

## Kant and Lying to the Murderer at the Door . . . One More Time: Kant's Legal Philosophy and Lies to Murderers and Nazis

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### Introduction

Kant's example of lying to the murderer at the door has been a cherished source of scorn for thinkers with little sympathy for Kant's philosophy and a source of deep puzzlement for those more favorably inclined. The problem is that Kant seems to say that it is always wrong to lie—even to a murderer asking for the whereabouts of his victim—and that if one does lie and despite one's good intentions the lie leads to the murderer's capture of the victim, then the liar is partially responsible for the killing of the victim. If this is correct, then Kant's account seems not only to require us to respect the murderer more than the victim, but also that somehow we can be responsible for the consequences of another's wrongdoing. After World War II our spontaneous, negative reaction to this apparently absurd line of argument is made even starker by replacing the murderer at the door with a Nazi officer looking for Jews hidden in people's homes. Does Kant really mean to say that people hiding Jews in their homes should have told the truth to the Nazis, and that if they did lie, they became co-responsible for the heinous acts committed against those Jews who, like Anne Frank, were caught anyway? Because this is clearly what Kant argues, the critics continue, his discussion of lying to the murderer brings out the true, dark side not only of Kant's universalistic moral theory but also of Kant himself. We get the gloomy picture of a stubborn, old academic who refuses to see the inhumane consequences of his theory, and instead grotesquely defends the inhumane by turning it into an a priori, moral command.

In this paper, I argue that Kant's discussion of lying to the murderer at the door has been seriously misinterpreted. My suggestion is that this is primarily a result of the fact that the *Doctrine of Right* with its conception of rightful, external freedom has been given insufficient attention in Kant interpretation. It is in the *Doctrine of Right* that Kant discusses rightful interaction in the empirical world. Hence it is in this work we find many of the arguments needed not only to understand his analysis of lying to the murderer in "On a Supposed Right to Lie from Philanthropy," but also to analyze the added complexity the Nazi officer brings to the example. When we interpret lying to the murderer in light of Kant's

discussion in the *Doctrine of Right*, we can make sense of why lying to the murderer, although a wrong, is not to wrong the murderer, why we become responsible for the bad consequences of the lie, and finally why lying is *to do wrong in general*. The account of rightful freedom provided in the *Doctrine of Right* also makes it possible to see why replacing the murderer with a Nazi officer adds philosophical complexity rather than just one more reason to reject Kant's view. The introduction of the Nazi officer requires us to consider the role of a public authority in ensuring rightful relations in general and what happens to the analysis of lying when rightful interactions as a matter of fact are no longer possible. We will see that the only time *doing wrong in general* by lying is legally punishable is when we lie to or as a representative of the public authority. The Nazis, however, did not represent a public authority on Kant's view and consequently there is no duty to abstain from lying to Nazis. Two further strengths of Kant's account, I propose in the final sections of the paper, lie in its ability to critique how European legal systems aimed to deal with the Nazis after the war was over and in its contribution to our understanding of the experiences of war heroes.

### The Murderer at the Door

Kant's short essay "On a Supposed Right to Lie from Philanthropy" (hereafter "Supposed Right to Lie") is a response to a challenge raised by Benjamin Constant in 1797. Kant begins by quoting Constant's challenges to him. Constant argues:

The moral principle, "it is a duty to tell the truth" would, if taken unconditionally and singly, make any society impossible. We have proof of this in the very direct consequences drawn from this principle by a German philosopher [Kant], who goes so far as to maintain that it would be a crime to lie to a murderer who asked us whether a friend of ours whom he is pursuing has taken refuge in our house. . . . It is a duty to tell the truth. The concept of duty is inseparable from the concept of right. A duty is that on the part of one being which corresponds to the rights of another. Where there are no rights, there are no duties. To tell the truth is therefore a duty, but only to one who has a right to the truth. But no one has a right to a truth that harms others. (8: 425)

Constant here argues against Kant that if it is always wrong to lie, then society is impossible, by which, I believe, Constant means that it would be practically impossible to protect oneself against violent aggressors. In addition, Constant maintains, whether or not lying is wrong depends on the circumstances, that is, to whom we are lying. Murderers do not have a right to the truth and hence no one has the corresponding duty to tell them the truth. Constant therefore concludes—allegedly against Kant—that lying to murderers should not be considered a crime.

