to a fair trial based on admissible evidence. Moreover, perjury undermines a central plank of due process law; without truthful testimony, the whole system of criminal justice would founder. Thus perjury is a species of institutional corruption. Accordingly, considered in itself, the act of perjury is a serious moral wrong, and an act of corruption.

Unfortunately, as we have already seen, the moral costs of Joe *not* committing perjury are also very high—perhaps higher than those involved in perjury. We can conclude that Joe faces a genuine moral dilemma; he will do moral harm whatever he does. Does it follow that we have found an instance in which noble cause corruption is justified? Here there are really two questions. Firstly, is Joe's action an instance of noble cause corruption? Secondly, is his action morally justified? The distinction between corruption—including noble cause corruption—on the one hand, and immorality on the other, is a fine distinction in this context; but it is no less real for that.

As we have seen in earlier chapters, corruption is a species of immorality, and corrupt actions are a species of immoral actions; nevertheless, not all immorality is corruption, and not all immoral actions are corrupt ones. Most corrupt actions have a number of properties that other immoral actions do not necessarily possess. First, corrupt actions are typically not one-off actions. For an action to be properly labelled as corrupt, it has to in fact corrupt, and therefore is typically a manifestation of a disposition or habit on the part of the agent to commit that kind of action. Indeed, one of the reasons most acts of noble cause corruption are so problematic in policing is that they typically involve a disposition to commit a certain kind of action. Acts of noble cause corruption are typically not simply one-off actions; they

are habitual. Now Joe's action is not habitual. However, some acts of corruption are one-off (Miller 2011). So the fact that Joe's action is a one-off, non-habitual action does not settle the question as to whether it is corrupt or not.

Secondly, most corrupt actions—involving as they do a habit to act in a certain way—are not performed because of a specific, non-recurring eventuality. Rather, they are performed because of an ongoing condition or recurring situation. In the case of noble cause corruption in policing, the ostensible ongoing condition is the belief that the law is hopelessly and irredeemably inadequate, not only because it fails to provide police with sufficient legal powers to enable offenders to be apprehended and convicted, but also because it fails to provide sufficiently harsh punishments for offenders. Accordingly, so the argument runs, police need to engage in noble cause corruption; that is, they need to develop a habit of bending and breaking the law in the service of the greater moral good of justice, given the irremediable features of the criminal justice system.

Now although Joe is motivated to do wrong to achieve good, or at least to avoid evil, he is responding to a highly specific—indeed extraordinary—circumstance he finds himself in, and one which is highly unlikely to recur (Delattre 1994, Chap. 11).[4] He has not developed a disposition or habit in response to a felt ongoing condition or recurring situation. However, again the point has to be made that some corrupt actions are one-off, non-habitual actions that are responses to a highly specific, non-recurring circumstance. Accordingly, we cannot conclude from the non-recurring nature of these circumstances that Joe's action is not a corrupt act.

Third, corrupt actions are typically motivated at least in part by individual or narrow collective self-interest. In the case of policing, the interest can be individual self-interest, such as personal financial gain or career advancement. Or it can be the narrow collective self-interest of the group, such as in the case of a clique of corrupt detectives. Certainly, Joe's action is not motivated by self-interest. However, it is a defining feature of acts of noble cause corruption that they are not motivated by self interest (or narrow collective self-interest), and so this feature of Joe's action does not prevent it being an act of corruption—and specifically, an act of noble cause corruption.

Given that Joe's act of perjury undermines a legitimate institutional process, and given the possibility of one-off acts of noble cause corruption, it might seem that Joe's act is corrupt. But this move is a little too quick. Certainly, Joe's action undermines a legitimate institutional process. However, as noted in Chap. 2, for his act to be corrupt, Joe typically has to be morally culpable in some degree. Now Joe is aware that his act of perjury will undermine a legitimate institutional process; it is not as if he is ignorant of the institutional damage that he is doing. On the other hand, he is well-motivated; he is aiming at the good, albeit by doing what is pro tanto morally wrong. Note that many actions are pro tanto morally wrong without being morally wrong *all things considered*. Thus an act of telling a lie is morally

[4]See Delattre for a discussion of such extraordinary situations, and the need—as he sees it—for consultation with senior experienced police officers.

wrong considered on its own, i.e. pro tanto; however, this act of telling a lie if it were performed in order to save someone's life might, nevertheless, be *morally right* all things considered (i.e. taking into consideration that telling the lie saved a life).

It might be thought that Joe's act of perjury is an instance of noble cause corruption. In order for his action to be an act of noble cause corruption it has to be corrupt, and in order for it to be corrupt it must fulfil the following three conditions identified in Chap. 2: firstly, it must corrupt something or someone—in the case of Joe, a legitimate institutional process, viz. the process of giving testimonial evidence is corrupted; secondly, there must be a corruptor or a corrupted and, if the former, the agent normally must be morally responsible for the act, i.e. he must have performed an act which has a corrupting effect, and one that he knew would have this effect, or which he ought to have known would have this effect, and; thirdly, assuming no person is corrupted, then the corruptor must be an institutional actor. If any of these three conditions are not met, then the action is not an act of corruption. In the case of Joe's action, all three conditions are met. So Joe performs an act of corruption, albeit—given his motivation—an act of noble cause corruption.

Note that it is possible for the action to be corrupt, and yet for the agent not to be culpable. This might be so, for example, in the circumstance that although the action was corrupt in itself, it was not morally wrong, all things considered. So Joe's action was corrupt, but the question remains as to whether Joe's action was morally wrong *all things considered*. Further, it is even possible for an agent who performs an action that is both morally wrong pro tanto and all things considered, nevertheless, not to be culpable, i.e. not to be morally blameworthy. For the agent might have a valid excuse for performing the morally wrong action in question. For example, perhaps the agent could not reasonably be expected to know that the action in question was morally wrong all things considered, albeit the agent knew that it was pro tanto morally wrong.

Joe faces a genuine moral dilemma. Obviously Joe knows that committing perjury is pro tanto morally wrong. Moreover, it might be the case that it would be morally wrong for him to commit perjury all things considered, e.g. even taking into consideration the harm it would do to his Mick and Joe's family if he did not commit perjury. However, even if this is so, arguably Joe would not be morally culpable, i.e. blameworthy, if he committed perjury in these circumstances. For the dilemma is such that we cannot confidently claim that Joe ought to have known that committing perjury *in these circumstances* would be morally wrong all things considered. I conclude that irrespective of whether or not Joe's act of perjury in these circumstances would be morally wrong all things considered (obviously it was pro tanto morally wrong), Joe would not be morally culpable in performing it.

Before summing up our discussion of noble cause corruption in policing, I would like to present another example of noble cause corruption in which the corruptor appears to be morally justified. Consider a police officer in India whose meagre wages are insufficient to enable him to feed, clothe, and educate his family, and who is prohibited by law from having a second job. Accordingly, he supplements his income by accepting bribes from certain households in a wealthy area in

return for providing additional surveillance and thus greater protection from theft; this has the consequence that other wealthy households tend to suffer a somewhat higher level of theft than otherwise would be the case. The police officer is engaged in corruption, and his corruption has a noble cause, viz. to provide for the minimal wellbeing of his family. However, arguably his noble cause corruption is morally justified by virtue of the more stringent moral obligations he has to provide for the basic needs of his family. That is, his noble cause corruption is morally justified all things considered.

We have seen that corrupt actions, including acts of noble cause corruption, are typically, but not necessarily or invariably, habitual actions; typically, they are not one-off actions performed in accordance with moral principles that have been applied to a particular non-recurring situation. So in most cases of noble cause corruption, the motivating force is in part that of habit, and there is no attempt to perform a rational calculation of the morality of means and ends on a case-by-case basis. Accordingly, there is an inherent possibility, and perhaps tendency, for such acts of noble cause corruption not to be morally justified when individually considered. After all, the police officer who has performed such an individual act of noble cause corruption has simply acted from habit, and has not taken the time to consider whether or not the means really do justify the ends in the particular case. Moreover, given a presumption against infringing communally sanctioned and legally enshrined ethical principles, this failure to engage in moral decision-making on a case-by-case basis is surely morally culpable by virtue of being, at the very least, morally negligent.

What we have said thus far points to the morally problematic nature of doing wrong to achieve good as a matter of unthinking routine. This does not show that noble cause corruption is after all motivated by individual (or narrow collective) *self-interest*. Rather noble cause corruption remains noble in the sense that it is motivated by the desire to do good. However, there is a weaker claim to be made here, namely that most acts of noble cause corruption are motivated, or at least in part sustained, by a degree of moral negligence. The officer who habitually performs acts of noble cause corruption does not feel the need to examine the rights and wrongs of his (allegedly) ends-justified immoral actions on a case-by-case basis. Yet given the presumption against infringing communally-sanctioned ethical principles enshrined in the law, surely decision-making on a case-by-case basis is typically morally required. Moreover, as we saw above, acts of noble cause corruption have not been communally sanctioned; they are actions justified, if they are justified at all, only by some set of moral principles held to by the individual police officer or group of officers. Further, this set of alleged ethical principles is typically not objectively valid; it is not a set of principles that ought to be enshrined in the law. Rather, these allegedly ethical principles are in fact typically spurious; they are the kind of principle used to justify actions of the sort that Mick commits, viz. loading up suspects and perjury.

Accordingly, there is a strong possibility of, and perhaps tendency to, moral arrogance, moral insularity, and the application of unethical principles inherent in noble cause corruption. Accordingly, noble cause corruption is both dangerous in

its own right, and likely to be at least in part self-serving. In short, while acts of noble cause corruption are by definition not motivated by individual (or narrow collective) self-interest, in so far as they are habitual actions, they are likely to be indirectly linked to, and in part sustained by, self-interest. Indeed, this conceptual claim of an indirect connection between noble cause corruption and self-interest seems to be supported by empirical studies. It appears to be an empirical fact that police who start off engaging in noble cause corruption often end up engaging in common or garden, out-and-out corruption (Wood 1998).

3.3 Noble Cause Corruption as a Defining Feature of Policing

Thus far I have been motivating the view that police corruption can be accommodated within my overall theory, or quasi-theory, of corruption and of noble cause corruption. In what remains of this chapter I want to address the claim associated with Machiavelli, Max Weber, Michael Walzer and others that there is something special about certain roles such as the role of political leaders, military officer and, in particular, police officers, such that engaging in noble cause corruption is somehow a defining feature of these roles (Walzer 1973). Here I am assuming that these theorists are making a stronger claim than the one that I am committed to. I have argued for the weaker claim that in policing (and, presumably, elsewhere) there may well be morally justified acts of noble cause corruption. Nevertheless, I reject the claim that engaging in noble cause corruption is a defining feature of the police role (Coady 2001: 407).[5]

This strong kind of claim is sometimes made in the context of a discussion of the so-called problem of dirty hands. Here it is important to first note some conceptual differences between the concept of dirty hands and the concept of noble cause corruption. The idea of dirty hands is that political leaders, and perhaps the members of some other occupations such as soldiers and police officers, necessarily perform actions that infringe central or important principles of common morality, and that this is because of some inherent feature of these occupations. Such 'dirty' actions include lying, betrayal, and especially the use of violence.

The first point to be made here is that by my lights it is far from clear that such acts are necessarily acts of corruption, and hence necessarily acts of noble cause corruption. In particular, it is not clear that all such acts undermine to any degree institutional processes, roles or ends. (This is compatible with such acts having a corrupting effect on the moral character of the persons who perform them, albeit not

[5]This view in relation to dirty hands is espoused by C.A.J. Coady. On the other hand, Coady seems also to be endorsing a version of moral absolutism, and if so, he would not want to accept a range of what I would regard as morally justified acts of noble cause corruption.

on those traits of their moral character necessary for the discharging of their institutional role responsibilities as (say) politicians, police or soldiers.)

The second and related point is that some putatively 'dirty' actions are indeed definitive of political roles, as they are of police and military roles. For example, earlier I argued that a defining feature of police work is its use of harmful and normally immoral methods, such as deceit and violence, in the service of the protection of (among other things) human rights (Miller and Blackler 2005, Chap. 1). Clearly, a similar definition is required for the role of soldier. And since political leaders necessarily exercise power and—among other things—lead and direct police and soldiers, they too will participate in 'dirty' actions in this sense. However, such use of deceit, violence and so on, can be, and typically is, morally justified in terms of the publicly sanctioned, legally enshrined, ethical principles underlying police and military use of harmful and normally immoral methods, including the use of deadly force. In short, some putatively 'dirty' actions are publicly endorsed, morally legitimate, defining practices of what I, and most people, take to be morally legitimate institutions, viz. government, and police and military institutions. I take it that the advocates of 'dirty hands' intend to draw our attention to a phenomenon above and beyond such publicly endorsed, legally enshrined and morally legitimate practices. But what is this alleged phenomenon (Weber 1991: 77–78)?[6]

According to Walzer (1973), politicians necessarily get their hands dirty and in his influential article on the topic he offers two examples (Walzer 1973: 164–7). The first is of a politician who in order to get re-elected must make a crooked deal and award contracts to a ward boss. The second is of a political leader who must order the torture of a terrorist leader if he is to discover the whereabouts of bombs planted by the leader and set to go off killing innocent people. I take it that these examples consist of scenarios in which politicians are not acting in accordance with publicly endorsed, legally enshrined, morally legitimate practices; indeed, they are infringing moral and legal requirements.

The first example presupposes a corrupt political environment of a kind that in a liberal democracy ought to be opposed and cleansed rather than complied with. Moreover, it is far from clear why the politician's re-election is an overriding moral imperative. The second example is hardly an example of what politicians in well ordered, liberal democracies routinely face; indeed, it is evident that even in the context of the so-called war on terror such cases only arise very occasionally, if at all. I conclude that Walzer's examples go nowhere close to demonstrating the necessity for politicians, let alone police or soldiers, to 'dirty' their hands in the sense of infringing central or important moral principles. At best, the second illustrates the requirement to infringe moral principles for the sake of the greater good in some highly unusual emergencies (Miller 2005).

[6]Max Weber seems to want to avoid the whole problem by defining political leadership purely in terms of one of its distinctive means, namely the exercise of physical force. This seems to me to be an unjustifiably narrow and negative view of political leadership and politics more generally.

There might in fact be *some* contexts in which central or important moral principles do need to be infringed on a *routine* basis, albeit for a limited time period. Such contexts might include ones in which fundamental political institutions had themselves collapsed or were under threat of collapse such as happened in Colombia during the period of the ascendancy of the Colombian drug baron, Pablo Escobar (Miller et al. 2005).

Now the above situation is one of emergency, albeit institutional emergency. So even if one wanted to support all or some of the methods used by the Colombian authorities one would not be entitled to generalise to other non-emergency political contexts. Moreover, there are reasons to think that many of the above-described dirty methods, e.g. execution and use of criminals to combat criminals, or at least the extent of their usage, were in fact counter-productive. For example, use of other criminal groups against Escobar tended to empower those groups. Further, such methods although 'dirty' are not as dirty as can be. In particular, methods such as execution of drug lords are directed at morally culpable persons, as opposed to innocent persons. I take it that at the dirty end of the spectrum of dirty methods that might be used in politics are those methods that involve the intentional harming of innocent persons.

