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ARTICLE

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# Police Detectives, Criminal Investigations and Collective Moral Responsibility

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SEUMAS MILLER\*

*In this paper my concern is with the collective moral responsibility of criminal investigators for the outcomes of their investigations, bearing in mind that it is important to distinguish collective moral responsibility from, and relate it to, individual moral responsibility. In what sense, if any, are police detectives individually and collectively morally responsible for their success (or, for that matter, their failure) in gathering sufficient evidence to identify, arrest, and charge an offender who has committed a serious crime? Alternatively, in what sense are they morally responsible in cases where they identify, arrest, and charge an innocent person? And in what sense, if any, are police detectives individually and collectively morally responsible for the ultimate outcome of the trial, the finding by the courts of someone they have investigated and charged with a serious crime to be guilty or innocent?*

**Keywords:** criminal investigation, detective, moral responsibility, collective responsibility, chain of responsibility, institutional responsibility

## Introduction

Serious crimes, such as murder and rape, often trigger major investigations with a large team of investigators, analysts, forensic specialists, and so on; hence the relevance to criminal investigators of the notion of *collective* responsibility and, given the moral significance of serious crimes, *collective moral* responsibility. Naturally, such

investigations can be more or less successful in a variety of aspects. Consider, for example, the major crime investigation of the so-called “Yorkshire Ripper” in the U.K. Peter Sutcliffe, the “Yorkshire Ripper,” was arrested and charged in 1981. He was convicted of 13 counts of murder and 7 counts of attempted murder, the first murder taking place in 1975. So the investigation was ultimately successful. However, the West Yorkshire police initially failed to connect Sutcliffe to the Ripper murders, even though they interviewed him a number of times. On one occasion, while stalking, he was charged

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with “going equipped to steal” – he had a hammer in his pocket.<sup>1</sup>

In this paper my concern is with the collective moral responsibility of criminal investigators for the outcomes of their investigations, bearing in mind that it is important to distinguish collective moral responsibility from, and relate it to, individual moral responsibility. In what sense, if any, are police detectives individually and collectively morally responsible for their success (or, for that matter, their failure) in gathering sufficient evidence to identify, arrest, and charge an offender who has committed a serious crime? Alternatively, in what sense are they morally responsible in cases where they identify, arrest, and charge an innocent person? And in what sense, if any, are police detectives individually and collectively morally responsible for the ultimate outcome of the trial, the finding by the courts of someone they have investigated and charged with a serious crime to be guilty or innocent?

In order to adequately address these related questions I need analyses of three key notions—namely, *epistemic responsibility*, *collective moral responsibility*, and what I will refer to as the *chain of institutional and moral responsibility*. In the first section of this paper I elaborate the notion of epistemic responsibility and apply it to criminal investigations. I take it that such investigations are essentially epistemic activities, since their main purpose or end is an epistemic one—

namely, knowledge (e.g., knowledge of the identity of the “Yorkshire Ripper”) or, more broadly, understanding, where the understanding in question is a structure of (so to speak) items of knowledge comprising in part knowledge as to the identity of the offender, the identity of the victim, and the nature of the crime and details of the crime scene, but also the offender’s motive and *modus operandi*, the events leading up to and following on from the crime, the other actors involved and their roles, and so on.<sup>2</sup> In the second section, I define my key notion of collective moral responsibility and apply it to those who participate in major criminal investigations. In the third section, I introduce a novel notion—namely, that of the chain of institutional and moral responsibility—and apply it to the contribution of criminal investigators to some of the larger purposes of the criminal justice system served by criminal investigations. Chains of moral responsibility exist on the back of chains of *institutional* responsibility. There are institutional links between police detectives, prosecutors, and the members of a jury, for example, since the investigations of detectives institutionally trigger prosecutions, which in turn can trigger trials, which terminate in decisions by juries. These links form an institutional chain and one which has moral significance; hence my notion of a chain of institutional and moral responsibility.

## 1. Epistemic Responsibility and Criminal Investigations

I suggest, and have argued elsewhere, that the fundamental *point* of criminal investigation is knowledge

(in the above-described broader sense of understanding) and, more specifically, propositional knowledge

expressed in statements—since such knowledge needs to be communicated to others and ought not to remain a private aspect of the investigator's consciousness.<sup>3</sup> In short, criminal investigators *ought* to have the acquisition of communicable knowledge as their principal aim or end. Accordingly, a necessary condition for being a good investigator is to aim at producing knowledge. An otherwise highly skilled investigator, who does not have knowledge with respect to crimes and their perpetrators as his *overriding* aim, but rather (say) a desire to have a very high clear-up or conviction rate, will not be a good investigator. For example, the highly skilled investigator who nevertheless ignores counter-evidence when forced to choose between getting to the truth of the matter (and thereby coming to have knowledge) and securing convictions is not a good investigator.

