Spying has been frequently called the world's second oldest profession,² taking second place to what is arguably the world's oldest profession, prostitution. This is an article on the ethics of spying, and this ranking may constitute an interesting case of foreshadowing that places spying in the same league as prostitution. Arguably, both the prostitute and the spy compromise themselves in some form to accomplish another goal. Further, the ethics of spying in this paper will be examined in the context of and compared to the ethics of war, which raises even more disturbing emotional reactions, as many authorities hold the position that war, with its attendant violence, death, and destruction, is the ultimate expression of human immorality and even evil. There is some commonsense support for this ranking in human experience, as sex was probably the most common act well before human beings started to engage in deception to discern what their neighbors were doing or about to do, with war following shortly thereafter when one tribe discovered that another tribe was about to attack.

A number of sociological authorities and some governments, if only in practice by failing to enforce certain laws, argue or recognize that prostitution can be or is moral (or at least not a crime) for a variety of reasons or at least a function of personal choice by the prostitute and the client. Most nations have laws prohibiting it. Yet no nation has ever succeeded in stopping it. As to war, no one denies the horrors of war, and there are a number of international treaties attempting to regulate it. Despite the best efforts of philosophers and statesmen (please note that I do NOT include politicians in this category), war still occurs with depressing regularity, which even the most effective political laxative of regime change apparently will not cure. But there is little authority, research, or publication about the general morality or ethical theory of espionage.
Almost all nations ban spying by foreign nations, yet, curiously, these very same nations formally engage in it against other nations and even have professional organizations to facilitate it. Obviously, philosophical universality is a concept that is not, at least in practice, applicable to the profession of espionage, which presents a curious parallel to both prostitution and war. How many politicians will beat the drum against immorality and illicit sex and then be found to have or currently be engaged in it? How many nations claim they are doing everything to maintain peace but then engage in war? Curiously, espionage is usually inextricably linked to war (both its prevention and its initiation and continuation), and it frequently employs the use of sex, whether through prostitution or blackmail, to accomplish its goals. These concerns raise the question: Can there be a Just Intelligence Theory?

Keeping in mind these rather daunting observations about espionage and its relationship to both prostitution and war, this article will start the rather Sisyphean task of trying to discern a reasonably acceptable set of ethics that might be generally applied to the second oldest profession of spying.

War

Throughout human history, war has existed and has been accepted, at least de facto if not de jure, as a necessary evil in the realm of politics and international relations. Any claim to the contrary is easily refuted by the rather dismal historical record of humanity. This statement that war has existed throughout human history is not a justification for the occurrence of war but merely a recognition that it has occurred, it is occurring, and it will likely (and unfortunately) continue to occur.

War is a thoroughly brutal and inhuman business. People, both combatants and innocents, are casualties of war. They are wounded, tortured, and killed. Livelihoods are lost. Families are decimated. Innocent civilians are reduced to refugee status in foreign lands. Homes and towns are destroyed—sometimes entire cities disappear with a single bomb or with concentrated firebombing, as was so efficiently demonstrated by the United States in World War II. In the aftermath of war, depending upon its scope and intensity, modern civil society vanishes. Thomas Hobbes's state of nature prevails, if only for short time, until the conquering power establishes order, usually through the use of military force and martial law, as shown
by the recent Iraqi War. As with all wars, politicians seek to justify the wars in which the states they rule engage. Numerous reasons are given: self-defense, expansion, need for natural resources, God’s will, inherent superiority, manifest destiny, etc. The reasons are legion and only limited by the political circumstances present and the creativity of the politicians seeking to justify the war in question, although there are some wars that almost everyone agrees are morally just, such as World War II and the effort to remove the Nazi regime of Germany. Whatever reasons are advanced, the politicians usually claim that the war in question is both necessary and just.

In response to this continuing horror, some of the more enlightened leaders of the world have, recognizing a sort of inevitability of war, sought to make war somewhat more humane or civilized and ameliorate the associated harm and destruction, especially upon innocent civilians and noncombatants. Accordingly, they have created various rules and laws to ameliorate the brutal consequences of war. Examples of such laws of war are the Geneva and the Hague conventions. The Geneva Conventions, first held in the 1800s and being reconvened several times until 1949, have sought to protect prisoners of war and civilians. The Hague Conventions, held in 1899 and 1907, have sought to establish rules for the conduct of war itself, which have included prohibitions on the use of such especially destructive and horrifying weapons of chemical agents, such as poison gas and hollow-point bullets.

Prior to these efforts and continuing to this day, philosophers and statesmen have attempted to formulate a comprehensive Just War Theory. No doubt some of these efforts were genuine attempts at understanding war and evaluating the presence of any ethical principles or the possibility of applying basic ethical principles to war. Others may have been merely attempts to politically rationalize the otherwise unthinkable results of war, despite the lack of any justifiable reason. The success of such attempts is debatable, although there is an extensive body of work devoted to Just War Theory, which has received a significant degree of academic and political recognition and approval. Just War Theory will be discussed in more depth in succeeding sections of this article.

**History of Espionage**

As previously acknowledged, spying has been called the second oldest profession. One of the first recorded texts addressing the
profession of spying is Sun Tzu’s *The Art of War*, written in the fifth century BC. In this rather extraordinary text, Sun Tzu provided, among other subjects, an explanation of the different types of spies, how to employ them, and how to operate an intelligence organization.7

In Western civilization, one of the first recorded employments of spies is in the Bible. Moses sent spies to investigate the land of Canaan.8 Joshua sent spies to discover the weaknesses of Jericho.9 Ancient history also provides examples of the use of spies. In 480 BC, the Greeks sent spies to Persia to determine the size of Xerxes’ military forces prior to his attack. And Xerxes sent a mounted spy against the Greeks just before his attack at Thermopylae, where the legendary 300 Spartans made their last stand.10 The Roman general Scipio Africanus and the Carthaginian general Hannibal both used spies in the Punic Wars.11

Machiavelli, who lived during the fifteenth and sixteenth centuries, was famed for his work, *The Prince*. However, he also wrote on the uses and techniques of spying.12 In the sixteenth century, the Catholic Church’s use of spies was made most evident. The pope used Jesuit priests as spies in an attempt to counter the spreading Protestantism in Sweden.13

It was not until the rise of nationalism and the religious wars in the sixteenth and seventeenth centuries that true specialists in intelligence began to appear in the West. One of the first and most famous was Sir Francis Walsingham, who was the secretary of state for Queen Elizabeth I. Walsingham recruited the most gifted graduates of Oxford and Cambridge universities. Christopher Marlowe, the famed English playwright who was killed in a bar brawl, was reputed to be one of his spies. Walsingham regularly employed the tactic of intercepting communications and employed the use of a person skilled in cryptology and cryptoanalysis.14 This was not the first use of cryptology, which has been acknowledged back to the time of the ancient Egyptians.15 Also in the seventeenth century, Cardinal Richelieu, a minister under the French king Louis XIII was infamous for his employment of spies, demonstrating that the church was not above being involved in espionage.16

Following the time of Elizabeth I in England, intelligence specialization continued under the rule of Oliver Cromwell in the seventeenth century. Cromwell employed a man named John Thurloe, who not only held the office of secretary of state but was also in charge of the government agency known as the Department of Intel-
Just War Theory as a Basis for Just Intelligence Theory

This is one of the earliest examples in Western civilization of a formal agency in government dedicated to intelligence.

In the late eighteenth and early nineteenth centuries, in the West, the craft of intelligence became differentiated into two functions: (1) domestic political intelligence/police and counterintelligence and (2) military and foreign intelligence. A domestic intelligence/police function was necessary for internal security and to keep control of the populace, especially in a world that had just seen the successful American and French revolutions. A counterintelligence function was needed to prevent foreign powers from collecting intelligence about the nation. This distinction in intelligence functions appeared in the government of Napoleon Bonaparte, largely influenced by the many conspiracies associated with the French Revolution. In contrast, the Prussians kept their intelligence functions unified and were considered to be one of the most efficient intelligence services until the dismissal of their leader Wilhelm Stieber in 1871, who is credited with being the first spymaster to employ mass intelligence operations to maximize the accuracy of the intelligence obtained. Russia, with its tyrannical czars, personified the problem of a revolutionary peasant population and the need for internal security to maintain the government. In 1826, Czar Nicholas I formed the Third Section of the Imperial Chancery, which was replaced in 1878 by the Okhrana in the Ministry of the Interior, which was a political police force dedicated to protecting the czar and the government.

