

Spying Through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence, by Cécile Fabre. Oxford: Oxford University Press, 2022. Pp. viii + 251.

Forthcoming in *Mind*

This excellent book shines a bright light on the dark arts. Though philosophers have had much to say about the ethics of overt foreign policy, surprisingly little work considers the ‘under the table’ methods of spying and subterfuge that underpin those policies. Cécile Fabre’s rich and stimulating book opens up this novel terrain and is sure to be the leading work on this topic for some time.

One of the book’s central virtues is Fabre’s ability to connect specific issues in the ethics of espionage to more general topics in moral and political philosophy, and to show how reflection on former can shed new light on the latter. So even if you may not be interested in the secret service, the secret service may be interested in you. The book is also marked by Fabre’s characteristic blend of rigorous philosophical argument and engagement with empirical and historical sources (not to mention spy novels, films and TV shows). Fabre clearly enjoyed researching the book, and the reader is rewarded with a philosophical investigation more readable and enjoyable than the usual fare. I highly recommend it.

I’ll first provide a brief overview of the topics covered in the book, before focusing on two issues in more detail.

1. Overview

The book consists of nine chapters. The first four chapters can be treated as a package, since they focus on general issues in the ethics of espionage. The first chapter sets out Fabre’s basic normative framework. This view takes the moral principles that govern spying and subterfuge to be continuous with those that govern all other activities (espionage isn’t some morally special domain). More specifically, Fabre holds that we should evaluate spying in terms of “general principles for the ongoing and preemptive imposition of defensive harm” (29). (This approach will be familiar to readers acquainted with the contemporary literature on the ethics of war and self-defence).

The basic idea is that individuals have rights not to have certain costs or burdens imposed on them. If inflicting these burdens is to be justified, the justification must take one of two forms. The first is to show that the individual *lacks* their normal right against bearing that burden. Fabre’s view is that individuals can come to lack their rights in virtue of either:

- (i) Bearing sufficient responsibility for unjustified threats to others, thereby incurring a duty to bear burdens in order to prevent or mitigate those threats.
- (ii) Having an enforceable Samaritan duty to bear burdens for the sake of assisting others in need.

This highlights a recurring theme throughout the book: That we can figure out what it is permissible to do *to others* by reflecting on what those persons would be required to do *to themselves*.

A second form of justification holds that though an individual retains their right against bearing a burden, this right can be *overridden* by the importance of achieving a significantly greater good. (Each of these two forms of justifications is subject to constraints of proportionality, necessity, and effectiveness.)

Chapter two explains why spying per se (understood as procuring information that its holder wants to keep secret) stands in need of justification in the first place. This is separate from the question of whether specific *means* of spying require justification. Fabre argues that, at heart, spying transgresses political communities' right to secrecy. This right is derived from individuals' more basic rights to security and to democratic agency (and so, interestingly, democracy requires *both* transparency and secrecy).

With this account of the right to secrecy in place, the third chapter outlines Fabre's theory of permissible spying (indeed, Fabre argues that spying can sometimes be morally *required*). The central part of the account is relatively straightforward: spying can be justified as a means of preventing others from violating individuals' basic rights, because the targets of spying either (i) lack their normal right to secrecy or (ii) have their right to secrecy overridden by the (much) greater good.

But Fabre also considers a different kind of case, in which a state might be justified in spying in order to minimise *its own* violations of basic rights in pursuit of just goals. For example, consider a state waging a just war of national self-defence. That state is under a duty to minimise the harm it causes in defending itself. One important means of fulfilling this duty might be to spy on its enemy, in order to determine when they are prepared to negotiate for peace. One interesting upshot of this argument is that the permissibility of many state policies may be conditional on a commitment to spying.

The fourth chapter extends the scope of Fabre's theory of permissible spying to the economic sphere. On Fabre's picture, what ultimately matters is whether spying would serve to thwart violations of basic rights. Since economic policies (and private economic actors) are capable of violating basic rights, there is no principled reason to restrict permissible spying to the non-economic realm. For

example, if spying on a price-gouging pharmaceutical company could enable a developing country to negotiate a fair deal for life-saving medicines, then doing so may be morally justified.