It has been suggested<sup>4</sup> that the aim of investigation and therefore of investigators is not knowledge (let alone truth) but is, rather, simply to gather evidence (both inculpatory and exculpatory) and that knowledge or the truth of the matter is the concern of the courts. However, this suggestion misunderstands the relationship between evidence and truth. Rational evidence-gathering is necessarily guided by truth.<sup>5</sup> Good and decisive evidence is evidence for the truth of the matter at issue—whether or not the suspect committed the crime, for example—and so truth-seeking gives direction to evidence-gathering. It follows that an investigator who is not aiming at the truth of the matter—for example, with respect to who killed John Doe's wife (and when, where, how,

why, and so on)—would not know, or even care to know, what counted as evidence and what did not, and would not seek to unearth as much and as much good evidence as possible. Of course, it is not up to the investigator to make the final adjudication with respect to the legal guilt of a suspect, but that is a different (albeit related) matter to which I return below.<sup>6</sup>

It goes without saying that the pursuit of knowledge with respect to criminal acts and their perpetrators is constrained by the law. Moreover, knowledge is not the only aim of criminal investigation; criminal investigation has other additional aims, and ought to have them. Such purposes include bringing offenders to justice, crime prevention, intelligence-gathering, protection of witnesses, asset recovery, ensuring reasonable clear-up and conviction rates (as we saw above), and so on. However, I claim that these are secondary purposes for investigators by virtue of being, for example, derived purposes, or larger institutional purposes from which the investigator's primary purpose is itself derived. Crime prevention is an instance of the latter; intelligence-gathering an instance of the former. Moreover, some of these secondary purposes, such as witness protection, are both derived purposes and ends in themselves. Witness protection is a derived purpose in so far as it is practised in order to aid in uncovering the truth and in bringing an offender to justice. But witnesses also have a non-derived inherent moral right to be protected from violence, intimidation, and so on, a right they have in common with everyone else, whether they be a witness or not.

Here I need to emphasize the distinction between factual guilt and legal guilt. It is the investigator's role to arrive at knowledge in respect of whether or not a suspect is factually guilty, and, if so, to recommend that the suspect be prosecuted (or otherwise present this knowledge to the relevant prosecuting authority). But factual guilt is not legal guilt. Legal guilt is, of course, a matter for the courts to determine. Naturally, a suspect ought to be found legally guilty only if he or she in fact committed the crime (i.e., is factually guilty); but, to reiterate, legal guilt is not for the investigator to determine.

It is sometimes suggested that there is no such thing as factual guilt, but only legal guilt. However, surely someone who in fact committed (say) an act of murder (by deliberately, unnecessarily, and unlawfully killing a person), and yet is pronounced in the relevant court of law to be innocent, is *in point of fact*—the formal verdict notwithstanding—guilty of murder by virtue of having intentionally killed the person in question and done so in breach of the law. Courts of law can and do pronounce on the guilt or innocence of those who come before them, but they cannot (and, therefore, do not) magically change the past. If as a matter of fact in 2012 A intentionally killed B in breach of the law (i.e., if A is factually guilty) then a court sitting in 2013 cannot change that fact. Accordingly, if the court in question pronounces A to be innocent, then the court has made a mistake.

I have argued that the fundamental point of criminal investigations is to acquire propositional knowledge. The knowledge in question can be summarized as the what, who, when, where, why, and how of a crime.

Propositional knowledge is at least true belief expressed in a language; so knowledge is true, *stated* belief.<sup>7</sup> Indeed, since the knowledge aimed at by criminal investigators not only has to be communicated to some others—for example, fellow investigators—but ultimately also has to become a matter of common knowledge in a public legal setting, then this aimed-at knowledge is knowledge expressed in statements and in accordance with various institutional protocols—for example, in the context of a brief of evidence.

If knowledge is at least true belief, then an existing state of affairs—for example, a dead body—is not a matter of knowledge until it, so to speak, 'enters the head' of someone—that is, becomes the content of a belief. However, in order for a belief to be knowledge it must be a *true* belief; falsehoods are not knowledge. If someone believes that the world is flat, or that  $2 + 2 = 5$ , then that person has a false belief and therefore does not have knowledge. So knowledge is at least true belief. But what is truth? Roughly speaking, a belief or statement is true if, and only if, the world is as the belief or statement holds it to be.<sup>8</sup> Thus, the belief or statement that snow is white is true if snow is in fact white and, indeed, only if in fact snow is white, and the belief or statement that this blood sample is that of Jones is true if, and only if, it is in fact that of Jones. To this extent the so-called correspondence theory of truth is acceptable, indeed trivially true.

Moreover, beliefs, judgments, statements, assertions, and the like have truth as their point; a statement, judgment, belief, and so on ought to aim at the truth and, if it turns out to be false, then it is defective qua statement, judgment, belief, and so on. Or, to put

things slightly differently, these states or acts “aim at” reality, and are successful—that is, true—in so far as reality is as they hold it to be. Consider a detective’s evidence-based judgment that a suspect robbed the bank. In making this judgment, the detective is aiming at reality, trying to get it right in relation to whether the suspect *in reality* committed the crime. If it turns out that the suspect was in fact overseas on the date in question and therefore could not have committed the crime, then the detective’s judgment will have failed; it will have turned out to be a *false* judgment. So judgments and statements are truth-aiming; they are teleological phenomena. Truth is what judgments, statements, assertions, beliefs, and the like aim at, or at least *ought* to aim at (given that there are liars and loose talkers who do not in fact aim at truth) and it is the property possessed by judgments, statements, assertions, and beliefs when reality is as they hold it to be.