The traditional reading of Kant outlined in the introduction is very much in line with Constant's general take on Kant. In addition, of course, it takes Kant's

response to Constant in the “Supposed Right to Lie” as more support for the reading. And if one were to choose a particular part of Kant’s essay that appears to confirm the traditional view, one is likely to choose the following passage:

... if you have *by a lie* prevented someone just now bent on murder from committing the deed, then you are legally accountable for all the consequences that might arise from it. But if you have kept strictly to the truth, then public justice can hold nothing against you, whatever the unforeseen consequences might be. It is still possible that, after you have honestly answered “yes” to the murderer’s question as to whether his enemy is at home, the latter has nevertheless gone out unnoticed, so that he would not meet the murderer and the deed would not be done; but if you had lied and said that he is not at home, and he has actually gone out (though you are not aware of it), so that the murderer encounters him while going away and perpetrates his deed on him, then you can by right be prosecuted as the author of his death. For if you had told the truth to the best of your knowledge, then neighbors might have come and apprehended the murderer while he was searching the house for his enemy and the deed would have been prevented. Thus one *who tells a lie*, however well disposed he may be, must be responsible for its consequences even before a civil court and must pay the penalty for them, however unforeseen they may have been; for truthfulness is a duty that must be regarded as the basis of all duties to be grounded on contract, the laws of which is made uncertain and useless if even the least exception to it is admitted.

To be *truthful* (honest) in all declarations is therefore a sacred command of reason prescribing unconditionally, one not to be restricted by any conveniences (8: 427).<sup>1</sup>

According to the traditional reading, we should view Kant’s responses to Constant through the lenses provided by, for example, his account of the moral law in *Groundwork*. In this work, we learn that all moral actions must be based on a maxim that can be universalized and that we must do the right thing because it is the right thing to do—or from duty. When viewed this way the “Supposed Right to Lie,” including passages like the one quoted above, is seen as accomplishing two goals: it simply repeats how one ought *never* to lie as the maxim of lying cannot be universalized, and it cashes out the implications of this moral principle with regard to people’s enforceable rights and duties against one another. Because lying is not a universalizable maxim, Kant is seen as saying, lying to the murderer is a crime. And of course, it is continued, this must mean not only that one cannot lie to a run of the mill murderer at the door, but also not to the worst of murderers, such as the Nazis. Lying to Nazis is therefore also a crime. There are no exceptions to the rule—the truth must be told. To make things even worse, in the above passage Kant can be seen as arguing that if you lie despite the immorality of doing so, you are also *legally* responsible for the bad consequences of the lie. So, for example, if the Jew hiding in your house sneaks out while you are lying to the Nazi, and hence as the Nazi walks away from your house she actually captures the fleeing Jew, then you are partially responsible for what happens to the Jew even if it was not foreseeable. But this analysis is clearly absurd and morally repugnant. If this is all Kant has to say about the issue, the critics reasonably conclude, then the theory’s irreconcilability with any test of reason is demonstrated.

Despite the popularity of the traditional interpretation of Kant's argument in the "Supposed Right to Lie" and despite the apparent textual support of it, I believe it must be mistaken. To start, it seems clear that an interpretative approach that focuses on issues of general morality is wrong, because Kant explicitly says throughout the essay that he is limiting the argument to a discussion of justice or what Kant calls "right."<sup>2</sup> For example, in the block quote in the previous paragraph Kant discusses only how lying to the murderer should be analyzed from the point of view of "public justice," meaning how public courts should respond to such cases (8: 426–29). Kant never discusses first-personal ethics (universalizable maxims and actions from duty) in this paper. In fact, the only mention Kant gives to ethics and virtue serves to emphasize that he is *not* concerned with these issues, but only with right or justice.<sup>3</sup> Furthermore, in *The Metaphysics of Morals*, Kant carefully distinguishes between analyses of justice (right) and analyses of virtue (ethics), and he rejects the idea that justice is merely an enforceable subsection of persons' general ethical duties in the way Constant and the traditional interpretation assume.<sup>4</sup> Instead, Kant sees justice as merely concerned with people's exercise of "external freedom" (setting and pursuing ends of their own in the world), whereas virtue concerns people's exercise of "internal freedom" (acting on universalizable maxims from duty). Justice is limited to what can in principle be coercively enforced (exercises of external freedom—setting and pursuing ends in the world), whereas virtue is limited to what cannot in principle be enforced (exercises of internal freedom—doing what is right simply because one ought to do it.) Hence, although external freedom and internal freedom constitute freedom as such for Kant, he rejects the view that justice is simply an enforcement of our ethical duties or a subset of our ethical duties (6: 218–28). To give one example of particular relevance here—an example I return to below—even though the maxim of lying is not universalizable, Kant rejects the idea that not lying or truth telling as such is an enforceable duty of justice. And the reason is that words do not, in general, have coercive powers (6: 238). Finally, the fact that Constant and the traditional interpretation make Kant come across as an unreflective, dogmatic brute also raises a red flag. Even if Kant is wrong, it is extraordinarily unlikely that he suddenly—after fifty years of writing philosophy that revolutionized the Western tradition—presented as flat-footed a defense of his theory as these interpretations suggest. The sympathetic reader will therefore be most skeptical about ascribing to Kant such an interpretation. But is there an alternative, more plausible reading of Kant on the question of lying?

