POLICE INFORMERS AND PROFESSIONAL ETHICS

Clive Harfield [1]

Associate Professor, Faculty of Law, University of Wollongong, NSW, Australia

Police use of informers is morally problematic at a number of levels: at the level of the institution; at the level of investigation management within the institution; and at the level of the individual (both informer and police officer). Drawing upon the author's practitioner experience of managing informers in England, this paper explores the ethics of informing within the context of Miller and Blackler's moral theory of policing.[2]

Informers are understood to be individuals who supply information about other persons covertly to the authorities, usually in expectation of some form of reward and usually at the instigation of the authorities. [3] The information thus supplied is specifically characterized: it is information leading to intelligence or evidence that the authorities need to pursue enforcement or regulatory investigation and which cannot be obtained by other means. The informer has access to such information by virtue of his or her relationship with the individual subject of the information. The informer and police are involved in a covert relationship which deceives the individual about

[1] The author is grateful to John Kleinig for his helpful and supportive comments on earlier drafts of this paper.

[2] Seumas Miller and John Blackler, *Ethical Issues in Policing* (Aldershot: Ashgate, 2005) chapter 1.

[3] Informers are thus distinguished here from informants: individuals who volunteer information motivated by civic duty with no expectation of reward, for instance a member of the public contacting police to alert them to a road traffic collision, or a citizen who anonymously leaves information on a 'crimestoppers' hotline message system. Notwithstanding the distinction drawn here, it should be noted that the terms are often used interchangeably in the academic literature and in journalism. For the purposes of this paper, a police officer involved in the day-to-day running of an informer will be referred to as the 'handler'.

whom information is being passed. [4] When viewed from the perspective of the person being informed against this deception, even though at its simplest no more than a non-disclosure, is a prima facie moral harm. That the information passed will be used to the disadvantage of the individual informed against is an additional moral harm.

Informers are generally utilised by law enforcement and intelligence agencies but in the United Kingdom, for example, statutory provision for the use of informers - termed in the legislation 'covert human intelligence sources' - extends to local government, central government and regulatory agencies as well as police agencies. [5] Certain criminal jurisdictions, for example in the United States of America, provide a defence in law of entrapment to protect individuals from being lured into committing crimes by informers (so-called 'sting' operations) and thus investing a particular expression of moral harm associated with informers with an adverse procedural consequence for the users of informers. Other jurisdictions (for example in the United Kingdom and Australia) provide no such defence although the manner in which an informer has been used may give grounds either for arguing that certain evidence should be excluded or grounds for arguing mitigation when sentencing.[6]

[4] It is not necessary for the purpose of this paper to distinguish between deception and lying. Both might be employed in the business of informing. (On the distinction see Jonathon Adler, 'Lying, deceiving or falsely implicating'. *Journal of Philosophy* 94(9) (1997), 435-452.

[5] See, for example, Clive Harfield and Karen Harfield, *Covert Investigation* (Oxford: Oxford University Press, 3rd edition, 2012), chapter 9 of which discusses the statutory framework for the deployment of informers in the criminal jurisdiction of England and Wales, which forms one of the three criminal jurisdictions in the UK (the other two being Scotland and Northern Ireland). For a list of authorities empowered in England and Wales to use informers see the *Regulation of Investigatory Powers Act* 2000, Schedule 1 (as amended).

[6] The term 'entrapment' describes both method and outcome. Significant and ongoing interdisciplinary debate prevails concerning the concept of entrapment. See, for example, Andrew Ashworth, (1999). 'What is wrong with entrapment? [1999] *Singapore Journal of Legal Studies*: 293-317; Gideon Yaffe, ' "The government beguiled me": the entrapment defense and the problem of private entrapment'.' *Journal of Ethics and Social Philosophy* 1, (2005) 1-33; and David Ormerod, 'Recent developments in entrapment.' [2006] *Covert Policing Review*: 65-86.

The inherent vulnerabilities (besides successful application of the entrapment defence) to which law enforcement and regulatory agencies are exposed when utilising informers have long been recognised and documented.[7] The potential harmful consequences arising from reliance upon informers include the individual corruption of those employed as law enforcement officers and even the institutional corruption of law enforcement agencies themselves.[8] Concern has been expressed in both academic literature and in the popular media about the general management of informers and the nature of the relationship between informers and those who utilise them. [9] Criminal biographies illustrate the social and personal harms, including physical violence, to which informers are vulnerable. [10] It is the immoral milieu within which such individuals live that forms the basis of their value as informers.

---

[7] See for example Paul Cooper and Jon Murphy, 'Ethical approaches for police officers when working with informants in the development of criminal intelligence in the United Kingdom' *Journal of Society and Politics* 26, no.2 (1997) :1-20; Colin Dunningham and Clive Norris, 'Some ethical dilemmas in the handling of police informants' *Public Money and Management* 18, no.1 (1998):21-25; Jon Moran, 'Evaluating Special Branch and the use of informant intelligence in Northern Ireland' *Intelligence and National Security* 25, no.1, (2010):1-23.

[8] Roy Clark, 'Informers and corruption,' in *Informers: Policing, Policy, Practice*, ed. Roger Billingsley, Teresa Nemitz and Philip Bean (Cullompton: Willan, 2001), 38-49.

[9] See Colin Dunningham and Clive Norris, 'The detective, the snout, and the Audit Commission: the real costs in using informants' *The Howard Journal* 38, no.1, (1999):67-86 for a critical review of a policy actively encouraging informer recruitment as the most cost-effective method of crime investigation: the auditors had failed to factor in the full on-costs of informer management in determining the supposed cost-effectiveness of this tactic. (Police managers can be more concerned about monthly performance measures than perennial ethics.) In 'The untouchables: crime fighters let gangsters take the money and run', investigative reporters Linton Besser and Dylan Welch observed that within the New South Wales Crime Commission, tasked with investigating serious organized crime in New South Wales, Australia, "An 'ends justify the means' culture exists at senior levels. It manifests itself in inadequate record keeping, the routine relaxation of policies governing the handling of informants and inaccurately reporting its financial achievements." *Sydney Morning Herald*, February 12, 2011. NSWCC Assistant Director Mark Standen was convicted in August 2011 of conspiracy to import precursor chemicals for narcotic production and of perverting the course of justice. His co-conspirators included one of his informers, James Kinch, currently fighting extradition to Australia: *Sydney Morning Herald*, August 12, 2001; also August 15, 2011. For a recent study of how different American law enforcement agencies and prosecutors utilise informers in one US State, and concerns about the management of the investigator/informer relationship and the recruitment and abandonment of informers by such agencies, see Delores Jones-Brown and Jon Shane, *An Exploratory Study of the Use of Confidential Informants in New Jersey*. A report commissioned by the American Civil Liberties Union of New Jersey in partnership with the Criminal Law Reform Project of the American Civil Liberties Union. (Newark, NJ: American Civil Liberties Union of New Jersey, 2011).

