

# Connecting the Intelligence Ethics Debate to Practice

by

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## ABSTRACT

Intelligence professionals work in classified and uncertain environments fraught with morally complex choices, and the United States (U.S.) government limits intelligence activity through ethical guidelines. Are these policies sufficient? Scholars have suggested a variety of frameworks for defining the ethical limits of targets and methods, but no study has conducted a methodical review of U.S. guidance. The central research question for this paper is *what ethical code does the U.S. government desire members of the IC to adopt?* This research selected a qualitative methodology with a directed content analysis as the research method to answer the research question. The authors code ethical themes and evaluate the state of IC ethics through traditional theoretical frameworks of ethics. By revealing patterns and collective assessments of the U.S. ethical code, the purpose of this paper is to better inform policy makers and the scholarly debate about the state of intelligence ethics.

**Keywords:** Ethics, intelligence community, standards, DoD

## Conectando el debate sobre la ética de la inteligencia con la práctica

### RESUMEN

Los profesionales de inteligencia trabajan en entornos clasificados e inciertos llenos de opciones moralmente complejas, y el gobierno de los Estados Unidos (EE. UU.) limita la actividad de inteligencia a través de pautas éticas. ¿Son suficientes estas políticas? Los académicos han sugerido una variedad de marcos para definir los límites éticos de los objetivos y métodos, pero ningún estudio ha realizado una revisión metódica de la orientación de los EE. UU. La pregunta central de investigación para este artículo es ¿qué código ético desea el gobierno de los EE. UU. que adopten los miembros del CI? Esta

investigación seleccionó una metodología cualitativa con un análisis de contenido dirigido como método de investigación para responder a la pregunta de investigación. Los autores codifican temas éticos y evalúan el estado de la ética de la CI a través de los marcos teóricos tradicionales de la ética. Al revelar patrones y evaluaciones colectivas del código ético de los EE. UU., el propósito de este documento es informar mejor a los responsables políticos y al debate académico sobre el estado de la ética de la inteligencia.

**Palabras clave:** Ética, comunidad de inteligencia, estándares, DoD

## 将情报伦理辩论与实践联系起来

### 摘要

情报专业人员在机密和不确定的环境中工作，这类环境充满了在道德上具有复杂性的选择，并且美国政府通过伦理准则来限制情报活动。这些政策是否足够？学者们提出了各种框架来定义目标和方法的伦理限制，但还没有研究对美国的（情报）准则进行过系统的审视。本文的中心研究问题是：美国政府希望情报界成员采用什么样的伦理准则？本研究选择了一项定性方法，以内容分析作为研究方法来回答该问题。作者通过传统的伦理理论框架，对伦理主题进行编码并评价情报界伦理的状态。通过揭示美国伦理准则的模式和集体评估，本文旨在更好地为决策者和关于情报伦理状况的学术辩论提供信息。

关键词：伦理，情报界，标准，国防部

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### Introduction

Members of the United States (U.S.) intelligence community (IC) frequently confront morally complex decisions in gray areas of law and ethics (Vrist Ronn 2016, 761). The role of intelligence in informing decision makers and protecting the public

precludes its complete elimination, but the intelligence profession is not above the human responsibility of ethical behavior (Bellaby 2012, 93; Omand and Phythian 2013, 49; Pfaff and Tiel 2004, 4; Quinlan 2007, 2; Shelton 2011, 26). The U.S. government implemented various ethical guidelines for intelligence through laws and regulations, but some

scholars assert that these policies do not provide clear intent or a sufficient ethical foundation for intelligence professionals to make decisions (Andregg 2007, 61; Hudson 2010, 1424; Vrist Ronn 2016, 767).

Despite the criticism, no study has methodically reviewed these U.S. policies altogether to evaluate the general interpretation presented by the scholarly literature. Thus, through a content analysis of official government sources, the central research question for this paper is *what ethical code does the U.S. government desire members of the IC to adopt?* The purpose of this research is to characterize the state of the U.S. IC ethical code to inform future policy and scholarly debates. By reframing the conversation, this paper provides a starting point for future research on the continued development of intelligence ethics as a discipline and practice.

This paper starts by establishing a theoretical framework of the three traditional ethical paradigms: consequentialism, deontology, and virtue ethics (Evans and Smith 2018, 599; Henly and Sprague 2020, 2; Hudson 2010, 1418-1419). Ethical principles important to intelligence are extensive, and researchers apply the normative ethical theories in many ways. However, authors of intelligence ethics pay significant attention to politicization, objectivity, deception, privacy, torture, and covert action (Bellaby 2012, 108; Fitzgerald and Lebow 2006, 894; Greenberg 2015, 69; Kutz 2014, 434; Luscombe 2018, 412; O'Donohue et al.

2014, 116; Quinlan 2007, 6; Rehbock 2012, 177-178; Wolfendale 2009, 51). By examining these issues through the lens of normative ethical theories, the theoretical framework section illuminates how and why authors frame the core intelligence ethics debates around limits on targets and methods (Quinlan 2007, 6-7). Moreover, these topics help explain the U.S. IC ethical code.

This paper employs a qualitative methodology of a directed content analysis of fourteen U.S. government policies that define the IC ethical code. The authors used purposive expert sampling to select four executive orders, three laws, six regulations, and one guidance document, which include IC-specific guidelines as well as policies regulating executive branch and Department of Defense (DoD) personnel. This paper represents the results of the three levels of code with bar graphs for each thematic level and tables that expound on the research method to facilitate a structured analysis. Using this data, the results section analyzes the theoretical foundation, breadth, and depth of U.S. IC ethical priorities to answer the central research question.

The sampling method and the interpretive nature of a content analysis are the primary limitations of this study, especially when connected with the mostly normative study of ethics. Scholars replicating this study may select different policies or characterize certain themes differently. The authors consciously endeavored to avoid biases, but understanding that no study or author is above mistakes, this paper

explains in detail methods, rules, limitations, and judgments to improve falsifiability.

The motivation for this research is the acknowledgment that collected intelligence and assessments can instigate far-reaching and potentially damaging effects (Hudson 2010, 1432). Society grants the IC tremendous privilege and responsibility, so intelligence professionals must hold themselves to a high ethical standard (Shapiro 2007, 3). If collectors and analysts are negligent in their responsibilities, then their products could lead to deaths, human rights abuses, and a loss of trust with the public and international partners (Bar-Joseph 2007, 31; Goldman 2007, 16; Verma 2007, 18). The incentive for this research is genuine and pressing.

## **Theoretical framework**

If intelligence is necessary for national security and the preservation of human rights, then the study of intelligence ethics must explore the limits of targets and methods, especially considering the same profession can violate human rights (Omand and Phythian 2013, 49; Quinlan 2007, 6). To understand the impetus of this paper's central research question, the reader should know the basics of the state of intelligence ethics research and the associated theoretical frameworks. The study of intelligence remains a relatively niche component of social science, but as a subfield, the study of intelligence ethics is comparatively robust thanks to a wealth of research on the issue proper and its many related themes. This schol-

arly attention reflects the importance of ethical decision making in applied intelligence.

