

Applying Analytic Reasoning to Clarify *Intention* and *Responsibility* in Joint Criminal Enterprise Cases

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Abstract

This paper argues that both criminologists and lawyers need a far more philosophically robust account of joint action, notably as it relates to technical matters of intentionality and responsibility when dealing with joint criminal enterprise cases. Criminologists are often unable to see beyond cultural explanations that are ill-suited to understanding matters of action. Law seems wedded to *mystical* notions of foresight. As regards the law there seems common agreement that joint enterprise prosecutions tend to over-criminalise secondary parties. This paper suggests that the current discussions around joint criminal enterprise will benefit from a critical engagement with analytical philosophy. The paper will examine a series of technical accounts of shared commitment and intention in order to explain the problems of joint criminal enterprise (*multi-agent* criminal activity).

Key words

Joint action; Joint commitment; Joint criminal enterprise; Shared intentions

Resumen

Este artículo defiende que tanto criminólogos como abogados necesitan ofrecer una acción conjunta más robusta, desde el punto de vista filosófico, especialmente en lo que se refiere a aspectos técnicos de intencionalidad y responsabilidad, al tratar casos de colaboración criminal. La criminología parece incapaz de ver más allá de la superficialidad de las explicaciones culturales, inadecuadas para entender cuestiones de acción. El derecho parece aliado con nociones *místicas* de previsión. En lo que respecta al derecho, parece que existe un consenso en que los fiscales de asociaciones de malhechores tienden a penalizar en exceso a los cómplices. Este artículo sugiere que el debate actual sobre asociaciones criminales se beneficiará de un compromiso crítico con la filosofía analítica. El artículo analiza un conjunto de explicaciones técnicas de compromiso e intención compartidos para explicar los problemas de las asociaciones criminales (actividad criminal *multi-agente*).

Palabras clave

Colaboración; compromiso conjunto; asociación criminal; intenciones compartidas

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1. Introduction

It is obvious to many of us that both academic criminology and the UK criminal justice system need to develop a far more robust account of *action* when dealing with group offending; especially as it relates to issues of *intentionality* and *responsibility*. This paper asks different types of questions than is usual within academic Criminology and it raises technical, and philosophical, issues which are currently entirely missed by criminologists, who seem largely stuck in a well-worn *cultural* paradigm, which generally ignores the approach I am suggesting. This would only be of academic interest if the criminal justice system did not routinely throw up such cases concerning joint enterprise and common purpose. A new type of approach is required that neither falls into the criminological pitfalls of addressing the issue solely in terms of culture nor succumbs to the mystical legal notion of 'foresight' i.e. seeing things entirely in terms of individual predictive mental processes. This paper has two aims: (1) to set out the work of two contemporary philosophers whose work on collective action has resonance in terms of the current debate concerning joint criminal enterprise cases, and (2) to *re-orientate* the current criminological discussion away from an emphasis upon culture and towards a more technical account of action. In such a way it is anticipated that others will develop their thinking mindful of more technical issues relating to action than has hitherto been the case within academic criminological writing.

It is generally assented that in the UK joint enterprise prosecutions seem to over-criminalise secondary parties: everyone seems to agree on that. This is especially the case when joint enterprise prosecutions are currently being used in cases involving large numbers of persons; in one recent case there were twenty six co-defendants (Williams and Clarke 2016, p. 20). Yet better defining gang membership, or the like, seems to completely miss the important point: that of accounting for *culpability* in criminal cases where accounting for multi-party agency, and individual agency, are important considerations. Gang typologies abound but it is difficult to see their merit in explaining the technicalities of agreement that are implied in the concept of joint enterprise. The big problem is the unwillingness of lawyers and social scientists to consider alternative approaches, which may be of practical use. It is the purpose of this paper to set out, in detail, models drawn from contemporary philosophy. It is also the purpose of this paper to get away from the *specialness* of criminal cases and uphold that incidents of joint criminal enterprise are but a sub-set of incidences of collective action. The only difference is that criminal law is only concerned with breaches of an agreed moral code. Once this philosophical material is considered, its application in real-world cases will be obvious and the consideration of joint and shared intentions, in a more philosophically technical fashion than hitherto within criminology and law, will be established.

There are models in contemporary legal theory, notably that of Kutz, which look at collective intention (Kutz 2000, pp. 275-76). Kutz has highly elaborated accounts of "participation" and "instrumentality" both of which add further elements of complexity; and which some scholars have found unsatisfactory, at least in the original version that Kutz outlines since it tends to see collective action in a non-reductive way and this problematizes *individual* agency (Sanchez-Brigado 2010, p. 89). Instead the paper will look at two versions of what is termed *reductive theory*. This essentially amounts to the claim that: "(E)very individual acts on the basis of their own *will*, or mental state, and that we can accordingly, say that all collective actions, may, in turn, be *reduced* to a sub-set of individual actions, each enacted by persons in terms of their own will, or mental state ... The point to hold onto is that those who hold a reductive theory of collective action view it as the sum of a set of individual actions enacted by a sub-set of wills, or mental states" (Amatrudo 2015, p. 111). The alternative is some version of a *non-reductive theory* which would have to hold that individuals can act at the will of another and in an unproblematic fashion (Roth 2004). This Rothian approach would seem to place substantial

limitations upon the autonomy of individual agency and is therefore not pursued in this paper. Michael Bratman's philosophical account is the most well-known we-action theory and it maintains that shared intention is essentially an arrangement of *individual* attitudes and their corresponding relationships, or inter-relationships. Margaret Gilbert's account, on the other hand, holds that shared intentions are better understood in terms of normative transactions which, in turn, give rise to inter-personal obligations. Gilbert has a stronger sense of the collective nature of action. There are scholars who term Gilbert a non-reductive theorist (List and Petit 2011, p. 194). This is to misunderstand, or rather over-state, her ideas about plural subjects. One may readily concede that Gilbert's work has a far stronger sense of the collective, than does Bratman, but although she sees plural subjects as acting as one; she is quite clear that plural subjects are always themselves *divisible* to a prior sub-set of individuals, all of whom have their own separate, and distinct, wills or mental states (Gilbert 1999). The aim of this paper is to emphasise a technical and philosophical explanation, over and against the criminological and cultural explanation, in accounting for group behaviour; and holds that criminal offending behaviour is to be understood as just a sub-set of a broader category of group behaviour. This paper will argue that both the accounts of Bratman and Gilbert, in their differing ways, offer interesting and *applicable* accounts to the criminologist and the criminal justice professional. The usefulness of using models that draw more heavily upon accounts of shared intentions, joint commitment and the formal determination of the nature of subjects (plural and individual) will surely give rise to better socio-legal and socio-psychological explanations of the structures of inter-personal moral obligation involved in action: and because it concerns morality, it can be the basis for the development of legal interpretation in the area of *multi-agent* criminal activity.