[10] See for example, the journalistic account of the criminal career of one of the UK's most notorious organized crime individuals: T. Barnes, R. Elias and P Walsh, *Cocky: the Rise and Fall of Curtis Warren, Britain's Biggest Drugs Baron*, (Bury: Milo Books, 2000). By way of alternative perspective, Graham Johnson, in his book *Powder Wars: The Supergrass Who brought Down Britain's Biggest Drug Dealers* (Edinburgh: Mainstream Publishing,

It is in response to such harms that statutory regimes have been enacted in various jurisdictions. But the law is sometimes a blunt instrument and often is intended to work indirectly (not requiring virtue *per se* but relying, rather, on the threat of sanction to deter potential wrong-doers). Sometimes, as Kleinig has observed, moral limits are crossed before legal limits are reached.[11] The law cannot always accommodate ethical nuance. The community needs to be able to trust law enforcement agencies to operate properly on behalf of citizens. Using members of the community to report covertly on their families and associates has the potential to undermine seriously not only these individual social relationships but also the relationship between community and police. For that reason, and because the relationship between informer and police is so complex, it is of value to consider both the ethical framework within which informing operates and whether, as agents of the police, informers when acting as such assume any professional obligations inherent in the police role.

Morally problematic issues at the institutional level

Policing is an institutional activity essential to peaceful society which, paradoxically, is facilitated by three kinds of conduct each of which is a species of prima facie moral harm. The first is coercion (constraining individual liberty through arrest, search, seizure); the second, deception (undermining trust through use of informers, undercover officers); and the third, surveillance (intrusion of privacy by various mechanisms). [12] Such individual harms can be morally justified in

2005), provides a journalistic biography of Paul Grimes, the informer who provided information about Curtis Warren to the authorities..

[11] Kleinig, *Ethics of Policing*, 135.

[12] Seumas Miller, *The Moral Foundations of Social Institutions* (Cambridge: Cambridge University Press, 2010) 263.

defined circumstances on the basis that they form conduct the purpose of which is to protect otherwise vulnerable individuals from the actions of those who have either not assimilated or have actively rejected the social norms of any given society. Within this context, those about whom information is covertly collected and passed to the police are rendered more exposed to police coercive action as a consequence of the information being passed: armed with such information the authorities have a basis on which to act which they previously did not possess. The persons about whom the police now have information are deceived to the extent that they are not aware that the information is being passed to the police by the informer. The informer abuses the trust of the person informed against: only because the informer is trusted, or even merely accepted, does the individual informed against associate with the informer. The moral harm of this deception and betrayal of trust can be outweighed in a policing institutional context. Justification for such methods is derived from the moral purpose of policing and the collective good it seeks: "the protection of fundamental moral rights - specifically justifiably enforceable (aggregate) moral rights - is a collective good to which the members of the community have a joint right, and it is the central and most important collective end of police work". [13] From this proposition the argument moves on to Miller and Blackler's proposed moral theory of policing in which "harmful and normally immoral methods are on occasion necessary in order to realise the fundamental end of policing, namely the protection of (justifiably enforceable) moral rights".[14] This over-arching moral theory of policing thus provides an account within which, if the police are to fulfil their proper institutional purpose, occasional recourse to otherwise immoral methods is required.

If policing as a social institution, including its occasional use of otherwise morally harmful methods, is morally justifiable then it must follow that those employed as police officers, to the

---

[13] Miller, *Moral Foundations of Social Institutions*, 250.

[14] Seamus Miller and John Blackler, *Ethical Issues in Policing* (Aldershot: Ashgate, 2005) 26.

extent that their actions are intended to deliver the purpose of policing, are subject to the moral theory of policing. If informing is to be included amongst the otherwise morally harmful methods upon which policing may, as circumstances dictate, justifiably rely, then it is necessary to go beyond police officers and staff and to include the actions of informers (when acting as such) within the moral theory of policing also. To deny this proposition is to deny that informing is legitimate as a method of facilitating the policing purpose. Although informers are not police officers, when acting as informers these individuals are helping to fulfil the purpose of policing and to that extent their actions can be considered within the scope of the moral theory of policing. [15]

The integrity of the institutional purpose is protected by the specification, usually in statute, of circumstances in which it is permissible to use such methods. Comparative consideration of the various covert investigation governance regimes operating in different jurisdictions is too broad a topic to be attempted here but in common, albeit to varying degrees, such regimes will be informed by the sorts of criteria that distinguish the circumstances in which recourse to otherwise immoral tactics can be justified. This provides the basis for identifying a detailed ethic of informing within the overall moral theory of policing that has been adopted for the purposes of this paper.

The use of informers will be morally justified when certain criteria are present together. Firstly, the proposed use of informers must be consistent with the general moral theory of policing. Secondly, there must exist reasonable suspicion that the suspect about whom information is to be gathered has committed or is going to commit a crime. Where ongoing or planned criminality is suspected it may be the case that information only an informer can provide will confirm the suspicion and therefore confirm the need for further investigation and intervention. It is equally possible that the information that only an informer could provide may in some cases demonstrate

[15] The same line of argument could be made in support of the notion of 'citizen's arrest'; the claim on which rests, for example, the moral legitimacy of a store detective detaining a customer who has left the shop without paying for goods taken.

the suspicion to be unfounded or it may elaborate the contextual understanding to the extent that it becomes evident to the investigators that less intrusive or less coercive methods will suffice to bring intervention to a successful conclusion. [16] Thirdly, the crime must be of sufficient seriousness to warrant recourse to otherwise immoral methods. The moral rights of victims/potential victims to be protected from serious crime or to have such a crime investigated and prosecuted as fully as possible must, in the circumstances, outweigh the suspect's moral rights to privacy. [17] Just as a right to privacy is not absolute, neither are all crimes sufficiently serious to warrant use of covert investigation methods. [18] Fourthly, there should be no other, less morally harmful means of securing the required information. Deployment of an informer should, in relation to the specific piece of information sought, be the last resort. Fifthly, the specific piece of information sought by means of an informer must itself be significant to the investigation: significant, in these circumstances, being understood to mean that the investigation could not proceed or that no prosecution could be initiated, without the specific piece of information that the informer could provide. Information that is merely interesting rather than of significant use, desirable rather than essential and necessary, may not be sufficient in itself to meet this moral criterion.

Together these criteria serve to identify when it is morally justifiable for an informer to do no more than pass information to the police. Where obtaining the desired information requires that the informer engages in the criminality in order to gather the information, the number of individual moral wrongs committed by the informer increase compounding the cumulative moral harm. In such circumstances the informer is not only deceiving the suspect but is participating in conduct that

[16] To be clear: there must first exist a reasonable suspicion of criminality. The fact that informer deployment subsequently discloses exculpatory rather than incriminating information does not invalidate that element of moral justification provided by this criterion if the original suspicion was reasonable in the circumstances.

[17] See Seamus Miller, John Blackler and Andrew Alexandra, *Police Ethics* (Hook: Waterside Press, 2006), 258-262 for a discussion of privacy in this context.

