FEATURE

Responsible Peacemakers: Toward a Reframed Ethics of HUMINT

Filip J. Scherf

Powerful intelligence services are indispensable for any responsible government in a world permeated with threats, conflicts, and violence. Policymakers rely on their spies to supply vast volumes of information on a growing range of issues through diverse methods employed across multiple countries, adversarial and allied alike. While intelligence agencies have grown in scale and power, the field of intelligence ethics has lagged far behind. The deepest gap between the practice of espionage and its ethical considerations is related to human intelligence collection, or HUMINT, built around a handler-agent relationship in which human sources collect and provide information. As information is collected through people and about people, HUMINT in particular raises profound ethical issues.[1]

Consider the illustrative example of James Olson, who spent decades as a HUMINT intelligence officer (IO) at the Central Intelligence Agency (CIA). Olson recounts having spent his "entire CIA career lying, cheating, stealing, manipulating, deceiving." Therefore, continues Olson, intelligence work "raises some particularly esoteric moral issues. We face them every day."[2] Yet, the currently dominant framework for HUMINT ethics has a tendency to overlook issues facing individuals and focuses disproportionately on the levels of policymaking, management, accountability, and institutions. Thus, it insufficiently addresses individual moral agency, personal responsibility, and interpersonal relations, which are the essence of the practice. As a consequence, individual HUMINT IOs and agents

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have only limited ethical guidance for their (in)actions. They operate without a coherent ethical framework for *being* a spy.

The absence of a theoretically sound and, more importantly, practically applicable intelligence ethics for individual spies leaves well-meaning IOs and agents in an ethical vacuum. This article offers a step toward remedying the situation by approaching the ethics of HUMINT from a fundamentally new perspective. It first identifies gaps in the current literature and practice, which is excessively prescriptive, impersonal, and overly abstract. It then advances a two-pronged approach to understanding the ethics of HUMINT. The first prong calls for a greater inclusion of individual moral responsibility in HUMINT ethics and, crucially, in institutional decision-making about and during HUMINT operations. The second prong contends that intelligence ethics should be grounded in the telos of peace. This perspective opens possibilities for a teleological ethics of HUMINT as a peacemaking tool of statecraft, with agencies encouraging individuals to act as free and responsible moral agents, constrained but not determined by institutional ethos.

Such ethics complements the areas left thus far underdeveloped, and points toward a deeply practical and concrete ethics for individuals immersed in the opaque world of espionage. It contributes toward covering the collective debt owed to the people who have dedicated their lives to protecting their societies, often at great personal inconvenience, and always at the cost of facing profound ethical dilemmas, as their actions affect not only the IOs themselves but also the political communities in which they operate. The importance for the individuals concerned cannot be overstated, for, as Olson warns, spying is "not a game, it's life and death."[3]

The Rise and Limits of Just Intelligence Theory

We have seen in the example of James Olson that conscientious IOs are often acutely aware of the ethical dilemmas inherent in HUMINT. Having served undercover for many years, Olson worried that some might see him "as a monster who spent his life doing all these nasty things." Then, Olson shares his own view: "I did not see them as nasty. . . . I saw them as consistent with the just war theory."[4] Thus, Olson recognizes the moral complexity of HUMINT and seeks solace and justification in making his actions consistent with the just war tradition (JWT). Its derivation, just intelligence theory (JIT), has indeed dominated intelligence ethics and has influenced both intelligence practice and lawmaking.[5] But can JIT meet the

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enormous expectations and hopes placed in it by ethically aware intelligence professionals?

JIT seeks to place limits on the whole intelligence cycle by devising concrete criteria for engaging in espionage (*jus ad intelligentiam*) and for the process of espionage (*jus in intelligentia*).[6] The *jus ad intelligentiam* criteria typically include just cause, legitimate authority, right intentions, necessity, and last resort, which are particularly relevant at the institutional and political levels. The *jus in intelligentia* principles of discrimination and proportionality aspire to provide guidance to individual IOs and agents.[7]

Overall, as Kevin Macnish summarizes, JIT is a "helpful tool for thinking about the problems raised in intelligence collection."[8] It offers useful contributions to intelligence ethics particularly at the levels of political and institutional decision-making, organizational management, accountability, and oversight. Beyond institutional ethics, JIT provides some helpful guidance to individual IOs and agents who find themselves in a very narrow set of circumstances, such as wartime and spying on a known imminent threat.[9] Outside of such circumstances, when applied to HUMINT at the level of its actual practice (as opposed to decision-making *about* HUMINT), JIT runs into conceptual and practical limits.[10] Furthermore, JIT does not offer robust answers to ethical challenges associated with the routine, daily conduct in the professional and personal life of a spy.[11] Let us now explore that opaque life, which will in turn elucidate the subsequent discussion of JIT's limits.

Being a Spy: Doing and Living HUMINT

A close study of the actual experience of HUMINT reveals that a truly robust and practical ethics must address not only the professional dimension—that is, *doing* HUMINT—but also the personal dimension of *living* HUMINT. The core of the professional dimension is obtaining information through people and from people. To obtain information through people, IOs engage in the practice of recruiting, developing, and handling agents. Beyond information collection, HUMINT is associated with channeling influence, infiltrating a target, maintaining cover, and mapping out one's social relations. These aims are achieved through routinized practices of deception and manipulation, altering the circumstances so that the target rests their decisions on the wishes of the deceiver rather than on their own will. Thus, HUMINT elicits and abuses trust, and the taught and valued techniques include offering money, flattery, lying, emotional pretense to evoke sympathy and

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trust, threats, ideological persuasion, and sometimes bribery or blackmail. Furthermore, espionage often leads to, and relies on, lengthy personal relationships that, in turn, make practices of deception and manipulation even more ethically troubling.[12] As Cold War CIA officer Drexel Godfrey put it, in HUMINT, "the modus operandi required . . . is the very antithesis of ethical interpersonal relationships."[13]

To illustrate the ethical challenges raised by the practice of HUMINT, take the actions of the ex-CIA IO Rolf Mowatt-Larssen, who had for years incentivized his agents to become traitors and rewarded them for betraying their family, friends, and nation. He describes operations in which agents were manipulated through false promises—never meant to be kept—into surrendering secrets considered vital to U.S. interests. These pledges were sacrificed to strategic imperatives or the practical demands of a given operation. Once the agents' utility had expired, they were left "out in the cold," destined in some cases for imprisonment, in others for death. "But what could I do?" Mowatt-Larssen reflects, recalling one such operation in which he paid an agent for his secrets and assured him of safe passage abroad, knowing full well that the agent would in fact be left behind. Days later, the agent was killed, precisely as anticipated. "Was I any better than the greedy spy I had sacrificed for our cause?" he asks, without fully answering the haunting question.[14]

To complicate matters further, those participating in HUMINT do not clock out at the end of the workday. There is no division between a nine-to-five routine and a life after office hours for IOs and agents. *Doing* HUMINT also requires *living* HUMINT. And to live HUMINT goes well beyond handling agents, stealing secrets, influencing others, and infiltrating institutions. IOs and agents also need to actively develop and maintain their cover in virtually all interpersonal interactions outside of their professional life. Thus, they are required to deceive their family members, friends, and people in their wider social circles.[15] In living HUMINT, Mowatt-Larssen had deceived—and had to deceive—even his children. They could not know where their father worked.[16]

The nuanced understanding of what it means to do and to live HUMINT derived from experience of actual IOs highlights the limits of institution-centered and legalistic ethical approaches to HUMINT. Instead of addressing the actual *reality of being* a spy, the dominant approaches emphasize institutions and legalistic procedures and neglect the component of individual moral responsibility. It is true that intelligence collection is an "institutional action" to the extent that individuals operate within certain institutional settings that empower and limit their actions.

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But it is *individuals* who operate, not the institution. Concrete, day-to-day moral decisions thus rest on that particular individual, not on an impersonal institution.[17] Therefore, it would seem a grave oversight for any robust ethics of HUMINT to give insufficient weight to the importance of individual moral responsibility. And yet, JIT is prone to making this omission due to its excessively prescriptive, checklist-style character and the major conceptual inadequacies at its core, which we shall presently discuss.