Before turning to what I believe is the better, and fortunately also philosophically and morally more reasonable interpretation of Kant's essay on lying, let me note why three alternative, sympathetic defenses of Kant's account of the problem of lying to the murderer are equally unsupported by the text. First, one might emphasize that on Kant's account you never have to answer people's questions just because they ask. There is nothing morally problematic about refusing to answer questions from murderers. Instead, the homeowner may simply ask the murderer to go away as it is none of his business who is in his house. The claim

is that Kant's account of truth telling neither entails that one has a duty to disclose information to just anyone, let alone to strangers and murderers, nor that one has no right to privacy. Second, it is tempting to respond to the problem by saying that on Kant's account we can answer, "yes, Ms. X is in the house, but you are not allowed into my house." The homeowner may then continue by saying that if the murderer has some unfinished business with Ms. X, he better contact the police and settle the matter of controversy in a public court of justice. Yet, it is clear that these two responses do not permit us to conclude that we can *lie* to the murderer at the door. Moreover, these responses are explicitly ruled out by the way in which Kant sets up the example. Here, Kant emphasizes the questions at hand:

*first* . . . whether someone when he cannot evade an answer of "yes" or "no," has the *authorization* (the right) to be untruthful. The *second question* is whether he is not, indeed, bound to be untruthful in a certain statement which he is compelled to make by an unjust constraint, in order to prevent a threatened misdeed to himself or to another (8: 426).

Kant therefore explicitly says that he is talking about cases in which someone is unjustly coerced into saying something to avoid wrongdoing to oneself or someone else and cases in which the person answering the door does not have the option of asking the murderer to go away.

A third, also ultimately unsuccessful, way of trying to get out of the problem involves appealing to the Kantian idea that one does not (technically) know whether the victim is in the house. After all, one cannot be sure whether the person sought is (still) in the house, and so one might argue that one can truthfully say that one simply does not know. Yet Kant also rules out this response in the opening pages of the essay. Kant emphasizes that at stake is not a right to the "objective truth" as this is "tantamount to saying that . . . it is a matter of one's *will* whether a given proposition is to be true or false," which is nonsensical (8: 426). Instead, what is at stake is "truthfulness" (*ibid.*), or telling "the truth to the best of your knowledge" (8: 427). Hence, if to the best of your knowledge the victim is in your house, then the truthful answer is that the victim *is* in your house.

### **The Missing Pieces in Traditional Interpretations of Kant's Analysis of Lying to the Murderer at the Door**

We noted above that Kant's analysis of lying to the murderer at the door in the "Supposed Right to Lie" is an analysis of the problem from the point of view of justice or right and not from that of ethics or virtue.<sup>5</sup> So why, then, and in which sense does Kant mean that lying is unconditionally wrong and punishable from the point of view of right? To see this, let us first pay attention to the ways in which lying is and is not a wrong according to Kant's *Doctrine of Right*. In this work, Kant argues that everyone is born with a right to freedom, or a right to "independence from being constrained by another's choice . . . insofar as it [one's exercise of external freedom] can coexist with the freedom of

every other in accordance with a universal law” (6: 237). On Kant’s theory of right, to interact rightfully is to set and pursue one’s own ends in space and time—to exercise “external freedom”—in ways reconcilable with other persons’ right to do the same under universal law.<sup>6</sup> Interestingly, on Kant’s account, to lie as such is therefore not necessarily to wrong another person from the point of view of justice. Others do not have a right against you that you tell the truth, because if they did, they would have an enforceable right to what is yours (your information), and this is irreconcilable with your innate right to freedom. Hence, in contrast to what Constant thinks, Kant actually rejects the claim that a person has a right against another that he tells her the truth. Indeed, against Constant Kant argues that with regard to merely the question of whether or not a person has a right against another that he tells her the truth, it is irrelevant whether or not telling the truth harms anyone. A person simply does not have a right against another person that he tells her the truth.

