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IS CLANDESTINE DIPLOMACY COMPATIBLE WITH LIBERAL DEMOCRATIC VALUES OF TRANSPARENCY AND ACCOUNTABILITY?

In the unlikely event that Tyrion Lannister, Barack Obama and Yitzhak Rabin find themselves together in a bar, there is at least one statement upon which they might all agree: "we make peace with our enemies, not our friends"[1]. A state that is prepared to talk only to its friends is one that has decided to limit its ability to influence the international environment and to restrict the foreign policy options available to it. On the other hand, a state which is seen openly making deals with terrorists and tyrants risks popular and political backlash, even when the goals of such interactions may be legitimate and morally defensible. The temptation for policy-makers, therefore, may be to attempt a third approach – a seductive, 'best of both worlds' option – to entertain all possible policy options by proceeding with negotiations, but do so under a blanket of secrecy. In such scenarios, policy-makers may find themselves resorting to the dark arts of 'clandestine diplomacy'.

At its core, diplomacy is the "conduct of relationships, using peaceful means, by and among international actors, at least one of whom is usually governmental"[2]. From here, it is a small terminological step to a workable definition of clandestine diplomacy, which is characterised by "the total isolation and exclusion of the media and the public from negotiations and related policy-making"[3]. Alternative descriptors include 'secret', 'covert', 'quiet', 'back-channel' or 'crypto-' diplomacy, but all essentially feature the same crucial ingredient: the use of "intelligence

1 Tyrion Lannister is the cunning political advisor to Queen Daenerys Targaryen in George R. R. Martin's *A Song of Ice and Fire* series of novels. Poniewozik, J. (2016) for New York Times. 'Game of Thrones': Tyrion, Daenerys and the Art of the Deal', https://www.nytimes.com/2016/05/16/arts/television/game-of-thrones-season-6-episode-4-daenerys-tyrion.html [accessed 19/7/2009].

2 Cooper, A. F., Heine, J. & Thakur, R. (2013). 'Introduction: The Challenges of 21st-Century Diplomacy', *The Oxford Handbook of Modern Diplomacy,* p. 2

3 Gilboa, E. (1998). 'Secret Diplomacy in the Television Age,' *International Communication Gazette*, vol. 60, no. 3, pp. 211–225.

connections…as a supplement to conventional diplomatic relations, or even as a substitute for them"[4].

There is some conceptual overlap with other similar terms which warrants deconfliction. *Intelligence liaison* generally focuses on the behind-the-scenes diplomacy that occurs within intelligence communities on issues such as the establishment and management of intelligence-sharing arrangements with foreign agencies[5]. *Intelligence-driven diplomacy* draws more on the usage of intelligence to strengthen a diplomat's hand, treating "intelligence as supplementary support for diplomats in the context of coercive bargaining"[6]. Both definitions explore connections between intelligence and diplomacy, but neither field has an analytical focus on the role of intelligence services as direct diplomatic actors. This essay is concerned with the clandestine diplomacy carried out via "highly deniable methods…conducted by secret intelligence services"[7] acting either in the capacity of primary interlocutors, or at least as significant facilitators of secretive negotiations involving other suitably accredited diplomatic officials.

The use of such deniable methods as an expression of official state functionality raises questions about the potential clash between liberal, democratic principles of transparency and accountability, and an elected government's prerogative to pursue whichever course it feels is best for the national interest. Where such clashes do occur, should the state be compelled to reveal its activities, or does a victory at the polls bestow upon it the autonomy to decide what its people should or shouldn't know? In addressing the potential for conflict between clandestine diplomacy, accountability and transparency, this essay will not seek to identify or pass judgment on individual cases when intelligence activities have contravened specific laws or statues. Instead, it will address wider questions of whether clandestine diplomacy should be regarded as fundamentally incompatible with the *principle or spirit* of democratic accountability and transparency.

