

**HOW CAN HUMAN INTELLIGENCE COLLECTION BE MORALLY JUSTIFIED?**

By

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## **Abstract**

This paper is an exploration of the ethics of espionage, specifically as it pertains to the human dimension. In it, I discuss the ethical aspects of some specific cases and questions about which moral theory we should use to evaluate and guide human intelligence (HUMINT) collection operations.

The topic will be explored through three major sections. The first section concerns some initial philosophical considerations and questions of the self. The second section is a presentation and analysis of three hypothetical case studies from the field. The final section is a much broader look at the socio-political considerations that are relevant to HUMINT collection.

It is my contention that justifying cases of HUMINT collection outside of a utilitarian construct is a challenge. While *most* HUMINT operations are best justified by utilitarian moral theories, justifying *all* HUMINT operations in terms of a utilitarian construct creates the potential risk of justifying acts that are so morally egregious that they should never be committed regardless of the potentially positive consequences.

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Espionage has existed since ancient times. Specifically, human espionage has existed as long as there has been conflict between human beings. It is one of the oldest professions in existence. Today, due to the advancement of modern technologies, spying can take many different forms and characteristics, but passing information between two individual human beings continues to persist. Lying, deception, and manipulation are tools used by spies, or human intelligence (HUMINT) collectors, for the purpose of obtaining information that can be processed and analyzed to the point that it can serve as valuable intelligence for intelligence customers. Generally, this intelligence is utilized by customers for the purpose of decision-making, and at the highest ends of government, decision-making in terms of shaping foreign policy and national security objectives. For some perspective, it is widely held that both Russia and China have more clandestine intelligence operatives inside the United States now, in the second decade of the twenty-first century, than at the height of the Cold War (Crumpton, 4).

But how can a nation ask its countrymen and women to lie, deceive, and manipulate foreign nationals to commit espionage against their respective country for the sake of foreign policy and national security? What concerns does this raise with regard to their sense of self when we ask such actions of our fellow countrymen and women; and can we justify the potentially questionable actions of the foreign nationals we recruit? More broadly, what sort of moral theory can we use to justify cases of human intelligence collection? Questions such as these will be the focus of this investigation. This paper will be an exploration of the ethics of espionage, specifically as it pertains to the human dimension.

This paper is broken down into three major sections. The first section will deal with initial ethical considerations of human intelligence collection. What sorts of moral theories are applicable or not applicable to such cases and do such theories justify *all* cases of human intelligence collection? Additionally, questions of the self; for example, integrity, loyalty, self-respect, guilt, and reluctance are weighed. How do these questions raise concern for the psychological profile and dispositions of our intelligence collectors? How do we ensure we are properly managing our collectors' moral character? The second section is a presentation and analysis of three hypothetical case studies designed to serve as examples from the field and to further elucidate some of the major questions of concern. The final section of this paper is a much broader look at the socio-political considerations of human intelligence collection. Here questions of decision-making, responsibility, complicity, dirty hands, and moral culture are examined. Who is complicit/responsible for such operations? Who should determine when to authorize an operation and why should it be that individual or group of individuals? How should we feel about it?

It is my contention that justifying cases of HUMINT collection outside of a utilitarian construct is a challenge. While *most* HUMINT operations are best justified by utilitarian moral theories, justifying *all* HUMINT operations in terms of a utilitarian construct creates the potential risk of justifying acts that are so morally egregious that they should never be committed regardless of the potentially positive consequences.

## **Section I - Initial Philosophical Considerations**

How does one evaluate the actions of human intelligence collectors and the spies which they recruit in terms of whether their respective actions are ethical? One can apply a number of different moral/ethical theories to their actions for evaluation and the results might vary across the spectrum of good and bad. For my purposes here, I focus primarily on consequentialism and deontological theory. Let's start with a deontological theory first.

Deontological theory, and more specifically for example, Kantianism, can be characterized by its strict adherence to duty or obligations. Such theories are absolute in their evaluation of actions because they install a very stiff standard for determining whether actions are morally acceptable or not. Where context, circumstances, and states of affairs are up for consideration in a theory like consequentialism, Kantianism downplays the importance of the consequences. The theory holds that some types of actions are wrong no matter what the consequences. Furthermore, for Kant, all actions should be taken in accordance with some fundamental principle or maxim. This fundamental principle or maxim is what determines whether or not an action is moral or immoral. According to such a theory, a morally good person will always do his or her moral duty in accordance with said fundamental principle or maxim, regardless of the consequences. Doing one's duty might not produce the most good for the most people; it might not even produce good for the individual performing the action, but it will make the acting agent a moral person.

Kant's most notable contribution to the field of ethics is his famous categorical imperative. One key formulation of the categorical imperative, the "universal law



formulation,” determines whether or not a fundamental principle or maxim is justified: “act only according to that maxim through which you can at the same time will that it become a universal law (Kant, 34).” This formulation asks us to imagine the world in which the maxim is adopted by all of humanity. For example, consider a maxim: do not lie. Then consider a world where that maxim is universally adopted by all members of the human race. What kind of world would that be? Well, it might be an honest and transparent world. By contrast however, consider a maxim such as: do not tell the truth. I don’t think it is unreasonable to assume that such a maxim would not be adopted. A world where everyone is a liar would be an unbearable world to live in. But, what if a murderer comes to my door stating they are looking for my sibling to murder them? According the categorical imperative, the morally right action would be to tell the murderer where my sibling is. Lying to the murderer and deceiving them would be morally wrong – even though my sibling might survive the murderer’s pursuit.

Another formulation of the categorical imperative, the “humanity formulation” suggests that one should “act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means (Kant, 41).” As Kant argues, this seems to capture the truth in the “Golden Rule” – treat others the way you would like to be treated. Again, roughly speaking, the humanity formulation tells us to treat people with dignity, respect, honesty, and integrity. According to this formulation it would be morally wrong to lie, deceive, and manipulate others to achieve one’s own ends or the ends of others.