The two approaches set out, I conclude, can give criminologists and criminal justice professionals a better *template* with which to tackle the issue of group offending and by insisting on the technical determination of what makes up action they afford a sounder basis for approaching criminal culpability. The paper will conclude by suggesting how criminologists, and indeed the courts, should begin to think about group offending. At present joint enterprise in the UK is often determined by issues such as bad character, foresight and prior association which seems removed from the main issues of determining who did what and why (Pitts 2014). Moreover, this kind of associational approach has, in the UK, been underscored by serious racial bias. Gangs are understood as a problem and gangs are seen as correlated with black youth. The authorities have gone after gangs and in so doing they have gone after black youths and the preferred legal approach has been the use of joint enterprise which has a very low threshold of proof (Williams and Clarke 2016). This approach has worryingly oriented the courts away from the main issue, which is that of culpability, in relation to a *specific* act, or acts, that are criminal. Undue attention has been given by social scientists and the police to typologies of persons. This has resulted in the over-criminalising and racial stereotyping of certain sectors of UK youth, urban black youth. The focus upon *dangerous* youths, and "gangs", in current UK joint enterprise prosecutions has given rise to real, but unwarranted, fears in the general public that certain groups are "enemies of society" (Green and McGourlay 2015). It is the contention of this paper that a rigorous application of the *principles* outlined by Bratman and Gilbert will prove a far safer way of determining culpability in criminal cases which relate to *multi-agent* criminal activity; and, furthermore, it will avoid the *moral panic* seemingly at work in the current policing and prosecutorial arrangements, around joint enterprise crime. Bratman and Gilbert are not concerned with the externalities of clothing, friendship chains, rap lyrics, social media, and the like, which are routinely used as evidence of *foresight* in joint enterprise prosecution cases (Williams and Clarke 2016, pp. 19-20). They both, instead, concentrate upon the more substantial issues of action, agreement, goal setting and intentionality. It is important right now that attention is shifted towards issues of culpability and responsibility and away from the unhelpful conflation of

gang discourse and an aggressive joint enterprise rationale. Here we have a case where new input is required so no apology is made for setting this out in detail and in terms of material new to law and social science.

2. Bratman: We-action theory, shared intentions and team goals

The main focus of *we-action-theories* is to determine the goal of a given actor by asking questions about the content of their intentions in relation to the group. The philosopher Michael Bratman in his writing on collective action asks us to focus upon the matter of shared intention as the basis of *we-actions*. Bratman's work on *we-actions*, and team preferences, has garnered a lot of attention because it appeals to the underlying processes of reasoning involved in any collective action around *shared* intention. Moreover, his theory works with the notion that collective actions are still, nonetheless: "reducible to a sub-set of individual, though inter-related, actions" (Amatrudo 2015, p. 112). Bratman's sense that the individual actor is always at the heart of any collective action has obvious, and real-world, moral and legal appeal. The important question for him is whether such an account of shared intention can also account for team goals. This amounts to asking whether when we say that an actor shares an intention to act that is also, conterminously to say, that he shares a team goal. Does the actor who shares a team goal also share the *same* intention as the others in the group? This is important, since having a goal and sharing an intention are completely different things, at least formally and in a technical sense. Moreover, using the language of sharing does tend to suggest a state of *intimacy* that is surely not present in all possible cases of collective action that one might come up with. Let us contrast, for example, the scenarios (a) that *A* and *B* go on a journey together and (b) that *A* and *B* share a journey together. The second account seems to suggest a far more personal connection that is missing in the first account. So, therefore, if *sharing* a journey, or any other experience, is stronger than collectively participating in it we can then reasonably argue that the sharing of an intention, or goal, is far stronger than just holding a goal, or intention, collectively: though in what way stronger it is rather difficult to set out. Here Bratman is less taken with the differences between a strong notion of goal sharing and its associated sense of intimacy and a weaker form of just sharing the same goal. He does, however, set out three elements which characterise shared activity and these are: (1) a commitment to mutual support (2) a commitment to joint activity and (3) what he terms "mutual responsiveness" (Bratman 1993, p. 103). These three elements are, in any case, all focused upon achieving a *goal*. Bratman distinguishes here not in terms of intimacy or strength of sharing but in terms of two technical definitions: namely, *jointly intentional activity* (JIA) and *shared cooperative activity* (SCA). In his 1992 essay *Shared Cooperative Activity* Bratman sets out the example of two singers who by their respective, or if you like separate, actions intend to produce a duet and yet they fail to support each other in their separate singing activities. Here we note that if one of the singers ruins their singing then neither of the singers has the intention, in this account, to help out. This, Bratman argues, is simply (JIA) jointly intentional activity since (SCA) shared cooperative activity would require the further commitment to mutual support the other. He states: "(Any) joint action-type can be loaded with respect to joint intentionality but still not strictly speaking (be), cooperatively loaded ..." (Bratman 1992, p. 337). If we follow Bratman here then we might ask whether his notion of team goals are cooperatively structured or just structured in terms of their joint intentionality. This seems an important question. Bratman's work tends to the notion of team goals which are cooperatively structured. It is my position that Bratman is correct and that team goals are indeed cooperatively structured. Actors who adhere to a team goal are surely far more committed than actors who are merely engaged in simple JIA. Let us set out the three types of outcomes that Bratman holds can be produced: (a) *collectively successful outcomes* which are characterised by each actor in a joint activity each performing their respective role so that a joint outcome is achieved; (b) *individually*

