

Fair Play: The Moral Dilemmas of Spying

Intelligence in Recent Public Literature

James M. Olson. Washington, DC: Potomac Books, 2006. 290 pages.

Reviewed by David Robarge

Not long before he embarked on his ill-fated espionage mission in 1775, Nathan Hale purportedly told a friend who thought spying was disgraceful that “Every kind of service necessary to the public good becomes honorable by being necessary.” Although many Americans may think that super-utilitarian calculation has always lain at the heart of the intelligence enterprise, former CIA counterintelligence officer James M. Olson shows in *Fair Play* that reality is much more complicated ethically when one gets down to cases. Even in the post-9/11 world, when the ends-justify-the-means argument seems more appealing than ever, there remain moral boundaries that intelligence professionals should never cross and many quandaries of conscience they will encounter well before approaching those red lines.

Practitioners, however will not get conclusive guidance from the great philosophers, theologians, and political thinkers. Those eminences from the Great Books canon—as quoted in Olson’s second chapter—run all over the moral map, from Machiavelli (“No good man will ever reproach another who endeavors to defend his country, whatever be his mode of doing so.”) and Cicero (“In times of war, the laws fall silent.”) to Kant (“Among these

forbidden means are...the appointment of subjects to act as spies...or even employing agents to spread false news.”) and Pope John Paul II (“...human activity cannot be judged morally good...simply because the subject’s intention is good...”). As Olson points out, “If you pick the right theologian or philosopher, you can defend almost any position....” (225)

What the intelligence officer is left with, then, is something akin to situation ethics, developed inductively case by case, and not—except in a few obvious extremes—a set of natural law principles. “The current situation of no clear guidelines is unfair and unwise,” Olson argues, because the intelligence services’ political masters expect them to protect America and will hold them to account if they do not, yet those same leaders are reluctant to explicitly authorize the services to stretch the moral limits. “‘Go do it,’ they are told, ‘but if after the fact we decide you went too far, we will have your heads.’ This is not a formula that encourages risk-taking...and the end result is that the overall effectiveness of the war on terror suffers.” (ix–x)

Olson investigates the conundrum in a novel and thought-provoking way. He has created 50 fictional scenarios “taken from the real world of espionage and covert action...[that] raise moral issues that US intelligence practitioners currently face or could conceivably face in the future.” He then asks “a wide range of ‘commentators’ to respond whether they consider the specified course of action morally acceptable or morally unacceptable. The commentators represent different political views, religions, professions, and ages.” (45) After each scenario, Olson quotes from a handful of the responses and then provides his own agnostic appreciation along with some historical or operational context. *Fair Play* is intended for readers interested in intelligence affairs but not versed in their history and terminology, so Olson’s backgrounders and often lengthy explanatory endnotes are helpful.

Olson generally has done well at the hard task of devising realistic and relevant scenarios. They fall into several categories: agent recruitment and handling, tradecraft and cover, covert action, counterintelligence, and—of course— counterterrorism. Some of the moral judgments are easy to make: not providing assets with child prostitutes or drugs when they demand them as the price for continued cooperation; not deploying a “Trojan Horse” device that would likely kill innocent victims when it disrupts technical systems in the target country; not authorizing a terrorist recruit to prove his worth to the group by killing people; not tricking a potential asset into believing his child is seriously ill but can be treated in exchange

for information; and not allowing a terrorist attack to occur in another country in order to protect a well-placed source who disclosed the plan. A few cases involve standard spycraft and raise issues of operational technique or political backlash rather than ethics, such as blackmailing a hostile service's officer into working as a double agent, fabricating evidence that compromises a terrorist, and recruiting sources at the United Nations.

