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Agents, Lovers, and Institutions: John Le Carré As Legal Critic

Allen D. Boyer*

An agent is subject

— Restatement (Second) of
Agency

Iustitia — amor soli amato serviens.

— St. Augustine

John Le Carré's father, a confidence man who dreamed of being a fugitive financier, had very different ambitions for his son: he wanted the boy to become Lord Chief Justice. In *The Russia House*, his most recent novel, Le Carré seems to be looking back at a career he did not choose. His narrator is a solicitor, in-house counsel to Britain's MI6. Obliquely, however, Le Carré has been dealing with legal issues much longer — in fact, since he began writing fiction.

Le Carré's theme is the conflict between individual identity and institutional role. His characters are people caught between their human impulses and their duties as members of organizations which require that they use others as ends to a purpose. These issues are not confined to the world of covert action. Le Carré's observations on secret services apply to organizations of similar complexity: churches, schools, businesses and bureaucracies. This is why one finds his writing discussed in such journals as *Public Administration* (a journal for British civil servants) and the *Harvard Business Review*.¹ On an even broader scale is the suggestion, underlying all Le Carré's work, that "secret services [are] the only real measure of a nation's political health, the only real expression of its subconscious."²

The legal rules collected in the law of agency represent the traditional way of defining the relationships which obtain within human organizations. In recent years, the conflict between personal identity and social role has drawn attention from other bodies of scholars. Organization theorists have studied how complex institutions operate. Such anal-

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1 See Wallace, *John Le Carré: The Dark Side of Organizations*, HARV. BUS. REV. (Jan.-Feb. 1985) 6; Neuse, *Bureaucratic Malaise in the Modern Spy Novel: Deighton, Green, and Le Carré*, 60 PUBLIC ADMINISTRATION 293 (1982); Dobel, *The Honorable Spymaster: John Le Carré and the Character of Espionage*, 20 ADMINISTRATION & SOCIETY 191 (1988). See also L. PANEK, *THE SPECIAL BRANCH: THE BRITISH SPY NOVEL 1890-1980* 250-52 (1981).

2 J. LE CARRÉ, *TINKER, TAILOR, SOLDIER, SPY* 342 (1974). Le Carré also praised THE PHILBY CONSPIRACY for treating "the British secret services for what they surely are: microcosms of the British condition, of our social attitudes and vanities." J. Le Carré, Introduction to B. PAGE, D. LEITCH, & P. KNIGHTLEY, *THE PHILBY CONSPIRACY* 7 (1968).

yses, stressing organizational rather than human concerns, have ironic affinities with Le Carré; they summarize the natural laws by which his covert agencies run.

On another front, one finds critics who have attacked many foundations of traditional law. A common agreement among these writers is that law cannot be seen as a matter of abstract principles, logically applied; all too often such systems only rationalize and conceal repression. These legal critics have called for a reshaping of the world which law governs, for the replacement of roles and hierarchies with flexible, re-humanized structures. One expects to find little common ground between radical legal scholars and a writer of espionage novels — but the same warning is repeated by these critics' call for a new social outlook and Le Carré's portrait of callous and amoral organizations.

The issue is how individuals define themselves, by their relationships to other individuals and by their relationship to larger social units — which is to say, along what lines society shall be structured. The conflict may be described as the choice between agency and love.

For Le Carré, to be a secret agent is to be an organization man: to identify oneself with an intelligence agency, to make its goals one's own. It is the opposite of loving, which involves identifying oneself with another person, and treating that other person's well-being as one's own. Throughout Le Carré's novels, love is what keeps spies from completing their missions — or, sadly, the value they give up to succeed.

I. Agency and Love: Some Working Definitions

All novels grow out of their characters' interaction, but Le Carré's books are about people expressly defined by their links to others. His characters serve nations, work against other nations, betray each other, hunt for those who have betrayed them. They eliminate foes and write off subordinates, and sometimes they fall in love. By profession they are secret agents — and decrypting this phrase offers the best way to understand Le Carré.³

Colloquially, *secret agent* means *spy*. *The Secret Agent*, by Joseph Conrad, may be the first novel to use the term in its modern sense. It is

3 See P. ELLIS, JOHN LE CARRÉ 112 (1985); D. MONAGHAN, THE NOVELS OF JOHN LE CARRÉ: THE ART OF SURVIVAL (1985); T. BARLEY, TAKING SIDES: THE FICTION OF JOHN LE CARRÉ 128-36 (1986), and P. WOLFE, CORRIDORS OF DECEIT: THE WORLD OF JOHN LE CARRÉ (1987). Also on the subject are Monaghan, *John Le Carré and England: A Spy's-Eye View*, 29 MOD. FICTION STUD. 570 (1983), Brady, *John Le Carré's Smiley Saga*, 60 THOUGHT 274 (1985); Rothberg, *The Decline and Fall of George Smiley: John Le Carré and English Decency*, 66 SW. REV. 377 (1981); Halperin, *Between Two Worlds: The Novels of John Le Carré*, 79 S. ATL. Q. 17 (1980); JOHN LE CARRÉ (H. Bloom ed. 1987); and THE QUEST FOR LE CARRÉ (A. Bold ed. 1988).

Other scholars have examined Le Carré in terms of the conventions of thriller and detective fiction. See B. MERRY, ANATOMY OF THE SPY THRILLER (1977). A useful introduction is Most, *The Hippocratic Smile: John Le Carré and the Traditions of the Detective Novel*, in G. MOST & W. STOWE, THE POETICS OF MURDER: DETECTIVE FICTION AND LITERARY THEORY (1983). See also J. CAVELTI & B. ROSENBERG, THE SPY STORY (1987); and M. DENNING, COVER STORIES: NARRATIVE AND IDEOLOGY IN THE BRITISH SPY THRILLER (1987).

Particularly interesting are Silver, *Woman As Agent: The Case of Le Carré's "Little Drummer Girl"*, 28. CONTEMP. LITERATURE 14 (1987) which draws on feminist criticism (with structuralist and Freudian influences) and René Girard's theory of mimetic desire, and Scanlan, *Philby and His Fictions*, 62 DALHOUSIE REV. 533 (1982-83), which discusses the literary impact of Kim Philby.

worth recalling that Conrad had to learn the meaning of every English word he used, because of the definition he gave this phrase. If he chose a title connoting cloak-and-dagger intrigue, that was the novel's last brush with romance.

Conrad's title character, Verloc, is a shabby vendor of dirty post-cards, "unexpectedly vulgar, heavy and impudently unintelligent,"⁴ with the air "of having wallowed, fully dressed, all day on an unmade bed."⁵ He is a mediocre informer and an incompetent *agent-provocateur*. Yet within the ledgers of the Russian secret service, Verloc is recorded as a "famous and trusty secret agent . . . the celebrated agent Delta, whose warnings had the power to change the schemes and the dates of royal, imperial and grand-ducal journeys, and sometimes cause them to be put off altogether!"⁶

One finds little personal merit in Verloc. He owes any importance he may have to the persona assigned to him by his Russian masters — that is, his role as their London agent. Conrad understood that to be an agent is to take on a certain status, to play a narrowly delineated role in certain relationships. The term agent, however, is only part of the concept of agency, a concept which is most comprehensively explicated by law.

In short, *secret agent* means something more than *spy*. A spy only gathers information. A secret agent is a person who acts, covertly, to achieve some other person's ends. Or, conversely, a secret agent is a person who is used so that another person may covertly achieve an end.

II. The Theories Behind the Fiction

A. Agency: *The Rules of Law*

Agency is the basic organizational bond for large sectors of modern society. It operates wherever one person agrees to answer to and represent another — providing the structure for commercial enterprises, and, in the realm of government, shaping the chain of responsibility within administrative bureaus.

Agency, says the Restatement, is "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."⁷ This definition speaks of consent. This implies a parity between the parties. The consensual character of agency, however, is ignored by the rules which are customarily used to describe the relationship between employees and masters. Instead, these rules emphasize factors which subordinate the agent: the duties which limit the agent's freedom of action, and the control which the principal remains free to exercise.⁸

⁴ J. CONRAD, *THE SECRET AGENT* 35 (1953).

⁵ *Id.* at 18.

⁶ *Id.* at 35.

⁷ RESTATEMENT (SECOND) OF AGENCY § 1(1) (1958).

⁸ It may be asked whether any relationship which involves the subordination of one person to another is truly consensual. In such circumstances, rationalization is all too easy; what is claimed to

Invariably, discussions of agency favor the principal's viewpoint. Consider this example: "The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another's efforts . . ." ⁹ Agency is *not* envisioned as collaboration. It is seen as a way to increase an employer's power. Given this perspective, it is hardly surprising that the traditional analysis of agency law reinforces the principal's authority.¹⁰ Theoretically, both parties to the agency relationship are equal, but once the rules have settled into place, the principal is a little more equal than the agent.

1. Fiduciary Duties

It is a legal commonplace that an agent bears a fiduciary duty to his principal. The simplicity of this declaration, however, masks its assumptions about agency systems. "It's always wonderful what a lawyer can achieve when nobody knows the law," Le Carré writes in *The Russia House*.¹¹ Likewise, it is wonderful — or alarming — what those who are privileged by the law can do when the rules they work by are not thought through.

A fiduciary duty, at its most abstract, is a general duty of loyalty. If an enterprise is to be carried on by those who are not its owners, some sort of obligation must be placed on the agent, to protect the principal.¹² Imposing fiduciary standards makes it possible for an enterprise to run indirectly: then employers can be relatively sure that their instructions will be obeyed, and that their property will not be stolen or misused. Yet agency law goes beyond this, consistently. When the interests of agent and principal conflict, and particularly when the issue is uncertain, the law resolves doubts in the principal's favor.

It might be enough simply to protect principals from actual wrongdoing by agents. The law forbids an agent to steal, to compete with the employer (through a misuse of position or confidential information) or to handicap the enterprise through malfeasance, misfeasance or nonfeasance. Yet the law goes further, requiring a higher standard of agents: *any* benefit which the agent derives from the agency relationship is regarded as the employer's rightful due.¹³ A concern for fiduciary duties translates as a privileging of principals' rights.

be consent may really be nothing more than an unacknowledged submission to superior force. See West, *Authority, Autonomy, and Choice: The Role of Consent in the Moral and Political Visions of Franz Kafka and Richard Posner*, 99 HARV. L. REV. 384 (1985).