Kant’s absolute theory of morality may be appealing in many contexts, but, at least for those of us who think some intelligence operations are morally permissible, it is

hard to see how it can help us evaluate human intelligence collection operations. Intelligence by definition, is whole-heartedly dependent on its ability to deceive and manipulate in order to be successful. HUMINT as a field would not be able to exist if all the collectors followed Kant's categorical imperative. Operations would be impossible. A collector's ability to *ethically* deceive, manipulate, empathize, and build trust with others for the purpose of getting them to spy on their native country leaves no room for such deontological theories. The actions of collectors routinely violate the universal law formulation and the humanity formulation because things like lying, deception, and manipulation cannot be universally applied to the whole of humanity (well, they could, but with detrimental effects) and because it treats prospective targets of operations as a means to an end rather than an end in and of themselves. In order to understand cases of ethical human intelligence collection and in order to guide collectors in the field, we need to move past moral absolutist theories like Kant's. The field requires a more flexible theory of moral justification.

A more flexible theory that could potentially justify cases of human intelligence collection is consequentialism. Contra to Kantianism, consequentialism is less absolute in terms of a strict adherence to moral rules that govern action. Consequentialism holds that the only thing that is of absolute value in evaluating the rightness or wrongness of an action is the consequences of that action, not the action itself: "Consequentialism provides a very simple theory of the right: an act is morally right (or morally permissible if and only if it produces the best consequences (Kagan, 61)." But how does one know which consequences are "the best?" Like traditional consequentialists, I believe that an act which produces the best overall consequences (the most utility for the highest

number of people) should be considered the best, and therefore right action. But how does one define said utility? Consider the ethical theory of utilitarianism: the justification of a given action is determined only if it leads to the greatest total amount of utility. For utilitarianism, utility is defined as the good or wellbeing. So, if the consequences of an action produce the greatest amount of good or wellbeing for the greatest number of individuals, then that action has met the requirements to be considered right, or morally justified, in terms of the ethical theories of consequentialism and utilitarianism.

The structure of utilitarianism makes it a good fit for evaluating the actions of collectors and their sources. Life in general is complicated, hard, and nuanced. In my view, it is a mistake to apply a strict set of moral rules or principles to actions. For example, there are times, in normal, day-to-day life, when things like telling a lie can be justified. If my spouse asks me if she looks fat in a dress, I don't think I am morally required to say yes to that question, even though I might think that she does. Similarly, espionage is an inherently "grey" profession, where the lines of good and bad, right and wrong can become blurry. Collectors are trained to lie, deceive, and manipulate others and their sources for the greater good of their country. Yes, lying, deception, and the manipulation of others is most often considered wrong, however, when the consequences of such actions are good, as under a utilitarian theory, such actions can be justified.

I think most people would agree that in most countries, things like national security and foreign policy are important in terms of promoting happiness. So, if in order to better inform policy makers our collectors are asked, and even required, to lie, deceive, and manipulate foreign nationals, a utilitarian rational will support the claim that

ends justify the means. To further develop this point, let us now consider a couple different types of utilitarianism and their implications.

### *Act Utilitarianism*

Act utilitarianism, broadly, is the kind of utilitarianism we have been considering above. The rightness or wrongness of an action is dependent on the utility of said action, where the utility is defined as the level of good or wellbeing promoted by the consequences. Act utilitarianism considers moral/ethical questions on a case by case basis. As we will see, this can be contrasted with rule utilitarianism, which concerns moral/ethical questions in terms of setting a precedent for a given act which should be followed in the future.

By promoting the most good and wellbeing, act utilitarianism makes room for the justification of most cases of human intelligence collection. However, before we adopt act utilitarianism we must consider the implications that it has across the full spectrum of HUMINT cases. For one could certainly submit a case, similar to the “ticking time bomb thought experiment,” wherein morally egregious or despicable acts could be justified if they produced enough overall good or wellbeing. This topic is something that will be considered in more detail in the next couple sections of this paper.

### *Rule Utilitarianism*

As alluded to above, rule utilitarianism establishes a precedent for a given action in the form of a rule that should be adhered to in the future for actions to be considered right and just. For example, the color yellow at a stop light means slow down. For a rule utilitarian, always following the rule of slowing down when the light is yellow will *generally* lead to the best consequences and most good/wellbeing, than say, making a

“game time decision” whether to speed up or slow down every time the light turns yellow – something an act utilitarian would do. Rule utilitarian’s feel that following rules will generally lead to better overall consequences *most* of the time rather than making decisions about actions on a case-by-case basis, even though making decisions on a case-by-case basis might lead to more overall good and wellbeing in specific instances. Rule utilitarianism attempts to resolve the issue raised by the ticking time bomb thought experiment which plagues act utilitarianism.

But the rigidity of the rule utilitarianism is what precludes it from being a useful moral/ethical theory for evaluating cases of human intelligence collection. As discussed earlier, the realm of spying, much like life, is a challenging place for absolutes. It is complex and nuanced. Dealing with all different kinds of people from many different walks of life make it that way. One must be flexible, adaptable, and socially aware to operate in such circumstances. Strict ethical rules make it challenging to operate in such a manner. And while there is certainly value in having rules, applying them on a case-by-case basis makes more sense for the field.

As it stands, act utilitarianism currently provides the best rationalization for cases of human intelligence collection. It is a flexible enough theory that takes context into account when determining whether or not actions are justified. There are reservations, however, in terms of the kinds of acts act utilitarianism might justify for the greater good. Do the ends *really* justify the means?

Other ethical considerations with regard to cases of human intelligence collection concern questions of the self. How does one manage a profession of lying, deception, and manipulation and a normal life? How does interacting, sympathizing, and

empathizing with potentially morally questionable individuals for the sake of national security and foreign policy affect the collector's sense of self, integrity, and self-respect? What sort of psychological profile is required for such work and how does the work affect one's psyche? Let's take a closer look.