The Problem of Circularity in Applying JIT to HUMINT

The real praxis of doing and living HUMINT, as we have seen, is routine, and typically takes place in utterly ordinary circumstances. The routine nature of HUMINT makes ethical considerations associated with *being* an IO, or an agent, qualitatively different from the classical JWT designed for the extraordinary conditions of war. Even the increasingly "ordinary" continuous quasi-wars—such as counterterrorism and counterinsurgency operations—present conceptually different ethical challenges from those involved in HUMINT.[18] Accordingly, the most successful attempts to adapt JWT to intelligence consider revisions of the classical account and recognize that significant changes to the criteria are needed to reflect the specificity of intelligence.[19] Even such adaptations run into limits that are clearly revealed in the logical circularity of the just intelligence reasoning, and in the application of the criteria of discrimination and proportionality.

HUMINT weakens the central JWT distinction between knowledge (prerequisite) and the infliction of harm (action). Because action first requires knowledge, the otherwise helpful JWT criteria become circular when applied to HUMINT.[20] This is unsurprising when we realize that at the core of a just war framework lies an ethical requirement that is often fulfilled via intelligence activity: The legitimacy of a target is established on the basis of collected intelligence. Yet, in routinized HUMINT, the very act of gathering information to determine whether a target is legitimate already raises crucial ethical questions. The circularity distorts the essential interplay of the interrelated JIT criteria; for instance, bending the last resort principle of JWT, since continuous intelligence collection is in effect the *first* resort.

Intelligence scholars have attempted to address the issue of circularity in diverse ways. Macnish, for instance, has proposed the use of "pre-existing evidence . . . available prior to the decision,"[21] while Ross Bellaby has suggested an intelligence "escalation ladder." Neither approach, however, resolves the central paradox.

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Dependence on "preexisting evidence" merely reinforces the circularity by positing that intelligence—the very goal of HUMINT—must already exist before HUMINT can be undertaken; intelligence collection is required to determine whether to escalate intelligence activities.[22]

Other JIT proponents link intelligence to self-defense, the classical JWT justification for war against an existing or imminent attack and a generally accepted lawful and legitimate *casus belli.* Most intelligence collection, however, takes place continuously and in a preventive mode, often without any imminent threat. As noted, "Intelligence actions only rarely have the degree of emergency and urgency entailed in the concept of self-defence."[23] Outside of wartime, collection overwhelmingly focuses on potential threats with extended temporal horizons that may never materialize.[24] JIT, however, understates the distinction between potential emerging threats—the focus of most intelligence activities—and imminent threats that might require self-defense.[25] If taken literally, the self-defense justification would in fact prove highly prohibitive and ill-suited to doing HUMINT, to say nothing of living HUMINT.

Another attempt to address the circularity proposes new analogies to routine intelligence collection.[26] One such analogy is sought in permanent nuclear deterrence. David Omand writes that the maintenance of a serious intelligence capability during peacetime helps maintain peace much as nuclear deterrence does.[27] In suggesting as much, however, Omand omits the fundamental difference in his own analogy: nuclear deterrence might prevent war because nuclear weapons are *not* used. On the contrary, intelligence *is* being used—and used continuously, against both enemies and allies, in peace and in war. JIT does not seek to ethically regulate the possession of HUMINT capabilities, but rather their massive usage. Thus, the cumbersome analogy fails to overcome the fundamental conceptual limits in JIT's applicability to doing and living HUMINT.

The Limits of Jus in Intelligentia

The limits become particularly apparent in the application of the *in intelligentia* principles of proportionality and discrimination. Omand describes "proportionality" in espionage as "keeping the ethical risks of intelligence operations . . . in line with the harm that the operations are intended to prevent, as part of the balancing act."[28] This balance sheet includes different variables: ends and means, the cost of action and inaction, gains and benefits, and the anticipated value of competing ends. Such a

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balance sheet is supposed to provide a reliable "moral accounting [which] allows us to balance the overall good effect of intelligence knowledge against some of the less desirable methods."[29]

The criterion of proportionality (challenging to apply even in war) has a very limited applicability to the routine and continuous nature of HUMINT. The first fundamental problem with proportionality when applied to HUMINT lies in the inescapably *dis*proportionate nature of most HUMINT. HUMINT is mostly conducted, as we have shown, against *potential* threats of a non-imminent sort and against allied and neutral states that rarely become actual adversaries. The inherent potentiality of most HUMINT defies the traditional logic of proportionality, however flawed that logic may be even in other settings. The second problem consists in the objectification of individual persons; their dignity becomes secondary to the benefits to the state. Thus, as Eric Stoddart cautions, proportionality carries an inherent risk. It attempts to objectively measure factors—such as harm to a person—that are fundamentally subjective and possess value beyond quantification.[30] It is arguably no coincidence that one of the modern states that most seriously mistreated individual persons at home and abroad, the USSR, also had one of the most potent intelligence services. Harm to any individual, and to any group of individuals, was always considered perfectly proportional to the interests of the Soviet state.

The second criterion, discrimination, requires that innocent persons ought not to be harmed and obliges intelligence collectors to assess "the risk of collateral harm . . . [to] the lives of those who are not the intended targets of intelligence gathering."[31] However, we once again find ourselves trapped in circular logic: Even in the most permissive of circumstances, such as spying on an adversarial IO, how else but through intelligence collection could one establish that a particular target is an IO? The fact that an IO needs to engage in HUMINT in order to collect information about whether a target is legitimate quickly becomes clear.

In echoes of JWT, some JIT theorists use the language of "guilt" for legitimate targets and "innocence" for those who cannot be targeted.[32] The language of relative guilt and innocence, however, is unsuitable for the actual reality of intelligence collection in general, and HUMINT in particular. Does merely possessing information make one "guilty" of something? Does a professional or family association with, say, a senior government official provide justification to be spied on? More problematically still, does one incur guilt by *potentially* possessing information or, alternatively, by knowing someone who might possess it?

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HUMINT routinely targets all of the above and, in most cases, the language of guilt and innocence is wholly inappropriate.

Consider, for instance, CIA's HUMINT operation to locate the former al-Qaeda leader Osama bin Laden. CIA IOs engaged medical professionals, among others, who had conducted vaccination in the areas where bin Laden might have been hiding. The medical staff had not transgressed a norm that would make them deserving of being targeted and dragged into espionage.[33] We see further that individuals routinely get involved in HUMINT, often without their knowledge. An IO's family and friends, as well as potential targets, are all being deceived and manipulated on a daily basis, as Olson describes in his memoirs. His children *did not know* that their father was an IO.[34] However, if a foreign intelligence service sought to establish whether Olson indeed was an IO and were to that effect to collect information about him, they would probably target his children—survey their routines, tap their phones, monitor their social media—as HUMINT-related activities often seek details about a target from third-party individuals who are associated with the potentially legitimate target. A strict application of the discrimination criterion would permit neither the use of medical staff nor engaging a target's associates. This strict application would render HUMINT unrealizable.[35]

The Limits of Democracy-Centered Legalism

The final limit to a wider applicability of JIT lies in its prevalent use to justify acquiring intelligence on behalf of a (morally superior) liberal democracy against an "authoritarian" or "nondemocratic" state. Both scholars and practitioners often advocate for harsher HUMINT methods against citizens of states that fall outside of the liberal-democratic community. JIT presupposes that a similar HUMINT practice is acceptable specifically for preserving the national security of liberal democracies. However, its proponents simultaneously argue that the just intelligence way of thinking "should be universal."[36] Seumas Miller's justification illustrates the broader argument. He writes that, with respect to authoritarian states, there are few if any constraints on intelligence gathering and analysis.[37]

On the general level of espionage, it is hard to see how JIT, with its clear preference for liberal democracies associated with the collective West, could be widely embraced and relied on by professionals in other political systems and in different parts of the world. In a revealing contradiction, JIT has a profound regard

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for liberal democracies on the basis of their professed respect for *universal* human rights and, simultaneously, diminishes the importance of these rights by justifying HUMINT against nondemocratic states.[38] Olson offers a typical argument along these lines. He describes spying "against totalitarian, evil, oppressive, atheistic communism . . . we thought we were on the right side of that. And so we had no qualms about doing what we had to do for our country."[39]

However, on the level of individual HUMINT, the democracy-centric argument implies that the personhood of individuals living outside of liberal democracies holds a lower value and, as such, might be subject to harsher HUMINT methods. This is highly concerning in part because HUMINT rarely targets the highest political leadership—the real or imagined "authoritarians"—but rather relatively "common" citizens who might have, or be able to mediate, access to desired information. It is therefore not only logically flawed but also ethically problematic to base the superiority of the liberal democracy on its respect for universal human rights, while denying the universality of these rights to individuals who happen to live under a different regime.

