

## **Kant and the Right to Lie**

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Kant's views about the moral prohibition on lying are commonly taken to be so unreasonably strict that they have even been cited regularly as showing there must be something fundamentally wrong with Kantian ethics. Kant's critics usually assume that Kant must have inferred validly from his principles to his extreme conclusions, and then cite the conclusions as discrediting the principles themselves. Kant's defenders usually argue that Kant's conclusions about lying do not (or need not) follow from Kantian principles. To show this, they usually employ one of the formulas of the moral law found in the *Groundwork* (usually the Formula of Universal Law, less often the Formula of Humanity), in order to derive conclusions about the morality of lying that are often at odds with the conclusions Kant is thought to have drawn, and also (what is not the same thing) at odds with the conclusions he did in fact draw.

Neither sympathetic nor critical treatments of this topic, however, typically consider Kant's own discussions of lying, or his claims about it, in the precise meanings that Kant attaches to them. It is seldom noted by anyone, for instance, that Kant considers lying in relation to two (and only two) distinct duties: a duty of right, and an ethical duty to oneself. Kant's most extreme statements on lying actually occur in the latter context, though I think that when correctly read in the context of all Kant's pronouncements on lying, these statements should be understood as the rhetorical hyperbole of an engaged moralist rather than as the literal doctrine of a detached moral theorist. Here I will restrict myself to Kant's views on the prohibition on lying as a duty of right, which alone is at stake in his late, brief, notorious essay *On a Supposed Right to Lie from Philanthropy*

(1797).<sup>1</sup> My contention is that these views do not involve the least bit of rhetorical exaggeration, and if not misunderstood, they are entirely reasonable just as they stand.

The fact that Kant considers untruthfulness as violating these two distinct kinds of duties requires us to look for a moment at a crucial feature of Kantian practical philosophy that is too often ignored, especially by Anglophone philosophers. Kant divides “morals” (*Sitten*) into two branches: “right” (*Recht*) and “ethics” (*Ethik*). *Ethics* is a system of laws given by the will of each rational being to itself, and requiring self-constraint on one’s own actions through the motive of duty. The principle of ethical duties is the one famously sought, found and argued for (in three principal formulations) in the *Groundwork for the Metaphysics of Morals*. Right, by contrast, is a distinct system of rational legislation dealing with external actions only, and duties of right, in the main, admit of external coercion, through the political state and its civil or criminal laws). There are also duties of right, however, whose fulfillment no one is in a position rightfully to coerce -- these include duties corresponding to a what Kant calls a *ius aequivoca* (such as duties of equity), and also some duties heads of state have toward their subjects (MS 6: 234, TP 8:289-306).

Kant’s views about ethics are well-known, and though many serious misunderstandings of them have wide currency, they are at least much discussed by moral philosophers. Kant’s theory of right is still relatively unknown; it is still pretty much the province of specialists who have carefully studied the *Doctrine of Right*, *Perpetual Peace* and a few other works that deal specifically with right rather than with ethics. Many moral philosophers who discuss Kant’s views do not even seem to be aware that there is a fundamental split between the distinct moral legislations of right and ethics.

Consequently it is still deplorably common for philosophers, especially English-speaking ones, to ascribe views to Kant on matters of right (such as political philosophy, or the justification of punishment, or promising, or lying) by triangulating from what is said in the *Groundwork* or other ethical writings that deal with right at most incidentally or obliquely. These calculations often involve very bad trigonometry, deriving supposedly “Kantian” thoughts about such topics that are wildly off the mark.

The fundamental principle of ethical duties is the principle given three famous formulations in the *Groundwork*. The principle of duties of right is the principle of right: “Any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law” (MS 6:230). It is unclear in Kant (and controversial in the literature on Kant) whether the principle of right is supposed to be based on the principle of morality or is independent of it (my own view, which I will not argue here, is that it is independent).<sup>2</sup> Every duty of right, however, corresponds to an ethical duty in the sense that we can and should do our duties of right from the motive of duty, since respecting the innate right to freedom possessed by all persons is an ethical duty grounded on the right of humanity (the Formula of Humanity) (MS 6:237). However, since the prohibition to lying, when lying is regarded as the violation of a duty of right, is a matter of right rather than of ethics, it is not a natural way for Kant to think about this aspect of the morality of lying by trying to derive the prohibition on untruthfulness from the principle of morality (in any of its formulations).<sup>3</sup> In order properly to understand the prohibition on lying as a matter of right, we need to see how lying relates to the system of right.

**What is a lie?** Let's begin with an elementary point of terminology. 'Lie' (*Lüge*, *mendacium*) is a technical term for Kant. It means: an intentionally untruthful statement *that is contrary to* a duty of *right*. Kant calls an intentional untruth that violates no duty of right, a *falsiloquium* (which I will translate here as "falsification") (MS 6:238n, VE 27:447). (You can pick up this usage from quotations D, E and F on the handout.) In Kant's sense, therefore, it is an analytic proposition that a lie is contrary to duty, and hence analytic that lying is always wrong. (Actually, there is one possible exception to this last assertion, the case of the "necessary lie", which we will discuss later). However, it is by no means analytic that every falsification is contrary to duty (or wrong). Nor does Kant believe that every falsification is contrary to duty. The judgment that that every lie is wrong -- and that (setting aside, again, the case of the "necessary lie") there are no exceptions to this -- is analytic. But this analytic truth tells us nothing about the conditions under which a falsification becomes a lie, and therefore it implies neither strict nor lax views on the subject of veracity.<sup>4</sup> Analogously, Kant thinks of "murder" (*Mord*) as a wrongful homicide (*homocidium dolosum*), so that it is analytic that every act of murder is wrong, even though some homicides, since they violate no right, are not acts of murder. The analyticity of "murder is wrong" therefore involves neither strict nor lax views about the morality of killing. In both cases, it all depends on which falsehoods or homicides are regarded as wrongful.

