

SPYING – AN ETHICAL PROFESSION

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ABSTRACT

In this essay, I will discuss the ethics and morality of spying. I will examine the dilemmas facing governments who choose to cross moral boundaries for the sake of national security. In discussing the morality of spying I will justify spying from a consequentialist and utilitarian perspective. The spy-game stretches the moral boundaries and the end often justifies the means. An example of this dilemma would be torturing a suspect to save a large number of people. Events involving the assassination of Hamas leader Mahmoud al- Mabhouh made headlines worldwide and prompted this discussion. The question asked is how far can intelligence agencies stretch these boundaries?

KEYWORDS: Spying; consequentialist; utilitarian; morality; intelligence

The morality of spying has become a major controversy in recent times. Israeli spies are believed to have killed a Hamas leader (Mahmoud al-Mabhouh) in Dubai while using fake passports, using actual foreign identities, to carry out the assassination. Have they gone too far to achieve their goal? Were they justified in using passports belonging to foreign nationals and from countries that have friendly relations with Israel? Was this pushing the limit of friendships? Are the governments that criticise these actions merely being hypocritical and are in fact guilty of having done the same thing in the past? If the occasion arises, would those that criticise these actions use fake passports to prevent an act of terror against their people or country? Are we led to believe intelligence operatives/spies use their real identities when performing their duty? How far should one go to achieve results in the spy game? Political necessity may override any moral concerns. If the end result can be measured from of a utilitarian viewpoint, then maybe there can be some moral sell-off to achieve these ends. From a consequentialist perspective, Israel's assassination of a Hamas terror leader ought to be measured in regard to the costs. The benefits surely outweigh the costs. The fraudulent use of a passport is hardly a life or death issue whereas the actions of Mabhouh resulted in the death of innocent civilians within Israel.

Spies are either acting in the best interests of their country, or the interests of another country or for financial reward. There are of course those who are blackmailed into deceiving their own country for fear of being publicly or privately disgraced. Those spies most admired, highly regarded or ethically condoned for their actions are those that protect your country's interests and by proxy your individual interests.

It is questionable whether the public perception of spying, as a profession, is held in high esteem? How can a spy be a morally defensible job when it is their job to lie, deceive, cheat, hide their identity and purpose from everyone? Nevertheless, how

can the integrity of the individual be in doubt when they are in fact carrying out acts on behalf of a country's security and safety? This is the greater good.

I believe that spying is like any other job. The consequentialist would argue, within limits, that the acts and moral behaviour of the individual, in the process of performing his/her duty, are less important than the outcome. By its very nature, spying is a role where the spy, in the field, adopts a new persona. Absolute, irreproachable honesty and truthfulness in the performance of their duty would be absurd and not achieve results. A spy is one (if a written job description existed) who impersonates, lies and deceives others in order to gather information. It is a dirty job and is arguably a job that has to be done. Is the spy one who has less moral integrity than the next person, or is the spy able to rise above their personal and civilian moral identity and perform in a moral vacuum? Can a spy jump from a civilian role to spy role without being labelled hypocritical? Again, necessity and from a utilitarian perspective, this transformation does take place. It follows that for a person to believe it is necessary to do such things, they would also have a strong sense of national pride and belief in national interests. Isn't spying just another legitimate form of defence?

Can the spy wash their hands of any responsibility for how information is used? They are merely doing their job and because of the nature of spying all information may be valuable in one way or another. The spy does not always have the expertise or knowledge of how valuable the information they pass on really is. This ought to free them from any blame or guilt. A pre-emptive bombing of a nuclear bomb-making factory could save many innocent lives had the bomb been manufactured and used against civilians. It is a case of bomb or be bombed. If your bomb was intended to be used on a civilian population, my acts would be excusable. In this case the spy who discovered the information ought to be congratulated although some lives would be lost if the factory or facility housing the bomb is destroyed. This is the utilitarian view of maximising benefits and minimising costs. If anyone is to be held responsible for a negative outcome, then it should be the superiors who make use of the information passed to them and who possibly use excessive force that results in a disproportionate response. On balance there must be a weighed response, otherwise there is a moral shortfall in the act of pre-emptive strikes.