The investigator attains truth when he or she has a true belief that (say) Peter Sutcliffe is the Yorkshire Ripper. However, truth in the sense of true belief is not sufficient in this context. The investigator needs to be able to justify his or her true belief by recourse to evidence. Moreover, this justification must consist in reasons—namely, good and decisive reasons; a bad reason is an unacceptable justification and a good reason is not necessarily sufficient to warrant true belief (there might be, for example, a countervailing good reason not to hold that belief). Typically, there will be a set of good reasons that cumulatively should constitute a decisive reason for the investigator’s true belief.

Accordingly, the investigator has as a goal *justified* true belief. But justified true belief is knowledge (or so I am assuming). So knowledge, specifically propositional knowledge expressed in statements, is the goal of the investigator.

I note that if knowledge is expressed in statements and, specifically, in written form, then it is possible for it to be stored in libraries, databases, and the like, making it thereby available for access by multiple users. Indeed, if it is further rendered in electronic form and stored in large databases, then the combining, cross-tabulating, and so on of different items of knowledge becomes possible, which is of enormous significance for intelligence-based investigation. I also note that what might count as a good and decisive reason for a belief outside a formal legal setting might not count for one within the courtroom setting in particular. For example, some forms of evidence are not admissible in a court of law because they were gathered unlawfully. The notion of knowledge relies on justification in its ordinary, non-legal sense.

In summation, the investigator has as his or her goal—or, at least, *ought to have*—knowledge in the following (somewhat simplified) sense (and using the above example): (i) the investigator believes that Sutcliffe is the Yorkshire Ripper; (ii) it is true that Sutcliffe is the Yorkshire Ripper; (iii) the investigator has a justification (which consists of a number of reasons that cumulatively constitute a good and decisive reason) for believing Sutcliffe to be the Yorkshire Ripper—for example, Sutcliffe has the motive, the ability, and the opportunity and there is physical evidence of his presence at the various crime scenes; (iv) the investigator has expressed the proposition that

Sutcliffe is the Yorkshire Ripper in a statement or series of statements.

Given that the primary aim of the criminal investigator is knowledge, a very important question arises as to the investigator's moral responsibility in this regard. Is an investigator morally responsible for failing to acquire such knowledge, for example, and is he or she therefore morally blameworthy? Conversely, is an investigator who succeeds in acquiring such knowledge morally praiseworthy? Certainly, the outcomes of criminal investigations have great moral significance, both for victims as well as suspects and, indeed, for society at large, given that crime is typically a moral as well as a legal offence. Accordingly, in so far as investigators are responsible for these outcomes they can be held morally responsible. But are they responsible?

An important difference between actions and beliefs is that actions can often be performed at will, whereas this is not so for belief acquisition.<sup>9</sup> Moreover, this contrast can lead to a sharp division between questions of morality and questions of knowledge. Morality, it might be argued, pertains only to actions (and dispositions to perform actions, e.g., virtues and vices), for which one can be held responsible, whereas belief acquisition—and therefore knowledge acquisition—not being under control, can have no intrinsic moral dimension. To be sure, knowledge involves principles of rationality—for example, in relation to good and bad evidence for one's beliefs—but such principles do not include, on this view, any specifically moral principles. If this view is correct, then criminal investigators are not morally responsible when they acquire knowledge of crimes and

not morally responsible, either, when they fail to do so.

However, it is doubtful that morality pertains only to actions, and dispositions to perform actions, for which one can be held responsible. Bad character traits, such as racial hatred, a violent temper, and paedophilia, for which one is not necessarily responsible, are nevertheless moral deficiencies and the actions that flow uncontrollably from these dispositions morally bad actions. Consider, for example, someone raised in a racist society, or a paedophile who was himself routinely subject to sexual abuse as a child and developed paedophilia as a consequence. Indeed, lack of autonomy and therefore the inability to act with moral responsibility is itself a moral deficiency, notwithstanding that one might not be responsible for this lack—for example, if one was raised as a slave or became a drug addict in one's mother's womb—and not responsible, either, for the actions or omissions that manifest this lack.

More importantly for our purposes here, this contrast between actions and beliefs in relation to their being freely acquired should not be overstated.<sup>10</sup> First, beliefs are often acquired after a process of investigation, and the decision to investigate is a voluntary decision to act, for which an investigator can obviously be held morally responsible. For example, the belief that Sutcliffe is the Yorkshire Ripper could not have been acquired if detectives had not decided to investigate the murders of Yorkshire prostitutes. That is, without this act of will—to conduct an investigation—the detectives would simply not have had any belief with respect to the identity of the Yorkshire Ripper; they would have remained in a state of



ignorance. Moreover, given the moral significance of identifying the Yorkshire Ripper, deciding to remain in ignorance would have been morally culpable.