In order to understand Kant's views about when a falsification is a wrongful falsification (or a *lie*), we need yet another crucial piece of technical terminology -- "declaration" (*Aussage*, *Deklaration*, Latin *declaratio*) (see quotation C on the handout) A declaration is a statement that occurs in a context where others are authorized (*befugt*)

to rely on the truth of what is said and makes the speaker liable by right, and thus often subject to criminal penalties or civil damages if what is said is knowingly false (cf. MS 6:254, 258, 366). Sometimes Kant appends the adjective “solemn” (*feierlich*) to “declaration,” to emphasize this special significance (R 6:159, MS 6:272). The paradigm case of a declaration in a formal legal context would be a statement made under oath in a court of law (MVT 8:268, MS 6:272) or a promise or warranty contained in the terms of a contract (MS 6:254, 272). Right is for Kant a rational system of duties that grounds mere positive legislation, so declarations are not limited only to statements with specific legal consequences. For example, Kant thinks that a person’s solemn avowal of religious faith counts as a declaration (R 6:159, MVT 8:268). The line separating lies from mere falsifications depends on whether the statement is one that others are authorized to rely upon with a view to maintaining their rightful external freedom of action.

Accordingly, Kant’s main principle governing the prohibition on untruthfulness regarded as a violation of duties of right is this: *An intentionally untruthful declaration is a lie, hence a violation of a duty of right.* This applies chiefly to cases of untruthfulness that deprive someone of something that is rightfully his – such as a piece of property, or a choice it is his right to make. I’ll read quotations D and E:

“The only kind of untruth we want to call a lie, *in the sense bearing upon right (im rechtlichen Sinne)* is one that directly infringes upon another’s right. e.g. the false allegation that a contract has been concluded with someone, made in order to deprive him of what is his (*falsiloquium dolosum*)” (MS 6:238n).

“[One is] authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it – such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or false and insincere (*veriloquium aut falsiloquium*); for it is up to them whether they want to believe him or not” (MS 6:238).

The test for whether it is “up to you whether to believe me or not” is whether it is you or I who assumes responsibility, in relation to matters of right, for your believing what I say. For instance: If in a casual conversation I volunteer the information that my car has 35,000 miles on it, and you take some action on the basis of that assertion, those actions are up to you and you bear the responsibility for them. But if in a contract of sale of the car I state that the mileage is 35K, when really it is 135K, then you can sue me, and I also would bear the responsibility for any other actions you take based on my declaration.

The basis of all duties of right, according to the principle of right, is the protection of unhindered external freedom according to universal laws. What is rightfully mine -- such as a piece of property (MS 6:260-270), or the various things that can be made the objects of contracts, including the promised performances of others (MS 6:274-276), or a choice that is mine to make unhindered by coercion or by the deception of others as to the consequences of my options – all this is regarded by Kant as falling under principles and duties of right because it bears on my lawful freedom. I am externally free only insofar as I can freely make use of the property that belongs to me, the performances others have contracted, or the unhindered choices that are mine to make. A declaration is a statement made by another on whose truthfulness, within the system of right, I have a right to rely. If a declaration made to me is false, then I am deprived of what is rightfully mine and my freedom is restricted wrongfully or unjustly.

More generally, Kant insists that truthfulness in declarations in general is something on which all persons must be able to rely in order to have their rightful freedom effectively protected. If someone lies in a court of law, it is not only his adversary whose right is violated, but the entire system of right, which must presume the truthfulness of

declarations made in legal processes. If someone is defrauded in a contract, it is not only this person whose right is violated, but the entire system of contract right, which is structured around the truthfulness of the declarations involved in contracts. When he makes this point, as in quotation C, Kant puts his case this way: that when I make a lying declaration, “I bring it about, as far as I can, that declarations (*Aussagen* [*Declarationen*]) in general are not believed, and so too that all rights which are based on contracts come to nothing and lose their force” (VRL 8: 426). The claim here is *not* that some particular lie might in fact have the consequence of generally shaking people’s confidence in contracts.<sup>5</sup> It is rather that it would be contrary to the very concept of right that it could be permitted by right to make an untruthful declaration when the declaration is supposed to count as probative in a court of law, or more generally its truthfulness is required for the operation of the system of right (external freedom under universal laws). By making a knowingly false declaration, I am in that sense acting in such a way as to deprive declarations made the system of right of their validity, whether or not that result is intended or actually occurs.