successful outcomes which are characterised by an individual actor successfully performing their role but in which the joint action itself is not successful due to the failure of one, or more, of the actors; (c) *jointly unsuccessful outcomes* actors wherein actors fail to perform their roles correctly and where there is no joint outcome obtained. I am using *joint* in a neutral sense here since it cannot be assumed that joint outcomes necessarily require the contribution of more than one actor. However, Bratman is clear that actors, who undertake any JIA, rather than SCA, will value their individual success over any collectively successful outcome (Bratman 1992, p. 337). The point Bratman makes could be contested but the point I take from his work is that one can, in fact, distinguish between actors involved in a JIA from those involved in a SCA. Moreover, that the distinction between the two, i.e. JIA and SCA, relates to the form their values impose upon a range of possible *intended* outcomes. Simply put, Bratman states that one can maintain that the possession of team preferences is itself reliant upon actors being motivated by a SCA and not simply a JIA: it is a moral position.

2.1. Bratman: intentions and collective action

Bratman's novel contribution to the understanding of collective action is focused upon his particular account of sharing intentions. Actors are involved in the *collective action* of *J*-ing only when they share the same intention to *J* and where *J* is voluntary and un-coerced. It is worth citing his classic technical formula. We intend to *J* if and only if:

1. (a) I intend that we *J* and (b) you intend that we *J*;
2. I intend that we *J* in accordance with and because of 1a, 1b, and meshing sub-plans of 1a and 1b; you intend that we *J* in accordance with and because of 1a, 1b and meshing sub-plans of 1a and 1b;
3. 1 and 2 are common knowledge between us. (Bratman 1993, p. 106)

The first of these conditions are what we term *we-intention* conditions. The second of these conditions he terms *meshing sub-plan* conditions. These meshing sub-plans are actually broken down in greater detail by Bratman but for the sake of my argument we do not need to distinguish in too much detail here. Essentially, Bratman holds that shared intentions are not simply reducible to the set of attitudes possessed by individual actors but are best understood as the *appropriate* mental attitudes held by *appropriate* actors (Bratman 1992).

2.2. Shared intentions

In Bratman's account of *J*-ing the *we-intention* condition holds that actors *A* and *B* hold intentions of the technical form expressed as "I intend that we *J*", where *J* is a particular joint action. The problem then surely arises about the possibility of an individual intending a joint action and indeed Bratman raises this himself (Bratman 1999, p. 156). His solution is to develop a *control* (condition C) which states that an actor cannot intend an action which they do not control and also *settle* (condition S). Condition S holds that an actor may only intend an action which is up to them to achieve *personally* and resolve, i.e. *settle*. However, it is realistic to imagine that *we-intention* criteria could breach both the C and S constraints. Bratman is not overly concerned that *we-intentionality* poses a risk to his C and S constraints. He posits that credible C and S constraints (upon intentions) can indeed allow what he terms "other-actor conditional mediation" (Bratman 1999, pp. 156-157). For example, if we held that an actor *X* can intend to bring about an outcome *q* by undertaking an action *x* even where *q* entails that another actor *Y* perform an action *y*, then if *X* considers whether *q* is produced depends on the actor performing *x*. Then the actor controls whether *q* is produced and he also *settles* the issue of whether *q* is to be produced. Moreover, this is the case even if an actor is undertaking *y* is conditional on *X*'s performance of *x*; if *X* knows the actor undertaking *y* is conditional on *X*'s intention to perform *x*. In this case *X* can both

control and *settle* the production of q by holding the intention to x . Furthermore, Bratman maintains it is reasonable to state that an actor X can intend a joint action J , where it is the case that they believe that whether the joint action J is undertaken at all depends, at least to some extent, on whether the actor develops the intention to do their part x of a joint action J . Here it is worth citing Bratman on the matter because much rests on it: "When I decide that we paint together, I suppose that my intention that we paint will lead you so to intend as well. Does this mean that, strictly speaking, *you* don't get to settle the matter of our painting or, at least, I don't see you as settling the matter? Well you remain a free actor; it really is a decision that is up to you without which we really will not paint. I predict that, in part as a result of my intention, you will so decide; but that does not mean that you do not decide. I can predict what I know to be your free decision. I can predict that you will freely, in response to my intention, intend that we paint, and so settle the matter of our painting together. That is why I can now intend that we paint" (Bratman 1999, pp. 156-157). Let us state that if we say that an outcome q is produced by actor X 's undertaking action x and actor Y 's doing action y . Furthermore, we hold that actor Y will only undertake y at all if they see X about to perform x , or in the case that they considers, X has formed an intention to x . Bratman has argued how it is right for X to intend to bring about q by undertaking an action x and how X can be understood as controlling whether q is produced and also settle that issue of whether q is to be undertaken. Though as to the matter of whether it is right to hold that X intends that collectively X & Y produce q we might contend that X intends that he generates q in terms of undertaking X but that this falls some way short of the more significant claim, namely that X intends that *they* (i.e. X & Y) produce q . The scenarios are useful nonetheless in focusing on q and how it is achieved.

The outstanding issue is whether it is valid, for Bratman, to move from a version of an *other*-actor conditionally mediated approach to intentionality to a fuller *we*-intentionality sense of intentionality. I am not sure this is possible because *we*-intentions are different, in form, from *other*-actor conditionally mediated intentions. After all *we*-intentions are characterised by their content being expressed by their not being only described by the action of an actor but by the action of other actors too. To set this out properly let us return to Bratman's classic "I intend that we J " formulation. Joint actions are necessarily made up of at least two contributing actors. If an actor X has some set of behaviours x that he can undertake and which create an action-type and another actor Y has a set of behaviours y that he can undertake and which also establish an action-type then the joint action J is made up of the aggregate, which we can set out as $\{Xx, Yy\}$. Furthermore, let us make another claim that of the compositionality of joint action-types which holds that a joint action J which can be undertaken by actors X and Y is dependent on some other set of behaviours x and some other set of behaviours y : so that J is, in turn, $\{Xx, Yy\}$ i.e. the aggregate set. Therefore if joint action-types fulfil the compositionality criteria then it follows that joint action-types are themselves, in turn, reducible to a set of behaviours undertaken by *each* of the participating actors. This reducibility is a key point to note.