The nineteenth century also saw the prescient appearance of what has become one of the more important forms of modern espionage: economic espionage. In the nineteenth century, the banking house of Rothschild had one of the greatest intelligence services in Europe. The Rothschilds employed their intelligence service to obtain all forms of political and economic information to maximize their financial interests. For example, Nathan Rothschild in London knew of the defeat of Napoleon at Waterloo before Europe did and used the information to make a financial killing on the sale and repurchase of British government securities. Although the Rothschilds employed their own private intelligence service, the use of government intelligence agencies to engage in economic espionage has been and is both a legal and an ethical issue in modern times.

This is not an article about the history of espionage, but a brief review of it was necessary to demonstrate that spying has a long history and has been employed by every private, public, commercial,
and religious institution for a variety of reasons, which highlights the importance of examining the ethics of espionage.

It is interesting to note that one of the most famous spymasters in contemporary history, Allen W. Dulles, who headed the Central Intelligence Agency in its early years after its formation after World War II using the historical Russian secret police as an example, formulated the principle that the size and power of an internal security service is in direct ratio to the suspicion and fear of the ruling element of that government. This disturbingly accurate observation leads to some rather interesting and uncomfortable questions and conclusions later in this article. For example, as an ethical matter, it would seem that a self-admitted tyrannical state, such as the former Soviet Union, would have no moral qualms about severe and harsh internal controls over its own populace, but how do theoretically free and enlightened societies morally justify large internal security services, unless there are “legitimate” reasons for fear by the ruling elite, which would seemingly contradict the ethics of a free and enlightened society?

Modern Intelligence Services

Although governments have frequently used spies throughout history, it was only in the twentieth century that the use of spies, provocateurs, and saboteurs became a refined art and was even elevated to the status of a true profession. Generally, from the time of World War I to the end of World War II, the bases for the modern intelligence agency had been formed. Some of the more “well-known” contemporary intelligence services are listed below. The CIA was started in 1947 from its precursor, the OSS, which was the Office of Strategic Services, which was the U.S. intelligence agency during World War II. The NSA was formed in 1952 to provide technical communications intelligence. The FBI was tasked with internal counterintelligence. The British MI5 (counterintelligence) was formed in 1909, and the MI6 (intelligence) was formed in 1911. The Russian (previously Soviet) intelligence agencies began with the CHEKA in 1917, which became the GPU in 1923, the OGPU in 1923, and the NKVD in 1934. In 1954, it became the KGB. After the fall of the Soviet Union, the Russian intelligence service became known as the FSB. The Israeli intelligence service, the Mossad, was formed in 1951. Of course, there are numerous other unnamed national intelligence agencies that have earned reputations for competence and secrecy.
With the Cold War between the Communist-bloc nations and the Western democracies from the 1940s to the 1990s up to the fall of the former Soviet Union, the development of the modern intelligence agencies reached its heyday. Intelligence gathering essentially became a necessary and fundamental tool not just for the conduct of war but also for statecraft. Nations created huge agencies devoted to the acquisition and analysis of intelligence and the execution of covert operations to enhance national security and further national interests. During this period, these agencies began to focus and develop technology to aid in the accomplishment of their missions. These agencies consume a tremendous amount of money and resources to finance and operate.

The employment of intelligence operations has become almost an absolute necessity for the political (and, on occasion, the actual) survival of both governments and nations, never mind success, in today’s fast-moving, technology-enhanced, instantaneously communicating, subject-to-nearly-immediate-surgical-military-strikes, and viciously political world. This need for intelligence to help ensure survival and success is not just limited to political issues but has expanded to include economic issues. Some nations define their national interest to include access to natural resources. Some nations hold the position that the spread of particular political or economic philosophies is part of their national interest, which has resulted in numerous international problems. This has not become a problem for those governments that have a state-controlled economy, for the obvious reasons.

Nations, as a practical matter, cannot and frequently will not take action in the arenas of national security, military operations, or foreign affairs without some form of hopefully accurate intelligence concerning the opposing nations or entities, which may include nongovernment organizations (NGOs) such as Al-Qaeda. Indeed, intelligence is considered so important, especially politically, in both the domestic and international arenas that some nations have even resorted to manufacturing “intelligence” to support their proposed actions in both military operations and foreign affairs, as exemplified by Colin Powell’s speech to the United Nations about alleged weapons of mass destruction to justify the American invasion of Iraq, which were subsequently shown to be somewhat “erroneous.”

Whatever the reasons, intelligence operations are now considered not only an accepted tool of statecraft but also a necessary function of a government that is to survive and prosper. But concurrent with
the presence of government functions comes the question of how such functions should operate. In other words, what are the ethical boundaries of such intelligence operations? Just War Theory attempts to prescribe certain outer ethical boundaries for the initiation, conduct, and recovery from war. However, there is no generally accepted Just Intelligence Theory. This article will attempt to present a general framework for a Just Intelligence Theory, using the centuries of thought that form the basis for Just War Theory. This approach is taken because, at least in one aspect, war and intelligence operations share a common denominator: both involve the commission of acts that would otherwise be considered immoral and illegal.

**Intelligence Operations**

What are intelligence operations? An examination of the structure of the Central Intelligence Agency (CIA), one of the most "well-known" intelligence organizations in the world, provides a framework for answering this question. The CIA has four basic components: Directorate of Intelligence, the National Clandestine Service, the Directorate of Science and Technology, and the Directorate of Support. Each one has a general mission. The Directorate of Intelligence identifies, monitors, and analyzes data and prepares reports on world events, national and international crises, and potential dangers to the nation and the world, to include terrorism and crime. It is also concerned with counterintelligence. The mission of the National Clandestine Service is to covertly collect human intelligence (HUMINT) and engage in covert actions. Once raw intelligence is obtained, it is usually forwarded to the Directorate of Intelligence for analysis and processing. The website for the CIA rather pointedly (and understandably) fails to publicly define what constitutes covert action, although there have been more than a sufficient number of books and congressional investigations to determine what many covert actions involve. The Directorate of Science and Technology supports the missions of the CIA with the creation, development, and operation of advanced technologies to facilitate the collection, processing, and analysis of information and the execution of covert operations. It is this directorate that creates, manufactures, and provides, among other things, the equipment used by agents in the field to perform such tasks as disguising themselves so that they are not detected in their activities; eavesdropping on secure communications; defeating technical methods of preventing/detecting them in the performance of their duties;
or even assassinating a target without leaving any evidence of the fact, the method, or the source of the assassination. The Directorate of Support provides administrative and logistical support to the CIA. There are several interesting histories of the CIA that have been published.25

In contrast to the CIA, the National Security Agency (NSA) is the primary gatherer of signal and electronic intelligence (SIGINT) in the American intelligence community. SIGINT has two main categories: communications intelligence (COMINT) and electronics intelligence (ELINT). COMINT includes communications by telephone, facsimile, cell phone, radio, Internet, microwave, computer, and satellite. ELINT includes electronic signals that are not communication but may reveal certain other intelligence information, such as the identity of a particular electronic system based upon its electronic signature. The NSA is also responsible for the communications security (COMSEC) of the United States. As part of its responsibility in this area, NSA is considered the foremost expert in the world on cryptology and cryptoanalysis. Unlike the CIA, the NSA does not publicly present its organizational structure on its website. However, in at least one book on the NSA, its supposed general structure at that time has been published.26 An excellent history of the NSA has been recently published.27

Image intelligence (IMINT) is different from signal and electronic intelligence. Where signal intelligence involves the interception and decryption of communications, image intelligence involves the obtaining of images of objects of intelligence. Objects of intelligence include but are clearly not limited to ICBM sites; nuclear, biological, or chemical testing or production facilities; new weapons systems, such as modern armored vehicles or advanced jet fighters; or orbital space weapons platforms. Each of these objects of intelligence are items that could be analyzed through the use of images of them. Such images can be obtained through the use of normal photography from fast-flying jet planes such as the SR-72 Blackbird or digital-imaging systems operating from space satellites. IMINT is obtained and processed by several agencies within the intelligence community. One of the major agencies involved with IMINT is the National Reconnaissance Office, which is part of the Department of Defense. The National Reconnaissance Office is responsible for the design and development of spy satellites and the coordination and analysis of image intelligence gathered from airplanes and satellites.
The Federal Bureau of Investigation (FBI), as the major national criminal investigative agency of the United States, is primarily concerned with violations of domestic federal law. However, the FBI is also tasked with counterintelligence duties because the CIA and NSA are generally prohibited by law from conducting intelligence operations within the borders of the United States against American citizens. Within the FBI is the National Security Branch, which is responsible for counterintelligence and counterterrorism and the operation of the Terrorist Screening Center to assist state and local law enforcement agencies.