9 H. REUSCHLEIN & W. GREGORY, *HANDBOOK ON THE LAW OF AGENCY & PARTNERSHIP* 1 (1979).

10 Left-wing writers, cued to look for class struggle, have cut through to matters which traditional legal analysis overlooks. See, e.g., Hyman, *Trade Unions, Control and Resistance*, in *THE POLITICS OF WORK AND OCCUPATIONS* 303 (G. Esland & G. Salaman eds. 1980).

11 J. LE CARRÉ, *THE RUSSIA HOUSE* 151 (1989).

12 See Easterbrook & Fischel, *Corporate Control Transactions*, 91 YALE L.J. 698, 700-03 (1982).

13 See generally Douthwaite, *Profits and Their Recovery*, 15 VILL. L. REV. 346 (1970). For example, if a purchasing agent, while buying supplies for his company, buys additional supplies for his own account, the company can recover the profit he makes from selling them. See, e.g., *Michigan Crown Fender Co. v. Welch*, 211 Mich. 148, 178 N.W. 684 (1920), and *Tarnowski v. Resop*, 236 Minn. 33, 51 N.W.2d 801 (1952). If an agent has diverted a payment to his own account, the principal may be

A corollary has been suggested: that an agent's duty requires him to act with self-sacrificing zeal.

We invariably think of the trustee as fiduciary vis-a-vis his cestui que trust. Similarly we must think of an agent as a fiduciary vis-a-vis his principal. The clear implication then is that an agent is under duty to act solely and entirely for the benefit of his principal in every matter connected with his agency.¹⁴

This implication, in fact, is far from clear. As between trustee and beneficiary, the stronger figure is the trustee. Here a fiduciary duty helps ensure that the stronger party does not take advantage of the weaker; it is sensible to require that the trustee be zealous and punctilious in protecting the beneficiary's rights.

Employers and employees hardly stand in the same position, vis-a-vis each other, as do beneficiaries and trustees.¹⁵ Applying so broad a fiduciary duty here reinforces the dominant position of the employer. It facilitates the principal's aggrandizement of the enterprise's wealth, by forbidding any of the opportunity to be appropriated by the agent. Organizations built along these lines will tend to the monolithic. Power and control will be accorded to the principal, all resources put at the principal's disposal, and all profits seen as the principal's riches.

By contrast, in discussing the principal's responsibility toward the agent, the law does not speak of general fiduciary duties — only of specific obligations. The principal may be required to furnish the agent with an opportunity to work (a duty riddled with loopholes) and must not interfere with him. The principal must avoid damaging the agent's reputation, or otherwise demeaning him. The principal has a duty to keep accounts, and also to pay the agent for his work — two closely related obligations.¹⁶ The fact that these duties are so specific means that they are limited.

If we read "fiduciary" in a strict pecuniary sense, this also implies the subordination of the agent. To hold that an agent is a fiduciary necessarily involves the assumption that an agent has no right to the money which passes through his hands as part of the enterprise. The wealth of the enterprise, the success it realizes, are not things in which the agent shares. The assumption is that the agent is a factor of production — something to be bought and paid for, like other factors of production. Between agent and enterprise, the cash nexus is the only connection which the law admits.

This, again, privileges the principal's status. It assumes that wealth is created by the principal — that the agent's contribution is not of the same importance. Consciously or not, this embodies the labor theory of

allowed to demand payment directly from the third party — forcing the third party to pay twice. *Donemar, Inc. v. Molloy*, 252 N.Y. 360, 169 N.E. 610 (Cl. App. 1930).

14 H. REUSCHLEIN & W. GREGORY, *supra* note 9, at 121; *see* RESTATEMENT (SECOND) OF AGENCY, *supra* note 7, at § 387.

15 On employer dominance, *see* Marglin, *What Do Bosses Do? The Origins and Functions of Hierarchy in Capitalist Production*, 6 REV. RADICAL POL. ECON., Summer 1974, at 60, and Fox, *The Meaning of Work*, in *THE POLITICS OF WORK AND OCCUPATIONS* 141 (G. Esland & G. Salaman eds. 1980).

16 RESTATEMENT (SECOND) OF AGENCY, *supra* note 7, §§ 433, 434, 437, 436, 441.

value, which was propounded by an English gentleman named Ricardo and popularized by a German savant named Marx. The use of an agent generates additional returns to the enterprise, above the fixed salary which the agent is paid — and this surplus is what the principal keeps.

2. Obedience and Control

Part of the agent's task is to obey the principal.¹⁷ Descending from the master's right to direct the actions of a servant, this is essentially a subset of the general fiduciary duty. Remarkably, other fiduciaries are not under such an obligation. Only those who furnish labor — *not* those who furnish money — are put under such a bond.¹⁸ The full import of this rule, however, emerges when the law turns to discussing control. To say that the agent is obliged to obey the principal is only a polite way of saying that the principal has a right to control the agent.¹⁹

When courts must determine, between co-employers, who exactly bears the responsibility for a tort committed by an employee, control emerges as the classic test. The touchstone question is, who had the primary right of control when the act was performed.²⁰ The court does not focus on whom the servant considered himself to be serving, or on who was paying. It may ask who can best afford to pay the loss — but this is a modern innovation.²¹

Consider that the law does *not* ask which master was most responsible for the harm. This would be only another way of asking who had the primary right of control — but this formulation dares to speak of a duty on the principal's part. That this particular question has not been asked recalls once more how agency law is written from the principal's vantage point. This may give the principal a twofold benefit: literally, here, the traditional standard speaks of control, without mentioning responsibility.

Similarly, much is glossed over with the statement that an agent's powers are irrevocable only when there is an agency coupled with an interest. This assumes that an agent can be employed at the discretion of the principal. Although agency is voluntary, so that the agent is also free to leave the relationship, the rule is grounded on the right of the principal "to reassume the control" which he had delegated to the agent.²²

17 See *id.* at § 385. This subsumes such duties as non-negligent performance, good conduct, and rendering information. See *id.* §§ 379-81.

18 The lack of control by the "beneficiary" over the "trustee" is what distinguishes the agent from such other fiduciaries as executors, administrators, guardians and directors. *Id.* at § 14 comment c.

This suggests that Western law does not impose fiduciary duties upon those whose involvement in an enterprise relates to the employment of capital — that it imposes such duties only when the investment is of labor. A Marxist critic might point out that this disadvantages employees, by restricting their right to act in their own interest, and denigrates them, by assuming they will steal, while privileging the monied classes — by allowing them to pursue their own self-interest irrespective of the harm they may do the borrower. This critique would be exactly right.

19 See *id.* at § 14.

20 See REUSCHLEIN & GREGORY, *supra* note 9, at 105. This grows out of the general use of control as a test for liability. RESTATEMENT (SECOND) OF AGENCY, *supra* note 7, at § 220. The Restatement speaks of "[a] servant directed or permitted by his master to perform services for another," another example of how agency law prefers to avoid discussing the agent's personal autonomy. *Id.* at § 227.

21 See Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L.J. 499 (1961).

22 See REUSCHLEIN & GREGORY, *supra* note 9, at 96.

Again, the perspective is that of the principal. The rule does not emphasize the consensuality of the agency connection; it focuses on the employer's right to terminate it. It leaves initiative — and, hence, power — in the employer's hands, envisioning the principal as the dominant figure in the relationship.

Why should agency become irrevocable only when an interest is added? This assumes that the agent has no rights in his employment, is without any defensible rights, until he has an interest. It may sound circular to say that an agent has no interest until he has an interest, but this really means, *an agent has no cognizable rights until and unless he is recognized as a principal*. The two-tiered hierarchical structure, in which both parties are equal, but principals more equal, remains intact.

B. *Hierarchy and Roles: Organization Theory*

The conventional wisdom of industrial sociology translates this perspective into theory. Management's task, this outlook holds, is to initiate and control:

Management is responsible for organizing the elements of productive enterprise — money, materials, equipment, people — in the interest of economic ends Without this active intervention by management, people would be passive — even resistant — to organizational needs. They must therefore be persuaded, rewarded, punished, controlled — their actions must be directed. This is management's task — in managing subordinate managers or workers. We often sum it up by saying that management consists of getting things done through other people.²³

Studies of institutional structure treat as distinct and opposed the interests of organizations and their human participants. Among the literature which deals with the conceptual basis of institutional structure, particularly interesting is an article by Professor Jean Tirole, *Hierarchies and Bureaucracies: On the Role of Collusion in Organizations*,²⁴ which describes the forces which compete within an organization.

The paradigm with which Tirole works treats the basic organizational structure as a three-tiered hierarchy of principal, supervisor and agent. (These may correspond to proprietor, executive and worker, or captain, sergeant and enlisted man.) The principal issues directives, the supervisor implements them, and the agent finally carries them out.

The organization which seeks to maximize its efficiency — to fulfill most effectively the objectives of the controlling principal — will seek to focus its energies in a strict "vertical" line. The principal orders, the supervisor complies, and the agent obeys, with no resistance or friction

²³ McGregor, *The Human Side of Enterprise*, in *Adventures in Thought and Action*, in *MANAGEMENT AND MOTIVATION* 307-308 (V. Vroom & E. Deci eds. 1970). To be sure, this is not the only view. Other perspectives (most notably, the work of Peter Drucker) emphasize "management by objective" rather than "management by control." The idea holds that management's role is to open up the individual initiative of the members of the organization. *Id.* at 315.

²⁴ Tirole, *Hierarchies and Bureaucracies: On the Role of Collusion in Organizations*, 2 J. L., Econ., & Org. 181 (1986). See generally M. CROZIER, *THE BUREAUCRATIC PHENOMENON* (1967), and M. DALTON, *MEN WHO MANAGE* (1959).

at any stage. Relationships which are "horizontal," in which two of the parties combine in a non-official coalition which cuts out the third, divert and dissipate this directive. For this reason, organization theory condemns such non-hierarchical groupings as "collusive transfers."

A "collusive transfer" is any relationship which inhibits the smooth functioning of the organization. The term itself reveals the opposition of institutional and human interests. To apply this label to informal contacts — to *any* informal contact — implies that such relationships steal institutional property.

An institution which seeks to run efficiently may seek to restrict the leeway of supervisor and agent.

