

# Persons, Personhood and Proportionality: Building on a Just War Approach to Intelligence Ethics

## Introduction

There are a number of different approaches to intelligence ethics that one can take. In recent years, Michael Quinlan, Ross Bellaby, and David Omand have each argued that the principles of the just war tradition can be usefully employed to assess the ethics of intelligence (Bellaby 2012; Omand 2012; Quinlan 2007) from a deontological perspective. I have elsewhere argued that the just war principles are helpful in assessing surveillance (Macnish 2014b), which has obvious overlaps with intelligence work. In this chapter I defend the approach of employing the principles of the just war tradition to intelligence and develop these principles further than Quinlan, Bellaby, or Omand. First I consider the benefits of this approach. I then look at the challenges to it, in so doing presenting a comprehensive list of those challenges, and answering each in turn. Finally I accept that one challenge in particular (that of a lack of real guidance) holds particular weight. I address this challenge through a consideration of the just war principle of proportionality as it applies to coercive techniques of intelligence collection. When weighing proportionality, it is tempting to see the assault in coercive intelligence as solely against the individual. I argue that the assault is also against personhood and the wider community, and goes both deeper and wider than an assault “merely” against a single person. I conclude that coercive practices in intelligence are not *mala in se* but that they are justifiable only in rare cases.

## Just Intelligence

The just war tradition, the attempt to recognize and place moral limits on the declaration and prosecution of war, can be dated back at least as far as Cicero (Cicero 2006), and there are elements, such as the principles of last resort and discrimination, which can be found in the Bible (Deuteronomy 20:10-14). Over the course of time, a number of principles have emerged which are often grouped together and today referred to as the “Just War Theory”. The just war approach distinguishes between a war that is just in its declaration (*jus ad bellum*) and a war that is just in its

prosecution (*jus in bello*). One can be just from the perspectives of *ad bellum* and *in bello* (although it is hard to find an actual case of this), just from the perspective of *ad bellum* but not *in bello*, or just from the perspective of *in bello* but not *ad bellum*. Finally, of course, a war can fail to be just from the perspectives of either *ad bellum* or *in bello* considerations. In recent years there has also been a push to focus on the morality of ending a war and conduct in the aftermath of fighting (*jus post bellum*), although this discussion is sufficiently immature to have yet developed any broadly-agreed principles (Bass 2004).

There is no absolute agreement as to precisely which principles should be included in just war considerations (O'Donovan 2003, pp.13–14). The principles of *jus ad bellum* most commonly accepted include: a just cause (the reason for going to war); a correct intention (the intention for going to war is the same as the just cause); the authority to declare war (to avoid private conflicts escalating); a formal declaration of war; a chance that the war will be successful in achieving the just cause; the stipulation that the war must be necessary, or a matter of last resort; and a requirement that war is a proportionate response to the occasioning cause. Given that these relate to the decision to enter a war, they are generally directed at the leaders of a state. The *jus in bello* principles, by contrast, are directed more towards those who do the actual fighting (although they also have a bearing on those leaders who might direct the soldiers to pursue certain policies). The number of *in bello* principles is similarly disputed, although there are two on which there is universal agreement and which have been enshrined in international law through the Additional Protocols to the Geneva Convention (ICRC 1977): proportionality of military acts and discrimination in targeting between combatants and non-combatants. Further principles sometimes included are: necessity of military actions (if this is not included in the proportionality consideration), treatment of prisoners (to encourage surrender over fighting to the death and so limiting bloodshed), and means *mala in se* (to ban certain weapons or actions as evil in themselves, most typically seen in terms of chemical and biological weapons).