Of course, in the case of the Yorkshire Ripper it was obvious that an investigation needed to be undertaken; the situation was far from being a moral dilemma. Nevertheless, a decision still had to be made to investigate—whether by the investigators themselves or their superiors—and as such it was a decision to acquire morally significant knowledge rather than to remain in ignorance. That is, it was a decision for which the investigators were morally responsible (albeit, I suggest, one for which they were neither blameworthy nor praiseworthy, since it was, so to speak, their job to make it). By contrast with the Ripper case, there are many situations in which it is far from clear whether or not an investigation ought to be conducted. Perhaps resources are stretched, or perhaps it is not obvious that a crime has been committed, notwithstanding a claim to this effect by a member of the public.

Decisions to investigate typically involve discretionary moral judgments. For example, an investigator might decide to investigate one serious crime rather than a number of less serious ones in a context in which limited resources prevent her from investigating all of the crimes in question. Here, “serious” might refer in part to the degree of harm involved in the crime and, hence, the degree of moral significance in play. Indeed, on some occasions such judgments can be in effect that an investigation into a crime ought not to be conducted because the morally bad consequences of doing so heavily

outweigh the morally good ones. Consider a minor assault of a man committed by his juvenile son in the overall context of a family in which the son is angry with his father because the father regularly beats the mother (who is, nevertheless, not prepared to come forward to the police). Consequently, moral responsibility is involved in decisions to investigate, and the latter are, in effect, decisions to come to have beliefs, albeit beliefs that are preceded by a complex process of evidence-gathering, inference-making, and so on. It is not as if the process of belief-formation in question is simple, direct, and performed at will in the manner of, say, raising one’s arm. However, the contrast between belief-formation and action is too sharply drawn in a second and, indeed, a third respect relevant to the ascription of moral responsibility.

Belief-formation often results from investigations that comply with the rational principles that govern, or ought to govern, knowledge-acquisition—for example, principles of evidence-gathering with respect to physical evidence and the testimony of witnesses. But compliance with such principles is freely chosen; detectives decide to gather, for example, blood samples from a crime scene and to submit them for DNA-analysis with a view to determining whether or not a suspect was present at the crime scene. Accordingly, whether or not the investigator’s suspicion transforms into a belief that the suspect is indeed the offender is in part dependent on the investigator’s freely chosen action to comply with the relevant epistemic principles, in this case of evidence-gathering and inference-making. So once again belief-formation is dependent on prior freely chosen actions.

However, in this case it is not simply the case that the detectives will come to hold some belief or other in relation to a matter—for example, who the Yorkshire Ripper is—but rather that a specific belief or its negation will be formed—for example, that Sutcliffe is the Yorkshire Ripper or that he is not. Again, which belief the detectives come to hold is highly morally significant by virtue of, for example, the potential injustice and harm to victims, the suspect, and so on that may result if a false belief is formed. Hence, it matters a great deal whether their belief is a true one or not, and this in turn depends on the quality of their decisions with respect to evidence-gathering and the like.

The third respect in which belief formation is analogous to action is the following: beliefs are often the terminal point of an act of judgment and acts of judgment are often freely performed. For example, the belief that Sutcliffe was the Yorkshire Ripper was formed as a result of the detectives' judgment that on the basis of the evidence gathered he was the Yorkshire Ripper. Naturally, their judgment was not freely made, in the sense that they could make any old judgment they felt like making, including a judgment that was completely inconsistent with the evidence. But freely performed judgments are not to be identified with capricious or irrational judgments. And in this respect judgments are akin to actions in general: an action that is "compelled" by reason does not thereby cease to be a freely chosen action. Suppose a police officer uses a taser gun on an armed offender in self-defense and could not have done otherwise if he was to preserve his own life. Here the police officer has acted freely,

notwithstanding that "he had no other choice", rationally speaking; that is, his action was fully rationally justified and the alternative (to allow himself to be killed) was without rational justification (assuming taser guns to be a form of non-lethal force).

The upshot of this discussion of the belief-formation of investigators is that investigators can be held morally responsible for the outcomes of their investigations. As already stated, the outcomes of these investigations are morally significant for victims, suspects, and the wider community. Moreover, investigators are responsible, in part, for these broader outcomes in so far as they are responsible for their investigation and its particular epistemic outcome viz. justified true, stated belief.

An investigator is responsible for several aspects of an investigation, and with respect to each of them the possibility of success or failure arises. Speaking generally, an investigator is responsible for failing or succeeding in arriving at knowledge of the structured kind in question. Moreover, there are a variety of explanations for such failure. The investigator's failure could be the result of failing to commence the investigation, failing to aim at knowledge once the investigation has commenced, inadequate evidence-gathering, invalid inference-making, and/or lack of judgment. Conversely, his or her success will typically result from pursuing knowledge of the who, what, where, when, how, and why of the crime, engaging in careful and comprehensive evidence-gathering, valid inference-making, and exercising good judgment.