From this structure, it is apparent that the primary mission of “intelligence” is the gathering, analysis, and reporting of information in support of the goals of that particular agency, which, in the case of the United States, are the enhancing of national security and the supporting of American foreign policy. However, intelligence operations do not just consist of the gathering, analysis, and reporting of information. As shown in the structure of the CIA, there is a specific branch known as the National Clandestine Service. The National Clandestine Service, which involves covert operations, is not merely concerned with secretly opening someone’s mail without his or her knowledge or permission. Covert operations executed throughout the world by many nations can and do involve such unsavory acts as the assassination of foreign government officials; manipulation of foreign elections; destruction of physical property of foreign nations; kidnapping of foreign government officials; compromising, to include blackmailing, foreign government officials to betray their own nations; undermining and inciting revolution in foreign nations; sedition and propaganda directed at foreign nations; interrogating people using techniques that could be classified as torture; conducting questionable medical experiments on people; preventing or sabotaging the efforts of a foreign nation to improve its military capability; preventing or sabotaging the efforts of a foreign nation to improve its scientific knowledge; preventing or sabotaging the efforts of a foreign nation to improve its economic position; preventing or sabotaging the efforts of a foreign nation to improve its political power; preventing or sabotaging the efforts of a foreign nation to gain access to natural resources; and preventing or sabotaging the efforts of a foreign nation to improve its own intelligence capability. Numerous publications detail the actual occurrence of such events by various intelligence agencies, so they will not be listed here. Intelligence operations also include counterintelligence, which involves
the prevention, discovery, and prosecution of foreign intelligence operations within the nation. As a general rule, such activities within the borders of the United States against its own citizens are limited by law to the FBI.

This article is not intended to brand all intelligence operatives and agencies as rogue outlaws wholly lacking in ethics. However, the published literature on the topic clearly and unequivocally shows that intelligence operatives and agencies can and do engage in unethical and illegal conduct.\(^2\)\(^8\) For those who wish to reflexively maintain the politically correct position that such unethical and illegal conduct is merely a pack of political hogwash and popular government bashing, I refer them to the Church Committee reports issued as a result of the U.S. Senate hearings in 1973.\(^2\)\(^9\) This article presumes that unethical and illegal conduct is employed by both intelligence operatives and agencies in the execution of their missions. Whether such actions are justified are, in most cases, almost impossible to objectively determine because of the secrecy surrounding such missions.

No matter how romantically Hollywood or thriller spy novels portray the life of a secret agent, covert intelligence duties can be and frequently are dangerous, brutal, illegal, and immoral. However, the argument has been made countless times and has been widely accepted by numerous authorities that such intelligence operations are not only necessary but, as a matter of “realpolitik,” also inevitable, just as in many situations as shown by history, war is inevitable. Of course, this does not necessarily mean that such actions are moral or ethically justified.

As previously stated, with the Cold War between the Communist-bloc nations and the Western democracies from the 1940s to the 1990s up to the fall of the Soviet Union, the concept of intelligence operations was refined to a professional level. Intelligence gathering essentially became a necessary and fundamental tool not just for the conduct of war but also for statecraft. Many intelligence agencies recruited well-educated individuals and began highly specialized internal training programs. However, the principle of realpolitik in the execution of intelligence operations frequently requires the intentional breaking of laws and ethical codes, to include but not limited to theft, burglary, assault, robbery, kidnapping, torture, murder, extortion, bribery, conspiracy, illegal surveillance, civil rights violations, and violations of various precepts of international law. Violations of privacy and the use of deception are a given in intelligence gathering. This is not to say that intelligence gathering cannot
or does not occur by merely legally accessing public information, such as newspapers, magazines, or public media broadcasts without violating any laws. In fact, a significant, if not a major, portion of intelligence gathering occurs by the use of these legal methods.

With the rise of the modern professional intelligence agencies, ethics, regardless of whether they were formally recognized, became a fundamental issue. Each intelligence agency has a continuing mission, usually aligned with the goals of maximizing national security and/or national interests through the use of gathering intelligence from foreign states, preventing foreign states from gathering intelligence, and engaging in covert operations to maximize national security and national interests. It is interesting to note that the CIA publishes on its website an article that raises serious issues about the lack of ethics within the CIA and makes various suggestions to emphasize ethics. However, the missions of intelligence agencies frequently conflict with both generally accepted codes of ethical behavior and criminal law. As to internal codes of ethics, both formal and even more importantly, informal, the focus will be on the accomplishment of the mission and the preservation of national security and the national interest. No doubt, informal codes of ethics among intelligence agents will focus on protecting each other. The Code of Conduct for the CIA stresses loyalty to the agency and its mission. However, it also prohibits activities that are violative of law and regulations. Further (someone at the CIA must have a sense of humor), it also prohibits any “appearance of impropriety,” which is a rather unique requirement to place upon a spy (unless this statement refers to the ultimate transgression of any spy of getting caught). Interestingly, the NSA, on its website under values, stresses that it will have “respect for law.” This is a curious statement of values as the NSA has recently been involved in questionable activities involving the illegal interception of electronic communications on American citizens, and the very nature of the NSA’s activities requires it to violate the laws of other nations and international law.

Intelligence-gathering missions, by necessity and by definition, require the gathering of intelligence by means other than sending a formal request for the information to the foreign head of state. In addition to the passive methods of gathering intelligence, such as reading foreign newspapers and magazines and listening to foreign communications, intelligence agencies employ spies whose function is to secretly gather the intelligence, usually without the foreign state discovering that its secrets have been compromised. As previously recognized in this article, the missions of spies can, do, and will require the violation
of laws: theft of foreign governments’ documents, smuggling of arms to foreign revolutionaries, bribery of foreign governments’ officials, burglarizing of foreign governments’ offices, and even assassination of foreign governments’ officials. Thus, not only are ethical standards violated, so are criminal laws. To think that intelligence can be effectively accomplished without employing such methods has been called incredibly ignorant, despite the statement of one former U.S. secretary of state, Henry Stimson, prior to World War II and before the advent of the modern technologically focused intelligence agencies (with some notable exceptions such as the OGPU and the NKVD of the former Soviet Union and the Abwehr of Nazi Germany before and during World War II), who stated: “Gentlemen do not read other gentlemen’s mail.” Stimson’s ethical position, however much it comports with idealistic standards of courtesy or ethics, is widely acknowledged to be naïve and fails to recognize the realm of realpolitik where national survival or success can be the primary concern, especially in the modern world. Indeed, after World War II, Lieutenant General James Doolittle stated: “If the United States is to survive, long standing American concepts of ‘fair play’ must be reconsidered.”

Considering this very brief previous discussion of intelligence operations, for the purposes of this article, I will use the following general framework for my discussion of intelligence operations:

Intelligence Activities

1) Passive intelligence gathering from public sources such as the media;
2) Passive intelligence gathering from publicly viewed sites, such as satellite photography or airplane flyovers;
3) Passive intelligence gathering from public sources such as telecommunications interception of nonencrypted broadcasted signals;
4) Passive intelligence gathering from nonpublic sources such as telecommunications interception of encrypted broadcasted signals and cryptoanalysis;
5) Passive intelligence gathering from nonpublic sources such as willing spies/defectors who initiate the process;
6) Active intelligence gathering from nonpublic sources such as telecommunications interception of secured signals (hardwired telecommunications networks) or postal/diplomatic interception and cryptoanalysis;
7) Active intelligence gathering from nonpublic sources such as data storage facilities, whether electronic or hard copy;
8) Active intelligence gathering from nonpublic sources such as willing spies/defectors who do not initiate the process;
9) Active intelligence gathering from nonpublic sources such as unwilling spies/defectors;
10) Active intelligence gathering from nonpublic sources such as espionage (actual placement of a spy in foreign governments is not categorized as a passive operation);
11) Prevention, detection, and prosecution of intelligence-gathering activities, which is counterintelligence and includes such activities as physical security and communications security and cryptology;
12) Active covert operations to include sedition, sabotage, revolution, and assassination (I take the position that there are no passive covert operations; although I do recognize that a number of passive and active intelligence-gathering activities are conducted in secret [i.e., covertly], my response is that true active covert activities, at least for the purposes of this article, are those that involve actions beyond mere intelligence gathering, except for category 7 [theft of information] and category 9 [forcing participation by opposing personnel]); and
13) Prevention and detection of covert operations.

Although this theoretical framework appears to be comprehensive, there is another perspective that must be examined when considering the ethics of intelligence operations. This perspective is the object of the intelligence activities. Many people would assume that intelligence operations involve a foreign agency, government, or nation. This assumption, of course, includes a nation's own citizens when operating on behalf of the foreign agency, government, or nation. And it is this assumption that underlies the previously presented list of categories of intelligence activities.