Rawls, in Cohen (2004), talks about 'reflective equilibrium,' which is like a stop, think, act process- and more than likely resulting in a moral compromise (p. 63). Without acknowledging this process, it is possible that a less considered action may result in greater harm than was necessary. Hinman (2008), in his book *Ethics*, argues, "Unless we are able to compromise in at least some of these cases, our common life would grind to a halt" (p. 348). On some occasions, there may be a factual uncertainty as to how we anticipate the results of our actions (p. 348). It is almost impossible to predict the outcome of our actions. Hinman (2008) further asserts that at times decisions or judgement calls have to be made immediately and there will inevitably be some compromise (p. 348). Only hindsight is conclusive proof of something being absolutely right or wrong.

Despite the negative image of spies and spying, there is a need for them. Regardless of their morals they are a necessary evil. Their actions and morals seem to oscillate from one end of the moral spectrum to the other. Their dirty actions, it seems, are vital for us living in a free society. At the core of their actions is a moral intent that shines brightly on the civilian population. It may not appear obvious, but nearly

all acts carried out by spies for their country have a roll-on effect to those in everyday life. Their presence is hardly noticed, but their absence may be noticed. Le Carré, the author of *The Spy Who Came in from the Cold* asks: “What do you think spies are: priests, saints, and martyrs?” Alec Leamas, the protagonist of the book, famously asked: “They’re a squalid procession of vain fools, traitors too, yes; pansies, sadists and drunkards, people who play cowboys and Indians to brighten their rotten lives,” but whose efforts are nonetheless vital for the “safety of ordinary, crummy people like you and me” (as cited in Olson, 2006, online).

It seems that irrespective of what we think spies are, they are nevertheless a necessary tool in protecting us and our country’s interests from harm. They are both a necessary evil, by nature of their work, yet a political necessity whereby their actions, in most cases, ought to be sanctioned. It may be that spying for any other purpose, besides for a country’s good, is regarded as unsavoury, i.e. listening in to a private conversation among friends or family. Private acts of spying are regarded as despicable and morally wrong. For example, spying on workers or family members seems to carry a stigma separate from spying for one’s country. The thought of eavesdropping or snooping are distasteful, whereas doing the same thing for your country is acceptable. Private acts of spying may make us feel a personal discomfort, whereas in public matters the distance provides a sort of emotional barrier. We can, and do, distance ourselves from the acts of public spying. Besides, spying for one’s country is sanctioned – even before the results are known, whereby spying on friends, family or workers is mostly despised irrespective of results. Public privacy is treasured. Recordings of a conversation are only admissible in evidence if certain guidelines are followed – no matter how incriminating it is.

Spying for our country is the dirty side of our government’s duty and goal in protecting us. It can be seen as an invisible program that the public never question, but know that it is carried out to create a safer and better world. We don’t necessarily see or know what happens behind closed doors, but if made aware of these actions would most likely agree. It is not a profession whose existence is denied by governments – although their actions are often denied to protect their agents or other people. The Hague Convention acknowledges the existence and validates the acts of spies. Article 24 says, “The secret agent, which is not prohibited by either written or customary international law...” ([p.561] Article 46 - Spies).

The act of spying may prevent a future catastrophe. The 9/11 tragedy could have been prevented had the US intelligence agencies listened and acted upon the information passed to them from various overseas intelligence agencies. There was adequate information that something was brewing and that an attack on US soil was imminent. As early as 1999 M16 had information suggesting Al Qaeda were planning to use aircraft to attack the US. Any question of whether spying is moral or not would certainly be quashed if it had prevented the 9/11 disaster. In hindsight the importance of listening to foreign intelligence became obvious. No one would have denounced the ethics of spying if it had prevented this attack (History Commons, *CIA Library – open content project*. Retrieved 10 June, 2010).