[18] Whilst too large an issue to be discussed here, seriousness in this context is understood to be a reflection of the harm caused (or likely to be caused) by the (planned) crime.

society, through its legislative assembly, has defined as criminal. Assuming that the given law is not itself immoral, committing crime is itself a moral harm. This in turn gives rise to a further moral harm: committing crime in order to prosecute crime undermines the very purpose of the criminal justice system and the integrity of its actors and agencies. Nevertheless it can be envisaged that the five criteria above could, if the circumstances were sufficient, provide the starting point for an account which could provide moral justification for participation in a crime by an informer in order to secure significant information that could not otherwise be obtained about serious crime.

To arrive at such an account, to the initial five criteria identified above must be added a sixth; that the nature of the informer's participation must be both minor within the context of the specific crime and also necessary and therefore unavoidable (non-participation being morally preferable to participation). For example: it might be justifiable for an informer to supply or perhaps even drive the getaway car in which persons planning to commit an armed robbery of a bank with their identities disguised, intended to flee the scene. This might be the only means by which investigators could confirm who actually took part in the robbery. But it would only be justifiable if there was no realistic option for the authorities to intervene pre-emptively and frustrate the robbery before it was committed. This constraint might exist where such pre-emption would expose, compromise and therefore possibly endanger the informer. A seventh necessary criterion when contemplating informer participation in a planned crime is that the specific planned crime will happen anyway, whether or not the informer participates. In other words, the informer's non-participation will not of itself be sufficient to frustrate the crime and so prevent the moral and physical harms to which its commission will give rise.

Such moral ambiguity is reflected in law. In some Australian jurisdictions, in order to avoid the adverse consequence of having evidence declared improperly obtained and so excluded from trial, statutory provision exists for the prior authorization (and in some circumstances even

retrospective authorization) of criminal participation by informers or undercover officers. [19] Statute law in England is silent on this issue but case law has defined parameters which, without going so far as to offer immunity from prosecution, define when minor participation has been accepted and those involved may not be proceeded against.[20]

The above criteria apply in circumstances that fall short of entrapment: the most morally ambiguous use of informers. Miller et al offer five criteria that should be met for conduct they define as entrapment to be morally justified. [21] In addition to the criteria of reasonable suspicion and no feasible alternative means discussed above, when the circumstances could give rise to entrapment Miller et al propose that three further criteria should apply. The suspect should be ordinarily presented with the kind of opportunity that typically exists: police should not specifically create the circumstances for the crime to be committed. The inducement that entices the suspect should be nothing more than would typically be available to the suspect and one that an ordinary, law-abiding citizen would be expected to resist. Finally, for the use of an informer or undercover officer in such circumstances to be morally justifiable, it must be clear that the suspect not only had a disposition to commit such crime but also had a standing intention to commit such crime. In other words, the suspect should not merely be of a character more inclined to succumb to criminal temptation than to resist: it must be probable that the suspect will commit crime whenever opportunity presents itself. [22]

---

[19] *Law Enforcement (Controlled Operations) Act* 1997 (NSW), s.14.

[20] *R v Birtles* [1969] 1 WLR 1047.

[21] Miller et al, *Police Ethics*, 263-4.

[22] It is assumed that such offenders act not on irrational impulse but upon a rational choice in which a determination is made on the basis of weighing up personal gains against the likely cost (including the likelihood of detection, conviction and punishment) of committing the crime. See Derek Cornish and Ronald Clarke, *The Reasoning Criminal: Rational Choice Perspectives on Offending* (New York: Springer-Verlag, 1986)

Distinction can be drawn between a proactive 'sting' or 'tethered goat' scenario in which a criminal opportunity is presented and those availing themselves of it will be prosecuted (which gives rise to entrapment concerns),[23] and a reactive 'test purchase' scenario, in which intelligence has disclosed ongoing criminality and the deployment of an undercover operative is necessary in order to secure a specific element of the chain of evidence upon which a prosecution will depend. [24] An example would be that of the street drug dealer, whose disposition and standing intention could be demonstrated through surveillance. Surveillance alone is not sufficient for a conviction because to satisfy criteria of proof at trial it will be necessary to secure evidence of exactly what is being sold. Arresting the dealer's customers identified through the surveillance may result in such evidence being obtained but drug-users may not present themselves as credible witnesses at trial. [25] Adept cross-examination may well ignite reasonable doubt in the minds of the jury thus undermining the prosecution. In such circumstances the deployment of an undercover officer to purchase the drugs (itself a crime) to establish a continuous and auditable chain of evidence from dealer to forensic laboratory to trial, can be morally justified (even though a series of such purchases may be necessary to prove a specific charge relating to continuing or repeated behaviour) using the criteria discussed in this section.

The moral theory of policing provides an over-arching framework within which institutional reliance upon the tactic of informing can, on occasions, be morally justified. Within the context of any given institution this conduct needs to be managed. Management mechanisms (including

[23] This scenario is akin to integrity-testing of the public rather than criminal investigation of specific suspects. Claims that it is a legitimate means of fulfilling the proper purpose of policing are undermined by the objection that, in these particular circumstances, no crime (and therefore no moral harm offending public morality) would have occurred but for the police use of proactive methods.

[24] An undercover operative in this scenario need not be a police officer - for example where the test purchase is of alcohol or cigarettes being sold to a person younger than the age at which alcohol or tobacco purchase is permitted. The use of juveniles in such circumstances raises additional moral issues beyond the scope of this paper.

[25] Given that arrest is itself a moral harm, it is not conclusive in the circumstances considered here that it is morally justifiable as a means of securing (coercing?) persons to act as prosecution witnesses at trial.

statutory authorization regimes) geared towards accountability for resource allocation and holding staff to account professionally will not of themselves provide additional or alternative moral justification for the use of informers. (That which is lawful and accords with policy nevertheless may not be moral; that which is possible and feasible may not be necessary.) But such mechanisms ought properly to guard against unjustifiable moral harm.

Morally problematic issues in the management of informers

Current accountability regimes governing the use of informers have two common features: prior authorization of deployment, and post facto reporting on contact between the police officer(s) handling the informer and the informer. These two species of mechanisms recommend themselves on the basis of smooth fit with administrative practice and through consistency with governance regimes established for the use of other policing tactics and powers. [26] In seeking to achieve and maximise transparency (to the extent consistent with maintaining informer and handler safety) these mechanisms nevertheless do not encompass how police handlers and informers should conduct their own relationship and the business of informing. This lacuna exists because current accountability mechanisms are founded upon direct supervision of paper- or computer-based bureaucratic methods, and there is no scope for any form of direct supervision of informers once they are active in the surveillance arena. [27] Making authorization conditional can create safeguard criteria the breaching of which will void the authorization (thus possibly rendering informing conduct unlawful in turn triggering a disciplinary investigation, or a criminal investigation, or action to remedy an abuse of due process, or any permutation of these interventions) but this at best provides a negative 'shall not' approach rather than a more positive 'shall' approach to guiding informer and handler decisions about conduct.