In the “Introduction to the Doctrine of Right,” Kant expresses the above points by arguing that the innate right to freedom is to be “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 untrue and insincere . . . for it is entirely up to them whether they want to believe him or not” (6: 238). Words in general do not have coercive power on Kant’s view. Although we will return to two exceptions shortly, the general point is that I cannot obtain material objects belonging to others simply by uttering words. Hence, I can say whatever I want, including telling a lie, because simply by uttering my thoughts I cannot deprive others of what is theirs; they can, after all, simply ignore what I am saying. It’s a “sticks and stones” point. From the point of view of justice, therefore, you do not wrong another simply by refusing to give him some particular piece of information or simply by lying to him. Moreover, it is totally up to you what information you want to share with another and whether, in fact, what you say is insincere or untruthful. Indeed, as in the case of the murderer at the door, if someone forces you into a situation from which you cannot escape unscathed without giving up your information, this person wrongs *you*, not the other way around. This is why Kant says in the “Supposed Right to Lie,” as noted above, that the case of the murderer at the door involves one person (the murderer) subjecting another to “an unjust constraint” (8: 426). It is an unjust constraint because the murderer at the door does not have a right to obtain your information and hence threatening you to get it wrongs you.

To lie as such, therefore, is not to wrong another person from the point of view of justice, because lying as such is not a coercive act, understood as a hindrance of someone else’s external freedom (her ability to set and pursue ends of her own with her means). In general, lying does not involve coercively taking something that belongs to another person, and so it does not involve depriving another of her external freedom. This is also why, from the point of view of justice,

the only two times lying as such is a wrong against another person are when the lie deprives another of her rightful honor (defamation) and when it is part of a contractual negotiation.<sup>7</sup> In these cases, the lie serves to coercively deprive someone else of something that rightfully belongs to her, either her reputation or something that would not be agreed to except under false pretenses. Lies in these scenarios are acts of coercion as they take some of the other person's means without that person's consent, which is to hinder the other person's external freedom. In a case of wrongful defamation a person is deprived of her rightful honor by being denied public recognition for the life she has lived. Actions are wrongly imputed to her or actions she has done are denied her. By so doing, the defamer treats the defamed person's honor or reputation as if it were her own means. Similarly, in the case of contracts, instead of obtaining a thing or service through consent, the liar obtains it through deception. Lying as part of contractual agreements is akin to stealing and not only voids the contract, but also is a punishable wrong.

In light of the above, we can appreciate why, in the "Supposed Right to Lie," Kant does not argue that lying to the murderer at the door is a wrongdoing because it involves wronging the *murderer*. Against Constant's interpretation of Kant's position, Kant denies that lying to the murderer is to commit a crime against the murderer. Indeed, because the murderer does not have a right to your information, he actually wrongs *you* by threatening you into telling the truth. So, of the murderer and the liar, the murderer is the one committing the crime, not the liar.

But Kant's account does not stop here, for the liar does do wrong, even though it is not against the murderer. Kant surprisingly argues that the liar commits wrongdoing "in general" (8: 426, 429) when she lies. The duty not to lie is not a duty of justice we hold against any particular other person, say the murderer, but a duty each one of us has towards "everyone" (8: 426). Kant expresses this point also by saying that though by lying "I in fact wrong no one, I nevertheless violate the principle of right with respect to all unavoidable necessary statements *in general* (I do wrong formally though not materially)" (4: 429). I do not wrong anyone in particular ("materially"), but I wrong everyone by making a condition of rightful interaction impossible in principle ("formally"). Rather than this making lying less problematic from the point of view of right, however, Kant sees it as making it *more* problematic: by lying one does not wrong another particular person, but humanity, by acting in a way irreconcilable with rightful interactions as such (*ibid.*). Lying makes it impossible to interact both in a way consistent with rightful honor and contracts and also generally because it undermines the trust even mundane consensual interaction requires. For example, actions requesting information about directions, about meetings, or about other people and so on are all incompatible with lying. All such consensual, rightful interactions rely on truth telling. Hence, lying is wrong in general as it is inconsistent with a world of rightful interaction, even when—as is generally the case—it is not a wrong of justice against another, particular person.<sup>8</sup>



At this point, it is important to note one more important aspect of Kant's analysis of the murderer at the door. His primary aim is to establish how a public court of justice should consider cases where someone faces situations in which she could either tell the truth or lie to a potential wrongdoer (8: 427). The focus is not to unravel complicated scenarios such as those involving Nazis and other unjust regimes, but on how a just state's legal system should handle cases involving an innocent private person's imparting of information about a victim to a potential wrongdoer. His basic claim is that if a person chooses to stay out of the interaction between the murderer and his potential victim by telling the truth to the potential murderer, then a public court of justice cannot punish her for having done so. In these situations, only the murderer can be punished because the entire action is traceable only to him. In contrast, when a person lies to someone, she deliberately deceives another person (the potential murderer) with regard to his perception of the empirical world, and in this way she becomes a co-author of the action undertaken. The liar, therefore, is punishable for the bad consequences of the lie.