This paper examines ethics on a philosophical level with a focus on organizations. Of course, individuals make up organizations and choose to take ethical or unethical actions. Still, since the unit of analysis is not on the individual level, the conversation primarily, though not exclusively, centers on philosophical constructs rather than individual decision mechanisms (Ho 2015, 289-290).

## ***Consequentialism***

There are three traditional theories of ethics: consequentialism, deontology, and virtue ethics (Evans and Smith 2018, 599; Henly and Sprague 2020, 2; Hudson 2010, 1418-1419). As the name implies, a consequentialist is primarily concerned with the outcomes of a decision when debating the most ethical choice (Frisk and Johansson 2021, 73). This process involves a rational cost-benefit analysis to maximize happiness and wellbeing, even if the methods are questionable. So, hypothetically, the ends justify the means (Henly and Sprague 2020, 3; Shelton 2011, 28).

In this way, consequentialism is utilitarian, and some authors refer to it as such (Dion 2012, 10; Evans and Smith 2018, 599; Hudson 2010, 1418-1419). But for whom does consequentialism provide utility? Whose happiness and wellbeing does consequentialism maximize? In most cases, the goal is to benefit the greatest number of people affected, or as a consequentialist might

put it, the greater good. Still, how can the decision maker have the foresight to anticipate every possible outcome (Dion 2012, 10-11; Henly and Sprague 2020, 3)?

The persisting ambiguity in utilitarian thinking contributes to a key debate in consequentialist ethics. For example, an intelligence professional might assert that national security is worth conducting otherwise unethical behavior, such as deception or violations of privacy (Shelton 2011, 28). In terms of international relations, a state may consider secondary and tertiary effects on international order and state stability as affecting what it perceives as the greater good (Herman 2007, 41-42). Similarly, a realist might argue that the consequence of state survival is necessary to protect other values and ethics (Ben-Haim 2021, 721-722; Vrist Ronn 2016, 768-769; Shelton 2011, 29). These differing interpretations raise larger ethical questions about what is good and whether a regime is moral and thus justified in survival (Pfaff and Tiel 2004, 2). Is any action categorically bad?

Apologists of utilitarianism adhere to a more subtle explanation. Consequentialism is not an all-knowing capability but rather a framework to analyze an objective (Vrist Ronn 2016, 771). Despite its utilitarian nature, consequentialism denies certain actions by fully analyzing the harm of a consequence, such as arguing against torture because of the consequences of human rights violations and loss of national legitimacy (Frisk and Johansson 2021, 78). This balance between utility

and ethical bounds makes consequentialism the underpinning philosophy for many authors on intelligence ethics (Goldman 2007, 16; Omand and Phythian 2013, 49).

## ***Deontology***

The second ethical theory, deontology, is an absolutist, rules-based approach that elevates intent (Dion 2012, 13; Henly and Sprague 2020, 5; Herman 2007, 41; Vrist Ronn 2016, 772-773). Central to the theory of deontology, or Kantian ethics, is the idea of impartial universality, which entails three rules. First, people must act as they want all others to act. Second, actors must treat all people as equal ends. Third, no exceptions or special circumstances exist in ethics (Evans and Smith 2018, 602; Henly and Sprague 2020, 5-6).

These categorical imperatives make intelligence difficult, if not impossible, under deontological reasoning. In ethical theory, the idea of harm can include any violation of an individual's core requirements or rights, such as her or his physical and mental integrity, autonomy, liberty, sense of self-worth, and privacy (Bellaby 2012, 96-97; Dion 2012, 13-14; Henly and Sprague 2020, 5). Intelligence is thus unethical outright since it causes some level of harm and treats people as means (Frisk and Johansson 2021, 78; Vrist Ronn 2016, 772-773).

However, proponents of deontology address these challenges by proposing universal yet nuanced rules. For example, authors legitimize self-defense through a universal rule that victims

can ethically use violence when a clear and present danger exists to themselves or others (Frisk and Johansson 2021, 79). Additionally, a person can lose the right to some level of autonomy if he or she significantly infringes upon another's wellbeing or liberty (Altman and Wellman 2008, 252; Henly and Sprague 2020, 6). Furthermore, some argue that harms are measurable and relative in interest, severity, and duration, so an intelligence collector's violation of a target's privacy is a lesser harm than the target's impending attack on innocents (Bellaby 2012, 107).

These sorts of issues dominate the debate over deontology and intelligence. Similar to consequentialism, the ultimate question concerns who establishes the rules and how those decision makers go about it (Henly and Sprague 2020, 6). Further complicating the debate, Kantian ethics esteems reason-based rules, but deontologists disagree over the structure of that overarching value system, especially concerning cultural and religious distinctions (Dion 2012, 13).

### ***Virtue ethics***

The third traditional theory, virtue or aretaic ethics, is more difficult to measure and study since it is not outcomes- or rules-based (Henly and Sprague 2020, 6; Perry 2009, 4). Virtue ethics focuses on character traits and asserts that a good person knows what is moral (Dion 2021, 14). More than any other theory, this approach forces responsibility upon the actor as she or he cannot blame a rule or expected pseudo-math-

ematical outcome (Henly and Sprague 2020, 6).

The aretaic ethics model is attractive since it offers maximum flexibility when unraveling a complex ethical dilemma, and it acknowledges differences between cultural or religious norms. However, virtue ethics relies on the judgments of individuals, which may be flawed and ultimately harm others. In uncertain environments, such as those found in intelligence, two virtuous people could advocate two competing ethical solutions, and virtue ethics offers little advice to solve such a quandary (Henly and Sprague 2020, 6). Still, a proponent would argue that aretaic ethics is more beneficial in application than stricter frameworks since it emphasizes strong character traits and a more realistic way of thinking through issues in real time (Ho 2015, 290; Hudson 2010, 1418-1419).

### ***Politicization and objectivity***

The literature identifies several common ethical issues for intelligence practitioners. First, politicization is a prominent pitfall for analysts and, to a lesser degree, collectors. An intelligence professional's job is to inform decisions, not make policies, so intelligence practitioners must speak truth to power with honesty and objectivity above personal policy preferences (Andregg 2007, 56-58; Quinlan 2007, 11). This argument rests on the ethical case against deception and promotes the pragmatic objective of better-informed policy decisions (Puffer 2016, 685-686).

## ***Deception***

The secretive nature of intelligence inherently involves a certain level of deception, and some intelligence agencies perform psychological or information operations of calculated lying (Andregg 2007, 58). Some ethical theorists justify deception through implicit consent, arguing that intelligence targets are justified due to their contributions, no matter how small, to national security (Pfaff and Tiel 2004, 4-7). Others point to consequentialism to legitimize dishonesty if it produces a greater good, although that argument empowers the deceiver to judge when the lie is justified. Either way, the act violates most interpretations of deontology by disregarding individual dignity and autonomy (Bok 1985, 717; Rehbock 2012, 177-178).