The application of the above principles to intelligence work has clear appeal. The principles are well-established and understood within the philosophical and military traditions; they have been tried, tested, and refined over centuries into a robust

approach to an ethics of war; and they can be transposed into intelligence work without much modification. Taking *jus ad bellum* principles first (to which Quinlan refers in the case of intelligence as *jus ad intelligentium*), it seems correct that espionage should have a just cause, be carried out by a correct authority, and be a proportionate response to the occasioning trigger. Furthermore, the intention for the surveillance should be the same as the just cause, the espionage should have a chance of success, it should be necessary (in that the alternatives to meeting the just cause are either exhausted or morally worse options), and there should be, if not a formal declaration, at least an understanding that espionage is a likely response to the occasioning trigger.

Furthermore, when looking at the *jus in bello* principles (Quinlan's *jus in intelligentia*) the parallels continue: IOs *should* act in a manner that is proportionate and they *should* discriminate between legitimate and illegitimate targets.

Comparisons can also be drawn between IOs and soldiers. Both agents of the state, and how they act reflects on the state they represent. Both engage in a degree of deception, soldiers through camouflage and ambush, IOs in adopting false identities or masking their "real" work. There is an apparent degree of moral equivalence between IOs as there is between soldiers: whatever the ideology of "their masters", they are essentially just "doing their job" and a mutual respect can arise across international barriers based on tradecraft and irrespective of ideology.<sup>1</sup> Finally, when caught IOs and soldiers are typically neutralised and repatriated (for IOs in peacetime this is usually fairly immediate, for soldiers in war repatriation occurs at the conclusion of the war). "It is generally agreed that spies, when captured, are not to be summarily executed without trial; spymasters are usually allowed diplomatic status ... to the extent that the 'spy' may be thwarted but not destroyed" (Hulnick & Mattausch 1989, p.517).

There is also a strong intuitive fit with these principles. They seem to apply well in both cases, and also to limit, or at least give scope to limit, the more extreme actions such as torture that many would wish to see severely limited in an IO's rules of

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<sup>1</sup> It is important to note that the theory of moral equivalence of soldiers has been strongly challenged by Jeff McMahan (McMahan 2006; see also Walzer 2006 for a response to McMahan). While interesting and undeniably pertinent to the intelligence debate I shall not here develop the implications for IOs if McMahan is correct in his assertions)

engagement. They also bring the advantage of centuries of discussion as to the relative merits of each principle, its precise meaning, and its application in a variety of settings. This alone is a valuable contribution to the debate.

While there are advantages to applying the just war principles to intelligence, these are not unfettered. There are challenges too. Tony Pfaff, for example, points out that threats to the military are those already existing, whereas in intelligence threats are merely potential. Pfaff suggests a check here such that “for intelligence gathering activities in peacetime to be justifiable, there needs to be an analogous ‘act of aggression’ that gives the nation that seeks to obtain these secrets, in some sense, a ‘right’ to them” (Pfaff 2006, p.76). That is, we should not be spying on our friends. Of course, as Pfaff recognizes, intelligence threats are not always *merely* potential (intelligence is carried out in war as well as in peace, while intelligence carried out against terrorists falls between the two) and military threats may be potential rather than actualised (e.g. the Panzer divisions sitting on the German side of the Ardennes in 1940 prior to the *blitzkrieg* of France). These qualifications aside, Pfaff’s condition would hold in the majority of cases.

A further challenge can be levelled against the just war approach by rejecting key elements in the analogy between IOs and soldiers. While this does not underpin the use of the just war principles, it does add weight to their consideration. One disanalogy becomes particularly clear when IOs who have no official cover (NOC) are considered, rather than those with diplomatic cover. As noted by Arthur Hulnick and Daniel Mattausch, those with diplomatic cover fall under the purview of international laws which set out how these individuals may be treated. This is not because they are spies, though, but because they are diplomats. When one turns to look at NOCs, the picture as to how IOs are seen and treated is somewhat different: NOCs are not neutralised through automatic repatriation but more typically through imprisonment, sometimes for years. Furthermore, when captured in times of war soldiers are imprisoned as prisoners of war and are, or should be, treated as neutralised threats, afforded food, shelter and basic privileges for the duration of the war. Spies, and especially NOCs, are more often shot. In times of war the spy is essentially a non-uniformed combatant often living in urban areas. This muddies the already murky waters between combatants and non-combatants and risks putting non-

combatants' lives at risk: if combatants (spies) masquerade as non-combatants then reprisals for the actions of spies could be visited on non-combatants in general. When Heydrich was assassinated in Czechoslovakia in 1940, for example, the German response was an attempt to remove the village in which the assassination took place from the map, irrespective of who had actually taken part.<sup>2</sup>