By arguing from the standpoint of a liberal democracy, JIT implicitly renders regime type a decisive moral variable, such that the ethics of spying are understood as a function of the regime it serves. This view might be defensible at an institutional level but is deeply problematic when considered through the prism of individual IOs. As history shows, even democracies can require their intelligence professionals to engage in morally wrongful actions. Furthermore, regimes of all types justify their actions by referring to their supposed righteousness. During the Cold War, governments would routinely justify actions with statements akin to "Action *X* protects communism, therefore it is good; action *Z* advances socialism, therefore it is just." And it is certainly arguable that there was little inherently either good or just in socialism in Eastern Europe, let alone the Soviet Union. More generally, the structure of the argument is simply wrong, whether made by a socialist government or a democratic one. Moreover, there is no generic liberal democracy (just as there was no generic socialism), but only countless variations. There may well be a relatively good and just liberal democracy. But the assessment is too complex, too contextual, and too subjective to take the regime type as an a priori justification.

JIT's focus on democratic *legal* procedures does not resolve the issue—certainly not from an individual IO's perspective. Complying with the law does not automatically entail acting ethically. Attempts at serious ethical reflection on HUMINT

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based primarily on legal norms, combined with the nature of a regime, are incomplete and, often, hypocritical and self-serving. Moreover, a foreign intelligence service is obliged to operate within the boundaries of its national law in every country, regardless of the regime. There is nothing inherently ethical about a particular legal framework and, correspondingly, about *lawful* action, as law is an instrument of state power—the same power that controls and uses the intelligence services. Angela Gendron, a thoughtful proponent of JIT, remains skeptical about building an ethics of spying around legalism. As she acknowledges, the fact that "an intelligence service is legally mandated and subject to oversight does not mean that every objective it pursues, nor every means to do so, will be either lawful or morally justifiable."[40]

Finally, there is the legal dimension of operating abroad, which is equally, if not more, problematic. HUMINT in foreign intelligence collection operations involves a "constant breaking of the rules . . . such operations are necessarily extra-legal and sometimes illegal."[41] An exoneration by one country's own law while breaking those of another renders an overemphasis on legal arguments either void or lacking in good faith.[42] It strips the law of any pretense for an objective and universal moral value. A strict application would logically create a situation where each state conducts lawful HUMINT according to that state's legal framework, without any a priori relation of that framework to ethics.

The Limits of Rights-Based Revisions of JIT

An interesting alternative reinterpretation of JIT has been proposed by Cécile Fabre. She starts by posing two central and related questions. First, is an IO morally permitted to collect certain information? And second, what is the IO permitted, or even obliged, to do to obtain that information?[43] She then proceeds to a general defense of espionage when it serves a "just foreign policy,"[44] which she links, crucially, to the protection of fundamental rights (the definitions of which she leaves somewhat vague). The rights-based approach leads Fabre to argue that intelligence collection is ethically defensible as a means "to thwart violations of fundamental rights or risks thereof, in the context of foreign policy writ large, subject to meeting the requirements of necessity, effectiveness, and proportionality."[45] She thus partially embraces the JIT criteria and maintains that, first, espionage is legitimate to counter rights violations; and, second, that continuous collection is unjustified unless there is prior evidence of a threat to rights violations.

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What seems at first to be a very modest and reasonable argument would in fact prohibit most intelligence collection activities, which in practice do not have any direct, and often even indirect, impact on the defense of fundamental rights—except in the broadest and vaguest of senses.[46] If Fabre's principles are applied strictly, most espionage as it is practiced would have to be terminated; if the principles are interpreted broadly and permissively, then they become void of meaning. Of course, one could defend spying using a more permissive interpretation of Fabre's framework by arguing that intelligence about a *potential* war might *possibly* protect someone's rights in an *indeterminate* future. Thus, depending on interpretation, Fabre's proposal could either exclude most espionage or, on the contrary, permit almost any instance of it.

Fabre admits as much herself, acknowledging that "it is entirely possible—perhaps even likely—that much of what intelligence agencies have done and are currently doing is morally wrong, at the bar of the account I defend here."[47] Acknowledging the problem, Fabre eventually slips into what is in effect only a revised version of JIT. She argues that, generally, espionage-related practices such as deception, manipulation, and lying are justified when they are necessary, effective, and proportionate means of neutralizing threats to fundamental rights.

Fabre's defense suffers from an underappreciation of what doing and living HUMINT actually means, and, correspondingly, what some of the most serious ethical issues are on the individual and interpersonal levels. Her framework is unrealistic except for very limited circumstances, such as spying on an evidently rogue regime (and, even then, with significant restrictions) and during wartime. She is aware of the prohibitive implications of her framework and concludes with a rather somber admission that the "question is what to do with those institutions."[48] Fabre's question is extremely relevant—and one that I do *not* consider in this article. Instead, Fabre's conclusion (without accepting her rights-centered premise) leads me to inquire what individuals in these institutions can and should do. To address that question, I have first demonstrated the limits of JIT in providing ethical guidance to individuals involved in HUMINT. Having revealed the limits of the *current* discussion, I propose a paradigm shift at two levels: I indicate how this paradigmatic shift can open up new possibilities for ethical reflection and, in doing so, enrich the now rather stuck discourse. Finally, I invite ethicists and practitioners coming from diverse ethical traditions to engage in this discussion, for my effort is but an initial turn toward fresh approaches outside of the exhausted JIT-inspired reasoning.

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Institutionalized Individuals and Moral Outsourcing

A renewed focus on individual moral responsibility for (in)action, combined with institutional practices that constantly encourage and facilitate competing ethical inputs into decision-making, can contribute to filling the gaps in JIT, support conscientious IOs, and strengthen intelligence agencies. I hold that each IO is a moral agent with ultimate responsibility for their conduct and ought not become an institutionalized individual who outsources that responsibility to the collective ethos of an organization, government, or state.

The collective shortfall in moral reflection and action has been clearly—and darkly—articulated by Reinhold Niebuhr. Against the background of two world wars, Niebuhr convincingly argued that individual moral deficiencies are dramatically augmented at the level of collectives, such as nations and powerful state institutions. The action on behalf of, or within, a collective is precisely where Niebuhr identifies the greatest moral risks and the causes for much of the violence in societies and international relations. The individuals' capacity for moral deliberation weakens as that individual becomes a part of the institution's collective mentality. In every human group, writes Niebuhr, "there is less reason to guide and to check impulse . . . and therefore more unrestrained egoism than the individuals, who compose the group, reveal in their personal relationships."[49]

A group—such as a highly secretive and powerful intelligence agency—can amplify egoistic impulses, erode conscientious resistance, and displace personal responsibility in favor of faceless collective responsibility and abstract notions of justice. Such moral corrosion is a natural risk when IOs ground their ethics primarily in institutional authority and legalistic justification. Such justifications reflect an insufficient grasp of the "brutal character of the behavior of all human collectives, and the power of self-interest and collective egoism in all intergroup relations."[50] They push "institutionalized individuals," in Niebuhr's phrase, to the invention of "romantic and moral interpretations of the real facts, preferring to obscure rather than reveal the true character of their collective behavior."[51]

In general, institutionalized individuals wield immense power through their respective institutions. Through the complex and seemingly all-powerful machinery of a state institution, even an otherwise powerless individual can cause immeasurable harm. In the intelligence world, risks associated with the exercise of that power are further accentuated by the necessarily limited oversight of individuals'

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actions. Given that so many examples from HUMINT are classified, let us use cases from outside the HUMINT domain to illustrate with disturbing clarity what happens when institutionalized individuals act without a firm sense of ethical responsibility in organizational cultures that neither promote nor reward them for doing so. Though these cases are all from Nazi Germany, the implications extend directly to HUMINT, where ethical dilemmas are typically less distinct—and the risk of overlooking them all the more imminent. Furthermore, the readiness of individuals to cooperate in manifestly evil acts serves as a stark warning for IOs, who typically operate in far less morally binary environments—settings in which the internal moral warning signals may be considerably more muted; if individuals could cooperate in something so clearly wrong as the Nazi regime, think of how much easier it is to become complacent in less extreme circumstances. First let us consider the rank-and-file Reserve Police Battalion 101 that operated during World War II, five hundred *ordinary men* deployed by the Nazis to occupied Poland to contribute to the Final Solution. The institutionalization through the police turned the common civil servants from the Hamburg area into murderers who killed some eighty-three thousand civilians—men, women, and children—between 1942 and 1943. Christopher Browning reminds us that the "policemen faced choices, and most of them committed terrible deeds." The institutional pressure in bureaucratized societies, continues Browning, sets behavioral norms and exerts enormous pressure on individuals to accept these norms. However, Browning observes that, despite the pressure, even in Battalion 101 "some refused to kill and others stopped killing."[52] He concludes—as I do—that "human responsibility is ultimately an individual matter"[53] that can make a profound difference, sometimes between life and death. For our purposes, we learn that even individuals at the lower levels of an institutional hierarchy can make a profound difference if they assume—and, more poignantly, as the examples show, fail to assume—personal moral responsibility.