The proverbial "fly in the ointment" is when intelligence activities are not directed at foreign agencies, governments, or nations or their agents within the nation (to include that nation's citizens), but rather are directed at the nation's own citizens in response to those citizens' beliefs, associations, or activities held or taken based on political principle with no external (i.e., foreign agency, government, or nation) influence. As any person who has read basic treatises on political science or history is able to discern, this perspective con-
cerns the employment of internal political control functions or, in other words, a national secret political police force with all of its attendant trappings of secret surveillance; use of friends and family as informants; comprehensive dossiers; lack of any personal privacy; limitations on travel, communications, and associations; public humiliation and denouncements; employment blacklists; late night arrests; interrogations under torture; "psychiatric" commitments; extended incarceration without any criminal charges or trials; secret, nonpublic trials; political show trials; internal exile to gulags; imprisonment and execution as enemies of the state; and extensive government secrecy. Although anathema to free societies, at least in theory, some such free societies, employing complex technologies, have been moving toward a level of internal policing, whether justified or not by such events as 9/11, that would make a Gestapo agent salivate. Examples of internal political policing and technology used against citizens include COINTELPRO by the FBI in the 1960s and the 1970s against various social and political groups and the contemporary surveillance society of Great Britain. This perspective will rear its ugly head again later in this article.

But are the idealistic ethical standards commonly accepted by so many people and espoused, even if not followed, by politicians and nations so easily cast aside in the realm of intelligence operations? Does the law of the jungle prevail in intelligence operations, and is the prevailing ethic to win at any cost? There are many authorities who accept Just War Theory as presenting at least some situations in which the initiation, conduct, and recovery from war can be ethically accomplished, despite the attendant horrors of war. Perhaps there is a Just Intelligence Theory that would accommodate realpolitik in much the same way that Just War Theory ethically accommodates at least some wars. Thus, the principles of a Just Intelligence Theory might be analogized from Just War Theory.

**Just War Theory**

War, according to Carl von Clausewitz, is merely the continuation of political policy by more violent means. If this statement is taken as wholly true, war could and would be justified with almost any rationale, based on mere political necessity. And if war can be justified so easily, then espionage, which is arguably less immoral because of its much lesser scope of violence, death, and destruction, can be even more easily justified. Indeed, von Clausewitz was not overly critical
of war from an ethical perspective. Such a position, where war is considered to be the norm of political affairs, would be the antithesis of most theories of ethics. Unfortunately, politics and ethics are a volatile mixture and frequently result in such nasty events as revolutions, fueled by such politically "inconvenient” ideas such as civil rights, human rights, economic equality, and political principles. Although very few ratified political documents, except, for example, possibly the American Declaration of Independence, recognize the justness of revolution, politicians justify wars (and revolutions) all the time. The problem is that most justifications for wars are written by the victors (thereby questioning the impartiality of the history) and find an a priori coherent and broadly based acceptable ethical justification for war. Hence, Just War Theory.

Just War Theory has been presented and developed by a number of philosophers, theologians, and scholars throughout history, including Cicero, Augustine, Aquinas, and Grotius. Modern Just War Theory has been generally divided into three categories: (1) *jus ad bellum*, which is the justification for initiating or engaging in war; (2) *jus in bello*, which is the just conduct of war; and (3) *jus post bellum*, which is the just termination of war. However, Just War Theory has an inherent contradiction: justifying behavior that, in normal circumstances, would usually be considered immoral if not criminal—that is, for example, the destruction of property and the killing of other human beings. These concepts and their correctness will not be extensively discussed in this article but will merely be reviewed to form the basis for Just Intelligence Theory.

**Jus Ad Bellum**

The first category of Just War Theory, *jus ad bellum*, concerns the justification for initiating or engaging in war. Although there are different ideas for justifying war, international law and many of the recognized theorists include the following four requirements: (1) just cause; (2) proper authority; (3) last resort; and (4) proportionality.

Just cause is the most important of these four requirements. Recognized just causes for war include self-defense from foreign attack, defense of others from foreign attack, protection of innocent people from tyrannical regimes, and punishment for a serious wrong that has not been corrected. Some theorists hold that a just intention is also required before engaging in war. In other words, a war cannot
be waged for ulterior motives such as to seize land or gain power over another nation. However, this reason is part of just cause. International law prohibits planning or engaging in a war of aggression or in a war in violation of treaty obligations.\textsuperscript{44}

Proper authority refers to the legitimate government authorizing the war. Part of this requirement is that the authorization be public. The requirement of last resort refers to the principle that all other peaceful efforts to avoid war must be exhausted before war is commenced. The final requirement of proportionality means that states must not inflict more damage or harm than that which is needed for defense or to accomplish the legitimate cause for the war. For example, a state may not completely destroy another state and its cities in response to a mere occupation of a small portion of land. The principle of proportionality would dictate that once the seized land had been recovered, the war should end. Some theorists include the requirement that before engaging in war, a state must have a reasonable chance of success. Without this requirement, a state could go to war, resulting in destruction for its own people, and it would still be considered just.

**Jus In Bello**

The second category, *jus in bello*, concerns the conduct of a war after it has started. Under the Nuremberg Charter, the following acts during the conduct of war were recognized as war crimes: crimes against peace, war crimes, and crimes against humanity.\textsuperscript{45} These crimes involved planning, initiating, and executing a war of aggression, murder, enslavement, inhumane acts, and wanton destruction of property. Many of the treaties concerning the conduct of war, which include the Geneva and the Hague conventions, address the use or prohibition of certain weapons; treatment of ill and wounded personnel; treatment of prisoners of war; treatment of civilians; and proportionality. The use of chemical and biological weapons is forbidden by international law.\textsuperscript{46} Although the use of nuclear weapons is not strictly prohibited, any use of them would likely bring universal condemnation upon the user.

Prisoners of war and the ill and the wounded are required to be treated with humanity. They must be given food, shelter, clothing, and medical care. They must be protected from abuse, and it is prohibited to torture them. They cannot be forced to fight against their own nation.
Civilians (i.e., noncombatants) must not be the intentional targets of military operations. They are given extensive legal protections not just from military operations but also from such acts as reprisals, genocide, mass rape, ethnic cleansing, or forced or slave labor. Some theorists argue that this requirement also includes protections for domestic populations of nations that engage in war. Under this theory, such nations cannot engage in human rights violations against their own populations. Of course, this idea raises all sorts of issues concerning civil rights, conscientious objectors, forced labor, internment camps, censorship, and conscription.

The last requirement of *jus in bello* is proportionality. A nation must only use the force that is necessary to accomplish the military goals. For example, weapons of mass destruction are generally considered to not be acceptable proportional means to conduct a conventional war. Moreover, extensive and unnecessary destruction with conventional weapons is considered prohibited.

**Jus Post Bellum**

The last category of Just War Theory is *jus post bellum*. *Jus post bellum* is a relatively new development in Just War Theory that concerns the termination of war. There is little developed law on the topic, except for the law of occupation and the treatment of prisoners of war and civilians, as mandated in *jus ad bellum*, and the principle of proportionality, all of which should be continued during any military occupation. Actual postwar practice and a number of theorists advance the idea that *jus post bellum* includes punishment for those responsible for an unjust war, punishment for those who committed war crimes, and restitution for the cost of the war. Some theorists also advocate that *jus post bellum* also requires the rehabilitation of the defeated nation.

**General Ethical Theory**

Generally speaking, ethics or moral philosophy concerns the question of what is the right or correct behavior. In other words, ethics concerns what *should* be done. Some ethical philosophers, recognizing the practical difficulties of applying theory to actual practice, refer to the study of ethics as differentiating between what ought to be done with what is done—in other words, the problem of the ought and the is. This article is not intended to be a full discussion
on basic ethical theory but will just briefly review the three leading classical theories of ethics.

Before the leading secular theories of ethics are discussed, I wish to touch on traditional Western religious ethics. In Western culture, religion and Christian values are very influential, especially with the rise of the Religious Right in America. This article began with a reference to the use of spies by God’s Chosen People in the Bible. Christian values are unquestionably embodied in the Ten Commandments, which include the following: Thou shalt not lie, Thou shalt not steal, Thou shalt not kill, and Thou shalt not covet thy neighbor’s ass. Spying always involves deception, frequently involves stealing, on occasion sanctions murder, and is almost always based on fear, desire, and greed, especially when it is politically motivated. That is four out of ten—not a good average when considering that ethics, according to most accepted ethical theories, should be universal and applicable to all persons, nations, and situations. There is no qualification in the Bible that states it is acceptable to break the commandments in the national interest. However, in the Old Testament, the use of spies (and war) to accomplish political (or, perhaps, religious?) ends was not unknown and apparently supported by the Old Testament God. For the lack of a reasonable ethical theory of spying, will we be reduced to relying on age-old claims that God is on our side? This smacks too much of the current political-religious crisis between the West and the Islamic cry of jihad. And, speaking of jihad, depending upon which non-Christian religion is considered, war might very well be acceptable, even in theory, as opposed to the categorical prohibitions listed in the Ten Commandments. Indeed, Christian and other religions have used religious reasons to justify many a war. However, this article is not an examination of the various religions of the world in an attempt to justify espionage, but it merely acknowledges that the Western religions based on the Bible (or at least the Old Testament) provide some ethical foundation for questioning the morality of espionage, even if the Old Testament contains examples of its use. However, I decline to venture into the quagmire of religious ethics in this article and will focus on the basic secular theories of ethics.