Spies must cross the line and break certain laws if they are to effectively perform their duty, justifiably so if by crossing the line they save lives. The Israeli spy agency Mossad recently hit the headlines across the world when they were rumoured to have used British, Australian and other country’s passports in the killing of undisputed

terrorist – Mahmoud al-Mabhouh. Alan Dershowitz, in his March 12 article in the Australian newspaper made mileage of the fact that any good intelligence agency used forged or stolen passports. The opposition deputy leader and shadow minister for foreign affairs, Julie Bishop, in an interview on camera with Barry Cassidy from Fairfax media, confirmed that Australia has been guilty of using forged passports. Cassidy (2010) argued, and I believe, quite rightly confirmed, "It would be naive to think that Israel is the only country in the world that has used forged passports, including Australian passports, for security operations." Cassidy asked, "What, we do?"

Bishop replied, "Yes." The Australian government neither confirm nor deny this, but talk about a long standing convention on discussing the actions of its intelligence agency. Whilst the government accused Bishop of breaching national security, Dylan Welch (2010) from The Age newspaper reports that, "sources within the intelligence community have confirmed she [Julie Bishop] merely made public an inconvenient truth." The government said that the convention of not commenting had been breached and that it was contrary to Australia's national security interests (online). It seems from these comments that it is not a moral issue at all, but an issue of national security.

If there is a moral issue, it is to do with breaching a convention of silence in these matters. The morality of using fake passports is not questionable; but getting found out, or talking about it, seems to be the issue. The subsequent dismissal of an Israel diplomat would, it seems, be a mere formality. For those who see the misuse of passports as insignificant and less important an issue, then this course of action may pass for a reprimand of sorts. Hypocrisy is expressed by the publicity and outcry of shock and horror by the government that fake Australian passports were used. Such an outcry makes a mockery of the fact we are guilty of the same actions – just haven't openly acknowledged it or been caught out. The condemnation of Mossad for using passports belonging to other nationals smacks of hypocrisy. After all, isn't spying a just another legitimate tool we use in our defence.

Dershowitz makes the point that no country that uses fake passports has the moral authority to complain. To prove his point he refers to a meeting with John Howard shortly after the Bali bombings. Dershowitz (2010) was writing a book on pre-emption and asked Howard whether he would have authorised a pre-emptive attack on the terrorist who killed Australian citizens, if such an attack would have saved their lives. His response was that Australia would have done anything it could to prevent these terrorist attacks. Anything, I guess, except misusing passports. It should be assumed that the use of forged or stolen passports to prevent the Bali massacre or the London subway attacks would have been condoned. Large scale massacres such as these allows for governments to make greater exceptions to the rules and leave the moral issue lacking in conviction (p. 14).

In his book titled *"Fair Play,"* a former CIA counter-intelligence officer James M. Olson (2010) talks about Nathan Hale, who was considered one of America's first spies. Just prior to Hale's final mission in 1775, he told a friend who thought that spying was disgraceful that "Every kind of service necessary to the public good becomes honourable by being necessary." It would seem that the moral issue of spying again falls into that category of being a utilitarian calculation (online). It is not surprising that after 9/11 the ends-justify-the-means argument seemed more appealing. Moral boundaries were stretched. Olson talks about "moral boundaries that intelligence

professionals should never cross and many quandaries of conscience they will encounter well before approaching those red lines” (online). Even in light of 9/11 when the unthinkable happened, Olson still sees limits or moral boundaries. It would seem that there is a bottom line morality, that no matter what the circumstances are, a spy must not cross.

According to Olson (2010), in chapter two of *Fair Play*, the moral dilemma as to whether spying is an ethical profession is up in the air and stretches from one end of the scale to the other. He quotes some of the great thinkers who seem to rebound off a moral high to a moral low. He says we will not get any sure guidance from any of these great thinkers, as they:

... run all over the moral map, from Machiavelli (“No good man will ever reproach another who endeavours 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 ...” (p. 225)

Spies are expected by their superiors, in unwritten terms, to stretch the moral boundaries, but according to Olson, if they go too far their superiors will say, “We will have your heads” (Olson, 2010, p. ix-x). There are limitations as to how far a spy can go to prove his effectiveness.