## ***Privacy***

The issue of privacy is one of the most sensitive public concerns, and it interrelates closely with trust and legitimacy (Vrist Ronn 2016, 764-765). The American public grew increasingly wary about the legality and limits of privacy violations as the global war on terror blurred the lines between foreign and domestic operations (Gill 2009, 86; Greenberg 2015, 165; Thompson 2011, 8). One justification is a naturalist explanation that international norms prohibit privacy violations only when unlawful or arbitrary, similar to the principles of just cause and proportionality in the just war tradition (JWT) (Lasson 2008, 351; Toner 2010, 91). Some argue that warrants, a priority for least intrusive

methods, and a consequentialist evaluation of civil liberty violations mitigate harm to an acceptable level (Gill 2009, 88; Quinlan 2007, 11).

## ***Torture***

In the push to increase state capacity in the aftermath of the September 11, 2001, terrorist attacks, the U.S. amplified what it termed enhanced interrogation techniques, or torture, against detainees until the Obama administration banned the practice in 2009 (Greenberg 2015, 69; Manget 2007, 334). Some ethical theorists defend torture if it provides critical information necessary to prevent greater harm to innocents, and they argue the tortured forfeited their rights through unethical actions (Altman and Wellman 2008, 252; Kutz 2014, 440; Lasson 2008, 358; O'Donohue et al. 2014, 116). Conversely, other ethical scholars claim even consequentialism cannot justify torture since the physical and psychological harms are too great, starting a slippery slope of degrading fellow humans (Gill 2009, 95; Kutz 2014, 440; Luban 2009, 219; Vrist Ronn 2016, 771; Wolfendale 2009, 51).

## ***Assassinations and covert action***

While not a traditional intelligence function, assassination is one category of covert action that intelligence agencies have at times adopted, and similar to justifications for other moral dilemmas, ethical scholars propose limits through ethical and legal frameworks (Aloyo 2013, 349; Kasher and Yadlin 2005, 45). For example, did the target forfeit her or his rights through un-

ethical behavior, and does the expected benefit, whether the prevention of war or the alleviation of human rights abuses, outweigh the physical and psychological harm of assassination (Altman and Wellman 2008, 253; Andregg 2007, 54)? When evaluating these consequences, decision makers must also consider potential harm from international instability caused by sudden political disruption, the threat of repeated violence, or the risk of retaliation and escalation (Kutz 2014, 434).

### ***Takeaways and related concepts***

This literature review of theoretical frameworks is a simple introduction to a broad, complex topic. The authors primarily rely on case studies and questions to stir the mind to think critically about the applied practice of intelligence. What level of responsibility should intelligence bear for double effects and unintended outcomes (Manjikian 2015, 694; Pfaff and Tiel 2004, 9)? Is the decision maker ultimately responsible and the intelligence collector or analyst an innocent tool (Omand and Phythian 2013, 42)? Are nations complicit in unethical behavior if they share intelligence with the perpetrating state or entity (Manjikian 2015, 693; Rosenbach 2009, 51)? Should the use of private companies for intelligence concern citizens regarding privacy and accountability (Vrist Ronn 2016, 763; Rosenbach and Peritz 2009, 90)?

While the study of ethics is an intense debate with potentially high stakes, most reviewed authors generally agree on two things. First, intelli-

gence is necessary, but the application of ethics is also necessary. An ethical code for intelligence must confine actors enough to prevent abuses while maintaining mission effectiveness. To that end, the second point of general agreement is that U.S. ethical policies and guidelines for the IC are inadequate and lack philosophical depth, amounting to little more than best practices (Andregg 2007, 61; Hudson 2010, 1424; Vrist Ronn 2016, 767). This paper concurs with the first argument and addresses the second.

## **Methods**

### ***Research design***

**T**o answer the central research question, the authors chose a qualitative methodology for an in-depth, highly contextual analysis of a limited, clearly defined topic. This approach enables a scientific evaluation of real-world data that do not reasonably fit a quantitative model. Without the requirements of random sampling, statistical hypotheses, and testable dependent variables, a researcher can explore the complexities of social phenomena through textual, anthropological, or collaborative subject analysis (Berg and Lune 2012, 350-351; Hahn 2008, 1).

For the research method, the authors employed a content analysis, which is a structure to interpret qualitative data by coding themes, words, or phrases from a set of sources (Berg and Lune 2012, 350). The unit of analysis for this research is ethical themes on an organizational level, which provides what

moral principles IC agencies prioritize to their intelligence professionals. This study used a directed content analysis, which involves the researcher immersing herself or himself in the literature to blend an inductive interpretation of the sources with deductive insights from the broader discipline (352). The authors deductively leveraged existing normative theories and previous research on intelligence ethics to inform terminology and judge thematic boundaries (Neuendorf 2017, 101).

Using a spreadsheet as a manual coding instrument, this research codes three levels of ethical themes, associated original text, source document and section, and initial researcher comments. The level one code records occurrences of ethical themes; level two reexamines the original code to refine definitions and provide orderly results; and level three categorizes the depth of level two themes as philosophical or functional (Hahn 2008, 9). The instrument includes the original text, source, and comments to improve reliability and falsifiability (Berg and Lune 2012, 353). Using the resulting data, bar graphs depict the number of documents that reference each theme of levels one and two and how many level two occurrences are philosophical or functional.

With a focus on the holistic U.S. IC ethical framework, this paper counts only the existence of a theme in a source rather than its frequency in the document. This latent analysis prevents a false over representation of data, such as financial conflicts dominating the results due to legal repetition in a

regulation (Berg and Lune 2012, 355; DoD 1993). For reference purposes, the spreadsheet records the approximate frequency of level one themes per source, but the reader should not rely upon the numbers as a precise count.

Taking this coded data, the research method solves three key questions that collectively answer the research question. First, what is the theoretical foundation for U.S. IC ethical priorities? Even if decision makers structured policies with no particular ethical theoretical framework in mind, the overarching ethical code governing IC activity includes important philosophical assumptions, and this study explores those underpinnings through the normative theoretical frameworks of deontology, consequentialism, and virtue ethics.

Second, what is the breadth of U.S. IC ethical priorities? The existing literature generally critiques ethics policies for the IC as vague and narrow in scope (Andregg 2007, 61; Hudson 2010, 1424; Vrist Ronn 2016, 767). This research examines the themes addressed in U.S. policies to determine whether this criticism is fair, and depending on the results, the theoretical frameworks and existing literature can help fill the gaps or explain nuance that previous research missed. To ground this analysis, this section references the predominant potential moral dilemmas of intelligence ethics as identified through the literature review, those being politicization, objectivity, deception, privacy, torture, assassinations, and covert action.