The following five chapters focus on ethical questions arising from specific means of espionage. Chapter five focuses on the use of deception, particularly in the context of using undercover agents to gather intelligence. Chapter six offers a rich discussion of the ethics of spying against one's own community, thereby committing treason. Chapter seven considers the ethics of recruiting intelligence assets and the use of manipulation, exploitation and coercion (including blackmail and entrapment) as a means of doing so. I'll discuss aspects of these three topics in more detail below. But let me note that these chapters are good examples of how Fabre's investigation into ethics of espionage sheds light on more general topics in moral and political philosophy. Most discussions of deception, manipulation, coercion (and sub-species such as lying and blackmail) focus on cases in which these activities are uncontroversially morally wrong. The central question is *why* these activities are wrong. Fabre's discussion shows us that the question of *when* these activities are morally wrong (and when they are not) is just as interesting and important.

Chapters eight and nine consider the ethics of technological espionage methods. Chapter 8 focuses on the selective use of technology to spy on particular targets (such as intercepting electronic messages, observing an individual remotely, etc.) Fabre's key question is whether there are any deep moral differences between technological intelligence gathering and human intelligence gathering. Despite noting some important contingent differences, Fabre is ultimately sceptical, concluding that "there does not seem to be a morally salient difference between eyes and lenses or between ears and bugs." (178)

In her final chapter, Fabre examines the use of mass, AI-assisted surveillance, of the kind brought to public attention by Edward Snowden's revelations. Fabre aims to vindicate the common view that that there is something deeply morally pernicious about a state spying on its population. But she does so through a non-standard route. Most reactions to mass surveillance focus on citizens' rights to privacy. But Fabre argues that this objection is much less powerful than usually thought. The problem is the level of human involvement. To violate a person's privacy, argues Fabre, requires a human observer. But most mass surveillance activities involve automated trawling of huge quantities of data, with only a tiny subset flagged for human review. For sure, there is potential for privacy violations *in these case*. But the vast majority of mass surveillance does not implicate our privacy interests.

Instead, Fabre argues, the more powerful objection to mass surveillance lies in the biases present in the technology. These biases result in the burdens of surveillance falling disproportionately on already-disadvantaged groups, thereby exacerbating unfair inequalities and discrimination. Interestingly, unlike the

privacy objection, this ‘distributive’ objection is contingent on technological limitations. *If* it were possible to conduct mass surveillance techniques that “eliminated negligent and prejudicial discriminatory treatment” (222) then the associated moral objection would disappear.

2. Loyalty and Treason

My first comment focuses on Fabre’s detailed account of the morality of treason (chapter six). Once again, Fabre’s knack for identifying philosophically fertile ground is on full display. Despite the traitor being one of the most reviled characters in the history of moral and political thought, with treason punishable by death in many contemporary jurisdictions, contemporary philosophers have had rather little to say on the topic.

Fabre’s discussion is organised around two questions. First, what is treason? At its core, treason is essentially relational. A certain kind of bond must exist between two parties in order to make treason a possibility. Fabre illustrates this with the contrast between ‘American Jake’ and ‘British Jake’, each of whom passes secret information about the US to China (123). Though both may cause harm to Americans, only American Jake can be said to commit treason, because only he stands in the right kind of relationship to the victim(s) of disclosure. More specifically, a relationship must exist between an individual and a political community that is governed by a norm of *loyalty* which prohibits *betrayal*. Fabre argues that the relevant treason-enabling relationship is not formal citizenship, but rather (a specific kind of) ‘social membership’, in which the would-be traitor enjoys a sufficient level of protection and benefit from the political community in which they reside. This excludes citizens who are persecuted by their own state, but includes long-term foreign residents who enjoy protection on host soil (115-121).

The bulk of Fabre’s discussion focusses on a second question: what is the moral status of treason? Fabre starts by vindicating the common view that “acts of treason are presumptively worse than non-treasonous yet harmful acts” (124). In normal conditions, the presence of the loyalty-generating relationship magnifies the wrong of disclosing secret information (Fabre’s discussion focuses on ‘informational’ treason, but her theory generalises). Moreover, the wrongfulness of treason *by state officials* is doubly magnified, since they breach their duty of loyalty qua group members *and* their role-based obligation to protect the community. (125)

But when one’s political community is up to no good, things are very different. Fabre argues that treason can be morally justified if doing so serves to prevent one’s community from committing serious rights violations (subject to proportionality and necessity constraints). Moreover, since all persons are under a standing duty to prevent serious human rights violations (subject to a cost

proviso), all cases of justified treason are potentially morally required. As Fabre puts it:

[A]nyone who finds herself in possession of secret intelligence the disclosure of which would stymie violations of fundamental rights is under a duty to pass on that intelligence, thereby committing treason if she stands in a treason-qualifying relationship with the parties whose secret it is. (132)

The cost proviso on the duty to betray is sensitive to the would-be traitor's degree of causal and moral responsibility for their community's unjust activities. The greater our causal and moral responsibility for an unjust threat, the greater the costs we are duty bound to bear in order to help avert that threat.