To illustrate the logic of Kant's reasoning, let us first consider a case of lying not to a murderer, but simply to another person. According to Kant, if someone asks you for directions and your lying answer sends him into an unsafe neighborhood where he is robbed, then you are partially responsible for the resulting robbery despite having no intention or foreknowledge of the robbery. Through lying, you have chosen to deceive another with regard to the correct description of the world in which she acts, and this deception is, in part, what allows the robbery to take place. Hence, you are responsible for the bad consequences of your lie. Insofar as this example helps to illustrate the case of lying to the murderer at the door, it is important to take care not to misunderstand what Kant is saying. Importantly, we should note that Kant's analysis as outlined above proceeds on the assumption that a friend "has taken refuge" in your house (8: 425). The argument, in my view, proceeds to establish two points. First, you cannot be under a legal obligation to lie to protect someone who has taken refuge in your house—not even your friend. Otherwise, anyone fleeing into another person's home would have a legal right against the homeowner that they be helped in their escape. Moreover, truth telling on the part of the homeowner—or staying out of others' troubles—would be punishable. If this were the case, then persons would be seen as having the right to choose to put each other into situations where they must lie to dangerous murderers rather than having the option to stay out of it by telling the truth. And Kant maintains that because persons have an innate right to freedom, a public court can neither give any of its subjects a right against others to be helped in this way, nor can courts fail to respect people's rights to avoid wrongful interactions by telling the truth. Therefore, a person cannot be seen as committing a wrongdoing against a person hiding in her house if she refuses to take part in the lying interaction with the murderer. In contrast, and this is the second point, by unilaterally choosing to partake in the interaction, namely by lying about the location of the victim, the homeowner also becomes responsible for the unintended, yet bad consequences of the lie. The reason is that by lying you choose to



take part in determining a particular course of actions by setting up a deceptive framework in which another acts. That is to say, when you lie to the murderer, it is obviously not your intention to help the murderer capture the victim—quite the opposite. But if your action (lie) actually makes it possible for the murderer to get to his victim, then you are legally responsible (“you can by right be prosecuted”) for these bad consequences. It may, after all, be the case that the person who fled into your house is counting on you to tell the truth, and while the murderer is searching the house she plans to make her escape. By unilaterally choosing to try to set up a deceptive framework for the murderer and his victim, even under the best of intentions, you run the risk of being wrong; by taking that risk, you incur responsibility for the bad consequences.

To see more clearly which scenario Kant is considering, we may distinguish the case of the person who has taken refuge in your house from three other cases where your decision to lie is not a unilateral decision of the kind described above. First, consider the case in which the fleeing friend asks you both whether she can hide in your house and whether you will lie for her. You answer “yes” to both questions, but in fact you have lied, because you do not intend to lie for her. In this scenario, clearly, you become an accomplice in the murder when you tell the murderer where your friend is. One cannot lie to one’s friend (saying that one will lie to the murderer), tell the truth to the murderer (about the friend’s location) and then claim that because one told the truth to the murderer, one is not legally responsible for the bad consequences of the lie to one’s friend. This is therefore not a case in which one’s right to stay out of a situation must be protected, for there must be truth telling throughout the process in order to stay out of it.

A second case goes as follows. Assume that you honestly promise the fleeing friend that you will lie, but as a matter of fact, it turns out that, face to face with the murderer, you are so scared that you tell the truth, revealing your friend’s location. I believe that Kant would say that you are not to be punished also in this case. Consenting to lie on behalf of a friend cannot be understood as carrying legal obligations. Others cannot have the right against you that you perform actions that are wrong in general, such as lying, even if consensual. That you may not be able to go through with the lie is a risk that your friend runs by asking you. Hence, even if you consent to partake, you do not thereby incur legal obligations.<sup>9</sup> A third and final case involves the following scenario. Assume that you and your friend consent and you go through with the agreement by lying to the murderer. But your friend, despite your agreement to the contrary, chooses to run out of the house and is caught by the murderer. In this case, the reason why your friend is captured is not your lie, but either your friend’s failure to act according to what the two of you agreed to do or her decision to act otherwise despite your agreement. Thus, by acting contrary to the agreement, your friend assumes the risk and the responsibility of being caught.