We can put this point in the terminology of John Rawls’ famous essay “Two Concepts of Rules,”<sup>6</sup> by saying that for Kant, right is a rational human “practice” and the truthfulness of declarations is one of the basic rules of this practice. “Right” is, in effect, a rational framework for understanding, justifying and correcting not only state and legal institutions but also other less formal understandings between people that guarantee their external freedom of action under universal laws. Kant attempts to justify the practice of right by showing the necessity of different aspects of it for protecting something regarded by Kantian ethics as of fundamental value – namely, the guarantee to persons of their

external freedom according to universal law. The requirement that there be “declarations” at various points in the system of right is to be established by presenting contract law, judicial trials, and so on, as requiring them. In that way, although Kant regards the rules of right as categorical imperatives, their justification in his theory of right depends on their *consequences* in maintaining a system of freedom under universal law. Once the practice of right is justified, and the making of truthful declarations is established as part of this practice of right, the principle of right requiring that declarations be truthful goes with the practice of making them. The duty always to be truthful in declarations needs no further defense. To ask for one, or to think that in a particular case a lie might be justified by citing the particular good or bad consequences of lying or truth-telling is to misunderstand the whole moral situation in a fundamental way.<sup>7</sup>

**Kant and Constant.** In the famous late essay on the right to lie, untruthfulness is being considered (as the title of the essay, as well as its content, clearly indicates), solely as a violation of a duty of *right*. That essay is part of a controversy between Kant and the French writer Benjamin Constant. As I have said, its brevity, along with the common neglect of Kant’s entire theory of right, often prevents readers of it from understanding this context, or appreciating the precise nature of the question being addressed in it.

Though the chronology is murky, Constant was apparently responding to an example Kant had used in the Doctrine of Virtue, of a servant who lies to the police in saying that his master is not at home, enabling the master to slip away and commit a crime (MS 6:431, see quotation B). Constant radically modifies the example, transforming the servant of a would-be criminal into the friend of an innocent man who is trying to escape being murdered (quotation A).<sup>8</sup>

It is clear from the title of Constant's essay, *Des réactions politiques*, and also in Kant's reply, that the real issue is the duty to speak truthfully in declarations in *political* contexts and the alleged conditions and limits on this duty. This point often missed entirely, because the famous example of the murderer at the door is not about the speech of politicians or statesmen.<sup>9</sup> Constant's thesis in the essay is that moral principles apply to politics only by means of intermediate principles. Specifically, he claims the principle of truthfulness in declarations must meet the condition that those to whom one speaks have a "right to the truth." Kant's counter-thesis is that statements made by political figures or statesmen, in announcing their policies are typically declarations, and the duty of right to be truthful in declarations belongs to every declaration as such, and is not limited to the any condition that those to whom they are made have a right to the truth.

Constant imagines you finding at your door a man who asks the whereabouts of your friend, whom you know he intends to kill. Is it permissible for you to give him an intentionally false answer, in order to protect your friend? As Kant is usually interpreted, he maintains that it may be permissible to refuse to answer the murderer's question, but if you cannot avoid answering it (as Constant is stipulating that you cannot), then it is not permissible to lie to him, even if your truthfulness directly enables him to murder your friend (VRL 8:425-427). The natural reaction to Kant's position, when it is understood in this way, is that it is utterly wrongheaded, a piece of rigoristic craziness that is bizarre to the point of being outrageous. It is sometimes is argued that Kant is committed to such an inflexible position by his basic thesis that moral imperatives are categorical, or his principle that we must be able will our maxims to be universal laws. It should not be necessary to rebut such absurd claims, but since it is easy enough to do so, I will digress

for a moment to do it. A moral imperative is categorical, in Kant's sense, because its function is not to advise us not how to reach some prior end of ours based on what we happen to want, but instead it commands us irrespective of our wants or our contingent ends, and so its rational bindingness is not conditional on our setting any of them. A moral rule or principle, however, may very well be conditional in other ways – for instance, the principle that speaking untruthfully violates a duty of right is restricted by the condition that the speech must be a *declaration*, not a mere falsification. When this condition is not fulfilled, there is no categorical imperative at all that the statement must be truthful. Further, where a statement is a mere falsification, not a declaration, there might be many maxims involving the making of such statements that can be willed as universal laws.

More generally, as I read Kant, moral rules or duties -- as distinct from the fundamental principle of morality -- always in principle admit of exceptions in particular cases. In the second Critique '*exceptivae*' is one of the twelve practical categories -- corresponding to the category of 'limitation' in the first Critique (KpV 5:66). Kant rejects the idea that moral conclusions about what we should do can ever be rigorously deduced from the principle of morality together with some set of factual propositions. Moral rules or duties are rather to be viewed as interpretations of the fundamental principle of morality or the principle of right under the general conditions of human life and perhaps also more specific empirical circumstances. Kant also holds that moral choices involve the application of judgment to the application of moral rules and principles. Both in theoretical and practical matters, concepts, rules or discursive principles never determine everything all the way down to the particular instance (KrV A132-136/B171-175). The

role of judgment in interpreting particular moral rules and duties, Kant's view, is irreducible to further rules and critical to drawing the right ethical conclusions. The "casuistical questions" Kant appends to his discussion of particular duties in the Doctrine of Virtue are mostly devoted to discussing possible exceptions to the duties under discussion (MS 6:411). Kant's disagreement with Constant is not over whether it could ever be permissible to assert falsehoods to someone. The point is rather that there are no exceptions to the rule prohibiting *lying declarations*, or at least not exceptions of the kind Constant is alleging. Kant takes Constant's position to be that lying *declarations* are justified whenever they serve to prevent a great enough harm (or an injustice, such as a murder or wrongful death). His counter-claim is that they are not.<sup>10</sup>