Ethical standards are not topics to which different persons will readily agree. What may be ethical and honorable to one may not be to another, even for those persons who claim they subscribe to the same ethical theories. Regardless, there are two basic theories of ethics by which acts concerning people and social institutions
are judged. The first basic theory is what is historically referred to as utilitarianism. Sometimes this theory of ethics has been referred to as teleological ethics and is focused on the results rather than the method or motive concerning the acts in question. The second basic theory is frequently referred to as deontological ethics, which focuses on duties and the motives and methods concerning the act in question. It also relates to inherent or natural rights. The third classical ethical theory is referred to as virtue theory.

Utilitarianism was first formulated by the famous British philosophers Jeremy Bentham and John Stuart Mill during the 1700s and 1800s. Utilitarianism’s basic premise is the Principle of Utility. This principle holds that the greatest good for the greatest number is what determines whether an act is moral. This is also known as the Greatest Happiness Principle. Intentions or motives do not enter into the calculation of happiness and the determination of morality. If an act resulted in a greater good for a greater number of people, then that act would be considered moral or just. One of the problems associated with utilitarianism is how to measure what is good or what makes people happy. It is difficult to place a quantifiable value on differing degrees of happiness when comparing potential courses of action. Further, it is quite difficult, if not impossible, to accurately predict what the outcome of any course of action will be. Utilitarianism is frequently linked with teleological ethics, which is usually described by the maxim that “the ends justify the means.” Another problem with strict utilitarianism is that, at its extreme, the torture and killing of innocents can be justified if these otherwise heinous acts serve the happiness of the greater number.

The primary proponent of deontological ethics was the Prussian philosopher, Immanuel Kant, who lived during the 1700s. Kant wrote the *Groundwork for the Metaphysics of Morals*. In his work, Kant presented the Categorical Imperative, which is the basis for deontological ethics. The Categorical Imperative consists of two basic principles. However, underlying both principles was Kant’s recognition that all human beings have free will.

The first principle is that a person should act according to the maxim such that that act should be a universal law. This statement means that if a person acts, he or she should act such that the act would be a universal law for everyone—in other words, that everybody should act in the same way. Essentially, this is a different formulation of the Golden Rule, which states that people should do unto others as they would have done to them. When Kant uses
the term *maxim* he is referring to both the underlying value of the act and the motive for that act. Another word for *maxim* would be a *principle*. Kant did not list all of the possible underlying values that would form the basis of a moral person's acts. Kant thought that each person, as a rational being, had a conscience that, if followed, would be able to provide the proper guidance. Of course, the basic fundamental value, for Kant, was the inherent value of each human being.

The second principle is that a person should never be treated as a means to an end. A human being is considered to be an end, or the ultimate ethical value. In other words, a person is an ultimate ethical value just by virtue of that person being human. When Kant uses the term *means* he is referring to the process whereby a person is being used by a second person as a means to a mundane end or a goal. An example would be in which a person manipulates a second person through lies and gossip to arrange for the firing of a third person from a job so that the first person could obtain that job. In this situation the first person's use of the second person would constitute an immoral use of the second person as a means to an end or a goal. The existence of any duty to another human being must also be considered. Duty was formulated based on the fundamental inherent value of human beings as human beings, and Kant thought that each person has a duty to act in accordance with that fundamental inherent value of respect for all human beings. Thus, whether an act is moral or just depends on the following factors: What are the fundamental values involved in the situation? Is there a duty and, if so, what is the duty? What is the intent of the act? Will the act be respectful of all human beings? Will the act use a human being as a means to an end? Should this act be a universal law?

Generally, there are two forms of deontological ethics. They are called *act deontological ethics* and *rule deontological ethics*. Act deontological ethics focuses on the individual specific acts of a person. In other words, any ethical analysis is performed on each act of the person. In contrast, rule deontological ethics concerns the enactment of rules that have a deontological basis. Societies or governments, to be ethical, should enact rules that conform to the deontological principles of ethics.

The third classical theory of ethics is virtue ethics. Aristotle was the major proponent of virtue ethics. For Aristotle, happiness or doing what is good is a function of the mean between the extremes
of possible actions. Thus, Aristotle’s ethics were somewhat relativistic and did not depend upon any universal rule. One of the major criticisms of this theory of ethics is that the mean is not always the best way to act. For example, the two extremes of killing a person and not killing a person for whatever situation is present do not lend themselves to finding an appropriate mean. However, some proponents of Aristotelian thought respond that Aristotle’s mean of virtue is intended to help a person grow and develop morally rather than provide an absolute guide on how to act. Thus, the virtue theory of ethics is of little practical use in making moral judgments or determining the most moral course of action. Indeed, in difficult ethical situations, it would almost encourage some degree of moral compromise. Accordingly, I will not employ it in this article.

Of course, these ethical theories have a number of variations. Moreover, these theories have their adherents and their detractors. The nature of ethics and philosophy being what it is, it is unlikely that total agreement will ever be obtained. However, each theory has elements that most persons would find moral. Regardless, these descriptions present the major competing theories of ethics that can be applied to the understanding and analysis of Just War Theory and the formulation of a basic Just Intelligence Theory.

Before proceeding, I wish to present an additional theory of ethics that will likely be applied to any evaluation of intelligence activities. Espionage is part of the real world and not merely an intellectual exercise. It belongs in the realm of realpolitik. Indeed, many authorities use realpolitik in many of their justifications of actions in the political or military world that would otherwise be morally reprehensible under most theories of ethics. When we speak of realpolitik, we are acknowledging those actions that must be taken due to political or military necessity, which usually involve the survival or success of a nation. Essentially, then, realpolitik is an ethical posture in which “the ends justify the means,” which is quite similar to utilitarianism. But even this definition is somewhat naïve in that it does not recognize that political and military leaders often take actions that are not based on political or military necessity but merely based on personal ego or gain. George Bush Jr.’s invasion of Iraq after Saddam Hussein’s alleged assassination attempt of George Bush Sr. comes to mind. However, it is difficult to separate political or military necessity from personal ego or gain when much of the activity under scrutiny is secret.
Just Intelligence Theory

Like von Clausewitz, who acknowledged the reality of war, the reality of intelligence must also be acknowledged. It has occurred, it is occurring, and it will continue to occur. So when can intelligence operations be considered just? Is it possible to construct a framework by which intelligence activities can be adjudged to be moral and therefore justified? Is it possible to construct a Just Intelligence Theory that is internally valid and sound, or would the product of such an endeavor merely be a tool for politicians to continue to justify immoral extremes in intelligence operations?

There is little doubt that intelligence operations can be just as dangerous as war, at least to individual intelligence operatives and the individual subjects of intelligence operations, and might involve even more, proportionally, intentional illegality than war. However, the magnitude and scope of injuries or destruction or damage in most intelligence operations does not even begin to approach that which occurs in war. Given this important distinction between war and intelligence operations, there might be grounds for having less restrictive restraints and a more broad definition of what might be considered just intelligence operations rather than justifications for war, based, of course, upon what fundamental set of ethics is employed to set the standard for determining what is just.

There is also little dispute that the killing of fellow human beings, the desolation of national infrastructure, and the destruction of society, all being the results of war, are, as a general matter, morally wrong. This would be true for any of the theories of ethics, although a utilitarian might justify death and destruction as long as the greater number of people approved of it. Regardless, Just War Theory attempts to justify what would otherwise be inherently reprehensible acts. Although Just War Theory includes three categories (*jus ad bellum* for the engagement in war; *jus in bello* for the conduct of war; and *jus post bellum* for the just termination of war), there are some issues that must be addressed before using Just War Theory as a basis for Just Intelligence Theory.