2.3. Technical elaboration

However, it is still unclear that *every* joint action-type fulfils the compositionality condition. For although cooperatively neutral joint action-types do need to satisfy the compositionality condition too in Bratman's scheme, let us contend that because Jq is cooperatively neutral it follows that there may be some joint actions we can term $J+$ that are externally the same as Jq which are cooperative activities and other actions that are *not* cooperatively derived, $J-$. Both $J+$ and $J-$ are though indistinguishable with respect to external behaviour. In accounting for $J-$, a non-cooperative action, we cannot surely resort to collective goals; rather $J-$ can only ever be explainable by resort to the individual goals of the actors, X and Y . These

would entail that there are component activities x and y that the goals of X and Y and which together establish J - and amounts to the amalgamation of the individual action-types we term $\{Xx, Yy\}$. As Jq is a cooperatively neutral joint act it is therefore identical to J -, externally. In other words it is necessarily made up of action-types x and y . Of course the same applies to $J+$ in as much as it is too composed of actions x and y . All cooperatively neutral joint actions must hold to this compositionality condition which maintains that any joint action-type we J is precisely the same as the joint action-type of the kind that I do x and you do y . Bratman's meshing sub-plans and his "common knowledge" condition enable us to account for cooperatively neutral joint action-type J collective actions. I do harbour the concern, however, that due to the compositionality criteria that Bratman demands that, in the end, the *we*-condition does lead to a definite circularity in the argument.

In the classic Bratman's formulation of the *we*-intention condition: "1. (a) I intend that we J and (b) you intend that we J ." This holds in the case where J is a cooperatively neutral joint action-type. In respect to the compositionality condition J must be coterminous with the combination of action-types x and y . Bratman's second condition: "2. I intend that we J in accordance with and because of 1a, 1b, and meshing sub-plans of 1a and 1b; you intend that we J in accordance with and because of 1a, 1b and meshing sub-plans of 1a and 1b." We could re-draft the *we*-intention (slightly) as: 1^* (a) X must intend that X do x and that Y do y and that 1^* (b) Y must intend that X do x and that Y do y . However, this also seems very inadequate for how can X , or Y , intend that Y , or X , perform an action? This is if we hold, at all, to the notion that C and S conditions are proper constraints on individual intentions since then we must reject the notion that X can intend that Y do y as X should not, on this account, understand themselves as either controlling (C) or settling (S), whether Y does y . It can be reasoned that X does control or settle, to some extent, whether Y does y . X , it can be argued, can be predicted that Y will do y as long as they hold that X will do x . To quote Bratman here on the S condition: "Suppose that Diane does not intend to raise the pressure once Abe intends to pump. But Diane is a kind soul and has access to the pressure valve. Recognizing this, Abe might be justifiably confident that if Diane knew that Abe intended to pump water Diane would decide to turn the pressure valve. And he might be confident that if he intended to pump Diane would know it. Given this confidence can Abe decide to pump water? Can he in the relevant sense "settle" the matter of whether the water is pumped? I think he can, given that he is in a position to predict that Diane will respond appropriately" (Bratman 1999, pp. 1954-1955). I find this unsatisfying. Bratman never *actually* claims that Abe settles the matter of whether Diane *actually* turns the pressure valve and what Abe settles is only whether the water is pumped, no more than that. Moreover, Abe could intend only to bring about the outcome of water being pumped. Though it would be incorrect to state the situation is as Abe intended and that they (collectively) pumped the water: by means of his pumping and her turning. Abe may have settled the matter of having pumped the water, through his own actions, but he surely cannot also be said to settle the matter of their pumping the water. He cannot settle the matter of her (Diane) turning the valve; though this is an important consideration, surely. All we can hold is that Abe's intention is having water pumped and it being pumped. The fact that this casual connection is related to Diane's intention is not really very important even though he is aware that her action is indeed required. Diane's contribution is merely a part of the backdrop of things that connects Abe's action with a preferred outcome. Were we to say that Abe's intention is *their* pumping water then that suggests his being able to settle both his pumping and her turning. In other words that would mean that Abe sees himself as being able to settle Diane's contribution to the action which is not possible: at least not if she is to be properly understood as a sovereign agent.

Let us contend that an actor *X* may be able to bring about, i.e. intend, an outcome *q* that depends on their doing action *x* and another actor *Y* doing an action *y*. However, this is not the same as saying *X* intends that they (collectively) bring about *q* by means of one doing *x* and another doing *y*. Instead it is better to say that *X* intends to bring about *q* in terms of their undertaking *x* with the knowledge that their doing *x* will lead to *Y* undertaking *y* and the outcome *q*. We simply cannot so easily hold that *X* intends that *they* bring about *q* because that would require *X* to intend *y* and *Y* to intend *x* and this is problematic since we understand that *X* cannot control (C) or settle (S) in the case of *Y*'s undertaking *x*. It is fair to say that Bratman's use of *we*-intentions is highly problematic as he cannot supply grounds for accepting *we*-intentionality without recourse to the actors themselves possessing *we*-intentions: and we have seen how such *we*-intentions infringe the practical condition that we would want to place upon our understanding of *individual* intentions.

Bratman's contribution is in focusing upon an account of collective action that tends to reduce things to the *individual* actor, deliberating and acting upon their own individually held, though interdependent, mental states. This is tantamount to the deliberation and action of actors involved in individual action. The only difference being between cases of individual action and collective action being that in the latter there is reliance upon the actor intending that others enact an action rather than themselves enacting it alone. In short, *X*'s intention that *X* and *Y* do *J* is something he can actually control if he is sure *Y* will come to such an intention to *J*. The dilemma is that we have noted how *X*'s intention is other-actor facilitated so will only refer to their own action. Therefore the content, I argue, does not refer to collective action at all. Moreover, if the intention refers to *Y*'s action as well as their own (*X*'s) then the intention would breach the own action condition which states that actors cannot intend the actions of others: although it may be possible for individual actors to intend an outcome which is collectively performed.