However, the main point to be made here is that even if such dirty methods are morally justified it is in the context of an argument to the effect that their use was necessary in order to re-establish political and other institutions in which the use of such dirty methods would presumably not be permitted. Accordingly, such scenarios do not demonstrate that the use of dirty methods are a necessary feature of political or police leadership.

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Chapter 4
Integrity Systems for Police Organisations

Abstract This chapter outlines the elements of integrity system for police organisations. The elements in question included oversight bodies, internal affairs corruption investigations, professional reporting and integrity testing. I argue that the key moral notion informing integrity systems is that of collective moral responsibility and I provide an analysis of that notion.

In looking at options for promoting integrity and combating ethical failure by police officers, it is very easy to look and opt for some kind of 'magic bullet' solution, such as increasing penalties or giving more intrusive powers to investigative agencies (Miller 2010a, b, 2014).[1] And it is easy to adopt such measures without considering the full array of implications associated with their employment, not only including their demonstrable (as opposed to hoped for) benefits but also their costs in terms of resources, damage to and ethico-professional ethos, and so on. Which of these favored measures has been tested and, as a consequence, is *known* to work (Prenzler 2009)? Under what conditions? What unanticipated side-effects have they been known to have? What is more, such "magic bullet" solutions are often offered in relative ignorance of both the actual nature and causes of the problems that they are supposed to address. The truth is often in the detail (Guiliani and Bratton 1995; Klockars 2015; Ivkovic and Haberfeld 2015).

Consider the integrity testing of police officers. Does this practice actually reduce police corruption? Or does it rather increase levels of distrust between, say, management cops and street cops and, thereby, compound the problem of the so called "blue wall of silence" whereby street cops (in particular) protect their corrupt colleagues? Perhaps random integrity testing in relation to minor ethical misconduct is problematic in this respect whereas targeted integrity testing in relation to serious forms of corruption is much less so because it is widely accepted by police officers. The findings of an empirical attitudinal study of Victoria Police officers, for instance, seem to confirm that this is the case (Miller et al. 2008).

[1]Earlier versions of the material in this and the following section appeared in Miller (2010a, 2014).

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In attempting to determine the causes of unethical professional practices there are a number of preliminary questions that need to be addressed. One set of questions pertains to the precise nature of the unethical practice at issue, and the context in which it occurs. What practices are involved? Minor gratuity taking? Theft from burgled premises? Excessive force? Fabricating evidence? What is the motivation? Is it greed? Is it a (possibly misplaced) sense of justice (so-called, noble cause corruption (Miller 2004))? Are there, for example, some compelling practical facts that explain the practice, say, a belief that the only way to secure convictions of serious drug offenders involves the use of unlawful methods? What other pressures, such as a lack of resources, might explain the unethical practice in question? Another set of questions concerns the extent of the corruption or unethical practice: Is it sporadic or continuing, restricted to a few "rotten apples" or widespread within the police department? (Miller and Blackler 2005, Chap. 5). Here, as elsewhere, rhetoric is no substitute for evidence-based conclusions, difficult though it may be to provide the latter.

A further set of problems arises in situations in which internal affairs departments may have good intelligence or even good evidence that a particular officer is corrupt but lack sufficient evidence or perhaps admissible evidence and, therefore, are not in a position to charge the officer. The dilemma in this kind of situation is what to do with this officer? The police service has two immediate options, which must be carefully risk assessed:

1. It can confront the officer with the fact there has been, let us assume, a covert inquiry, which has revealed a connection between him and a known and active criminal. Then interview him on the matter.
2. It can leave him in place, without informing him of the inquiry and continue the covert inquiry.

Each has its own problems, the first will leave them with an officer who, if he denies wrongdoing, can no longer be trusted especially in the position he holds now and that which he had anticipated being promoted to. If they are unable to deal with him under internal conduct regulations he can remain a police officer. The second option raises the question of any impending promotion and possible job transfer; neither can be set-aside without informing the officer of the reasons for such a decision. If the force, after reviewing all the facts, considers that he is unaware of the inquiry and so decides to continue it, due to the quality of the intelligence being received how can this be done without giving the officer some hint there is something amiss? The cancellation of a promotion coupled with his removal from being 'preferred candidate' for any new role is highly likely to cause him to question what is going on. Can the force realistically make the decision to promote him? Can another candidate 'pip him at the post' for the new role?

Evidently, the problem of police corruption requires a sustained institution-wide response and not simply ad hoc quick-fix or 'magic bullet' solutions. As already noted in the Introduction, this institution-wide response is best understood as designing an integrity system.

4.1 Integrity Systems

As stated in the Introduction, an integrity system is an assemblage of institutional entities, mechanisms, and procedures, whose purpose is to ensure compliance with minimum *ethical* standards and to promote the pursuit of *ethical* ideals. Integrity systems can be contrasted with regulatory frameworks (Miller et al. 2005; Alexandra and Miller 2010; Prenzler 2009). A regulatory framework is a structured set of explicit laws, rules, or regulations governing behaviour, issued by some institutional authority and backed by sanctions. The term "system" is, admittedly, somewhat misleading in that it implies a clear and distinct set of formally integrated institutional mechanisms operating in unison and in accordance with determinate mechanical, or at least quasi-mechanical, principles. In practice, however, integrity "systems" tend to be a messy assemblage of formal and informal devices and processes, and they operate in often indeterminate and unpredictable ways. Nevertheless, if it is to be regarded as a system, this assemblage of device and processes needs to be unified in the sense that it serves a common purpose(s) and integrated to the extent necessary to be mutually reinforcing with respect to that purpose(s).

The integrity of an occupational group is dependent on the individual integrity of its members and, therefore, the integrity system of an occupation is in large part focused on developing and maintaining the individual integrity of its members. A person has individual integrity only if he or she complies with objectively correct moral principles and is of good character i.e. is possessed of virtues rather than of vices. Moreover, many of these objectively correct moral principles that ought to govern the actions of individual persons are universal; they apply to individuals at all times, both in private and in public.[2] For example, the moral principle prohibiting murder is universal. However, some (objectively correct) moral principles governing action evidently apply to some occupations but not necessarily to all. For example, although deceiving others is generally morally wrong, it is an unavoidable and, within limits, an acceptable practice for undercover police operatives.

Arguably, professions (and quasi-professional groups) are defined in terms of the basic purposes that they ought to serve, as well as by their constitutive activities (Miller and Blackler 2005; Alexandra and Miller 2010).[3] The different purposes and activities of different professions generate differences in required moral character. Thus it is because the police must track down and arrest criminals that police

[2]Note that from the fact that a principle is objectively correct it does not follow that it ought to be universally followed. See Chap. 1.

[3]There is a dispute as to whether policing ought to be regarded as a profession or a craft. I suggest that police are an emerging profession. At any rate at the very least they should be regarded as a quasi-profession to distinguish them from occupations that require little or no specialized training and knowledge. However, these controversies make no difference to the points I am making here since elsewhere I have defined policing according to this teleological conception and this conception does not depend on police being accorded the status of a profession.

officers need to have a disposition to be suspicious, a high degree of physical courage, and so on.

In entering into a particular profession, individuals accept professional obligations. Some of these obligations are also moral obligations. The moral obligations are different from and additional to the moral obligations these professionals had before entering the profession. For example, if a police officer fails to intervene in an attempted burglary, she has not only failed to do what her profession requires, she has also failed to do what morality now requires of her. So, it seems, in undertaking a particular profession, an individual is obligated to possess or develop a specific moral character in order to be able to discharge the profession's distinctive moral obligations.

At least two things seem to follow from this account of the moral character of a member of a profession, or at least of the moral character of police officers. First, the fact that a police officer is deficient in some character trait that is highly morally desirable in members of some other profession, or in some specific private role, would not necessarily count against the officer *qua police officer*. For example, we can contrast a sexually promiscuous police officer with a sexually promiscuous husband, wife, or Catholic priest. If the police officer restricts his sexual activities to his private life and does not, for example, pursue work colleagues or others he deals with in his capacity as a police officer then, arguably, his sexual promiscuity has no bearing on his fitness to discharge his role.[4] Matters are entirely different for husbands, wives, and Catholic priests.

Second, the fact that a police officer is deficient in some character trait might well count against that officer, even though the trait in question is not necessary for, or highly desirable in, members of most *other* occupations, or in most *private* roles. Consider physical courage. This is necessary for police officers, but presumably not for academics and accountants. Indeed, a character trait might be a virtue in a police officer but a *vice* in members of most other professions—and even in most private roles. Suspiciousness might qualify as such a trait. The same constant looking about for wrongdoing that makes a good detective might make someone a bad husband or wife.

A further point about moral character might follow from the nature and purposes of policing. This concerns moral character conceived in general terms, as distinct from specific character traits. Perhaps the minimum standards of integrity, honesty, courage, loyalty, and so on demanded of police officers ought to be higher than for many, even most, other occupations. After all, police have extraordinary powers that are not given to others, including the power to take away (briefly) the liberty of their fellow citizens. Moreover, police are subject to moral temptations to an extent not typically found in other occupations. Consider detectives working in drug-law enforcement: they are exposed to drug dealers prepared to offer large bribes just to

[4]Nevertheless, and consistent with this claim, a police officer's sexual activities, even if they do not involve other police, may become professionally problematic in so far as they bring the police service into disrepute.

have an officer do nothing. Arguably, the conjunction of extraordinary powers with enhanced temptations justifies setting higher minimum standards of moral character for police than for members of many other professions.

Maintaining and enhancing the integrity of a profession is partly a matter of attending to the *structure*, *function* i.e. purpose, and *culture* of the organizations in which professional practitioners are housed. Consider structure, both legal and administrative. In an organization that needs to possess integrity, such as a police organization, the administrative processes and procedures in relation to, for example, promotion or complaints and discipline, should embody relevant ethical principles of fairness, procedural justice, transparency, and the like. Now consider purpose. In a police organization that possess integrity, the organizational goals actually pursued should align closely with the morally legitimate purposes of the profession of policing, such as the protection of legally enshrined moral rights, such as the rights to life and liberty (Miller and Blackler 2005, Chap. 1). Finally, consider culture. In an organization that must possess integrity, such as a police organization, the pervasive ethos or culture, should be, for example, conducive to high performance, both technically and ethically, and supportive in times of need, but intolerant of serious incompetence and misconduct. Naturally, the nature and influence of culture can, and should, vary from one type of organization to another, depending in part on the nature of the work of the occupational group housed within that organization. Police organizations, for example, are characterized by a culture in which a high level of loyalty can be expected.

4.2 Holistic Integrity Systems

Thus far in my analysis I have argued for the importance of integrity systems for combating institutional corruption, and have identified three relevant dimensions of institutions, namely, purpose, structure and culture. Let me now briefly describe the general features of an integrity system or at least of what I will refer to as a holistic integrity system.

Integrity systems comprise both reactive, e.g. investigation of complaints, and preventive mechanisms, e.g. ethics training. Preventive mechanisms include those which promote ethical behaviour, reduce opportunities for corruption, deter corruption, contribute to good corporate governance, and increase transparency. It is evident that in most societies, jurisdictions, and indeed organisations, the attempt to combat unethical behaviour involves all of the above. That is, integrity building strategies involve reactive systems as well as preventive systems, and within preventive systems there are mechanisms that promote ethical behaviour, there are corporate governance mechanisms with an anti-corruption function, and there are various transparency mechanisms. Moreover, it seems clear that an adequate integrity system cannot afford to do without reactive as well as preventive systems; and that preventive systems need to have all the elements detailed above. This suggests that there are two important issues. The first is the adequacy of each of the

elements of the above systems, e.g. how adequate is the investigative capacity or the mechanisms of transparency? The second issues pertains to the level of integration and complementarity between the reactive and the preventive systems; to what extent do they act together to mutually reinforce one another?

In this connection, it is worth noting that many jurisdictions have corruption 'watch-dog' agencies, such as the Independent Commission Against Corruption in Hong Kong. These bodies are established by statutes that also define a range of offences, have powers to investigate and refer matters to the courts for prosecution. However, it is noticeable that these 'watch-dog' agencies often involve themselves in corruption prevention programs that involve the development of preventive mechanisms; they do not necessarily see their role as merely that of a reactive agency.

In the past, there has been a tendency to advocate some specific remedy to deal with a corruption problem that has been identified. Of course, in some situations it is possible to identify some clear administrative or legal shortcoming that can resolve the particular corruption problem. However, it is far more likely that the corruption problem requires recourse to a wide range of integrated anti-corruption mechanisms. More generally, it is likely that the best integrity systems are holistic in character. In short, it is best to conceive of specific integrity building mechanisms as elements of a holistic integrity system.

In looking at the set of integrity building processes as a holistic system, we need first to remind ourselves what is presupposed by an integrity system. First, and most obviously, there must be some shared moral values in relation to the moral unacceptability of specific forms of behaviour, and a disapproval of those who engage in such behaviour. That is, there needs to be a framework of accepted moral norms. Second, there needs to be a broadly shared conception in relation to what needs to be done to minimise it, e.g. should it be simply criminalised or should the response include restorative justice elements (Miller and Blackler 2005, Chap. 6). Thirdly, there needs to be present some capacity to create and implement mechanisms that deal with the issue of unethical behaviour, and this presumes some form of legal or regulatory system and organisational structure. Here considerations of efficiency and effectiveness are important. Finally, there needs to be some source of authority whereby sanctions can be applied to individuals who engage in unethical behaviour.

Having discussed what an integrity system looks like, I can now identify some of the key properties of an effective and vibrant integrity system. One of these factors is leadership. Whether the anti-corruption message is coming from the President of the US, the company management or the police commissioner, an effective campaign against unethical behaviour requires clear articulation and a strong and visible commitment on the part of the leadership. However, even when an individual leader is strong and committed to an anti-corruption program, problems can arise. Specifically, if the necessary institutional mechanisms are not established and entrenched, then the result can be disastrous when the charismatic corruption fighter moves on.

Another feature of a good integrity system is impartiality, and the capacity to deal with the powerful in particular. Put simply, the real test of an effective integrity

system is its capacity to deal with cases where the perpetrators are powerful. It is relatively easy to establish systems that act disproportionately against the least powerful engaged in relatively minor forms of misconduct, such as junior police who ignore written complaints from influential public figures of police using abusive language. The test of the system is whether it can act against, for example, senior police who profit from serious forms of corruption. This issue is critical because if the aim is to eliminate serious forms of immoral behaviour such as corruption, then it follows that the integrity system must be capable of dealing with the most serious forms of corruption. Moreover, nothing undermines the legitimacy of an integrity system more than the perception that persons involved in minor forms of unethical practice pay a heavy price, while their superiors who are engaged in far more serious acts of corruption are left alone.

A good integrity system maintains a balance between its component parts. Effective operation not only requires that all of these components be present, but that there be a reasonable balance between them. The most obvious example of an integrity system out of balance is one that relies totally on harsh and vigorous enforcement to the exclusion of all other mechanisms. Such systems tend to create a secretive and punitive culture. Secretiveness is generated because if mistakes or minor misdemeanours are disclosed they are harshly treated. But, as we have seen, secretiveness facilitates corruption. On the other hand, the power of those in authority is greatly increased by virtue of their capacity and tendency to mete out harsh punishment. But, as we have seen, power imbalances often facilitate corruption.