As a preliminary matter, I must distinguish between the issue of privacy and security. Many ethical theories, if not the law, recognize some degree or right of privacy. However, the concept of privacy, when it involves a state or a government and its intelligence activities, is an issue of security rather than an issue of privacy, which is more applicable to individuals. Without some degree of security,
intelligence operations can and will be compromised. Accordingly, this article will focus primarily on national security rather than on individual privacy. Associated with this principle is the idea of secrecy. The overwhelming majority of intelligence operations are conducted in secret. Without secrecy, most of the intelligence operations mounted by governments would likely fail. Secrecy is an essential element of all intelligence operations. Thus, any moral analysis of intelligence operations must, as a practical matter, accept some degree of secrecy, despite any reservations that the average person might entertain concerning government activities. Of course, the extent of secrecy that a nation employs is a question of political values where, at least in theory, free societies will demand and receive from their government much greater openness concerning government operations, which necessarily includes intelligence operations. However, with 9/11, it appears that the scope of secrecy that the United States will tolerate is expanding.

A major issue concerning intelligence operations is the overall national interests claimed by nations. A number of nations include in their formulation of national interests such goals as economic interests, spreading a particular economic philosophy or system, ensuring access to natural resources, or spreading a particular political philosophy or system. These national interests raise serious questions of ethics. In international relations, each nation has what is called sovereignty, which is the authority of self-determination and control over internal affairs. There is a serious legal and moral issue about the morality of influencing or changing the social, economic, or political system of another nation, which has the inherent right to determine its own destiny. Even more serious can be the abuse of intelligence operations to sabotage foreign nations’ ability to improve their defensive military capability, to sabotage the efforts of foreign nations to increase their scientific knowledge, and to foment revolutions. Would the employment of intelligence activities, especially those that violate the law and ethical principles, to alter the social and political systems of other nations prosper under Just Intelligence Theory? This is an issue that Just War Theory implicitly, if not explicitly, rejects. According to international law, the answer is no. Deontologists would also likely answer no. Utilitarians might say that as long as the intelligence operations were successful and resulted in greater happiness for the nation engaged in them, the actions would be moral. But what about the victims?

When applying moral judgments concerning the intelligence activities in question, I will attempt to examine both sides: the entity
engaging in intelligence activities and the entity subject to them. Just War Theory takes into consideration all parties to a war. No less should be done when formulating a Just Intelligence Theory. The first step in developing a Just Intelligence Theory is to examine the essential nature of the basic intelligence operations previously outlined and the goals or values underlying them as opposed to the possible harm or damage such intelligence operations may cause.

The Categories of Intelligence Activities and Morality

There is little doubt that category 1 of the Intelligence Activities does not violate any basic ethical principles. No person is to be used as a means to an end for deontological ethics. A utilitarian would probably view the activity as morally valueless, unless it was successful. Gathering intelligence from public sources such as the media violates no laws, domestic or international, and does not violate any mandate of security. I recognize that simply because an act does not violate the law does not mean that the act is moral. However, there is no practical demonstrable harm by gathering information that is public. Thus, this category does not need to be justified by any Just Intelligence Theory.

Category 2 involves the law as to the regulation of airspace. Although U.S. law arguably recognizes some degree of privacy for lower altitudes over a certain property, the advanced technology of satellite photography makes the issue essentially moot. There is no international law prohibiting satellites occupying orbits above a nation and taking photographs of locations within another nation. Although the argument might be raised that such photography violated a nation’s national security, because of the public view from space, any such claim would be legally unenforceable. Indeed, the objecting nation only needs to not conduct its secret activities in the public view. From a moral perspective, once again, no person is used as a means to an end and, as long as the act was intended to fulfill a duty and a praiseworthy goal, it would be moral. A utilitarian would also consider this activity to be morally valueless, unless it accomplished a goal. Like category 1, no practical harms arise from such activity. Thus, category 2 need not be justified by any Just Intelligence Theory.

Category 3 concerns the public broadcasting of telecommunications signals that are not encrypted. The primary example of this situation would be communications from cell phones, which are usually conversations between private individuals. The U.S. courts have
found that there is no expectation of privacy concerning such public signals. Based on this principle of law, it follows that there is no enforceable national security interest. Indeed, it could be rationally argued that any nation that broadcasts its secret intelligence over an unencrypted cell phone probably deserves to lose it. A deontologist might have some moral qualms about this activity if the gathering of information treated a person as a means to an end, but because there was no effort to conceal the communication, the qualm would be de minimis. A utilitarian would likely hold the same position as for the previous two activities. Although there might be some resulting harm from the collection of such information, because there was no effort to secure it, I suggest that no significant moral question arises. Otherwise, all people would have a duty to ensure the privacy of the conversations of other people, which I suspect even Kant would reject. Thus, category 3 of intelligence activities, as a practical matter, need not be justified by any Just Intelligence Theory.

Categories 4 and 6 are similar. Both involve communications, but there is a significant difference. With category 4 intelligence activities, there are intentional actions taken to defeat the security measures of the opposing nation, even though the essential communications are available to the public (i.e., they are transmitted through open space). With category 6 intelligence activities, there are intentional actions taken to defeat the communications security of the opposing nation, but the signal itself has been kept nonpublic (i.e., limited to hardwire networks). With both categories, the potential harm or damage would be the same: whatever information was revealed could be the same nature in either communications format. But the moral implications are greater for category 6 because the efforts to secure the communications by the opposing nation were greater. For either category, the deontologist would reject a finding of morality based on the principle of universality. There is no doubt that the nation engaging in either intelligence activity would not want such actions to be taken against it. The fact that category 6 involves even greater intentional acts that would, at least, constitute a crime only further increases the immorality of the act. In contrast, there is the utilitarian perspective. If the intelligence activity in question was successful and undiscovered, it would be considered moral. If the act was successful but discovered by the opposing nation, then a moral calculation would have to be made: was the happiness generated for the initiating nation greater than the unhappiness for the opposing nation? In other words, was the value of the intelligence
gained worth the political or military (i.e., does the opposing nation go to war because of the act) cost? The final scenarios for the utilitarian would be whether the mission failed and whether the attempt was discovered or not. If the attempt was not discovered, then the act would not have any moral consequences. If the attempt failed and was discovered, then it would be both a political (and possibly military) as well as a moral loss.

Categories 5 and 8 are similar in that they involve the collection of information from willing spies or defectors: the difference being that category 5 concerns those spies/defectors who initiate the process and category 8 concerns those spies/defectors who do not initiate the process. The moral analysis is the same as for the similarity between categories 4 and 6 and results in the same conclusions, except for one observation. I would suggest that because category 5 involves the collection of information from spies/defectors who initiate the process, then the moral culpability for category 5 intelligence activities is minimal. I concede that the potential harm or damage to the opposing nation could be great—the mitigating factor is that the initiating spy/defector was acting under his or her own volition and whatever moral judgment that person made in justification of the action. I cannot envision even a deontologist such as Kant requiring a nation to refuse to receive a spy/defector who voluntarily engages in his or her revelations of information. In contrast, I suspect that deontologists such as Kant would condemn category 8, as such intelligence activities involve the initiation of a betrayal by the spy/defector, which would treat that spy/defector as a means to an end. Thus, category 5 would likely not be a moral problem for deontologists. The results and/or whether the attempt remained secret would be the factors to determine whether the attempt was moral for a utilitarian.

Category 7 is relatively easy to analyze. Essentially, category 7 intelligence activities concern theft, which is illegal in all criminal justice systems. A deontologist like Kant would condemn such an act as immoral on the ground that it violated the concept of universality: the initiating nation would not want such acts to be executed against it, so the act cannot be considered a universal law. It would be different for the utilitarian, where the ends would justify the means. If the act of stealing the information was successful and remained secret, then it would be considered moral. If the successful attempt was discovered, then, again, a moral calculation would have to be performed, as described in the discussion concerning categories 4 and 6.
The same calculation would also have to be done if the attempt was unsuccessful and the attempt was discovered.

Category 9 of intelligence activities, which concerns the gathering of information from unwilling spies/defectors, usually citizens/employees of the opposing nation, raises the moral issues to a higher level. Unwilling spies/defectors are not cooperative and usually have to be coerced to provide the desired information. With this species of intelligence activities, serious criminal activity such as extortion/blackmail, assault/battery, kidnapping, torture, and possibly even murder is involved. A deontologist such as Kant would categorically reject such intelligence activities as violating both the maxim not to treat other people as means to an end and as violative of the principle of universality. What about the utilitarian? The analysis grows a bit more difficult for the utilitarian at this level. Serious crimes are now involved, and the moral calculus must be more carefully done. Is the information worth committing serious crimes against a person? How can there be certainty that the suspect has the desired information? Again, as with previous analyses, the determinative factors for the utilitarian will be whether the attempt was successful and whether it was discovered. However, an additional factor of whether the commission of a serious crime, to include the harm done to the individual suspect, was worth the information obtained.