One of the biggest knocks against consequentialism and utilitarianism is that it requires some people to violate their personal integrity. For, if all that matters in an ethical case is the state of affairs that is produced from a given action, and the best state of affairs is the one that promotes the most good and wellbeing, then the action which produces such a state of affairs should be taken every time, regardless of the integrity or personal point of view of the acting agent. For example, imagine that I am a collector and that there is a source I am trying to recruit because he has information that would be extremely valuable to the defense of my country. The source however, will only meet me in a strip club and yet as an individual I am wholeheartedly against the idea of strip clubs because I feel they are demeaning and degrading to women. The concern then becomes: do I violate my personal integrity and attend the meetings with the source at the strip clubs for the greater good of my country? Or do I not attend the meetings and maintain my integrity thereby causing my country to suffer because we could not obtain the information. Moreover, I am therefore responsible for said suffering because I failed to act. This scenario raises important considerations with regard to individual responsibility and personal integrity – “a consideration involving the idea, as we might first and very simply put it, that each of us is specially responsible for what he does, rather than for what other people do. This is an idea closely connected with the value of integrity. It is often suspected that utilitarianism, at least in its direct forms,

makes integrity as a value more or less unintelligible (Williams, 99).” The demands of utilitarianism ask us to conduct ourselves in such a way as to produce the most good or happiness, and yet in doing so, it asks us to neglect our own personal projects or commitments that would produce *our* own individual good or happiness. This seems unreasonably demanding.

The concerns over personal integrity and alienation from one’s sense of self are very real and certainly applicable to cases of human intelligence collection. In responding to such worries, I think generally people would agree that if we can promote the most good for the most people - that is a good thing and we should try to do that whenever possible – especially when it comes to national security and foreign policy development, it is almost a must for policy makers. Having said that, however, questions of utilitarianism and integrity, specifically the integrity of the personal point of view, should be given due thought and consideration. For example, is it possible to hold a utilitarian stance over cases of human intelligence collection while also accounting for individual collector integrity, conscience, and self-respect? I don’t see why not.

Consider “sophisticated consequentialism” as described by philosopher Peter Railton: “A sophisticated consequentialist is someone who has a standing commitment to leading an objectively consequentialist life, but who need not set special stock in any particular form of decision making and therefore does not seek necessarily to lead a subjectively consequentialist life (Railton, 153).” Being a sophisticated consequentialist allows individuals to be generally concerned with the overall state of affairs, while also taking individual integrity into account. Being a sophisticated consequentialist helps us

avoid worries of alienation from our integrity, projects, and commitments while also promoting the best state of affairs.

Furthermore, from a practical perspective, there are measures in place whereby a collector has the ability to hand their source off to another collector should they be assigned elsewhere or the workload becomes too consuming. The source could simply be handed off to a collector who has no issues of personal integrity with the nefarious hobbies of the source. To be sure, candidates looking to become HUMINT collectors need to be honest with themselves and know going into the profession that they might have to deal with morally questionable individuals. Issues arise however, should the source require action so despicable or egregious that the integrity of *every* collector would be violated. Such operations then become a question of strategic, national policy too to be determined by decision-makers.

The questions of integrity raise even more concerns. Where do and should a collector's loyalties lie: loyalty to one's personal commitments and/or loyalty to one's job and country? Additionally, what about loyalty to the source? What sort of loyalty do they deserve considering sources can run the gamut of reasonable, decent, human beings to unreasonable, morally bankrupt individuals? In terms of self-respect, should the collector decide to act on a morally questionable source, should he or she feel some sense of reluctance towards the action? Some sense of guilt? Moral remainder?

Certainly, loyalty to one's country and a strong sense of integrity are screening criteria for becoming a human intelligence collector. Moreover, in some countries character, selfless service, professionalism, and honesty all play a role in the selection of HUMINT collectors. In the United States for example, the above traits are a



requirement for the majority of federal employees and especially so for those holding security clearances. Individuals who volunteer for such positions go into the profession knowing the level of self-sacrifice and selflessness required in serving one's country. Collectors in the most sensitive areas know the information they are collecting is of the utmost value to decision-makers and can be part of the reason their operations are so sensitive. Volunteers know that it is possible to be operating in morally ambiguous environments, but they continue on anyways for the sake of their country.

But should a necessity for feelings of reluctance, guilt, and moral remainder be something we consider in our selection and training of collectors? I would argue yes. The existence of moral conflict necessitates that in some situations, moral persons who seek to do the right thing will have their ethical purity violated. When this happens, agents are praised for doing what they must as morally upstanding persons, yet must also bear the moral cost. This triggers an appropriate moral emotion (De Wijze, 457). The implications of the absence of such moral emotions are two-fold: (1) Feelings of reluctance, guilt, and moral remainder indicate the existence of a moral value system. The lack of such a system raises major red flags in terms of questioning a collector's loyalty to his or country, which could have disastrous consequences. (2) Feelings of reluctance, guilt, and moral remainder can result from the violation of a collector's integrity and alienation or estrangement from one's commitments. But that can be a good thing! For, do we really want a morality without alienation, estrangement, or separation from one's commitments? If alienation from one's commitments didn't exist, then people would just do whatever they want. We want morality to tell us what we should do. Some alienation is good. It helps guide our actions (Railton, 162). Such

feelings should be considered normal but not to the affect that there are negative psychological repercussions.

The absence of things like moral character and empathy can indicate questionable psychological traits like sociopathy. Yes, we want our collectors to feign things like sympathy, empathy, loyalty, and trust but only as operational tools for achieving operational success. We don't actually want our collectors to be sociopaths, with questionable moral character, who lie, deceive, and manipulate everyone they meet. You can't trust people like that. And in a profession where collectors are expected to operate as a singleton in potentially dangerous, morally ambiguous environments that can be extremely sensitive to the reputation of nations and to the lives of individuals - one must be able to trust one's collectors. This makes the profiling and dispositions of those who volunteer and who are eventually selected for such operations extremely important. So important in fact, that some countries have designed their psychological testing and screening processes for HUMINT collector selection to specifically identify sociopaths and eliminate them from selection altogether.