Third, what is the depth of U.S. IC ethical priorities? When determining ethical parameters, does the IC prioritize the greater good for the sake of morality, or are the guidelines concerned primarily with improving tradecraft and preventing corruption? While the latter objectives are noble, knowing the altruistic depth of IC ethics likely exemplifies the IC's desired balance between ethical behavior and mission success. This question is more challenging than the other two to address since it requires a higher degree of interpretation (Graneheim, Lindgren, and Lundman 2017, 32). To tackle the challenge, this study codes level three themes by judging their tone and intent based on the theoretical frameworks of deontology, consequentialism, and virtue ethics. This paper combines the results with a closer examination of the DoD *Joint Ethics Regulation*, the IC's principles of professional ethics, and the fourteen general ethical principles in Executive Order 12333 of 1981, "United States Intelligence Activities," as these sources best capture moral intent (DoD 1993, 96-97; ODNI 2019, 31).

### **Source selection**

The authors used purposive expert sample, rather than a random, probabilistic selection, of four executive orders, three laws, six regulations, and one guidance document that best represent U.S. ethics policies for the IC (*Encyclopedia of Survey Research Methods* 2008). The collection includes guidelines specifically directed at the IC, but it also features general executive branch policies and DoD regulations that pertain to

IC members. This latter demographic is important to capture since the DoD controls nine of the eighteen IC member organizations, the most of any single executive department. Table 1 provides a brief explanation of relevance for each selected source.

Although reviewed for relevance, this content analysis does not include several other policies one might assume it covers, which Table 2 describes.

### **Criteria and limitations**

The sources' treatment of several themes leaves room for debate on coding strategy, so this research uses the following rules. The sources refer frequently to civil liberties and rights, but no included source provides a definitive distinction. Common legal terminology describes rights as protection from discrimination and liberties as rights guaranteed by the U.S. Constitution (Zick 2020, 232-233). However, the sources arguably do not follow this logic. Given the setting, this study codes civil liberties as an ethical concept that combats discrimination and preserves various freedoms, but the code excludes references to rights when in a legal context. The theme of human rights is an exception since, in this instance, it refers to a global moral concept rather than a legal one.

This research codes domestic surveillance and privacy separately. The sources generally reference them independently, and the concepts possess qualitative, state-oriented differences (Omand and Phythian 2013, 49; Rosenbach and Peritz 2009, 18). Similarly, assassinations are one function under the

Table 1. Selected sources and relevance		
Source	Short Form	Relevance
Executive Order 12333, “United States Intelligence Activities” (December 4, 1981; as amended by Executive Orders 13284 [2003], 13355 [2004], and 13470 [2008])	EO 12333	Defines roles and responsibilities of the intelligence community
Executive Order 12731, “Principles of Ethical Conduct for Government Officers and Employees” (October 17, 1990)	EO 12731	Provides ethics expectations for government employees, including members of the intelligence community, and sets responsibilities for the Office of Government Ethics
Executive Order 12968, “Access to Classified Information” (August 7, 1995)	EO 12968	Access to classified information is a key part of most intelligence work, so any ethical considerations for access are important to know
Executive Order 13388, “Further Strengthening the Sharing of Terrorism Information to Protect Americans” (October 27, 2005)	EO 13388	Foundational executive order during a period of transition for the intelligence community
Ethics in Government Act of 1978	Ethics Act of 1978	Provides ethical guidance for government employees, including members of the intelligence community, and establishes the Office of Government Ethics
Foreign Intelligence Surveillance Act of 1978	FISA of 1978	Governs foreign intelligence electronic surveillance primarily within the United States, with potential for ethical violations
The Intelligence Reform and Terrorism Prevention Act of 2004	IRTPA of 2004	Most thorough legislation reshaping the modern intelligence community
Intelligence Community Directive 200 – <i>Management, Integration, and Oversight of the Intelligence Community Analysis</i>	ICD 200	Directs conduct of analysis
Intelligence Community Directive 203 – <i>Analytic Standards</i>	ICD 203	Provides expectations for analysts, including the five intelligence community analytic standards

Table 1. Selected sources and relevance		
Source	Short Form	Relevance
Department of Defense Manual 5240.01 – <i>Procedures Governing the Conduct of DoD Intelligence Activities</i>	DoDM 5240.01	Governs intelligence within the Department of Defense
Department of Defense Regulation 5240.1-R – <i>Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons</i>	DoD 5240.1-R	Additional provisions not covered by DoDM 5240.01
Department of Defense Regulation 5500.7-R – <i>Joint Ethics Regulations (JER)</i>	DoD 5500.7-R	Overarching ethical guidance for the Department of Defense, including Department of Defense intelligence elements
Joint Publication 2-0 – <i>Joint Intelligence</i>	JP2-0	Foundational military intelligence source document
<i>National Intelligence Strategy of the United States of America</i> of 2019	NIS	Vision and guidance for the entire intelligence community

umbrella of covert action, but this study codes the two separately since covert action includes more than assassinations.

Trustworthiness, strength of character, integrity, and reliability are general themes of good behavior. Level one codes the concepts separately, but to improve readability of the results, level two unites them under the encompassing theme of integrity. On the other hand, this study leaves objectivity, bias, and politicization as separate themes. Bias is related to objectivity as a violation of impartial judgment, but the two are distinct enough to warrant separate coding. Likewise, politicization is a unique violation of objectivity tied to partisan or policy preferences.

Lastly, the level one code includes diversity as part of equal opportunity, and level two places limits on organizational activity under domestic surveillance. Although the two themes are relatively unique, the sentiment of restricting potential domestic spying or subversion remains the same between the concepts. This study also does not code themes of accountability, oversight, legalism, over classification, transparency, protection of sources and methods, or excellence. Despite their importance, these themes facilitate ethical behavior and are not the focus of this paper.

The greatest limitation of this method is the inherent subjectivity of latent assessments of directed con-

Table 2. Sources not included and justifications for exclusion	
Source	Justification
Executive Order 13467, “Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information” (June 30, 2008)	Provides little ethical insight with only one non-intelligence related reference to privacy
Executive Order 13490, “Ethics Commitments By Executive Branch Personnel” (January 21, 2009)	Limited applicability as it primarily references appointees
Executive Order 13491, “Ensuring Lawful Interrogations (January 22, 2009)	Sole focus on torture; the findings and analysis section addresses this source separately
Executive Order 13526, “Classified National Security Information” (December 29, 2009)	Little ethical relevance as it focuses on standard classification guidance
Foreign Assistance Act of 1974	Commonly referred to as the Hughes-Ryan Amendment; sole focus on oversight for covert action; the findings and analysis section addresses this source separately
Privacy Act of 1974	Sole focus on privacy in a non-intelligence context

tent analysis (Berg and Lune 2012, 352; Graneheim, Lindgren, and Lundman 2017, 32; Hahn 2008, 11). Other scholars conducting similar research might select different policies, or they might extrapolate alternative themes using different coding rules. Still, by revealing patterns and collective assessments, the purpose of this research is to better inform policy makers and the scholarly debate about the state of intelligence ethics, and this paper carefully traces the research process to assist falsifiability.

In the review of ethical theories, this paper attempts to maintain a fair balance between justifications and cri-

tiques, but for purposes of evaluating intelligence ethics, this study accepts a consequentialist perspective that intelligence and ethical limits on intelligence are mutually necessary (Evans and Smith 2018, 602). Despite the consequentialist normative baseline of this research, the design employs all three theoretical frameworks to analyze the U.S. IC ethical code.