[T]he agent is simultaneously decision maker (because of his superior information) — and involved party. Therefore, he cannot be fully trusted The idea that one may want to limit the discretion of a party who is simultaneously "judge and party" is well understood.²⁵

It will focus more tightly its vertical line of force, recognizing that a narrow point penetrates more deeply than a blunt one. But from this, it inexorably follows that the more an organization pursues institutional efficiency, the less it tolerates human considerations.

When an institution treats its own interests as paramount, which is the logical extension of confining its members' discretion, "non-hierarchical relationships" and "human relationships" become synonymous. In fact, organization theorists specifically identify human attachments as a major category of "collusive transfers."

[T]here is another type of transfer . . . which is somewhat out of the . . . realm of economics but which is very important in practice. It has to do with face-to-face relationships, and includes mutual affection and respect. . . . It is just very unpleasant to hurt someone one is facing.²⁶

One way to eliminate "collusive transfers" is to minimize contacts between different levels of the hierarchy. If relationships are broken up into short-term contacts, there is little opportunity for non-hierarchical relationships to develop. "Think of the very strict rules that can be imposed on employees checking on people they will never see again (e.g. conductors on trains)."²⁷

At the turn of the century, Georg Simmel, in his pioneering study of secret organizations, showed that secret societies faithfully pattern themselves on visible human institutions. Secret societies were particularly prone to hierarchical ranking:

²⁵ Tirole, *supra* note 24, at 203.

²⁶ *Id.* at 186, citing A. ETZIONI, MODERN ORGANIZATIONS 34 (1964).

²⁷ *Id.* "Keeping relationships short has the advantage of restricting side transfers and, thus, of limiting the influence of coalitions in organizations [C]ooperation between two parties at any given time increases with the time horizon of their relationship." *Id.* at 201.

Another way to minimize opportunities for collusion — *i.e.*, to reduce human interests — is to decrease the *quality* of contacts. In schools of all levels, papers are graded anonymously, professional papers are submitted anonymously and reviewed anonymously and votes on tenure and promotion are made by committees (to insulate participants from personal responsibility) and voted on anonymously. In intelligence services, the same effect is achieved through the use of codenames. Not only does this entail anonymity; it also encourages supervisors to minimize the humanity of their agents.

All system-building . . . involves the assertion of power If this is true of all attempts at organizing a group according to principles, it is especially true of the secret society, which does not grow but is built, and which can count on fewer pre-formed parts than can any despotic or socialistic system.²⁸

Ritual also flourishes; its emotional aspects let secret societies exercise an emotional claim on their members. "[T]hrough such formalism, as well as through the hierarchical organization itself, the secret society makes itself into a sort of counter-image of the official world. . . ."²⁹

Writing of organizations in general, Tirole describes in technical language what Le Carré's fiction has dramatized. Tirole's conclusions might stand as an argument for Le Carré's fiction, which describes a world in which institutional considerations are raised to the highest level.

The agent, in both the ordinary world and the secret world, is defined by his subordination to the principal who employs him. The agent represents his employer, executing his orders and serving his purpose. He is bound to his master by requirements of loyalty and obedience. Significantly, the agent has no separate cognizable identity. His role is to be his employer's instrument. As defined by the relationship, the agent is valuable only to the extent that he serves his principal's ends. The hallmark of agency relationships, thus, is the restriction of human identity. Agent and principal exist as creatures of the agency relationship, bound up in a system of limitation and control.

The agent's role entails the compromise of his own interests. The unstated assumption of agency relations is that the principal's purpose outweighs the agent's personal autonomy. From this it follows, logically if not charitably, that the principal, in pursuing his own ends, may disregard the agent's interests. The principal has already done this, simply by structuring the relationship as one of agency, because of the inevitable subordination of the agent. The difference between this and sacrificing the agent altogether, as too many of Le Carré's spymasters are too ready to do, is only one of degree.

III. Le Carré's Fiction

Forced to decide between their covert missions and their inclinations as lovers, Le Carré's characters are called to choose between the institution and the individual.

To choose the institution is to be seduced by the principles of agency which govern the covert world. These rules offer a complete rationale for self-interest. They exclude morality, make easy the deflection of blame and assign authority to those with power. They tempt characters away from their human impulses by defining, and thereby limiting, how one can live. To choose love, by contrast — whatever love exactly

²⁸ G. SIMMEL, *THE SOCIOLOGY OF GEORG SIMMEL* 357 (K. Wolff trans. 1950).

²⁹ *Id.* at 360. A look into German solidifies the link. "The first internal relation typical of the secret society," Simmel wrote, "is the reciprocal confidence among its members." *Id.* at 345. Here *confidence* translates *Vertrauen*. Simmel's word choice echoes down the catacombs of espionage history. Among German-speaking intelligence services, the word for agent remains *l-mann*, short for *l'ertrauensmann*. See, e.g., E. COOKRIDGE, *GEHLEN: SPY OF THE CENTURY* 161 (1971).

means — is to choose affection, kindness, selflessness and responsibility. It means treating others as humans rather than agents.

Le Carré's spymasters, the characters who succeed in his books, choose the institution. The other choice is made by his lovers — the characters with whom his sympathies lie and whose choice his novelist's vision affirms.

A. *Spying as the Opposite of Love*

With its secrecy, caution and emphasis on control, spying inverts the openness and trust which exist among lovers. From some angles, intelligence work resembles a sinister parody of love.³⁰ Spying's essence is the betrayal of trust. In spying, as in loving, one tries to gather an intimate knowledge of someone else, the better to understand that person. But where love seeks the welfare of other people, the purpose of spying is to use such information to protect oneself, or even to do harm to others.

Le Carré's fiction intensifies this reality. Among his secret agents, friends and foes know each other equally well. This shared knowledge goes beyond George Smiley knowing the brand of cigarettes favored by his Russian adversary Karla, or the way Karla can catalogue Ann Smiley's bedfellows. Le Carré's spies know the smallest details of their opponent's lives and can rely on their opponents knowing the smallest details of their own. Covert operations, as in *The Spy Who Came In From the Cold*, can be launched on the expectation that gossip in the London headquarters of the Circus (Le Carré's nickname for Britain's Secret Intelligence Service) will be acted upon in East Berlin.

Love and espionage are consistently at cross-purposes. *The Spy Who Came In From the Cold* sets up the paradigm. In this novel, the Circus brings together a burnt-out spy and a young Englishwoman, a Communist, then plays them separately into East Germany. The agency hopes that the pair's conflicting stories will clear the Circus's top East German agent by discrediting those who suspect him. The plot works, from the standpoint of espionage, but both lovers are shot dead while crossing back to West Berlin. Throughout the Smiley trilogy, George Smiley's on-again off-again marriage is the weakness which Karla exploits. Recognizing that she is "the last illusion of the illusionless man," he orders Bill Haydon to have an affair with her, trying to maneuver his penetration agent around to Smiley's blind side.³¹

"Love is whatever we can still betray," Magnus Pym writes at the end of *A Perfect Spy*, in a farewell note to his wife.³² Spying takes advantage of

30 Simmel noted the tension between secrecy and openness.

The secret, too, is full of the consciousness that it *can* be betrayed; that one holds the power of surprises, turns of fate, joy, destruction — if only, perhaps, of self-destruction . . . The secret puts a barrier between men but, at the same time, it creates the tempting challenge to break through it, by gossip or confession — and this challenge accompanies its psychology like a constant overtone.

G. SIMMEL, *supra* note 28, at 333-34.

31 Haydon explains to Smiley afterward: "He reckoned that if I were known to be Ann's lover . . . you wouldn't see me very straight when it came to other things." J. LE CARRÉ, *TINKER, TAILOR*, *supra* note 2, at 350.

32 J. LE CARRÉ, *A PERFECT SPY* 447 (1986).

love; the work of spies can be undone by love. Spying can succeed only by overcoming love, and, as *The Little Drummer Girl* shows, to love one must grow out of the roles in which spies cast themselves. Loving and spying are natural opposites.

B. *The Secret Agent as Organization Man*

The agent exists only in relation to the principal; the secret agent exists only as part of the intelligence agency. The disparity Conrad portrayed between Verloc, the slovenly pornographer, and Delta, the secret agent, is a crucial part of the relationship. Spies seek out intelligence agencies because they feel that they are more important as institutional cogs than as humans.

Sometimes this works to the case officer's advantage. It becomes possible to buy an agent's allegiance with rewards which have meaning only within the institution — if they have any meaning at all. The Central Intelligence Agency, for example, hands out "intelligence medals" which can only be worn within its Langley headquarters.³³

An agent may concentrate his life to his work because it allows greater scope to certain aspects of his personality. Behavior which would be restrained by ordinary society often goes unchallenged in the covert world; many notable intelligence officers rival Verloc as social misfits. The CIA offers many examples of this — James Jesus Angleton and William King Harvey come to mind — but probably an easier proof is to recall how many sociopaths found their way into the Gestapo.³⁴

Like Verloc, certain of Le Carré's espionage figures are much more prepossessing as figures of the intelligence community than they are in person. Near the end of *Tinker, Tailor*, Smiley considers the personal failings of those who run the Circus. "The social contract cuts both ways," he thinks. "The Minister's lolling mendacity, Lacon's tight-lipped moral complacency, the bludgeoning greed of Percy Alleline: such men invalidated any contract — why should anyone be loyal to them?"³⁵

33 V. MARCHETTI, *THE CIA AND THE CULT OF INTELLIGENCE* 273 (1974).

The CIA told Oleg Penkovsky, a defector-in-place who held the rank of colonel in the Soviet GRU, that he had been made a colonel in the United States Army. Despite Penkovsky's tremendous service to the West, particularly during the Cuban Missile Crisis, the commission may have been a sham. While on a visit to London, Penkovsky asked to see his American uniform. None had been prepared, and the CIA was forced to borrow one from an American colonel of Penkovsky's build. *Id.* at 264-65.

The Soviet GRU has staged at least one similar ceremony for one of its own prize agents, Col. Stig Wennerström of the Swedish Air Force. Wennerström was told that he had been made a Soviet major general, and that he had the "authority of a top agent." These honors were almost certainly bogus. See T. WHITESIDE, *AN AGENT IN PLACE: THE WENNERSTRÖM AFFAIR* 138 (1966).

34 Few institutions other than the CIA would have tolerated Harvey's alcoholism and festering hostility — dangerous tendencies in a man who liked letting people know that he carried a gun. As CIA counter-intelligence chief, Angleton's dominant characteristic was paranoia: a suspicion of everyone else, an insistence that only his favorite defectors were telling the truth. He had people leave his office while he locked papers in his personal safe, fearing that they might peer over his shoulder. Had he shown such paranoia as a private citizen, he might well have been committed. D. MARTIN, *WILDERNESS OF MIRRORS* 226 (1980).