[26] Considerable variation exists between and within jurisdictions as to what species of official may confer prior authorization. In England and Wales, for example, the Secretary of State for Home Affairs is the authorizing officer for telephone interception, whilst chief constables and independent surveillance commissioners participate in a two-stage process for the authorization of intrusive surveillance. Directed surveillance (general observations or the use of informers) is authorized by a Police Superintendent. Similar tactics in other jurisdictions require judicial rather than self- or administrative authorization.

[27] There is scope for senior officers to supervise contact between informers and handlers when tasking or debriefing informers. But deploying an officer to accompany and supervise the informer when the latter is acting in that capacity would arouse suspicion on the part of the suspect and so compromise and endanger the informer.

Consider the process involved in police deployment of an informer against a suspect. The relevant *statutory* threshold is met[28]: the suspected criminality is sufficiently serious to warrant consideration of such a tactic; [29] there is no other feasible and less intrusive means of obtaining the desired intelligence or evidence; and the proposed tactic is lawful. Meeting statutory governance criteria creates the circumstances in which authorization to deploy may lawfully be given all things being equal. The police will subsequently record the following: details of the meeting at which the informer is briefed and deployed; and details of the debriefing meeting following deployment at which the informer will relay to the police what took place during deployment. Such records provide a form of transparency amenable to subsequent review by managers or independent ombudsmen.[30]

This system addresses general moral justification (to the extent that such can be expressed through statute law) for the fact that the police are making institutional recourse to the use of informers, an otherwise morally unjustified intrusion against individual privacy and autonomy. But it offers no guidance or benchmarks about how informers should conduct themselves so as to minimise moral harm to others during their deployment, and indeed minimise the "moral cost" of the fact of the deployment itself.[31] Even if the moral theory of policing provides an account within

[28] In England and Wales the relevant statutory thresholds for different categories of surveillance including the use of informers are defined in the *Regulation of Investigatory Powers Act* 2000 and the *Police Act* 1997, both as amended. The architecture of these Acts, in turn, is strongly influenced by the *Human Rights Act* 1998 which enshrines many of the values protected by the criteria outline in the first section of this paper.

[29] Seriousness of a crime for the purposes of prior authorization of a specific tactic or engagement of a specific power (e.g. arrest) is often defined in terms of maximum prison sentence. In England and Wales for instance general surveillance (termed 'directed surveillance' in the statute and which includes informer deployment) may be applied in the investigation of any offence but certain forms of intrusive surveillance are restricted to investigations into offences conviction for which would carry a maximum sentence of three or more years in prison: ss. 26, 27, 28, 29, 32, and 81 *Regulation of Investigatory Powers Act* 2000. The police general power of arrest is triggered if the suspected offence would, on first conviction, attract a possible maximum sentence of five years imprisonment: s.24 *Police and Criminal Evidence Act* 1984.

[30] If safety considerations permit an informer might be equipped with a covert recording device but this merely facilitates post facto transparency through record-keeping. It does not offer a means of direct supervision in the whilst active in the surveillance arena.

[31] John Kleinig, *The Ethics of Policing*, (Cambridge: Cambridge University Press, 1996) 130.

which informer participation as a tactical tool can be (exceptionally) justified, how is the extent and nature of justifiable informer participation in any given planned crime to be determined? What will be justifiable may depend upon the exact nature of the planned crime. Who is to make this determination? Intuitively the notion presents itself that the decision-maker should be a senior officer independent of the investigation yet such distance carries with it the risk that those seeking authority to deploy will provide selective intelligence upon which the decision-maker is called upon to determine the approved strategy.[32] Informers, handlers, investigators and managers may all have different views on what might be justifiable in any given circumstance and it may be difficult for outcome-focused practitioners to omit expediency when calculating the moral equation.[33] Informer participation can be accommodated conceptually within the moral theory of policing but it does not follow that it will necessarily ever be morally right for police to ask - let alone obligate - informers to participate in a crime.

Any management system based on policies and procedures is at risk from the possibility that those who should abide by such systems choose not to. Police officers prioritising practical efficacy and the achievement of results over procedure may subvert the management process in order to cut corners whilst still seeking to fulfil the proper purpose of policing.[34] Other individuals may subvert the systems for personal gain. [35] Where an organization uses a dedicated and exclusive informer-handling unit, investigators outside that unit may nevertheless privately recruit their own informers for professional gain thus evading all systems for managing the informing relationship. To the extent

[32] A further deception vulnerability in an arena, as will be seen in the next section, replete with deceit.

[33] That is not to deny that economic considerations may be pertinent to some moral judgements.

[34] The investigator prioritizing pragmatism over procedure may be doing so genuinely to achieve the proper ultimate purpose of policing or the individual may have his or her own personal perception of what the ultimate proper purpose should be. Either scenario gives rise to so-called noble cause corruption.

[35] Within any organization using informers, access to informers, the information produced by informers, and information about the informers themselves are all assets capable of being exploited by corrupt staff. Mark Standen's case, fn 9 above, is one such example.

that any management process can be corrupted, the management of informers can be corrupted. Assuming the management systems and their ultimate purpose to be morally sound, corruption of such systems or persons using them is a prima facie moral wrong. Corruption of a system (and/or its actors) intended to manage justifiable utilization of an otherwise morally harmful conduct is thus morally wrong at a number of levels.

Regulation and governance of the management of informers reinforces (through defined operating standards) the moral justification for institutional recourse to such methods. Informer management in and of itself does not provide a separate moral justification for informing although it does provide a mechanism for minimizing the immoral use of informers. Minimizing the immoral use of informers does not, in and of itself, guarantee that the informers and their police handlers will, as individuals, act in a morally justifiable way when engaged in the process of informing. Inculcating greater awareness of moral problems to be minimized and managed might be achieved through reference to professional obligations. Professional obligations in relation to informing and the management of informers (if such exist alongside the general ethical framework proposed above) must be founded upon an understanding of the moral issues confronting individuals in the daily arena of informing.

Morally problematic issues at the individual level

At the individual level moral issues arising from the act of informing divide into two arenas: informer moral behaviour and handler moral behaviour. The latter can be further sub-divided because of the different operational environments in which police may manage the use of informers. Police officers working in an exclusive and dedicated informer-handling unit are tasked through intelligence-management processes with obtaining specific items of information with which

to inform the intelligence picture in support of any investigation team. Organizationally separated and, where good practice is followed, physically removed from the actual investigation team, specialist informer-handlers do not have the same personal vested interest in the outcome of an investigation as does the detective or street patrol officer cultivating his or her own informers. [36] The discussion that follows considers first informer morality and then handler morality.