Olson (2010) lists numerous cases where moral judgements are easy to make, such as offering child prostitutes to those who cooperate; not asking a recruit to prove his loyalty by killing people; not resorting to trickery by having someone believe his child is seriously ill, but can be treated in exchange for information; or safeguarding an operative by allowing a terrorist attack to take occur in another country. He separates ethical issues from standard “spy craft.” He says that things such as blackmailing someone into working as a double agent or fabricating evidence that compromises a terrorist or recruiting from the United Nations will cause a “political backlash” and are more or less justified as spy craft techniques (online). He justifies these acts on the understanding that these are a necessary tool of the trade. They may overstep the moral boundary in public life, but in the realm of spying are acceptable techniques. It seems the boundaries of what is morally acceptable and unacceptable are blurred when performing your duty. There are cases when the moral issue is not so clear cut, for example, using a third party to accomplish your task. This is where it becomes a little blurry – as in the case of the fake Israeli passport fiasco.

I believe Olson sums up the ethical dilemmas facing an intelligence officer. He sees the options in the light of situation ethics, whereby answers ought to be considered case by case. He does admit to certain cases falling within natural law principles. I suppose these to be universal laws that are common in all countries and seen as fair and legally binding. In today’s climate of extremism this may not be the case and what is natural to one culture may be totally disregarded by another, although the idea of natural law principles is a sound basis or moral platform – somewhat like a safety net where we find support for our moral principles.

REFERENCES

- Cassidy, B. (2010). Bishop's spy gaffe exposes intelligence 'convention'. *ABC – The Drum - Online*. 10 June 2010. Retrieved from <http://www.abc.net.au/news/stories/2010/05/26/2910073.htm>
- Cohen, S. (2004). *The nature of moral reasoning*. Melbourne: Oxford University Press.
- Dershowitz, A. (12 March 2010). Hold the front page, spies faked a passport. *The Weekend Australian - Commentary*. p.14.
- Hinman, L.M. (2008). *Ethics – A pluralistic approach to moral theory*. 4th ed. Thomson Wadsworth, California, U.S.A.
- History commons, foreign intelligence agency attack warnings. *CIA Library - Open Content Project*. 10 June 2010. Retrieved from http://www.historycommons.org/timeline.jsp?timeline=complete_911_timeline&warning_signs:_specific_cases=foreignIntelligence
- Le Carre, J. (1963). *The spy who came in from the cold*. Gollancz, London.
- Olson, J.M. (2006). *Fair play: The moral dilemmas of spying*. *Intelligence in Recent Public Literature*, Potomac Books, Reviewed by David Robarge Online. 8 June 2010. Retrieved from ps://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol51no1/index.html
- Protocol additional to the Geneva conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). 8 June 1977. Retrieved from <http://www.icrc.org/ihl.nsf/COM/470-750056?OpenDocument>
- Roberts, A. (6-7 March 2010). Israel victim of double standards after slaying. *The Weekend Australian – Commentary*. p.23.
- Welch, D. (2010). Australia part of fake passport swapping club. *Sydney Morning Herald. Online*. 26 May 2010. Retrieved from <http://www.smh.com.au/national/australia-part-of-fake-passport-swapping-club-20100526-webm.html>

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David Holmes is an English language teacher in Nepal. Starting his career as a policeman in Wellington, New Zealand, he moved into the C.I.B (Criminal Investigation Branch) in Auckland where he worked in the fraud squad and later in the burglaries squad. In his late teens he then moved to Australia and at the age of 40 he enrolled at James Cook University, Cairns Campus, graduating with a Bachelor's Degree in English literature, journalism and some philosophy subjects. In 2004, he gained his TEFL Certificate from ITTO in Guadalajara, Mexico. This enabled him to travel the world teaching English as a second language; in such places as Mexico, Canada, Turkey, Switzerland, Oman, UAE, China, Kuwait, Hong Kong and now Beni, Nepal (with my Nepali wife "Mero Sita") where he prepares students for the IELTS exam and teaches general English.