As it happens, many investigations involve joint action on the part

of more than one investigator and other contributors (e.g., intelligence analysts or forensic scientists); they are conducted by a *team* of investigators, and each member of the team makes a contribution to the common goal and relies on the others to make their contribution. This aspect of investigations raises the important moral issue of the *collective* moral responsibility of investigators, the issue discussed in detail in the next section. I note here that the common goal of a team of investigators is an *epistemic* one and that therefore the cooperative or joint action directed to that goal is a *joint epistemic action*.<sup>11</sup> Such action contrasts with what I will refer to (somewhat awkwardly) as *behavioral* actions, joint behavioral

actions in particular. Two men jointly killing their victim by overpowering and then stabbing him constitutes joint behavioral action; a team of detectives coming to *know* who the two killers are on the basis of blood samples, and so on constitutes joint epistemic action. For convenience, I will sometimes refer to joint action that is not joint epistemic action as joint behavioral action—thereby signaling the presence of bodily behavior— notwithstanding the fact that joint epistemic action and joint behavioral action (in this restricted sense) do not exhaust the types of joint action and also that joint epistemic action typically involves some form of observable behavior.

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## 2. Collective Moral Responsibility

I first need to distinguish some different senses of responsibility and, to begin with, I will do so with respect to individual, as opposed to collective, responsibility. In due course it will emerge that collective responsibility in the required sense is a construction out of individual responsibility and is based on the notion of joint action.<sup>12</sup>

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 or reasons. It should be noted 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 realizes an agent's goal.<sup>13</sup> 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 call this sense of being responsible for an action "natural responsibility." As I argued in the first section, a person can be responsible for his or her epistemic actions, including deciding to investigate some matter, making inferences from one belief to another, and making a judgment with respect to the truth of some matter. Criminal investigators deciding to investigate a particular person, making inferences on the basis of evidence, and making a judgment with respect to whether

someone committed a crime are all instances of such epistemic “action,” which terminates in beliefs and statements, including formal statements such as briefs of evidence and the like.

On other occasions, the term “being responsible for an action” means 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. Moreover, the role occupant in question may also be institutionally required to see to it that what ought to be done is, in fact, carried out—for example, see to it that the required knowledge in question is indeed acquired and, perhaps, communicated to others. Thus the members of a surveillance team might have the responsibility to identify the occupant of certain premises as being or not being the person suspected of being (say) a terrorist, to video-record anyone leaving these premises, and to communicate information in a clear and precise manner to their control room; moreover, they might have these institutional responsibilities irrespective of whether or not they carried them out, or even contemplated doing so. Clearly, these institutional responsibilities are ones in respect of what are essentially epistemic tasks.

A third sense of “being responsible” for an action is a species of our second sense. If the matters in respect to 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 by virtue of being the person in authority over them.

The fourth sense of responsibility is, in fact, the sense we are 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 if 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 can 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—for example, the imprisonment of an innocent person following on a poorly conducted investigation. Sometimes the specific outcome is not foreseeable, but that there could be some bad outcome is foreseeable. This is often the case when police (avoidably) exercise poor judgment—for example, when Sutcliffe was apprehended with a hammer in his pocket and only charged with “going equipped to steal,” although he was actually out stalking. In these cases the person who exercised poor judgment would typically not be morally responsible for the outcome, especially given that the outcome was someone else’s morally culpable action, but the person might

still be held to be morally responsible for exercising poor judgment.

Sometimes the act or omission is morally wrong intrinsically and also by virtue of its untoward consequences. For example, in 1977, Peter Sutcliffe's wife provided a false alibi for him as the possible owner of a banknote left at one of the crime scenes. (Sutcliffe was one of hundreds interviewed regarding the banknote.) In doing so, she was at least morally responsible for telling a lie and causing police to believe that Sutcliffe was not worthy of further investigation, and possibly also morally responsible for protecting a serious offender from being brought to justice and enabling Sutcliffe to commit further murders.

We can now make the following preliminary claim concerning moral responsibility (note that here actions and omissions include epistemic acts and omissions):

*If an agent is responsible for an action or omission (or a 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—merits 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 if there was some overriding moral justification for performing what would otherwise have

been a morally wrong action. It should also be noted that in contrast to some accounts of moral responsibility I am distinguishing this notion from that of blameworthiness/praiseworthiness.

Above, I distinguished four senses of responsibility, including moral responsibility. Let me now consider collective moral responsibility.<sup>14</sup> To do so, it is first necessary to elaborate the notion of joint action and in particular one of its species, joint epistemic action. Joint actions involve a number of agents performing interdependent actions in order to realize some common goal.<sup>15</sup> Examples of joint action are: two people dancing together, a number of tradesmen building a house, and a team of researchers conducting an attitudinal survey. This notion of a common goal or, as I shall refer to it, a collective end, is a construction out of the prior notion of an individual end. Roughly speaking, a collective end is an individual end more than one agent has, and which is such that, if it is realized, it is realized by all, or most, of the actions of the agents involved; the individual action of any given agent is only part of the means by which the end is realized. The realization of the collective end is the bringing into existence of a state of affairs. Each agent has this state of affairs as an individual end. (It is also a state of affairs aimed at under more or less the same description by each agent.) So a collective end is a species of individual end.<sup>16</sup>

Joint action is to be distinguished from individual action on the one hand, and from the “actions” of corporate bodies on the other. Thus, an individual walking down the road or shooting at a target are instances of individual action. A nation declaring

war or a government taking legal action against a public company are instances of *corporate* action. My concern in this paper is only with joint action and, in particular, with joint epistemic action. As noted above, epistemic action is action directed to an epistemic end, notably knowledge. Given our notion of joint action as action directed to a collective end, it follows that if the epistemic end in question is a collective end, then the action in question may well be joint epistemic action. Examples of such joint epistemic action are a team of scientists seeking a cure for cancer, or a team of detectives seeking to determine the identity of the Yorkshire Ripper. The collective ends of joint epistemic actions are importantly different from those involved in joint non-epistemic, behavioral action. In the case of the former, the content of the collective end—for example, the knowledge whether or not that *p*, — is necessarily unknown at the commencement of the joint epistemic action, for it is precisely this knowledge the joint epistemic action is aiming to acquire.