A pertinent question also arises as to who, in intelligence work, are legitimate targets and who illegitimate. Pfaff argues here that anyone who knowingly "enters the game" (i.e. works for an intelligence organisation or for an entity that is likely to be subject to foreign intelligence interests such as a nuclear weapons laboratory) is a legitimate target (Pfaff 2006, pp.82–83). However, this strikes me as being little too easy. Not everyone who "enters the game" does so through giving free, informed consent, and the IO may not know whether a person is even aware that they are at risk of being targeted by foreign intelligence. What of a wife of an IO with diplomatic cover? Did she know he was involved in intelligence when they married? Does she support his activities, and to what extent (is her support moral or physical)? At what stage, if ever, then, could she become a legitimate target? Is it ever legitimate to target her (for example, through a honey trap or planting goods in her pocket so that she might be detained for "shoplifting") in order to apply pressure on her husband?

A further area in which the just war tradition has been brought to bear on intelligence ethics is in the application of the doctrine of double effect (DDE). The DDE seeks to deal with scenarios in which an action will lead to a good and a bad outcome, and argues that to intend the good outcome is justifiable but to intend the bad outcome would be blameworthy. Further qualifications stipulate that the good outcome cannot come about as a result of the bad outcome and that the respective outcomes must be in proportion such that a great deal of harm isn't caused to achieve a modicum of good. In his discussion of the ethics of intelligence, Pfaff considers this problem of deception by IOs of family and friends, who are not allowed to know the IO's true job for reasons of national security, their own safety, and the safety of the IO. He applies the DDE to an IO's lying to friends and family, such that this renders the act

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<sup>2</sup> In saying this I am not pointing to the Nazi response to the assassination as justified, but remarking that by carrying out the assassination in the guise of Czech non-combatants, the assassins foreseeably put the lives of genuine non-combatants at risk.

justifiable if the intention is to protect the friends and family (and not to deceive them), that they are not protected purely as a result of the deceit, and that the harm of the deceit is outweighed by the harm that would result from them knowing the truth.

This is an interesting if controversial approach. Judith Jarvis Thomson, Thomas Scanlon and Frances Kamm have all rejected the DDE from a deontological perspective (Kamm 2008; Scanlon 2008; Thomson 1991), while others (notably Jeff McMahan (McMahan 2009) continue to defend it. Having acknowledged that, were the DDE to hold then it would be an effective means of resolving the problem of deceiving friends and family. However, it might also justify too much: could the targeting of the IO's unwitting wife be legitimated in this way if the intention were to gain information of importance to national security? If so then she could thereby become a legitimate target despite never having given informed consent to her part "in the game".

A further challenge can be raised to the just war approach by noting that war occurs in times of exception, whereas intelligence does not. During war, normal standards of morality are suspended for combatants in favour of the standards set by the just war position. In war, soldiers engage in activities which are not acceptable for just anyone, and so there is a need to find the limits to what a soldier can do. However, the activities of soldiers in wartime, even within the confines of the just war tradition, are not acceptable activities for those same soldiers to undertake in peacetime. *Only* in war (and some very exceptional occasions of national emergency) is it acceptable for a soldier to shoot and kill someone, to aim artillery and missiles at another state's buildings. In peacetime these activities are rightly condemned as murder and/or initiating a conflict. By contrast, intelligence happens round the clock, 365 days a year. It never ceases, and so cannot be classed as a state of exception. Rather, intelligence is the norm. Hence when special dispensation is granted to soldiers to commit what would otherwise be criminal acts in times of war, this happens because the agent is a soldier *and* the context is exceptional. In looking to give special dispensation to IOs to act in a manner that is under other circumstances morally unacceptable, and usually illegal in the countries in which they are practicing, this is based purely on the fact that the agent is a spy. There is no mitigating exceptional circumstance. As such, this approach seems very close to a case of special pleading.