2.4. Using Bratman in joint criminal enterprise cases

- Bratman affords us a useful insight in that he is less taken with notions of strong or weak goal sharing as he is with setting out three key elements that are important to collections of individuals when they focus upon achieving a goal. These are: (1) a commitment to mutual support (2) a commitment to joint activity and (3) mutual responsiveness. Taken together these three elements that define achieving a goal are replicable to joint enterprise cases; forming as they do, a template by which to determine matters of *jointness* and *enterprise* in criminal cases.
- Bratman's distinction between *jointly intentional activity* (JIA) and *shared cooperative activity* (SCA) is helpful in determining whether team goals (enterprises) are cooperatively structured or just structured in terms of their joint intentionality. This is a technical point but it illustrates how shared cooperative activity is stronger and requires that members have *commitment to mutually support* the other members involved not simply work alongside them. Again, we note how this point could be useful in criminal cases where the level of commitment to mutual support is the case in point, notably in joint criminal enterprise cases.
- Bratman is particularly useful when describing the *collective action* of *J*-ing; which we note is always voluntary and un-coerced. *J* being a given joint action. He sets out his *we*-intentions with regard to a notion of underlying meshing sub-plans. Importantly, he also notes how shared intentions may not simply be reduced to a set of attitudes held by individuals but have to possess an innate sense of being *appropriate* mental attitudes held by *appropriate* individuals. Bratman is tight on this point as he wants to avoid accident or coincidence. He wants *J*-ing to be clearly purposive. This sharp

focus upon *purposiveness* is clearly important in joint criminal enterprise cases.

- The most important point Bratman makes that is applicable in joint enterprise cases is to do with reducibility i.e. that all cases of collective action may be reduced to constituent actions. This is surely important in terms of matters of culpability and responsibility. We have seen how an actor one actor *X* may have a set of behaviours *x* which duly create an action-type and how another actor *Y* also has a set of behaviours *y* that also establish an action-type and that it follows that when actors *X* and *Y* undertake a joint action *J* it is necessarily an aggregate that we can term $\{Xx, Yy\}$. Moreover, we can also hold that because of this compositionality of action-types that any joint action *J* that *X* and *Y* undertake rests on a set of behaviours *x* and *y* and that *J* is always $\{Xx, Yy\}$ i.e. the aggregate set. This means that all joint action-types are *always* reducible to a set of behaviours undertaken by members of the group that performed it. This is surely important in joint enterprise cases where the responsibility may not be simply transferred to the group, *qua* group, or joint action, *qua* joint action.

3. Gilbert: Plural subjects

Gilbert follows John Searle in noting that the main feature of any joint action always relates to its internal composition (Searle 1997). Gilbert's originality lies in her understanding of what that constitutes that internal composition. For Gilbert the internal composition of any joint action resides in its *shared* intention. However, she defines shared intention not in terms of the form of the intention that participants possess; rather she understands it in terms of the inter-personal entitlements, and obligations that any shared intention subsequently produces. Hers is a very *sociologically* driven insight. Moreover, in contradistinction to Bratman, her work has a far stronger sense of the *collective* in collective action. It has been argued that her work requires an ontological commitment on the part of individuals to a joint commitment (Sheehy 2006, pp. 69-71).

3.1. Social life underscored by an ethic of joint commitment

Gilbert's argument is that it is only through understanding of the composition of groups and the beliefs and intentions they come to share that social phenomenon can be properly appreciated (Gilbert 1992, p. 2). Essentially Gilbert's argument is simply this: that when persons think in terms of what they intend or believe or have in mind as a goal that they are actually acting and thinking as members of a collective. There is a real ontological point here. The technical understanding has them as what is termed a "plural subjects of intention" or of belief (Gilbert 1992, p. 408). For her such intentions and beliefs are what philosophers call holistic; in other words that they cannot be explained simply as the intentions and beliefs (or attitudes and actions) of individuals alone. This is important since some versions of holism tend to unhelpfully minimize the role of individual agency (Harding 2007, p. 63). Gilbert's more nuanced position avoids such a pitfall. Let us set out Gilbert's formulation for understanding plural subject concepts: "*Schema S*. For the relevant psychological predicate "*X*" and persons *P1* and *P2*, *P1* and *P2* may truly say: "We *X* with respect to *PI* and *P2* if and only if *PI* and *P2* are *jointly committed* to *X*-ing as a body" (Gilbert 2000, p. 19).

The purpose of *Schema S* is to detail a basis for the technical elaboration of joint commitment and also as a basis for explaining *all* plural subject ideas. She holds that all commitments are reducible to two basic, in the sense of foundational, categories i.e. personal commitments and joint commitments. She maintains that all individuals may spawn personal commitments as they wish and there is no impediment to that whatsoever. Moreover, it follows that this also means they can

withdraw those commitments in the same spontaneous fashion, at will. She states: "... if and only if he is the sole author of a commitment and has the authority unilaterally to rescind it" (Gilbert 2000, p. 21). However, a joint commitment is an altogether more complex case. It is the commitment of the two, or more, persons, who are party to it, *jointly*. Therefore, joint commitments are much more than an aggregation of the relevant constituent personal commitments of the parties concerned. The important point to note here is that joint commitments are not "composite" in Gilbert's writing (Gilbert 2000, p. 53). The particular form of commitment entails the parties creating it *together* and therefore the only way to annul a joint commitment is for that also to be together since the wills of all the parties are necessary to achieve it (Gilbert 2000, p. 21). Consequently, if a party breaks their commitment they do not invalidate the original joint commitment rather they violate it. The commitment has status in and of itself. Gilbert understands that "the parties to a joint commitment are tied to one another" (Gilbert 1996, p. 295). We note here how Gilbert underscores how *both* parties are *mutually* required to annul any joint commitment. Moreover, the real point Gilbert advances is that the whole project of persons making mutual agreements necessarily spawns mutual *inter-personal* entitlements and obligations which are coterminous (Gilbert 2000, p. 26). This mutual agreement implied in joint commitment really matters in Gilbert; indeed it is her most important contribution.