Informers

Where an informer (X) provides information about a suspect (S) covertly to the police (P) the tactic is morally justified at the institutional level within the general moral theory of policing where qualifying criteria are met. X will be in an exclusive position to provide the desired information about S because they are associates.[37] X will either already be in possession of the desired information by virtue of past association with S, or else current association will provide the means by which X can discover the desired information. For example: for the purpose of examining telephone records P needs to know the telephone number of the mobile phone used by S. X may already know this because X and S communicate by phone. But if X does not know the number, X's association with S provides a context within which X plausibly can ask S for the number.

It is assumed that S would not approve the passing of such information to P because P will use the information to investigate and prosecute S. It is assumed that S would consider and may well

[36] In the United Kingdom police forces are encouraged to adopt as good practice the operating model of the Dedicated Source Unit (DSU) for the handling and management of informers which provides a sterile corridor between investigator and informer, an organizational structure seen as of particular benefit in minimizing risks of investigator/informer corruption. Within this operating model individual investigators do not recruit or handle their own informers. This operating model is encouraged by the statutory authorization regime for the management of covert human intelligence sources set out in Part II of the *Regulation of Investigatory Powers Act* 2000. Whilst the Act does not mandate the use of DSUs, the DSU model provides the most economic and efficient use of resources in order to meet statutory requirements.

[37] Taken to include family, friends or colleagues.

take retributive action against X were S to discover X was passing such information to P. It is assumed that were S to discover X were passing information to P, S would also take action to frustrate the investigation being undertaken by P. These assumptions are considered reasonable based on the reported experiences of police (handlers and undercover officers) and informers. [38] Such an environment provides justification for the use of deception to protect X and the integrity of P's investigation.

By not telling S that information is being passed to P, X is deceiving S. The deception of S by X is morally wrong because it undermines the trust on which their social interaction is based. This moral wrong is outweighed by the justification provided by the moral theory of policing discussed above: that deception by or on behalf of the police can be justified in certain circumstances. [39] An additional justification arises from the fact that secrecy, and therefore deception to maintain such secrecy, is necessary to protect X from retribution at the hands of S. (In the context of managing informers tactical use of deception can be posited as an occupational health and safety strategy!)

This line of argument can be used to extend the moral justification that can be argued for P to encompass the actions of X from which P will benefit at the expense of S. But such an extension does not take into account X's motivation and purpose.[40] It is conceivable that X is motivated by a sense of civic duty, in which case X's deception could be justified by extension of the moral theory of

[38] See, for example, Andrew Boyd, *The Informers: a Chilling Account of the Supergrasses of Northern Ireland* (Dublin: Mercier Press, 1984) 23; and generally, T. Barnes, R. Elias and P Walsh, *Cocky: the Rise and Fall of Curtis Warren, Britain's Biggest Drugs Baron*, (Bury: Milo Books, 2000); Graham Johnson *Powder Wars: The Supergrass Who Brought Down Britain's Biggest Drug Dealers* (Edinburgh: Mainstream Publishing, 2005).

[39] Justification of such deception on behalf of policing assumes that informers can be properly encompassed within the moral theory of policing adopted here.

[40] Graham Johnson, *Powder Wars: The Supergrass Who Brought Down Britain's Biggest Drug Dealers* (Edinburgh: Mainstream Publishing) recounts the circumstances in which Paul Grimes came to be of potential value as an informer and came to be motivated to inform against Curtis Warren, the richest organized crime figure in the UK. This is a particular example of informing at a very serious level of criminality and thus may not be typical. Little appears to have been done in the way of academic research into informer motivation.

policing. But the author's practitioner experience suggests that such public-spirited motivation amongst informers is rare. Reward and/or revenge, anecdotally, are more common motivations for informers. Neither has any strong claim that over-rides the prima facie moral harm inherent in informing.

If X is informing P about S as an act of revenge against S for some perceived or actual wrong caused to X (or another) by S, then X's purpose is to cause harm to S: a moral wrong motivated by malevolence. The fact that the moral harm likely to be suffered by S at the hands of P (for example, arrest, conviction, punishment) can be justified within the moral theory of policing does not overcome moral objections to X's conduct and motivation in these circumstances. Indeed, the immorality of X's malevolence towards S is compounded by the fact that X is, in essence, manipulating P (both as an institution and its actors in their own right and as a community resource) to cause harm to S.

Alternatively X may entertain no particular malevolence towards S but may instead be motivated solely by personal reward. This can be further complicated by the circumstances in which X comes to agree to supply P with information concerning S, to which consideration this paper returns in detail below [pp.23-27]. Suffice it here to consider straightforward circumstances in which X provides information to P and in return receives cash for doing so. In this account the information about S is a commodity to be traded. An objection could be raised on the basis that S will suffer harm as a consequence of such an exchange and that no one should be rewarded for causing harm to another. But this simple account would have to be qualified; otherwise neither the salaries of police officers nor the offering and paying of public rewards for information leading to the arrest and conviction of wanted persons could be morally justified. Reward for information provided also runs to heart of the trial process when witnesses who would otherwise self-incriminate are offered immunity from prosecution for testifying and defendants receive discounted sentences which take

into account either guilty pleas or information subsequently provided to the police in relation to other matters. [41] Unappealing as it is, trading information is at least desirable, possibly even essential , [42] for the better prosecution of serious crime and such exchange can be accommodated within the account provided by the general moral theory of policing.

If solely motivated by reward it is open to X to trade not with P but with S. X has two possible commodities to 'sell' in this scenario. The first is high risk and concerns the information X knows about S. X could demand reward from S for not passing the information on to P. This is blackmail and in the circumstances considered here, no obvious claim presents itself that overcomes the moral wrong of blackmail. Extorting money from someone in exchange for not passing on incriminating information about them has the effect of the blackmailer enslaving the person from whom money is demanded. Enslavement denies, or at least unreasonably constrains, individual autonomy.[43] Nor is this the only moral harm arising from such conduct. In these circumstances X is knowingly subverting the process of criminal law enforcement, causing a wider moral harm to the community. X may not be aware that information he or she knows is of value to P until P asks for it. X could then deceive P by denying access to such information whilst at the same time using the fact of P's interest as the basis for extorting money from S in exchange for silence. Again, beyond the fact that S is not exposed to enforcement action in such circumstances, no obvious moral justification presents itself and the absence of official harm to S is outweighed by the immorality of the blackmail.

---

[41] See for example the *Crime (Sentencing Procedure) Act* 1999 (NSW) ss.22-23; also *Serious Organised Crime and Police Act* 2005 (UK) ss71-75.

[42] For a policy discussion of such issues from a UK perspective see section 6.3.2, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime*, Cm 6167, (London: The Stationery Office, 2004).

[43] Accepting for the purpose here, Raz's analysis of autonomy in which three conceptual elements are distinguished: an appropriate mental capability to make and informed choice; an adequate range of reasonable options from which to choose; and independence from coercion. Blackmail denies the latter two. Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), chapter 14.