One possible response to this challenge is to challenge the separation *between jus ad intelligentium and jus in intelligentia*. As noted above, the just war analogues are treated as distinct, with *jus ad bellum* applying to leaders, classically the sovereign, while *jus in bello* applies to soldiers. The sovereign therefore announces the parameters of war within which the soldier can operate under the conditions of *jus in bello* (i.e. killing other combatants with impunity). A simple application of the just war analogy would suggest that the sovereign can still set the parameters of intelligence within which the IO operates. Yet this is precisely the problem: wars end while intelligence work often does not, and so the *in extremis* conditions become positively quotidian. An alternative involves the rejection of the sovereign/spy separation in the case of intelligence. This could lead to each act of intelligence being required to meet the full conditions of *jus ad intelligentium* and *jus in intelligentia*. Rather than seeing intelligence as a series of operations carried out under exceptional conditions, as is the case of war, each act of intelligence is seen as its own exceptional condition and required to meet every principle of the just intelligence canon. This is *not* to say that the IO should be the final arbiter of whether or not intelligence is morally acceptable in a particular circumstance, just as the sovereign is not the final arbiter in the case of war. The implication is that the IO is able to decide an act of intelligence is permissible, as is the sovereign in the case of war, but she remains accountable for her actions to the state and, in democratic regimes, the people. The principles by which the IO can expect to be judged, though, are those of both *ad intelligentium* and *in intelligentia*.<sup>3</sup>

Finally, Hulnick and Mattausch argue that the just war principles offer “only nominal consolation to the conscientious intelligence professional” (Hulnick & Mattausch 1989, pp.515–16), although they do not elaborate on this or justify the position with much vigour. Overall, while there is an intuitive fit between the principles of just war and the ethics of intelligence, this fit is not perfect. The challenges that I have outlined above have focussed more on *jus in intelligentia* than *jus ad intelligentium*. The latter seems to fit more easily: correct authority, proportionality, necessity, just cause, etc. are all sensible principles to follow when determining whether to engage in

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<sup>3</sup> I am grateful to Helen Morley for pointing this out to me as a possible solution.

intelligence work. However, it is in the *doing* of intelligence work that, arguably, the more serious ethical problems arise. By more serious ethical problems I mean those which directly challenge the autonomy of the agent through acts of coercion. Examples would include inducing people to lie, engaging in blackmail, conducting acts of torture to extract information, or treating agents as expendable. Here the principles of *jus in intelligentia* provide less obvious guidance, and yet it is precisely here that the IO needs help in determining which actions are permissible and which are not. This is true even when the principles of *ad intelligentium* and *in intelligentia* are combined, as I have suggested above. When considering proportionality, for example, what is *not* justified when one is acting in the interests of the security of one's country? In this regard, then, and especially when one considers coercive activities such as torture, blackmail, inducement to betray, and the expendability of agents, Hulnick and Mattausch's sentiment that the principles offer "only nominal consolation to the conscientious intelligence professional" carries some weight.

### **The Problem of Proportionality**

I take Hulnick and Mattausch's critique to present a serious challenge to the application of just war principles to intelligence. I also think that this is particularly true in the case of the principle of proportionality which in traditional just war discourse applies to both *ad bellum* and *in bello* considerations. Proportionality involves a balancing of costs and benefits. Do the benefits clearly outweigh the costs? Then the action is proportionate. Do the costs clearly outweigh the benefits? If so then the act is disproportionate. Inevitably there is a grey area between the two in which the one does not "clearly" outweigh the other, but, while important, that need not concern us here.<sup>4</sup> As it stands, this might appear to be a matter or a straightforward consideration of consequences within the just war principles. However, Thomas Hurka has argued convincingly that not all benefits should be weighed in the balance (Hurka 2005). He points out that war can have a rejuvenating impact on a national economy, but that to consider this as a *benefit* of engaging in war would be morally corrupt. We should not go to war, or engage in a particular battle, because it might help our economy out of a slump.

