

David Omand & Mark Phythian. *Principled Spying: The Ethics of Secret Intelligence*. Oxford: Oxford University Press, 2018. ISBN: 978-01-98-78559-0. Pp. 296. Hardcover, £20.00.

Principled Spying: The Ethics of Secret Intelligence is a joint endeavour by one highly respected intelligence and security academic, Mark Phythian, and consummate professional and former head of GCHQ, Sir David Omand. The book takes the unconventional format of a discussion between the two authors, in which they tackle a range of pertinent ethical issues, including the application of Just War principles to Secret Intelligence activities, the challenges of technological innovation, and building public confidence through oversight and accountability. Ethics and Intelligence may appear to be oxymoronic, but resolving the tension between human rights, accountability, and security in liberal democracies is essential if the public is to trust the intelligence machinery, and if that machinery is to be effective in its mission to protect the state and its citizens. Omand and Phythian are acutely aware of this. By choosing to approach this controversial subject via the device of dual authorship, a dialogue between an academic and a practitioner, they have, largely successfully, mitigated against both the potential institutional bias of an insider and the potential lack of internal insight of an external academic. They have also questioned one another throughout the book, adding apposite ideas and evidence omitted by the other, giving this book depth and rigour. The authors are well placed to address growing public concern around state conduct and human rights, and they have provided a synthesis of the existing arguments from scholars such as Erskine and Bellaby into one of the most comprehensive and instructive accounts attempted to date.¹

This book is timely, written in the aftermath of 9/11 and the Snowden revelations, in a context of diminishing deference to political leadership and increased public demand for the indelibility of the rights of liberty, privacy, and freedom from harm. *Principled Spying* draws on the concept of the 'protective state' from Peter Hennessy (p. 3), which shifts the focus from securing the institutions of state to protecting the people from harm. Essentially, intelligence

¹ See Toni Erskine, "'As Rays of Light to the Human Soul?'" Moral Agents and Intelligence Gathering', in *Intelligence & National Security*, Vol. 19, No. 2 (2004), 359-381, and Ross Bellaby, 'What's the Harm? The Ethics of Intelligence Collection', in *Intelligence and National Security*, Vol. 27, No. 1 (2012), pp. 93-117.

work, that is, the stealing of secrets in order to improve decision-making (pp. 9-16), involves using methods which violate human and civil rights as tools for protecting those rights, hence the inherent tension.

Some examples of morally questionable spying highlighted by Omand and Phythian are: the tactics and risks involved in recruiting and maintaining agents, the collection and storage of bulk personal data, and intrusions of privacy such as covert digital or physical surveillance. (p. 19) All of these tools are the 'bread and butter' of intelligence officers and are deemed essential in their mission to combat terrorism, espionage, organised crime, and the proliferation of weapons of mass destruction. The 'what', 'when', 'how', and 'who' of these tactics are guarded with the utmost secrecy, as without that protection they would be rendered ineffective or worse, a serious threat to the security of the referent object. If terrorists know exactly how they are being observed, they will be able to implement counterintelligence measures which will allow them to carry on committing acts of murder and destruction without fear of being stopped or caught.

While the public may accept secrecy for the sake of security in principle, the intelligence failures of the Iraq war and other scandals have created fear and mistrust of the instruments of state. The clandestine nature and lack of unambiguous guidelines exacerbate this tension. As Phythian and Omand point out, there is an 'absence of a clear framework' (p. 9), and an opaqueness to guidelines and oversight (p. 204), a dilemma that this book hopes to address by asking the right questions.

The book's main contribution to the development of a clear ethical framework to guide intelligence activities is the application of the norms of ethical conduct in war, known as the 'Just War' doctrine. These can be categorised into *Jus ad Bellum*, which determines if entering into a war is ethical or 'just', and *Jus in Bello*, ethical conduct in war. Omand and Phythian apply these concepts to intelligence, proposing the theories of '*Jus ad Intelligentiam*' and '*Jus in Intelligentia*'. (pp. 72-109) They are not the first theorists to attempt to cultivate this link,² but their account is perhaps the most thorough and has the benefit of a practitioner's insight from Omand.

The core concepts agreed upon by the authors in their just intelligence framework are 'just cause, right intention,

² See, for example, Bellaby, 'What's the Harm?'

proportionality, right authority, a reasonable prospect of success, discrimination, and necessity'. (p. 109) Not all concepts were thought to be directly applicable to peacetime spying. For example, 'last resort' was found to be problematic due to the goal inherent to intelligence collection of prevention. The authors agreed that 'necessity' was a more appropriate term in this case (pp. 106-108), as it would be negligent of the state to wait until a terrorist act had been committed before any action was taken.