**Unjust use of the truth; the "necessary lie."** In the usual interpretation of Kant's position, no thought at all is given to the fact that he would see no violation of right whatever in a mere falsification uttered to the would-be murderer about where his intended victim is. Although the category of "declaration" includes more than assertions made under oath or in a contract, it is no part of Kant's theory to hold that just anyone who knocks on your door might automatically require from you a solemn declaration regarding the present whereabouts of some person. Perhaps a policeman, as in Kant's original example, is in such a position, which is why the servant might be criminally liable as an accessory to his master's crime. Of course if the murderer at the door could not require a *declaration* from you, then telling him an intentional untruth would not count as a *lie (mendacium)*. In quotation F, Kant explicitly allows that no lie, and no violation of right, occurs if we commit a falsification in order to prevent another from making wrongful use of the truth:

“I can also commit a *falsiloquium* when my intent is to hide my intentions from the other, and he can also presume that I shall do so, since his own purpose is to make a wrongful use of the truth. If an enemy, for example, takes me by the throat and demands to know where my money is kept, I can hide the information here, since he means to misuse the truth. That is still no *mendacium*.” (VE 27:447).

Sometimes Kant describes this situation, or one very much like it, in terms that make it permissible even to make a false *declaration*, and thus to tell a lie (this is the one possible exception to the proposition Kant seems otherwise to regard as analytic: namely, that lying is wrong, as being contrary to a duty of right). For there are passages in his lectures in which Kant invokes the traditional concept of a “right of necessity” (*Notrecht, ius necessitatis*), in which under compulsion in an extreme case of need or distress, a person is permitted to do something that would normally violate a rule of right. A “necessary lie” (*Notlüge*) occurs where someone forcibly compels you to make a declaration of which you know they will make wrongful use. See quotation G:

Yet since men are malicious, it is true that we often court danger by punctilious observance of the truth and hence has arisen the concept of the *necessary lie*, which is a very critical point for the moral philosopher. So far as I am constrained, by force used against me, to make an admission, and wrongful use is made of my statement, and I am unable to save myself by silence, the lie is a weapon of defense; the declaration that is extorted and then misused permits me to defend myself, for whether my admission or my money is extracted is all the same. Hence there is no case in which a necessary lie occurs except where the declaration is forced from me and I am also convinced the other means to make wrongful use of it” (VE 27:448).

In Constant’s example it is stipulated you have no alternative to making the declaration. Yet because the declaration has not been forcibly extorted from you by the murderer, a lie to him under these circumstances would not count as a necessary lie. So Kant’s insistence that a lie is wrong even in this case also depends on that rather subtle point.

Kant does not always seem happy with the idea of a “necessary lie”. In some places he seems to question whether really there is such a thing, or he accepts the concept of a

necessary lie only reluctantly (VP 9:940, VE 29:701). He roundly rejects the idea that we are permitted to deceive another simply because the other has deceived us. Kant realizes that the right course of conduct will sometimes leave you open, at least to a limited extent, to the attacks of evil people. The policy of leaving yourself vulnerable in this way is required out of respect for the right of humanity (Quotation H):

“When one country has broken the peace, the other cannot do so in retaliation, for if that were allowable, no peace would be secure. And thus though [a lie to a deceptive or unjust person] may not infringe [his] particular right, it is still already a lie, and contrary to the right of humanity” (VE 27:447).

But as quotation F also clearly says, Kant thinks that when you are forced to make a false declaration in order to prevent the truth from being used unjustly, that would normally be considered a mere *falsiloquium* and not a *mendacium*, and it would violate no duty of right.

**Could the murderer at the door require a declaration?** It might be argued that in the example of the murderer at the door, there could be no question of making a statement having the technical import of a declaration. Tamar Schapiro has argued that a Kantian has good grounds to make an exception to a duty when the duty is based on a practice, but the understanding on which the practice rests has been reduced to a sham, as through the systematic misconduct of some of the parties to it.<sup>11</sup> To put it in the Rawlsian terms already mentioned, we might argue that the murderer at the door, through his intentions, has undermined the practice of right, and therefore that the concepts of “declaration” and “lie” that presuppose the rules of this practice, no longer apply. I think there is a lot to be said not only for Schapiro’s theory of excuses or exceptions within a broadly Kantian theory of right, but also for the above application of it to the case of the murderer at the door. Yet Kant himself clearly rejects that argument, at least as applied to

this example. He holds that even when someone intends to use a declaration unjustly, it might nevertheless be possible for him to be entitled to a declaration (rather than a gratuitous assertion) from you. Since this is in general possible, Kant allows the assumption that it applies to this case of the murderer at the door. When someone unjustly requires a declaration of you, you do no wrong to *him* in falsifying your declaration, but you nevertheless do wrong to humanity generally by violating your unconditional duty to be truthful in all your declarations (Quotation C):

“Truthfulness in declarations (*Aussagen*) that one cannot avoid is a human being’s duty to everyone, however great the disadvantage to him or to another that may result from it; and though I indeed do no wrong to him who unjustly compels me to make the declaration if I falsify it, I nevertheless do wrong in the most essential part of duty in general by such falsification, which can therefore be called a lie...; that is, I bring it about, as far as I can, that declarations (*Aussagen* [*Declarationen*]) in general are not believed, and so too that all rights which are based on contracts come to nothing and lose their force; and this is a wrong inflicted upon humanity generally” (VRL 8:426).

This point lies at the heart of the main issue between Kant and Constant, which is Kant’s rejection of Constant’s claim that we owe truthfulness only to those who have a right to the truth (VRL 8:426). It might seem that Kant should agree with Constant here, since the Kantian distinction between a lie and a mere falsification might seem to amount to the distinction between saying something false to someone who has a right to the truth from you and saying something false to someone who has no such right. But Kant rejects that account of the distinction, because he holds that the duty not to lie attaches to every declaration merely as such. It does not depend on anything about the person to whom the declaration is made.