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<sup>4</sup> For those interested in pursuing this question, I would recommend reading Thomas Hurka's *Proportionality in War* (Hurka 2005) or my own *Eye for an Eye: Proportionality and Surveillance* (Macnish 2014a).



Instead Hurka argues that proportionality should be a matter of weighing the costs of an action against the just cause for undertaking that action. If a state goes to war to defend a people group from persecution then it is against this that all military actions should be measured. This Hurka describes as a “sufficient just cause”. He also talks of “contributing just causes”, those which would not in themselves justify going to war while still being worthy of consideration as a benefit of the war (for example, the good that can come from disarming an enemy to prevent a return to aggression (Hurka 2005, p.41)). These are contrasted with a third category (which I have elsewhere described as “peripheral benefits” (Macnish 2014a)) which, as with economic benefit, should not be weighed.

These legitimately considerable benefits are to be weighed against all reasonably foreseeable costs of the action. By reasonably foreseeable is meant the consequences that a person could reasonably be expected to have predicted following from the action at the time the decision was made. Hence the deaths of civilians following the dropping of the atomic bombs over Hiroshima and Nagasaki could have been foreseen. The years of damage of radiation sickness, and particularly the impact on future births, arguably could not.

As suggested above, when an IO is charged with protecting national security, the fate of one individual can seem insignificant as a part of the broader picture. What, she might ask rhetorically, are one person’s injuries when considered against the saving of millions from a terrorist or missile attack? Seen in this manner, coercive acts such as blackmail and torture become easily proportionate. If the IO is happy that the person undergoing torture is a legitimate target then the stated *jus in intelligentia* principles are met and so the activity is justified. However, this strikes me as counter-intuitive. Leaving aside the efficacy of coercive acts for the purpose of this discussion, this approach would seem to provide ready justification for those coercive acts. While I am not prepared to rule those acts as impermissible in all circumstances (I do not, as I argue below, see them as evil in themselves), I do want to see them as harder to justify than the approach as stated would seem to suggest.

## **Persons and Personhood**

If I am correct that the existing proportionality consideration of coercion of one person (cost) weighed against national security (benefit) means that the person will always lose, and that this is a counter-intuitive state of affairs, then the resolution will lie in either decreasing the weight of the benefits or increasing the weight of the costs. I intend to do the latter, demonstrating that the coercion of the individual has wider ramifications than merely against that individual. Through this I will argue that the coercion of an individual is only an acceptable manoeuvre in intelligence in rare cases.

It is perhaps natural to see the cost of coercion of an individual to fall to that individual. In the case of a honey trap, we may condemn that person for getting into bed with someone other than their spouse. The impact on their family is rarely considered, or if it is the responsibility falls squarely on the shoulders of the philanderer. This, though, is at least sometimes overly simplistic. While it may be that the individual really does look to leap into bed with whomever he or she can find, this is by no means always the case. The target might have been sent great distances from her family and struggle to find a sympathetic ear in the temporary location, she might be struggling to save a failing relationship, or she might have been drugged. While I am not condoning adultery, honey traps (and blackmail in general) are typically carefully thought-through attacks on vulnerable individuals and can have devastating effects on them and their families.

Torture has an even clearer detrimental impact on the individual, whether that involves physical beatings or forced stress positions, or even disorientation through kidnapping and enforced lack of sleep. We tend to be more sympathetic to the victim of torture than we are to the victim of a honey trap or other form of blackmail, and with good reason. The latter exercised at least some autonomy in getting themselves into a compromising situation whereas the victim of torture did not. However, both cases exemplify coercive attacks not only on the individual person and their immediate family, but also on the wider community and ultimately on what it means to be a person.