Although grounded in an analytically structured approach, this paper is prescriptive in its findings and analysis. For this reason, the research focuses specifically on U.S. intelligence and provides normative recommendations

for U.S. decision makers. However, the results could potentially reveal patterns in intelligence activities around the world and shed light on policy oversights. In this way, the study offers some generalizability. At the very least, this paper presents a framework for future research as scholars refine and expand the study of intelligence ethics.

## **Results**

### ***Content analysis findings***

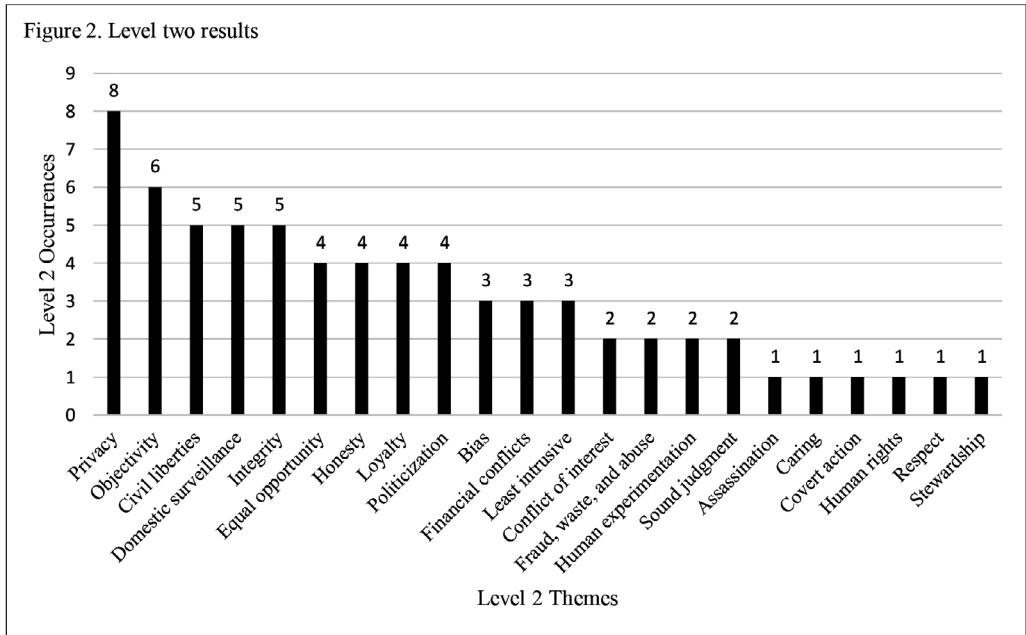
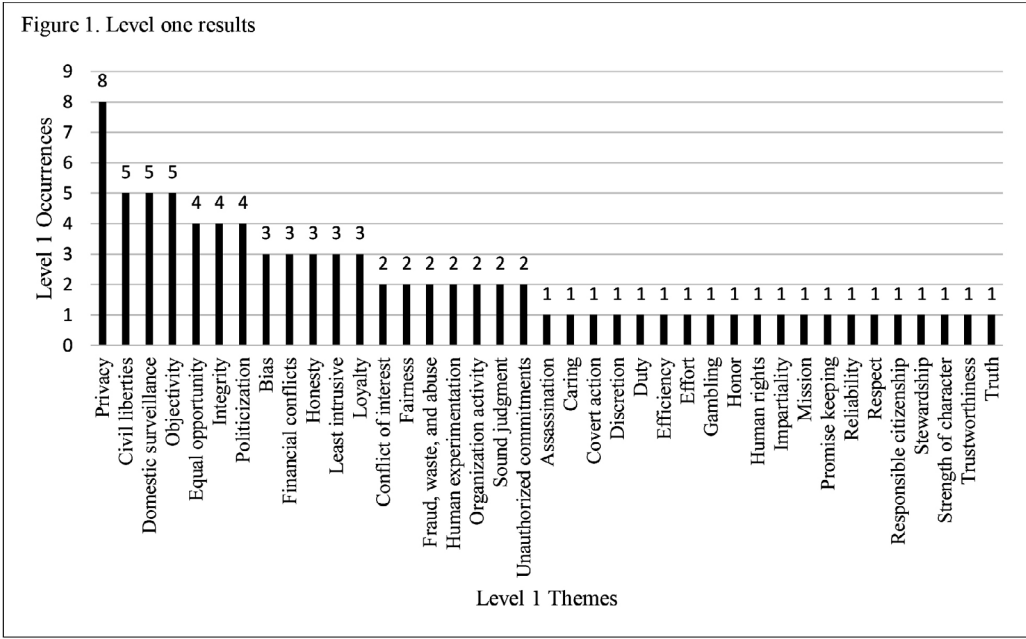
The level one code tracked thirty-nine ethical themes in the source documents as represented in Figure 1. The preponderance of the themes appeared in only one source, and several shared similarities with other categories. Table 3 shows how the research design distilled the level one code into twenty-two themes to make level two more reflective of the overall collection, which draws due attention to the themes that only one source referenced. With the recoding of comparable categories, Figure 2 most closely represents the priorities of the U.S. IC ethical code.

When reviewing the results, the first takeaway is the predominance of privacy references, and extensive regulations on domestic surveillance increase this attention on privacy rights specifically regarding U.S. persons. This result is unsurprising considering that intelligence, in its most foundational form, is a violation of privacy, so laws and ethical guidelines must balance protecting privacy and providing security (Andrew 2018, 14). As agencies within and

without the IC race to address security, privacy sometimes takes a back seat, as leaks of IC domestic data collection publicly demonstrated (Best 2014, 305; Rosenbach and Peritz 2009, 98).

Preserving a proper balance requires sufficient collection to accomplish the mission while protecting privacy to the greatest reasonable extent. What counts as excessive is up for debate, but the policies provide some guidance in the form of specific regulations on when, why, and how the IC can perform domestic surveillance. However, most references to privacy are aspirational with little explanation of intent beyond the protection of legal privacy rights.

The sources frequently invoke privacy and civil liberties together as an ethical catch all, and the Intelligence Reform and Terrorism Prevention Act of 2004 implemented a Privacy and Civil Liberties Oversight Board within the executive branch. In one sense, this simplistic summary is understandable since the documents rely on other laws to expound on limits to domestic surveillance and protection of civil liberties. However, this explanation is only moderately satisfactory since the referenced policies are unclear about what the term civil liberties includes. Even if the sources rely on legal interpretations to extrapolate, this invocation of privacy and civil liberties does little to prepare intelligence professionals to distinguish limits in morally complex situations. Additionally, this limited verbiage is collection-focused and does not cover most ethical issues in analysis.