Moreover, Kant seems to me clearly right about this. The duty to make a truthful declaration under oath in court is not owed merely to the attorney who asks you the question, but involves you in a relation of right to the judge, the jury and to the entire

process of justice. In relation to what ultimately interests Kant the most, the duty of politicians to be truthful in their public declarations is a duty whose performance must be relied upon by the public at large.<sup>12</sup>

Kant's further view that you might be *unjustly* required to give a declaration, which you nevertheless have no right to falsify, seems more questionable. It is a first cousin of his view that you are required to obey even the unjust commands of a civil authority, as long as they do not require you to do something that is in itself wrong. But it clearly plays a role in his willingness to regard it as conceivable that the murderer at the door might be in a position to demand a declaration from you.

Once we appreciate all these points, we can also begin to see how special, artificial (or even dubious) is the kind of case in which Kant is forced by principle to say that it would be wrong to lie to the murderer at the door. The example in which Kant has to say this is Constant's example, not Kant's. And if it is to be relevant to the issue about political speech, on the assumption that such speech involves declarations, the example requires us to make a number of unusual (or even implausible) assumptions. If our statement to the would-be murderer is not a *declaration*, then we need not speak truthfully, because then it would be a mere falsification, not a lie. If the declaration is forcibly extorted from us, with the intent of using it unjustly, then that would be a "necessary lie" and so a lie would be permissible. It is only where a declaration is unavoidable or "compelled," yet not forcibly extorted, that lying to the murderer at the door would violate the right.

The thing that seems to me doubtful about Kant's claims about the murderer at the door is not that it would be wrong to make a lying declaration to him under the conditions

stipulated, but instead that the stipulated conditions could ever obtain in the case of a murderer at the door. That, however, is not the error with which Kant is usually charged. Kant would be making a false assumption about the example of the murderer at the door, but solely in order to make it illustrate the issue he and Constant are discussing. If the assumption is erroneous, it would be an error merely about whether his judgment about this particular example fits the principles of right, and not an error involving Kant's principles themselves. With two centuries hindsight, and in light of how often and how badly Kant's claims in this essay have been misunderstood, it seems clear that he would have done better to reject the example itself as unsuited to illustrate the issue on which he and Constant disagree.

**Attempt at a less artificial example.** Even Kant's tactical decision to accept the example is defensible, however, at least to this extent, that there are certainly cases very much like that of the murderer at the door, where it is by no means unreasonable to hold that one must not lie even in order to prevent a great harm or wrong. Hence in order to gain a better appreciation of the issue Kant means to address, we might do better to consider a different example, in which the necessary assumptions would be less artificial or implausible. So I propose the following example, which is suggested by some of Kant's remarks and also some remarks of Henry Sidgwick (quotations I and J).<sup>13</sup> Suppose you are a witness under oath in a court of law, and you are asked a question the truthful answer to which might result in your friend, whom you know to be innocent, being convicted of a capital crime. Here an unscrupulous prosecutor might play the role of the murderer at the door, the innocent person accused of a crime the role of his intended victim. I think it is not entirely obvious what you should do in this predicament, but I

don't think we should regard Kant's position that you must not lie as so clearly wrong as to bring his entire ethical theory into discredit.

And my own considered view about *this* example is the Kantian one: Unless I take the legal process itself to be illegitimate, or a mere sham, I think I had better tell the truth. Otherwise (as Kant suggests in the right to lie essay itself) *I* am the one turning the process into a sham, by behaving according to a principle which, if generally followed, would bring all solemn testimony and all legitimate legal processes into discredit (VRL 8:426). Naturally I would feel deeply conflicted in deciding to tell the truth under these conditions. But then I think even those who disagree with me, and think they should lie in the witness's circumstances, ought also to feel great discomfort in adopting that position. If they did not, then they would be guilty of a serious moral error even if we grant that their choice to lie is not clearly wrong.<sup>14</sup> It is an all too common error in moral theory to think that everything depends on "getting the right answer" (the answer that supposedly matches our "intuitions"). The main function of ethical theory is to help us think better about moral problems, including the most difficult and conflicted ones, by placing before us the considerations we must not ignore. One such consideration in cases where truthfulness is an issue is the rule of right requiring that declarations must be truthful. Kantian ethics is right in drawing our attention to the pertinence of this rule even in difficult cases like that of our witness, or the murderer at the door.

**Political lying.** Now let's turn at last to the issue that appears to have really concerned both Kant and Constant – the duty of politicians or statesmen to be truthful in their official declarations. This is surely an issue where we need no implausible imaginary cases, since there are no lack of vivid examples all around us in real life.

Stephen Holmes, in his book *Benjamin Constant and the Making of Modern Liberalism*, persuasively describes Constant's thesis as the outcome of his experiences during the French Revolution, where the line separating police officials from murderers was not necessarily well-defined, and where declining to lie (even, we may suppose, in a declaration to a policeman or in solemn declarations in a political context) might easily result in you, or your friends, being sent to the guillotine.<sup>15</sup> On the other hand, Kant's contrary view belongs to his insistence in *Perpetual Peace* that for rulers and statesmen, political expediency must always be subordinated to principles of right, and that high office and political power – and the need to confront the kinds of decisions that go with the possession of such extraordinary power -- earn no one an exemption from these principles. Maxims involving deception, moreover – denying the wrongs you have done, for example, or concealing your true aims and policies from the public -- are prominent in that discussion (EF 8:375-376, 381-382).<sup>16</sup> If Constant's position is understandable as a reaction to the extreme conditions he faced during the Revolution, Kant's position is the fundamentally correct one about political life in general. Both are deserving of respect.