The second aspect of information trade in which X could engage with S is that of the double agent. Simply by asking X to provide information about S, P reveals to X official interest in S. Sophisticated informer management should seek to minimize the risk of detailed disclosure in such circumstances but it is open to X - and therefore a constant vulnerability for P - for X to alert S about such investigative interest and to request reward from S for doing so. X and S could agree to play along with P's request in order to try and elicit further intelligence about P's interest and awareness through the nature of P's requests. Here X has the opportunity to present the trade to S as a service. Such a presentation looks superficially different from explicit blackmail, but the potential for blackmail is evident and in determining how this scenario plays out much depends on the symmetry or asymmetry of the power relationship between S and X. Although S benefits from this deception by X, that individual good is insufficient to outweigh wider moral objections that remain: namely that the collective good of protecting community moral rights is not served by this use of deception. The benefit S receives merely facilitates S's continued criminality (a moral harm against the community) and the deception against P is morally wrong undermining, as it does, P's protection of victims and the community through the protection of justifiably enforceable moral rights.

In the circumstance above X (with or without S's collaboration) sets out deliberately to deceive P, doing so motivated by personal, private gain at the same time undermining the rule of law. It is open to X to agree to supply information to P and then only supply false or misleading information that will, intentionally or not, confound and frustrate P's investigations. X's potential for reward in pursuing such a strategy is likely to be short-lived: once P recognises that no information of value is coming from X, P will likely end the relationship. To the extent that X's actions undermine the legitimate rule of law,[44] such deception is not morally justified even if, for instance, X is able to put the reward to some morally good purpose such as buying food for X's children. Deliberate

[44] Assuming the relevant law is morally sound.

deception of P by X may be justifiable in circumstances where the law being enforced is morally wrong or where the police are structured and tasked not within the community service constabulary model but along the suppressive Gestapo or Stasi models. Deception of P by X will not be justifiable in a liberal democracy operating a criminal justice system according to due process principles.

The extent to which police use of informers is justified within a liberal democracy operating a criminal justice system according to due process principles does not depend solely upon the motivation of the informer. As the discussion above illustrates, the varied motivations of informers may significantly affect the value of the informing relationship to the police, and through their agency its value to society at large. To the extent that the relationship must provide information of significant value to an investigation if all the criteria for moral justification of informing proposed above are to be met, then informer motivation and conduct can seriously undermine the moral justification of informing. But informer use of deception and treatment of informer product is not the only moral arena at the individual level. In this interaction the other half of the relationship is the police handler who has day-to-day contact with the informer. As previously noted the handler may either be an investigator operating individually to recruit and manage personal informers or the handler could be a specialist officer whose role it is solely to manage informers as an organizational resource and who has no investigative responsibilities beyond tasking informers with missions to fill identified intelligence gaps and then relaying the acquired intelligence back to the requesting investigator in a form suitably sanitized to protect the source. It is to this aspect of the informing process that this discussion now turns.

Handlers

The handler collaborates with the informer in deception against the suspect. Although the informer is the individual who actively deceives the suspect (without the handler being present at the time), the handler is complicit in the deception because the informer, even if motivated by private gain, is operating also for the benefit of (and usually at the behest of) the handler who needs the deception to be executed in order to achieve the desired end. In undermining the trust upon which social relations are based, such deception is morally wrong. To the extent that it is employed in furthering the protection of justifiably enforceable victim and community moral rights deception in these circumstances can be morally justified.

Where exclusive informer-handling units manage informers as an organization resource on behalf of all investigators, it would not be unusual for officers so deployed to operate with assumed identities when interacting with the informers.[45] Using a false identity when recruiting and managing an informer is a form of deception and must therefore be justified if the prima facie moral objection is to be overcome. Trust as a foundation of social interaction is closely related to accepting the identity of the person in whom trust, however qualified, is invested for the purpose of interaction. The informer, when dealing with the suspect, deceives the suspect as to the ulterior purpose of their interaction. S knows who X is but not the exact nature of what X is doing. The relationship between a handler and an informer at best is likely to operate on the basis of qualified trust rather than upon an unconditional trust such as might exist between friends. (Indeed, were it to become a friendship rather than a working relationship risks of corruption would arise.) Where handlers protect themselves using false identities for operational purposes, is this use of false

[45] Where investigators recruit and manage their own informers it is more likely that they will first encounter the potential informer in circumstances in which the officer's real identity will be known or become known to the informer through the investigator acting in his or her official capacity. Where specialist informer-handling units are used there is the opportunity from the outset for officers to utilise alternative professional identities as a means of protecting their true identities.

identity morally wrong? On one account, any form of deceit can be said to be morally wrong but on another account deceit can be morally justified in certain circumstances, within the moral theory of policing. The informer knows what the handler represents and, to the extent that P reveals the purpose of the investigation, what P is doing. The fact that the handler is known to colleagues as 'John' but to informers as 'Mick' is not apparently a significant deceit in these circumstances because trust and identity are not as crucial to the X/P relationship as these elements are to the X/S relationship. The X/P relationship is characterized more by function than social identity. The informer understands that the police will use the information provided against the suspect. The informer's deceit of the suspect is of greater moral significance than P's deception of X in using a false identity (for which a specific moral justification can be claimed - preventing compromise of P's safety and integrity - alongside the justification derived from the moral theory of policing).

In the event that the suspect discovers what the informer is doing, the informer is at risk of (violent) retribution from the suspect. The suspect may wish to extend this retribution against the informer into vengeance against the handler with the intention of deterring future investigative and enforcement interventions. [46] To this extent both informer and handler are dependent upon each other not disclosing their purpose and so compromising their own and each other's individual safety. The handler can use a false identity to reinforce his or her personal protection from such a risk. Handlers are entitled to take measures to reduce risks to themselves and so work in the safest feasible environment (recourse to subterfuge being inherently and intrinsically risky and dangerous): organizational safe operating procedures policy may well impose such a risk reduction measure on handlers.[47] That the informer has no such avenue of additional protection does not itself make it

[46] Open-source intelligence can be exploited just as easily by suspects seeking to compromise police officers and their families as it can be by investigators seeking to discover more information about a suspect.

[47] Where the assumption of a false identity is indeed organizational policy it is assumed that the procedures will include processes by which the handlers remain fully accountable to supervisors for their actions. Where the handler just assumes a false identity of their own volition such conduct reduces their amenability to accountability and in doing so the handler may be practising a deceit against their own management.

morally wrong for the handler to utilise such measures but it does perhaps increase the onus on the handler to protect the informer because the latter is the more vulnerable for not having that option. Such a deception - the use of a false identity - exercised by the handler against the informer (even though the informer is acting on behalf of the handler) is considered morally repugnant on the basis that the officer is lying about his or her identity and identity is key to any relationship. But the use of such a lie can be morally justified to the extent that it is necessary to facilitate the morally justifiable purpose of policing as an institution: the protection of justifiably enforceable victim and community moral rights. To that extent moral justification for the use of false identities by handlers is based on complex considerations and is not *prima facie* self-evident.