3.2. *The plural subject: joint commitments and shared intentions*

If we return to Gilbert's *Schema S* we can flesh out the notion of the plural subject and its relationship with intention. Gilbert points out three features of shared intentions which need to be set out and related back to her ideas about the plural subject, since it supposedly accounts for them. Gilbert demonstrates her thinking by the use of an example of two people who go for a walk i.e. a walk *together*. She asks us to ponder two people who have an intention to go for a walk together. She then supposes what happens if after a short time one of them decides to go back and abruptly end the walk. Here she argues one is obviously diverging from the original shared intention. When this occurs the person giving up the walk would be rightfully chided since the person who carries on walking has a "special standing ...by virtue of the shared intention" (Gilbert 2000, p. 16). These types of situation, around shared intention, throw up some interesting characteristics; that we need to note. First of all in the Gilbert formulation the parties, and there may be more than two, have an obligation to act in accordance with the shared intention: and it follows that such an obligation is focused upon the success of the shared intention. Secondly, these shared intentions also throw up what we might term *positive entitlements* and *rights* upon all other parties; in terms of achieving the desired outcome. Lastly, if a party to the shared intention acts in any way counter to its goal then all the other parties have the entitlement to chide them for it (Gilbert 2000, p. 17). When thought of together these three features constitute what Gilbert terms the "obligation criterion" (Gilbert 1999). In such a way the individual is bound by their shared intention. Yet let us suppose that one of the walkers, in the example I give, wants to go back due to weariness. Gilbert is sure that even in such a case they would not be right to one-sidedly terminate the walk. Gilbert maintains that they would need to ask permission from their fellow walking companion to do that as, in the case of a shared intention, all the parties need to agree. In Gilbert, shared intentions can only be annulled if all parties agree (Gilbert 2000, p. 170). This *permission criteria* element is crucial to Gilbert's account of shared intentions and it underscores her criterion for determining adequacy. The other criterion of adequacy being what she terms the *compatibility criterion*. This *compatibility criterion* is simply the criterion that demands that the intentions of all the parties correspond not that they merely coincide. In Gilbert, shared intentions entail recognition of joint commitment and to the associated rights and obligations thrown up by it. In Gilbert shared intention is necessarily a conceptual matter (Gilbert 2000, p. 17).

3.3. Gilbert on obligations and joint commitment

In Gilbert we have noted that shared intentions and joint commitments are integral to one another; and also how joint commitments infer the existence of inter-personal obligations and entitlements between the all of the parties concerned. A joint commitment has certain formal characteristics that we need to set out. These joint commitments are, first and foremost, directed in the sense that they relate to obligations to particular persons. It is the other person that one is obligated to and who, in turn, has a corresponding entitlement, or right (Gilbert 2000, p. 57, 104). Secondly, the obligations of joint commitment are neither moral nor prudential. She holds that such notions as morality and prudence could animate persons to reach their goals but that such notions are not strong enough to account for a strong enough sense of joint action (Gilbert 1992, p. 163). I do not agree with her underplaying of morality, especially in the form of a limited notion of political obligation, and on this I follow Sheehy in seeing her simple separation of morality from politics (Sheehy 2006, p. 70). All of which rather begs the question about Gilbert's understanding of the nature of joint commitment is? What are they if they are neither moral nor prudential? Essentially she sees them as associational and, more particularly, as political, in her sense of political. They are associational because they are about the associational nature of the particular joint commitment (Gilbert 1992, p. 394, 411). They are political, in the limited sense, that this association places the parties to it in a relationship comprised of mutual respect and support although I am unsure why that is not moral, in a broader sense (Gilbert 2000, p. 103). Thirdly, all obligations of joint commitment are necessarily unconditional i.e. they are not dependent upon some other condition (Gilbert 1996, p. 352). Fourthly, the obligations of joint commitments are always interdependent so in the case of a breach by one party the other party, or parties, may be freed (Gilbert 2000, p. 60). The last point, which follows from the previous four, is that joint commitments always provide the parties with sufficient reasons for action (Gilbert 1996, p. 288). In *Sociality and Responsibility* she writes that an obligation is: "sufficient reason for acting" (Gilbert 2000, p. 120, 243). In recognising these features of the obligations of joint commitment Gilbert provides us with a coherent, and inter-personally normative, structure for considerations about them. The whole thrust of her writing on shared intention revolves around this explanation of action.

3.4. Back to Schema S and X-ing as a body

Let us now delve a little deeper into Gilbert's formulation for understanding social action. To recap:

"*Schema S*. For the relevant psychological predicate "X" and persons *P1* and *P2*, *P1* and *P2* may truly say "We X with respect to *PI* and *P2* if and only if *PI* and *P2* are jointly committed to X-ing as a body" (Gilbert 2000, p. 19).

The underlying joint commitment to a shared intention is the main issue in *Schema S*, as has been noted (Tuomela 2007). However, we need to understand the notion of "X-ing as a body" and the role it plays in *Schema S*. X-ing which is set out as a psychological notion, in *Sociality and Responsibility*, that underscores Gilbert's collective sense of action. For Gilbert the notion of X-ing has in mind a sense of collective acting as a body i.e. acting as though a single person though in fact a collective, i.e. plural (Gilbert 1996, p. 348). There seems to be some circularity of thinking here though. In which case if we were to be looking into the key notion of shared intention by using *Schema S* we would see how using "X-ing as a body" implies the notion of joint intention which is the precise concept it is seeking to explain in the first place. I do not believe this is fatal to Gilbert for it merely requires there to be a more rounded, i.e. fleshed out, version of "X-ing as a body." If we are interested in shared intention then we could introduce a psychological predicate "Z" to intend. This would enable a better sense of "intending as body" and follow Gilbert's line on shared intention, as set out in *Sociality and Responsibility*