Indeed, the sources as a whole provide significant guidance for intelligence collection. The themes of privacy, civil liberties, domestic surveillance, and least intrusive all relate directly to limits on collection targets and meth-

ods, and while outside the selection of this content analysis, Executive Order 13491 of 2009, “Ensuring Lawful Interrogation,” exclusively restricts the use of torture to gain intelligence. However, the policies also address ethical con-

Table 3. Recoding themes from level one to two	
Level 2	Level 1
Integrity	Duty Gambling <sup>a</sup> Honor Reliability Strength of character Trustworthiness
Fraud, waste, and abuse	Efficiency Effort Promise keeping Unauthorized commitments <sup>b</sup>
Loyalty	Duty Mission
Domestic surveillance	Organization activity
Equal opportunity	Fairness <sup>c</sup>
Honesty	Truth
Objectivity	Impartiality
Sound judgment	Discretion
<p><sup>a</sup>As a one-off theme, this paper coded gambling under integrity to facilitate data readability, although the thematic association is ambiguous.</p> <p><sup>b</sup>Unauthorized commitments make promise keeping difficult, so the two themes are related but distinct concepts. DoD 5500.07-R includes promise keeping and unauthorized commitments as part of its primary ethical values, but this paper judges that the intent concerns a waste of resources and an abuse of position.</p> <p><sup>c</sup>Although distinct concepts, the references to fairness in DoD 5500.07-R and the <i>National Intelligence Strategy</i> imply specific application to equal opportunity.</p>	

cerns for analysis, which is an intelligence practice that both collectors and dedicated analysts perform (Bar-Joseph 2007, 29). Objectivity, integrity, honesty, politicization, bias, and sound judgment are concerned primarily with

assessments, although they apply to collection as well. Of note, objectivity is second only to privacy in occurrences, demonstrating high priority alongside the related concepts of politicization and bias.

Additionally, the sources offer brief but straightforward guidance on the untraditional intelligence activities of human experimentation, assassination, and covert action. Executive Order 12333 of 1981, “United States Intelligence Activities,” and DoD regulation 5240.1-R allow human experimentation only with informed consent and within guidelines for the welfare of subjects (DoD 2017, 58). Executive Order 12333 also bans assassinations outright and limits the use of covert action. To this latter end, the Foreign Assistance Act of 1974 increases oversight of covert actions in a section popularized as the Hughes-Ryan amendment.

### ***Theoretical foundation of U.S. IC ethical priorities***

With an understanding of the contents, what do the results reveal about the theoretical framework that underpins the philosophical assumptions of the U.S. IC ethical code? First, the IC’s code is not purely deontological because it lacks a complete set of rules and does not recognize universal equality. Although some argue that deontology can justify intelligence through implicit consent and strict caveats, current U.S. policies still fail to satisfy these requirements due to a lack of definitive rulings on key ethical dilemmas (Frisk and Johansson 2021, 79; Pfaff and Tiel 2004, 5). Furthermore, the ethical code employs special qualifications for U.S. persons with only one reference to human rights as a whole. This point is not surprising in a collection of government documents relating to an intelligence community

responsible to the American people, but the distinction runs counter to deontology’s assertion that all people are equal ends (Evans and Smith 2018, 602).

Still, one could argue that some of the individual themes in the ethical code are deontological in nature, even if the code as a whole is not (Perry 2009, 10). For example, the categories of privacy; civil liberties; domestic surveillance; equal opportunity; loyalty; financial conflicts; conflicts of interest; fraud, waste, and abuse; human experimentation; and assassination are rules-based in that they carry the weight of law. However, these themes are comparatively straightforward, with the code offering no clear rules on how to implement the categories of integrity, sound judgment, caring, human rights, respect, stewardship, and even covert action.

Moreover, the IC’s adoption of universality is questionable. For example, must intelligence professionals always tell the complete truth, even when supporting information operations against adversaries in wartime? If not, then the theme of honesty is only concerned with the functional benefit of truthful intelligence products, which does not account for the deontological requirement for universal honesty.

Second, the U.S. IC ethical code is implicitly consequentialist in that the ends justify exceptions to deontological rules, but that point is not a complete description of the collective code. Reviewers can most clearly see evidence of consequentialism in the limitations on, but not complete elimination of, do-

mestic surveillance, privacy violations, covert action, and torture. U.S. policies allow domestic privacy violations under certain conditions when decision makers view the consequences as justified, such as during investigations of suspected terrorist activity. Similarly, regulations on covert action stipulate increased oversight and review by Congress, which simply shifts the judgment of consequences away from the exclusive purview of the executive branch. Although Executive Order 13491 prohibits what it defines as torture, the policy allows interrogations to continue under different guidelines.

Even with clear rules such as the ban on assassinations, judging intent is challenging. Did the decision makers responsible oppose assassinations on purely ethical grounds, or did they consider the consequences of international instability and potential retaliation not worth the ethical violation? Some may consider these questions superfluous, but the answers would reveal a consequentialist or deontological foundation since the latter stresses the ethical significance of intent (Vrist Ronn 2016, 772-773). Nonetheless, categories such as caring, respect, and human rights attest that the U.S. IC ethical code excludes an extreme interpretation of consequentialism with no limits (Nair 2014, 174).

Third, despite similarities to the other two theoretical frameworks, the U.S. IC ethical code most closely resembles virtue ethics with guiding elements of consequentialism and deontology. Although the policies offer specific and

stringent rules on some issues such as domestic surveillance and financial conflicts, the guidance leaves other principles open to interpretation. These categories are best understood as virtuous character traits, such as integrity, sound judgment, compassion, esteem for human rights, respect, stewardship, objectivity, honesty, impartiality, and responsibility with personal and government resources and interests.

This finding explains the IC's plea for employees to possess strength of character. The ethical code presents some semblance of the moral behavior it wishes intelligence professionals to adopt, but the IC needs individuals with moral courage willing to make ethical judgments and execute the intent of the ethical guidance. The primary DoD regulation on ethics further supports this assessment by explicitly calling on employees to consider values, not just rules or consequences, when making ethical decisions. The document's associated list of primary ethical values resembles a catalog of character traits, and thereafter, the regulation provides an ethical decision-making model to work through moral dilemmas (DoD 1993, 96-99). As a whole, the IC ethical code blends clear deontological constraints, consequentialist ambiguities, and virtuous character traits, and such an eclectic framework requires a flexible aretaic approach.

### ***Breadth of U.S. IC ethical priorities***

If the IC relies predominantly on virtue ethics, then does the ethical code provide sufficient guidance to prepare

intelligence professionals to make such decisions? To determine the breadth of IC ethical policies, this study considers whether the sources include and sufficiently address critical categories. To guide the analysis, the literature review highlighted seven prominent issues for intelligence ethics, which a suitable ethical code must adequately address.

First, four sources in the selection emphasize the need to eliminate politicization, labeling its abolition as a required element of intelligence tradecraft. The IC recognizes that intelligence must not affect the U.S. political process beyond reporting honest, unbiased assessments to those in authority, and the analytic ombuds is available to address reported violations of this principle (DoD 2016, 9; Intelligence Reform and Terrorism Prevention Act of 2004; ODNI 2007, 2; ODNI 2015, 5). Second, the policies are clear about the need for objectivity, so the key is to teach collectors and analysts how to avoid biases and logical fallacies to enforce the code's expectations.