In closing this section, our argument up this point leads us to the following tentative conclusions. First, deontological theories like Kant's cannot guide our thinking about espionage ethics because their absolutist views would rule out normal espionage activities that bring about great good. Second, act utilitarianism is an improvement over absolutist deontology and it helps us see why espionage activities that bring about great good are morally justified. But, act utilitarianism threatens to justify extreme acts that are intuitively morally heinous and that threaten the integrity of those who preform them. To avoid those results, I suggest that we adopt a sophisticated consequentialist view of

espionage ethics. In what follows I will further support these conclusions by examining concrete cases.

## **Section II – Case Studies**

### *Fabricating Academic Credentials*

Syed Arif Sadiq is a senior advisor to Pakistani President Ashfaq Yusuf. Sadiq has access to large quantities of classified documents in the office of the president, including secret reports of President Yusuf's meetings with foreign leaders. Sadiq has regular professional contact with Walter McHenry, the deputy chief of mission at the U.S. Embassy in Islamabad. Through McHenry, Sadiq meets CIA officer James Thurman. Sadiq and Thurman have sons who attend the same international high school in Islamabad. The two boys become friends and spend time together in each other's home. The parents become better acquainted at school functions for their sons and soon begin socializing together.

The Sadiqs' dream is to have their son Jamaat study at a top university in the United States. The problem is that Jamaat did not apply himself in high school and made poor grades. He also has a reputation for having a bad attitude and for getting into trouble. His SAT and TOEFL (Test of English as a Foreign Language) scores are excellent, but without grades and good recommendations his prospects for getting into a selective U.S. University are dim. Sadiq shares all of this with Thurman and asks for his advice.

Thurman believes he can recruit Sadiq as a CIA source in return for getting his son into the right U.S. university. The CIA has the capability of fabricating an impressive high school transcript for Jamaat and of forging glowing recommendations for him from teachers and administrators. In addition, the CIA can agree to secretly pay for Jamaat's schooling, since the cost of education at an elite private university in the U.S. would be beyond the family's means.

Sadiq wants his son to apply to Georgetown, Rice, Duke, Stanford, and Dartmouth.

Would it be morally acceptable for the CIA to fabricate academic credentials for Jamaat and to pay for his education in return for Sadiq's agreement to work for the CIA as a source inside the president's office (Olsen 154-155)?

From a deontological perspective, this case cannot be considered morally justified. The universal law formulation and the humanity formulation of the categorical imperative are both violated. For starters, it is hard to imagine that adopting a maxim of fabricating academic credentials would be a rational choice in a universalized world.

What sort of effect would this have on higher education if applications were being fabricated? Widespread fabrication of high school credentials would lead universities to no longer trust transcripts and letters of recommendation like the one in question. In such a world, the CIA's plan would never work. So, it would not be rational to try to get the source what he wants by fabricating the academic credentials in such a world.

Additionally, a theme across all the case studies presented, is our collectors' violating the humanity formulation by treating their sources as a means to an end rather than an end in and of themselves. In this instance, Sadiq is treated as a means to an end, rather than an end in and of himself. The only reason the collector has befriended Sadiq and empathized with his situation is to recruit him as a source inside the Pakistani president's office. This is not a real relationship built on dignity, respect, and the integrity of his source. Moreover, as it regards loyalty, while the argument could be made that the collector does retain loyalty to his source, the loyalty is only retained insofar as it allows the collector to achieve mission accomplishment. His true loyalties lie with the mission and any loyalties outside that are feigned in service of the mission. In essence, there is a double violation of the humanity formulation: fabricating the application disrespects the university and the deception of the source disrespects the source.

From a utilitarian perspective, this scenario is an example of the question of the means justifying the ends and of "necessary evil." In a moral dilemma, "the agent cannot avoid doing evil whatever he does." And in the case of a necessary evil, "though wrong doing is inescapable, there is rationally best course of action (Haksar, 333)." Such is the world our collector's live in. Our collector has two options: (1) help the

source fabricate academic credentials so his son gets into an American university and in doing so violate U.S. law, the institutional integrity of the university, and deny admittance to a student that would otherwise be deserving to attend; all in the name of information on the Pakistani president and American foreign policy/national security. Or, (2) do not help the source fabricate academic credentials for his son so as *not* to violate U.S. law, preserve the institutional integrity of the university, and enable the admittance of a worthy student to the university; however, the source does not agree to work for the collector and we lose information highly valuable to U.S. foreign policy development. Act utilitarian's only see one correct option here. However, there are drawbacks. You're damned if you do and you're damned if you don't. In fact, it could also be argued that each choice, depending on the point of view, was a necessary evil: evil that protected American laws or evil that failed to protect and inform the homeland.

To conclude, let's summarize roughly how the theories under consideration would respond to such a case. Deontic theory does not justify the acts in this case. Deontology would not allow us to utilize and manipulate people and academic institutions in such a manner. However, this is not without a cost: a morally absolute collector would not be able to acquire the intelligence needed. Act utilitarianism would say that the CIA should fabricate the academic credentials: use the source as a means to access information inside the Pakistani president's office. And lastly, sophisticated consequentialism would agree with act utilitarianism because one can recruit a source such as the one above without being a sociopath or having to violate the collector's individual conscience or integrity.

### *Prostitute for Terrorist*

The CIA has had a major intelligence success. It has recruited a penetration of an important al Qaeda cell in Hamburg, Germany. This new source, encrypted FZOBSTACLE, is providing the CIA with extremely valuable intelligence on terrorist activities and personnel, not only in Germany but also throughout Europe. His information has proven to be accurate and reliable. On the basis of FZOBSTACLE's reporting, two al Qaeda operatives have recently been arrested in Madrid. Also, thanks in large part to his intelligence, an al Qaeda terrorist attack against the U.S. Embassy in Stockholm was prevented.