The authors make an important distinction between collecting and using intelligence, or the conduct of intelligence agencies and the decisions made by policymakers. (Ch. 6) They discuss several examples, such as the assassination of Iranian nuclear scientists to prevent the perceived greater risk of Iran fully developing nuclear capabilities. (pp. 194-195) While at first glance this action may appear to be unambiguously amoral and politically motivated, there are no moral absolutes in the complex arena of international relations and security. Ethics cannot be fixed as they evolve according to contextual factors such as norms and level of threat. Ongoing reflection must be embedded into all aspects of the intelligence cycle, and it is this that the authors are advocating for in this book. Legal frameworks must adapt to circumstances, as in the case of the UK's Investigatory Powers Act 2016, which was passed in response to public anger at extensive data collection by GCHQ and the NSA, revealed by Snowden. (p. 50)

Technology has shifted the landscape in a variety of ways. New capabilities bring new threats, including, but not limited to drones, malware, 'fake news', Artificial Intelligence, bulk data collection, cryptocurrencies, and hacking. Again, inaction would be negligent, but a fine line must be walked between protection and intrusion. The design of algorithms must be sensitive enough to extract intel pertaining to threat without creating false or exaggerated profiles on persons who are entirely innocent of any wrongdoing. (pp. 100-101) An effective state security apparatus requires technologically superior knowledge and capabilities to combat both state and non-state cyber threats. However, as the authors argue, rigorous oversight should be in place, and a culture which values the sanctity of privacy must be fostered. Omand's role as head of GCHQ lends him an authority on SIGINT matters, and he talks of potential threats and ethical concerns with profundity. However, the section on agent handling has received criticism from former Director General of MI6, John Scarlett who has questioned the

selection of extreme examples at the margin, such as the infiltration of police officers into protest groups in the UK, and failure to give credit to the honourable conduct of much of HUMINT work.³ This is revealing in that it lays bare the lingering threads of interagency rivalry and the unconscious bias of a person's professional background and experience.

Further contextual factors which would have been highly relevant to their discussion are the rise of identity politics,⁴ and the erosion of the 'rules-based order',⁵ which curtail the ability of liberal democracies to have open debate and discussion about matters of fundamental importance to society. In the current climate, anger and mistrust are ubiquitous, and lines of opinion and identity are drawn in the sand. The intelligence community must overcome these barriers and actively engage with the debate on ethics in order to earn public trust and avoid being irrevocably castigated as an instrument of Orwellian state surveillance and oppression.

Ultimately, greater public trust in the security apparatus and governing bodies will lead to greater stability and security, serving the primary function of the security services. As Omand and Phythian argue, intelligence organisations need to be proactive and adapt to evolving threats and ethical concerns. Bringing the public 'on-side' will enhance the ability of spies to serve and protect the public.

Principled Spying frames the complex debate around ethics and intelligence with nuance and insight, providing viable suggestions, if not definitive answers, on where ethical and legal lines should be drawn. There are, of course, many ethical issues which the book has not addressed, such as the moral maze of intelligence liaison relationships or internal agency counterintelligence measures, including, but not limited to practices of recruitment, culture, and oversight. The book also focuses primarily on Western jurisdictions, particularly the UK and the US. Future work on intelligence and ethics would benefit from expanding this scope to include diverse

³ John Scarlett, 'Review: Principled Spying: The Ethics of Secret Intelligence', *The RUSI Journal*, Vol. 163, No. 4 (2018), pp. 112-114.

⁴ Francis Fukuyama, 'Against Identity Politics: The New Tribalism and the Crisis of Democracy', in *Foreign Affairs*, Vol. 97, No. 5 (September/October 2018), p. 90.

⁵ Sir Mark Lyall-Grant, cited in Catherine Philp, 'Trump's Assault on Global Rules "Poses Greatest Threat to Britain"', in *The Times*, 13 September 2018, online at <https://www.thetimes.co.uk/article/trump-s-assault-on-global-rules-is-branded-biggest-threat-to-uk-23pmnxl88>. (Last accessed 12 May 2019)

cultural perspectives from both democratic and authoritarian states. However, this book serves as a valuable and thoughtful starting point to focus academics, practitioners, and policy-makers on the current state of the relationship between ethics and spying in liberal democracies. Hopefully, the book will inspire and inform research on both the topics covered and those not, initiating the public debate on principled spying it has prescribed. The key to ensuring the efficacy and legitimacy of intelligence agencies is to demonstrate that their work protects human rights and civil liberties more than it erodes them.

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