Armed with this notion of joint action and, in particular, joint epistemic action, let me now turn to collective responsibility. As is the case with individual responsibility, one can distinguish four senses of collective responsibility, including senses established in relation to epistemic actions and omissions. The first of these four senses is developed in relation to joint actions: 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 realized.

In the case of the above-mentioned members of the surveillance team, the joint action in question is an epistemic action; it is a joint action the point or purpose of which is knowledge—for example, knowledge of the identity of those entering and leaving the premises in question. So the individual members of the surveillance team perform the joint (epistemic) action of surveilling these premises. It is important to note here that each agent is individually (naturally) responsible for performing his contributory action, and responsible by virtue of the facts (i) that he intentionally performed this action; and (ii) that the action was not intentionally performed by anyone else. So an investigator might do all that can be reasonably expected of him or her only to have some other contributor fail to discharge adequately his or her responsibilities. For example, an investigator might conduct a first-rate investigation and brief of evidence, only to have an incompetent forensic scientist undo the good work by destroying a key piece of physical evidence.

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 realization of the (collective) *end* that results

from their contributory actions. Consider two agents jointly killing someone in a crowded setting, one by grabbing him and holding him fast, the other by shooting him in the head. Each is individually (naturally) responsible for his own action, and the two agents are collectively (naturally) responsible for bringing it about that the person is dead, given that the actions of both were necessary for this outcome.

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 realize 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 realized.

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 relevant police authority collectively decide to exercise their institutionally determined (and, therefore, lawful, let us assume) right to introduce a counter-terrorism measure—for example, collecting the metadata of large numbers of Internet users from the relevant Internet providers. The members of the police authority are then collectively responsible for this policy and,

potentially, for the untoward consequences of its implementation—for example, infringements of the privacy rights of citizens, and the political furore following on media disclosure of the policy.<sup>17</sup>

Several things need to be kept in mind in this context. 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 analyzed in terms of the notion of what I analyzed in detail elsewhere—namely, a joint institutional mechanism.<sup>18</sup> By the lights of that account the “decision” of the police authority can be analyzed as follows. At one level each member of the authority voted for or against the policy at the relevant meeting. Let us assume some voted in the affirmative and others in the negative. But at another level each member of the authority 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 favor would be realized. Accordingly, the members of the authority were jointly institutionally responsible for the policy change—that is, they 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 surveillance team:

*If agents are collectively responsible for a joint action or omission (or the realization 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—merit moral praise or blame, and (possibly) punishment or reward for bringing about the outcome.*

As is the case with the parallel account of individual moral responsibility, the crucial “other things being equal” clauses 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.

It should be pointed out that there can be cases in which the morally significant collective end of a joint action is realized even though one or more individuals fail to successfully perform their individual action, as well as cases in which the morally significant collective end of a joint action is not realized, even though one or more individuals successfully perform their individual action. In the former kind of case, assuming the individual (or minority) actually 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 realization of the end, notwithstanding their individual failure in relation to their contributory action. In the latter kind of case, again assuming the individual actually has the collective end, the individual shares in the collective moral responsibility for the failure to realize the end, notwithstanding their individual success in relation to their contributory action.<sup>19</sup>

Major criminal investigations involve joint epistemic actions and therefore potentially collective moral responsibility at multiple levels, some of which might not be obvious. Consider the Yorkshire Ripper investigation. As with many murder investigations, it generated an immense volume of information. Indeed, Peter Sutcliffe was actually in the databank. However, the manual system was such that there was a delay in identifying Sutcliffe, resulting in further loss of life. (A computerized system was eventually used.) The lack of an appropriate computerized system was evidently due to omissions on the part of various different senior members of the police organization in question over time. Arguably, therefore, there was collective moral responsibility over a period of time on the part of a succession of the relevant members of the police authority for the failure to install a computerized system, even if the failure to get early access to another organization’s system was a failure on the part of a single senior police officer.