At a secret meeting in a safehouse in Hamburg, FZOBSTACLE asks his CIA case officer to provide him with a prostitute. He says it would be dangerous for him to frequent the red-light districts in Hamburg, because he knows the German police patrol there heavily, and he is concerned about the risk of disease. FZOBSTACLE therefore asks the CIA to arrange a discreet rendezvous for him with a medically cleared call girl. He adds that if the CIA does not comply with his request he will break off contact, and the CIA will lose him as an intelligence source.

Would it be morally acceptable for the CIA to procure a prostitute for FZOBSTACLE (Olsen, 101)?

Based on discussions earlier and the context of the scenario at hand, it is pretty clear that the majority, if not all cases of human intelligence collection would be considered immoral under a deontological framework. Even if some cases did manage to somehow seep through the cracks, this instance in particular could not be considered moral because it violates the humanity formulation of the categorical imperative (in a number of ways actually). First, the case officer is treating the source as a means to an end, rather than an end in and of himself: the case officer is looking to achieve operational success through the source. Additionally, even the source is violating the humanity formulation by looking to procure a prostitute. Individuals who procure prostitutes are treating prostitutes as a means to an end, rather than an end in and of themselves. The case is flatly immoral under a deontological framework.

From a utilitarian perspective, this scenario could be considered a serious moral issue and the morally right course of action depends on contingent facts about what will

best promote utility. The question of where the money to pay for a prostitute is coming from is a major concern. Obviously, the CIA's budget is covered by the U.S. federal government fully supported by U.S. taxpayers. How would American taxpayers feel knowing that their well-earned money is being spent to pay for a prostitute? There have been real-world examples where similar cases required authorization from the President himself, and I tend to think rightly so.

Assuming that the purchase of the prostitute is authorized by the President, it is then made clear that the U.S. deems this specific instance justifiable, if not morally acceptable, and the President is willing to accept responsibility on behalf of the American people. The question of responsibility also raises farther questions with regard to personal integrity, insofar as threats to individual integrity depend on who is deemed the responsible agent. For example, if the dirty hands are to be pinned on the individual who actually procures the prostitute, assuming it's the collector his or herself, what concerns does this raise with regard to his or her personal integrity? I believe that most American citizens would be very concerned if their government employed collectors who helped procure prostitutes *and* who have no reluctance in doing so. If we view prostitution in a negative light, such a case could create a conflict between our collector's integrity and loyalty. Procuring a prostitute might go against our collector's personal integrity, commitments, and projects, and yet *not* procuring said prostitute would violate our collector's sense of loyalty to duty, mission, and country. Such an example is an interesting feature of the topic at hand and is applicable regardless of where complicity and dirty hands fall.

To conclude, let's summarize roughly how the theories under consideration would respond to such a case. Deontic theory does not justify the procuring of a prostitute. Act utilitarianism suggests that we should do whatever most maximizes utility. In this case, hire the prostitute for FZOBSTACLE because the information he is providing is preventing terror attacks throughout Europe. Consideration can be given to the individual who hires the prostitute (collector or not) and whether it violates his or her conscience or integrity, but this consideration will most likely be outweighed by the overall good and wellbeing produced. Sophisticated consequentialism asks us to focus more on what it would mean to have collectors with the kind of psychological profile or disposition towards the justification of such an act. They would certainly be good collectors because they would achieve operational success – terror attacks would be prevented, however, as was mentioned earlier, American citizens might have their reservations if they found out that prostitutes are being procured in their name. This is a utility cost that should be weighed. Having collectors who have no issues of integrity or conscience with such actions could be utility maximizing at the end of the day if the American citizens don't find out about the actions. Additionally, operational success can be achieved without concern over traits of sociopathy in the collectors.

#### *Child Prostitute*

There is a serious threat of war with North Korea. The North Koreans have massed troops on the border with South Korea and have engaged in increasingly belligerent rhetoric. They have at least ten nuclear warheads in their arsenal and have stockpiled 5,000 tons of chemical warfare agents. Last fall, the North Koreans successfully tested the latest version of their Taepo-Dong missile, which the CIA now believes is capable of reaching targets as far away as the U.S. Midwest. In response, the U.S. has increased its military presence in South Korea to nearly 80,000 troops.

The CIA has recruited an outstanding North Korean source encrypted, DBMIRROR. DBMIRROR is a senior North Korean official who



travels outside the country regularly on official business. He has a universal contact plan so he can initiate contact with the CIA wherever he shows up. His intelligence reports on the North Korean military threat, leadership politics, and secret negotiations with the Chinese have received the highest evaluations. He is the CIA's only high-level HUMINT source in North Korea.

DBMIRROR is corrupt and venal. He was originally recruited in Copenhagen while serving there as the North Korean ambassador. At that time, he asked for and received from the CIA a recruitment bonus of \$500,000 in cash. Since then, he has been paid a monthly salary of \$50,000, which is deposited into a secret Swiss bank account.

DBMIRROR is in Bangkok to represent North Korea in sensitive discussions with regional officials. When he can break away from his duties and colleagues, he meets secretly with his CIA case officer in an alias-rented hotel room. He is providing extremely valuable intelligence on the crisis on the Korean peninsula.

At one of the meetings, DBMIRROR asks the CIA to provide him with the services of a pre-pubescent girl for his carnal pleasure. He says if the CIA does not comply, he will break off the relationship. He insists he is too high profile to take the risk of procuring a young girl on his own. Child prostitutes of this kind are readily available in Bangkok.

Would it be morally acceptable for the CIA to provide DBMIRROR with a child prostitute (Olsen 103-104)?

From the intuitive or common-sense point of view child prostitution is morally heinous and clearly wrong. So much so, in fact, that we can place it in the same circle of morally abhorrent acts such as torture, rape, and genocide. Clearly such acts are physically and psychologically life altering to the victim, but something that adds to the repulsive nature of such acts is the existing or manifested psychological effects on the trigger-person or perpetrator, not to mention the effects on their personal integrity. The negative psychological effects and negative effects on individual integrity are part of what make such actions wrong; plain and simple. But even though such actions seem intuitively wrong, might there be a time when they are justified? One of the only ways an ethical theory could allow for such an act (because clearly deontological theory does not apply here), such as the purchase of a child prostitute for a highly informative

source, would be if the theory considered the consequences of the action as the sole determining factor of justification of the given action – a utilitarian ethical theory.