US President Woodrow Wilson's famous 'fourteen points' speech of 1918 was supposed to usher in a new era of diplomacy – one that swept away the duplicity and connivance of secretive backroom deals, and instead replaced them with openness and popular participation. Diplomacy, he declared, should be predicated upon "open covenants of peace, openly arrived at…always

4 Westerfield, H. B. (1996). 'America and the world of intelligence liaison', *Intelligence and National Security*, vol. 11, no. 3, p. 537

5 Sims, J. E. (2006). 'Foreign Intelligence Liaison: Devils, Deals, and Details', *Journal of Intelligence and CounterIntelligence,* vol. 19. No. 2, p. 196

6 Metter, N. (2015; online). 'A Case for Clandestine Diplomacy: The Secret UK-US-Libyan Talks', *The Yale Review of International Studies,* http://yris.yira.org/essays/1553 [accessed 1/8/2019]

7 Scott, L. (2004). 'Secret Intelligence, Covert Action and Clandestine Diplomacy', *Intelligence and National Security,* vol. 19, no. 2, Summer 2004, p. 330

frankly and in the public view"[8] to ensure that foreign policies remained anchored in the democratic consent of a knowledgeable and agreeing public. It was the secretive 'old' diplomacy, conducted behind closed doors beyond the reach of attempts at scrutiny, which had bound Europe together into a disastrous entanglement of alliances that had allowed war to be transmitted across the continent, and which found itself the target of particularly heavy criticism in the inter-war years[9]. Wilson's deeply liberal pronouncement that "all international treaties should be transparently negotiated and ratified by parliaments"[10] came in direct response to a woeful lack of proper accountability, which had itself fed perceptions of a sinister and "intimate relationship [between secret diplomacy and] illicit activities"[11]. However, at the Paris Peace Conference of 1919-20, it quickly transpired that Wilson actually "favoured submitting the results, rather than the process, of negotiations to public examinations"[12]. Secrecy was evidently not be abolished entirely from diplomatic proceedings, but his insistence "that state actors should engage each other in conditions of transparency and accountability…had an enduring impact on diplomacy [that] remains manifest to the present day"[13].

As covert operators *par excellence*, intelligence services are a natural choice for the conduct of secret state business. Nonetheless, the crucial role they play as actors in diplomacy is frequently overlooked in academic literature. Research for this paper has uncovered a general agreement that clandestine diplomacy persists as an interesting but underdeveloped field; typical remarks characterise it as a "neglected area of enquiry"[14] and a "topic which is shrouded in secrecy and resistant to academic enquiry"[15]. However, further research indicates that clandestine diplomacy occupies a rather curious space within current conceptual frameworks: there seems to be no clear ontological demarcation between which 'camp' clandestine diplomacy best fits in with. It appears to be caught in something approximating an academic 'no-man's land', with neither scholars of 'pure' diplomacy (as conducted via ambassadors and embassies) nor students of intelligence seemingly willing to assert conceptual ownership over the topic. Intelligence agencies are not

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8 Unnamed author for the Lillian Goldman Law Library, Yale Law School, citing President Woodrow Wilson's 'Fourteen Points' speech of 8th January 1918 (2008; online), https://avalon.law.yale.edu/20th_century/wilson14.asp [accessed 4/8/2019]

9 Butterfield, H. (1966). 'The New Diplomacy and Historical Diplomacy', *Diplomatic Investigations: Essays in the Theory of International Politics*. London: George Allen & Unwin, pp. 181-182

10 Bjola, C. & Kornprobst, M. (2018). Chapter 3 – 'Woodrow Wilson and the new diplomacy after World War I', *Understanding International Diplomacy*. 2nd ed. Routledge, pp. 38-41

11 Ibid.

12 Hamilton, K. & Langhorne, R. (eds) (2010). Chapter 5 – 'The 'new diplomacy', *The Practice of Diplomacy*. Routledge, p. 157

13 Bjola, C. & Kornprobst, M. (2018). Chapter 3 – 'Woodrow Wilson and the new diplomacy after World War I', *Understanding International Diplomacy*. 2nd ed. Routledge, p. 40

14 Ibid. p. 330

15 Docharteigh, N. O'. (2011). 'Together in the middle: Back-channel negotiation in the Irish peace process', *Journal of Peace Research*, vol. 48, no. 6, p. 767

treated as distinct diplomatic actors in the same vein as, for example, Intergovernmental Organisations (IGOs) like the UN, or transnational corporations (TNCs)[16]. Meanwhile, studies into intelligence are often much more concerned with matters of "how knowledge is acquired, generated and used…scrutinising the process of gathering, analysing and exploiting intelligence"[17]. The fascination with these intriguing aspects of intelligence is understandable, but caution ought to be taken not to detract from efforts to generate a more comprehensive picture of the myriad other functions performed by intelligence agencies; the victim of this tunnel-vision could be an area of intelligence activity that is potentially highly significant but little-understood and too easily overlooked. In any case, intelligence and diplomacy may be closer cousins than is widely recognised. According to one senior former British intelligence official, it is not uncommon for 'dual-hatted' intelligence officers to find themselves simultaneously juggling Foreign Office and MI6 duties[18].