Third, regarding deception, the sources emphasize honesty, integrity, and objectivity in reporting, but such guidance does not explore the broader ethical considerations of deceiving an adversary or even foreign allies. DoD regulations admit that information operations face legal complexities and ethical gray areas, and with a reliance on intelligence for such operations, this admission also challenges intelligence practitioners (Joint Chiefs of Staff 2014, III-3). Such ambiguities are concerning since they offer scant intent to intelli-

gence professionals as they weigh proper limits and ethical implications of propaganda, disinformation, and other deception-related activities.

Fourth, more sources address privacy than any other theme, and the policies intricately regulate domestic surveillance. The primary deficiency is a shortage of clear ethical guidance regarding violations of privacy of foreign adversaries, allies, and neutral entities, but this ambiguity is unlikely to change due to the classified and intrusive nature of intelligence. Despite this consequentialist calculation, the policies at least recognize the broad importance of privacy, and other policies such as the USA Freedom Act of 2014 amplify specific protections for U.S. persons.

Fifth, the selected policies do not mention torture, but there is little need for further guidance since Executive Order 13491 addresses the issue in detail. Critics can advocate for changes in this policy, but such a change does not imply insufficient breadth in the current IC ethical code regarding the issue. Sixth and similarly, only two sources mention assassinations, but the issue is soundly resolved through Executive Order 12333's ban. Concerns about the U.S. returning to the practice are purely conjectural at this point.

Seventh, the sources do not directly regulate covert action, opting rather to enhance Congressional oversight and place some limits on which organizations can conduct covert action. While debates over the efficacy and morality of covert action will no doubt continue to shape presidential

and Congressional decisions, the public will likely see few additional details regarding ethics-related policies on covert action due to its sensitive nature. As a carefully guarded capability, the issue of covert action illustrates why the IC prioritizes virtue ethics. In a heavily classified environment far from public attention, strength of character and moral courage are especially important (Vrist Ronn 2016, 761).

The U.S. IC ethical code does not capture every possible ethical dilemma, but that is arguably an unreasonable demand. The IC cannot credibly teach an exact response to every possible situation to every employee, and overall, the policies acknowledge this reality (DoD 1993, 97). Rather, the guidelines that constitute the IC ethical code should provide a baseline of essential values and clearly explicate moral intent. Just as importantly, the IC must teach intelligence professionals how to combat biases and logical fallacies and make sound moral decisions based on the ethical code.

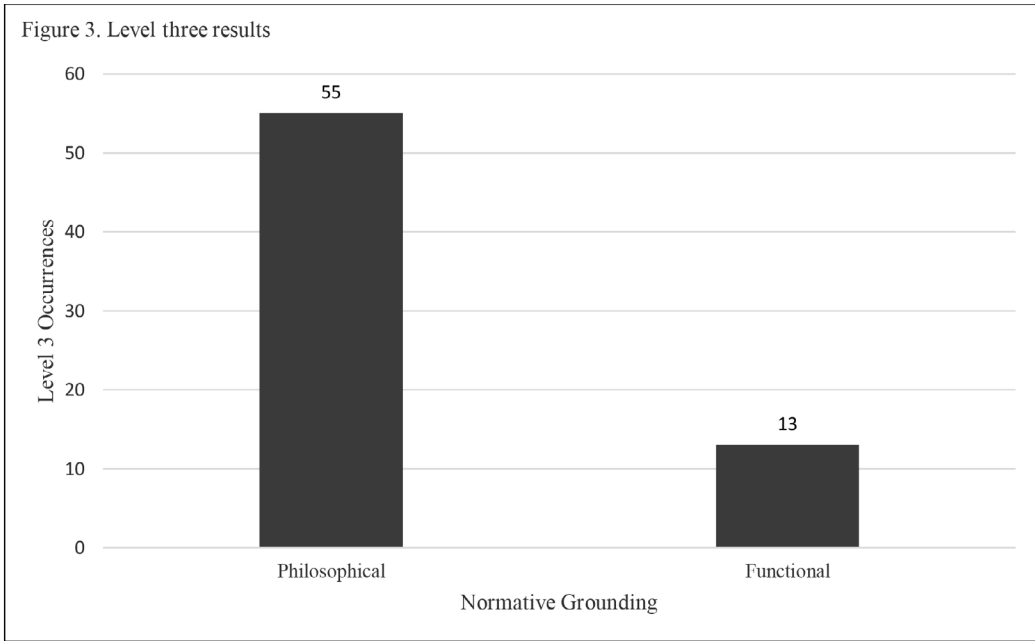
### ***Depth of U.S. IC ethical priorities***

The final defining element of the U.S. IC ethical code is the depth of its moral nature. Is the code primarily a list of best practices and shallow platitudes, or does the code ground its guidance foremost in ethical values? As a starting point, Figure 3 divides the total occurrences of themes as either philosophical or functional. In other words, can a reviewer reasonably connect the category to a philosophical ethical value, or does the guidance more closely represent an

organizational policy of best practices? Table 4 depicts how this research adjudicated the question. The reader should note that labeling a theme as functional does not impinge its importance but rather highlights the possible motivation of decision makers when constructing these policies.

When examining U.S. IC ethical policies, the detailed coverage of financial conflicts, conflicts of interest, and abuses of resources and power could give reviewers the impression that the IC ethical code has little to do with moral values. While the minutiae of these issues dominate certain sources, the level three results indicate that the code has a broader philosophical base than one might expect, although this foundation is accompanied by significant functional technicalities and philosophical ambiguities.

However, these results are only one framework for evaluating IC ethical depth, and a closer look at individual sources gives a clearer explanation. The *Joint Ethics Regulation* is the principal ethics policy for DoD personnel and arguably the clearest example of organizational functionality mixed with a clear representation of moral values. Long passages of bureaucratic details constitute most of the document, but the regulation also contains a values-based definition of morality and an elucidation of primary ethical principles. The document identifies these principles as honesty, integrity, loyalty, accountability, fairness, caring, respect, promise keeping, responsible citizenship, and pursuit of excellence (DoD 1993, 96-97).



Conversely, Executive Order 12333 lists fourteen general ethical principles that the Office of Government Ethics prioritizes for executive employees, but these guidelines have little grounding in ethical values of philosophical virtue (Office of Government Ethics n.d.). While the principles encourage personnel to place ethical ideals above personal gains, the guidance primarily focuses on corruption with little topical breadth or philosophical depth. Nine of the fourteen principles address misuse of government time and resources, and none reference specific ethical values such as those included in the *Joint Ethics Regulation* (DoD 1993, 96-97).

Lastly, the 2019 *National Intelligence Strategy* (NIS) presents the principles of professional ethics for the IC as a baseline, single source of ethical guidance. This source blends references to organizational concepts such as legali-

ty, loyalty, and stewardship with broad aspirational principles of truth, integrity, excellence, and diversity (ODNI 2019, 31). Thematically, the functional principles perhaps fit better on a list of best practices or legal responsibilities, but purely pragmatic instructions do not dominate this ethical code. Taken together, these results and sources describe the IC ethical code as necessarily functional but also morally informed.