35 J. LE CARRÉ, *TINKER, TAILOR*, *supra* note 2, at 332. *TINKER, TAILOR*, in the world of organization sociology, has been read as a study in "the collective blindness of bureaucratic careerists who sacrifice their craft and integrity in exchange for promotion." Dobel, *supra* note 1, at 201.

It is only as figures in an institutional framework, one whose hierarchy is secured by agency principles, that such men can command obedience. If Bill Haydon should be condemned for treason — which he should — it is not because he betrayed these ciphers. It is because he betrayed people who worked with him, befriended him, and loved him.

It is pathetic and sinister that little men seek out high office to vest themselves with importance. The contrast between person and position highlights the shortcomings of Alleline, Lacon, and the Minister. Alongside this lies an even sharper criticism: Alleline, Lacon, and the Minister have achieved their ambitions. Le Carré's point is that institutions, when filling their positions of authority, choose to fill them with the lying, morally complacent, and greedy.

The most amoral of Le Carré's characters have even renounced their own names, identifying themselves solely in institutional terms. In *The Spy Who Came In From the Cold*, the head of the Circus lets the East Germans kill every British agent in their territory — in order to protect his special source, the East Germans' own head of operations. In *The Looking-Glass War*, he cheerfully sabotages the operations of another British spy agency, the Department, helping it along the road to suicide. This man is known only as Control. In *Tinker, Tailor* we learn that his real name remained unknown even to his protégé Smiley.³⁶

To hide one's identity behind a workname must be seen as a step into a new self, one which is institutional rather than personal. If these are the kind of men who identify strongly with intelligence agencies, this extends an even more damning charge against the elements of institutional hierarchy — against agent, principal, and agency principles.

C. Jargon as Encipherment

Le Carré portrays the strength of this institutional hierarchy by casting his novels in its language. The jargon which Le Carré has coined for his characters is one of his most characteristic hallmarks. It could be called spy-speak. *Scalphunters*, *lamplighters*, *ferrets*, *ju-ju men*, *coat-trailers* — reviewers were impressed with these vivid terms, and they rang so true that readers assumed they were borrowed directly from espionage parlance.³⁷

Jargon provides the ritual terms which unite secret services. A passage from *The Looking-Glass War* illustrates. At a rendezvous at the Helsinki airport, a Department courier hears a bartender mention the name

³⁶ Across the Iron Curtain, Karla is equally ruthless. He kills his agents to cover his tracks and sends his political rivals to the executioner; he even orders his own mistress, the mother of his daughter, to be killed because she is "politically unreliable." Like Control, Karla has hidden his real name; in calling himself Karla he has adopted the codename of the first espionage network he ran. J. LE CARRÉ, *THE HONOURABLE SCHOOLBOY* 106 (1977).

³⁷ David Monaghan, in his gazetteer to Le Carré, has identified no fewer than 184 words and phrases of the idiom. See D. MONAGHAN, entry for "Jargon," in SMILEY'S CIRCUS: A GUIDE TO THE SECRET WORLD OF JOHN LE CARRÉ 102-04 (1986). When asked about the derivations of various spy-speak terms, Le Carré replied, "I've used some authentic words where I've been able to discover them, but I prefer my own, really." Bragg, *The Things a Spy Can Do — John Le Carré Talking*, 95 THE LISTENER 90, Jan. 22, 1976 (interview with John Le Carré).

of his contact, Lansen. This startles him because it differs from Department practice.

Lansen. It was odd to hear a name spoken out like that. In the outfit they simply never did it. They favored circumlocution, cover names, anything but the original: Archie boy, our flying friend, our friend up north, the chappie who takes the snapshots; they would even use the tortuous combination of figures and letters by which he was known on paper, but never in any circumstances the name.³⁸

As George Orwell remarked, the great enemy of language — the greatest obstacle to accurate expression and thought — is insincerity. To call one's agents by nicknames, rather than to use the real names of real people, is unprofessionally insincere. Moreover, by retreating into its own private language, the Department has cut itself off from the real world.

These definitions suggest that espionage comprises a secret and exclusive world, one which can only be understood in its initiates' terms. This cachet is responsible for much of the glamour of espionage, but the real significance of these terms is much more troubling. Scalphunters are cutthroats who kill people for money, in assassination attempts called mail-fist operations. Lamplighters are secret policemen who follow people whom the government suspects. A honey-trap is a blackmail operation, using prostitutes as bait. A mole is someone who works among others for years, even for decades, acquiring trust in order to betray it at some future date.

The crispness of these phrases helps disguise their role as euphemisms. Orwell would have respected their mephistophelean shrewdness. Or perhaps *faustian* is a better fit; those who use these terms compact with the devil. To rename what agents do implicitly demands that their actions be judged by a different set of norms — the standards of the trade, rather than any ethic or morality. To speak in trade jargon is to think in trade jargon, to redefine life in institutional terms.

Institutional identification can supplant both individual identity and patriotism. The only engagement remaining is a cold hostility toward the foe; the only surviving connection between people is the link connecting agent and agent runner. Human society, with its multiplicity of involvements and connections, is reduced to this skeletal parody.

To live and act on this basis shuts one off from both smaller and larger social orders. In Le Carré's fiction, there is no one-on-one confrontation of hero and villain. No covert agency ever tries to topple a hostile government, or thwarts a threat to the nation it serves. His secret services war only on each other, and only within their own self-contained, self-referential context.

Le Carré drives this point home in *The Russia House*. The novel's premise comes straight from the context of the thriller genre. A dissident Russian scientist, Yakov Savelyev, turns over material showing that Russian ICBMs are not the danger the West has feared: some cannot be launched, some are inaccurate, some will not go off. But the rest of the

³⁸ J. LE CARRÉ, *THE LOOKING-GLASS WAR* 16 (1965). The American edition of this work is titled *The Looking Glass War*.

novel shows how this message is smothered by the espionage bureaucracy. British and American spymasters feud over who should see the documents, who should assess them, who should check their veracity, who should fund the operation. Meantime, the KGB arrests Savelyev. And NATO's analysts seem relieved: it means they need not follow up his claims, and gives them a new topic to debate among themselves.

Talking to his British contact, the man he hoped would publish his information, Savelyev uttered his own epitaph. One hears Le Carré speaking through him, passing judgment on his spies.

Experts are addicts. They solve nothing. They are servants of whatever system hires them. They perpetuate it. When we are tortured, we shall be tortured by experts. When we are hanged, experts will hang us. . . . When the world is destroyed, it will be destroyed not by its madmen but by the sanity of its experts and the superior ignorance of its bureaucrats.³⁹

Through his invented language, through his portrayal of phony wars, Le Carré has deconstructed the secret world which his spies create. In his novels, he commented in a television interview, "one of the things I suppose I write about and think about is the relationship between the individual and the ideology, and the individual and the institutions he has created to contain his ideology."⁴⁰ An earlier interview had placed this point in the specific background of espionage:

[A]n intelligence operative is supposed to distinguish himself from the ordinary bureaucrat because he acts. He does things while others talk. You know, you have the smoke-filled boardroom, and the prime minister sitting there, and everybody grinding his own axe; he walks away into a small room, and there are two guys in grey flannel suits, and they say: 'Shall we just cut his throat for you?' So they're the people who actually combine thought with deeds. To that extent, they are the infantry of our ideology.⁴¹

Contain may mean to *embody* or to *perpetuate*. It may also mean to *limit*. Those who create institutions, ostensibly to serve their cause, may actually be revising their belief structures — that is, distorting them.

Le Carré's spymasters, when they look at human life, can recognize only certain structures. Internalizing this, they create an inner (and distorted) vision — and then, by taking action, they impose this internal vision upon the real world. (For example, the spymaster might act by choosing a foreign leader, labeling him target, and dispatching a scalphunter on a mail-fist operation.) The falsity of this life does not stop with its predilection for euphemisms. As Le Carré sees it, the spymaster's internal vision often conflicts directly with external reality.⁴²

39 J. LE CARRÉ, *THE RUSSIA HOUSE*, *supra* note 11, at 207.

40 John Le Carré, interview on MacNeil/Lehrer News Hour (June 13, 1989).

41 Bragg, *supra* note 37, at 90.

42 Compare Simmel's observation:

[T]he hiding of realities . . . is one of man's greatest achievements. In comparison with the childish stage in which every conception is expressed at once, and every undertaking is accessible to the eyes of all, the secret produces an immense enlargement of life The secret offers, so to speak, the possibility of a second world alongside the manifest one; and the latter is decisively influenced by the former.

Moreover, the problem is not just that spies, seduced by euphemisms, call certain men scalphunters and send them out to kill. The system's structural biases make such actions inevitable; the men whom espionage bureaucracies select to lead them *begin* by wanting to send men out to kill, and then develop euphemisms to fit their needs. The spymasters of this world see only what their internal vision predetermines.

D. *The Agent and the Agent Runner*

The successful case officer—the spymaster, the agent runner—must counterfeit a lover's concern for his agent's welfare. The case officer must gratify and reassure, convincing the agent that his work is appreciated and that his needs are being met. The best description of the case officer's task, in fiction or non-fiction, may be given in *A Perfect Spy*, when Magnus Pym recalls the role of his Czech controller.

Axel's ambitions were for himself as well as Pym. . . . Oh, how he studied Pym! Such obsessive, flattering concentration on a single man! How delicately he coaxed and gentled him! How meticulous he was, always to put on the clothes Pym needed him to wear — now the mantle of the wise and steady father Pym had never had . . . now the soutane of Pym's one confessor He had to read Pym faster than ever he could read himself. He had to scold and forgive him like the parents who would never slam the door in his face, laugh where Pym was melancholy and keep the flame of all Pym's faiths alive when he was down and saying, I can't, I'm lonely and afraid.⁴³

Pym wishes that he had the skill to describe “the pleasure of being really well run.”⁴⁴ Nonetheless, he recognizes the true nature of the relationship. For Axel, Pym is “fortune in all its meanings, his passport to the privileges and status of a paid-up Party aristo.”⁴⁵

In Martin Buber's terms, such a relationship is not between I and Thee; it is between I and It.⁴⁶ To make use of others is the first step away from humanity, the first degree of betrayal. But betrayal is a concept rooted in humanity. It is a negative recognition of a social bond. Before trust can be betrayed, it must first have existed, and if there is a social bond, all individuals are in some way equal.