A final, and related, indicator of the effectiveness of an integrity system is transparency. As is well-known, corruption thrives in environments in which the members of a community or organisation are unable to obtain key information, whether it be through an effective news media, elected representatives or through individuals who wish to come forward and bring unethical practices to light (see Chap. 5).

4.3 Collective Moral Responsibility

I have argued that the design and implementation of an integrity system is central to combating police corruption. However, a key notion underpinning integrity systems is collective moral responsibility; it is not merely a matter of an aggregate of persons individually deciding not to engage in corrupt behaviour, even a majority of persons. For institutional corruption can be systemic even though only a minority of the members of the institution in question actually engage in corruption. Typically, systemic corruption involves a minority of persons engaging in joint (i.e. cooperative) corruption and a majority of other persons ignoring or otherwise tolerating this corruption. Hence efficacious anti-corruption measures are a matter of collective morally responsibility; anti-corruption measures need to embody, engender and mobilise a culture that is intolerant of corruption. This is especially the case in

police organisations. For police organisations are characterised both by high levels of cooperation, this being necessary if crime is to be combated successfully, and (relatedly) by a solidaristic culture in which loyalty is prized. Accordingly, combating police corruption requires the development and mobilisation of a felt sense of collective moral responsibility for combating corruption and for implementing anti-corruption measures. But how are we to understand the notion of collective moral responsibility?

Let us first distinguish between some different senses of responsibility (Miller 2006, 2010b, Chap. 5). Sometimes to say that someone is responsible for an action is to say that the person had a reason, or reasons, to perform some action, then formed an intention to perform that action (or not to perform it), and finally acted (or refrained from acting) on that intention, and did so on the basis of that reason(s). Note that an important category of reasons for actions are ends, goals or purposes; an agent's reason for performing an action is often that the action realises an agent's goal. Moreover, it is assumed that in the course of all this the agent brought about or caused the action, at least in the sense that the mental state or states that constituted his reason for performing the action was causally efficacious (in the right way), and that his resulting intention was causally efficacious (in the right way). I will dub this sense of being responsible for an action 'natural responsibility'.

On other occasions, what is meant by the term 'being responsible for an action' is that the person in question occupies a certain institutional role and that the occupant of that role is the person who has the institutionally determined duty to decide what is to be done in relation to certain matters—including what is to be investigated or what is in fact the case in relation to some requirement for knowledge—and to see to it that it does happen (or see to it that the required knowledge in question is acquired and, perhaps, communicated to others).

A third sense of 'being responsible' for an action, is a species of our second sense. If the matters in respect of which the occupant of an institutional role has an institutionally determined duty to decide what is to be done include ordering other agents to perform, or not to perform, certain actions (including acquiring certain knowledge), then the occupant of the role is responsible for those actions performed by those other agents. We say of such a person that he is responsible for the actions of other persons in virtue of being the person in authority over them.

The fourth sense of responsibility is in fact the sense that I am principally concerned with here, namely, moral responsibility. Roughly speaking, an agent is held to be morally responsible for an action or omission—including an epistemic act or omission—if the agent was responsible for that action or omission in one of our first three senses of responsibility, and that action is morally significant. An action or omission—including an epistemic act or omission—can be morally significant in a number of ways. The action or omission could be intrinsically morally wrong, as in the case of a rights violation. Or the action or omission might have moral significance by virtue of the end that it was performed to serve or the foreseen or reasonably foreseeable outcome that it actually had.

I can now make the following preliminary claim concerning moral responsibility—note that I will use the term "action" or "omission" to refer to epistemic acts (acts of belief formation or knowledge acquisition) and omissions as well as behavioural ones:

1. If an agent is responsible for an action or omission (or foreseen or reasonably foreseeable outcome of that action or omission) in the first, second or third sense of being responsible, and the action, omission or outcome is morally significant, then—other things being equal—the agent is morally responsible for that action, omission or outcome, and—again, other things being equal—ought to attract moral praise or blame and (possibly) punishment or reward for it.

Here the 'other things being equal' clauses are intended to be cashed in terms of capacity for morally responsible action, (for example, suppose the agent was a psychopath), or in terms of exculpatory conditions, either by way of justification or excuse. Thus, other things might not be equal if, for example, the agent was coerced, or there was some overriding moral justification for performing what would otherwise have been a morally wrong action. Note also that contra some accounts of moral responsibility I am distinguishing this notion from that of blameworthiness/praiseworthiness.

I have distinguished four senses of responsibility, including moral responsibility. Let me now consider collective moral responsibility. As is the case with individual responsibility, we can distinguish four senses of collective responsibility, including in relation to epistemic actions and omissions. In the first instance I will do so in relation to joint actions (Miller 1992, 1995, 2001, Chap. 1).

Agents who perform a joint action are responsible for that action in the first sense of collective responsibility. Accordingly, to say that they are collectively responsible for the action is just to say that they performed the joint action. That is, they each had a collective end, each intentionally performed their contributory action, and each did so because each believed the other would perform his contributory action, and that therefore the collective end would be realised.

It is important to note here that each agent is individually (naturally) responsible for performing his contributory action, and responsible by virtue of the fact that he intentionally performed this action, and the action was not intentionally performed by anyone else. Of course the other agents (or agent) *believe* that he is performing, or is going to perform, the contributory action in question. But mere possession of such a belief is not sufficient for the ascription of responsibility to *the believer* for performing the individual action in question. So what are the agents *collectively* (naturally) responsible for? The agents are *collectively* (naturally) responsible for the realisation of the (collective) *end* which results from their contributory actions.

Again, if the occupants of an institutional role (or roles) have an institutionally determined obligation to perform some joint action then those individuals are collectively responsible for its performance, in our second sense of collective responsibility. Here there is a *joint* institutional obligation to realise the collective end of the joint action in question. In addition, there is a set of derived *individual*

obligations; each of the participating individuals has an individual obligation to perform his or her contributory action. (The derivation of these individual obligations relies on the fact that if everyone performs his or her contributory action then it is probable that the collective end will be realised.)

There is a third sense of collective responsibility that might be thought to correspond to the third sense of individual responsibility. The third sense of individual responsibility concerns those in authority. Suppose the members of the Cabinet of country A (consisting of the Prime Minister and his or her Cabinet ministers) or the members of the relevant police authority, collectively decide to exercise their institutionally determined right to introduce an anti-corruption measure, for example, an independent oversight body. The Cabinet and/or the relevant police authority is then collectively responsible for this policy and, potentially, for the untoward consequences of its implementation.

There are a couple of things to keep in mind here. First, the notion of responsibility in question is, at least in the first instance, institutional—as opposed to moral—responsibility.

Second, the 'decisions' of committees, as opposed to the individual decisions of the members of committees, need to be analysed in terms of the notion I have introduced elsewhere, namely, a joint institutional mechanism (Miller 2001, Chap. 5, 2010b, Chap. 1). By the lights of that notion the 'decision' of the Cabinet, and also perhaps of the police authority, can be analysed as follows. At one level each member of the Cabinet or the authority voted for or against the policy. Let us assume some voted in the affirmative and others in the negative. But at another level each member of the Cabinet or the authority (or both) agreed to abide by the outcome of the vote; each voted having as a collective end that the outcome with a majority of the votes in its favour would be realised. Accordingly, the members of the Cabinet and/or of the authority were jointly institutionally responsible for the policy change, that is, Cabinet and/or the authority were collectively institutionally responsible for the change.

What of the fourth sense of collective responsibility, collective *moral* responsibility? Collective moral responsibility is a species of joint responsibility. Accordingly, each agent is individually morally responsible, but conditionally on the others being individually morally responsible. There is interdependence in respect of moral responsibility. This account of collective moral responsibility arises naturally out of the account of joint actions. It also parallels the account given of individual moral responsibility.

Thus we can make our second preliminary claim about moral responsibility—again bearing in mind that the joint actions in question include joint epistemic actions, such as that of the members of the surveillance team:

2. If agents are collectively responsible for a joint action or omission (or the realisation of a foreseen or reasonably foreseeable outcome of that action or omission), in the first or second or third senses of collective responsibility, and if the joint action, omission or outcome is morally significant then—other things being equal—the agents are collectively morally responsible for that action,

omission or outcome, and—other things being equal—ought to attract moral praise or blame, and (possibly) punishment or reward for the action, omission or for bringing about the outcome.

As is the case with the parallel account of individual moral responsibility, there are crucial 'other things being equal' clauses to provide for the possibilities that the agents in question either lack the requisite moral capacities—and so cannot be held morally responsible—or are possessed of moral capacities, but in the circumstances in question have an excuse or justification for their joint actions and omissions, and for the outcomes of such actions and omissions.

Note that there can be cases where there the morally significant collective end of a joint action is realised, yet one or more individuals fails to successfully perform their individual action, and cases where the morally significant collective end of a joint action is not realised, yet one or more individuals successfully performs their individual action. In the former kind of case, assuming the individual (or minority) has the collective end (and presumably, therefore, did not intentionally fail to perform their contributory action) the individual shares in the collective moral responsibility for the realisation of the end, notwithstanding their individual failure in relation to their contributory action. In the latter kind of case, again assuming the individual has the collective end, the individual shares in the collective moral responsibility for the failure to realise the end, notwithstanding their individual success in relation to their contributory action. It is consistent with this that if an individual (or minority) *culpably* failed to realise their individual end yet knew that the collective end would, nevertheless, be realised then that individual does *not* share in the collective moral responsibility of the successful outcome since, for one thing, the individual did not in fact have the collective end. It is also consistent with the above that if an individual (or minority) *culpably* failed to realise their individual end in the knowledge that as a consequence of this culpable failure of theirs the collective end would not be realised, then the individual (i) does not have the collective end and (ii) is individually morally responsible for the collective failure to realise the collective end. So there is no collective moral responsibility for the failure.

So much for the concept of collective moral responsibility, but how is it to be understood in relation to anti-corruption measures and integrity systems for organisations in particular?

4.4 Organisations, Collective Responsibility and Anti-corruption

Our starting point for this discussion is that the collective moral responsibilities of members of organisations, including police organisations, go well beyond simply avoiding unlawful and/or corrupt activity. Managers and employees are rewarded financially, and in other ways, in order that they collectively pursue collective ends

which are collective goods such as, in the case of police organisations, the protection of the legally enshrined moral rights of the citizenry. In addition, managers and employees are collectively morally responsible for seeing to it that various general standards are complied with. In some cases the standards, such as efficiency, are a means to the realisation of the collective goods. In other cases they are an independently required constraint, e.g. compliance with the law. In still others, they are both. The collective responsibility to combat corruption is of this latter kind.

Needless to say, the ascription of collective moral responsibility in the sense of joint moral or ethical responsibility to an organisation's managers and employees needs to be qualified in any particular case by considerations of the diminished responsibility of subordinates, the nature of the specific institutional role, e.g. an investigator in the internal affairs department, and so on. Moreover, the ascription of joint ethical responsibility to an organisation's entire cohort of staff in some cases, e.g. pervasive and systemic corruption, is consistent with the ascription of individual or selective joint responsibility to, say, the commissioner of police or members of the senior cohort of police in other cases, e.g. failure to introduce some specific anti-corruption measure such as targeted integrity testing. Further, legal liabilities and penalties *could* reflect such differential ascriptions of joint ethical responsibility.

Acts of corruption, are obviously not always joint actions per se, or the outcomes of joint actions. They are often crimes committed by individuals acting on their own. The individual is acting in his capacity as an individual, and is wholly morally responsible for his crime.

But just as members of the public, and not just members of the police force, are morally responsible for the prevention of crime and the capture of criminals—for example, members of the public have a duty to report crimes—so the managers and employees of an organisation are in part morally responsible for the prevention of corruption within that organisation. This is especially the case with police organisations, given their definitive role in relation to crime and corruption.

This is not yet to spell out what the specific duties of individual role occupants in this regard ought to be. However, there are some obvious responsibilities which attach to all. For example, there is the moral, and presumably legal, responsibility to report corruption. Moreover, an organisation that is highly susceptible to corruption, as police organisations evidently are, is morally obliged, should be required by law to have in place, and adhere to, a suite of measures to combat and reduce corruption (an integrity system), including professional reporting mechanisms, an internal affairs department, a complaints and discipline system, ethics education and so on, in the same way that most organisations are typically now required to put in place various measures to ensure the health and safety of their managers employees, clients and customers. Indeed, to reiterate what has been said above, the adherence to such measures is a collective moral responsibility; a responsibility one has jointly with others.

Here, the so called 'problem of many hands' is relevant (Thompson 1987). This problem arises in situations in which many individuals contribute to an outcome,

though each only in a very small way. Thus each police officer might accept a free hamburger from a particular diner; yet this in itself is innocuous. However, if many police officers regularly do this then the diner in question might be unfairly receiving a high degree of police protection not afforded to other establishments. Accordingly, officers might reasonably be required not to accept free hamburgers. The problem of many hands is solved by implementation of a policy which everyone complies with in accordance with their collective or joint responsibility to impartially protect the rights of citizens.

4.5 Integrity Systems for Police Organisations

Notwithstanding the above, integrity systems for police organizations can and do vary. However, such systems ought to have at least the following components or aspects (Prenzler 2009; Prenzler et al. 2008; Miller 2010a):

3. An effective, stream-lined complaints and discipline system;
4. A comprehensive suite of stringent vetting and induction processes reflective of the different levels of risk in different areas of the organization;
5. A basic code of ethics and specialized codes of practice—for example, in relation to the use of firearms—supported by ethics education in recruitment training, and ongoing professional development programs;
6. Adequate welfare support systems, for example, in relation to drug and alcohol abuse, and psychological injury;
7. Intelligence gathering, risk management and early warning systems for at-risk officers, for example, officers with high levels of complaints;
8. Internal investigations, that is, the police organization takes a high degree of responsibility for its own unethical officers;
9. Pro-active anti-corruption intervention systems, for example, targeted integrity testing;
10. Ethical leadership, for example, promoting police who give priority to the collective ends definitive of the organization rather than their own career ambitions; and
11. External oversight by an independent, well-resourced body with investigative powers.

As the foregoing points suggest, a key element in an integrity system for police organizations is an organization-wide, intelligence-based, ethics risk-assessment process. This involves good intelligence and an organization-wide ethics risk-assessment plan and—based on good intelligence and the risk-assessment plan—the identification of corruption/rights violations/ethical misconduct risks in the police organization.

Ethical risks in a contemporary police organization might include risks in many, if not most, of the following areas:

1. Data security, notably electronic data;
2. Drug investigations, given the massive funds involved and the absence of victims who might complain;
3. Excessive use of force;
4. Informant management, given that most informants are themselves criminals;
5. Infiltration by organized crime.

Other areas of concern in many police organizations are the ethical risks stemming from: severe stress among police officers and the inability of managers to identify and respond effectively to severe stress in their subordinates; noble cause corruption, in which officers break the law to achieve good outcomes, for example, by doctoring statements and even fabricating evidence; political and/or media and/or police hierarchy pressure for results, or even actual interference in high profile investigations, thereby compromising the investigative process and (potentially) its outcome.