The reason I draw attention to these different scenarios is to emphasize that in the original case Kant is considering only how a public court should analyze a situation in which someone runs into your house to hide (“takes refuge”) and you

are considering what to do as the murderer is banging on the door. Kant argues that if you unilaterally choose to partake in what follows by lying, the fact that you do it from a good heart does not, as such, eradicate your responsibility for any bad consequences following from your lie. By telling the truth, in contrast, you do not take part in the interaction, but leave it open what will happen next: whether the victim sneaks out, whether the neighbors and you manage to subdue, incapacitate or kill the murderer as he is searching through your house, or whether the police arrive in time to stop the murderer. In other words, if you unilaterally choose to lie you must be willing to face the legal consequences if your judgment is faulty and your lie actually ends up helping the murderer capture the victim.

### **Going beyond Kant's Discussion of Lying to the Murderer: The Nazi Case**

As emphasized above, I believe Kant's discussion in "Supposed Right to Lie" is primarily aimed at establishing how a public authority should deal with cases involving subjects who have lied from benevolent intentions. Yet I do not think it constitutes the complete Kantian analysis of all cases of lying. In particular, it does not cover the case in which the murderer at the door is a Nazi officer. In order to deal with this case, we must turn to two important arguments in the *Doctrine of Right*. In the first part, on private right, Kant argues that choosing to stay in the state of nature is not necessarily to wrong another particular person, but yet it always involves committing wrongdoing in general, indeed "in the highest degree." In light of this account, we will see why, on Kant's account, the only times general wrongdoing by lying can be legally punishable occur when we lie to, or as, public officials. In the second part, on public right, Kant argues that the public authority, although non-voluntary, is not absolutist. Kant's non-absolutist conception of the sovereign explains why once we introduce the Nazi officer into the example, the situation changes, namely it is one in which rightful interaction is no longer possible at all. The Nazis did not represent the public authority, but its antithesis. Therefore, no one was under an obligation to tell them the truth and the Nazis did not have the right to punish. The issue of rightful punishment therefore did not arise until the legitimate European states once again were able to regain power, and I will argue that Kant's account seems particularly well suited for critiquing their reasoning regarding the punishment of those who had taken part in the Nazi movement.

Let us start with the argument concerning the impossibility of justice in the state of nature. In the first part of the *Doctrine of Right*, Kant gives an account of private right—or right within the parameters of the state of nature, understood as the pre-state condition.<sup>10</sup> Kant here argues that because we are embodied beings, the innate right to freedom gives us a right to our bodies. In addition, however, he argues that we need an account of how we can acquire "external objects of choice" as our own, because without being able to acquire and have empirical things as our own, it is impossible to set and pursue ends of our own in the world—or to be externally free. Kant distinguishes three categories of

external objects of choice, making three accounts of private right necessary, namely private property (things), contracts (services), and other persons (fiduciary relations, including family). The general question posed in the private right section of the *Doctrine of Right* concerns how to give an account of the acquisition and having of external objects of choice that is reconcilable with everyone's innate right to freedom. Kant's rather remarkable claim is that it is impossible to conceive of such reconciliation within the conceptual framework of the state of nature. For reasons we cannot engage here, Kant argues that problems relating to assurance and indeterminacy concerning the correct specification and application of the abstract principles of private right cannot in principle be solved in the state of nature. Only by introducing the concept of a public authority, or civil society, is it possible to give an account of rightful acquiring and having the three types of external objects of choice. Consequently, Kant concludes the account of private right by saying that we have an enforceable duty to enter civil society and that insofar as one chooses to stay in the state of nature, one does wrong in the highest degree.<sup>11</sup>

Because private individuals cannot in principle solve the problems of assurance and indeterminacy, the establishment of a public authority is constitutive of rightful interaction in the empirical world. Only by establishing a common agency—a public agency through which we act together—can we enable rightful interactions in the world. But important for our analysis of the Nazi case is that just punishment is impossible in the state of nature.<sup>12</sup> There is no public authority with standing to resolve particular disputes between disagreeing individuals, and consequently no rightful punishment can occur there either. This is why Kant does not discuss punishment as part of his doctrine of private right; just punishment is impossible in the state of nature because private individuals cannot punish rightfully. This is also why Kant's analysis in the "Supposed Right to Lie" simply addresses the question of how an already instituted *public court* should address the problem of lying when positing laws governing private conflicts.