To call the use of another human betrayal inherently states that the traitor held a responsibility toward the person betrayed. That is, without responsibility and equality, there can be no betrayal. And this is how agency avoids the issue; it redefines the way in which humans deal with

G. SIMMEL, *supra* note 28, at 330.

43 J. LE CARRÉ, *A PERFECT SPY*, *supra* note 32, at 437-38. “If you wish agents to serve you well,” wrote Sir John Masterman, who helped run Britain's wartime counter-espionage system, “you must satisfy their personal wishes and personal interests.” J. MASTERMAN, *THE DOUBLE-CROSS SYSTEM IN THE WAR OF 1939 TO 1945* 185 (1972).

44 J. LE CARRÉ, *A PERFECT SPY*, *supra* note 32, at 437.

45 *Id.*

46 See generally M. BUBER, *I AND THOU* (1923). One thinks also of the work done by the Frankfurt School on instrumentalism. See R. BERMAN, *MODERN CULTURE AND CRITICAL THEORY: ART, POLITICS, AND THE LEGACY OF THE FRANKFURT SCHOOL* (1989).

each other, creating relationships in which there is neither responsibility nor equality. One does not betray an instrument; one simply uses it.

There can be no doubt that case officers make use of (rather than, say, work with) their agents. The history of espionage during the Second World War provides a somber lesson: *any spy deployed under wartime conditions will eventually be caught*. The decision to send an agent into hostile territory is not one of calculated risk; it is one of amortization. The British pride themselves on capturing every German agent landed in Britain (with the exception of one man, apparently a Belgian, who shot himself when his money and ration coupons ran out). The Germans, however, captured virtually every British agent dropped into Holland — more than 100 men, with enough munitions to equip an entire guerilla army.⁴⁷

To be involved in the world of secret agents means treating the agent's personality as a collection of values, traits, and appetites to be appraised and manipulated. George Smiley's tragic flaw first manifests itself in pre-war Germany.

It intrigued him to evaluate from a detached position what he had learnt to describe as the 'agent potential' of a human being; to devise minuscule tests of character and behaviour which could inform him of the qualities of a candidate. This part of him was bloodless and inhuman — Smiley in this role was the international mercenary of his trade, amoral and without motive beyond that of personal gratification.⁴⁸

In *Tinker, Tailor*, the one treasonous act which Bill Haydon regrets is staging Operation TESTIFY, in which Jim Prideaux was captured, wounded, tortured, and broken by the Russians. His rationalization hinges upon the details of the mission. Haydon knew that to make the trap credible, it had to be set in Czechoslovakia. He knew that the British would send only someone who had not been involved in Circus infighting, who ranked high enough to impress a defecting general, and who was not cleared to receive Witchcraft-grade information. He also knew that Prideaux held a senior post, stood outside the Circus mainstream, was not Witchcraft-cleared, and spoke Czech.

In describing the TESTIFY deception, Haydon avoids mentioning Prideaux's name. The fact that he can deal only with these particulars illustrates how agency dealings reduce persons to objects. By reducing Jim Prideaux to a personnel checklist, Haydon could set up a trap knowing that the only man sent into it would be his oldest friend and comrade-in-arms — someone, perhaps, who had even been his lover.

E. Agency and Control

In an early interview, Le Carré described the kind of control which an effective case officer exercises over his agents. He used the example

⁴⁷ The final tally of material captured by the Germans included 5,000 small arms, 3,000 sub-machine guns, 300 machine guns, 500,000 rounds of ammunition, 2,000 hand grenades, 15,200 kilograms of explosives, 75 radios, and 40 bicycles. See generally N. WEST, *M16: BRITISH SECRET INTELLIGENCE OPERATIONS 1909-1945* 180-83 (1983); H. GISKES, *LONDON CALLING NORTH POLE* (1949), excerpted in *GREAT TRUE SPY STORIES* 364-78 (A. Dulles ed. 1968); and G. PEIS, *THE MIRROR OF DECEPTION [SO GING DEUTSCHLAND IN DER FALLE]* 210 (1976).

⁴⁸ J. LE CARRÉ, *CALL FOR THE DEAD* 5-6 (1961).

of V. M. Petrov, the Soviet Consul in Canberra, who defected in 1954. Le Carré suggested that defection could be understood as a rebellion against the control under which spies work.

Petrov [had] accepted the smallest regulation of his life, having been told on what street corner to meet you or me, having been told at which garage to rent the car, what false number to give it . . . [W]hen he defected this was the infuriated gesture of a child growing up, feeling its independence, and no longer wanting that control which its parents exerted.⁴⁹

Le Carré shows that the control which spymasters seek is an imperfect and ultimately unworkable relationship.⁵⁰ It can work only with an agent who accepts subordination, and it cannot work indefinitely. Spies lie by omission, leaving out information. By minimizing what their masters know, they carve out corners of their own lives where control cannot follow them.⁵¹ They fiddle with expense accounts, diverting funds from institutional to personal uses. Magnus Pym chooses, like Petrov, to kick over the traces, trying to get back some of his own. His British superior's thoughts sum it up: "What I made him do, he made me pay for."⁵²

The Looking-Glass War deals with control from the agent runner's viewpoint. In this novel, the Department, an atrophied section of the British espionage community, decides to put an agent across the East German border. The group acts on flimsy evidence, trying to prove to themselves that peace has not made them obsolete. The man whom they select to carry out their mission is one of their old wartime agents, Fred Leiser, a Danzig Pole.

To make Leiser believe that he serves a successful agency, the Department stage-manages an elaborate training program, renting a new safe house and hiring new personnel. One of them even trains at his side, to create the illusion that a steady stream of agents are being turned out. The process of training is a metaphor hidden in plain sight. To specify what kinds of exercises to do, what skills to learn, what kind of observations to make — this is the Department's baldest assertion of control over Leiser's life.

The stress of maintaining control affects agent runners, too; spying dehumanizes all spies. After describing Smiley's ability to appraise other people's "agent potential," Le Carré records the effect of espionage work on Smiley himself.

49 Crutchley, *The Fictional World of Espionage*, 75 *THE LISTENER* 548, 549 (April 14, 1966). This article includes an interview with Le Carré.

50 Compare Tirole, on the shortcomings of the institutional model:

In our model, coalitions unambiguously decrease the efficiency of the vertical structure. Coalitions and their enforcement mechanism, side transfers, ought to be fought. This conclusion is extreme The medicine sought can do more harm than the illness. . . . [I]t is widely recognized by sociologists that without the countless acts of cooperation that take place everyday between members, most organizations would break down.

Tirole, *supra* note 24, at 207-08.

51 An anonymous "CIA alumnus" remarked to *NEWSWEEK*, "Anybody who's ever handled an agent gets a chuckle over his observation that agents 'lie by omission' about their girlfriends." *Inside Job?*, *NEWSWEEK*, Feb. 3, 1964 at 80.

52 J. LE CARRÉ, *A PERFECT SPY*, *supra* note 32, at 408.

[I]t saddened him to witness in himself the gradual death of natural pleasure. Always withdrawn, he now found himself shrinking from the temptations of friendship and human loyalty; he guarded himself warily from spontaneous reaction [H]e forced himself to observe humanity with clinical objectivity, and because he was neither immortal nor infallible he hated and feared the falseness of his life.⁵³

This withdrawal, this numbness of the psyche, is useful in espionage work. It helps one brush aside emotional and moral troubles, just as caluses and scar tissue help one ignore physical pain. But spies cannot divide their lives into professional and personal spheres, and so this moral atrophy gradually spreads to all parts of the personality.

In *The Looking-Glass War*, the Department spies for the sake of spying. They make a shrine of their little-used archive — “[s]crupulously kept. . . Library Copy, Operational Copy, sealed minutes: just like in the war.”⁵⁴ They measure their importance by their ability to obtain the paraphernalia of espionage, black Humber limousines and special passes signed in red ink. They have reduced intelligence work to an all-encompassing form of make-believe — the chance to do the things spies do.

The Department’s treatment of Leiser is a lengthy rehearsal of their shortcomings as agent runners.⁵⁵ When they can furnish only an obsolete radio set, they point out the shortcomings of newer models. They forbid him to carry a pistol across the border, observing that sometimes a knife is more useful than a gun. Asserting control over Leiser lets them ignore their own flaws. In making Leiser carry on, despite his misgivings, they shift onto him the burden of their failures. They practice a collective form of denial — and like other forms of denial, this only compounds the underlying problem.

“It’s so easy to get hypnotized by *technique*,” Smiley warns, but the Department ignores him.⁵⁶ In their obsession with detail, they run Operation MAYFLY like a historical reenactment, as if they were being judged on flawless execution rather than by results. At the novel’s end, they learn that Leiser, being hunted down by the East Germans, faces prison or death across the border. Their chief, however, expresses only a childish, sadomasochistic pride at having played the game well.

“The war rules,” Leclerc spoke proudly, “we play the war rules. He knew that. He was well trained.” He seemed reconciled; the thing was dismissed.⁵⁷

53 J. LE CARRÉ, *CALL FOR THE DEAD*, *supra* note 48, at 6.

54 J. LE CARRÉ, *THE LOOKING-GLASS WAR*, *supra* note 38, at 307.

55 The memoirs of one former SIS officer suggest that Le Carré portrays accurately both the training’s improvisational nature and its supervisors’ attitude.

A few trainees were tossed our way: two small groups of Belgians and Norwegians and a somewhat larger group of Spaniards. In all there were about twenty-five of them. Perhaps they picked up some useful tips at Brickendonbury, but I doubt it. We had no idea what tasks they were supposed to perform

K. PHILBY, *MY SECRET WAR* 31-34 (Ballantine ed. 1983); *see also id.* at 45-47.

56 J. LE CARRÉ, *THE LOOKING-GLASS WAR*, *supra* note 38, at 168-69.

57 *Id.* at 309. This ritualized ethic of control may descend from the ethos of Britain’s public schools. *See* R. GAGNIER, *SUBJECTIVITIES: THE PRAGMATICS OF SELF-REPRESENTATION* (forthcoming 1990). Indeed, as the Department says goodbye to Oxford, and sets off on its mission, Le Carré

This group psychosis affects the Department's men personally as well as professionally. John Avery, the group's youngest member, sees his marriage collapse as he throws his energies into MAYFLY. Succumbing to the temptations of the secret world, he uses his clandestine duties to parry his wife's demands for reassurance.