Once ethical risk areas have been identified, preventive counter-measures need to be put in place. These counter-measures should track the identified risks. Some counter-measures and the risks that they track include the following.

1. In relation to data security: segregation of, and controlled access to, internal affairs databases; audits of data base access.
2. In relation to drug investigations: early warning systems, for example, profiles of at risk officers/locations/high risk areas; intelligence-driven targeted integrity testing of individuals/locations; audits of drug squads and forensic laboratories.
3. In relation to excessive use of force: complaints-driven investigations informed by intelligence, for example, a high number of complaints of excessive use of force.
4. In relation to informant management: accountability mechanisms such as documentation naming the informant, ensuring that a police officer with an informant has a supervisor who meets with the officer and the informant, having a supervisor who monitors the police officer's dealings with the informant, and recording all payments (including electronic transfers, to prevent theft).
5. In relation to infiltration by organized crime: stringent and constantly updated vetting procedures (especially for officers in sensitive areas), ensuring adequate supervision of all officers, and monitoring and utilization of intelligence data bases (including criminal associations).
6. In relation to stress: ensuring adequate supervision of all officers; introduction of stress management tools.
7. In relation to all of the above: ongoing ethics training based on identified risks in specific roles.

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Chapter 5
Professional Reporting and Police Culture

Abstract In this chapter I discuss the matter of the morality and rationality of professional reporting: police reporting on the corrupt behaviour of their fellow officers. Historically, the so-called 'blue wall of silence' has been a barrier to such reporting and, therefore, to combating corruption in police services. I argue that since most police officers are not themselves corrupt and believe that they morally ought to report or provide evidence in relation to their corrupt colleagues, they will do so if conditions are created under which it will be rational for them to do so. These conditions include the following ones: A reasonable number, and a high rate, of convictions/terminations of corrupt police officers as a result of a well-resourced, high quality, internal investigations department focused only on criminal and serious disciplinary matters, and operating in the context of: (i) the normalization of the role of internal investigator; and (ii) the felt duty on the part of most police to report/provide intelligence/evidence regarding criminal/corrupt colleagues in the knowledge that if they do: (a) the persons in question are likely to be convicted/terminated; and (b) they themselves will suffer no harm or adverse career consequences.

Having discussed integrity systems for police organizations in general terms in Chap. 4, I turn now to an historically important challenge that faces police organizations, namely, professional reporting. Note that there is a distinction between professional reporting and whistleblowing. Professional reporting is *internal* disclosure of corruption or other misconduct within an organisation whereas whistleblowing is *external* disclosure to the media or other agency which will communicate the disclosure to the public at large. This distinction between internal and external disclosure can cause confusion, particularly in public sector institutions. When an individual raises his or her concerns with another public sector body—such as the Auditor-General or Ombudsman—in one sense the complaint has gone beyond being an internal management matter. However, if we conceive the agency to whom the individual belongs and the external public sector agency to whom the complaint has been referred as constituting parts of the same public sector organizational entity, then the individual is not engaged in whistleblowing. Specifically, the individual has

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not 'made public' the alleged corrupt activity. Accordingly, police who disclose corruption to external police oversight bodies are engaged in professional reporting and not necessarily whistleblowing. My concern here is only with professional reporting by police officers of corruption perpetrated by other police officers.

5.1 Police Culture

Organizational integrity systems, including integrity systems for police organizations, rely heavily on the members of organizations to report the ethical misconduct of their colleagues and, in the case of criminal offenses, to be prepared to provide sworn evidence against them (Miller et al. 2006; Miller and Blackler 2005; Miller 2010).[1] Historically, police officers have been very reluctant to "rat" on their corrupt colleagues, and this reluctance has been explained in large part in terms of police culture (Reiner 1985: Chap. 2) and, specifically, the above-mentioned "blue wall of silence (Kleinig 2001; Skolnick 2002)".

Police culture is a complex phenomenon and one much-commented on. Moreover, we need to distinguish the sociological description of police culture from the ethical or, more broadly, normative analysis of it. According to Robert Reiner, a sense of "mission" is a defining characteristic of police: "it's a sect, it's like a religion, the police force", "you're 'ordained' as a policeman, so to speak" (Reiner 1985: 245); "it is important in understanding police work that it is seen as a mission, a worthwhile enterprise, not just another job" (Reiner 1985: 85); "The core of the police outlook is this subtle and complex intermingling of the themes of mission, hedonistic love of action and pessimistic cynicism" (Reiner 1985: 91).

Brian Chapman (1970) refers to Balzac's notion of policing as the noblest profession, because in their person police play the roles of soldier, priest, and artist. But Chapman suggests there are moral dangers associated with these roles:

> The policeman like the civil servant, the judge and the soldier is preconditioned to accept the doctrine of the golden end, the doctrine of the Jesuits, the raison d'être of the health of the Republic, of St Ignatius, of Bismark and of Gaugin. The policeman like the soldier does not flinch from force, since contact with violence, as well as with human stupidity, is part of his professional life. The danger inherent in this doctrine for the policeman is that, if unchallenged, in the end the soldier may have to sacrifice the women and children, the priest the Jews, and the artist his family (Chapman 1970: 103).

Social scientists have documented how police officers inducted into a police culture of this sort can begin to see many of the situations that they confront as so-called Dirty Harry scenarios, as we saw in Chap. 3. The point to be stressed here is a variant on the one made by Chapman above, namely, the inherent potential of this police sense of mission to lead police to believe that at least on some occasions they can disregard, or even think that they are somehow above, the law.

[1]Earlier versions of the material in this section appeared in Miller et al. (2006: Chap. 9), Miller and Blackler (2005: Chap. 5), Miller (1998, 2010).

As noted earlier, a feature of police culture is the strong sense of loyalty felt by police officers to one another. Police work is inherently dangerous and requires a high level of cooperation and trust, particularly among street police. So it is unsurprising that police culture is characterized in part by a strong sense of solidarity among police officers. Moreover, at least in many large metropolitan police services, this solidarity goes hand in glove with an "us versus them" mentality in respect of both the public and police management. The public are often thought by police to misunderstand, dislike, and/or fear the police; after all, it is the public who are being policed and in urban crime-ridden areas it may be difficult for the police to separate offenders from ordinary law-abiding citizens. Police managers are often thought by street police to be unsupportive, untrustworthy, and punitive; after all, it is the managers who are policing the police and in police organizations with an acknowledged corruption problem street police are likely to be especially distrustful of the police managers who are under political pressure to be seen to be doing something about the corruption.

Numerous inquiries into police corruption have noted that police officers typically expect other police officers not to report them, even when they have engaged in criminal acts and notwithstanding the legal requirement that they do so. This "blue wall of silence" depends in part on the feelings of loyalty that I have been describing. Perhaps it also draws support from the feeling among many police officers that at times they are justified in breaking the law, whether by failing to report corruption or by engaging in (at least) noble cause corruption. Many police officers interviewed in the aforementioned Victoria Police study said that they would be very reluctant to report a minor assault by a police officer on an offender if the offender had been provocative or had otherwise "deserved it", notwithstanding that the assault in question was a criminal act (Miller et al. 2008; Kleinig 2001; Skolnick 2002).

Police solidarity can often be a virtue. It enables officers to cooperate with one another and to stand solid in the face of danger, for example, to successfully discharge their responsibilities in relation to crowd control or when two police officers "on the beat" confront a violent offender. It also reinforces the individual capacity for physical courage, including a preparedness to die in the service of others. And it generates a willingness to help other police when they most need help. But such solidarity can also be a vice. Historically, in many police organizations solidarity has manifested itself in a willingness to elevate organizational interests above those of the public, including by tolerating corruption in the ranks. Notoriously, police have engaged in cover-ups of the crimes of fellow officers. Such cover-ups represent examples of the immorality that solidarity can bring about.

As mentioned earlier, one dimension of police culture is the schism between street cops and management cops and, more specifically, between street cops and internal affairs investigators (Reuss-Ianni and Ianni 1983). This aspect of police culture can have profound implications for the effectiveness of the police organization. If there is an "us-them" attitude between lower and upper echelon employees, an organization is hardly likely to perform at optimum levels of efficiency and effectiveness. For example, it is conducive to a punitive culture in which minor ethical misconduct on the part of subordinates, once exposed, is harshly

punished—often following an internal affairs investigation in the service of a police management hell-bent on demonstrating a tough anti-corruption stance to its political masters and the public at large—when a remedial/development response would be far more appropriate. Naturally, such a punitive culture reinforces the "blue wall of silence", particularly among lower echelon police officers.

It might be argued in response to this, and by way of supporting punitive management action, that it is often very difficult to convict experienced police officers of serious forms of corruption. They have a thorough knowledge of criminal law and police investigative methods, and the evidentiary threshold for conviction—that is, beyond reasonable doubt—is high. Accordingly, the argument runs, management may need to settle for less and should do so. Hence it is allegedly justifiable to relentlessly pursue, and harshly punish, officers for relatively minor ethical misconduct, that is, non-criminal, disciplinary matters. After all, they are known to have committed serious criminal offences—albeit this cannot be proven—and the evidentiary threshold (for example, on the balance of probabilities) is much lower for disciplinary matters; so success is far more likely.

This argument is highly problematic. For one thing, in the absence of good evidence, the supposed "knowledge" on the part of management or internal affairs investigators of the corrupt activities of certain officers is questionable; accordingly, there is a real danger of taking excessively punitive action against officers who are innocent or who have at most engaged in minor ethical misconduct. For another thing, even in the case of those officers who are engaged in criminal activity, disciplinary action that is short of termination does not remove the problem. Indeed, it may exacerbate it, for example, by alerting the officers in question to the fact that they are under scrutiny.

Although the structure, purpose, and culture of an institution provide a framework within which individuals act, these dimensions do not fully determine the actions of individuals. There are a number of reasons for this. For one thing, rules and regulations cannot cover every contingency that might arise, and laws, norms, and ends need to be interpreted and applied. For another thing, culture is not necessarily fully determinative of action, or even the dominant factor in play. Not only is there available space within the institutional framework and occupational culture for a degree of individual autonomy, but also changing circumstances and unforeseeable problems make it desirable to vest individuals, including individual police officers, with discretionary powers.

Notwithstanding the malign influence of certain aspects of police culture in many police organizations, the moral courage of individual police officers can enable them to resist encroachments on the exercise of their autonomy. The image of a pervasive, monolithic, and dominant attitude and action determining culture is only ever partly true. Moreover, there is a range of responses to the malevolent aspects of police culture, including reducing the opportunities for corruption and introducing an elaborate system of detection and deterrence. As discussed above, such responses constitute part of the overall integrity system. However, they are not sufficient.

For as argued above, reliance on detection and deterrence alone bypasses the issue of moral responsibility which lies at the heart of corruption. In the last analysis

the only force strong enough to resist corruption is the moral sense—the motivating belief in doing what is right and avoiding doing what is wrong. If most police officers do not for the most part have a motivating belief in avoiding doing what is illegal or otherwise immoral, no system of detection and deterrence, no matter how extensive and elaborate, can possibly suffice to control corruption.

Again, as earlier argued, the motivating belief among police officers in doing what is right can be reinforced by ensuring a just system of rewards and penalties within the police organization itself and reinforced by ensuring an appropriate system of command and control. Moreover, the belief in doing what is right can be reinforced by ensuring that ethical issues in police work, including the ethical ends of policing itself, are matters of ongoing discussion and reflection in training programs and the like.

The belief in doing what is right can be reinforced by utilizing the intrinsically collective nature of policing, and, in particular, by stressing that police officers are collectively responsible for controlling corruption. The collective effort to ensure that the fundamental ends of policing are pursued will contribute to their internalization by police officers. More important, such a collective effort will ensure that police officers identify with those ends so that self-respect, as well as the respect of others, depends on the pursuit of those ends and on opposition to corruption. This amounts to a change in police culture, but not one that is at the expense of loyalty per se or of the commitment to cooperation and assistance to fellow officers that underpins it.

Of course, it is one thing to provide a coherent account of what police culture *ought* to be, and quite another to change it and, specifically, to break down the "blue wall of silence" and bring about a culture that is intolerant of corruption and encourages professional reporting of corruption. However, the provision of such a coherent normative account is a necessary first step, and designing the various elements of an integrity system—including reduction of opportunities, accountability mechanisms, ethics education programs—is an important second step.

An important aspect of the process of developing a culture that is intolerant of corruption involves rationality, as opposed to morality or legality. I suggest that developing such a culture presupposes that the conditions exist under which it is rational for individual police officers to report their corrupt colleagues, and not simply deemed to be legally or morally obligatory for them to do so. It is this issue that I explore in the final section with particular reference to the relationship between professional reporting and internal affairs investigations.

5.2 Professional Reporting and Internal Affairs Investigations

In the discussion thus far I have suggested that police culture is not necessarily a pervasive and monolithic social force that is the dominant determinant of the attitudes and actions of police officers in all police organizations. Many of the

classic features of police culture are principally features of police serving in large, metropolitan, bureaucratic, and hierarchical organizations. Moreover, between and within even these organizations there are significant attitudinal and behavioural differences in respect of police corruption. I have further suggested, in effect, that police culture is in large part a rationally and morally legitimate response to the operational policing environment and, as such, cannot be, and ought not to be, jettisoned in its entirety. I now suggest that police culture, not being the pervasive, monolithic and dominant force that it is often presented as being, is a malleable phenomenon; in principle, it can be changed and, in particular, its malignant features can be curtailed, even if they cannot be removed entirely.

Curtailment depends on a number of things, notably designing and implementing appropriate integrity systems. However, in the context of an appropriate overall integrity system, curtailment typically depends in part on adjusting the incentive structures in place so as to make compliance with the dictates of malignant features of police culture much less rational than it otherwise would be. (This is perhaps most obvious in the case of the deterrence mechanisms that are a necessary feature of most integrity systems.)

Unfortunately, in dysfunctional, corruption-riddled police organizations compliance on the part of any given police officer with the malignant features of police culture may be quite rational. This is not to say that the malignant features of police culture are an irresistible force. Far from it; these features of police culture are by no means the only important factors at work and compliance, though rational, is not the only choice available. However, it is to say that the particular configuration of factors in play is such that these malignant features of police culture end up being the decisive factors at work. Accordingly, the challenge facing those seeking to design an appropriate integrity system is how to bring it about that these malignant features of police culture cease to be the decisive factors at work; it is not necessarily, at least in the first instance, a matter of directly removing these features.

Here I want to narrow my focus and explore, in particular, an apparently important relationship between a reluctance on the part of police to report corrupt fellow officers, on the one hand, and the quality of internal affairs investigations, on the other. Good, though by no means decisive, empirical evidence of this relationship has been provided in the Victoria Police study (Miller et al. 2008; Miller 2010, 2014).[2] The relevant parts of the study comprise a survey of ethical attitudes, an analysis of all internal affairs corruption investigations files over a five-year period, and the conducting of some seventy focus groups of serving police officers (circa 500 police officers out of a police force of 9000). Moreover, the evidence for this relationship is further strengthened by the consideration that it has an intuitively rational structure to it.