Category 10 is somewhat similar to category 9 except that the spy would generally not be a citizen/employee of the opposing nation. In this situation, I suggest that there would be less moral culpability, at least for the deontologist, in that another person would not be forced against his or her will to participate in the intelligence activity in question. Of course, any spy placed in an opposing nation under this category of intelligence activity would then likely be engaging in any of the other intelligence activities. Thus, any moral evaluation of this category would also have to include whatever other activities the spy was performing. A deontologist would reject this category as immoral. Again, the analysis for the utilitarian perspective would be the same as for the other categories with regard to the success of the attempt and whether the attempt was discovered.

With category 11 intelligence activities, counterintelligence and security, and category 13 intelligence activities, preventing covert intelligence operations, the moral perspective between the initiating nation and the opposing nation is reversed. Both the deontologist and the utilitarian, as a general matter, would find that taking defensive actions to prevent intelligence activities within one’s
own nation would be moral. Of course, the utilitarian would factor into the moral calculation whether the actions taken were successful. However, the issue of the method of conducting counterintelligence would come into question. For example, if a spy was caught, would the nation in question employ torture in the interrogation of the spy? Would the nation in question employ blackmail/extortion to obtain additional information from the spy? Such methods would be rejected by the deontologist but would be acceptable to the utilitarian based on the success of the methods. With this category of intelligence activities, it would probably not be significant to the utilitarian if the opposing nation discovered that its spy was caught, as the opposing nation would eventually make such a conclusion when the spy failed to make contact. Of course, the moral issues of category 9 would come into play if the spy was turned into a double agent (i.e., spying for the nation that caught him or her).

Category 12 intelligence activities concern the heart and soul of covert operations. It is within this category that many of the dangerous activities of espionage reside. It is with category 12 covert intelligence activities that agents frequently present within the borders of the opposing nation, engaging in such activities as sabotage, influencing elections, inciting revolts, and assassination of opposing government officials. I should note that category 7 and category 9 intelligence activities can fall within category 12, especially when they are conducted within the borders of an opposing nation. Deontologists such as Kant would emphatically reject such activities as immoral for violating both the maxim that a person should not be used as a means to an end and the principle of universality. No nation would agree to allow such covert activities within its own borders. As with the arguments raised regarding the other categories of intelligence activities, morality for a utilitarian would be subject to a calculation of the success of the attempt and whether or not the attempt was discovered, to include a balancing of the crimes committed during the course of the attempt. As to the potential harms or damage, little need be said. Sabotage destroys property, assassinations kill people, and revolutions violently change governments and social structures. All these activities would generally be considered criminal.

With these moral observations and ethical comparisons, I will attempt to construct a basic framework for a Just Intelligence Theory based on Just War Theory.
Considerations for a Just Intelligence Theory

The essential problem is that it appears there must be some reasonable basis for believing that intelligence operations concerning that particular nation are warranted. As a matter of most commonly accepted ethical values, arbitrary and capricious intelligence operations, which would necessarily involve the breaking of domestic, foreign, or international laws, would not be justified. Indeed, even justified intelligence operations usually involve the breaking of laws and moral principles. From a moral perspective, a utilitarian could calculate that the mere breaking of various laws that prevented a much greater harm of war was successful, and then the act would have moral worth. A deontologist would be more circumspect and would likely evaluate the duty that would be applied and whether the intelligence operations could be considered to be universal law under the circumstances.

Moreover, the potential harms of an intelligence operation are not just legal or moral; they can also be political, economic, social, and personal harms. Thus, it would appear that any intelligence operation, to be justified, must be subjected to an ethical analysis where the harm of breaking the laws is balanced against the potential harms the intelligence operation is anticipated to prevent. Unfortunately, neither ethical theory satisfactorily explains how to calculate risk in an ethical dilemma. And it is unlikely that any Just Intelligence Theory would be able to accurately calculate the potential harms for intelligence operations.

The potential harms from intelligence operations are almost impossible to quantify, although they can be described. Personal harms are obvious. At the extreme, an assassinated foreign leader would suffer death. A compromised foreign government official acting as a spy for “our side” would suffer disgrace, imprisonment, or execution. Although such personal harms are a moral consideration, in the world of realpolitick they are inconsequential. Economic, political, and social harms are potentially significant to a nation, but they usually are not as devastating as war.

The opposing side of the balancing of harms is the interest being protected. Intelligence operations are theoretically intended to protect the national security and the national interests of a nation. Defining these two goals is frequently a political issue and not a moral or a legal issue, although one would hope that ethics and law are significant influences on such issues. Traditionally, national security
has been limited to the physical security of a nation and the protection of its citizens, both at home and abroad. However, over the last few decades, national security and national interests have taken on a much broader meaning to include such issues as access to natural resources, maintenance of military superiority, and establishment of certain political or economic systems in other nations.

One theorist has advanced a list of levels of potential threats regarding national security. In descending order, they are annihilation, devastation, dominion, subversion, intimidation, deprivation, manipulation, humiliation, and aggravation. Perhaps these levels of potential threats can be used to determine when intelligence operations should be undertaken and at what level they should be conducted. A deontologist would likely employ such levels of potential threats to determine the level of duty owed to the nation before engaging in intelligence operations. A utilitarian might consider them in evaluating the risk of success of any intelligence operation.

Framework of a Just Intelligence Theory

The first category of Just War Theory is the actual initiation or engagement in war. Applying Just War Theory by analogy to justify the initiation or engagement in intelligence operations, a nation would need to apply the following tests: (1) just cause, (2) proper authority, (3) last resort, and (4) proportionality to justify engaging in intelligence activities.

Just Cause

Just cause, of course, is the most important factor. What is just cause for initiation of intelligence operations? Just War Theory depends significantly on self-defense. Looking at just cause for a just war, it appears that it would be just to initiate intelligence operations for self-defense from foreign attack and to prevent a foreign attack. Self-defense is a laudable principle in the eyes of both deontologists and utilitarians. The problem is with defining just cause to initiate intelligence operations against an opposing nation. It would appear that it would be less than what is required to launch a preemptive military attack in self-defense, as the gathering of intelligence is, at least in part, meant to prevent war, although many nations in history have used intelligence to facilitate war. Borrowing from U.S. jurisprudence on probable cause, I suggest that just cause to initiate intelligence
operations for the purposes of self-defense exists when, based on historical records, actions taken by opposing nations would cause a reasonable person to conclude that the opposing nation was planning or preparing for war. Of course, this is a very general definition. However, war is a complex phenomenon, and accurately anticipating it is even more problematic.

Would a deontologist agree? Deontologists probably would not object to this definition of just cause to initiate intelligence operations based on the theory of self-defense, but deontologists, like Kant, would limit the level of intelligence activities that the initiating nation could perform. Utilitarians would not have any objections to this formulation of just cause for the initiation of intelligence activities. As to the moral value of initiating intelligence activities, utilitarians would likely argue that determining whether an opposing nation is about to attack would satisfy the principles of maintaining the greatest happiness of the people. However, what about other “national interests”?

Would a utilitarian approve of initiating intelligence operations to obtain an economic advantage over other nations? Perhaps . . . if the attempt resulted in success and was not discovered. But, then, the utilitarian would have to consider the potential harm or damage if the attempt failed and/or was discovered. Such a calculation would no doubt include the relative value of the economic advantage. Was the economic advantage essential for the nation—such as heating oil for a northern nation that had no access to this resource? What about an essential metal required for a nation’s military equipment that was not available in that nation? The attendant harms, both political and military, would have to be carefully balanced. Interestingly, the utilitarian position on this aspect of just cause for the initiation of intelligence operations appears to mirror the position of those who subscribe to the philosophy of realpolitik. I suggest that a deontologist would likely reject intelligence operations using economics as a justification, except for, of course, those intelligence operations that would not conflict with the principle of universality or using a person as a means to an end. As shown by the previous section of this article, that leaves few intelligence operations available to the deontologist.

What about the preparation for the spreading of a nation’s political or economic ideology? Using the same arguments for the justification of economics, both a utilitarian and a realpolitik perspective would likely accept such a justification, depending upon the moral
calculus of benefits and happiness versus harms or damage. I suggest that a deontologist would likely reject such a justification, as the preparation for the spreading of a certain political or economic ideology by the use of such deception would be considered an interference with the free will of other people and treat them as a means to an end, as well as a violation of the principle of universality.

The maintenance of military superiority does not appear to be a legitimate reason for the initiation of intelligence operations by the deontologist. As the quintessential deontologist, Kant is more concerned with such aspects of humanity as the development of each person to his or her highest potential. When presented with such a reason for the initiation of intelligence operations, Kant might ask "Why?" unless he was presented with evidence showing the likelihood of military attack by the opposing nation. Utilitarians would likely find that the maintenance of military superiority was a sufficient reason to initiate intelligence operations—history has shown that having the best military seems to make the masses happy. Those who subscribe to the realpolitik theory of international relations would have no qualms about initiating intelligence operations for military superiority. Indeed, it could be argued that realpolitik almost assumes a certain degree of paranoia about opposing nations.