Consider the ticking time bomb thought experiment again: is it morally acceptable to torture one individual such that many people will live? Supporters of the utilitarian viewpoint would argue that because torturing the individual would save many lives and produce the most good, torturing the individual is morally justified and right. Critics of the utilitarian view might take a more deontological perspective and argue that torture is wrong based on the character of the act of torture; or they may point to the individual doing the actual torturing and argue that the effects committing torture has on that individual's psyche and personal integrity are reason enough to consider torture wrong.

I bring up the ticking time bomb thought experiment because it has similar features as the current scenario. A utilitarian might argue that the ends justify the means. Buying a child prostitute for the North Korean source so that he keeps providing information that will either deter a war or end the war quickly so that hundreds of thousands of lives are saved, is justified and morally right because it reduces the amount of life lost and promotes the most possible good. But does that really make child prostitution in this context, morally right? I don't think so. Following common sense intuitions that I believe most people share it seems that there are some actions, as mentioned earlier, that are certainly wrong.

So what sorts of conclusions can we draw about the above case studies? Certainly, the moral norms defended by deontological perspectives struggle to justify the actions of our collectors and more senior ranking decision-makers. That much is clear. Additionally, in presenting the above case studies, my purpose is to walk the

reader through a series of ever escalating moral/ethical dilemmas of espionage wherein the application of a utilitarian theory of ethics does not seem to be unreasonable (fabricating academic credentials), to the point where, a utilitarian theory of ethics has a hard time justifying the actions of the agent, regardless of the perceived positive consequences (child prostitute). Now, some will question the legitimacy of an ethical theory that doesn't work all the time. After all, all that is involved in the denial of a consequentialist theory of ethics, is that with respect to some type of action, there are some situations in which that would be the right thing to do, even though the state of affairs produced by one's doing that would be worse than some other state of affairs accessible to one (Williams, 90). Certainly, we could, if we wanted to, make act utilitarianism the governing moral theory of human intelligence collection activities. However, the repercussions of such an absolute course leaves open the potential for thinks like rape, torture, and genocide to be considered "justified" should the consequences of such action produce an overwhelming amount of good.

So, the question then becomes, should we blanket the gamut of human intelligence collection activities under the umbrella of consequentialism and utilitarianism? Just because it is one of the few, if not the only ethical theory that justifies actions in such cases, does that mean in every case if the good produced outweighs the actions of the agent and his source, the action is justified? At least in the United States, policy and law is very clear as to which persons are prohibited as sources of information and what types of activities are considered prohibited. This indicates that there is point at which the means *no longer* justify the ends. Cases of human intelligence collection generally operate under the ethics of utilitarianism, but for

some countries, there is a cutoff where the theory is deemed unfit. But who decides where the line is drawn? Why did they draw the line there? And what gives them the right to draw the line?

There is a flip side to that coin as well. Consider an amalgam of the ticking time bomb thought experiment and the child prostitute case, where-in a child prostitute must be provided to the North Korean official to prevent the explosion of a nuclear bomb that would take millions of lives. Clearly, child prostitution is wrong, and providing a child prostitute to a source is wrong. However, providing the child to the North Korean official will result in millions of lives being saved. In some countries, policy and law does stipulate that such actions are never authorized, however a review and waiver process, through high ranking government officials exists, wherein the policy and law may be bypassed in extreme circumstances. Is this not similar in a way to the previous point with regard to where the cutoff for utilitarian application ends? Who gets to decide when a waiver should be granted? And what gives them the right to grant the waiver?

The question of cases that fall within politically established laws and policy, *and* can be considered reasonably justified in light of a utilitarian perspective are relatively straightforward. The actions of the collector and his or her source are justified because the states of affairs and amount of good produced sufficiently rationalizes the action. But it seems there are things, we as human beings are just simply not ok with and are morally absolute in our scorn for. Once the line has been crossed into the realm of things like torture, rape, and genocide, utilitarianism falls off and moral absolutism takes hold. And that's ok. The question then becomes, what moral theory are we holding to for the identification of such acts? Clearly not a deontological one because, as we have

seen deontology can't apply here, and we have reached the limits of what reasonable persons can expect from utilitarianism.

How do we determine which acts are so morally abhorrent that they should never be committed and can never be justified regardless of the consequences? I think this depends on the audience in two distinct but co-existing ways: individual moral conscience and socio-political moral conscience. By individual moral conscience I means things like personal integrity, loyalty, the individual point of view, and virtue theory. All of these things come together to form a perspective from which individual projects/commitments are undertaken, plans are developed, events are observed, and life is lived. Each individual perspective constitutes, among other things, a locus relative to which harms and benefits can be assessed and are typically assessed by each person's individual perspective to form their individual moral conscience (Scheffler, 56). Socio-political moral conscience, on the other hand, is the social, cultural, and political *collective* moral compass of the group or country. It represents the integrity of the country – the collective moral conscience. The morality of the audience or country is determined in these two ways. At times the individual moral conscience will be at odds with the socio-political moral conscience and at other times they might be congruent. The point is that the relationship is fluid. Individual moral consciences can change and this could potentially affect the greater audience or vice-versa. Deontological theories cannot capture this dichotomy, but I think sophisticated consequentialism can. Viewing such cases through a sophisticated consequentialist lens allows collectors to produce maximum utility, while at the same time retaining their integrity, and not being sociopaths. They need to have a conscience, but they can't be deontic moral agents. If

they were deontic moral agents then they would be ineffective collectors and unable to produce maximum utility. So, our collectors need to be sophisticated consequentialist agents who generally are motivated by conscience and integrity, and draw a line at morally heinous acts, but they also have to follow utilitarian thinking more than ordinary agents do. This is significant because this is partly how a determination is made as to which acts are so morally abhorrent that they should never be committed. In closing this portion of the paper, the final section is a closer look into the socio-political considerations of cases of human intelligence collection.