The following two examples concern individuals with executive authority. The first, the story of Franz Stangl, the commander of the extermination camps in Sobibor and Treblinka, testifies to the failure of individual responsibility due to refusal to bear the costs of one's decision, combined with unrestrained personal ambition. In Gitta Sereny's classic account, Stangl repeatedly defended his *decisions* to remain in his institutional position based on a supposed lack of alternatives; if he refused to stay in the role, he thought he would have been imprisoned or killed, perhaps with his whole family. Thus, he continued in the position until around nine hundred thousand people had been murdered under his command. Only hours

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before his death from a heart attack did Stangl recognize the importance of assuming individual responsibility and accept its price. "I should have died. That was my guilt," concludes Stangl.[54] A "moral monster," to use Sereny's strong words, is not born but made through myriad daily decisions. It follows for Sereny that collective morality depends on an individual's ability to make responsible ethical choices as they exercise power within their institution.[55] Individuals' failure to exercise responsible moral agency, particularly when their power is augmented through an institution, can have tragic consequences for peoples and nations. They can do much damage regardless of their respective institutional seniority.

Another such institutionalized individual, Adolf Eichmann, provides our next example. As recorded by Hannah Arendt, Eichmann demonstrates the detrimental effect of Stangl-like ambition combined with a refusal to engage in critical questioning of orders, and in moral reflection on one's actions to implement these orders. Eichmann reposed his individual conscience in the faceless collective; he outsourced his ethical deliberation. When the Nazi state collapsed, Eichmann realized that henceforth he would have to "live a leaderless and difficult individual life, I would receive no directives from anybody, no orders and commands would any longer be issued to me."[56] Had he been an ethically responsible individual in his institutional role, he would have made different moral choices. Crucially for us, Eichmann's bureaucratic complacency was far from unique; the sui generis historical context turned him into an Eichmann. As Arendt described, the "trouble with Eichmann was precisely that so many were like him . . . [in] that they were, and still are, terribly and terrifyingly normal,"[57] a stark warning for IOs with their immense institutionalized power.

Similar to Stangl, Eichmann had been incapable of accepting the price of making an ethical decision. He asserted that "none of us had a conviction so deeply rooted that we could have taken upon ourselves a practically useless sacrifice for the sake of a higher moral meaning."[58] The decisions of several of Eichmann's compatriots proved him wrong.[59] In fact, a group of spies, among others in the German Resistance, sacrificed their very lives for a higher moral meaning.

Ethically Responsible Spies

Spies involved in different roles in the conspiracy against the Nazi regime manifested individual ethical responsibility in and through HUMINT. In a leadership role, the head of the Abwehr (the intelligence department of the German military),

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Admiral Wilhelm Canaris, strived to systematically weaken the Nazis—which he officially served—due to profound ethical disagreements. Thus, Canaris actively covered for conspirators, recruiting them to the Abwehr to allow them to travel freely, and also had close ties to the British intelligence and, likely, secretly conversed with Winston Churchill through clandestine channels and intermediaries throughout the war.[60] Rank-and-file Abwehr intelligence officers and government functionaries Hans Oster and Hans von Dohnanyi shared Canaris's concerns and also took the ethical responsibility to fight the Nazi regime through espionage. We "must do more than pray," repeated Oster even as he was developing his traitorous network of agents.[61]

Two of the key principled agents were Josef Müller and the Lutheran pastor Dietrich Bonhoeffer. With the consent of Canaris, Müller and Bonhoeffer were formally recruited as Abwehr agents to have a robust cover for their foreign travels that could withstand the scrutiny of the Gestapo, a competing Nazi intelligence service. Serving the conspiracy, Müller collected information on Poland and Russia, and liaised with the Vatican, to seek the pope's formal blessing for tyrannicide.[62] The group concluded that "treason had become true patriotism and what was normally patriotism had become treason."[63] The secret police did not share their view and eventually arrested Bonhoeffer on the charge of espionage, together with Müller and their spymasters, including Oster, von Dohnanyi, and, later, Canaris himself. Eventually, they paid with their lives, except Müller who had escaped execution through the intervention of his high-level Nazi contact.

The conspiring spies' motivations and actions are unintelligible outside of their strongly held ethical convictions that were incompatible with the actions of the Nazi government. Furthermore, their letters and writing make clear that peace served as the guiding telos driving their actions. Their experience further demonstrates that "it is possible for an individual to transcend the interests of himself and his group"[64] without becoming a Promethean caricature. Firm embeddedness in an institution, combined with freedom from enslavement by that institution, is a testament to the power of individual responsibility within a collective, and to the impact of ethical actions through that collective. This dimension of individual moral responsibility within institutions remains a fundamental omission in current HUMINT scholarship and practice.

I argue that HUMINT ethics with a stronger emphasis on individual moral responsibility would not lead to more frequent treasonous behavior or to institutional paralysis caused by disobedience. The wartime context cited above was

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extreme, as were the actions of the conscientious spies. Absent extreme circumstances, the IOs' individual ethical responsibility lies not in standing outside of their collective structures, but in becoming *free and responsible within them*. In this dialectical relationship, the individual as a free moral agent scrutinizes collective practices, and the institutionalized mechanisms in turn provide checks against individualistic excesses. The freedom (not) to act liberates the IO from uncritical submission to the agency, government, or state; at the same time, the institutional ethos shapes the individual and guards against destructive hyperindividualism. Depending on the context—and hence the preference for contextual rather than prescriptive ethics—the same ideals of individual morality may, at times, be best expressed through group loyalty and, at other times, need to be restrained for the collective good.

In routine intelligence settings, the effects of the proposed ethical shift would be gradual, long term, constructive, and—crucially—function across the hierarchy of an intelligence agency. On the institutional dimension, agencies would embed continuous processes of ethical deliberation into the organization's fabric; neither operational nor strategic decisions would be taken without thorough, collaborative, and inclusive deliberation, informed by individuals' ethical reflection. The leadership level should include ethical considerations as an important variable in their calculations. Furthermore, they ought to encourage subordinates to challenge decisions from their varied ethical perspectives, thus limiting biases associated with groupthink, and create an atmosphere that allows open and honest engagement on ethical grounds across the hierarchy. Furthermore, the rank and file ought to seek regular opportunities for constructive critical engagement with their peers and superiors. Finally, IOs at all levels must have the moral courage to refuse to take any action that they find morally unacceptable—and they must be ready to bear the consequences. As former CIA director John Brennan remembers, "I have told officers that I don't want [them to do] something that they feel is inconsistent with their personal ethics and values."[65] Brennan's words might or might not be truthful. But they articulate how it *should* be. The ability to assume responsibility, and the courage to suffer the consequences if necessary, makes the difference between the Stangls and Eichmanns of history, on the one hand, and the von Dohnanyis, Osters, Müllers, and Bonhoeffers, on the other.

A greater space for individual ethical responsibility will not weaken spy agencies but make them considerably stronger. Internally, the proposed approach will contribute to more sound decisions, thanks to a robust process that involves

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individuals coming from diverse ethical traditions. Operationally, an agency with ethically sound objectives and a solid reputation for due consideration of morality of individuals' actions may attract more high-quality agents that are reliable and sustainable for a long-term collaboration, as shown by the respective examples of Müller and Bonhoeffer, who had refused to spy for the Gestapo but willingly joined the conspiracy. Publicly, an established, thorough ethical scrutiny may limit moral failures and associated backlashes. The improved reputation may, in turn, stimulate popular support and political willingness to approve robust funding and to grant wider powers to a well-functioning intelligence agency.