Other scenarios are much more ambiguous, at least when the details are factored in. Should a case officer be allowed to seduce a potential source, or run a Romeo operation, if the payoff is crucial? Should proxy agents on vital infiltration missions be told ahead of time that everyone who preceded them has been caught or killed? Is it right to continue contact with a source who has provided very valuable intelligence but who deceived his case officer about his execrable human rights record? What about exposing an unwitting third party to the risk of being jailed for espionage by secretly using her apartment as a listening post against a key target? Other of Olson's scenarios split ethical hairs instead of depicting murky morality. Is there really a difference between false-flag operations in which a CIA officer *pretends* to work for an NGO in one case, and *is* an NGO employee in another? Or between falsifying an academic transcript and plagiarizing a dissertation to secure a source's assistance? And a couple plots are far-fetched and better suited for episodes of *24*: kidnapping or killing a renegade CIA officer who is helping a terrorist cell assassinate Agency officers; and having an agent infiltrate a terrorist group's CBW factory and contaminate it with anthrax.

Olson's purpose in using a 66-person "focus group" was to get a sense of the *vox populi* on intelligence morality because, he asserts, "no profession, particularly one that can hide behind a veil of secrecy, should police itself... The American people should have a voice in how US intelligence operates and what the moral limits are." (ix-x) To better hear that voice, however, he should have made his collection of commentators more representative. It is heavily weighted toward intelligence officers, academics and graduate students, and the military, who together comprise over two-thirds of the group. Intelligence veterans are needed for their insiders' knowledge, obviously, yet Olson claims that leaving moral choices up to them has contributed to "confusion, abuse, and cover-up." (ix) He leavens the mix with a handful of FBI and State Department officers, clergy, journalists, and non-USG bureaucrats, a teacher, a lawyer, a doctor, and a left-wing activist. Notably absent is anyone from business, labor, agriculture, or science and technology (except for one professor).

Olson also could have been clearer about his methodology. Did he vet all 50 scenarios with all commentators and then chose the best or most typical judgments, or did he randomly select a handful of respondents for each scenario, or did he choose particular people for particular cases—such as asking clergymen and journalists about the use of their respective professions for cover, or academics about professors as talent spotters? Some respondents could have been dispensed with. One former senior intelligence officer never got into the spirit of the proceedings and gave mostly yes or no answers. The animal rights activist (on kamikaze dolphins) and one journalism professor (on anything) made political pronouncements instead of addressing the scenarios.

These drawbacks notwithstanding, the responses collectively demonstrate that “one of the realities that makes this debate so damnably difficult is that there are good, conscientious, patriotic people on both sides of it.... With the exception of uncompromising civil libertarians on one end of the spectrum and equally uncompromising Rambo-types on the other, most people seem conflicted when analyzing these moral issues.” (225–26) To get the most out of the book, readers should follow Olson’s suggestion and reach an instinctive conclusion about each scenario before looking at the commentators’ opinions. After reviewing the pro and con arguments—many of them insightful and at times provocative—this reviewer changed his mind more than once, and often wound up seeing shades of gray in what seemed at first to be clear black-and-white pictures.

As Olson notes, there was a surprising lack of predictability in the answers, and individual respondents displayed apparent inconsistencies from one moral issue to another. A few surprises among the responses are worth mentioning. Most of the journalists would at least consider using journalistic cover and reporters as collectors. Career operations officers—perhaps reflecting the legacy of risk aversion from the mid-1970s through 2001—approached many scenarios more as lawyers than operators and (they were not alone in this) segued very quickly from ethics to efficacy. Most respondents were squeamish about torturing terrorists (including by proxy) unless many lives were at imminent risk, but few worried much about killing them, even if collateral damage was inflicted. By contrast, on the non-lethal subject of press placements, the commentators were adamantly opposed, even as a tactic in an international hearts-and-minds campaign to advance US counterterrorism policy.

Olson ultimately believes that if the United States and its allies are to win the war against terrorism, the American public and its leaders must work

through conflicts over the ethical issues that inhibit intelligence activity. Like the military, he contends, the US Intelligence Community needs clear rules of engagement that emerge from open and informed discussion of what constitutes tolerable behavior. Moral outrage, such as that ensuing from disclosures of NSA's domestic surveillance program and CIA's terrorist renditions and detentions, builds obstacles, rather than pathways, to consensus over those rules. Reading *Fair Play* is an essential step to the understanding that will underpin that consensus.

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