In answer to the central research question, this paper demonstrates that the U.S. government desires members of the IC to *practice an ethical code based on virtue ethics that is informed by certain deontological rules and consequentialist reasoning*. The U.S. IC ethical code is broad enough to reference most ethical challenges that intelligence professionals face, but it limits this breadth through ambiguous guidance in key areas such as honesty and covert action. The code sets broad goals but relies on

Table 4. Coding level two categories as level three themes	
Philosophical	Functional
Privacy	Loyalty
Objectivity	Financial conflicts
Civil liberties	Conflict of interest
Domestic surveillance	Fraud, waste, and abuse
Integrity	Covert action <sup>b</sup>
Equal opportunity	Stewardship
Honesty	
Politicization	
Bias	
Least intrusive <sup>a</sup>	
Human experimentation	
Sound judgment	
Assassination	
Caring	
Human rights	
Respect	

<sup>a</sup>This paper coded least intrusive as philosophical since the concept seeks to limit ethical violations.

<sup>b</sup>Some raise concerns over covert action from the standpoint of moral values, but in this instance, the selected sources only reference covert action in terms of oversight and accountability.

intelligence professionals to work out situation-dependent interpretations. To inform these interpretations, the code embodies sufficient moral depth to expect values-based decision making, but as a whole, the policies lack congruence. Overall, the U.S. government expects intelligence professionals to understand the outlined primary values, intuit U.S. national moral intent, and take significant responsibility for making difficult ethical decisions to best serve the nation.

## Conclusion

### *Key findings*

The authors assert that the U.S. IC is filled with hard-working, intelligent professionals who sincerely do their best for their nation and the moral greater good of humankind. This paper also argues that persistent introspection and personal accountability are unavoidably necessary for a successful IC that serves the security

and moral interests of the American people. To that end, this research contributes to the ongoing study of intelligence ethics by examining the holistic ethical code for the IC as defined by U.S. government policies.

To answer the central research question, this paper used content analysis to discover the theoretical foundation, breadth, and depth of U.S. IC ethical policies. This research is unique in the intelligence ethics subdiscipline with its structured, holistic review of what moral behavior the U.S. government expects of IC members. The approach revealed patterns across policies and characterized the structure and intent of the current ethical code for U.S. intelligence professionals.

When examined in light of the IC's reliance on virtue ethics, the results show that U.S. government ethics policies have greater moral breadth and depth than much of the literature on the topic suggests. Some issues, such as legal judgments on assassinations or values-based imperatives of objectivity, require no further policy attention since the dictates are straightforward. Other issues, such as civil liberties and honesty, need additional elaboration of definitions and limits, but their inclusion in the code demonstrates that U.S. policies are interested in establishing more than pragmatic practices for government efficiency. Broad critiques of the U.S. IC ethical code are unfair, but the policies still have room for improvement.

## ***Recommendations***

First, policy makers in the executive and legislative branches should eliminate any ambiguity over what is protected through civil liberties. Policies should avoid any chance of confusion or misinterpretation by elucidating in detail the rights that intelligence professionals must protect. Policy makers should not rely on disparate and complicated legal definitions of otherwise vague terms, such as privacy and civil liberties.

Second, the IC must establish clear ethical policies relating to deception and information operations. General calls for honesty do not help intelligence professionals wrestle with morally proper limits for supporting propaganda, deception, and disinformation. Such practices clearly must not target U.S. persons, but even incidental effects of operational use can cause great harm to innocents around the world. Who is a legitimate target? What forms of deception are permissible? Who decides when and how to use deception? The IC must answer questions like these before a moment of crisis to avoid poor decisions based on inadequate guidance and intent.

Third, policy makers should enshrine in IC ethical policies a clearer representation of the importance of human rights. A state-centric baseline does not alleviate the responsibility of intelligence professionals to the rest of humankind. If the U.S. wishes to depict itself as a global leader in human rights, which it should, then IC ethical guidelines must capture these expectations. Of course, the details of intelligence op-

erations will remain largely classified, so the publicly available ethical code will likewise remain relatively vague. However, this point highlights the importance of Congressional oversight, especially for classified activities and policies. Still, the public IC ethical code should add principles of human rights that the U.S. acknowledges and seeks to uphold. This centralized guidance will ensure all intelligence practitioners can easily reference ethical expectations, and the public access and ascent will keep the IC accountable to the American people.

Fourth, the IC must improve the coherence of its ethical code. Currently, a DoD policy that technically does not apply to the entire IC provides the clearest explanation of ethical values and intent for decision making (DoD 1993, 96-99). This paper presents a cohesive IC ethical code, but this was possible only by piecing together disparate policies from different authorities. An intelligence professional should not need to pour through multiple, relatively discrete sources nor read this paper to grasp the full IC ethical code. The NIS claims to provide a sole source of IC ethics, but this one page is woefully inadequate (ODNI 2019, 31). The IC needs a single, robust ethics policy that expands on identified ambiguities applicable to all IC members.

Fifth, while such a policy would significantly improve the clarity and comprehensiveness of the IC ethical code, the document could not realistically account for every possible moral challenge. The IC will still rely predominantly on a virtue ethics framework,

so the most important step the IC can take is to introduce a more robust ethics training program. Aspirational guidelines mean little if intelligence professionals are not prepared to make decisions in morally complex scenarios. This shortcoming is the foundation for accusations that the IC ethical code is filled with nothing more than platitudes. The proposed training must explain the importance of the IC's ethical values and force participants to contemplate moral decision making through scenario-based exercises. By developing a more robust ethical proficiency, the IC can cultivate a force of intelligence professionals with strength of character and moral courage.

### ***Future research and conclusion***

These policy recommendations inherently present future research opportunities as well. First, disinformation writ large is a pressing issue for scholars and policy makers, so future research could study the physical and cognitive ethical effects of intelligence contributions to information operations. Second, scholars could address the issue of human rights by exploring a universal set of rules for intelligence based on deontology. Third, policy-minded researchers could design an all-encompassing, single source policy for IC ethics and an associated training program. Fourth, this paper offers a research framework for replicability and falsifiability, so other studies could select alternative sources or code themes differently to test understanding of the collective IC ethical code. Fifth, a study could also take a more critical, rather than explanatory,

look at current U.S. policies through a specific ethical theoretical lens. Sixth, future research could offer better insight into the moral or pragmatic intent of U.S. ethical policies by performing psychological studies on the source's originators.

The purpose of this paper is to better inform policy makers and enrich the scholarly debate about the state of U.S. intelligence ethics, but changing policies will only solve part of the problem since the primary moral decisions

and effects occur in the field. Organizational changes most often develop on the member level, so this conclusion places substantial responsibility on the collectors, analysts, and managers executing the daily work of intelligence (Caldwell, Karri, and Vollmar 2006, 208; Pierce 2007, 8). The individual members of the IC must continue to contemplate and internalize ethical values, exude professional respect, and hold themselves and their organizations accountable. The authors maintain that these public servants are up to the task.

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