### **Section III - Socio-Political Consolidations**

In the last section the focus was on three cases and the argument that sophisticated consequentialism generates the best approach in terms of thinking about what the morally best action to take would be. My discussion suggests that sophisticated consequentialism will provide the best approach to thinking about other cases and the ethics of HUMINT more generally, but I won't attempt to establish those broad conclusions here. Instead, I want to turn to some additional topics that a more comprehensive account of the ethics of espionage might address. Specifically, I will turn from questions about right and wrong action to questions about moral responsibility and dirty hands.

At the highest levels of government, citizens of a given country would hope that decisions being made on their behalf with regard to foreign policy and national security are informed. Knowledge, information, and intelligence are paramount in making such decisions, especially for information that would be considered sensitive. In the United States for example information on a recent North Korean ICBM launch or nuclear test,

information on the People's Liberation Army-Navy activities in the South China Sea, and information on potential Russian Federal Security Service involvement in the 2016 presidential elections - all would be extremely valuable to U.S. policy-makers. But information of that sensitive a nature, information that foreign countries deem sensitive enough to safeguard and keep secret, isn't just readily available through open source channels. Nations have to make a concerted effort of time and resources to acquire that information. This is where HUMINT collectors are so valuable. They can get that information in a clandestine manner that goes unnoticed by the local population or target nation. The information can then be processed, analyzed, and disseminated as intelligence to consumers, the most crucial of which, of course, are national policy-makers.

But which direction does the arrow between foreign policy/national security and intelligence go? Does it go from foreign policy/national security to intelligence? Or vice versa? I think the answer to that question depends on the country of interest. In some countries I'm sure hardline, proactive national security directives drive the intelligence requirements and so those countries focus their collection efforts accordingly. Other countries might be a bit more reactive toward their foreign policy/national security policies and base their intelligence collection requirements and efforts on the states of affairs around them as they occur in real time. And I'm sure still other countries maintain a more give and take relationship between the two poles to allow for maximum flexibility and adaptability.

I bring up the relationship between foreign policy/national security and intelligence collection, not because any way is the right or wrong way of doing things;

certainly each country has their own priorities and should act in its best interest, but there are implications in terms of complicity and dirty hands depending on which direction the arrow goes and how democratic a given nation is, especially as it concerns highly sensitive or morally questionable collection efforts, such as those mentioned in the above case studies.

There are a couple of different ways to look at the problem of dirty hands and complicity for cases of human intelligence collection. One way would be to suggest that it is not possible to be complicit and have dirty hands without making a *causal* contribution to a given act. So, I pull the trigger behind a gun that kills someone: I am causally responsible for their death. I push someone down a flight of stairs and they break their leg: I am responsible for their broken bones. However, consider this example:

George, who has just taken his Ph.D. in chemistry, finds it extremely difficult to get a job. He is not very robust in health, which cuts down the number of jobs he might be able to do satisfactorily. His wife has to go out to work to keep them, which itself causes a great deal of strain, since they have small children and there are severe problems about looking after them. The results of all this, especially on the children, are damaging. An older chemist, who knows about this situation, says that he can get George a decently paid job at a certain laboratory, which pursues research into chemical and biological warfare. George says that he cannot accept this, since he is opposed to chemical and biological warfare. The older man replies that he is not too keen on it himself, come to that, but after all George's refusal is not going to make the job or the laboratory go away; what is more, he happens to know that if George refuses the job, it will certainly go to a contemporary of George's who is not inhibited by any such scruples and is likely if appointed to push along the research with greater zeal than George would. Indeed, it's not merely concern for George and his family, but (to speak frankly and in confidence) some alarm about this other man's excess of zeal, which has led to the older man to offer to use his influence to get George the job... George's wife, to whom he is deeply attached has views (the details of which need not concern us) from which it follows that at least there is nothing particularly wrong with research into CBW (Williams, 98).



Is George responsible for the continued propagation of the CBW? The notion of negative responsibility would suggest that he is. Failure to act or choosing not to act is action as well. Negative responsibility is a key feature of any consequentialist ethical theory and the notion suggests that responsibility and complicity are relational. “An action or omission can be complicit with respect to one instance of wrong doing while undermining (and thus failing to be complicit) in another (Driver, 262).” You are just as morally responsible for things you fail to do, as the things you do, do. So, if we are going to consider cases of human intelligence collection under the guise of consequentialism and utilitarianism, then we must accept that complicity and dirty hands can extend beyond causal contribution. But how far, and to whom?

To make headway in our thinking about responsibility, it might be useful to focus on what is called “the division of moral labor.” Policy-makers and decision-makers in government are charged with the national security and foreign policy development. They are a point within the relationship between national security/foreign policy and intelligence wherefrom action can originate. The policy-makers we are concerned with for our purposes here, make decisions about national security and foreign policy that result in action. “The point is that it is a predictable and probably hazard of public life that there will be these situations in which something morally disagreeable is clearly required. To refuse on moral grounds ever to do anything of that sort is more than likely to mean that one cannot seriously pursue even the moral ends of politics (Williams, 60).” Nine times out of ten, policy-makers, when asked to make decisions, will justify their decision through a consequentialist framework.