She was crying, he could hear the tears in her voice. "John, *please* come back. I'm so frightened. You've got to get out of this, go back to publishing; I don't care what you do but —" "I can't. It's terribly big. More important than you can possibly understand. I'm sorry, Sarah, I just can't leave the office." He added savagely, a useful lie, "You may have wrecked the whole thing."⁵⁸

To Sarah Avery, however, Le Carré allots the last word. "For pity's sake, John," she finally snaps at her husband, "don't try to run me like one of your wretched agents."⁵⁹

Sociologists have cherished the dream of an organization which would be neutral and objective. Ideally, an organization would deal solely with external forces, the ones it was designed to handle. It would suffer no internal politicking, would not garble or slant the information it relayed. Given sufficient information, it would make the right decision. The recognition has grown, however, that this ideal does not represent reality. Bureaucracies are not neutral, and they are only imperfectly rational. Wrong initial decisions will be aggravated as later decisions follow them. "[T]he pursuit of rational self-interest can actually be displaced by 'pathology,' that is, by behavior that is logically self-defeating, both from an individual standpoint and from the standpoint of the organization as a whole."⁶⁰

As Le Carré has said, one of the greatest fallacies of modern government is the belief that groups of men will not go crazy.⁶¹ He offered this abstract of *The Looking-Glass War*:

A group of people were led gradually to a point where they recognized the futility of their position in the cold war, and from then on they act out left-over lives to kill, sustained by the image of the hot war . . . until finally from their dream they select a man, train him, sustain him

comments, "Term was over; the boys were going home." J. LE CARRÉ, *THE LOOKING-GLASS WAR*, *supra* note 38, at 219.

When Leiser arrives, one member of the Department observes: "He was a man; not a shadow. A man with force to his body and purpose to his movement, but somehow theirs to direct . . . [H]itherto they had courted ideas, incestuously among themselves; now they had a human being on their hands." *Id.* at 174. As training progresses, Le Carré writes, Leiser "acquired, as they gained his trust, a disarming frankness; he loved to confide. He was their creature; he gave them everything, and they stored it away as the poor do." *Id.* at 194. From ideal to man to creature — the controller's conception of his agent proceeds downhill by these easy stages.

58 J. LE CARRÉ, *THE LOOKING-GLASS WAR*, *supra* note 38, at 133.

59 *Id.* at 224.

60 Schulman, *The "Logic" of Organizational Irrationality*, 21 *ADMIN. & SOC'Y* 31, 32 (1989); see also Hammond & Thomas, *The Impossibility of a Neutral Hierarchy*, 5 *J. L. ECON. & ORG.* 155 (1988), citing, *inter alia*, Wilson, *The Study of Administration*, 2 *POL. SCI. Q.* 197 (1887), Hecló, *OMB and the Presidency: The Problem of "Neutral Competence"*, 38 *PUB. INTEREST* 80 (1975), and March & Olson, *Organizing Political Life: What Administrative Reorganization Tells Us About Government*, 77 *AM. POL. SCI. REV.* 281 (1983).

61 John Le Carré, interview on the Today Show/(May 31—June 1, 1989).

with images of the past, and then send him away into the cold reality of his mission, where he dies. He is their sacrificial victim.⁶²

The Looking-Glass War should be read in this context, as a study in organizational breakdown.

IV. The Fall of George Smiley

The Department's collapse shows what can happen to spies of mediocre mentality and spirit. It is very easy for such people, blinkered by their organizational roles, to become mere factors in an institution. Even being cleverer and more sensitive, however, does not guarantee that one can avoid their fate. A greater tragedy befalls people of greater talents who ignore their consciences and let themselves be tempted to evil.

Institutions make it easier to do evil. A man who identifies with them can become alienated from the human components of his personality. Fulfilling institutional goals can accustom one to a routine in which insensitivity becomes the norm. Witness the psychology experiment in which adult subjects, told that the study required them to administer increasing electrical shocks to a subject, kept pressing the button despite the subject's outcries and eventual silence.⁶³

Le Carré's point, however, is that institutions reflect as well as magnify human failings. He has commented, of Britain's most prominent traitor, "Philby had an innate disposition to deceive . . . his Marxism was a rationalization, which came later."⁶⁴ Spying may be despicable work, but spies seek it out. Balzac, one of Le Carré's favorite writers, reached the same insight in describing two secret policemen of the French Revolution.

[A]nyone who could have observed the keen flair with which these two bloodhounds were scenting out unknown or hidden facts . . . would have had cause to shudder! How and why could these gifted men have sunk so low when they could have risen to such great heights? What flaw or imperfection, what evil passion brought them to such depths? Are men spies in the same way as other men are thinkers, writers, statesmen, painters or generals, being unable to do anything but spy in the same way as the others talk, write, govern, paint or fight?⁶⁵

Le Carré's social criticism never forgets that the individual stands behind the organization. Morally, institutions provide no shelter; it is individuals who create them, who yield to the temptations they offer, and who ultimately bear responsibility for actions taken in their name.

Balzac suggested that a novelist might try "painting the devious ways by which an ambitious man of the world gets the better of his conscience."⁶⁶ Le Carré has followed this course with Smiley. Smiley, his creator said in 1986, saw himself as someone who

62 Crutchley, *supra* note 49, at 549.

63 Milgram, *Some Conditions of Obedience and Disobedience to Authority*, 18 HUM. REL. 57 (1965).

64 Gross, *The Secret World of John Le Carré*, THE OBSERVER, Feb. 3, 1980, at 33.

65 H. DE BALZAC, A MURKY BUSINESS 103 (H. J. Hunt trans. Penguin ed. 1972). Le Carré's working library includes "all 48 volumes of Balzac in the Caxton edition." Cameron, *The Case of the Hot Writer*, N. Y. TIMES MAG., Sept. 8, 1974, at 55, 57.

66 H. DE BALZAC, PERE GORIOT 129-30 (H. Reed trans. Signet ed. 1962).

would nobly pay the cost for doing the dreadful things that have to be done so that ordinary, decent, unaware citizens can sleep in their beds at night. He would find the money out of his own conscience. Smiley would sacrifice his own morality on the altar of national necessity⁶⁷

Smiley is almost as much a bureaucratic creature as is Control. He lacks (or has shed, or conceals) most of the defining indicia of individuality. "Was he rich or poor, peasant or priest? Where had she got him from?" gossips asked when Ann married him. "[W]ithout school, parents, regiment or trade, without wealth or poverty, [he] travelled without labels in the guard's van of the social express."⁶⁸ Physically, he is insignificant.⁶⁹ The only structures of his emotional life are his attachments to Ann, to German literature, and to intelligence work — a final involvement which eventually crowds out the others.

His career leads Smiley into self-betrayal. Although a germanophile, he spends most of his career spying against Germany — aware that if his wartime activities helped rescue his cultural homeland from Hitler, his postwar missions have undermined the attempts of Germans to affirm and define their national identity. In *Call for the Dead*, he is bludgeoned, almost fatally, by Hans-Dieter Mundt; but in *The Spy Who Came In From The Cold*, he participates in Control's plan to save Mundt.

Tinker, Tailor presents Smiley in his finest hour. Working with limited time and resources, he ferrets out a traitor who has undermined his service and committed adultery with his wife. Buried within the novel, however, is the suggestion that Smiley was the ultimate cause-in-fact of Ann's unfaithfulness with Haydon.

In 1955, in Delhi, Smiley tried to persuade Karla to defect. Sensing that the Russian was married, he tried to crack Karla's silence by discussing his wife:

As it was, the next thing I knew, I was talking about Ann Oh, not about *my* Ann, not in as many words. About *his* Ann. I assumed he had one. I had asked myself — lazily, no doubt — what would a man think of in such a situation, what would I? And my mind came up with a subjective answer: his woman. Is it called "projection" or "substitution"?⁷⁰

By voicing his own concerns, Smiley laid open a weakness which Karla exploited. More troubling, on a subtler level, is that he handed over to Karla his own cigarette lighter — Ann's gift, and inscribed "To George from Ann with all my love." Symbolically, unconsciously, Smiley showed himself willing to give up Ann's love in order to beat Karla.

Ann Smiley refers to Karla as Smiley's "Black Grail." The Arthurian reference is not an empty allusion. The Sangreal was a symbol of redemptive love, a point Le Carré places in the specific context of Smiley's

67 *The Clandestine Muse*, interview with and address by John Le Carré, 37 *JOHNS HOPKINS MAG.* 11, 15 (1986).

68 J. LE CARRÉ, *CALL FOR THE DEAD*, *supra* note 48, at 1.

69 "Short, fat and of a quiet disposition, he appeared to spend a lot of money on really bad clothes, which hung about his squat frame like a skin on a shrunken toad." *Id.*

70 J. LE CARRÉ, *TINKER, TAILOR*, *supra* note 2, at 199-200.

life. Seeking the Grail ennobled; pursuing Karla narrows, hardens, and finally damns.

By the end of *Smiley's People*, George Smiley the man survives only as George Smiley the operative. His hunt for Karla opens with the destruction of his own past. He relentlessly fires members of the old Circus, closing down the organization Haydon knew. In a highly metaphorical action, his men reduce Circus headquarters to a shambles as they rip out hidden microphones. Above his desk hangs a blown-up photograph of Karla, like an icon portrait of a patron saint.

Midway through his quest, Smiley writes a letter to Ann. He speaks *de profundis*, after a mission in which one of his oldest friends has died — a death for which he shares the blame.

Today, all I know is that I have learned to interpret the whole of life in terms of conspiracy. That is the sword I have lived by, and as I look round me now I see it is the sword I shall die by as well. These people terrify me, but I am one of them. If they stab me in the back, then at least that is the judgment of my peers.⁷¹

The letter is the last time Smiley regrets his profession, and the last time he seeks to be reconciled with Ann.

Lacon comments, "If Ann had been your agent instead of your wife, you'd probably have run her pretty well."⁷² To Smiley's credit, he never tries to manipulate Ann; Magnus Pym, who charms people in order to use them, would have tried. Smiley's failure, however, cripples him to the same degree. He is unable to move beyond agency to love.