Proper Authority

A Just Intelligence Theory would necessarily include the approval of the proper authority of the nation engaging in the intelligence operations. The deontologist is very concerned with acting in a moral manner in accord with the Categorical Imperative and the principle of universality. Accordingly, as a general matter, the approval of the highest authority responsible for the actions of a nation would, if only implicitly, be required before intelligence operations were undertaken. Surprisingly, I find the utilitarians and the realpolitick proponents in accord with this position. These two philosophies would likely hold the position that only the leaders of a nation would have sufficient knowledge and access to information to make the moral calculation of what was likely the best course of action for their nation and what would bring about the greatest happiness. Of course, this conclusion assumes the rather idealistic view that even a realpolitik politician only has his or her nation's best interests at heart and not any desire for personal gain . . . Ahemmmmm. . . .
**Last Resort**

The third factor in Just War Theory, last resort, would at first glance appear not to apply to a Just Intelligence Theory. In fact, it can be reasonably argued that one of the main purposes of intelligence operations is to prevent the last resort of war. Further, effective intelligence operations have been attributed to saving many lives during war and even preventing some wars. A utilitarian might approve of conducting a war (and intelligence operations) earlier than as a last resort, as long as they were successful and resulted in greater happiness for the nation conducting the operation, at least in relation to the likely results that would have occurred if war had been delayed and a greater degree of death and destruction would have occurred. However, a deontologist might oppose the employment of intelligence operations before other options were exhausted. But a deontologist is not necessarily a fool and has to operate in the real world. Balancing the harms, I suggest that a deontologist, depending on the circumstances and the risks, would try other methods before resorting to intelligence operations, such as diplomacy. Given these considerations, I suggest that the requirement that intelligence operations be the last resort is not applicable. Of course, it would not be the first resort, which would likely be intelligence gathering of the first three categories listed above.

**Proportionality**

The fourth factor in Just War Theory, proportionality, would necessarily apply to Just Intelligence Theory. With all intelligence operations, there is a risk of discovery and a risk of failure. As these risks increase, so do the risks of potential harm. Viewing intelligence operations as a means to protect national security and national interests, it would appear self-defeating to employ disproportional methods, such as assassination of an evil foreign leader, to accomplish a national interest of preventing expansion of the influence of that foreign leader when the gathering and release of information that would lead to his removal from office would be just as effective.

Deontologists, by definition, would reject employing disproportional methods of intelligence operations. Indeed, the strict application of deontological ethics would prevent the employment of many intelligence operations. However, the same limitation is not present for the utilitarians or the subscribers to realpolitik. The only limita-
tion on those two philosophies would be the balancing of the potential harms with the expected benefits of the intelligence operations. Thus, proportionality has its place in a Just Intelligence Theory.

Conclusion

The discussion up to this point has focused on the use of Just War Theory to start constructing a Just Intelligence Theory. I have focused just on *jus ad bellum* in the interests of starting the dialogue for the construction of a Just Intelligence Theory and in the interests of space limitations. It is impossible to construct a comprehensive Just Intelligence Theory in one short article. However, a basic framework for discussion and expansion on the topic and associated issues has been presented. I reserve for a later date a discussion on *jus in bello* and *jus post bellum*. Further, I would stress that *jus ad bellum* is of fundamental importance; if there is no justification for the initiation of intelligence operations, then application of *jus in bello* seems rather moot.

It is easy to criticize and pass moral judgments on actions after the fact. It is very difficult to determine the correct moral action before the fact, balancing the various factors and possible harms of each course of action. But that is the purpose of ethical theories—to provide moral guidance. Human beings live in the real world, where realpolitik rules and utopian ideals are often relegated to the Ivory Tower and social discussions after dinner over a favorite drink. Perhaps it is impossible to morally justify acts that, under most other circumstances, would be universally condemned.

Before presenting my concluding Just Intelligence Theory for the initiation of intelligence operations, I wish to note that it appears that there cannot ever be any comprehensive Just Intelligence Theory based on deontological ethics. Deontological ethics prohibits many of the categories of intelligence activities that, as a matter of reality, occur in the world. Of course, Just War Theory can hardly be considered a true part of deontological ethics, but it tries to apply some of the basic principles of what most people would consider to be moral behavior with the horrific reality of war. Perhaps that is all that can be done with a Just Intelligence Theory. However, there are two other ugly matters I promised to address in this article.

First, it has been often stated that politics is the last refuge of the scoundrel. This statement is entirely in keeping with the philosophical position of realpolitik. Philosophers and statesmen, as opposed to
politicians, universally despise the process of politics. But it is with us and will likely not disappear in the near future. Given this observation, it seems that trying to apply deontological ethics and what most people would consider the highest moral principles (such as respect for human beings) to the profession of spying is truly a Sisyphean task. Intelligence activities are based on deception—period. And there are few who would dispute that politics, as a practical endeavor, is also based on deception. Deception can hardly be the basis of most ethical activities. But can political considerations (i.e., national interest and national security) ever be the basis for what would otherwise be considered the immoral acts of individuals? That argument has been soundly rejected when the case of the Nazi soldiers who committed immoral and illegal acts is considered. Indeed, the Nuremberg tribunals rejected the defense of "following orders." Whether that defense is now viable in the wake of Abu Ghraib, Guantanamo Bay, and secret rendition seems to be open for discussion.

The second is the issue of intelligence activities conducted against a nation's own populace. Of course, the employment of such intelligence activities against a nation's own citizens who are spying for other nations is not included in this category and is properly within the ambit of counterintelligence. It is undisputed that the conduct of such intelligence activities against their own citizens, at least in their extreme forms, are the province of such tyrannies as Hitler's Germany and Stalin's Soviet Union. But what about supposedly free societies that engage in such intelligence activities against their own citizens who are trying to change their country? Many would say that 9/11 changed the political landscape such that even governments of free societies may engage in such intelligence activities against their own citizenry. Should this set of circumstances be addressed in a Just Intelligence Theory? My answer is an unequivocal yes. American history supports my position when the abuses of the McCarthy hearings and COINTELPRO conducted by the FBI are considered. Modern-day events concerning the NSA raise the same issue.

Accordingly, I would add an additional test to the framework of a Just Intelligence Theory, at least at the level of jus ad bellum, the initiation of intelligence operations: internal politics. This test would appear even before the test of just cause. The test of internal politics would ask the questions: are the activities to be subjected to intelligence operations conducted by the nation's own citizens, and do they constitute political activity? If the answers to the two prongs of this test are yes, then to be considered just under Just Intelligence Theory
the intelligence activities would be prohibited. Activities of citizens that would normally and historically be considered crimes, such as crimes against persons and crimes against property, would not be subject to intelligence activities. The concept of political crimes subject to internal secret policing should be eliminated. Of course, I realize that this test raises an interesting problem concerning the right to revolt, as expressed by the Declaration of Independence. After all, should we consider the Founding Fathers to be terrorists?

I do think that it is possible to construct a Just Intelligence Theory, but any such theory will have the same, if not more stringent, limitations on its scope as Just War Theory. It will have to recognize the realities of the world and address certain actions that, as history seems to illustrate, will never leave us—prostitution, war, and spying. Of course, I recognize that applying Just Intelligence Theory will be even more difficult than applying Just War Theory, as intelligence operations are usually kept secret. In conclusion, I offer the following set of tests to determine the *jus ad bellum* stage of a Just Intelligence Theory: (1) internal politics, (2) just cause, (3) proper authority, and (4) proportionality. Let the games begin . . .

### Notes

1. In the lore, history, and mythology of espionage, when a conversation or meeting was deemed to be sub-rosa, it was understood by all of the participants to be secret and to have never happened.
3. In ancient Greek mythology, Sisyphus was eternally punished by the gods, who forced him to repeatedly roll a boulder up a mountain, only to see it roll down again.
6. The Hague Convention, Declarations 2 and 3 (1899).
10. Ibid., 5–6.


19. Ibid., 14.

20. Ibid., 13.


37. Ross Clark, The Road to Big Brother: One Man’s Struggle against the Surveillance Society (New York: Encounter, 2009); DVD: The Last Enemy (Masterpiece, 2008).
44. United Nations Charter, Arts. 1, 2, 39, and 51 (1945).


William C. Plouffe Jr. has degrees in philosophy, psychology, criminal justice, and law. He has taught philosophy, political science, criminal justice, and law at several universities and has authored more than one hundred articles, reviews, and books. He has been employed as a municipal police officer, a university professor, a legal editor, a criminal defense/civil rights attorney, and a judicial law clerk and has served in special operations in the United States military.