To fully elicit the added complexity when the murderer is a Nazi, it is useful also briefly to explain Kant's claim that choosing to stay in the state of nature is to do wrong in the highest degree. Because rightful interacting is seen as impossible in the state of nature, the state of nature is necessarily a state of wrongdoing. Choosing to stay in this condition is therefore to reject the possibility of rightful interaction between yourself and others, which is why you can be forced to leave the state of nature. Yet, it is important to note that if none of the interacting parties wants to enter civil society, then they do not wrong one another by choosing to stay in this condition. Because no party wants to interact rightfully with the others, they all choose to interact in ways that are *at most* devoid of justice. That is to say, if everyone happens to agree on everything and coercion is never needed, then their interactions are merely "devoid of justice," whereas if they do disagree on various issues and decide to solve their disagreements with violence, then there is "injustice" (6: 307).<sup>13</sup> But regardless of whether or not there are disagreements and coercion, by refusing to interact in rightful ways, namely by refusing to institute

a public authority, they refuse the possibility of justice. And to do this—to refuse the possibility of rightful interaction—is to do wrong in the highest degree (6: 305–8, 311–13). Finally, if all but one refuse to enter civil society and the one is too weak to force the others to do so, then those who refuse to enter civil society both wrong the one *and* do wrong in the highest degree. That is, the condition “given the intention to be and to remain” in the state of nature is not met (6: 307), as the one does not have the intention to be or to remain in this condition. The one wants to leave, but cannot. In this case, rather, the one does not have “to wait for actual hostility; one is authorized to use coercion against someone who already . . . threatens him with coercion” (*ibid.*).

The final piece of exegesis needed before we can return to the case of the Nazi officer concerns Kant’s account of public right. The main aim in the public right section of the *Doctrine of Right* is to delineate the institutional requirements constitutive of civil society, and hence concerns the way in which Kant’s non-voluntarist account of political obligations does not result in an absolutist conception of political legitimacy. More specifically, Kant argues that the public authority must be set up as the rule of public law for everyone born on the land. To do this, the sovereign is set up as a tripartite authority without private property and private interests; the laws protect the private rights of each person born on the land, and finally there must be a certain institutional structure to reconcile the sovereign’s rightful monopoly on coercion with the rights of each citizen by giving citizens public right claims on their public institutions. For example, the sovereign must institutionally guarantee unconditional poverty relief for all its citizens and it must provide public, institutional control over economic and financial systems so that all citizens can interact within these systems as free and equal.<sup>14</sup>

It is important to appreciate how this account of the legitimacy of a public authority has implications for when lying deserves legal punishment. First note that in “Supposed Right to Lie” Kant is simply evaluating how public courts should evaluate private persons who lie to potential wrongdoers. He is not considering how a public court should deal with cases where private citizens lie to public officials, whether in court, to the police or to anyone else in her capacity as a public officer. He is also not considering how public courts should deal with cases where the lies issue from people acting in their capacity as public officials. What, then, are the conclusions we should draw from Kant’s account of the public authority with respect to these kinds of lies? First, if one is lying to a representative of the public authority, one is not lying to a private person, but to a public official. The public authority represents all of us and yet no one in particular; it is not a private person, but a public, artificial person (an institution) that we have created because we need a common agency through which to act together. Therefore, if one lies to a public officer or one lies under oath in court, then one lies to “everyone” and not to anyone in particular, or one commits a “formal” rather than “material” wrong. Similarly, if a person in her capacity as a public official lies about her actions in that capacity, then she commits a formal wrong too, because

in so doing she fails to represent everyone, and yet no one in particular. By lying and deceiving the people with respect to the actions of her public office, she effectively privatizes the public office by allowing her private concerns and judgments to determine how the public authority should function. Such a person can no longer be entrusted with holding a public office and she can be punished for having corrupted the public nature of the office. Corruption consists in the fact that no longer does the public institution represent everyone, but only the private individual occupying the office. Hence, on this account lying that wrongs humanity (lying that is a wrongdoing in general) is punishable when the lie involves deception issuing from the public authority or when the deception is directed to the public authority. Moreover, because the lie wrongs everyone, one commits a public crime (a crime against the state) rather than a private crime (a crime against another private citizen).

### **Lying to the Nazi Officer**

I take it that the analysis of the Nazi officer is different from that of the general run of the mill murderer in that the Nazi officer claims to be representing the public authority or the sovereign. As we saw above, citizens are legally required to abstain from lying to public officers. Hence, if the Nazi represents the public authority on Kant's view, then one would be required to abstain from lying to the Nazi even though one is permitted to lie to ordinary murderers. But the antecedent is not fulfilled, for the Nazi would not count as representing a public authority. To see why the Nazi cannot be taken to represent the public authority on Kant's view, we may start by exploring Kant's distinction between the despot and the sovereign.