Espionage, Peace, and Responsible Statecraft

For ethical responsibility to be effective at both the individual and the institutional levels, it must be guided by some minimally shared direction. One direction can be found in peacemaking. A peace-focused teleological ethics of HUMINT brings at least three benefits. First, it provides a common telos, however narrow, for constructive discussions between different ethical traditions and diverse philosophical, religious, and political systems. The telos of peace—even if imperfect and contested—can offer a minimal common ground that may transcend particular viewpoints and ideologies. As the quest for some form of peace is not unique to liberal democracies, the nature of the regime becomes secondary in the moral reasoning.

Second, the imperfection of peace points to a world that is painted countless shades of gray, rather than existing in the binary of good and evil. In the grayness, demands for peacemaking are ever evolving. Accordingly, a peace-oriented teleological HUMINT ethics would naturally be less checklist-like and more contextual —characteristics that capture the dynamism of doing and living HUMINT.

Third, such a telos strengthens HUMINT by offering an alternative to the more restrictive tendencies of JIT, human rights–based approaches, and deontological traditions. In contrast, a peace-oriented framework would be more permissive, responding to the pressing need of responsible governments to sustain effective foreign intelligence services. At the same time, given the risk of abuse inherent in peace-centered teleological reasoning, any justification for expanding the remit of intelligence services requires careful and critical consideration.

An argument in favor of powerful intelligence agencies inevitably runs up against the Kantian deontological approaches to espionage, which argue that the

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practice of HUMINT is practically irreconcilable with the categorical imperative. Indeed, Kant himself went beyond abstract concepts and explicitly condemned spying. He suggested that espionage is a "diabolical art" that "exploits the dishonesty of others" and, as such, is "intrinsically despicable."[66] Thus, to interpret Kant in modern terms, the duty one owes to human beings is considered superior to what one owes to national security or interests of the state.[67]

If national interests are conceptualized within the broader notion of peace—not as a static binary opposite to war, but as a dynamic process conducive to human flourishing, authentic personal development, and the common good—then their pursuit and protection need not be a priori immoral, as Kant believed.[68] As perpetual peace is never attained and the specter of war and violence is ever present, it follows that an imperfect peace must be pursued ceaselessly as a sine qua non for individual and societal development. This view recognizes negative peace as a prerequisite for sustainable contributions toward positive peace. Positive peacemaking, grounded in the protection of a negative peace, requires suitable tools. One such tool is HUMINT. Acknowledging HUMINT's role in sustaining negative peace implies a vision of positive peace, even if never fully attainable. The objective of peacemaking, combined with the aspiration for genuine peace, can thus teleologically guide the choices of IOs and the operations of their agencies.

As a Kantian critique correctly emphasizes, HUMINT fundamentally thrives on, and reinforces, the hermeneutics of suspicion. The belief in states' capacity for treachery justifies intelligence collection against foes and friends alike. Spying on temporarily allied states (for there are no eternal alliances) follows the Russian maxim favored by Ronald Reagan: "Doverai, no proverai," or "Trust but verify."[69] Thus, states dishonestly (and naturally) claim that intelligence collection focuses on "acquiring the secret intelligence of hostile states."[70] In reality, much collection is focused on "potentially hostile states"—that is, on current partners that pose no immediate threat. But, as Niebuhr asserts, the duplicity of a state is a necessity for that state's survival.[71] Such practice is consistent with a reality of peace that is fundamentally different from Kant's image of a perpetual peace where, perhaps, espionage might be unnecessary.

Absent perpetual peace, however, the prevalence of espionage both testifies to the reality of negative peace and contributes to its maintenance. HUMINT indeed cannot deliver harmonious, risk-free relations between states. But such relations are an illusion in the reality of negative peace. Within that reality, HUMINT is a fundamental component of responsible statecraft. It is an expression of, and

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testament to, the human condition where fear and mistrust shape relations between states. While predicated on suspicion, HUMINT can also reduce uncertainty, dispel fear of the unknown, and establish channels of communication with the mistrusted. In this sense, HUMINT can be conceptualized as a tool of responsible statecraft that facilitates, or informs, nonviolent conflict prevention and resolution, guides policymakers, and thereby contributes to the making of peace. Although often practiced through morally troubling methods, HUMINT can nonetheless serve as an effective instrument of peacemaking.

Such a conceptualization of HUMINT is both *realistic* and *idealistic*. Realistic because it recognizes the need for espionage in a world full of actual and potential threats; and idealistic as it aspires to mitigate those threats peacefully. Rather than positioning HUMINT in opposition to peace-emphasizing ethical approaches, this teleological account turns HUMINT into an essential and powerful tool of responsible peaceful statecraft in a fundamentally dangerous world.

Reframing HUMINT Ethics: Power, Conscience, and Peace

Both academic and practical intelligence ethics require a sharper focus on individual moral responsibility. Such a focus can enrich an overinstitutionalized, deindividualized discourse that currently fails conscientious IOs, fosters the outsourcing of moral judgment from individuals to collectives, and thereby weakens intelligence agencies. While JIT offers important contributions, normative frameworks alone do not fully correspond to the dynamics of doing and living HUMINT. Therefore, HUMINT ethics would benefit from reframed approaches that are contextual.

The approach advanced here encourages individuals to assume ultimate responsibility for their (in)actions, while proposing institutional practices that promote critical ethical engagement across all levels of intelligence decision-making, from rank-and-file staff to agency leadership, from operational planning to strategic management. This emphasis reduces two principal risks: the sidelining of ethics in decision-making and the dangers of conformist groupthink. Future discussions about HUMINT ethics should accordingly foreground the role of potentially ethical individuals within potentially unethical organizations. A teleological ethics with peace at its core—one that places high value on individual moral responsibility within institutional settings—can produce intelligence services that are both more efficient and more ethical.

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Developing such an ethics is a collective debt owed to the individual spies who dedicate their lives to protecting communities and who would benefit from more robust guidance in navigating the moral complexities of HUMINT.[72] For HUMINT is the sphere where power and conscience meet: Every intelligence officer embodies the power of the agency, yet must exercise conscience to use that power responsibly. The effort and desire to bring ethics more tangibly into the routine practice of HUMINT, repeatedly expressed by Olson, Mowatt-Larssen, and other well-meaning officers in liberal democracies—and, arguably, beyond—can find firmer grounding if the current approach is enriched through emphasis on individual responsibility directed toward peace.

Notes

[1] The cited conceptualization of HUMINT is used by NATO and the U.S. intelligence community. See Joint Chiefs of Staff, *Joint Intelligence*, Joint Publication 2-0 (Washington, D.C.: Joint Chiefs of Staff, October 22, 2013), www.benning.army.mil/infantry/doctrinesupplement/atp3-21.8/PDFs/jp2_0.pdf; and NATO Standardization Agency, *NATO Glossary of Terms and Definitions (English and French)*, AAP-006, ed. 2013 (NATO Standardization Agency, 2013), www.jcs.mil/Portals/36/Documents/Doctrine/Other_Pubs/aap6.pdf. A broader context of HUMINT is discussed, for instance, in: Michael Herman, *Intelligence Power in Peace and War* (Cambridge, U.K.: Royal Institute of International Affairs, Cambridge University Press, 1996), pp. 61–66, 119–120; and Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, 7th ed. (Washington, D.C.: CQ, 2017), pp. 133–38. Throughout this article, the terms "spying" and "espionage" are used as substitutes for HUMINT to avoid repetition; whenever they appear, they refer exclusively to HUMINT. The analysis is limited to HUMINT in the context of foreign intelligence collection. As Patrick F. Walsh and Seumas Miller demonstrate, different intelligence disciplines raise distinct ethical and practical issues at every stage of planning, collection, analysis, and dissemination. HUMINT conducted domestically (counterintelligence) presents additional challenges, since it targets one's own citizens, and thus falls outside the scope of this article, even if some principles overlap. Finally, quasi-military covert action, though often associated with HUMINT, is qualitatively distinct from the civilian practice of information gathering through interpersonal relations. Patrick F. Walsh and Seumas Miller, "Rethinking 'Five Eyes' Security Intelligence Collection Policies and Practice Post Snowden," *Intelligence & National Security* 31, no. 3 (2016), pp. 345–68; and Charles Cogan, "Hunters Not Gatherers: Intelligence in the Twenty-First Century," in Peter Jackson and L. V. Scott, eds., *Understanding Intelligence in the Twenty-First Century: Journeys in Shadows* (London: Routledge, 2004), pp. 147–61.