Secrecy is a necessary precondition for intelligence services to operate, and by definition, so too is it an inherent requirement for clandestine diplomacy. In liberal democratic societies with established accountability, transparency and oversight mechanisms, and where there exists a general expectation by citizens to be kept informed about their government's activities, there is the potential for any deliberate attempt at official secrecy to be interpreted as something nefarious. The intelligence agencies who must operate under such secrecy are certainly not spared suspicion and mistrust. Public trust in intelligence services has suffered following a series of damaging, high-profile incidents in recent years, including the Edward Snowden revelations, non-existence of Iraqi WMDs, and concerns about the legislation popularly nicknamed the 'snooper's charter'[19]. Each case raised important questions about the relationship between state, security services and private citizens, and generated debates about the extent to which a government would or should keep its citizenry informed of matters relating to sensitive intelligence work. The ever-growing extent of technological interconnectedness and penetration of communications technology into modern everyday life has only served to enliven the perennial debate on the right balance between privacy, disclosure and security.

16 Hamilton, K. & Langhorne, R. (eds.) (2010). Chapter 7 – 'Diplomacy diffused', *The Practice of Diplomacy*. 2nd ed. Routledge, pp. 230-253

17 Scott, L. (2004). 'Secret Intelligence, Covert Action and Clandestine Diplomacy', *Intelligence and National Security,* vol. 19, no. 2, Summer 2004, p. 322

18 Speaker at the Cambridge Security Initiative's (CSi) International Security and Intelligence Conference (2019), speaking under Chatham House rules

19 Piper, E. (2015; online). 'Britain to present new watered down surveillance bill', https://uk.reuters.com/article/uk-britain-security-surveillance/britain-to-present-new-watered-down-surveillance-bill-idUKKCN0SQ1PG20151101 [accessed 4/8/2019]

Polling conducted in the UK by YouGov reveals how popular attitudes and opinions of intelligence agencies vary depending on their activities. Predictably, some activities were deemed more acceptable than others. Respondents were asked, among other questions, whether they felt that UK intelligence agencies should (under certain circumstances) have the power to break laws, break into private property, kill people, or hack into communications in the UK or abroad. People's attitudes varied depending on the specified activity: 49% of respondents felt that the British intelligence services should be able to hack the communications of foreign citizens, while just 16% believed they should have the power to kill people in the UK[20]. Other rounds of polling have revealed the mercurial nature of public attitudes towards the activities of intelligence services, as evidenced when the percentage of respondents who wanted more investigative powers for the security services fell following revelations about US and UK surveillance programmes[21]. The results of the surveys indicate that there is public recognition and acceptance of the fact that, in order to fulfil their functions, intelligence services must be able to perform unpalatable tasks, and that some of this work must necessarily be done in secret. Although research for this essay failed to uncover any public surveys of attitudes on clandestine diplomacy specifically, press releases and media reporting provide insight into the attitudes of governments on the matter – and how they can differ in public versus privately.

It is an oft- and widely-repeated mantra that governments 'do not negotiate with terrorists'. To do so, argue critics ranging from scholars to presidents, risks legitimising the terrorists and terrorist tactics in general[22]. A major argument against engaging with terrorists is the fear that 'successful' acts of terrorism are seen to be 'rewarded' with official recognition and legitimation, and that the cost of a seat at the negotiating table can be paid in the blood of the victims of terrorist violence. To compromise with terrorists is to give them "full recognition…which in turn leads to increased attacks"[23]. From a policy-maker's perspective, there are clear disincentives to negotiate with terrorist groups, including the perceived risks of provoking further attacks and of incurring the political disapproval of an outraged electorate.

Nonetheless, and in spite of frequent repetitions of the mantra of non-negotiation, there is ample evidence that governments across the world have engaged in precisely these sorts of talks. Recent years have seen the emergence of evidence documenting the roles played by intelligence

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20 De Waal, J. R. (2013; online). 'Public opinion and the Intelligence Services', https://yougov.co.uk/topics/politics/articles-reports/2013/10/11/british-attitudes-intelligence-services [accessed 4/8/2019]

21 Ibid.

22 Toros, H. (2008). 'We Don't Negotiate with Terrorists!': Legitimacy and Complexity in Terrorist Conflicts', *Security Dialogue*, vol. 39, no. 4, pp. 407-408

23 Ibid., p. 410

agencies to facilitate such discussions by operating as clandestine diplomatic actors. Among other examples are the intimate involvement of British intelligence in discussions on peace in Northern Ireland[24], instructions for an incoming Mossad chief to cultivate new diplomatic ties for Israel in the Middle East[25], and relations between the CIA and the Palestine Liberation Organisation – at the time, a designated terrorist entity[26].

