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INTELLIGENCE ETHICS: NOT AN OXYMORON

All professions have codes of ethics, often incorporated into legal regulation.

We trust solicitors not to embezzle, teachers not to seduce students and scientists not to cheat on their results. Ethical codes are a mix of (teleological) consequentialist reasoning (judging the rightness of an act by its results such as saving life); (deontological) importation of wider moral constraints (thou shalt not steal); and (aretaic) personal value ethics (this is how a decent human being should behave towards another).

WHY INTELLIGENCE AND SECURITY AGENCIES ARE DIFFERENT

The intelligence and security agencies are a special case. Whilst society wants national security and public safety, obtaining the necessary intelligence inevitably involves acting in ways that society considers to be immoral; espionage involves stealing secrets.

People with secrets of value, be they hostile states, dictators, terrorists, proliferators of narcotics or people traffickers, child abusers, cyber or other serious criminals, will go to huge lengths to prevent their secrets being known. For this reason, intelligence professionals argue that their difficult and sometimes dangerous job requires a licence to break normal moral conventions, precisely so that the governments that employ them can have done in the dark what ethically they dare not be caught doing in the day.

Ethically questionable methods to obtain these secrets can include covert surveillance, recruiting agents and informants, eavesdropping and intercepting communications. Ethical questions arise over how and when to justify manipulative and exploitative behaviour towards others, including spying on friends, invasions of personal privacy, and deception through sting and false flag operations.

Issues also arise when sharing intelligence with countries that have different moral attitudes to the use of intelligence, such as for interrogation or targeted killing. Adding to this complexity, these methods and sources must remain hidden, or the secret-keeper will easily be able to dodge the attentions of those trying to obtain it.

Democratic societies and their secret agencies are going through unprecedented self-questioning about the ethics of methods used to obtain secret intelligence and the extent to which society needs to rein in its intelligence agencies. This has come about not least because of the publication of top secret documents showing the power of modern digital intelligence methods, stolen from NSA and GCHQ by Edward Snowden. Intelligence and security ethics has now become a major politically charged research topic in the 5-eyes intelligence communities and the European Union.

'JUST WAR' AND INTELLIGENCE OPERATIONS

One approach I have researched with the political scientist Professor Mark Phythian of Leicester University, is the application to intelligence and security of the ethical concepts of the 'Just War' tradition that underpins the Geneva Conventions and the Laws of War.

Some adaptation is needed but the main concepts have clear usefulness to those authorising or managing intelligence activity:

- *just cause* – only in accordance with the rule of law (for the UK, this would be actions deemed to be in the interests of national security, including in the interests of the economic well-being of the UK from outside threats; or in support of the prevention or detection of serious crime) and where the intended meaning of terms such as 'national security' is explained in published government documents such as the UK National Security Strategy.
- *right intention* – acting with integrity and having no hidden political or other agendas behind the authorisation of intelligence activity or the analysis, assessment, and presentation of intelligence judgments to decision-makers.
- *proportionality* – keeping the ethical risks of intelligence operations, and operations based on intelligence, in line with the harm that the operations are intended to prevent, as part of the balancing act required by the Human Rights Act 1998 and the European Convention on Human Rights.
- *right authority* – obtaining the level of approval appropriate to the ethical risks that may be run (under the IP Act 2016, the most intrusive investigations warrants might be signed by a Secretary of State and judicially reviewed by a senior judicial commissioner) and that will then allow for accountability for decisions taken and independent oversight of the process.
- *reasonable prospect of success* – having adequate justification for individual operations based on sound probabilistic reasoning that also can prevent bulk access operations becoming 'mass surveillance' or general fishing expeditions.
- *discrimination* – ensuring that the human and technical ability (for example the design of selection algorithms to apply to bulk data) exists to assess and manage the risk of collateral harm, including privacy intrusion into the lives of those who are not the intended targets of intelligence gathering.
- *necessity* – finding no other reasonable way to achieve the authorised mission at lesser ethical risk (recognising with John Stewart Mill that a person may cause evil to others not only by her actions but by her inaction, and in either case she is justly accountable to them for the injury).

Recent UK government commissioned inquiries have also drawn on such thinking. This can be summarised as a 3-R approach: all activity should be conducted within the rule of law, there is regulation and proper democratic accountability through both judicial and legislative oversight, and authorities should exercise restraint to respect the privacy of the individual and apply the principles of proportionality and necessity at every stage.

APPLYING ETHICS TO THE LEGAL FRAMEWORK

This general approach was incorporated into the 2016 UK Investigative Powers Act. Complying with the rule of law has led the UK government to unprecedented openness, through having to admit to the use and regulation of techniques such as equipment interference (computer network exploitation and hacking) and the digital exploitation of personal bulk data bases.

The requirement to exercise restraint in the use of the coercive powers of the state is an ethical injunction: not every intelligence operation that may be possible and can be made lawful should necessarily be carried out. Each requires consideration of the potential gain set against the ethical risks (for example to potential agents and their families or to the collateral invasion of personal privacy of those not the target of the operation).

Scholars and civil rights activists have expressed particular concerns that the acquisition and storage of bulk digital data by US and UK agencies for future intelligence purposes risk becoming a form of mass surveillance. It is essential that agencies can continue to satisfy oversight bodies that the filtering and search algorithms used can be sufficiently targeted, using seeds or precise search criteria, to avoid that ethical taint.

Recent UK studies have confirmed that intelligence officers develop ways of behaving well, even when knowingly encouraging betrayal or intruding on the privacy of private communications and family life. Experimental psychology nevertheless also demonstrates that even those who see themselves as highly moral actors can be led to behave in unacceptable ways when placed in an unhealthy environment.

So ethical issues in intelligence have a situational as well as a personal dimension, not least when it comes to designing organisational structures, and statutory safeguards and internal processes to ensure that future governments cannot misuse the powerful intelligence capabilities that the UK intelligence and security agencies must continue to possess.

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