It has been argued above that informing as an activity engages the three morally wrong behaviours that, in the appropriate circumstances (usually defined in law) are necessary to facilitate effective policing. Informing is a form of surveillance (and so an invasion of privacy); it functions through deception, which has occupied the bulk of the consideration above; and through the recruitment of potential informers it may involve the use of coercion or the exploitation of coercive circumstance, to persuade the potential informer to co-operate.

Informers can be recruited in a number of ways. They can, of their own volition, meet freely to volunteer their services to the police. Such recruitment circumstances will probably be based on consensual collaboration: X, albeit perhaps motivated by a desire for financial reward, freely offering or agreeing to supply information to P. [48] In this case no question of P (ab)using X seems to arise. There is no coercion present in this scenario.

---

[48] To the best of his knowledge, uniquely amongst his colleagues the present author and his team of specialist handlers managed one informer (with a long history of serious criminality) who never sought reward of any description and refused rewards unilaterally offered by the police. This particular informer volunteered his services to the police in an unsolicited approach, claiming a private, altruistic motivation. This was sufficiently unusual to generate suspicion as to the informer's true motive; specifically the suspicion that the informer was providing information against criminal market competitors in order to monopolize whatever criminal market

Not infrequently, it is the fact that the potential informer is a criminal - their criminal associations rendering them valuable as informers - and accordingly, recruitment could take place in circumstances in which the (potential) informer is subject to law enforcement intervention likely to result in adverse consequence to the (potential) informer. An offer, made in the cell-block, of police bail as an alternative to remand in custody is an offer of a 'reward in kind' that is made in circumstances of significant vulnerability for X. The informer, under arrest on another matter, is required to make a choice in circumstances of very restricted autonomy with the real possibility of immediate adverse consequence in the event of non-cooperation. [49] In this scenario the circumstances in which X is approached by police are coercive in character.

Nor is the character of the circumstance any less coercive if, whilst sitting in the police cell, it is the potential informer rather than the police officer who broaches the possibility of informing. X, in order to curry favour with the investigators, may offer to act as an informer before being asked. Whilst this has the appearance of being voluntary, such an apparently unsolicited offer is nevertheless still made in coercive circumstances: X is offering to be an informer not because he or she would have done so anyway, but because he or she is seeking mitigation of prevailing personal disadvantage.

---

enterprise the informer was engaged in. The informer was made subject to various covert intelligence operations which tended to corroborate the informer's claim to have retired from active serious criminality.

[49] A not unusual arena for informer recruitment is the police custody suite or cell block. X is arrested under investigation for an offence. During X's period of arrest and detention by P X may be invited to act as an informer in relation to other and/or future matters. Either explicitly or implicitly the impression may be conveyed to X that P will not oppose bail (release from custody pending trial) in the matter for which X has been arrested if X agrees to act as an informer. The alternative to bail is being remanded in custody until trial. In such circumstances X may form the impression that becoming an informer will buy immediate freedom from custody. In addition, or alternatively: X, knowing that conviction in his case will result in a prison sentence, may choose to act as an informer in order that a plea for mitigation can be entered before sentence. In England and Wales such pleas are entered with the judge via a letter from the police, the existence of which is known only to P and X, and must be kept secret from X's lawyer: Kingsley Hyland, 'Texts - rewarding the public spirited defendant or a recipe for abuse?' [2006] *Covert Policing Review*: 87-97.; a further use of deception even though P and X would counter that in following this procedure they are observing procedures formally set out for the administration of trials.

Coercion, or the exploitation of coercive circumstance, is morally harmful. Can it ever be morally justified? Is the manipulation of an individual of a different moral order from the covert manipulation of information? The latter can be justified in certain circumstances within Miller's moral theory of policing. Can the former? Where circumstances of coercion have induced the (potential) informer to co-operate, the absence of unfettered willingness on the part of the informer taints the moral worth of the recruitment notwithstanding that it is claimed ultimately to be for the benefit of the morally legitimate purpose of policing.[50] A fine but nonetheless significant distinction can be drawn between the manipulation of an individual to the advantage of 'the police', and the manipulation (covert acquisition and onward transmission) of information for the purposes of 'policing'. If, in the recruitment scenario, the informer is (or feels) not free to refuse to act as such, then he or she is subject to police exploitation: conduct which oversteps the line distinguishing what the police (on Miller's normative account of institutional morality) are entitled to do (even if specific justification is required for otherwise morally wrong conduct) and that which they are not.[51]

Coercion is one of the morally problematic issues concerning informer recruitment. A second morally problematic area concerns recruitment of individuals as informers who hitherto have led lives free from reliance upon deception but whose innocent (or at least non-criminal) relationship to the suspect means that they are best placed to provide the information that cannot be provided by any less intrusive or less morally problematic means. [52] Examples could include the

[50] An arrested potential informer unmoved by incarceration and unconcerned by the consequences of non-compliance may well be persuaded to opt for co-operation rather than not on the basis (all other things being equal) that it is the more attractive of the alternatives available. But where detention is unduly influencing the judgement of the detainee, then coercion is at play.

[51] The recruitment of informers and the use of informing as a tactic are distinguishable and thus require separate moral consideration.

[52] Whilst it is not unknown for individuals to commit crimes with the intention of being caught, it is assumed here that the majority of individuals who commit crimes would wish to evade detection and prosecution if they could, and would default to deception as one tactic in an overall strategy of evasion.

exploitation of a business relationship, informing thus infringing any obligations of professional confidentiality. An alternative scenario would involve a familial relationship; even to the extent that spouses are asked to inform against their partners or children against their parents. To the extent that informing undermines trust-based relationships (a prima facie moral harm), is the undermining of a biological relationship of a different moral order from that of a merely social relationship? Adult sexual abuse of a child is abhorrent regardless of whether the perpetrator is related to the victim or not. The vulnerability of the victim defines the awfulness at an objective level. Yet subjectively, moral repugnance (illustrated often at its most raw for example in media commentary[53]) seems greater when the offender is related to the victim. In such a scenario a particular bond of trust above and beyond the ordinary has been violated. In the adult world the law also recognises that certain relationships are held to be inviolate: many jurisdictions adhere to the principle that an individual cannot be compelled to give evidence against their spouse.[54] If the violation or infringement of such relationships is held to be more morally repugnant than the violation of non-familial relationships in relation to criminal activity, does not the same principle apply in the arena of informing? Or does the moral theory of policing overcome other objections in such circumstances? To elaborate the dilemma: if the only person who can provide authorities with the information necessary to intervene successfully against a criminal causing serious harm to individuals or the community is the child of the offender, would it be morally wrong of the authorities not (to attempt) to recruit the child as an informer and not to use the information that the child could provide (because to do so would violate the familial/biological relationship, an objection that normally over-rides other considerations)?

[53] One thinks, for instance, of the campaign run by the now defunct British newspaper *The News of the World* to name and shame paedophiles following the murder of schoolgirl Sarah Payne in July 2000: a campaign that ignited much violent and not infrequently misdirected vigilantism. See, for example, http://news.bbc.co.uk/2/hi/uk_news/1709708.htm, dated 16th December 2001, accessed 30th January 2012.