Here I note that collective responsibility for some state of affairs is often understood, at least implicitly, as if it necessarily attached to a joint action (or joint omission) considered as an event that took place at a particular time, as



opposed to a temporally extended series of events; that is, it is assumed that the individual actions constitutive of the joint action (or omission) were performed at the same time rather than as a succession or series of actions, each of which took place at a different temporal location in the series. This is not the case, as will become abundantly clear in the next section. But for the moment consider as an example a

relay or (to take a more complex case) a major building project, such as the Great Wall of China that was built over hundreds of years. Likewise, a series of omissions which had untoward consequences might be such as to constitute a collective moral failure; if so, then it might be the case that the individuals involved were collectively morally responsible for these consequences.<sup>20</sup>

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### 3. Chains of Moral Responsibility

In the first section of this paper I elaborated the epistemic responsibility of criminal investigators, and in the second I proffered an account of the notion of collective moral responsibility. The notion of a chain of institutional and moral responsibility that I introduced in the opening paragraphs of this paper is my focus in this third and final section. In the above section on epistemic responsibility I focused on the moral responsibility of investigators with respect to, so to speak, the proximate end of determining factual guilt or innocence of a suspect. In this section on the chain of moral responsibility I am concerned with the moral responsibility investigators may have with respect to a further end of the criminal justice process—namely, that the factually guilty be found legally guilty (and the factually innocent not be found legally guilty).<sup>21</sup>

Of course, it is only from the perspective of the larger institutional process that this end (of determining factual guilt or innocence of a suspect) is merely proximate. If, on the other hand, we focus more narrowly on the principal role of the investigator, then matters are somewhat

different. For the principal, indeed defining, role of the investigator is, as I argued above, knowledge (propositional knowledge expressed in statements) and, in particular, knowledge with respect to factual guilt (or innocence). Moreover, by the lights of an overarching normative theory of the criminal law and of criminal investigators, even this further collective end of criminal investigators (jointly aimed at with members of juries and others in the chain of institutional and moral responsibility) that the factually guilty be found legally guilty (and the factually innocent not be found legally guilty) serves in turn the larger purpose (let us assume) of the protection of justifiably enforceable moral rights not to be harmed and to receive assistance in relation to needs-based deprivations.<sup>22</sup>

In all this there is an institutional division of labor and segregation of roles that involves each type of institutional actor—investigator, prosecutor, judge, jury-member, and so on—making a contribution to the further (collective) end of identifying and appropriately punishing the guilty and exonerating the innocent.

However, unlike many institutional arrangements, the criminal justice process is predicated on strict adherence on the part of institutional actors to the segregation of roles on pain of compromising this further end. I emphasize that this segregation of roles is consistent with all of these actors, each with their own different and segregated role, having a common further aim; agents can have a common aim even though it is a requirement for each of them to make a different and separate contribution to that aim, not to perform the tasks assigned to the others, and to do all this in the service of that common aim.

With respect to this segregation of roles, the relationship between the different categories of institutional actors (e.g., investigators, jury members) in the criminal justice process is *unlike* that which holds between a manager, a waiter, and a barman in a small pub. There is no reason why, for example, the manager and the waiter might not assist the barman in doing his job of pouring beers during a rush period or even stand in his place when he is called away. But there is good reason why the prosecutor should not also be the judge, or the investigator the jury; in an adversarial system, any such conflation of roles would constitute a structural conflict of interest and, as such, would be likely to undermine the administration of justice.

Institutional arrangements such as this in which there is a segregation of roles (and associated responsibilities) but, nevertheless, a common further end involve a chain of institutional and moral responsibility. In chains of institutional and moral responsibility all the participants aim (or should be aiming) at the further end in addition

to undertaking their own roles (and, therefore, aiming at the end definitive of their own particular role). Moreover, all the participants (at least in principle) share in the *collective responsibility* for achieving that further end (or for failing to do so). Let me examine again the example of Peter Sutcliffe, the Yorkshire Ripper, who was ultimately convicted of 13 counts of murder (the victims being prostitutes working in Yorkshire in the U.K.).

The detectives involved were (collectively in the sense of jointly) morally responsible for gathering and analyzing the evidence that identified Peter Sutcliffe as the Yorkshire Ripper; they acquired the required knowledge of Sutcliffe's *factual* guilt and, thereby, realized the collective end of their institutional role as detectives. On the other hand, members of the court and, in particular, the members of the jury were (collectively) morally responsible for finding Sutcliffe *legally* guilty and thereby realized the (collective) end of their institutional roles as jury members. So far so good, but what was the ultimate end that was realized by the detectives *and* the members of the jury (as well as the other actors involved in the institutional process, e.g., the judge)?

Presumably, the end in question is for the factually guilty to be found legally guilty (and the factually innocent not to be found legally guilty) and this is an end (a collective end) that is realized by the detectives working jointly with the members of the jury (and the other relevant institutional actors). It is not an end that the detectives could achieve on their own; they can only arrive at knowledge of factual guilt. But it is equally not an end that the members of the

jury could realize on their own, for they rely on the knowledge provided by the detectives.<sup>23</sup>

Notwithstanding the above-described mandatory segregation of roles (in the context of a chain of institutional and moral responsibility), detectives have been known to try to pre-empt the outcome of the criminal justice process—for example, by fabricating evidence against suspects they believe to be guilty and deserving of severe punishment, rather than remaining within the confines of their designated role of evidence-gathering in the service of truth and being content to rely on

prosecutors, judges, and juries to undertake their different (albeit ultimately interlocking) roles in relation to assessing the case against suspects, determining guilt, passing sentence, and so on. In so doing, they are, of course, compromising the integrity of the chain of institutional and moral responsibility, not by virtue of failing to pursue its ultimate collective end on the occasion in question, but rather by overreaching their institutional role and by violating a central institutional rule, both of which are in place to ensure that the ultimate collective end is in general realized.