which posits: "Persons *P1* and *P2* have a shared intention to do *A* if and only if they are jointly committed to "intending as a body" to do *A*" (Gilbert 2000, p. 22). Let us use an example that Gilbert herself uses that of Ruth and Lil who share an intention to paint a kitchen *together* and this, she argues, involves them jointly committing to paint the kitchen *as a body*. In other words, and in terms of practical reason, their joint commitment gives reasons to satisfy their shared intention. As Gilbert explains: "(Both) has reason to act, make plans, and so on, in conformity to the joint commitment" (Gilbert 2000, p. 24). This account affords them reasons to act solely in terms of the joint commitment. What Gilbert is doing here is providing Ruth and Lil with reasons to fulfil their shared intention in terms of a collection of thought and action that relates directly to their shared intention; in the case Gilbert gives, to paint the kitchen together. This being the sum of actions, thoughts and plans that underscore the shared intention i.e. makes it possible at all. Upon this reasoning we can think of the term "intending as a body" as related to the collection of actions, thoughts and plans that enable it. So if we use the interpretation that I suggest then we can interpret "intending as a body" as explaining what it is for Ruth and Lil, together, to *share* an intention to paint the kitchen, and this will work for all versions of "X-ing as a body." I think this is clear.

However, it is useful here to clarify some important points relating to "X-ing as a body." It is obvious that the collection of actions, thoughts and plans that pertain to "X-ing as a body" necessarily stipulates the content of any joint commitment. Moreover, as we noted earlier, Gilbert has argued that joint commitment provides reasons for the parties to act accordingly, in other words in line with their joint commitment. So the phrase "intending as a body" expresses the notion of what it means to act accordingly in terms of the *understanding* of shared intention. We also need to bear in mind that there is an expanded explanatory role for the psychological predicate "to intend" for it relates what actions, thoughts and plans constitute "intending as a body" at all. Gilbert makes the claim that the collection of actions, thoughts and plans that make up Ruth and Lil's intention "as a body" to paint the kitchen does not need their personal intentions to paint the kitchen at all (Gilbert 1996, p. 349). The last point to bear in mind here is that the collection of actions, thoughts and plans are what is technically termed *disjunctive* with Ruth and Lil's individual needs to enable them to complete their shared intention of painting the kitchen. In other words, there will indeed be a set of attitudes that are necessary, and prior, to *their* painting of the kitchen but that both Ruth and Lil only undertake a sub-set of those attitudes. They each only do their part in the "intending as a body." The notions of "intending as a body" and "X-ing as a body" are central to Gilbert's main contribution i.e. her work on plural subjects and their capacity for holding a *collective* belief, or beliefs. She notes: "The behaviour that results from collective belief is driven by the concept of belief and the concept of X-ing as a body. It is as if the participants ask themselves 'what do I need to do to make it the case - as best I can - that I and these others together believe that *p* as a body?' ... the answer given by our everyday understanding for the simple interpersonal case is that, among other things, in reasoning together we say things that entail *p* rather than *not-p*, we do not deny *p* without preamble, and so on ... We attempt as best we can to make it true that the body we constitute relates to *p* the way any individual who believes that *p* relates to *p*" (Gilbert 1996, pp. 356-357). In *Sociality and Responsibility* she maintains that where individuals believe that they share intention then we can assume actions which support and reflect that fact (Gilbert 2000, pp.50-70). The notion of believing *as a body* is the keystone for Gilbert's ideas about shared intentions because shared intentions rest upon a notion of *collective* beliefs. Moreover, Gilbert shows us how there is a matrix of actions and thoughts that are similarly required for the development of shared attitudes. If we go back to *Schema S* to see to look at how "X-ing as a body" relates to this notion. What is the relationship of "We X" to "X-ing as a body" notably around shared intentionality that Gilbert advances in *Sociality and Responsibility*? I think it is fairly straightforward and avoids circularity. If we focus on shared intention then

we see a difference between the idea of shared intention and the idea of "intending as a body." Shared intention is far stronger for it presumes both joint commitment and "intending as a body." The notion of "intending as a body" is definitely weaker since though it specifies the collection of thoughts and actions necessary for shared intention it may indeed fall short of joint commitment. If we interpret "X-ing as a body" in this fashion then *Schema S* is not circular and, moreover, it becomes a useful tool.

My interpretation of "X-ing as a body" and its importance, and practical usefulness, in relation to plural subject analysis is in terms of its focusing upon an individualistic rationales. In other words "X-ing as a body" should always to be understood as constituted of a collection of individual actions and thoughts. It is the *collection* of attitudes that every member of a given plural subject of X will possess as a result of being jointly committed with, and to, the other members "X-ing as a body." As we saw with Ruth and Lil's shared intention to paint a house this collection is made up of the sum of the individual attitudes of Ruth and Lil. It does not breach the holistic nature of *plural subject* test that Gilbert furnishes us with (Gilbert 1992, p. 13). This is simply because, on my reading of Gilbert, the holistic nature of shared attitudes is secured by the underlying joint commitment that they share. Moreover, joint commitment is, in this scheme, essentially a holistic notion. Gilbert sets this out neatly in *Sociality and Responsibility* where she states that: "... the core concept of plural subject theory is this holistic concept of joint commitment" (Gilbert 2000, p. 3). My reading of "X-ing as a body" prevents the circularity inherent in *Schema S* but it also has the benefit of illustrating the psychological aspect of shared attitudes, which I note as an important aspect of it.