The first point to be made here is that in well-ordered liberal democratic states, such as Australia, the majority of police officers in many, if not most, contemporary police organizations are evidently not themselves corrupt and do not engage in

[2]Earlier versions of the material in this section appeared in Miller (2010, 2014).

ongoing corrupt activities. For example, although the 1990s' Wood Royal Commission into police corruption in the New South Wales (Australia) Police Force found systemic corruption, it was largely limited to groups of detectives functioning in the area of illicit drug investigations and specific local area commands in which there was an endemic drug problem, for example, the King's Cross red light area in Sydney. Moreover, evidence from the Victoria Police study indicated that the majority of police officers in Victoria Police and, presumably, similar police organizations, strongly desire to rid their organization of corruption and criminality. A further finding of the Victoria Police study was that the majority of police officers believe that they morally (and not simply legally) ought to report/provide evidence in relation to the minority of corrupt colleagues. Notwithstanding this belief that they ought to report and provide evidence in relation to their corrupt colleagues, most police officers are apparently unwilling to report their corrupt colleagues; this was a further finding of the Victoria Police study. How can this be so?

Certainly, there is nothing illogical or even atypical in this. People often have moral beliefs that they are unwilling to act on, notably when it is not in their self interest to do so or when there are other felt moral considerations in play such as feelings of loyalty. Unsurprisingly, it turns out that the attitudes and, therefore, the culture of Victoria Police is a complex and differentiated phenomenon: evidently there is a strong and widespread belief that corrupt police morally ought to be reported—including because it is unlawful not to do so—but there is a contrary feeling that it is or might be disloyal to do so. This contrary feeling is an attitudinal barrier to reporting corrupt fellow officers, especially at the lower end of corruption or in relation to noble cause corruption. In the context of my attempt here at explication of the rational structure underlying police action (or, at least, inaction) this attitudinal barrier can usefully be thought of as a presumption against reporting corrupt colleagues. Considered on its own this presumption might well be overridden by the belief among police that police corruption (at least in its more serious forms) ought to be reported. However, there is a third consideration in play, namely, the irrationality of reporting corrupt colleagues. Evidently, this third consideration is the decisive one. Let me explain.

According to the empirical evidence provided in the Victoria Police study, one important aspect (I do not say it is the only important aspect) of the rational structure of the situation is as follows:

Conclusion (c): Police officers (junior and senior) are reluctant to provide evidence in relation to corrupt officers because (for the reason that):

Premise (a): Police *believe* that internal investigations are unlikely to result in convictions and/or termination and that they are, in any case, often management-driven witch-hunts of innocent police or of police who have, at most, engaged in minor ethical misconduct;
Premise (b): If honest police officers report/provide evidence in relation to corrupt officers and those officers are exonerated and remain in the force, then the police culture is such that their own careers will suffer from the stigma of having sided

with a punitive management/internal affairs department and "ratted on" their colleagues (who are widely believed to have been innocent or at least only guilty of a minor infraction).

Of course, the fact that their exonerated colleagues are widely believed to be innocent, or at most guilty of only a minor infraction, is a function in large part of police culture. The loyalty of fellow police officers ("one's brothers") surely demands a strong presumption in favor of one's innocence or, at the very least, a presumption in favor of the offense in question being an understandable breach of a legal or ethical principle. (The breach may be regarded as understandable because the principle in question is a minor one or because the circumstances were such that compliance was not unproblematic or some-such.)

Notice, however—to return to the rational structure of (a) and (b) therefore (c) above—that police culture (the "blue wall of silence") gets traction here only on the assumption that police believe that internal investigations are unlikely to result in convictions and/or termination of corrupt officers, and that there will be, as a consequence, a widespread view that the officers investigated were not guilty of any serious offense, but merely the victims of a punitive management/internal affairs department.

The widespread belief of police in many police organizations that internal investigations are unlikely to result in convictions and/or termination of corrupt officers is not without rational foundation. Historically, internal investigations in many, if not most, large metropolitan police organizations—including, until recently, Victoria Police—have as a matter of *fact* (and not simply of officers' beliefs) had relatively little success; certainly, they have typically resulted in low rates of conviction and/or termination of officers under investigation. Moreover, again historically, in many, if not most, large metropolitan police organizations, police who inform on other police are as a matter of *fact* "sent to Coventry", if not subjected to harassment, by their colleagues, and in many cases their careers have been ruined. So police officers' beliefs in this respect are well founded.

The lack of success of internal police investigations is, of course, in part dependent on the reluctance of police officers to provide evidence regarding their corrupt colleagues. There is also a reluctance on the part of police to become internal investigators; solidarity dictates that investigating allegations of corruption against one's fellow officers is unlikely to be an attractive role, and highly unlikely to be preferred to the role of investigating alleged offenders who are not police officers. At any rate, for this and other reasons internal investigators are unlikely to be high quality investigators and, even if they are, their investigations of fellow police officers may well manifest a lack of commitment or be otherwise flawed. Yet internal investigations need to be of the highest quality, given that the people under investigation are themselves police and, therefore, familiar with police investigative methods.

One of the flaws to be found in many internal investigations is a breach of confidentiality that has compromised the investigation. Such breaches of confidentiality are themselves acts of corruption and yet they have often taken place with

impunity. But again this is reflective of the malignant features of police culture; a culture of being reluctant to ensure that suspected corrupt police are brought to book, whether those police are the ones who engaged in the original act of corruption or those who sort to protect them by engaging in the secondary act of corruption, for example, a breach of confidentiality.

So there is a vicious circle in operation: the 'blue wall of silence' undercuts the efficacy of internal investigations which in turn reinforces the 'blue wall of silence'. However, the point I want to stress here is that—in the current circumstances—it would be irrational of police officers to report, or provide evidence in relation to, their corrupt colleagues. For, on the one hand, they reasonably believe that this will not result in the conviction/termination of these corrupt officers and, on the other hand, they reasonably believe that it will ruin their own careers. Moreover, the irrationality of reporting corrupt colleagues is, I suggest, the decisive factor in determining their action (or at least inaction). They believe it is morally wrong not to report their corrupt colleagues (at least in serious cases), feelings of loyalty notwithstanding; however they believe that no good will come of it but only harm to themselves.

What is the way out of this impasse? There is a need for the following countermeasures. First, internal affairs departments ought to investigate only criminal matters and serious disciplinary matters that warrant termination. (And perhaps the difficulty of terminating police also needs to be looked at, for example, by recourse to Loss of Commissioner Confidence provisions, although there are procedural rights issues in this area.[3]) Other ethical misconduct ought to be regarded as a management/remedial issue. The latter is important partly as a means of reducing the possibility that initial minor ethical lapses on the part of new recruits will come to be regarded, by the offending officers themselves as well as others, as fatal moral compromises that forever impugn their integrity and prevent them from ever reporting the serious ethical misconduct of their corrupt colleagues.

Second, the rate of internal investigations convictions/terminations needs to be improved to a high level of success. In the first instance (that is, in the context of a reluctance on the part of officers to inform on their corrupt colleagues), this can be partly achieved by:

(a) Increasing the quality of internal investigations (for example, by head-hunting high quality investigators), increasing data security measures (for example, the use of "sterile corridors", the stringent vetting of internal Affairs (IA) personnel, including administrative staff), audits of investigations, and adequate resourcing of IA departments;
(b) The use of well-resourced proactive anti-corruption strategies, for example, targeted integrity tests, intrusive surveillance methods that do not rely heavily on the willingness of police to provide evidence regarding corrupt colleagues; and

[3]Loss of Commissioner Confidence provisions exist in a number of Australian police services, including Victoria Police and New South Wales Police.

(c) Recourse to well-resourced external oversight bodies with an independent investigative capacity, especially in relation to serious corruption in the upper echelons of a police organization.

Third, the stigma attached to being an internal investigator and to reporting, or providing evidence against, corrupt police needs to be reduced by:

(a) Normalizing the role of internal investigator, for example, by making 2 years as an internal investigator mandatory for all police investigators seeking promotion to senior investigative positions;
(b) Instituting measures to protect (physically and career-wise) those who provide evidence against corrupt colleagues, for example, the implementation of internal witness protection programs and transparent promotion processes; and
(c) Introducing ongoing tailor-made ethics education programs that sensitively but squarely address the issues of police culture, internal affairs investigations, and professional reporting.

In short, it needs to become rational, and not simply legally and ethically mandated, for police officers to report, and provide evidence in relation to, their corrupt colleagues. Given that most police officers are not themselves corrupt and believe that they morally ought to report or provide evidence in relation to their corrupt colleagues, they will do so—or at least are more likely to do so—if conditions are created under which it will be rational for them to do so; that is, if it works for them and brings rewards rather than punishment. These conditions will include the following:

A reasonable number, and a high rate, of convictions/terminations of corrupt police officers as a result of a well-resourced, high quality, internal investigations department focused only on criminal and serious disciplinary matters, and operating in the context of:

(i) the normalization of the role of internal investigator; and
(ii) the felt duty on the part of most police to report/provide intelligence/evidence regarding criminal/corrupt colleagues in knowledge that if they do:

    (a) the persons in question are likely to be convicted/terminated; and
    (b) they themselves will suffer no harm or adverse career consequences.

These specific conditions are consistent with, and conducive to, a functional and defensible police culture—one in which loyalty is felt to be owed to police officers who embody the ideals and legitimate ends of policing, but not to corrupt colleagues. Such a functional police culture is likely in turn to facilitate the emergence of these specific conditions.

Naturally, these recommendations in relation to internal investigations and professional reporting are only one piece in the puzzle; I am not suggesting that they constitute a panacea. Indeed, I earlier elaborated a detailed set of key elements of an integrity system for police organizations. More generally, I am suggesting that in combating police corruption more attention needs to be paid to the rational

structure underlying individual police decision making and the ways in which it might be adjusted (and, in a sense, less emphasis placed on police culture as a stand-alone determining factor). However, the rational structure in question is not the familiar one of rational self-interested actors unmoved by morality or by irrational (or non-rational) social forces; police are clearly moved by a complex mix of individual self-interest, moral beliefs, and cultural factors.[4] Combating corruption in policing, as elsewhere, involves in part unearthing this rational structure and devising ways to adjust it so that self interest, moral beliefs, and cultural factors work together to promote ethical conduct and reduce corruption rather than the reverse.

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[4]I do not mean to imply that these three categories are mutually exclusive.

Chapter 6
Internal Investigations

Abstract This chapter outlines twenty-two criteria for good internal investigations. The criteria include the competence, resilience, open-mindedness and independence of the investigator, and the investigation being well-planned, thorough and conducted under conditions under which information/evidence is secure and the rights of suspects and witnesses are respected. I also discuss the need for the judicious use of covert methods and the importance of best practice informant management.

Historically, the quality of police investigations of police corruption and misconduct has been poor. Numerous police commissions in the United States (Knapp 1972; Mollen 1994), Australia (Wood 1996), and elsewhere have found major deficiencies when police investigate police. The deficiencies identified have included inadequate planning of investigations, inadequate use of electronic surveillance, failure to interview key witnesses, breaches of confidentiality, and lack of timeliness. A 2001 study of New South Wales (Australia) police internal investigations into serious drug-related police corruption identified a variety of systemic issues (Ratcliffe et al. 2005). The overall quality of internal investigations was poor and there were too many investigations. There was an emphasis on bureaucratic processing of complaints at the expense of quality-driven investigations.

An important preliminary step to take in relation to improving the quality of internal affairs investigations is to determine what counts as a good investigation, that is, what constitute the criteria for quality in this area. On the one hand, there is very little in the policing literature on standards for internal investigations. On the other hand, there are various performance indicators in the wider literature on policing that could be applied to internal affairs investigations (Prenzler 2009; Ivkovic and Haberfeld 2015).[1] Here I stress that performance indicators are themselves problematic in various ways. Performance indicators and numerical measures including statistics, in particular, in and of themselves should not dictate evaluations let alon policy decisions. In the first place, performance indicators are

[1]The professional standards department of the New South Wales Police has developed a set of criteria for the quality of internal investigations and I have made use of a number of these criteria in this article. Professional Standards Department (2001).

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merely indicators and ought to be merely one instrument in the hands of police leaders making professional judgments. Performance indicators are not ends in themselves nor are they constitutive of performance, although they have a tendency to become so, e.g. the number of complaints of misconduct against an officer is taken to be equivalent to the officer's extent of misconduct. In the second place, performance indicators need to be interpreted—including in respect of their veracity—and ought not to be taken at face value. Such interpretation typically requires the exercise of professional judgment.

This chapter focuses on criteria for quality in internal police investigations, bearing in mind the distinction between a criterion of quality and a numerical measure of the extent to which that criterion has been met (Miller 2010).[2] In particular, this chapter offers a relatively comprehensive set of criteria for quality in police investigations by professional standards units. Although many of these are straightforward—indeed, obvious—they are rarely brought to bear specifically on internal investigations.

6.1 Quality of Investigations: 22 Criteria

6.1.1 Competence of Investigators

Self-evidently, investigators need to have: (i) the necessary training (that is, they need to have successfully undertaken an investigator's course); (ii) the relevant experience (that is, they need to have undertaken a reasonable number of complaints or similar investigations); (iii) the required aptitude (for example, they need to have displayed the necessary capacity for logical thinking and open mindedness); and (iv) demonstrable expertise (for example, they need to have successfully completed previous investigations).[3] Accordingly, competence and performance indicators (for example, audits of the investigator's past investigator reports, prosecution outcomes, complainee and complainant's degrees of satisfaction) need to be developed to determine what counts as a competent investigator. These should be applied to investigators in a systematic and objective manner. Experts also emphasize that internal investigations require specialist training:

Inevitably, many of the anti-corruption investigations require highly specialised skills and equipment. It is important that all staff deployed in these investigations are appropriately trained, and the UK's HMIC (Her Majesty's Inspectorate of Constabulary 1999: 10) recommends that such training should meet national standards and be accredited accordingly. It should also be noted that competence is

[2]An earlier version of the material in this chapter appeared in Miller (2010).

[3]The foregoing requirements suggest that those who are deployed in internal investigations should (a) have first gained some investigative experience in non-police-related investigations, and (b) be assigned to low-level internal investigations before being given major responsibility for high-level internal investigations.

to some extent relative to the person to be investigated. Presumably, other things being equal, a novice investigator should not be assigned the task of undertaking the investigation of a serious complaint made against a police officer who is him/herself a highly experienced investigator.

Incentives need to be in place, in the form of promotion or career-enhancing experience, to attract high quality investigators from other parts of the organization—especially given that, historically, the role of internal investigator has been shunned in many police organizations. In Los Angeles, the Rampart Inquiry report in fact recommended that the Los Angeles Police Department's Internal Affairs Group halt the system of open application to investigator positions and, instead, "hand pick" the best detectives: "those selected for these assignments must be guaranteed retention of their advanced pay-grade position and given preference of assignment upon completion of their IAG assignment" (Rampart Inquiry 2000: 337).

6.1.2 Resilience of Investigator

Historically, the role of internal affairs investigator has been spurned by many police, who have seen it as a form of "catching and killing one's own". In addition, investigative expertise is often possessed by those who are being investigated, and police culture is secretive and fraternal. These factors make the role of internal affairs investigator psychologically demanding, especially if it is undertaken over lengthy periods of time. Accordingly, internal affairs investigators need to have a high degree of psychological resilience, including a capacity to resist external pressure.