Take the prostitute for terrorist case study above for example: a prostitute is authorized to be purchased for a source, for the sake of national security. Whose hands are complicit and whose hands are dirty in such a scenario? If the President were the final, authorizing authority for the purchase, is it his hands which are the only dirty hands? Or do the citizens of the country who elected him have dirty hands as well? After all, theoretically his decisions are made in the name of the people. Where does the complicity lie? Is everyone from the President down to the person who actually, physically pays for the prostitute complicit in the act? To resolve such questions, Philosopher David Archard suggests a “division of moral labor.” “This moral division means that politicians get their hands much dirtier than the public whom they represent, but that the democratic public is still complicit to a degree in their representatives’ actions (Archard, 788).” Based on the nature of their work as policy-makers, it is demanded of them “both that they carry the weight of decision-making that leaves them with dirty hands (and on occasion hands that can never be cleaned) and that they be of a certain moral character. We wish them to be persons who clearly and distinctly recognize the moral ‘disagreeableness’ of what they do. They must be able to dirty their hands on our behalf but acknowledge exactly what it is to have dirty hands (Archard, 782-783).” Politicians are elected because people know they can carry the weight of the dirty hands that a democratic public doesn’t wish to carry. While the democratic public still retains responsibility as the electorate, it is that same responsibility which allows them to remove politicians from office for other more egregious actions. In the end, there are actions which are going to be unethical even though they may be justified according to policy and decision-makers. “The point is that

only those who are reluctant or disinclined to do the morally disagreeable when it is really necessary have much chance of not doing it when it is not necessary (Williams, 62).”

Another social factor that we need to keep in mind when assigning responsibility is attitude – namely, the attitudes of the potential audience. Attitudes and values about action are significant because they can be an indicator of one or a group’s virtue. “Virtue involves having the right kind of orientation or attitude toward what is deemed good or evil (Driver, 76-77).” Let’s make one thing very clear. Spying, of the type being discussed here, is illegal in every country on the planet and is a violation of international law – and yet it happens in every country on Earth. A country’s attitude towards spying can vary based on the socio-political climate of the country. Is the country engaged in a civil war or some sort of state-vs-state conflict? Perhaps each country’s respective citizens are more open to spying. Is the country experiencing a period of peace and prosperity? Perhaps the county’s citizens frown upon spying. One kind of attitude worth nothing that is potentially harmful is the kind of attitude that results from a kind of nationalist mania or a fixation on a kind of “us-versus-them” climate. This “with us or against us” attitude can appear when the threat is perceived as so great and the odds so insurmountable, that it creates an attitude and environment of “anything goes” and “the gloves are off.” This can be very dangerous to countries that practice democracy because the legal and moral norms which govern the actions of regular individuals might be suspended by those that view themselves as advocates of the homeland. In the field of intelligence collection and even in the greater national security sphere, such

an attitude can be very dangerous for intelligence professionals and for the country which they represent.

One thing is evident, however, due to the nature of HUMINT operations, leaders and decision-makers are required to weigh the risks should sensitive, potentially harmful or politically embarrassing operations be compromised and come to light. A very important factor has to do with one's audience, and what the audience makes of a given action, or what the agent can reasonably expect the audience to make of the action (Driver, 266). The attitudes and values of the nation conducting the operations *and* the attitudes and values of the target nation, all play into the decision of whether or not to act on a given operation. This is telling because who makes the decision and what position they hold has influence in terms of responsibility. For example, in 2015, the United States was caught tapping, then German Chancellor Angela Merkel's cell phone. Clearly, decision-makers at the time felt that the information gleaned from tapping her cell phone was of enough value so as to outweigh the risk of compromise. When the tap was discovered it brought outrage from the German's and embarrassment for the United States. Why would the U.S. tap an allied leader's cell phone? Especially during a time of peace and prosperity between the two nations. The incident was embarrassing for both countries.

The wiretapping of the German chancellor's phone is an example of how things like moral attitudes, values, and context all play a role in weighing the consequences of a given action, the utility of a given action, and who is responsible for said action. At times, a given problem set could be so complex and convoluted that the correct answer isn't sitting there in black and white. A full account of which actions are right and wrong

and of moral responsibility would need to take all these facts (about complex attitudes, the moral division of labor, etc.) into account in order to be satisfactory. HUMINT operations need to be handled on a case by case basis because there are simply too many variables that must be evaluated.

In closing, let us revisit the key question of this investigation: how does one morally justify human intelligence collection operations? What theories are applicable? Which are not? And if they are, what is the scope of their application? It has been shown that duty, rule, or obligation based deontological ethical theories like Kantianism cannot justify human intelligence collection operations because they are morally absolute. Such theories consider some actions absolutely right or wrong, just or unjust regardless of the intention of the agent or the resultant consequences. Such theories are not resilient or versatile enough accommodate the level of moral/ethical adaptability required of HUMINT collectors and their operations. Moreover, such theories neglect actions in the profession that although they may be ethically wrong in the eyes of the moral theory, would otherwise produce a substantial amount of good for the greatest number of people.

A moral theory that can justify human intelligence collection operations is sophisticated consequentialism. Sophisticated consequentialism can justify HUMINT operations because it considers the utility of the resultant consequences of a given action while also accounting for things like integrity and conscience. HUMINT operations serve the purpose of providing intelligence to national decision-makers for the sake of the survival of the homeland – something that can produce a large amount of good for the country's citizens.

Theories like act utilitarianism and rule utilitarianism, while at times applicable, are not without their flaws. Questions of individual integrity and the morally heinous plague these theories. For example, it is possible for act utilitarianism to justify acts like torture, rape, or genocide, should the consequences of those actions produce enough good. This is not ok. The scope of utilitarianism and its oversight of HUMINT must be reined in by policy and decision-makers. Due to their nature as politicians, they are imbued with the power to make tough decisions about potentially morally unjustified actions (in the eyes of utilitarianism) that result in a less optimal amount of good produced, because some things (like rape and torture) are just plain wrong. To be sure, their status as leaders and decision-makers requires of them that they carry this moral burden of complicity and dirty hands. It is their patriotic duty to those who elected them.

Justifying cases of HUMINT collection outside of a utilitarian construct is a challenge. While *most* HUMINT operations are best justified by utilitarian moral theories, justifying *all* HUMINT operations in terms of a utilitarian construct creates the potential risk of justifying acts that are so morally egregious that they should never be committed regardless of the potentially positive consequences. Sophisticated consequentialism can help us solve this problem.

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