It is logical to conclude that governments enter into negotiations with terrorist groups because they assess that they are likely to derive benefit from doing so. In the case of the Northern Ireland peace process, this assessment seems to have been borne out. For over twenty years, a "secret back channel" allowed the British government and dissident republicans to communicate at a time when both parties were guilty of killing innocent civilians[27]. Between the early 1970s and early 1990s, Brendan Duddy, a businessman from Londonderry, acted as a vital intermediary between the intelligence services and senior members of the Irish Republican Army (IRA), even hosting meetings at his home on Derry's Glen Road[28]. This back channel helped to lay the foundations of limited trust by fostering cooperation and increasing mutual understanding between the conflict parties, from which strong interpersonal relationships were allowed to grow between the interlocutors[29]. The clandestine nature of the talks increased the chances of attaining a positive outcome in two important ways, which may not have been achievable with publicly disclosed dialogues: firstly, as a shared project explicitly designed to bypass spoilers, the negotiations exerted structural pressures on both sides to manage and mitigate internal opposition to the talks[30]. Secondly, the deniability and secrecy of clandestine diplomacy ensured that both sides were insulated from outside pressures in a situation where "open political dialogue may [have been] anathema"[31]. It is a matter of conjecture whether such sensitive relationships would have flourished or even survived exposure to wider scrutiny, but it seems that in the greater context of

24 Unnamed author, BBC News (2017; online). 'Brendan Duddy obituary: NI's 'secret peacemaker', https://www.bbc.co.uk/news/uk-northern-ireland-39887873 [accessed 4/8/2019]
25 Keinon, H. (2015; online). 'Frontlines: Israel's Covert Diplomacy', https://www.jpost.com/International/Frontlines-Israels-covert-diplomacy-437001 [accessed 4/8/2019]
26 Bird, K. (2014; online). 'Op-Ed: Robert Ames and the CIA's history of back-channel talks with 'the bad guys', https://www.latimes.com/opinion/op-ed/la-oe-bird-back-channel-diplomacy-20140622-story.html [accessed 4/8/2019]
27 Powell, J. (2008; online). 'Talking to the enemy: the secret intermediaries who contacted the IRA', https://www.theguardian.com/politics/2008/mar/18/northernireland.northernireland [accessed 21/7/2019]
28 Unnamed author, BBC News (2017; online). 'Brendan Duddy obituary: NI's 'secret peacemaker', https://www.bbc.co.uk/news/uk-northern-ireland-39887873 [accessed 22/7/2019]
29 Docharteigh, N. O'. (2011). 'Together in the middle: Back-channel negotiation in the Irish peace process', *Journal of Peace Research*, vol. 48, no. 6, pp. 767-778
30 Ibid., p. 767
31 Scott, L. (2004). 'Secret Intelligence, Covert Action and Clandestine Diplomacy', *Intelligence and National Security,* vol. 19, no. 2, Summer 2004, p. 336

peace in Northern Ireland, conditions of secrecy helped to raise the prospects of positive negotiating outcomes.

Clandestine diplomacy is not a tool reserved exclusively for communications with unpalatable non-state actors such as terrorist organisations. It provides additional options for inter-state negotiation when more overt channels have broken down. The US and USSR also employed diplomatic back channels, established and managed by intelligence officers, during the Cuban Missile Crisis. This was done to ensure that parallel lines of communication were available at a time when the capacity of the two states to negotiate was in jeopardy due to the significant strain placed on normal diplomatic relations over the course of the crisis[32]. Facing a choice between public accountability and nuclear annihilation, one can understand why both parties opted for the latter.

