

Introduction: Probing the Limits of Ethical Espionage

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The downing of a Chinese spy balloon within U.S. territory in early 2023 is a graphic and crude reminder that espionage remains part and parcel of international relations. It is striking, therefore, that its academic study continues to be so sparse. The dearth is particularly striking in the philosophical literature. One would think that insofar as international espionage constitutes a paradigmatic breach of basic moral and political principles, such as honesty, loyalty, transparency, and trust, it would attract deep and sustained ethical scrutiny. This has not been the case. Admittedly, one can find remarkable academic analyses on the ethics of intelligence, broadly conceived; on some isolated aspects of international espionage (such as cybersecurity, mass surveillance, and so on); and on the normative criteria that ought to guide spies and spying on the ground. Less common are studies attempting to ground the morality of international espionage on a robust philosophical account of permissible actions and obligatory duties.¹

This is the task of Cécile Fabre's *Spying through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence*.² The book advances the most systematic and rigorous ethical framework to date to examine the subject matter of international espionage. The framework draws and expands on Fabre's prior philosophical work on just war theory, human rights, cosmopolitanism, and economic policy. And while its methodological approach is derived from analytic

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philosophy, the book displays an impressive command of empirical sources, including works of history, memoirs, and novels.

Fabre's analysis rests on two ethical foundations. The first is the claim that the most compelling justification for espionage, in whatever form it takes, is that its use will protect some fundamental interest of individuals. Espionage can only be justified if it protects individuals from violations of fundamental moral rights or risks thereof. What she means by "rights" is the possession and enjoyment of certain capabilities. The second foundation pertains to the question of who is liable to be the subject of espionage and why. On Fabre's account, legitimate targets of espionage make themselves liable to being spied upon by virtue of their contribution to the harm to be averted (although admittedly, there are cases where some individuals are spied upon as collateral damage). Espionage, then, is justifiable as a form of self-defense in the face of threats to fundamental rights, subject to constraints such as necessity, proportionality, and effectiveness.

Based on this framework, Fabre's book articulates a pro tanto permission and duty to spy. A political community is justified, even required, to spy on another if the latter launches an unjustified war of aggression against it, or if the intelligence that will thereby be collected is required to thwart unjust foreign policy. Espionage serves to assess the fighting capacity of the unjust aggressor, which will enable the victim state to tailor its defensive actions, or more generally to disclose the rights-undermining plans of rogue nations. *Unjustified* espionage may also be a just cause for *offensive* counterintelligence. Espionage, then, must be understood as a rights-defending action, which is justified provided it meets the constraints mentioned above, and provided no countervailing considerations come into play.

Once this groundwork is in place, the book sets out to explore the ethical stakes of a range of enduring and emerging issues in international espionage: economic espionage; the use of deception and treason in espionage operations; the tolls of recruiting human assets; the predicaments of choosing between technological and human means as tools of espionage; and the perils of mass surveillance, among others. Fabre's examination of these issues casts a novel light on many of them. For instance, she mounts a qualified defense of economic espionage and the use of deception, which tend to be outrightly rejected by governments (at least rhetorically) and scholars alike; and she even rehabilitates some forms of, and some grounds for, treason, which, we recall, deserves the greatest of condemnations in Dante's *Inferno*. The messy and almost always morally tenuous interactions between handlers and "their" (manipulated and coerced) spies also receive a dispassionate treatment in the book.

The contributions to this symposium—from Ross Bellaby, Ron Dudai, Alex Leveringhaus, Rhiannon Neilsen, and myself, with a response by Cécile Fabre—think through these and many other issues. They draw on the rich normative and conceptual framework of *Spying through a Glass Darkly* while at the same time raising concerns about its implications or probing its limits. Ross Bellaby provides a cautionary tale about economic espionage, arguing that while its use may be advocated on the basis of protecting fundamental rights, its ramifications cannot be plausibly contained in a way that is consistent with rights protection, giving us pause about its permissibility. Ron Dudai also tells a cautionary tale, this one about the recruitment of spies. Yes, it may be justifiable to encourage deception and treason to obtain intelligence in some restricted circumstances, but when we consider the matter in relation to the world of asymmetric conflicts between powerful states and rebellious nonstate actors, the ensuing harms may be so dire as to turn the moral assessment on its head. Alex Leveringhaus provides a final word of caution: Substituting technological for human intelligence would seem to be conclusively justified because the former spares human assets from the risk of potential reprisals. However, as in the case of precision weaponry in warfare, technology invites ever-increasing and more expansive forms of espionage, creating risks of its own. Rhiannon Neilsen thinks intelligence, and particularly cyber intelligence, should not be restricted to procuring secrets, which may not be able on its own to impede the violation of rights. Spies and traitors are justified not only in acquiring secrets (cyber espionage) but also in covertly manipulating or falsifying information (cyber manipulation) to prevent atrocities. Finally, in my own contribution, I contend that the use of facial recognition to obtain intelligence in scenarios of war raises some of the same concerns associated with the technology in ordinary circumstances, such as the erosion of privacy. But it also raises distinctive concerns regarding its deployment as a tool of warfare, which are critical to assessing its permissibility in these contexts.

This is just a small sample of the constellation of discussions that Fabre's book will undoubtedly initiate in the years to come.

NOTES

¹ Among the rare exceptions are David Omand and Mark Phythian, *Principled Spying: The Ethics of Secret Intelligence* (Oxford: Oxford University Press, 2018); Ross W. Bellaby, *The Ethics of Intelligence: A New Framework* (London: Routledge, 2014); and Darrell Cole, *Espionage and the Just War Tradition* (London: Routledge, 2015).

² Cécile Fabre, *Spying through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence* (Oxford: Oxford University Press, 2022).