More recent real life examples of lying declarations by political leaders and government officials leave me feeling far less ambivalent. I will pass over the lying declarations made by earlier U. S. regimes that have been repeatedly defended by such malefactors as G. Gordon Liddy and Oliver North, and consider only the political manipulation and misrepresentation of intelligence leading up to the U.S.-British invasion of Iraq in 2003. This involved systematically untruthful declarations to the public by many officials of both governments, including blatant lies by the U.S. Secretary of State Colin Powell before the United Nations in February of 2003. More recently, these same

lying officials have protested that that they were not lying after all, but only misinformed by their intelligence sources. But it has been well documented that they not only picked and chose among those sources but even manipulated the gathering of intelligence to rationalize the policies already decided upon. Accordingly, these lame excuses should be treated as nothing but more lies, further compounding the criminal wrongs they have committed. No doubt they, typical of political liars in all ages, think of their lies as justified by their noble ends – though what these are becomes increasingly difficult to specify as their misguided policies lead to one disastrous failure after another. But even if their lies had enabled them to achieve their ends, and the ends had been otherwise desirable ones, this would not justify the violation of right involved in their policy of lying to the public.

The issue here is not correctly conceived as a dispute between “deontology” and “consequentialism.” For any consequentialist who can see beyond the end of his nose, and also properly values the importance of maintaining right as a system of external freedom of human beings under universal law, would be able to defend the principle that false declarations are impermissible even when lying might avert some sizeable immediate harm or injustice. To think that consequentialists are committed to being shortsighted about this is either to underestimate the resources of consequentialist ethics or else unjustly to ascribe to consequentialism one’s own moral bankruptcy.

In moral philosophy it is an important truth in that due to the great complexities of human life, no moral rule simple enough to be practically useful can be framed so delicately as to be free of exceptions. But the following empirical generalization seems to me to be true in real life (as distinct from philosophy): The speech act of asserting truly

that there are exceptions to rules is more often than not used to justify wrongdoing, while the speech act of asserting falsely that there are none is more often than not an attempt (usually unsuccessful) to prevent wrongdoing. Kant realizes something like this when he denies we should teach children that there can be “necessary lies,” since “they would soon take the smallest excuse for a necessity, and often allow themselves to tell lies” (VP 9:490). In this respect, the people now in power are far worse than children. When they argue for exceptions to important rules restricting their conduct – using murderer-at-the-door arguments to justify lying, wartime emergencies to justify indefinite detentions without charge or trial, or ticking-bomb arguments to justify torture, or weapons of mass destruction in the wrong hands to justify preventive wars – then you can be certain that they will lie to your face when there is no murderer at the door, violate basic human rights when there is no emergency, use torture on prisoners when there is no ticking bomb, and start blatantly unjust wars of aggression when there are no weapons of mass destruction. Rulers who allow themselves such license regarding human rights pose a far greater danger than any of the enemies with whose specter they try to frighten us.

Constant charged that Kant’s position would make all social life impossible. This claim seems wildly exaggerated; it seems to have merit only in cases where circumstances have made a genuine condition of right, hence a free and just society, impossible already. The Kantian rejoinder to this charge, which is surely no exaggeration, is that something like Constant’s laxer policies on political truthfulness are precisely what *do* make possible the kind of political life under which we presently suffer.

## Notes

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<sup>1</sup> Kant's writings will be cited according to the following system of abbreviations:

- Ak            *Immanuel Kants Schriften*. Ausgabe der königlich preussischen Akademie der Wissenschaften (Berlin: W. de Gruyter, 1902-). Unless otherwise footnoted, writings of Immanuel Kant will be cited by volume:page number in this edition. Works not abbreviated below will be cited by Ak volume:page.
- Ca            *Cambridge Edition of the Writings of Immanuel Kant* (New York: Cambridge University Press, 1992-) This edition provides marginal Ak volume:page citations.
- EF            *Zum ewigen Frieden: Ein philosophischer Entwurf*, Ak 8  
*Toward Perpetual peace: A philosophical project*, Ca Practical Philosophy
- G             *Grundlegung zur Metaphysik der Sitten* (1785), Ak 4  
*Groundwork of the metaphysics of morals*, Ca Practical Philosophy  
Translations from *Groundwork for the Metaphysics of Morals*, translated by Allen W. Wood (New Haven: Yale University Press, 2002).
- KpV          *Kritik der praktischen Vernunft* (1788), Ak 5  
*Critique of practical reason*, Ca Practical Philosophy
- KrV          *Kritik der reinen Vernunft* (1781, 1787). Cited by A/B pagination.  
*Critique of pure reason*, Ca Critique of Pure Reason
- MS          *Metaphysik der Sitten* (1797-1798), Ak 6  
*Metaphysics of morals*, Ca Practical Philosophy
- MVT         *Über das Misslingen aller philosophischen Versuche in der Theodicee*, Ak 8  
*On the miscarriage of all philosophical trials in theodicy*, Ca Religion and Rational Theology
- R             *Religion innerhalb der Grenzen der bloßen Vernunft*, Ak 6  
*Religion within the boundaries of mere reason*, Ca Religion and Rational Theology
- TP            *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*, Ak 8  
*On the common saying: That may be correct in theory, but it is of no use in practice*, Ca Practical Philosophy
- VA            *Anthropologie in pragmatischer Hinsicht* (1798), Ak 7  
*Anthropology from a pragmatic standpoint*, Ca Anthropology, History and Education
- VE            *Vorlesungen über Ethik*, Ak 27, 29 Cited by volume:page number  
*Lectures on Ethics*, Ca Lectures on Ethics
- VP            *Pädagogik*, Ak 9  
*Lectures on Pedagogy*, Ca Anthropology, History and Education
- VRL         *Über ein vermeintes Recht aus Menschenliebe zu lügen*, Ak 8  
*On a supposed right to lie from philanthropy*, Ca Practical Philosophy