The creation and maintenance of alternative channels for dialogue can be particularly important in situations where formal diplomatic ties breakdown entirely, owing to the limitations imposed on governments' abilities to message, negotiate or otherwise interact with one another. These divisions can be long-lasting and can damage not only to a state's ability to conduct its foreign affairs but constitute a threat to wider regional or even global security. The US severed diplomatic relations with Iran in 1980 following the seizure by students of the American Embassy in Tehran, and in spite of the eventual release of the hostages, formal diplomatic relations remain severed to this day; the quarrel compelled the US to outsource to Switzerland the role of protecting power for American interests in Iran[33]. The present-day US-Iran relationship is characterised by escalating tensions and a "climate of deep mutual distrust", in which there is a "distinct potential for misunderstanding" that could conceivably spill over into armed confrontation[34]. These anxieties are shared by their respective populations. An Ipsos poll conducted in 2019 indicated that a slim majority of Americans viewed Iran as a threat to the US[35], while most Iranians held a negative view of the US (in particular of the government, although not of the American *people*) and were pessimistic about the near-term prospects for improved relations[36]. Arguably, it is just as well

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[32] Ibid., pp. 332-335

[33] Unnamed author, Office of the Historian, Foreign Service Institute, US Department of State (2019; online). 'A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Iran, https://history.state.gov/countries/iran [accessed 5/8/2019]

[34] Goldenberg, I. (2019; online). 'What a War With Iran Would Look Like', https://www.foreignaffairs.com/articles/iran/2019-06-04/what-war-iran-would-look [accessed 6/8/2019]

[35] Ipsos Public Affairs (2019; online). 'Iran Poll 05.20.2019', https://www.ipsos.com/sites/default/files/ct/news/documents/2019-05/2019_reuters_tracking_-_iran_poll_05_20_2019.pdf [accessed 6/8/2019]

[36] Gallagher, N., Mohseni, E. & Ramsay, C. (2016; online). 'Iranian Public Opinion, One Year after the Nuclear Deal', http://www.cissm.umd.edu/publications/iranian-public-opinion-one-year-after-nuclear-deal [accessed 6/8/2019]

that the US and Iranian governments had not asked their populations for permission to hold negotiations for the Joint Comprehensive Plan of Action (the 'Iran nuclear deal').

Despite the ongoing history of animosity and suspicion, the nuclear deal was signed in 2015 between Iran and the P5+1 group of countries. It was the culmination of twelve years of quiet multilateral diplomacy, some of which had been conducted via clandestine back channels curated by the Sultan of Oman[37]. Although the deal has begun to unravel, its signing nonetheless represented a diplomatic *tour de force*; it was a comprehensive legal treaty, arrived at via peaceful diplomatic means, that accommodated a diverse array of diametrically opposed viewpoints on highly sensitive issue areas. It stands as an example of how diplomatic progress can be made even against a backdrop of suspicion and mistrust. In an echo of the sentiment expressed at the beginning of this essay, President Obama enunciated the logic behind adopting a diplomatic approach: "you don't negotiate deals with your friends. You negotiate them with your enemies"[38]. The Iran nuclear deal was the product of diplomatic discussions between governments which, in no small part, viewed each other as adversaries. It occurred in the context of deeply rooted animosities, widespread mutual public suspicion, and troubled political relationships – in other words, conditions under which standard diplomacy is highly susceptible to political pressures, and under which the case for clandestine diplomacy might be correspondingly strengthened. Despite all this, a diplomatic solution was reached; hopefully, the role of clandestine diplomacy in the Iran nuclear deal will become clearer as more evidence becomes available.

This essay has explored the moralistic implications of clandestine diplomacy to determine its compatibility with principles of procedural transparency and democratic accountability. It has demonstrated the utility of clandestine diplomacy in negotiations conducted between both state and non-state actors by noting its positive involvement in the Iran nuclear deal and Northern Ireland peace process. A core theme of this essay has been that, in the context of diplomacy, *secret* and *sinister* should not be considered synonymous; it is entirely possible to do good deeds quietly, just as it is to do bad ones openly. The resort to secrecy should not be automatically and uncritically construed as an indicator of nefariousness. There may be occasions, as shown in the case of Northern Ireland and the fragile relationships which were allowed to develop there between the British intelligence services and the IRA, where clandestine diplomatic contact can yield an overall benefit to society likely greater than that which would have resulted from a regime of full public

[37] Sherman, W. (2018). 'How We Got the Iran Deal – And Why We'll Miss It', https://www.foreignaffairs.com/articles/2018-08-13/how-we-got-iran-deal [accessed 6/8/2019]
[38] LoBianco, T. (2015) for CNN. Obama: 'You don't negotiate deals with your friends', https://edition.cnn.com/2015/08/07/politics/obama-khameinei-iran-deal-enemy/ [accessed 29/7/2019]

disclosure, in which obedience to principles of transparency and loyalty was absolute and uncategorical.

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