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### Notes

1 See Nicholson, *Yorkshire Ripper*. See also Miller and Gordon, "Crimes against the Person," 127–32.

2 Here I am assuming, of course, that a crime has been committed, whereas there are investigations that might find no crime to have been committed, or ones undertaken to prevent a crime being committed, e.g., terrorist investigations.

3 Strictly speaking, as already mentioned, my view is that criminal investigators ought to aim at understanding: understanding in the sense of a structured set of mutually supporting "items" of knowledge that can be summarized as the what, who, when, where, how, and why of a crime. Moreover, I assume in this article that propositional knowledge is to be defined as (roughly speaking) true belief with a justification. The definition of knowledge is a matter of ongoing controversy in the philosophical literature. However, this definition (or, at least, sophisticated versions thereof) has been well supported historically and, in any case, suits my purposes here. See Lehrer, *Theory of Knowledge* and Moser, *Knowledge and Evidence* for overviews. See also Ichikawa and Steup, "Analysis of Knowledge." For the need to communicate

investigative knowledge in propositional statements, see Miller and Gordon, *Investigative Ethics*, Chapter 2.

4 See Stelfox, *Criminal Investigation*.

5 I take it that the investigator, in aiming at knowledge, is necessarily aiming at truth, but truth for which he or she has good and decisive evidence; otherwise the investigator might discover the truth without knowing that he or she has done so.

6 In many jurisdictions it is not up to the investigator to decide whether or not a suspect he has charged with a serious offence should go to trial, this being a matter for the prosecuting authority.

7 Sometimes for the sake of brevity I use the term "knowledge" to mean propositional knowledge, as opposed to knowledge in general. However, context should make this clear.

8 There are various complications here. For example, there are approximations to the truth. Moreover, philosophical theorizing on truth is long-standing, complex, and controversial. See, for example Pitcher, *Truth*. However, my claims here are familiar ones with widespread, if by no means universal, support.

9 See, for example, Williams, "Deciding to Believe."

10 See Walker, "Voluntariness of Judgment," for a related defense of the sort of view I am here espousing.

11 I introduced the notion of joint epistemic action in Miller, "Collective Responsibility and Information and Communication Technology." See also Miller, "Institutions and Information and Communication Technology."

12 For a useful collection comprising diverse theories of collective moral responsibility, see French, *Midwest Studies in Philosophy*.

13 The goal or purpose in question is that of the agent, e.g., by virtue of being appropriately rationally connected to the agent's other goals and beliefs; the goal is not, for example, one implanted in the agent by another agent. So the agent's actions are under his or her control. Moreover, the analysis of responsibility in this sense typically excludes any particular motive for one's end or goal in performing the action; one can be responsible in this sense and have a good, bad, or indifferent motive. It is even conceivable that one did not have any motive but rather just a capricious intention or end.

14 For detailed analyses of the notion of collective moral responsibility in play here, see Miller, "Collective Moral Responsibility" and "Moral Foundations of Social Institutions," Chapter 4.

15 For detailed analyses of the notions of joint action in play here, see Miller, "Joint Action (a)"; Miller, "Intentions, Ends and Joint Action"; Miller, "Joint Action (b)"; Miller, "Joint Action: The Individual Strikes Back"; and Miller, "Social Action."

16 There are, of course, a myriad of different possible cases here, including ones in which some of the actions of some of the participants are not known. See Miller, "Joint Action (a)"; Miller, "Intentions, Ends and Joint Action"; Miller, "Joint Action (b)"; Miller, "Joint Action: The Individual Strikes Back"; and Miller, "Moral Foundations of

Social Institutions," Chapter 2, for discussions of various different related cases of joint action.

17 There can, of course, be different degrees of individual responsibility within a group whose members are collectively responsible, notably if some members have a greater degree of institutional authority than their fellows.

18 See Miller, "Joint Action (a)"; Miller, "Organizations, Agency, and Action"; and Miller, "Teleological Account of Institutions."

19 It is consistent with these claims that if an individual (or minority) *culpably* failed to realize their individual end, yet knew that the collective end would nevertheless be realized, 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 claims that if an individual (or minority) *culpably* failed to realize their individual end in the knowledge that as a consequence of this culpable failure of theirs the collective end would not be realized, then the individual (i) does not have the collective end; and (ii) is individually morally responsible for the collective failure to realize the collective end. So in this case there is no collective moral responsibility for the failure.

20 See Miller, "Collective Moral Responsibility"; and Miller, "Social Norms."

21 Assuming that there are only two possible verdicts, guilty and innocent, which is not the case in some jurisdictions, e.g., in Scotland.

22 See Miller and Blackler, "Theory of Policing"; Miller, "Police"; Miller and Gordon, "Law, Morality, and Policing"; and Miller and Gordon, "Knowledge, Evidence, and Aims of Investigation."

23 Chains of institutional and moral responsibility consist of a process in which the completion of one stage institutionally triggers the commencement of the next stage, e.g., arrest is followed either by the suspect being charged or released within a specified time frame.

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