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<sup>2</sup> See *Kant's Ethical Thought* (New York: Cambridge University Press, 1999), pp. 322-323; "The Final Form of Kant's Practical Philosophy," in Mark Timmons (ed.), *Kant's Metaphysics of Morals: Interpretive Essays* (Oxford: Oxford University Press, 2002), pp. 5-10.

<sup>3</sup> I do not say this is an impossible way of looking at duties of right, and Kant does think we can consider violations of people's rights in this way, at least for the purpose of illustrating the Formula of Humanity (G 4:430). But because it confuses things by considering a duty of right only insofar as it exemplifies an ethical principle, it is not a perspicuous way to present this duty. I think this is why Kant himself, either in the *Metaphysics of Morals*, or in his lectures on ethics, or especially in the late essay on the supposed right to lie, never discusses lying as a violation of a duty to others by relating it to the formula of universal law or the formula of humanity.

<sup>4</sup> It is similar if we accept the stipulation that the term 'murder' is equivalent to 'wrongful homicide'. Then it will be analytic, hence true without exception, that every murder is wrong. But that would settle nothing about when a homicide is considered wrongful – or even about when an act of killing counts as a homicide. So its being analytic that murder is always wrong involves neither strict nor lax views about the morality of killing.

<sup>5</sup> However, it should be observed that those who, in philosophical discussions, lightheartedly stipulate that in the example they are considering, we can be sure the lie will never be found out, or that its discovery will have only marginal influence on people's confidence in trials or contracts, usually grossly exaggerate the certainty we could ever have that these stipulated conditions would hold in real life.

<sup>6</sup> Rawls, "Two Concepts of Rules," *Philosophical Review* 64 (1955), pp. 3-32.

<sup>7</sup> It may be that Kant's conception of right is unacceptable to some people for various reasons. They may not value coercively protected external freedom as much as Kant thinks the right of humanity requires us to, or they may not think that our freedom requires protection by a coercive system with such strict laws. Objections of this kind would strike at the fundamentals of Kant's entire conception of right. If someone rejects that conception, there is no mystery about why that person would reject Kant's principle that intentionally untruthful declarations are always lies, that is, are always violations of right. In fact, I think such a person would even be rejecting (or holding inapplicable to human actions) the very concept of a "declaration," since that concept involves the concept of a system of right and of a kind of statement whose truthfulness is demanded by such a system. But of course if we reject the very terms in which the issue is posed, then it is a misunderstanding to think that Kant is taking a position on an issue that could only be described in quite different terms, or using the same words but with quite a different meaning. If we accept the Kantian idea of right and the attendant idea of a declaration, but are worried that Kant's system of right makes too many statements into 'declarations' or is too inflexible in its prohibition on false declarations, then some of those worries will be considered immediately below, in connection with the famous dispute between Kant and Constant. We will see that Kant is far from holding all statements to be declarations, and that he may even allow for untruthful declarations under certain circumstances.

<sup>8</sup> The example occurs in a casuistical question not about lying as a violation of right, but lying as a violation of a perfect duty to oneself, grounded on self-respect. I suggest that the most pointed issue raised by the example in this regard is whether it violates the servant's self-respect to obey a command to lie to the police, making him complicit in his master's crime. And Kant does explore the question of that complicity – namely, the imputability to the servant of the guilt for the crime -- in his discussion of the example. And at the end he returns to the fact that the lie was a "violation of the servant's duty to himself, whose results his conscience imputes to him" (MS 6:431). If that is the issue, then Constant's reworking of the example totally changes the issue that is supposed to be raised by it.

<sup>9</sup> Constant, *Des réactions politiques*, sixième cahier no. 1, *Écrits et Discours politiques*, ed. O. Pozzo di Borgo (Pauvert, 1964), pp. 63-71; Kant VRL 8:429.

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<sup>10</sup> It is striking how seldom any of the literature has taken note even of the fact that the issue is about right, not about ethics. Attempts to defend or correct Kant's position through applications of FUL – which would be irrelevant if the issue about right rather than ethics – are deplorably common. Almost the sole scholar who has seen the point is Hans Wagner, "Kant gegen 'ein vermeintes Recht, aus Menschenliebe zu lügen'," in G. Geismann and H. Oberer (eds.) *Kant und das Recht der Lüge* (Würzburg: Königshausen & Neumann, 1986), pp. 95-103. But see also Julius Ebbinghaus, *Briefwechsel mit H. J. Paton*, *ibid.*, pp. 66-68, and the Introduction to the same volume by Hariolf Oberer, pp. 19-20.