While I agree with much of Fabre's analysis, I want to explore the question of exactly how the traitor's loyalty-based reasons bear on the all-things-considered justification of treason. One natural view is that a loyalty-grounding relationship adds an additional moral reason against treason. Given this additional reason, a greater good would need to be achieved in order to justify *treasonous* disclosure. More precisely:

Restrictive Asymmetry View: The fact that an individual would betray their fellow community members via treasonous disclosure renders that disclosure harder to justify, compared to disclosing the same information about a community that they are not a member of (holding all else equal).

To illustrate, recall the contrast between American Jake and British Jake discussed above. According to the *Restrictive Asymmetry View*, there is a more stringent justificatory threshold on American Jake's treasonously disclosing secret information about the United States in order to prevent the United States from violating basic rights, than applies to British Jake non-treasonously disclosing the same information.

Interestingly, Fabre rejects the *Restrictive Asymmetry View*. On her view, the presence of the loyalty-grounding relation is not morally significant. We might call this the *Parity View*:

Parity View: The fact that an individual would betray their fellow community members via treasonous disclosure does not itself make a difference to the justification of disclosure, compared to disclosing the same information about a community that they are not a member of (holding all else equal).

On this view, if it is permissible for British Jake to disclose secret information about the US, it is also permissible for American Jake to do so. The justificatory threshold is the same.

It might seem that the *Parity View* is in tension with Fabre's earlier defence of the distinctive wrong of treason (and that the *Restrictive Asymmetry View* is a more natural fit). One might think that if a loyalty-grounding relationship generates additional moral reasons not to disclose, such that unjustified treasonous disclosure is worse than similarly unjustified non-treasonous disclosure, then those very same reasons should make treasonous disclosure harder to justify than non-treasonous disclosure.

But this is not so. For Fabre, the moral reasons against treason, grounded in the special relationship to one's associates, are crucially *conditional* on our associates' moral conduct. The fact that we have a general duty of loyalty to our associates doesn't mean that we owe it to them to help them act wrongly, or to refrain from preventing their wrongdoing. When our associates pose threats to innocent people's basic rights, our duty of loyalty is vitiated. As Fabre forcefully puts it:

One can no more validly pledge loyalty to political actors who conduct an unjust policy than one can validly pledge to serve a Mafia boss who commits similar wrongdoings – even if one derives considerable benefits from belonging to either the Mafia or one's political community. (127)

If the duty of loyalty is conditional in this way, then the *Parity View* is compatible with the idea that *unjustified* acts of treasonous disclosure (those which do not aim at thwarting one's associates' wrongdoing) are morally worse than non-treasonous disclosure. When our associates are acting within their rights, one owes them special duties not to undermine their efforts. But when they threaten others' rights, our associative relationship is normatively inert.

I agree with Fabre that we lack moral reasons to help or allow our associates to act wrongly. But I want to suggest that we can reject the *Restrictive Asymmetry View* while challenging the *Parity View* from the other direction.

Fabre's general discussion gives the impression that if our community is engaged in wrongdoing then, when it comes to treason, we should relate to our community as if we were a non-member. But I think we should take seriously the thought that our associates' wrongdoing has special moral significance for us, which gives us additional moral reasons to *prevent* their wrongdoing. If this is plausible, it supports the following departure from the *Parity View*:

Permissive Asymmetry View: The fact that an individual would betray their fellow community members via treasonous disclosure renders that

disclosure easier to justify, compared to disclosing the same information about a community that they are not a member of (holding all else equal).