[2] James Olson, "Spycraft and Soulcraft on the Front Lines of History: A Conversation with Former CIA Chief of Counterintelligence James Olson," interview by Albert Mohler, Albert Mohler, April 28, 2021, albertmohler.com/2021/04/28/james-olson; and James M. Olson, *Fair Play: The Moral Dilemmas of Spying* (Washington, D.C.: Potomac Books, 2007). Neither Olson's nor Mowatt-Larssen's religious commitments invalidate the examples. My claim is threefold: first, every IO should possess a robust sense of moral responsibility; second, that responsibility must be grounded in an ethical tradition—religious, philosophical, or other; third, pluralism in such traditions is desirable, as it can strengthen intelligence agencies at the institutional level. Accordingly, it is immaterial to the argument whether an IO cites Jesus or Aristotle. What matters is that officers are trained to engage in sustained, critical reflection on the ethics of their actions—beyond an insufficient reliance on legal procedures, accountability mechanisms, chains of command, regime type, and the like. These safeguards are important, but they are neither sufficient nor determinative.

[3] Olson, "Spycraft and Soulcraft on the Front Lines of History."

[4] Ibid.

[5] David Omand and Mark Phythian, "Ethics and Intelligence: A Debate," *International Journal of Intelligence and Counterintelligence* 26, no. 1 (2013), pp. 38–63, at p. 54; David Omand, "Intelligence Ethics: Not an Oxymoron," *Crest Security Review* 7 (Winter 2018), p. 19; and Kevin Macnish, "Just

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Surveillance? Towards a Normative Theory of Surveillance," *Surveillance & Society* 12, no. 1 (March 2014), pp. 95–106.

[6] Ross Bellaby, "What's the Harm? The Ethics of Intelligence Collection," *Intelligence and National Security* 27, no. 1 (2012), pp. 93–117, at pp. 108–9; and Robert Frisk and Linda Johansson, "From Samurais to Borgs: Reflections on the Importance of Intelligence Ethics," *International Journal of Intelligence and CounterIntelligence* 34, no. 1 (2021), pp. 70–96, at p. 91.

[7] Angela Gendron, "Just War, Just Intelligence: An Ethical Framework for Foreign Espionage," *International Journal of Intelligence and CounterIntelligence* 18, no. 3 (2005), pp. 398–434, at p. 419; Michael Quinlan, "Just Intelligence: Prolegomena to an Ethical Theory," *Intelligence and National Security* 22, no. 1 (March 2007), pp. 1–13, at p. 3; Oliver O'Donovan, *The Just War Revisited* (Cambridge, U.K.: Cambridge University Press, 2003), p. 44; Omand, "Intelligence Ethics"; Omand and Phythian, "Ethics and Intelligence," p. 42; and David Omand and Mark Phythian, *Principled Spying: The Ethics of Secret Intelligence* (Washington, D.C.: Georgetown University Press, 2018), pp. 74–80; Kira Vrist Ronn, "Intelligence Ethics: A Critical Review and Future Perspectives," *International Journal of Intelligence and CounterIntelligence* 29, no. 4 (2016), pp. 760–84, at p. 775; Eric Stoddart, "Challenging 'Just Surveillance Theory': A Response to Kevin Macnish's 'Just Surveillance? Towards a Normative Theory of Surveillance'," *Surveillance & Society* 12, no. 1 (2014), pp. 158–63, at p. 162; Bellaby, "What's the Harm?," pp. 108–9; and Ross Bellaby, "Intelligence and the Just War Tradition: The Need for a Flexible Ethical Tradition," in Seumas Miller, Mitt Regan, and Patrick F. Walsh, eds., *National Security Intelligence and Ethics* (London: Routledge, 2021), pp. 7–20.

[8] Kevin Macnish, "International Espionage," ch. 4 in *The Ethics of Surveillance: An Introduction* (London: Routledge, 2017), pp. 77–92.

[9] Adam Henschke, Seumas Miller, Andrew Alexandra, Patrick F. Walsh, and Roger Bradbury, *The Ethics of National Security Intelligence Institutions: Theory and Applications* (London: Routledge, 2024), pp. 22–23; and Omand and Phythian, *Principled Spying*, p. 108.

[10] Macnish's attempt to apply JIT to espionage against allies shows that the framework offers little moral guidance beyond the claim that it "was not obviously wrong." His examples concern intelligence acquired from intercepting transmission signals, or SIGINT, but his argument addresses espionage against allies in general, including HUMINT. This illustrates how the just war tradition tends to shift responsibility from individuals to leaders or institutions, tying ethics to the legitimacy of authority and its claim to act for the community's good—claims open to divergent interpretations. See Macnish, "International Espionage."

[11] Gendron, "Just War, Just Intelligence," p. 404; Adam Diderichsen and Kira Vrist Rønn, "Intelligence by Consent: On the Inadequacy of Just War Theory as a Framework for Intelligence Ethics," *Intelligence and National Security* 32, no. 4 (2017), pp. 479–93; Filip Scherf, "The Hidden Disciple: Towards a Christian Ethics of Spying," in "The Bible and Christian Ethics," special issue, *Studies in Christian Ethics* 36, no. 1 (February 2023), pp. 123–54, at pp. 126–38; and Stoddart, "Challenging 'Just Surveillance Theory'," pp. 158–163.

[12] Bellaby, "What's the Harm?," p. 100; Cécile Fabre, *Spying through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence* (Oxford: Oxford University Press, 2022), pp. 94, 96–98, 112, 142, 228; Lowenthal, *Intelligence*, pp. 102–103, 313; Omand and Phythian, *Principled Spying*, pp. 110–41; Omand, "Intelligence Ethics," pp. 18–19; Omand and Phythian, "Ethics and Intelligence"; and Quinlan, "Just Intelligence."

[13] E. Drexel Godfrey Jr., "Ethics and Intelligence," *Foreign Affairs*, April 1, 1978, www.foreignaffairs.com/articles/united-states/1978-04-01/ethics-and-intelligence, p. 630.

[14] Rolf Mowatt-Larssen, *A State of Mind: Faith and the CIA* (pub. by author, 2020), p. 67, 65–68.

[15] Olson, "Spycraft and Soulcraft on the Front Lines of History."

[16] Mowatt-Larssen, *State of Mind*, pp. 194–95.

[17] Henschke et al., *Ethics of National Security Intelligence Institutions*, p. 7; Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Viking Press, 1963); and Seumas Miller, "Rethinking the Just Intelligence Theory of National Security Intelligence Collection and Analysis: The Principles of Discrimination, Necessity, Proportionality and Reciprocity," *Social Epistemology* 35, no. 3 (2021), pp. 211–31.

[18] Asaf Lubin, "The Liberty to Spy," *Harvard International Law Journal* 61, no. 1 (Winter 2020), pp. 185–243, at p. 210; Oscar Jonsson, *The Russian Understanding of War: Blurring the Lines between War and Peace* (Washington, D.C.: Georgetown University Press, 2019); Omand and Phythian, *Principled Spying*; Nicholas Melgaard and David Whetham, "Jus ad Vim: War, Peace and the Ethical Status of the In-Between," in Miller et al., *National Security Intelligence and Ethics*, pp. 186–98, at pp. 189, 191–92; Didier Bigo and Anastassia Tsoukala, eds., *Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/11* (London: Routledge, 2008); and Mark Phythian, "Intelligence and the Liberal Conscience," in "Developing Intelligence Theory," special issue, *Intelligence and National Security* 33, no. 4 (June 2018), pp. 502–16, at p. 510.

