

Intelligence in Public Media

Spying Through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence

Cécile Fabre (Oxford University Press, 2022), 272 pages.

Reviewed by Joseph Gartin

French philosopher and lecturer at All Souls College (Oxford University) Cécile Fabre begins her superb treatment of the ethics of espionage and counterintelligence with a pair of biblical references. The first is her title, drawn from St. Paul (“For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known.” (*I Cor.* 13:12) and a brief recapitulation of Moses sending members of the Twelve Tribes of Israel to “go and spy the land” of Canaan to decide whether it was ripe for the taking (*Num.* 13:17ff.) Within the next few opening paragraphs, she has touched on Kaspersky Lab, Bletchley Park, John le Carré, WikiLeaks, and more. If the introduction seems discordant, there is a method.

Spying and its necessary companion counterintelligence are millennia old. The Israelites’ reconnaissance mission (to which we will return) is but one ancient example, and espionage remains an essential element of statecraft and, increasingly, private industry. If the profession is old, the literature is comparatively young, born in the aftermath of the great wars of the last century and the long wars of this one. Today, nearly 70 years of *Studies in Intelligence* is but one shelf in a groaning library of books and journals on intelligence, which Fabre estimates runs into the dozens of thousands. Yet only a small fraction of that corpus focuses specifically on ethics. Fabre does not offer much of an explanation for this disparity, but she rightly observes it is surprising given the connection between intelligence and war, for which there is a sizable body of literature on ethical conduct from St. Augustine to the present day.

Spying Through a Glass Darkly seeks to fill in at least some of the vacuum. From the outset, Fabre approaches the subject practically: “This is a book of applied moral and political philosophy.” (8) She sets out to defend two important if contested claims:

First, espionage and counter-intelligence ... are morally justified as a means, but only as a means, to thwart violations of fundamental risks or risks thereof, in the context of foreign policy writ large,

subject to meeting the requirements of necessity, effectiveness, and proportionality. Second, more strongly, intelligence activities which are justified on those grounds and under those conditions are morally mandatory. (3)

Only a few dozen pages in, the intelligence practitioner might be tempted to declare victory and stop reading, given that Fabre’s defense would seem to align well with the views of many. Fabre has little patience for arguments that the government has no right to secrecy, noting that preventing both appropriation and disclosure is necessary for security and that secrecy is therefore an appeal to the government’s responsibility to provide that security. (39) Figures like Julian Assange of WikiLeaks infamy might argue for full disclosure by a government, but Fabre wryly observes that he would have simultaneously claimed for himself the right to withhold information about the security arrangements made for him while ensconced in the Ecuadorian Embassy in London. (53) The reader should press on, however, because the ethical landscape becomes more fraught as Fabre explores a series of dilemmas threaded together over the next 250 pages that comprise the key elements of intelligence: “deception, treason, manipulation, exploitation, blackmail, eavesdropping, computer hacking, and mass surveillance.” (3)

Not every conclusion Fabre asserts will find agreement in the hallways of spy agencies, US or otherwise, but her treatment of the issues should provoke reflection. From the outset, the practitioner confronts the principle of universality: “We cannot claim a fundamental right that we deny to others. Thus, we owe a duty of protection not just to those with whom we stand in a special relationship, but to all human beings wherever they reside in the world. (106) Moreover, intelligence is contingent, a relationship between the keeper and seeker of information, not a fixed thing. (45)

Consider that the Canaanites’ land, settlements, armies, herds, and soon “were there for all to see.” (38)

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None of it was secret. And yet, if they knew the Israelites were considering whether to attack them, in a violation of their fundamental right to live unmolested, wouldn't they then have regarded such information as secret? Likewise, wouldn't they have had the right to thwart the Israelites' unjust intentions? For intelligence officers everywhere, universality of fundamental rights and contingency seem to collide with the us-versus-them nature of intelligence—collector versus target, our laws versus their laws, our secrets versus their secrets—and the state's claim of authority over what to make secret and for how long.