Why think that we have special moral reasons to thwart our associates' wrongdoing? Here is one suggestion, which starts from the assumption that we have special obligations to protect and promote our associates' interests. Alongside uncontroversial interests, such as in the material conditions for leading a flourishing life, several philosophers have argued that persons also have *moral* interests. These interests are set back by engaging in serious moral wrongdoing (e.g. Tadros, 2016; 2020; Brownlee, 2019). As Victor Tadros summarises:

[W]rongdoing blights the lives of wrongdoers. A person has an interest in not being a wrongdoer. Not only do people have an interest in not being wrongdoers, we owe it to others to ensure that they are not wrongdoers. For example, we owe it to people to educate them, when they are children, to prevent them from becoming wrongdoers, not only for the sake of victims, but also for their sake. And we owe it to people to remove the temptation to become wrongdoers. (Tadros 2016: p. 164)

If this is right, the same underlying concern for our associates reflected in our special duties to support their morally permissible projects also gives rise to special duties to thwart their wrongful endeavours. For our purposes, this includes a duty to betray our associates via treasonous disclosure.

I won't pretend that this is a full defence of the *Permissive Asymmetry View*. Much more needs to be said to flesh out the details. But I think the central thought is appealing. Rather than thinking, as Fabre's discussion suggests, that our duties of loyalty are extinguished when our associates engage in wrongdoing, we should instead consider the possibility that the duties persist, but their content inverts. While loyalty normally requires us to support our associates, in some contexts betrayal may in fact be the appropriate response to the value of our associative relationship. Whichever way we go, Fabre's rich discussion of treason helps us think more deeply about the (dis)value of loyalty and betrayal.

3. Spying and Sex

My second comment turns to an issue that arises in Fabre's discussions of deception (chapter 5) and the recruitment of intelligence assets (chapter 7): the use of sex as a means of spying. Fabre's main contributions to this issue occur in the context of her analysis of blackmailing individuals into becoming intelligence assets. Fabre starts with the following type of case:

Sexual Blackmail: Asset is a high-ranking official within Blue. Green's services blackmail him into passing on sensitive information about Green's

military strategy by threatening to send compromising photos of his affair with another man. Homosexuality is a criminal offence in Blue. (145)

Fabre concludes that it may be permissible to threaten to *disclose* the information, if it serves to coerce Asset into complying with his moral duties. This is compatible with it being impermissible to *follow through* on the threat.

In *Sexual Blackmail*, the sexual behaviour which forms the basis of blackmail occurs independently of Green. But other cases not only involve sexual blackmail, but also sexual *entrapment*. Consider:

*Sexual Blackmail**: Asset is a high-ranking official within Blue and is married to a woman with whom he has children. Green's services have placed him under surveillance and form the suspicion that he is a closet homosexual. They set up a fake identity for one of their own male agents, who entices Asset into a sexual relationship. Two weeks into that relationship, Green's services reveal to Asset his lover's real identity, produce compromising evidence, and threaten to reveal his affair to Blue's counter-intelligence services unless Asset agrees to work for them. (170)

In this case, Fabre concludes that sexual blackmail is impermissible. The reason is that the means of entrapment involves sexual deception. In virtue of this deception, Green inflicts an extreme sexual wrong on Asset. As Fabre explains, "His lover can be aptly described as raping him, and Green's services as being complicitous in rape." (170)

Fabre's argument involves the following three claims (170):

- (1) If A deceives B about A's identity in order to have sex with B, then B's consent to sex with A is invalid. (Fabre calls this the 'Restrictive View' of valid sexual consent).
- (2) Rape essentially involves sex without valid consent.
- (3) Rape is never permissible.

Each of these claims seems very plausible. Together they entail not only that tactics like those in *Sexual Blackmail** are necessarily impermissible, but also, Fabre concludes, that *any* use of sexual deception as a means of espionage is morally wrong (170n34).

Though I share Fabre's general revulsion at sexual deception, I think matters are more complex (and philosophically interesting) than she allows, in two respects.

First, even if we accept all three of Fabre's claims, it does not follow that sexual deception is always impermissible as a means of espionage. This is because there

are cases of sexual deception which do not seem to violate the Restrictive View of valid sexual consent. Consider a variation on Fabre's case:

*Sexual Blackmail***: Asset is a high-ranking official within Blue and is married to a woman with whom he has children. Green's services have placed him under surveillance and form the suspicion that he is a closet homosexual. They email Asset advertisements and generous discounts for a gay bar, where Green will have cameras waiting. Asset decides to visit the bar and has sex with a man he meets there (who is entirely unaware of Green's operation). Green's services reveal the compromising evidence, and threaten to reveal his sexual activities to Blue's counter-intelligence services unless Asset agrees to work for them.