In *Smiley's People*, Smiley closes in on Karla. He identifies a young woman in a Swiss asylum as Karla's daughter. The Russian's weakness is one "with which [he] himself from his own tangled life, was eminently familiar."⁷³ But if this gives him the leverage he needs to bring his enemy across the border, it also brings a shadow of remorse: "I'm going off to blackmail a lover," he thinks as he prepares.⁷⁴

But while Karla holds to his love for his daughter, Smiley edges away from Ann. He travels to see her, then rejects the reconciliation she offers. He finds that he relates to her, as they walk along the Cornish sea-cliffs, "only in the sense that she was another living creature moving along the same path."⁷⁵ At the same time, he is organizing the hunt for Karla. Witnesses notice in him "an ominous *going in*, a *quietness*, an economy of word and glance," "a clarifying loneliness." One friend is reminded of a boxer readying for a title bout, but another thinks of a widower recalling his wife.⁷⁶

Smiley's People, which seems so tightly-plotted, is riddled with unlikelihoods. It is possible that the Russians have not learned, after thirty years, that a conspicuous streak of yellow chalk is the recognition symbol of an Estonian resistance group. It is possible that the Circus retains, as

71 J. LE CARRÉ, *THE HONOURABLE SCHOOLBOY*, *supra* note 36, at 533.

72 J. LE CARRÉ, *SMILEY'S PEOPLE* 289 (1980).

73 *Id.* at 351.

74 *Id.* at 285.

75 *Id.* at 287.

76 *Id.* at 277-78.

its last surveillance vehicle, a black motorcycle and sidecar. It is possible that an emigré threatened by Soviet assassins would head to a late-night rendezvous by walking across Hampstead Heath, instead of taking a taxi. It is possible that a retired, unpopular intelligence chief would be allowed to run his own major espionage operation, and it is possible that he might be able to blackmail his Soviet counterpart into defecting.

As the unlikelihoods mount, the story becomes less plausible. *Smiley's People*, finally, is less of a spy novel than it is a parody of a spy novel. Given Le Carré's ability to make fictions credible, one must conclude that the effect is deliberate. In *Smiley's People*, Smiley achieves his greatest triumph — and yet, this victory comes in a parody. Success as a secret agent, Le Carré quietly hints, reduces one to a parody of a man.

"All that sacrifice of conscience — was it really noble?" Le Carré asked.

Is there such a grand difference, in fact, between the man who voluntarily surrenders his conscience, and the man who never had one in the first place? Has Smiley, has *anyone* the right — least of all a man of such perception — to suspend his individual conscience in the interest of some mistily perceived collective?⁷⁷

When Smiley and Karla meet, after decades of covert war, all we can see are two worn-out spies, one of whom has beaten the other. The price of this shabby victory is Smiley's humanity. When he gave Karla his lighter, he gave up love — pledging it in hope of victory, with the chance to redeem it after he had won. Now Karla surrenders the lighter, dropping it into the gutter; but Smiley does not retrieve it. "He thought of picking it up, but somehow there seemed no point."⁷⁸ We last see Smiley as a man reduced to living by institutional terms, a man refusing love.

Losses suffered in the wars of secret agents can be repaired, even turned into advantages. If the Russians can suborn the second-in-command of the British secret service, the British can suborn the head of the Russian secret service. Covert war resembles the game of Othello, in which clever moves by White or Black can flip a lengthening row of counters from black to white and back again to black. Such contests seem artificial and tedious, compared to love. Only in love are there irremediable losses, which means that only in love are there true, absolute values.

V. Criticism and Context

If law is to be just — if it is to accord with the values and expectations of those it governs — then those who apply it must ensure that it can respond to society as it evolves. "Inherent in social life," Roberto Mangabeira Unger has argued, "is the danger that all forms of exchange and community will be used to entrench the exercise of ongoing, unaccountable, and unreciprocal power."⁷⁹

⁷⁷ *The Clandestine Muse*, *supra* note 67, at 15-16.

⁷⁸ J. LE CARRÉ, *SMILEY'S PEOPLE*, *supra* note 72, at 372.

⁷⁹ R. UNGER, *PASSION: AN ESSAY ON PERSONALITY* 96 (1984). Unger's other works include *KNOWLEDGE AND POLITICS* (1975); *LAW IN MODERN SOCIETY: TOWARD A CRITICISM OF SOCIAL THEORY* (1976); and *POLITICS: A WORK IN CONSTRUCTIVE SOCIAL CRITICISM* (3 vol., 1987).

There is a timelessness to this warning about what law can become, if its rules are taken solely at face value. Any good judge, alert to changing social realities, will apply the existing elements of a legal system to that change: Lord Mansfield took the medieval writ of *habeas corpus* and used it to unshackle a fugitive slave. The Legal Realists challenged the hallowing of the law — the idea that law-making meant the logical, neutral application of abstract principles. They reminded lawyers that law involved real facts and actual cases. In the current generation, the Critical Legal Studies movement, godfathered by Unger, has taken up the task of undermining received ideas.⁸⁰

The devices for exchanging labor and the products of labor may help fashion and perpetuate an entrenched hierarchy of power and wealth. . . . Engagement in shared forms of life threatens us with depersonalization as well as with bondage. The individual may vanish . . . into a ready-made social station and find himself recast as a helpless placeholder in the grinding contrast of genders, classes, communities, and nations⁸¹

Against this vision of regimentation and depersonalization, legal critics call for a reshaping of social institutions. Social orders — contexts, in the critical lexicon — should be opened up to allow human contact. “A context of social life is natural if it makes available to those who inhabit it all the forms of practical collaboration or passionate attachment that people might have well-founded reasons to desire.”⁸² Contexts should be made “plastic,” flexible and open to correction.⁸³

The best social order is the one that by making itself more completely accessible to real challenge prevents any scheme of rigid roles, divisions, and hierarchies from hardening. In this way people may more readily deal with one another as concrete individuals rather than as fungible placeholders in the grand system of national, class, communal, or gender contrasts. As a result they may also be preserved against the dangers to human reconciliation that arise whenever personal loyalties become entangled in social dependencies. For such en-

80 To speak of the “Critical Legal Studies movement” may be to portray a noisy crowd as a disciplined corps. For this reason, the term “legal critic” seems preferable. It also indicates that criticism of law may come from perspectives distant from the leftist viewpoint of CLS. But even if it has no leaders, the CLS movement has its spokesmen and prophets, and Unger’s works aspire to present a manifesto for reform, rather than to collate observations and grievances. See Ewald, *Unger’s Philosophy: A Critical Legal Study*, 97 *YALE L.J.* 665, 666 (1988) (“If anyone in CLS can claim to have undermined the central ideas of modern legal thought, that person is Professor Unger”). See also Symposium, *Roberto Unger’s Politics: A Work in Constructive Social Theory*, 81 *Nw. U.L. REV.* 589-951 (1987).

On critical legal studies, see generally R. UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986); M. KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* (1987); and symposia on critical legal studies, 36 *STAN. L. REV.* 1 (1984); 6 *CARDOZO L. REV.* 691 (1985); and 34 *AM. U.L. REV.* 939 (1985). For an overview of contemporary American law and its discontents, it is worth consulting Teachout, *Chicago Exposition: The New American Jurisprudential Writing As a Cultural Literature*, 39 *MERCER L. REV.* 767 (1988).

81 R. UNGER, *PASSION*, *supra* note 79, at 96.

82 *Id.* at 5-6. Passion, in this sense, represents all the quintessential human values. The concept stands for “the whole range of interpersonal encounters in which people do not treat one another as means to one another’s ends. The purely instrumental relationship is the only one [which] reduces the other personality to the condition of an object — whether an aid or an obstacle.” *Id.* at 105-06.

83 See *id.* at 264.

tanglements invariably put the distancing stratagems of control and resistance in place of the search for mutual acceptance.⁸⁴

To warn against stratagems of control, to view passion as the antithesis of instrumental relationships — these themes parallel Le Carré's criticisms of agency relations and bureaucracies. The critical call for an open society is the same as Le Carré's vision of love. "Salvation through the acceptance of vulnerability," Unger has written, "is the only kind of salvation there really is."⁸⁵ Love involves acceptance — lacking rules and conditions, it is the most open and personal of human relationships. It is the most plastic of any human context.

Consider that Unger's diagnosis of societal illness is titled *Passion: An Essay on Personality*. Consider also this passage from its conclusion: "The career of faith, hope, and love . . . may decisively enlarge the area of social life in which human reconciliation can take hold and human freedom can be acknowledged."⁸⁶ This critique is close to those of jurists like John Noonan and Thomas Shaffer, who write within the Christian tradition.⁸⁷

Rules and persons may be conceived as an antinomy — "government of law, government of men" Rules and persons may be conceived of as alternative perspectives, to be chosen depending on the view we want. . . . The process is rightly understood only if rules and persons are seen as equally essential components, every rule depending on persons to frame, apply, and undergo it, every person using rules. . . . Abandonment of the rules produces monsters; so does neglect of persons. . . . [T]he second danger is as great, the specific evils it has produced as enormous. Lawyers, lawmakers, judges do not act as responsible persons by mere faithful attention to rules.⁸⁸

No matter how one describes it, the path leads outside the system. To avoid systematizing, one must take apart assumption after assumption, refusing to rest. To call for making all social orders "completely accessible to real challenge" argues that the critical viewpoint itself must be taken apart. When one has mastered the rules, moving outside and beyond them, one emerges into the personal, rule-less realm of love. The endpoint is the same, whether it is reached by rigorous deconstruction or by holding unswervingly to the polestar of conscience.

VI. Solutions: An Outline

The individual and the collective, as Emerson long ago recognized, are different equations linked by an equals sign. Liberating society necessarily involves the revitalization of the individuals who compose society. Le Carré inherited from his father an understanding of manipula-

⁸⁴ *Id.* at 27.

⁸⁵ *Id.* at 300.

⁸⁶ *Id.* at 250.

⁸⁷ See J. NOONAN, *PERSONS AND MASKS OF THE LAW* (1976); T. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1982); Shaffer, *The Gentleman in Professional Ethics*, 10 *QUEEN'S L.J.* 1 (1984); Shaffer, *Moral Implications and Effects of Legal Education: Brother Justinian Goes to Law School*, 34 *J. LEGAL EDUC.* 190 (1984).