<sup>11</sup> Tamar Schapiro, "Compliance, Complicity, and the Nature of Nonideal Conditions," *The Journal of Philosophy*, 100:7 (July 2003) 329-355.

<sup>12</sup> Of course some declarations might be given under conditions of confidentiality, as in the case of a letter of recommendation for someone to a prospective employer. But special cases like this do not seem to constitute counterexamples to the claim Kant is making. For although not everyone is entitled to have access to the content of such declarations, there is no relaxation, as far as I can see, of the requirement that they be truthful. It is not as though the recommender is required to make truthful declarations to the prospective employer but is permitted to make *untruthful declarations* to anyone not entitled to confidential communications.

<sup>13</sup> "In speaking truth to a jury, I may possibly foresee that my words, operating along with other statements and indications, will unavoidably lead them to a wrong conclusion as to the guilt or innocence of the accused, as certainly as I foresee that they will produce a right impression as to the particular matter of fact to which I am testifying." Henry Sidgwick, *The Methods of Ethics* (Indianapolis: Hackett, 1981), p. 97. Sidgwick admits that the morality of common sense would call it truth-speaking to testify truthfully to the particular fact in question. But he appears to conclude – though without quite saying this explicitly -- that there is a certain artificiality in the common sense notion of veracity here – as though a witness who is *really* interested in *the truth* might do better to lie about the particular fact in order to bring it about that the jury draws the *right* conclusion about the guilt or innocence of the accused. That would justify a conclusion directly contrary to the Kantian one about our example. However, it would also be a most remarkable conception of what the oath to tell the truth at trials binds us to do. It would imply that a witness might lie whenever they thought the jury would be misled in their conclusions about the case by truthful testimony and would be more likely to reach the right conclusions about the case by being fed intentionally false testimony. If Sidgwick were called as a witness at a trial, and I were in the position of the attorney cross-examining him with the aim of discrediting his testimony, I think all I would need to do is read to the jury this passage from the *Methods of Ethics*, and suggest to them the non-quite-stated conclusion that it looks like Sidgwick wants to draw. Unless Sidgwick were prepared to repudiate this interpretation of his meaning, and were capable of doing so quite convincingly, I submit that the jury would be quite justified in ignoring everything he says on the stand as totally lacking in credibility.

<sup>14</sup> Reflection on this witness's troubled predicament also gives me the occasion to voice a complaint about some current fashions in ethical theory. In testing moral principles against our intuitions, moral philosophers often put a premium on getting the "right answer" to any example, even the most extreme and conflict-ridden examples, such as those involving runaway trolleys that are going to kill either one group of people or another (you have to decide which), or examples where you have to choose between killing a hundred people and blinding a thousand. In some of these examples, you would have to be morally demented to think there is any clearly right answer at all. To test a moral theory by the answer it gives to these examples seems to me a sign of serious moral blindness. The important thing in such extreme cases is surely that your theory should provide the right way of thinking about the case, whatever the agent might decide to do. Kant's emphasis on the duty of truthfulness in declarations is surely one indispensable thought the witness ought to have in this case.

<sup>15</sup> Stephen Holmes, *Benjamin Constant and the Making of Modern Liberalism* (New Haven: Yale University Press, 1984), pp. 107-110.

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<sup>16</sup> The issue Kant means to raise here is sometimes misleadingly stated by those arguing on the other side as an issue about whether the standards of “private morality” apply to the “public” realm of politics, statesmanship, war and the like. For example, Carl Schmitt holds that the political has its “own criteria” which are distinct from those that can be traced back to moral concepts of good and evil. See Carl Schmitt, *The Concept of the Political*, translated by George Schwab (Chicago: University of Chicago Press, 1996), p. 26. When Kant speaks of “morality” in relation to politicians, as he does in *Perpetual Peace*, the standards he is using are never those of private ethics but always of public right. If Schmitt’s claim is that politicians or statesmen are bound not by the criteria of private morality, but by standards appropriate to the political realm, then Kant agrees. Kant thinks they are bound by the standards appropriate to their position as exercisers of public coercive force, which must be regulated by laws of right. These standards are looser than private ethical standards, since they relate to a system of laws that are in general coercively enforceable – and this is looser than the system of ethical laws through which each of us should inwardly regulate our private behavior. As I have already mentioned, however, not all standards of right are coercively enforceable, and Kant is famous (or infamous) for holding that subjects have rights against heads of state, and heads of state have duties of right, that no one is in a position to enforce coercively (as by violent revolution, which might be the only conceivable means for enforcing them). So Kant’s position, while no doubt different from Schmitt’s, is not as different from it (or as vulnerable to criticism) as people like Schmitt often think. The problem is that for many politicians (and the “realist” theorists who enjoy identifying with those who exercise great power over their fellow human beings), any constraint on the use of that power based on mere principle (rather than arising from external constraints or political self-interest) feels like an annoying incursion on their prerogatives according to “inappropriate” standards. For the simple reason that Schmitt’s position seems to arise from this kind of sympathy, I regard it as morally bankrupt from the start. It would be cleaner if people in power simply admitted that they feel entitled to do whatever they feel like doing as long as their self-interest does not forbid it. Of course if they did admit this, you might think they could not stay in power very long – or at least you might have thought this if you had not considered the recent political success of the Republican party in the U.S., in which criminal conduct has often been accompanied by an astonishing degree of brazenness, and the inevitable hypocritical attempts to justify it have often been transparent to the point of negligence.