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[19] For a thoughtful recognition of the need to adapt the criteria, see, for example: Henschke et al., *Ethics of National Security Intelligence Institutions*, pp. 22–23; and Melgaard and Whetham, "Jus ad Vim," pp. 189, 191. Recent JWT revisionists have challenged many of the theory's key assumptions, particularly the supposed moral equivalence of combatants, the immunity of noncombatants, and the tension between the state-centered concept of public war and the individual-centered principle of discrimination. For a balanced revisionist discussion, see and juxtapose the following texts: Christian Nikolaus Braun, "The Historical Approach and the 'War of Ethics within the Ethics of War'," *Journal of International Political Theory* 14, no. 3 (October 2018), pp. 349–66; Seth Lazar, "Evaluating the Revisionist Critique of Just War Theory," *Dædalus* 146, no. 1 (Winter 2017), pp. 113–24; Seth Lazar, "Just War Theory: Revisionists versus Traditionalists," *Annual Review of Political Science* 20, no. 1 (May 2017), pp. 37–54; Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009); Jeff McMahan, "The Morality of War and the Law of War," in David Rodin and Henry Shue, eds., *Just and Unjust Warriors: The Legal and Moral Status of Soldiers* (Oxford: Clarendon Press, 2008), pp. 19–43; Graham Parsons, "The Dualism of Modern Just War Theory," *Philosophia* 45, no. 2 (June 2017), pp. 751–71; and James Pattison, "The Case for the Nonideal Morality of War: Beyond Revisionism versus Traditionalism in Just War Theory," *Political Theory* 46, no. 2 (April 2018), pp. 242–68.

[20] JIT fails to resolve the "intelligence dilemma," in which states justify intelligence gathering by citing potential threats. Richards situates the dilemma in the post-9/11 context, highlighting globalization, surveillance society, the "intermestic" threat environment, covert action, cyber capabilities, and partnership risks—all shaped by counterterrorism operations. See Julian Richards, "Intelligence Dilemma? Contemporary Counter-Terrorism in a Liberal Democracy," *Intelligence and National Security* 27, no. 5 (2012), pp. 761–80; Diderichsen and Rønn, "Intelligence by Consent," pp. 481–82; and Gendron, "Just War, Just Intelligence," p. 399.

[21] Macnish, "Just Surveillance?," p. 151. Note that here Macnish writes about "discrimination" as applied to surveillance. Note further that Macnish's views on the application of JWT in surveillance and intelligence, respectively, changed considerably throughout the 2010s, from his early enthusiastic embrace to a rather reluctant advocacy. Thus, his judicious attempts to apply just war concepts outside of the domain of war reveal, as Macnish recognizes, the limits of such attempts. Kevin Macnish, "Just Surveillance?" and Kevin Macnish, "Persons, Personhood and Proportionality: Building on a Just War Approach to Intelligence Ethics," in Jai Galliott and Warren Reed, eds., *Ethics and the Future of Spying: Technology, National Security and Intelligence Collection* (New York: Routledge, 2016), pp. 95–106.

[22] Bellaby acknowledges the problem, writing that "intelligence activity can, and should, come long before the threat is known for it is the purpose of the intelligence operative to locate the threat in the first instance," without conceiving that the escalation ladder is impractical. See Bellaby, "Intelligence and the Just War Tradition," p. 11; for the proposal, see Ross W. Bellaby, *The Ethics of Intelligence: A New Framework* (London: Routledge, 2014), pp. 30–37; for an embrace of the concept, see Henschke et al., *Ethics of National Security Intelligence Institutions*, pp. 59–60; for a critique, see Diderichsen and Rønn, "Intelligence by Consent," p. 482.

[23] Adam Diderichsen and Kira Vrist Rønn, "Intelligence by Consent: On the Inadequacy of Just War Theory as a Framework for Intelligence Ethics," *Intelligence and National Security* 32, no. 4 (2017), p. 484; post-9/11 environment has seemingly somewhat blurred the distinction between prevention and preemption. However, it remains relevant whether a threat is imminent, which is simply not the case for most HUMINT activities. See Diderichsen and Rønn, "Intelligence by Consent," p. 484; Omand and Phythian, "Ethics and Intelligence," p. 43; and Ronn, "Intelligence Ethics," p. 773. Even with Nigel Biggar's understanding of "threat" (when one has good reason to suppose it is substantial), which is more permissive than Oliver O'Donovan's (when the threat is on the verge of becoming actual), intelligence collection is more deeply preventative than just war theorists generally permit military force to be. For a comparison, see Nigel Biggar, "Review Article: The Just War Revisited," *Studies in Christian Ethics* 19, no. 2 (August 2006), pp. 223–32; and O'Donovan, *Just War Revisited*.

[24] Bellaby, "Intelligence and the Just War Tradition," p. 11. Fabre compares preventive intelligence collection to purchasing a knife that one might use for their self-defense. The analogy is inaccurate, however. Intelligence collection is the knife, not the information on a threat; and it is *being* used before the reality of a threat is established. See Fabre, *Spying through a Glass Darkly*, p. 59.

[25] Diderichsen and Rønn, "Intelligence by Consent," p. 480.

[26] The continuity argument is even more problematic for forms of permanent data collection, such as mass surveillance and other investigation-type intelligence activities, than for HUMINT. See Stoddart, "Challenging Just Surveillance Theory," pp. 161–62.

[27] Omand and Phythian, "Ethics and Intelligence," p. 53. Omand does not address the obvious challenge to the analogy: Even if one admits that nuclear weapons contribute to peace (a contested proposition in itself), they do so precisely because they are *not* used. On the contrary, spying can contribute to peace

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when it *is* used widely and effectively. In this direction, a thoughtful contribution to a more permissive view of espionage, when conceptually linked to self-defense, is offered by Suzanne Uniacke. Her expansive interpretation of the prospect-of-success condition in the just war tradition carries practical implications, particularly for HUMINT, directed against adversaries and imminent threats—for example, Ukraine against Russia even prior to February 2022. See Suzanne Uniacke, "Self-Defence, Just War, and a Reasonable Prospect of Success," in Helen Frowe and Gerald Lang, eds., *How We Fight: Ethics in War* (Oxford: Oxford University Press, 2014), pp. 62–74. For a detailed just war account of some of the challenges related to the nuclear age, see, in particular, Mackubin Thomas Owens, "Vietnam and the Just War Tradition" (ch. 10) and Darrell Cole, "The First and Second Gulf Wars" (ch. 11), in Mark David Hall and J. Daryl Charles, eds., *America and the Just War Tradition: A History of U.S. Conflicts* (Notre Dame, Ind.: University of Notre Dame Press, 2019), pp. 226–50 (ch. 10), pp. 251–70 (ch. 11).

[28] Omand, "Intelligence Ethics," p. 19.

[29] Bellaby, "Intelligence and the Just War Tradition," p. 16.

[30] Macnish, "Persons, Personhood and Proportionality," pp. 103–4; and Stoddart, "Challenging Just Surveillance Theory," p. 162.

[31] Omand, "Intelligence Ethics." See also John W. Lango, "Intelligence about Noncombatants: The Ethics of Intelligence and the Just War Principle of Noncombatant Immunity," *International Journal of Intelligence Ethics* 2, no. 1 (Spring 2011), pp. 50–76.

[32] Tony Pfaff and Jeffrey R. Tiel, "The Ethics of Espionage," *Journal of Military Ethics* 3, no. 1 (2004), pp. 1–15; Dallas J. Gingles, "'Dirty Hands': Guilt and Regret in Moral Reasoning," *Studies in Christian Ethics* 36, no. 1 (2023): 107–122.

[33] Saeed Shah, "CIA's Fake Vaccination Programme Criticised by Médecins sans Frontières," *Guardian*, July 14, 2011, www.theguardian.com/world/2011/jul/14/cia-fake-vaccination-medecins-frontieres.

[34] Olson, *Fair Play*; Olson, "Spycraft and Soulcraft on the Front Lines of History"; and Mark Phythian, *Understanding the Intelligence Cycle* (New York: Routledge, 2013), p. 87

[35] In JIT debates, the discrimination principle is usually applied to privacy in SIGINT, where it serves a moderating role in the collection and assessment of digital data. See Anita L. Allen, "The Virtuous Spy: Privacy as an Ethical Limit," *Monist* 91, no. 1 (January 2008), pp. 3–22; Michael Falgoust and Brian Roux, "Ethics for Intelligence Officers," in Galliott and Reed, *Ethics and the Future of Spying*, pp. 219–32; Nicolas Tavaglione, "A Dilemma for Indiscriminate Pre-Emptive Spying," in Galliott and Reed, *Ethics and the Future of Spying*, pp. 120–31; and Miller, "Rethinking the Just Intelligence Theory of National Security Intelligence Collection and Analysis."

[36] Omand and Phythian, *Principled Spying*, p. 227.