6.1.3 Independence of Investigator

Clearly the investigator needs to be independent and, importantly, needs to be seen to be independent. There are at least three respects in which the independence of the investigator might be compromised:

(a) Institutional dependence (Miller and Blackler 2005: 33–37). Such a problem arises when, for example, police from a given police organization investigate complaints of *systemic* police corruption within that organization. Some have argued that serious police corruption within a police organization should not be investigated by members of that organization; instead, investigators from an outside organization should be used.

(b) Conflict of interest (Miller et al. 2005: 47–49). This issue arises when, for example, an investigator investigates a complaint against a relative. The notion of a conflict of interest involves the following: (i) one person, P_1, is required to exercise judgment in relation to another person, P_2, (as occurs when P_1 investigates a complaint made by P_3 against P_2) and (ii) P_1 has a special interest tending to interfere with P_1's proper exercise of his or her judgment in

relation to P_2. The special interest in question can be a personal interest (for example, P_2 is a relative) or a conflicting role interest (for example, P_2 is P_1's immediate superior).

(c) Bias. This problem occurs when, for example, a police investigator investigates a complaint of corruption by a non-police complainant against a workmate of the investigator. Strictly speaking, this does not necessarily involve a conflict of interest, because the investigating officer might not have a special interest in the required sense. Indeed, one might reasonably expect police to resist any temptation to be unduly influenced by the fact that the person being investigated is merely a workplace colleague. On the other hand, in these situations there might be a tendency for bias or, at least, the appearance thereof.

In relation to each of the above, performance indicators might be developed to mitigate such problems (Prenzler and Lewis 2005).

6.1.4 Investigation Is Lawful and Ethical

There are some issues that need to be settled prior to the commencement of an investigation, including the following:

- The investigation must itself be lawful and ethical; for example, an actual complaint needs to have been made or intelligence come to light that is sufficient to warrant investigation.
- The investigator needs to have been properly authorized to undertake the investigation; for example, the investigation must not have been embarked upon for personal reasons.
- The terms of reference of the investigation need to have been established. An investigation should not go beyond its terms of reference.

Note that an investigation might be undertaken that, strictly speaking, is lawful but unethical. Although not unlawful, perhaps it is being pursued as part of a vendetta, or for some other ethically unacceptable reason.

6.1.5 Compatible with Public Interest

There is a legitimate public interest in the investigation of complaints of police wrongdoing. This is so notwithstanding the fact that the wrongdoing in question might in large part consist of harm done to some particular individual rather than the public at large—as when police assault a suspect. On the other hand, there is also a legitimate public interest in the investigation of complaints of police wrongdoing in which no harm is done to any individual. Police wrongdoing that needs to be investigated because it is in the public interest to do so, even though the

wrongdoing in question need not harm any individual, include some forms of police corruption, such as the acceptance of bribes. Moreover, many complaints do not pertain to police misconduct but to police incompetence or the low quality of service provision by police. There is a public interest in having police organizations that provide high quality service, hence the importance of the scrutiny and, if necessary, the investigation of such complaints.

6.1.6 Corporate Priorities Considered

Given scarce resources, priority must be given to some investigations over others. Such priorities ought to be determined by a variety of criteria, including the seriousness of the complaint made and the likelihood that it will be resolved if investigated. But there are also corporate priorities. A particular kind of complaint might occur so frequently that it indicates that the associated form of misconduct is highly prevalent, and therefore in special need of attention at a particular time (for example, the sexual harassment of female police officers). Or there might be a need to focus more on crime reduction (for example, when police engage in drug dealing) rather than customer satisfaction (for example, police insensitivity to the victims of crime). Surveys and interrogation of complaints databases and the like can help to identify areas of concern and assist in the process of prioritization.

In relation to any corporate priority there will be a number of strategies in place—for example, strategies to reduce a particular form of misconduct. Assume that it is a corporate priority to reduce drug dealing among police officers. A large number of separate anonymous complaints that particular officers are engaged in drug dealing might trigger an investigation of the complaints made against those officers, notwithstanding the fact that any single anonymous complaint taken on its own might not warrant further investigation.

An important corporate priority is organizational reputation. The question should be asked: to what extent is organizational reputation given reasonable, but not overriding, weight? Organizational reputation should be understood primarily in terms of public confidence in the willingness and capacity of the organization to pursue its public task, rather than simply the individual reputations of those in positions of authority. On occasion, undue pressure has been placed on internal investigators to resolve cases speedily or even to ‘get a scalp’ to assuage public concern in relation to police corruption. This can lead to injustices, as happened in the NSW police internal affairs investigation of Inspector Harry Blackburn (Miller et al. 2006).

In relation to the realization of corporate priorities, including corruption reduction, there are a range of performance indicators that should be assessed, such as process and case audits, and the number and ratio of complaints leading to prosecutions.

6.1.7 Open Mindedness

Open mindedness is essential if the outcomes of investigations are not to be predetermined. Open mindedness consists in having the discovery of truth as the ultimate aim of an investigation, and in allowing evidence to settle the question of what is, or is not, the truth. Although open mindedness is an attitudinal state, it is one that has a number of behavioral manifestations in the investigative process, including the identification and exploration of all avenues of inquiry, the interviewing of all relevant witnesses, and the gathering of all relevant physical evidence (including that which is exculpatory). Auditing procedures can check the extent to which investigators' behaviors manifest a lack of open mindedness.

Open mindedness is particularly important given the persistent problem of miscarriages of justice in the criminal justice system. These very often begin with errors in the police investigative process followed by an unwarranted focus on one suspect or group of suspects. The investigation then shifts from being an impartial evidence-gathering process into one of building a case against the suspect(s) now believed to be guilty (Dixon 1999; Ransley 2002; Miller and Blackler 2005: 121–130).

Open mindedness is tested when the interviewee is not simply a witness but a suspect. The context of such interviews is inherently stressful, if not coercive, for the interviewee. Such interviews may involve a conflict between interviewer and interviewee. Specifically, the interviewer might be concerned to discover the truth but (rightly or wrongly) believe the interviewee is actually attempting to prevent that outcome. Accordingly, the interviewer might make use of deceptive practices to "trick" the interviewee into making inconsistent statements or unintended disclosures, or might use methods of persuasion, for example appeals to self-interest, in light of the likely cooperation with police of the suspect's alleged partner in crime (Inbau et al. 2004). Evidently, there are broad differences between practices in different police services. Many U.S. police agencies train their interviewers in the use of manipulative techniques with the prime object of obtaining confessions, whereas recent U.K. policy in this regard has been for police interviewers to search for the truth and maintain open mindedness (Skerker 2010). Moreover, it may be that manipulative techniques will be known to police under investigation and, therefore, will be less useful in internal investigations than might otherwise have been the case. John Baldwin conducted an extensive evaluation of the video-recording of interviews with suspects for the U.K.'s Association of Chief Police Officers and concluded, among other things, that:

> The most accomplished interviewers do not enter the interview room with their minds made up, seeking single-mindedly a confession. They also recognise that confrontation and unpleasantness are likely to prove counter-productive. "You get more flies with honey than you do with vinegar," is how one experienced detective summed it up (Baldwin 1992: 13).

Audits of audiotapes and videotapes of interviews provide evidence of the quality of interviews, particularly in relation to open mindedness. Moreover, together with the use of CCTVs in custodial areas, audio-taping and video-taping provide evidence concerning respect for suspects' rights (Dixon 2006; Cain 2002). Suspects' complaints about interviews are a further indicator.

6.1.8 Well-planned Investigation

All the issues in the complaint need to be clearly identified. On the basis of the issues identified and the information/evidence available, an investigative plan needs to be formulated. This investigative plan need include, in relation to avenues of inquiry, additional information/evidence to be gathered, the witnesses to be interviewed, and task allocation. The plan is to some extent a dynamic process, given that new lines of inquiry may suggest themselves, new evidence may come to light, and so on. Nevertheless, at any particular stage of its development, the plan—in the form that it exists at that stage—should be adhered to. Audits of investigators' reports are a performance indicator in relation to the quality of investigation plans.

6.1.9 Thorough Treatment of All Information/Evidence

The information/evidence provided in the complaint, including unsubstantiated as well as substantiated claims, needs to be identified and verified (or at least its degree of likelihood established). Additional information/evidence required by the investigative plan should also be sought, verified, and then integrated into the investigative plan as it evolves. Information that is not germane to the investigation might, nevertheless, constitute valuable intelligence and should be forwarded to the relevant agency.

6.1.10 Comprehensive Recording and Preservation of All Information/Evidence

Appropriate access to electronic and other data systems should be provided to the investigator. The information/evidence gathered, and the information-gathering tasks undertaken (in chronological and logical order), should be accurately recorded on the relevant system(s). Quality of recorded data can be assessed in part by way of auditing the database (Crime and Misconduct Commission 2004).

6.1.11 Information/Evidence Security

Adequate security of information and evidence should be provided, and relevant security procedures followed, for example, confidentiality must not be breached, physical evidence should be secured. Process audits will determine the existence or non-existence of such procedures. Such process audits are an indicator of whether or not information/evidence security is taken seriously.

6.1.12 Respect for Rights of Victims

Victims have a moral and (usually) legal right to assistance from investigators, not only with respect to the detection and apprehension of those who have wronged them, but with respect to any immediate physical or psychological suffering brought about by that wrongdoing. Accordingly, there is a duty of care to victims, including police officers. In terms of the responsibilities of investigators, this might consist only in taking reasonable steps to ensure that an appropriate non-investigator discharges that duty of care. Such a duty of care might involve the provision or offer of welfare, medical, and/or professional counselling services. Victims also have other moral rights, including the right to privacy. Complaints from victims are an indicator in relation to investigators' respect for victims' rights.

6.1.13 Respect for Rights of Witnesses

Witnesses (including informants) have a moral and (usually) a legal right to protection. Accordingly, there is a duty of care in relation to witnesses, including police officers. Such a duty of care might involve referring officers to an internal witnesses support unit. Aside from duty of care considerations, there might be a need to afford protection to witnesses in order to prevent an investigation being compromised. Internal investigations of police by police are especially prone to breaches of confidentiality and 'interference', including intimidation. Witnesses also have other rights, including the moral right to privacy. As we saw in Chap. 5, an empirical study of officers in Victoria Police revealed that officers are often reluctant to provide evidence in relation to their corrupt colleagues because they believe that internal investigations are highly likely to fail in part because of breaches of confidentiality and the failure adequately to protect witnesses and the like. Furthermore, when investigations do fail officer-witnesses may be treated as outcasts by their colleagues and their careers ruined (Miller et al. 2008). Infringements of witnesses' rights can, of course, be investigated and witness protection programs can be evaluated, including by interviewing those who have made use of them. The broader cultural issue in a police organization with respect to police attitudes and

behavior towards police who act as witnesses against other police can be empirically investigated. What measures are taken to counteract unwelcome attitudes and unacceptable behavior toward police witnesses can also be the subject of scrutiny. For example, do many internal affairs investigations of serious offenses result in convictions or resignations and, if so, are these results promulgated to the rank of file?

6.1.14 *Respect for Rights of Suspects*

In the investigative phase, as in the testimonial phase, suspects have a number of moral and legal rights, including rights to the presumption of innocence, freedom, privacy, and life. They also have the right not to be assaulted or tortured, and not to self-incriminate (Wood 1996).[4] Under certain circumstances these rights can justifiably be infringed, for example, in the surveillance of persons reasonably suspected of committing serious crimes. However, such infringements are subject to stringent limitations and restrictions, for example, detention for questioning for only limited periods, and restrictions against the use of force to extract a confession.

According to the above-mentioned empirical study of officers in Victoria Police, many police officers under investigation suffer unnecessary and sometimes debilitating stress as a consequence of unduly prolonged investigations during the course of which they are not updated or otherwise provided with information that they are entitled to (Wood 1996).

6.1.15 *Judicious Use of Covert Tactics*

The evidence from more recent successful inquiries and exposés of police misconduct is that the use of "high tech" and covert methods is now essential to break open many of the more secretive and pernicious forms of misconduct (Wood 1996: Sect. 5). High tech and intrusive methods include listening devices, hidden cameras, telephone and electronic communication interception, covert physical surveillance, and the use of undercover operatives. These, however, can be justified only if: (i) they are have a reasonable chance of being successful and alternative, less intrusive methods are not available; (ii) they are used only in relation to serious crimes; (iii) the infringement of the rights of innocent persons is non-existent or minimal; (iv) their use is subject to warrants issued by a judicial officer; and (v) there is external oversight. In most cases, legislation is required to protect covert operatives if they must engage in some illegal behaviour (Prenzler and Ronken 2001).

[4]The right not to self-incriminate should be distinguished from the right to silence, albeit the latter is a means to realise the former. In some contexts, e.g. Royal Commissions, there is no legal right to silence. However, often this is 'balanced' by a right to immunity from prosecution.

6.1.16 Informant Management

Informants are also an important source of information for law enforcement agencies, especially in areas such as drug dealing and corruption where there is no direct victim. According to Jerome Skolnick, "without a network of informants—usually victims, sometimes police—narcotics police cannot operate" (Skolnick 1994: 117). However, informants are something of a double-edged sword. This includes 'turned' corrupt police officers who are being relied on to provide information in relation to the criminal activity of their corrupt colleagues. On the one hand, there have been some spectacular successes, such as the case of Trevor Haken, a former corrupt New South Wales police officer, who was turned and subsequently provided vital information to the New South Wales Commission of Inquiry into police corruption in the late 1990s (Wood 1996). On the other hand, some researchers have questioned the benefits of informants in terms of crime reduction (Dunnighan and Norris 1999). Such informants can also have a corrupting effect on a force's police culture in general (ICAC 1994).

Informants are often themselves criminals and are typically paid by police or otherwise 'incentivized', for example, by the promise of immunity, for the information that they provide. Accordingly, the information provided is not necessarily accurate. Moreover, in order to be provided with information police may have to permit the informant to engage in harmful or criminal behavior, for example, the informant may be allowed to consume illicit drugs, or police may simply turn a blind eye to their informants' criminal activities—the so-called "licence to deal" given to informants who are themselves drug dealers in order to catch "bigger fish" (Billingsley et al. 2001: Chap. 1). In some cases the informants have become de facto handlers and the police handler the informant. Organized crime, for example, has a vested interest in corrupting police officers and one favored way of doing so is for a criminal, who might actually be a police officer, to become a police informant and for the hitherto investigating police officer (the handler) to begin to feed information to his "informant" in return for financial rewards made available by the organized crime bosses (Billingsley et al. 2001: Chap. 2).

In this context, there is obviously a need for stringent accountability mechanisms, including documenting and naming the informant, ensuring that a police officer with an informant has a supervisor who meets with the officer and the informant, having a supervisor who monitors the police officer's dealings with the informant, and recording all payments (including electronic transfers to prevent theft) (HMIC 1999; ICAC 1994). However, such accountability mechanisms generate problems of their own. There is considerable risk attached to being an informant and a consequent need for strict confidentiality. Concern for their own safety can cause would-be informants not to become such, if there is to be documentation indicating their identity or if persons other than their immediate handler are to be made aware of their identity.