3.5. *The joint action/joint commitment problem: not completely settled*

I want to conclude my remarks about Gilbert's work by touching upon an issue that persists: the knotty problem of the relationship between joint commitment and joint action. Gilbert's writing on joint action is anchored by a particular understanding of joint commitment. She argues that what distinguishes joint action from what we shall call simple co-ordinated behaviour is that joint action is one which is marked by joint commitment from the individuals involved in it. It is as straightforward as that and it is the foundation of her broader explanation of shared agency in general (Gilbert 1992). Her notion of joint commitment has two features that we must note here because they are what philosophers call *primitive*, that is, at a level of analysis that may not be further broken down. It is exemplified in respect to the obligations that it generates between the parties. I am not altogether satisfied that Gilbert's approach to joint commitment settles the matter of joint action. In regards to the *primitive* nature of joint commitment then I am not entirely convinced that we detail the proper nature of joint action by merely resorting to another enigmatic idea, in this case joint commitment. In regards to the obligations generated by joint commitment it seems, on my view, that to do this we do fall into a form of circularity wherein these two concepts rest upon each other, and unhelpfully so. If we hold that joint commitments generate obligation this is merely a form of explanation that seems to appeal to the notion it was meant to explain in the first place. The proper question concerns the nature of what it is to be *joint*, at all, and how that joint nature is distinguishable from simple co-ordinated behaviour? This is important since joint commitment is the foundation of Margaret Gilbert's account of shared agency, indeed of her entire oeuvre concerning the understanding of social life and anthropology. Joint action is rolled out as the feature that will furnish a thorough explanation of shared intention (Gilbert 2000, pp.40-70). I think we have seen it is not quite up to that task. However, with some reservations, I believe Gilbert has nonetheless clearly illustrated some significant features about shared intention. She socialises her technical work and in so doing highlights the inter-personal nature of obligations associated with shared intentions. Here she is certainly correct. I am unconvinced

that the relationship she sets out between shared intention and obligation is an essential, or necessary, one but surely it is concerned with special obligations that are characterised by their associational and moral nature together with a thinner, in the sense of a more minimal, individualism (Amatrudo 2015).

3.6. Using Gilbert in joint criminal enterprise cases

- Gilbert's work has a real sociological richness in accounting for the internal composition of joint action. She understands joint action in terms of its nature being embedded in *shared intention*. Moreover, she elaborates her notion of shared intention not in conventional terms by way of focusing upon the form of individual intentions but, instead, in terms of the inter-personal entitlements and obligations that shared intentions give rise to. Accordingly, we note a stronger sense of the *collective* nature of collective action in terms of a real ontological commitment, by actors, to joint commitment and action. Her applicability in joint criminal enterprise cases is in terms of her stressing the fact that shared intentions also entail attendant inter-personal entitlements and obligations; and that such attachments are *wider* than the initial instance of a shared intention. Moreover, her argument has ontological force and such *plural subjects of intention* are conceived in such a way that they are not simply reducible to individual cases of intention or belief. The group has a holistic reality. Therefore there is a case to be made that *groups*, including criminal groups, can be held to account since they are composed of mutual agreements, inter-personal entitlements and obligations that are coterminous one with another.
- Gilbert's work emphasises the social dimension of groups by highlighting the inter-personal nature of obligations associated with shared intentions. We may quibble about the precise account she offers concerning the relationship between shared intentions and their corresponding obligations, however, her emphasis upon the *associational* along with contention that there is also always an *individual* element to shared intentions seems to capture a truth about group action. It always has both individual and collective aspects and the problem is always in determining where to place the emphasis, as in joint criminal enterprise cases.

4. Concluding remarks: the rationale for applying a more technical determination in multi-agent criminal activity cases

There is a focus and an intellectual rigour to the work of Bratman and Gilbert that is useful and applicable, to the Social Sciences and to the prosecuting authorities in multi-agent, joint agency, criminal cases, notably in joint enterprise cases. Neither Bratman nor Gilbert offer perfect accounts but both offer what we might term *doctrines*, of a reductive type, and each afford a template with which to focus upon the knotty issue of joint agency. They start at first principles and address the foundational matters that relate to collective agency which lie beneath the issue of joint enterprise. They *re-orientate* us towards the sorts of questions that really matter i.e. joint action, joint commitment and shared intention. These sorts of questions are neutral as between persons of different kinds: they are not linked to the class, race or prior affiliation but to the action, or actions, at hand. Here I have in mind the recent report *Dangerous Associations: joint enterprise, gangs and racism* which shows how "gangs" discourse in the UK is tied to disproportionate policing and prosecutorial strategies that unhelpfully racialize individuals and to Lola Young's earlier report which came to a similar set of conclusions (Williams and Clarke 2016, Young 2014). However, criminal actions are merely a sub-set of actions, legally proscribed ones. Accordingly, the work of Bratman and Gilbert can help us understand criminal actions, notably in regard to multi-agent criminal actions. Criminal action is merely a sub-category of the broader category of action and can be understood as such. From Bratman we should take that individual

actors are always at the heart of any collective action. He holds that joint actions J may be understood of an aggregate set of behaviour, i.e. $\{Xx, Yy\}$. In other words there is a compositionality aspect to joint action and that it is possible to reduce joint actions to those performed by *individual* actors. Gilbert provides us with a more complex model; but one with a far stronger sense of the *collective*, than found in Bratman. She also holds that only when persons intend, or believe, or have in mind a goal can they act and think collectively and be understood properly in terms of her concept of the "plural subject" (Gilbert 1992). Her notion of the plural subject is not composite in the way that Bratman's work is; instead it presumes that the parties to any commitment create, *together*, a joint commitment which if they break they then violate (Gilbert 2000, p. 21, 53). The important thing, in Gilbert's work, is the notion that parties, to a joint commitment, are *mutually* committed to it. It binds them as they are: "tied to one another" through it (Gilbert 1996, p. 295). The mutuality that she sets out is characterised by coterminous *inter-personal* entitlements and obligations. My interpretation of her notion of "X-ing as a body" illustrates the richness of her psychologically, and sociologically, saturated sense of shared intention. Bratman and Gilbert facilitate a meditation upon what really matters i.e. the nature of joint action. Their stress is upon the action, the event and what happened. They are not concerned with broader cultural or phenomenological matters. When it comes to multi-agent criminal activity this is a safer approach. There can be joint enterprise but proving it surely involves working through the nature of the commitments and intentions that gave rise to it, not presuming it through the cultural *externalities* of dress, family association, "gang" affiliation or some such (Williams and Clarke 2016, p. 18).

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