[37] Seumas Miller, "Espionage: Ends and Means," in Henschke et al., *Ethics of National Security Intelligence Institutions*, pp. 89–104, at p. 101; Seumas Miller, "National Security Intelligence Activity: The Principles of Discrimination, Necessity, and Proportionality," in Henschke et al., *Ethics of National Security Intelligence Institutions*, pp. 72–86; Adam Henschke and Patrick F. Walsh, "Institutionalising Intelligence Ethics: The Case for a Just Intelligence Theory," in Henschke et al., *Ethics of National Security Intelligence Institutions: Theory and Applications*, pp. 1–30, at pp. 4–5; Omand and Phythian, *Principled Spying*, ch. 3, p. 230; Phythian, "Intelligence and the Liberal Conscience"; and Raphael Bitton, "*The Legitimacy of Spying Among Nations*," *American University International Law Review* 29, no. 5 (2014): 1009–1070.

[38] Henschke and Walsh, "Institutionalising Intelligence Ethics," p. 3; and Miller, "Espionage," p. 101.

[39] Olson, "Spycraft and Soulcraft on the Front Lines of History."

[40] Gendron, "Just War, Just Intelligence," p. 413.

[41] John Magruder, "Report by the Director, Strategic Services Unit, Department of War (Magruder) to the Assistant Secretary of War for Air (Lovett)," Washington, undated, in *Foreign Relations of the United States, 1945–1950, Emergence of the Intelligence Establishment*, Document 34 (Office of the Historian, U.S. Department of State), p. 78, history.state.gov/historicaldocuments/frus1945-50Intel/d34.

[42] Lubin, "Liberty to Spy"; and Judith N. Shklar, *Legalism: Law, Morals, and Political Trials* (Cambridge, Mass.: Harvard University Press: 1986).

[43] Fabre, *Spying through a Glass Darkly*, pp. 3–4.

[44] Ibid., p. 57.

[45] Ibid., pp. 3, 55.

[46] Ibid., p. 8.

[47] Ibid. For Fabre's anticipation of the twofold critique—excessive permissiveness or restrictiveness—and her response, grounded in the JIT criteria of necessity, effectiveness, and proportionality, see pp. 58–59.

[48] Ibid., p. 8. Importantly, Fabre recognizes the institutional challenge but does not address it. She notes that hers is "a book of applied moral and political philosophy" that does "not have much to say about the

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best way to institutionalize morally justified espionage practices." Available on pp. 8 and 9, respectively. It is the JIT theorists who take up that challenge.

[49] Reinhold Niebuhr, "Moral Man and Immoral Society: A Study in Ethics and Politics," in *Reinhold Niebuhr: Major Works on Religion and Politics*, ed. Elisabeth Sifton (New York: Library of America, 2015), pp. 139, 227; Christopher Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Perennial, 1993); and Philip G. Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (London: Rider, 2007).

[50] Niebuhr, "Moral Man and Immoral Society," p. 145.

[51] Ibid., p. 156.

[52] Browning, *Ordinary Men*, pp. 188, 141–42.

[53] Ibid., p. 188.

[54] Franz Stangl, quoted in Gitta Sereny, *Into That Darkness: An Examination of Conscience* (London: Pimlico Books, 1995), p. 364.

[55] Ibid., epilogue.

[56] Adolf Eichmann, quoted in Arendt, *Eichmann in Jerusalem*, p. 32. See also ibid.

[57] Arendt, *Eichmann in Jerusalem*, p. 276.

[58] Adolf Eichmann, quoted in ibid., p. 237.

[59] While Stangl was, in fact, Austrian, he became a compatriot after the Anschluss.

[60] Richard Bassett, *Hitler's Spy Chief: The Wilhelm Canaris Mystery* (London: Cassell, 2005).

[61] Hans Oster, quoted in Ferdinand Schlingensiepen, *Dietrich Bonhoeffer, 1906–1945: Martyr, Thinker, Man of Resistance* (London: T&T Clark, 2010), p. 219.

[62] Bassett, *Hitler's Spy Chief,* p. 143; and Mark Riebling, *Church of Spies: The Pope's Secret War against Hitler* (New York: Basic Books, 2015), p. 69.

[63] Schlingensiepen, *Dietrich Bonhoeffer, 1906–1945*, p. 241.

[64] Ruurd Veldhuis, *Realism versus Utopianism? Reinhold Niebuhr's Christian Realism and the Relevance of Utopian Thought for Social Ethics* (Assen, Netherlands: Van Gorcum, 1975), p. 48.

[65] John Brennan, "Intelligence in American Society" (roundtable discussion with John Brennan, September 15, 2015), Clements Center for National Security, University of Texas at Austin, p. 18, www.clementscenter.org/wp-content/uploads/ISP_Roundtable_Transcript.pdf.

[66] Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in *Immanuel Kant: Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge, U.K.: Cambridge University Press, 1996), pp. 317–318.

[67] Macnish, "Persons, Personhood and Proportionality," pp. 103–4.

[68] Raymond Aron, *Peace and War: A Theory of International Relations* (New York: Doubleday, 1966); Iain Atack, "Peace Studies and Social Change: The Role of Ethics and Human Agency," *Policy & Practice: A Development Education Review* 9 (Autumn 2009), pp. 39–51; Elise Boulding, *Cultures of Peace: The Hidden Side of History, Syracuse Studies on Peace and Conflict Resolution* (Syracuse, N.Y.: Syracuse University Press, 2000), pp. 2–3; Johan Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 6, no. 3 (1969), pp. 167–91; and Joseph E. Capizzi, "Just War and Judgment in *Fratelli Tutti*," in "Just War or Just Peace? The Future of Catholic Thinking on War and Peace," special issue, *Studies in Christian Ethics* 37, no. 3 (August 2024), pp. 471–83.

[69] Proponents of liberalism and constructivism in international relations often point to examples of peaceful cooperation—such as the EU—to argue that competition can be tamed. Yet this reasoning collapses under even minimal scrutiny. The EU has indeed contributed to relative peace in parts of Europe, but in historical terms its duration is short and its future uncertain. Moreover, even ostensibly friendly EU states compete vigorously when security or core interests are at stake. During the pandemic, for example, states prioritized procuring vaccines for their own populations at the expense of their "partners." Finally, the failure of economic cooperation (liberalism) and the export of Western values (constructivism) to integrate Russia into the West is beyond dispute.

[70] Miller, "Rethinking the Just Intelligence Theory of National Security Intelligence Collection and Analysis," p. 94. Whether they can remain allies depends on the intelligence collected. What if Germans were to learn that, hypothetically, the United States is working with Russia behind their back? Would that knowledge—or suspicion—not justify intelligence collection against a real or imagined ally? Reports indicated that the German foreign intelligence agency's spying on allies extended beyond cooperation with the NSA to include Poland, Austria, Denmark, Croatia, and even the Vatican. The United States has likewise spied on European partners. This reveals not only hypocrisy but also realism about international politics, underscoring the ethical complexity of intelligence in a competitive system where allies may share broad interests yet still clash over vital ones. Fabre condemns most espionage against allies for eroding trust. Her critique is morally and intellectually clear, but its implications are utterly impracticable. See Fabre, *Spying through a Glass Darkly*, pp. 69–70.

[71] Niebuhr, "Moral Man and Immoral Society," pp. 219–20.

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[72] Developing such an ethics is also of course important for the purposes of better safeguarding against abuse of the communities in which spies operate, but that concern remains outside the scope of this article.

Abstract: This article proposes a reframing of the ethics of human intelligence collection (HUMINT). Intelligence officers (IOs) engaged in HUMINT routinely transgress ordinary ethical norms: to serve their nation-state, they lie, manipulate, deceive, and instrumentalize others not only in professional settings ("doing HUMINT") but also in private life ("living HUMINT"). The currently dominant framework for HUMINT ethics, derived from the just war tradition, does not adequately address key challenges—particularly at the individual level. I therefore argue for a reframing grounded in the lived experience of HUMINT, aimed at real dilemmas faced by conscientious IOs. The proposal has two components: first, expanding the space for individual moral responsibility across all levels of intelligence decision-making; and second, emphasizing peace as a minimal common telos to guide ethical deliberation by both IOs and their agencies. The reframing, I conclude, can enhance the efficiency and accountability of intelligence agencies while providing IOs with a more robust framework to guide their actions.

Keywords: HUMINT ethics, intelligence officers, just intelligence theory, JIT, institutional ethics, espionage ethics, intelligence agency governance, ethics of peace, individual moral responsibility, ethics of statecraft

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