Safety measures—including monitoring the informant/handler relationship, and close confidentiality protection for informants and their disclosures—need to be

buttressed by rigorous training in informant management (Rampart Inquiry 2000: 352). Moreover, the utility of intelligence provided by informants needs to be maximized, for example, by means of a central (protected) data source. However, this is obviously at the very least problematic, and probably undesirable, in the case of informants who are police officers. Some authors have suggested the use of ethics committees to test and quality assure informant-handling proposals; others have recommended random integrity testing in relation to the use of informants (Billingsley 2001: 63–64). A further issue is whether an outside person, such as a magistrate, ought to approve and supervise informants, as happens in Belgium and Netherlands (Gill 2000: 183).

6.1.17 Efficient and Effective Use of Public Resources

Investigations should be conducted within budget and use the appropriate number of personnel (avoiding "undermanning" or "overmanning"). More generally, the resources used should be appropriate to the investigations—there should, for example, be appropriate use of resource-intensive intrusive surveillance methods. The larger context for the efficient and effective use of public resources by investigators is the overall quantum of resources made available to the police organization by government. Naturally, appropriate resourcing of investigations cannot be achieved absent the existence of adequate resources within the police organization, or at least within the investigative division of the police organization. Accordingly, an important concern will be the system for allocating scarce resources within the police organization as a whole, as well as within the internal affairs department itself.

6.1.18 Communication with Stakeholders

Complainant surveys and interviews show that complainants place a very high value on being kept informed of the progress of their case. Lack of communication is a major factor in high levels of complainant dissatisfaction (Landau 1994; Maguire and Corbett 1991). Other stakeholders, such as the police officers being investigated, also have an obvious stake in, or right to, adequate communication (see above, Respect for Rights of Suspects).

6.1.19 Timeliness

It is important that complaints investigations are completed in a timely manner. Protracted delays in internal investigations have significant costs for complainants,

complainees, and for the police organization itself—both in terms of resources and the likelihood of a reasonable and just outcome (Prenzler and Lewis 2005). This occurs, for example, when witnesses cannot be contacted because they have changed their place of residence/work, and their memories become even less reliable when investigations drag on for lengthy periods. Investigations need to be completed within reasonable and agreed upon time frames, and any extensions need to be justified. The aforementioned study of officers in Victoria Police revealed that whereas complaints investigations were unduly protracted the main problem was not the investigation per se but rather the bureaucratic processes prior to and subsequent to the actual investigation (Miller et al. 2008).

6.1.20 Professional Approach to Presentation

It is of fundamental importance for an investigator to make an evidence-based recommendation, but it is also of great importance that the evidence be presented in a logical and luminous manner. More generally, investigative reports, plans, correspondence, and so on need to be presented clearly, concisely, and completely. Audits of investigators' reports, or complaints files as a whole, in relation to completeness are relevant performance indicators here.

6.1.21 Accountability

Investigators need to be held accountable for their investigations, including processes undertaken and results delivered. Accordingly, investigations need to be able to withstand scrutiny from both internal and external agencies. A variety of such forms of scrutiny have been mentioned above, including audits. An important dimension of accountability, indeed a presupposition of accountability, is transparency. Procedures need to be in place to ensure that investigative processes are transparent, not only to internal and external oversight agencies, but also to victims, witnesses, and suspects. Obviously, the nature and level of transparency needs to be consistent with security and confidentiality requirements. A further point here is that the decisions and recommendations made by the investigator need to be justified in terms of reasons, and these reasons need to be adequately documented.

Accountability needs to operate at two levels, at least: (i) there is the accountability of the investigator in relation to a particular investigation considered in itself; and (ii) there is the accountability of the investigator in relation to his or her investigative performance over a period of time. The latter is susceptible to performance indicators not necessarily applicable to the former. For example, subject to audit should be the number and ratio of complaints investigations in which the investigator's recommendation is that the complaint in question is sustained.

6.1.22 Continuous Improvement

Investigation is a dynamic and complicated mode of activity, in part because those investigated seek to avoid investigation and/or subvert investigative techniques. Hence, there is a need to identify and implement best practices, including use of the latest investigative tools, such as those made available by forensic science. Relatedly, there is a need to apply such practices and tools innovatively to the specific internal affairs context in which the investigators are operating—for example, in the design of integrity tests. Hence a criterion of the quality of investigations is the extent to which they not only deploy best practices, but are also monitored with a view to improvement in light of new developments.

In addition, data need to be collected regarding complaints, including the number of complaints received and finalized per annum, the time taken to finalize complaints, and the types of investigative decisions arrived at, such as substantiation, referral to mediation, and penalties. Data also need to be collected regarding the levels of satisfaction of complainants and, for that matter, of complainees, since such evaluations provide an important picture of agency work and can be used to indicate areas of under-performance by investigators.

In this chapter I have elaborated twenty-two criteria for determining the quality of internal police investigations. In doing so, I have also indicated some ways of assessing performance against these criteria. However, each of these criteria is in itself an important topic and in need of further analysis and assessment.

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Chapter 7
Integrity Testing

Abstract In this chapter the focus is on integrity testing of police officers; roughly, setting 'traps' for police officers suspected of corruption. This practice raises the important moral (and legal) issue of entrapment. I argue that targeted integrity tests are morally permissible under the following three conditions (assuming other more general conditions are met, such as the condition that the method of integrity testing is the only feasible method available to law enforcement agencies in relation to a certain type of offence, and that the offence type is a serious one). First, the integrity test should be the targeted testing of an officer (or group of officers) who is/are reasonably suspected of engaging in crimes of the relevant kind. Second, the suspect is ordinarily presented with, or typically creates, the kind of opportunity that they are to be afforded in the integrity test scenario. Third, the inducement offered to the suspect is: (a) of a kind that is typically available to the suspect and; (b) such that an ordinary police officer would reasonably be expected to resist it.

This chapter consists of a discussion of one of the covert methods of criminal investigations which have historically given rise to moral problems in a particularly acute form, namely, undercover operations, and specifically, the setting of traps or 'sting' operations in order to catch corrupt police officers. This discussion of the moral problems posed by undercover operations takes place in the context of my favoured normative theory of policing as the protection of justifiably enforceable, legally enshrined, moral rights and, in particular, my normative account of the role of the criminal investigator as essentially an epistemic or knowledge-aiming role (Miller and Gordon 2014). Undercover operations are quintessential *epistemic* policing methods since they are principally aimed at gathering intelligence and evidence. In the first instance, this intelligence and evidence gathering is in the service of knowledge of the who, what, where, when, how and why of criminal activity; but the ultimate purpose it serves, or ought to serve, is the protection of legally enshrined moral rights by way of facilitating the conviction and punishment of serious criminal offenders. However, as my discussion of entrapment below makes clear, some undercover operations, so-called 'stings' in particular, can on occasion, if not carefully conducted in accordance with the appropriate moral

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principles and laws, violate the moral and legal rights of suspects (and, therefore, be disqualified as evidence in court) and, indeed, even actually facilitate rather than combat criminal activity (Prenzler and Ronken 2001). One of the tasks I have set myself in this chapter is to elaborate the conditions under which such traps or stings are, at least in principle, morally justifiable.

7.1 The Ethics of Covert Operations

In the context of a believed failure to stem crime, especially in the case of organised crime, but also police corruption, investigators have turned from a reliance on complainants to various kinds of covert operations. Such operations include undercover investigations and various forms of trapping. Covert operations invariably involve deception of one sort or another, and deception is morally problematic (Kleinig 1996, Chap. 7). Deception is part and parcel of undercover work in particular. Deception can exist in relation to a personal relationship, and not simply in respect of some particular action. However deception in policing seems inevitable, and in any case does not necessarily involve an infringement of moral rights. In some circumstances lying is an infringement of a moral right. For example, lying about the accused in a court of law may be an infringement of the moral right of the accused. But outside special contexts such as a court of law, lying to someone, or simply failing to make know something to him/her, is not per se generally regarded as of the same high degree of moral wrongness as, say, assaulting or killing a person. Naturally, consequences can make a difference. The moral wrongness of lying about a person's whereabouts taken on its own might be relatively slight. However, if the consequences of this lie put the person's life at risk then the moral seriousness of the lie increases dramatically.

It might seem that on the above analysis police use of deception, at least in the investigative phase, is justified. While deception is inherently wrong, it is justified by the good consequences that flow from its use. Unfortunately, this argument is not as compelling as it might seem. For while the consequences are sometime good, this is not necessarily or always the case. Police can deceive criminals to serve their policing purposes, but they can also be used by criminals. And the danger is that the police end up engaging in a game of deception and counter-deception which they ultimately lose. Moreover, the police can develop a habit of deception that they find difficult to shrug off; so they start off deceiving criminals and end up deceiving one another and members of the public. Moreover, the widespread practice of deception is corrosive of trust not only within an organisation, such as the police, but also between police and members of the public. The erosion of trust between police and other police, and between police and the public that they serve can ultimately undermine the ends of law enforcement itself. For in the end of the day individual police rely on one another to enforce the law, and they also rely on the community. Abridgement of this policy of building trust for the short-term investigatory advantages that deception may confer—as in the setting of traps or 'sting'

operations—can come to pose a far greater danger for a democratic society—and for policing—than the criminal behaviours against which they are directed.

And there are specific forms of corruption which are extremely morally problematic. Of the notion of the state implicating itself in 'sting' activities (Marx 1988; Harfield and Harfield 2012, Chap. 9) such as those directed against the vice industry, Marx (1992) wrote:

"State sponsored deception, of course, raises all the ethical issues generally associated with deception. It also raises some issues that are unique to the state as the symbolic repository of societal values (for example, the need to avoid setting bad examples)… Propriety and the symbolic importance of a pristine government image may militate against certain extreme activities… *Betrayal involving another's body adds an additional troubling element*".

Hypothetically, we can only generalise that a police organisation, as a moral exemplar and as an organ of ethical government, bears a responsibility for the deployment of its employees. The impropriety of, for example, setting a police departmental employee to work as a prostitute in a brothel, in order to secure evidence against corrupt police officers involved in the vice trade, cannot be justified in the light of a successful prosecutorial outcome. The point to be made here is that the deceptive activity had an additional moral problematic character; it was not just deception, it was engaging in prostitution. Perhaps such inherently morally problematic activities on the part of undercover operatives are avoidable. However, almost inevitably many undercover operations give rise to a different kind of moral problem, namely, betrayal.

A person's intimate relationship with another person gives rise to a zone of interpersonal privacy from which third parties are excluded. For example, a married couple has a right to engage in intimate sexual acts in their home unobserved by others. Such zones of interpersonal privacy or intimacy typically exist between members of families, e.g. parents and children, friends and lovers. Moreover, such intimacy is regarded as a moral good. Certainly the development of interpersonal relations with emotional depth requires, and is in part constituted by, intimacy. However, intimacy can be morally problematic. Consider the predatory intimacy that might obtain in an exploitative sexual relationship, or the betrayal of trust that results when an undercover operative finally "shops" an offender that he has "befriended".

The moral dangers attendant upon undercover operations involving, as they do, the breach of moral principles, e.g. not to deceive or betray, call for the provision of a principled account of the difference between the justifiable use of normally immoral methods and forms of corruption (or otherwise immoral behaviour) that are motivated by good ends but are not morally acceptable. So I need to provide a principled account of the difference between morally justified use of covert methods, notably undercover operations, and so-called noble cause corruption. In Chap. 1 I did so, in effect. There I argued that when police officers act in accordance with the legally enshrined moral principles governing the use of harmful methods, they achieve three things at one and the same time. They do what is morally right; their actions are lawful; and they act in accordance with the will of the community.

7.2 Integrity Tests

Many undercover operations might be considered to be entrapment in the ordinary common sense meaning of that term, i.e. to *trap* someone. (This sense of entrapment is to be distinguished from various legal definitions of the term.) Consider, for example, the NSW Royal Commission operation in which police officer Trevor Haken trapped or entrapped police officer Chook Fowler (Miller and Blackler 2005, Chap. 5).[1] Clearly the infringement of the right to privacy is a central feature of undercover operations in which a police officer establishes a relationship and gains the trust of an offender. Indeed, important questions arise here as to the morally admissible nature and extent of such relationships. It is one thing to establish friendly relations, it is another to establish a sexual relationship. In some undercover operations, police in effect act as observers, albeit *inside*-observers. The offenders commit the offences that they commit independently of the actions of the undercover operatives. However, often undercover operatives interact with offenders in such a way as to make a difference to whether or not, or when, where or how, an offence is committed. This was the case with Chook Fowler; Haken was not simply an observer, he was also an active participant. This is trapping in our target sense of the term.

Integrity testing is a form of trapping used by internal affairs departments in their efforts to stem police corruption. Integrity testing is a pro-active law enforcement strategy used in many jurisdictions in preference to—or at least, in addition to—reactive strategies, such as complaints investigations. Integrity testing can make use of undercover operatives posing as drug buyers and the like. It can involve the building of lengthy interpersonal relationships. The most important consideration in favour of trapping is in relation to serious systemic police corruption. For example, in the 1990s corruption in the NSW Police was systemic, and evidently the only way to bring corrupt police to justice was by way of trapping corrupt officers. This typically involved "turned" corrupt police officers operating undercover. Only such officers would be trusted by corrupt fellow officers, and only a managed scenario would enable reliable evidence, such as videotapes, to be obtained.

Integrity testing can be random or targeted. Targeted integrity testing focuses on a specific person (or persons) who is/are reasonably believed to be involved in crime. Random integrity testing is not directed at any specific person. Integrity testing raises a number of ethical issues, including: (a) deception; (b) the infringement of privacy; (c) uncertainty in relation to the moral culpability of the offender, i.e. the offender was "tricked" into doing what he or she otherwise would not have done, and; (d) impropriety of law enforcement agents, since they might be creating crimes that otherwise would not exist.

Accordingly, questions arise as to the moral and legal limits that ought to be placed on integrity testing. The options here range from banning all forms of integrity testing, to allowing certain kinds of integrity testing in relation to a

[1] An earlier version of the material in this section appeared in Miller and Blackler (2005, Chap. 5).

narrowly circumscribed set of crimes. Here there are at least two relevant preliminary considerations. First, many serious crimes, such as murder, rape, and grievous bodily harm, do not lend themselves to integrity testing. After all, integrity testing must involve the actual commission of a 'crime', and presumably allowing someone to be murdered in order to convict the murderer is morally unacceptable. On the other hand, some related crimes, such as conspiracy to commit murder, might be suitable for integrity testing. Second, given the morally problematic nature of integrity testing, arguably it should only be used sparingly and presumably only for serious crimes—at least in relation to ordinary citizens. On the other hand, arguably police officers are a difficult kettle of fish; arguably, police need to meet higher moral standards than ordinary citizens, at least in certain respects. So perhaps random or targeted integrity testing of thieves among the ordinary citizenry is morally unjustified, but integrity testing of thieves within the ranks of police officers is justified under certain conditions.

Let us briefly consider deception in relation to integrity testing. If a suspect is to be trapped, he or she will need to be deceived. However, such deception will occur at the investigatory stage of police work. Evidently, when deception occurs at the investigatory stage—as opposed to the testimonial stage—it may well be morally justifiable. Thus lying to a corrupt officer to enable an arrest is morally justified, whereas lying in court is not morally justified. On the other hand, it is normally unlawful to give false information to a police officer; and this for good reason, given the need for police to elicit the truth from witnesses and others if crimes are to be solved.