I have already referred to a number of arguments put forward by Tony Pfaff in his consideration of ethical intelligence. His overall position is that ethical parameters should be introduced by using Kantian principles, and particularly the Categorical Imperative that would have us respect the dignity of other people, refusing to use others as mere means (Pfaff 2006, p.73). This has some interesting implications for intelligence work. There may be a level of concern about the individual recruited by the IO to pass over secret documents, but ultimately that individual is important to the IO because of the documents, not for his own worth. Granted that this is not *necessarily* the case (the agent may also be valued as a person by the IO) it is more readily identifiable in cases of coercion. In these cases the autonomy of the would-be agent is directly overridden by the coercive act in order to gain the information that the would-be agent can provide.

As noted above, Pfaff suggests that this becomes tolerable when that individual knowing “enters the game”. However, if we can overcome the Categorical Imperative through informed consent, then the Kantian principle ceases to act as a universal moral limit, and we are back to a more basic scenario of weighing one person’s wellbeing against national security, with the conclusion of that decision virtually predetermined.

While I have problems referring to espionage as a “game” in any context (I find this vocabulary unpleasantly reminiscent of 19<sup>th</sup> century militarism combined with allusions to schoolboy pranks, both of which fail to take seriously the real and potentially devastating impact coercive espionage can have on the lives of those affected), I do think that the Categorical Imperative can provide a way to understanding the value of an individual in the proportionality consideration of *jus in intelligentia*. The Categorical Imperative places a high value on the individual as one who cannot be used as a mere means. If this is the case then no coercive measures would be tolerable for the IO while those measures treated the agent as a mere means to the information he may be able to obtain for the IO. Passive surveillance and gathering of intelligence freely offered might be justifiable, other conditions of just intelligence pertaining, but torture, blackmail and other means of coercion would not.

Employing the Categorical Imperative adds a significant qualitative weight to the value of the person faced with coercive measures. It is an assault not just on a person but on *personhood*, what it means to be a person (at least in Kantian terms) in terms of autonomy. There is also a significant quantitative weight to the value of that person which is similarly overlooked in the “one person versus national security” argument. This quantitative weight derives from the fact that the assault on the individual through the application of coercive means does not end with the person herself. Nor does it extend merely to her family and friends but rather, I want to suggest, to the broader community.

A similar move has been made in discussions concerning the value of privacy in recent years. Daniel Solove and Priscilla Regan have each argued that attacks on privacy tend to be viewed in light of an attack on the individuals whose privacy is violated. However, this oversimplifies the situation. Privacy has a value to the wider community which goes beyond the individual. As Solove writes, “the problem with framing privacy solely in individualistic terms is that privacy becomes undervalued. Often, privacy receives inadequate protection in the form of damages to compensate individual emotional or reputational harm; the effects of the loss of privacy on freedom, culture, creativity, innovation, and public life are not factored into the valuation” (Solove 2008, p.89). He goes on, “privacy harms affect the nature of society and impede individual activities that contribute to the greater social good” (Solove 2008, p.92). It is not difficult to see how the debate in privacy, while involving a less coercive harm than in the forms of intelligence under discussion here, has nonetheless suffered from a similar lack of imagination in considering the extent of those harms.

Looking at these social harms in greater depth, Priscilla Regan has argued that there are at least three social values that are apparent in privacy: a common value, a public value, and a collective value. The common value is the shared perception of value in a particular good; the public value lies in the value of that good both to the democratic political system; and the collective value is found in the fact that it is difficult for one person to enjoy that good without all having a similar level of access to that same good (Regan 2002, p.399; Regan 1995).