Fabre explores contractarian arguments (Kant, Locke, Hobbes, Rawls, et al.) for and against espionage but leans heavily on the “dirty-hands” justification: one can act wrongly in one dimension but may nevertheless act rightly *all things considered*. (19) The spy does not face a moral conflict between two incompatible options in that “he must do wrong in order to do right or in order that right should prevail.” (19) Yet this is not a license for unfettered action. Read another person's mail? Yes, you might answer quickly. Torture a child to extract information from her parent? Well, no. Quite apart from the visceral objection the latter evokes while the former does not, reading someone's mail can be justified all things considered as defensive harm, while torturing a child—who should not be subject to harm even if her parent conceals a secret—cannot so be justified.

Fabre's defense of political secrets (i.e., the secrets of political communities, like the state) and political espionage (stealing those secrets) is relatively straightforward, although seemingly obvious claims “often prove harder to justify than we might think.” (37) Secrecy protects individual goods (e.g., the right to bodily autonomy) and collective goods (e.g., the services of a political community), and in reverse a party may seek such information to protect individual or collective goods. Fabre warns, though, that the “more expansive one's conception of security—beyond the strictly military and toward the more plausible construal of security as encompassing a community's critical infrastructure—the greater the difficulty.” (44) On balance, she finds political communities “are sometimes morally justified, indeed are under a duty, to engage in intelligence activities against other political communities as a means to conduct a rights-respecting foreign policy.” (71)

She casts a more skeptical eye on economic espionage, notwithstanding her concession that a presumption in favor of capitalism as a political-economic system “tilts the balance in favour of intelligence property rights in general, and of the right to secrecy over proprietary information in particular.” (77) States have a right to engage in economic espionage, and they are under a duty to do so to protect fundamental rights, she asserts, yet neither of these permissions extends to a means for pursuing unjust foreign policy, nor do they justify harm to a third parties' fundamental rights. (85) Fabre offers a qualified defense of acquisitive and protective deception as sometimes justified and even necessary, in so far as it is a means to procure secret information about other foreign-policy actors (even allies) and to defend one's secrets from attempts to procure them. (112)

This justification for espionage and counterintelligence rests in no small measure on their being directed at foreign parties; in the case of treason, the betrayal is within. “Laws against treason are rooted in deep-seated moral revulsion about acts which, in the political realm, are paradigmatic examples of breaches of loyalty.” (114) Nonetheless, treason is a contested concept, because it “is not always clear what and who the alleged traitor is actually betraying: one person's traitor is more often than not another person's loyalist.” An asset recruited by an intelligence agency to commit treason to help the United States can make an argument that the act is permissible or even mandatory (say, to thwart his country's unjustified violation of the fundamental rights of Americans), but it is context sensitive. (125–35)

Recruitment and treason go hand in hand, and here Fabre carefully explores the elements of manipulation, exploitation, and coercion that enable spy agencies to recruit assets. She concludes (somewhat reluctantly, perhaps) that espionage and counterintelligence are dirty business, “yet, not necessarily to be condemned for it.” (173) In Fabre's view, cyberintelligence operations raise new issues of identification, attribution, and speed, but they are not so fundamentally different from human operations that they require a new set of ethical principles. (197)

In the final and least persuasive chapter, Fabre is skeptical about the kind of “mass surveillance” that has emerged in the past 20 years, initially to combat terrorism but now widely adapted for many purposes, including by states to monitor their own populations. Fabre argues that

relative to other forms of espionage, mass surveillance is more likely to fail on the grounds of privacy and fairness, given the mind-boggling amount of information that can be collected. Like others, she also points to the risks that algorithms used in such surveillance can reinforce existing discrimination: “The burden is likely to fall disproportionately on those who are already unfairly disadvantaged.” (221) Fabre does not adequately consider whether distinguishing—as many intelligence officers might—between bulk-data collection and mass surveillance would change her arguments, and she does not explore how the ethical dimensions of either might differ when applied to the distinct phases of data collection, analysis, production, and dissemination.

Nonetheless, *Spying Through a Glass Darkly* is an immensely important contribution to the intelligence literature: It contains no reflexive critiques but instead offers thoughtful interrogation of the ethics of intelligence that will enlighten and sometimes rankle. It certainly ought to find a place on bookshelves everywhere. After all, Fabre argues, the key to ethical decisionmaking in espionage and counterintelligence “lies in the proper vetting and ethical training of intelligence officers; in fostering constant awareness amongst citizens and officials of the dangers of a culture of excessive secrecy; and in the normatively directed institutional design of intelligence oversight.” (51–52)



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