⁸⁸ J. NOONAN, *supra* note 87, at 18-19.

tion — how to manipulate people, how to make the rules work for you. But if his father was a confidence man, his grandfather was a Baptist lay preacher, part of a church which has always stressed both personal redemption and social ministry. Tracing back fifteen centuries along this tradition, one finds an oddly modern statement of law's purpose. Justice, St. Augustine said, is "love serving only the one loved."⁸⁹

In *The Honourable Schoolboy*, Le Carré gives a covert nod of respect to one secret organization: the heroin tong run by Hong Kong magnate Drake Ko. Le Carré does not hide the group's criminality. Ko traffics in narcotics, deals in prostitution, smuggles oil, corrupts individuals and governments, and kills without thinking twice or blinking once. But if Ko is a criminal, he rivals his English namesake in daring and piratical magnificence. He holds the Order of the British Empire, the same honor received by Smiley. And if his money comes from heroin, it was to exploit the opium trade that the British founded Hong Kong. His ruthlessness is matched by a spontaneous generosity. He has endowed a children's hospital, a Baptist church, and a Chiu Chow temple.

Within the tong, there is no divide between leaders and followers: Ko shares with his men a background in the Chinese fishing clans. Particularly important, to Le Carré, is the internal responsibility of Ko's organization, an absolute loyalty of men to leader and of leader to men. Keeping faith, says Ko's mistress, is "what he cares about most."⁹⁰ The last time he speaks in the novel, Ko warns a British agent: "Mr. Westerberby, I am advising you sincerely: if you have played a trick on me . . . your Christian Baptist hell will be a very comfortable place by comparison with what my people do to you. But if you help me I give you everything. That is my contract and I never broke a contract in my life."⁹¹

Over the novel's course, the tong confronts powerful enemies: the British SIS, the American CIA and DEA, and Mao Zedong's China. It is battered by the CIA's kidnapping of Ko's brother (a Russian mole inside mainland China), by a wave of drug prosecutions, and by the fall of South Vietnam — but Ko himself, and most of his men with him, slip away into the twilight. In Le Carré's vision, links of personal commitment and common blood outlast the ties of agency.

In *The Little Drummer Girl*, for the first time, both relational webs, of love and agency, connect the same two people. The lovers are an agent and a case officer: Charlie, an English actress, and Israeli Gadi Becker. To make her his agent, he by turns rouses and frustrates her sexual interest. Yet as she is drawn into a terrorist network, and he follows, stalking the Palestinian who masterminds it, a love affair grows out of this "theatre of the real."

The intelligence plot starts with forged letters. It subjects Charlie to the risks of kidnapping, imprisonment, car-bombings and air strikes, and a final shoot-out which spatters her with a lover's blood. Surviving these

89 "Iustitia — amor soli amato serviens." Augustine, *De Moribus Ecclesiae Catholicae et de Moribus Manicæorum*, 1.15, 125, in 32 *PATROLOGIA LATINA* 1332 (J. Migne, ed.), cited in J. NOONAN, *supra* note 87, at 174.

90 J. LE CARRÉ, *THE HONOURABLE SCHOOLBOY*, *supra* note 36, at 516.

91 *Id.* at 523.

physically, she is plunged into psychic breakdown. Becker, too, becomes a casualty. If Charlie is one of the wounded of the underground war, he is one of its missing, someone who walked away from intelligence work.

Only outside the network of agency can these lovers find each other—and recall that the word Mossad, used for Israel's secret service, means literally *the organization*. At the end of *The Little Drummer Girl*, in a skillfully modern variation on the play-within-the-play, Becker draws Charlie out of a theatre where she is playing a role involving misdelivered letters.

[He] came towards her down the empty street, walking very tall, and she imagined him breaking into a run in order to beat his own bullets to her, but he didn't. . . . She was leaning on him and she would have fallen if he hadn't been holding her so firmly. Her tears were half blinding her, and she was hearing him from under water. I'm dead, she kept saying, I'm dead, I'm dead. But it seemed that he wanted her dead or alive. Locked together, they set off awkwardly along the pavement, though the town was strange to them.⁹²

There could be happier endings, but this is a hopeful ending, the first in any of Le Carré's novels. Hope lies in walking away from organization, appreciating one's companion as a person rather than an instrument, moving away into the unfamiliar landscape of human life and affection.

Discussing Smiley, Le Carré considered where he and his best-known character had parted company:

The only thing we *can* say with safety, perhaps, is that the greatest threat to mankind comes from the renunciation of the individual scruple in favor of institutional denominators. From the adoption of slogan, and the mute acceptance of pre-packaged animosities, in preference to the hard-fought decisions of individual, humanistic conscience. Real patriotism lies, as it always will, not in conformity or even patriotism, but in acts of solitary moral courage.⁹³

Just as an agent is the instrument of his principal, so the agent also stands apart from individual responsibility. The agent has abdicated his autonomy; he has chosen to be governed by the principal's directions. This is why Le Carré's agents cannot make the individual, moral, conscience-based choices for which he calls. Their personal responsibility has been supplanted by duties of loyalty and obedience.

Yet if societal bonds are to be more than simplistic, black-lettered rules, we must be able to act as individuals. The rules themselves cannot tell us how they are to be made and how they are to be applied. These decisions can be made correctly only by standing outside the system's logic, and on the basis of conscience.

The warning Le Carré offers is general. To the extent that society structures itself along agency principles, what holds true for secret services will hold true for society at large. The nature of agency systems stands out even more clearly in contrast to love. Agency systems are built upon inequality. The agent, as agent, can be no more than a crea-

92 J. LE CARRÉ, *THE LITTLE DRUMMER GIRL* 430 (1983).

93 *The Clandestine Muse*, *supra* note 67, at 16.

ture of the hierarchy these rules define — can be only a subordinate, bound to the principal. In agency inheres injustice.

Le Carré's fiction is often pessimistic, but his comments outline a different ethic. Moral courage is solitary because it requires one to act as an individual. One must recognize that all choices are personal, in both senses of this word. Group priorities do not supplant the individual conscience; one person should not presume to control another person's life. A moral choice should respond to human values, the highest of which is love; and where it so responds, that is where justice will be found.

VII. Spies, Writers, and Critics

Le Carré has suggested, in a television interview, that there is a likeness between the work of the spy and the work of the novelist.

The fieldman is a figure who interests me, because I feel that he's a metaphor for other walks of life. He's a person I can explore as some kind of alienated character, perhaps. Who rather like a novelist is dependent on the society he's deceiving, and who rather like a writer makes his perceptions secretly and reports them in due course to the consumer.⁹⁴

A Perfect Spy works this out in detail. The book is an experiment in autobiography; Magnus Pym is Le Carré's alter ego, the man he is afraid he would have become had he not become a writer.

Both spies and novelists construe the world for their audiences, recasting it in their own idiom. Le Carré has shown up the unreliability — in fact, the falsity — of the constructs created by spies. He has not carried this over to fiction; he does not suggest that the novelist's stories are similar constructs, and therefore just as open to challenge. Thereby Le Carré distances himself from self-conscious writers like John Barth and Italo Calvino, who use pastiche, riddling, and plots-within-plots to question their own reliability and authorial role. Le Carré belongs (as his strengths in plotting and characterization show) to the school headed by Dickens, Balzac, and Tolstoy, the great narrative masters. Within this tradition, writing is not the unraveling of a narrative strand into threads of ever-diminishing size. Writing deals with life as the novelist sees it — trusting the author's vision, using technique as a means rather than an end, focusing on the life portrayed.

This understanding of the novelist's role may clarify the related role of the critic. Critical legal studies have come to a critical pass. To criticize law from within law imposes substantial limits. If, after the revolution, the old regime of principle and analysis is replaced with a new

⁹⁴ MacNeil/Lehrer News Hour, *supra* note 40. The work of spies often resembles the work of the novelist in other ways. During the Second World War, the British used their captured German agents to feed a tapestry of disinformation back to the Abwehr's analysts. To provide sources for this material, MI5's spymasters created dozens of notional agents, borrowing stock figures from espionage fiction: the lonely typist in the Ministry of War, the talkative American sergeant, the resentful Gibraltar waiter who happened to hold a ham radio license, the circle of crackpot Welsh nationalists and the mercenary, not-quite-trustworthy merchant seaman. See generally J. MASTERMAN, *supra* note 43; L. FARAGO, *THE GAME OF THE FOXES* (1971); and J. PUJOL with N. WEST, *OPERATION GARBO* (1985).

regime also based on principle and analysis, what was the point? And has there really been a revolution? Staying within the legal context may mean that one only reconstructs the old system, complete with all its flaws. Yet if one tries to avoid the recreation of hierarchies, one may be doing nothing more than tearing down without building up.

As John Gardner observed, the creative artist and the critic carry out the same task — a necessary, perennial defense of everything meant by the word *humanity*.

Art builds temporary walls against life's leveling force Art asserts and reasserts those values which hold off dissolution, struggling to keep the mind intact and preserve the city, the mind's safe preserve. Art rediscovers, generation by generation, what is necessary to humanness. Criticism restates and clarifies, reenforces the wall. Neither the artist nor the critic believes, when he stands back from his work, that he will hold off the death of consciousness forever; and to the extent that each laughs at his feeble construction he knows that he's involved in a game.⁹⁵

Raising the alarm is the critical task. It is more than half the battle. No matter how specific a program criticism may finally outline, whatever results it may actually achieve, its primary task is to keep the status quo from ossifying. Legal critics, if they stand apart from simplification and rationalization, and if they can teach lawyers simply to rethink matters, boldly and carefully, have succeeded.⁹⁶

Insights concerning the system of law may be better expressed in a fresh idiom. The novelist may be better fitted to explore human conduct than critics who are bound by facts or analyses. Only an observer outside a system, and gifted with the freedom to explore as well as to analyze, can properly appraise that system. It is his novelist's vantage point that other legal critics should envy Le Carré.

95 J. GARDNER, *ON MORAL FICTION* 6 (1978).

96 Artistic vision is a good servant but a bad master — a cousin to political ideologies which are serviceable in understanding the world, but which, installed in power, harden into totalitarian mind-sets. The value of critical thought lies in the tension and dialogue it creates with received ideas, not necessarily in what its triumph would bring. Contrast the record of Aleksandr Solzhenitsyn as a political critic with the vision of Solzhenitsyn as a political ruler. See further, Sherwin, *Law, Violence, and Illiberal Belief*, forthcoming in 78 *Geo. L.J.* (1990).