In this case, Asset is deceived into consenting to sex. But he is not deceived about his sexual partner's identity. Rather, he is deceived about the wider context of his sexual encounter. And, perhaps most importantly, he is not deceived *by his sexual partner*. Instead, he is deceived into consenting to sex by a third-party (Green's intelligence agents). I find it hard to believe that Asset is raped by their sexual partner in this case (even if we grant that Asset's sexual partner is fully non-culpable). If this is right, Green's agents cannot be complicit in rape. So, this looks like a case in which Asset's consent to sex is not invalidated by the fact that they consented to sex as a result of deception.

So, while Fabre may be correct that there is an absolute prohibition on sex which violates the Restrictive View, this does not conclusively rule out the possibility that sexual deception might be a permissible means of espionage (and Fabre need not disagree with this).

Of course, it does not follow from this that the sexual deception is permissible in cases like *Sexual Blackmail***. But if it is impermissible, this needs to be explained by something other than the constraint on non-consensual sex. Perhaps there is some kind of distinct sexual wrong that Green's agents inflict on Asset. Identifying the source of this wrong (and the role of third-party deception in sexual ethics more generally) is an interesting and underexplored question.

My second point is more controversial. I am unsure whether Fabre's absolute prohibition on sexual deception is as obvious as we might think, even in two-party cases in which A deceives B into having sex with A.

Consider the real-life case of Zheng Pingru, a Chinese socialite who spied against the occupying Imperial Japanese Army during the Sino-Japanese War (and whose exploits inspired the novella *Lust, Caution* and film of the same title). Her most famous mission involved forming a sexual relationship with Ding Mocun, a senior officer in the brutal collaborationist secret police, in order to gather information and to enable his assassination.

This looks like a clear case of sexual deception. But I find it very counter-intuitive to think that Pingru acted morally wrongly in this case (assuming that her actions had a sufficiently good chance of preventing violations of basic rights). If this is the correct verdict, it seems we have three options:

First, we might reject the Restrictive View and hold that:

- (i) Even though Pingru obtains Mocun's consent to sex by deceiving him about her identity, this does not render Mocun's consent invalid.

However, this requires us to explain why there is an exception to the Restrictive View in this kind of case, and what the scope of this exemption is.

Alternatively, we might stick with the Restrictive View and accept that Mocun does not validly consent to sex with Pingru. Instead, we would have to deny that it is always impermissible to have sex with a person without their valid consent. There are two possible variants of this view. According to the first:

- (ii) Mocun does not validly consent to sex with Pingru. Pingru therefore inflicts the serious sexual wrong of rape on Mocun by having sex with him. But Mocun's right against non-consensual sex is overridden by the good Pingru achieves by doing so.

I don't find this view attractive. Just as it is intuitive that Pingru does not act wrongly all-things-considered, it is similarly intuitive that Mocun has no complaint against Pingru that she sexually wrongs him (even if justifiably). This view also implies that it would have been similarly permissible for Pingru to have deceived an innocent person into non-consensual sex, if doing so had the same expectation of good consequences. A second view seems more plausible:

- (iii) Mocun does not validly consent to sex with Pingru. But Pingru does not wrong Mocun by having sex with him.

The most plausible explanation of (iii) is that because Mocun is morally responsible for unjustified threats to other's basic rights, and because deceiving him into sex is a means of thwarting those rights violations, Mocun lacks his normal right against sexual contact in this context. However, this suggests that there are two distinct mechanisms by which persons can make it the case that sexual contact does not wrong them: by *consenting* to sex and by *forfeiting* one's right against non-consensual sex.

None of these options are palatable. But it seems that we must endorse one of them, or else hold (as Fabre seems committed to) that agents like Pingru act morally wrongly. Once again, Fabre's exploration of the ethics of espionage helps illuminate more general questions in moral and political philosophy.

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References

Brownlee, Kimberley 2019, 'Acting Defensively for the Sake of Our Attacker'. *Journal of Moral Philosophy* 16, pp. 105-130.

Tadros, Victor 2016, *Wrongs and Crimes*. Oxford: Oxford University Press

---2020, 'Distributing Responsibility'. *Philosophy and Public Affairs* 48, pp. 223-161.