Apparently, the illegality of giving false information to a police officer has hindered integrity testing by some internal affairs departments in some jurisdictions.[2] For this provision limits the range of possible trapping scenarios. Scenarios in which, for example, drugs or money are left lying around are admissible, but not ones in which undercover police give false information to corrupt officers. A related problem for integrity testing is the ability of undercover police to assume a false identity. Under legislation in some jurisdictions, such as the Crimes (Assumed Identities) Act 2004 in Victoria, Australia, police can assume a false identity. However, evidently there have been practical problems in that agencies, e.g. the driving licence issuing authority, are not able to be compelled to comply with requests for false identity documentation and/or they are not able—or not able except with great difficulty—to change their databases so as to indicate that the licenses issued to these false identities are longstanding and not simply recently issued. These practical problems arise in the context of corrupt police officers having access to the databases in question and being suspicious of any allegedly substantiating documentation with respect to identity. Evidently, these practical problems can be resolved by amendments to the relevant legislation; the legislation can require such government authorities to comply with police requests. A related issue here is the need for information technology infrastructure that is resistant to

[2]For example, the Ethical Standards Department (ESD) of Victoria Police in Australia in the past.

abuse and misuse on the part of police, i.e. infrastructure that either prevents, or provides precise audit trails of, officers' unauthorised access to data of the kind in question.

Let us now turn to privacy issues. Infringement of privacy in integrity testing is morally justifiable under certain conditions. Privacy is not an absolute right, whether privacy on the telephone, the car phone, the Internet or on any other communication or information system. The rights to privacy of some individuals including police officers, and the right to confidentiality of members of some organisations including police organisations, will in some cases be overridden by the rights of other individuals, other members of organisations and the community in general to be protected by the law enforcement agencies from the perpetrators of serious crimes, including corrupt police.

Infringements of privacy, including the privacy of police officers, by law enforcement officials are morally justifiable if certain conditions are met. These conditions include the following ones: (a) there is reasonable suspicion that the person whose privacy is to be infringed intends to commit a serious crime; (b) the methods in question are effective, and; (c) there is no alternative non-intrusive, or less intrusive, method of investigation.

Arguably, integrity testing is required—or is far more effective than reactive methods, such as investigating complaints—in relation to certain crimes. The crimes in question include ones that do not involve a complainant, e.g. drug-dealing, or are in areas such as crime within police organisations, where offences might be difficult to prove because offenders are themselves experts in criminal investigation and protected by a secretive and fraternal culture. Moreover, in relation to certain kinds of offence and offender, arguably integrity testing does better on a cost/benefit analysis than reliance on informers, or on undercover operatives who observe but do not trap. Informers often provide unreliable information, and often fail to provide evidence of the guilt of those they implicate in crimes. Undercover operations are resource intensive and their outcomes uncertain. This is especially so when undercover operatives simply wait for a suspect to create the opportunity to commit a crime, and then hope to gather evidence in relation to the crime when it does happen. By contrast, integrity testing involves stage-managing a crime at a time and place chosen by police; so there is a greater assurance that the crime will be recorded and the offender convicted.

If persons who have been trapped are justifiably to be convicted, then they must have committed a crime. However, even if they have performed a criminal act, there might be important reasons not to convict them. Specifically, they might have been the victims of morally unjustified entrapment. What tests ought to be applied to determine whether someone was the victim of morally unjustified entrapment? In Australia the Crimes (Controlled Operations) Act 2004 at s.14 (d) states: "that the operation will not be conducted in such a way that a person is likely to be induced to commit an offence against a law of any jurisdiction of the Commonwealth that the person would not otherwise have intended to commit". This introduces the idea of an offence that would not otherwise have been committed, i.e. the creation of crime, and the related idea of an excessive inducement. In the USA, two legal tests

to determine whether someone has been entrapped have been proposed; the subjective test and the objective test. However, only the subjective test is actually in used. Note that in the sense of "entrapment" in question in the legal environment of the USA, entrapment is necessarily unlawful; in the USA, entrapment, by definition, involves pro-active policing practices that fail (in particular) the subjective test.

The subjective test asks whether the suspect has a disposition to commit crimes of the kind in question. Theoretically, but not necessarily, or indeed actually, in law, we might establish the existence of a disposition on the basis of his/her past behaviour, e.g. past criminal convictions. Evidently the point of this test is to ensure that the person entrapped has the requisite degree of culpability; an important motivating reason for using this test is the concern that without it, the police might induce an intention or inclination to commit a crime that was otherwise absent.

The objective test asks whether or not the State has acted improperly by virtue of instigating the crime. This resolves itself into two issues. The first issue is whether or not the contribution of the police to the creation of the opportunity to commit the crime is excessive. For example, suppose an undercover police officer supplies a fellow officer with the raw materials and the equipment to manufacture heroin, and suppose that the raw materials and equipment is not available to the person from any other source(s). The second issue is whether or not the inducement offered to commit the crime was unreasonable (too strong), e.g. offering a junior police officer working in a low risk area a million dollars to engage in minor theft.

One problem for the subjective test is how to provide evidence of a disposition. This problem is heightened in legal contexts in which knowledge of past crimes and convictions is not normally allowed to be used in determining guilt in relation to a current crime. A further possible problem for the subjective test is that it does not rule out strong inducements. Police officers might abuse the system by offering inducements that are too strong, and yet conviction would follow if the suspects had strong dispositions to commit the crime. A related problem arises from the fact that a disposition to commit a crime is not equivalent to an intention to commit that crime. Suppose someone has a disposition to commit a crime. However, knowing that he has this disposition, he puts himself in a context in which there is no opportunity to commit the crime. Consider a police officer who has a cocaine habit but who wants to avoid taking cocaine and decides to avoid going to places in which cocaine is available. Now assume an undercover police officer gets the police officer in question drunk and pressures him to join him in using cocaine. Arguably, the mere presence of a disposition is not sufficient for morally justified trapping; so the subjective test—at least as described above—would have to be strengthened.

A possible problem for the objective test is that it protects some people who should be found guilty. Suppose strong inducements are used in cases of suspects with strong dispositions to commit the crime, and suppose these suspects are in fact guilty of this kind of crime. Such inducements will be ruled out by the objective test, and yet the guilty persons in question will go free. On the other hand, it is normally preferable that some of the guilty go free than that some of the innocent are convicted. So this objection is relatively weak.

Another objection is that the objective test—in so far as it involves random testing of ordinary citizens, as opposed to police officers—amounts to the government engaging in integrity testing of its citizens. This is surely unacceptable; governments have no right to convict a citizen merely because the citizen fails to resist an inducement to commit a crime, even if it is an inducement that they ought to have resisted. However, it is by no means clear that this objection stands in the case of random integrity testing of police officers. A stronger objection to the objective test is that it is not a particularly effective test of virtue. For someone who lacked the disposition to commit that kind of crime, or indeed crimes in general, might nevertheless fail the objective test on a single occasion.

What is surely acceptable in the case of police officers is targeted integrity testing of individuals reasonably suspected of committing the crime that is the subject of the test. Moreover, random integrity testing of certain categories of public servants, such as police or politicians, in relation to a circumscribed set of crimes might be acceptable under certain conditions. For example, suppose bribe-taking is rife in a specific police organization and is undermining police operations in relation to serious criminality, and all other measures have failed to curtail it; perhaps random integrity testing is now warranted. The general moral justification for this is that police (and some other government officials) need to have a certain standard of integrity in relation to specific kinds of inducement, and they voluntarily accept a public office on the basis that they meet that standard. Accordingly, their integrity might reasonably be open to testing, especially if it is made clear to them before they accept the public office that their integrity might be subjected to a test.

There is a general objection to integrity testing, and this objection apparently stands irrespective of whether the subjective test or the objective test is applied. This is the objection that integrity testing involves the creation of crime, rather than the detecting or preventing of crime that would have existed independently of trapping. If this objection is sustained, it is decisive; integrity testing should be abandoned. But is this objection sustained?

In order to assist our deliberations, consider the following. Suppose a desk-bound police officer, Officer A, forms an intention to commit the one-off crime of stealing $5000 of drug money. Officer A believes the money was abandoned by his drug-dealer neighbour, B, in the garden outside B's house when B was arrested by the police, and that his crime will go undetected. Suppose that, unknown to A, this money was in fact confiscated by the police. However, the police decide not to remove the money, but rather to leave it with the purpose of trapping A, who they suspect might be tempted by the prospect of such "easy money", notwithstanding his general compliance with the law. A goes to steal the money and is caught red-handed. Notice that if the objective test is applied, the police are entitled to engage in this kind of trap. In the first place, the inducement, viz. $5000, is of a kind that police officers could reasonably be expected to resist. In the second place, it was the drug-dealer who created the opportunity for theft; all the police did was fail to remove this opportunity. On the other hand, this kind of integrity test is ruled out by the subjective test; for A does not have a disposition to steal.

Given the nature of this one-off opportunity, and A's general disposition to comply with the law, A would not have committed any crime if the officers from internal affairs had not trapped him. The reason is that he would never have been afforded the opportunity to commit the only sort of opportunistic crime that he is capable of committing. Yet given that he believed that the opportunity had arisen, he formed the intention to commit the crime. Arguably, the mere possession of an intention—in a context of police provision of opportunity—is not sufficient to justify the integrity test. The reason is not that A is not culpable; clearly A is guilty of an act of theft. Rather, the reason is that integrity testing under these conditions involves the creation of crime, rather than the detecting or preventing of crime that would have existed independently of the integrity test.

Let us take another look at our scenario, but this time let us assume that, unbeknown to the police, Officer A has a disposition to commit opportunistic acts of theft of large amounts of money, if they are left lying around and A believes he will escape detection. But let us further assume that there are no such opportunities. While A hopes for such opportunities, and tells his friends he is waiting for such opportunities, none have been or are ever likely to be forthcoming. As it happens, a one-off opportunity does come, and A is trapped. As before, the objective test does not rule out this kind of trap. Moreover, the subjective test does not rule out this kind of trap either; for A has a disposition to engage in opportunistic theft of large amounts of money.

Notwithstanding the existence of A's disposition to engage in opportunistic theft of large amounts of money, it still remains the case that A would not have committed any crime if the internal affairs officers had not trapped him. The reason is that he would never have been afforded the opportunity to commit the only sort of opportunistic crime that he is disposed to commit. Accordingly, it might be suggested that the possession of a disposition and an intention—in a context of police provision of opportunity—is not sufficient to justify integrity testing. The reason is that integrity testing under these conditions involves the creation of crime, rather than the detecting or preventing of crime that would have existed independently of the integrity test. On the other hand, presumably Officer A is unusual in being a desk-bound police officer who is not afforded opportunities to engage in opportunistic acts of corruption; many, if not most, police are in fact afforded such opportunities. So arguably if a police officer has a disposition to engage in opportunistic theft then he will engage in it, since opportunities will arise sooner or later.

Let me conclude this chapter by attempting to detail the general conditions under which targeted integrity testing of police is morally permissible. In so doing, I will try to accommodate the various objections made above to entrapment, and to the subjective and objective tests.

First, there are a number of such general conditions, such as the condition that the method of integrity testing is the only feasible method available to law enforcement agencies in relation to a certain type of offence, and that the offence type is a serious one.

Second, the integrity test should be the targeted testing of an officer (or group of officers) who is/are reasonably suspected of engaging in crimes of the relevant kind.

Third, the suspect is ordinarily presented with, or typically creates, the kind of opportunity that they are to be afforded in the integrity test scenario. This condition in large part rules out police creation of crime.

Fourth, the inducement offered to the suspect is: (a) of a kind that is typically available to the suspect, and; (b) such that an ordinary police officer would reasonably be expected to resist it. This condition rules out excessive inducements, and therefore one way in which crime might be created by the police.

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Conclusion

In this book a number of central philosophical and moral issues that arise in relation to police corruption have been examined. In Chap. 1 I elaborated a normative theory of policing according to which the principal institutional purpose of policing ought to be the protection of justifiably enforceable, legally enshrined, moral rights. Hence the close relationship between policing and the criminal law, on the one hand, and the protection of moral rights on the other.

In Chap. 2 I provided an analysis of institutional corruption according to which corrupt actions consist in actions which undermine institutional processes, purposes and persons (qua institutional actors). Moreover, corruptors and the corrupted could have done otherwise and are, therefore, typically (but not necessarily) morally responsible for their acts of corruption.

In Chap. 3 a very important species of police corruption was analysed, namely, so called noble cause corruption: corruption undertaken to achieve a good purpose. I argued that while noble cause corruption in policing was a pro tanto moral wrong and typically undermined criminal justice processes and purposes (as well as the moral character of police officers), it might be morally justified all things considered in some instances.

In Chap. 4 I outlined the elements of of integrity system for police organisations. The elements in question included oversight bodies, internal affairs corruption investigations, professional reporting and integrity testing. I argued that the key moral notion informing integrity systems is that of collective moral responsibility and I provided an analysis of that notion.

In Chap. 5 I discussed the matter of the morality and rationality of professional reporting: police reporting on the corrupt behaviour of their fellow officers. Historically, the so-called 'blue wall of silence' has been a barrier to such reporting and, therefore, to combating corruption in police services. I argued that since most police officers are not themselves corrupt and believe that they morally ought to report or provide evidence in relation to their corrupt colleagues, they will do so if conditions are created under which it will be rational for them to do so. These conditions will include the following ones:

A reasonable number, and a high rate, of convictions/terminations of corrupt police officers as a result of a well-resourced, high quality, internal investigations

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department focused only on criminal and serious disciplinary matters, and operating in the context of:

(i) the normalization of the role of internal investigator; and
(ii) the felt duty on the part of most police to report/provide intelligence/evidence regarding criminal/corrupt colleagues in the knowledge that if they do:

   (a) the persons in question are likely to be convicted/terminated; and
   (b) they themselves will suffer no harm or adverse career consequences.

Chapter 6 outlined twenty-two criteria for good internal investigations. The criteria include the competence, resilience, open-mindedness and independence of the investigator, and the investigation being well-planned, thorough and conducted under conditions under which information/evidence is secure and the rights of suspects and witnesses are respected. I also discussed the need for the judicious use of covert methods and the importance of best practice informant management.

In Chap. 7 the focus is on integrity testing of police officers; roughly, setting 'traps' for police officers suspected of corruption. This practice raises the important moral (and legal) issue of entrapment. I argued that targeted integrity tests are morally permissible under the following three conditions (assuming other more general conditions are met, such as the condition that the method of integrity testing is the only feasible method available to law enforcement agencies in relation to a certain type of offence, and that the offence type is a serious one). First, the integrity test should be the targeted testing of an officer (or group of officers) who is/are reasonably suspected of engaging in crimes of the relevant kind. Second, the suspect is ordinarily presented with, or typically creates, the kind of opportunity that they are to be afforded in the integrity test scenario. Third, the inducement offered to the suspect is: (a) of a kind that is typically available to the suspect and; (b) such that an ordinary police officer would reasonably be expected to resist it.