Following Solove and Regan, a similar position can and should be taken regarding autonomy-challenging coercive measures applied for the purposes of intelligence. Coercive measures are therefore not just an assault on the individual but the community at large. As with privacy, there are at least three social values which are harmed through intelligence gathering by coercive means. There is a common value in that we all value our autonomy and freedom to decide our own destinies. There is a public value in that our autonomy is of pivotal importance to the democratic political system. Without individual freedom to choose and vote democracy collapses, along with the society that it protects. Finally, there is a collective value in that we share a common interest in participating in a society in which coercive practices are not tolerated. We rightly shrink from the prospect of a police state, no matter the amount of protection it may offer from criminals. The more we do tolerate such coercive practices in society, the greater the likelihood that they will continue to be practiced and potentially practiced more widely. Rather than being a society that condones such practices, we risk becoming a society that is typified by them. Heeding the words of Martin Niemöller, if we do not speak out for those with whom we do not associate, we risk there being none left to speak out for us when our turn comes (as cited in Ishay 2008, p.217).

If I am correct in these assertions then there is a qualitative and a quantitative value to autonomy which is overlooked in the “individual vs. national security” proportionality equation outlined above in cases of coercive intelligence. The implication is that the harms of enacting coercive measures on the individual go far wider and far deeper than merely harming the individual person. Rather, they go to the root of what we take a person to be, and they extend to the community of persons at large. As such, these harms can be justifiably inflicted far less often than might otherwise be taken to be the case.

It is worth stressing that while these harms can be justified less frequently than the individual vs. national security equation might suggest, it does not follow that coercive measures can never be justified. They are not *mala in se*. The approach that I am taking remains a consideration *within* the principle of proportionality, and so it can be overridden in particular circumstances. While these are by no means frequent, they are not inconceivable. This is especially true in cases such as wars fought

against totalitarian regimes which, by their very nature, seek to dehumanise and denigrate what it means to be a person (Arendt 1968).

It might be countered that in such cases of wars against totalitarian states we should not depart from treating the IO as a representative of the state. The IO from a liberal democracy therefore could be seen to have an especial duty to uphold the values of democracy in the face of totalitarianism, which would imply maintaining a high value on the personhood. At the same time, though, there is a pressing need to protect that democracy from collapse and the ultimate devaluing of *all* persons living therein. In such circumstances I believe that it is not unfeasible that coercive measures may be justifiably employed. That is not to say that this should ever be undertaken lightly, and the remaining conditions of just intelligence should also all be met.

The conclusion to this position is that coercive measures are tolerable as a means of intelligence only during times of war or severe national emergency, and not always then. Coercive practices are, I believe, less justifiable in intelligence work than is often taken to be the case. In times of peace, and between allies, coercive means of intelligence are simply not justified. During war, by contrast, and particularly wars in which the value of personhood is challenged, such means may be justified.

## **Conclusion**

Treating the Categorical Imperative as a guiding principle within the proportionality consideration provides a valuable development on the existing literature applying the principles of just war thinking to intelligence ethics. It leads to a more intuitive conclusion when considering the justifiability of coercive means of intelligence. As a means of weighing the value of a person, this approach raises the worth of an individual so that considerations of blackmail or torture become more than a matter of one person's pain weighed against the security of a nation. It is rather the value of autonomy, in itself and as a social value, which is weighed against the security of a nation. This is a far stronger consideration than the wellbeing of the individual, albeit still not an absolute prohibition.

I will end by stressing that the conclusions to my argument are not in some way deleterious to human intelligence gathering, although they do apply more obviously to HUMINT than to SIGINT or OSINT. Human intelligence is an important aspect of the state's intelligence apparatus, and I have no problem with members of foreign states who wish to defect and bring their secrets with them. This was certainly true of many brave agents in the Cold War who willingly risked their lives to inform the West as to Soviet intentions and capabilities. The challenge I am raising is to *coercive* methods used in intelligence. In such case the harms visited, irrespective of whether those on which the harms are visited see themselves participating in some great game, are often simply too great to justify.

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