[54] Or at least can be compelled only in very limited circumstances.

If the moral theory of policing is sound - that otherwise immoral conduct can, in certain circumstances, be morally justified in order to secure the morally enforceable rights of victims or the community - then the use of child or spouse informers can, in specific circumstances, be justified. Trying to implement this normative principle into descriptive circumstance for the purpose of regulation and governance is where ethical theory meets with the practicalities of applied ethics. [55]

Whether or not the *utilization* of children or spouses can be morally justified, there remains the problematic issue of whether *recruitment* of such informers can be justified. In instances where the spouse or child has, of their own volition, formed the opinion that the conduct of their relative is such as to demand intervention, and in consequence of this opinion the individual voluntarily offers their services to the authorities, then the issue becomes one of whether or not the investigators are morally justified in not acting on the information offered. Such circumstances seem to fall within the moral theory of policing.

Where police become aware that a child or spouse may be in a position to provide the desired information but the child or spouse has not come forward to offer the information (and may not be aware that he or she is in a position to assist the authorities), then active and unsolicited recruitment is the only way forward. The investigators must make an approach to the potential informer and seek that individual's assistance (and it may be that such an approach alerts the spouse or child to the family member's criminality of which they were previously unaware). Unsolicited recruitment would involve the authorities deliberately undermining or corrupting a familial relationship which might otherwise not have been tainted in any way by the spouse's or parent's criminal conduct. It places the potential informer in the invidious position either of

[55] For the way in which the regulatory regime extant in the jurisdiction of England and Wales seeks to deal with the issue of juvenile informers see paragraph 4.23 and Appendix A of the *Covert Human Intelligence Sources Code of Practice*, issued pursuant to s 71 *Regulation of Investigatory Powers Act* 2000. The governance response is to elevate responsibility for prior authorization to a more senior officer, without necessarily providing any additional counselling on the moral issues to be weighed.

betraying/deceiving, or appearing to betray/deceive, their relative (if the desired information is provided) or of acting against the interests of crime victims and wider society, and possibly also of appearing to condone the criminality (if the potential informer refuses to assist the investigators). Intuitively such despoliation, and the moral dilemma to which it gives rise, seem harder to justify.

There are circumstances in which the killing of an individual by police can be both morally and lawfully justified.[56] Against this measure the corruption of a relationship in which the parties continue to live, albeit on different terms, seems the lesser harm and so in need of a less stringent moral justification. It is not at all clear, however, that these different categories of harms are truly comparable. Police intervention (in the form of informer recruitment) into a dysfunctional familial relationship may be more cathartic and therapeutic than harmful. The investigators may have no feasible or reasonable means of assessing this before initiating the intervention.

Conclusion: towards a professional ethic for informers?

It has been argued here that informing can be accommodated within a moral theory of policing and that, to the extent that their actions facilitate the morally justifiable purpose of policing as a social institution, the conduct of informers is encompassed within this over-arching moral theory just as is the conduct of police officers when acting as such. Can this line of argument be taken further? Can it be argued that alongside the ethical framework for informing as a function, there can be established a professional ethic for informers?

[56] Arguably killing is the most significant moral harm that can be inflicted upon an individual yet it is amenable to moral justification, particularly where not to intervene would result in greater harm (for example where a gunman randomly shooting passers-by in the street is shot dead by a police marksman if that is the only practical and least harmful means of preventing the gunman killing others).

Whether policing can be regarded as a profession is debatable. [57] Those employed in policing can certainly aspire to professionalism and it can be argued that policing brings with it certain role-specific obligations and reasonable role-related public expectations of those who are police officers. The line of argument that extends the moral theory of policing to encompass the conduct of informers cannot obviously be applied to the idea that, in serving the policing purpose, an informer necessarily assumes the professional obligations of the police (and therefore any professional police ethic). Such a proposition is undermined significantly in two ways. Firstly, informers are not police officers, trained or employed as such. They are providers of information for the purpose of policing. As providers they have no responsibility and cannot be held accountable for the way in which the police use the information so provided to further the purpose of policing.

Nor do informers have any responsibility to enforce the law beyond a citizen's civic obligation to obey the law and prevent or resist crime. Herein lies the second fundamental flaw: it is their disinclination to adhere to this civic duty that places most (potential) informers in a position where they can in fact access and provide information that cannot be obtained by other (less morally problematic) means.[58] If, for sake of argument, the law can be envisaged as black or white, then policing necessarily requires shades of grey, in the shadow of which will be found the function of informing. The Australian Independent Commission Against Corruption [ICAC] has concluded: "what it all comes down to is this that wrongful means must not be used to achieve noble ends". [59] It is by no means as clear-cut as that, and an ethical framework, such as that proposed above, helps navigation of these murky moral waters.

[57] See Kleinig, *Ethics of Policing*, chapter 3 for a presentation of the issues and arguments.

[58] Of course not all informers are criminal: there are those, for example, who are recruited to inform because of the professional or employment position that they hold. But the majority of individuals recruited as informers are likely to have criminal associates even if they are not actively engaged in crime themselves.

[59] ICAC, *Report on Investigation into the Use of Informers* vol 1, (Sydney: ICAC, 1993) 118.

Informing as a tactic of investigation and surveillance confronts the moral theory of policing with its most contentious challenges. The circumstances in which a police officer might be justified in killing someone can be defined more precisely than the circumstances in which recourse to an informer, particularly the recruitment of a child or spouse, can be justified. That which can be justified for the purposes of policing may not be justifiable merely as an advantage to the police: whilst informing might be justified under the moral theory of policing adopted here, recruiting certain categories of informers cannot so readily be justified, notwithstanding that their deployment and product would be capable of moral justification. This has implications for the governance and regulation of informer management. That which is lawful is not necessarily moral; that which is unlawful is not necessarily immoral (and in each case, vice versa). Governance regimes typically utilise bureaucratic accountability to demonstrate (a semblance of) transparency. This is not inherently a bad thing but governance mechanisms do not necessarily address moral issues. It does not follow that because resource allocation and utilization can be economically or politically justified that it is also morally justified.

This paper has demonstrated that the act and process of informing - passing information about an individual covertly to a third party for exploitation by that third party that will adversely affect the subject of the information - is a significant moral wrong. In defined circumstances, consistent with the moral theory of policing, claims can be made for the justifiable use of informing where it facilitates the overcoming or remedying of a greater moral wrong (a serious crime for instance) and protects the morally enforceable rights of persons who would otherwise be harmed by that greater moral wrong. The process of informing, including its component elements such as informer recruitment and the management processes, [60]carries with it parallel moral concerns.

[60] These processes operate in multiple arenas: management of informers by handlers; management of handlers by their senior managers; upward management of decision-makers by those seeking authority to use informers.

Where the appeal to the moral theory of policing is derivative rather than substantive additional justification is warranted.