According to Kant the heart of the distinction between the despot and the sovereign concerns the nature of the public institutional structure of civil society, especially and crucially the way in which the sovereign is constituted by the rule of public law. The sovereign is a law-governed, tripartite, public institutional authority founded on a commitment to each of its citizens' innate right to freedom. This commitment involves securing the citizens' protection in terms of their rights to their bodies, their acquired private rights and their public, institutional rights. In these ways, the public, institutional system of the public authority as a whole is made consistent with the innate right rights of each citizen. The Nazi regime was exactly not such a regime, because early on it denied private and public rights to large groups of the population, including the Jews, before it proceeded to set up a legal system that institutionalized not only the deprivation of rights but also the denial of some citizens' rights to their own bodies. The Nazi regime did not represent "everyone, but no one in particular" by securing everyone born on the land the same (private and public) rights as citizens. Therefore, it was not a public authority. That is to say, Nazi Germany was exactly not civil society, but at best despotism. As Kant explains in the *Anthropology from a Pragmatic Point of View*,<sup>15</sup> the republic or civil society is "Power with freedom and law" (7: 331),

whereas despotism, in contrast, is “Law and power without freedom” (7: 330). At best Nazi Germany was despotism at its worst.

But this description seems, in fact, to be far too generous to the Nazi regime. Kant further distinguishes despotism from an even worse condition, namely “barbarism.” Barbarism is “Power without freedom and law” (7: 331).<sup>16</sup> One might reasonably argue, then, that the Nazi officer—and certainly after the “final solution”—is not only *not* representing a sovereign, but he is representing something much worse than the everyday despot because the Nazi regime upheld neither law nor freedom, but systemic might aimed at the destruction of rightful conditions for the people. This is therefore not a case of one particular, private person possibly committing a wrongdoing against another particular, private person, as those who took part in the Nazi movement took part in an institutionalized attempt to destroy rightful relations as such. It was an attempt to institutionalize a coercive system in which there is no innate right to freedom *at all* on the land, which is barbarism at its worst.<sup>17</sup> As long as the Nazis were in control, the citizens of Germany and the occupied European states not only found themselves in a state of nature, but in a state of barbarism. Therefore, fighting the Nazis—by lying or killing—was not to wrong them. Moreover, because Nazism is in fact much worse than the state of nature, rightful punishment in any territory controlled by the Nazis was in fact impossible—whether of ordinary murderers or extraordinary ones like the Nazis themselves.

The analysis does not stop here, however, as it is important to be aware that from the normative point of view of the *Doctrine of Right* the *rightful* sovereign of the citizens of individual European countries occupied by the Nazis was the sovereign that existed before the occupation. Hence, even though the executive power was *de facto* incapable of enforcing the laws of the state during the occupation, these laws were still the ones that *rightfully* governed all interactions within the boundaries of that state. Consequently, once the European regimes regained their rightful power in the mid-1940s, the aim of the European legal systems was to re-establish the proper rule of law, including by punishing those who had broken the laws during WWII. The laws each state applied and enforced to actions undertaken during the war were therefore the same as those that had been applied and enforced before the war.

A particular strength of the foregoing Kantian analysis is that it provides the basis for a critique of what the European legal systems aimed to accomplish once the war was over.<sup>18</sup> Their aim was to re-establish the proper rule of law, including by punishing the private crimes committed during this period—whether by Nazis or ordinary citizens—as well as punishing those who took active part in the Nazi movement and thus committed public crimes against the state itself. On the one hand, therefore, everyone—whether a Nazi supporter or not—could be legally punished for any private crimes committed against other private citizens during the war. That is, in line with Kant’s account above, the individual European legal systems did not regard the Nazis as representing the sovereign, and consequently the Nazis’ individual actions of aggression against other citizens were seen as

private crimes of one person against another. On the other hand, those taking part in the Nazis movement were punishable for having taken part in a coordinated, violent revolution against the sovereign, which is to say that they were also to be charged with their shared, public crime—their common crime against the state itself.<sup>19</sup> Because the public crime of taking part in a violent revolution (trying to destroy the rightful state) is the worst type of public crime, Kant considers it “*high treason*,” for which the harshest punishment, death, is deserved (6: 320).<sup>20</sup> Finally, no European legal system after WWII held any of its citizens criminally responsible for not taking part in the active resistance against the Nazis, including for not lying to threatening Nazis. Those who tried to stay out of it by telling the truth when threatened were not, and according to Kant should not have been, punished.<sup>21</sup> The reason those who found themselves unable actively to resist, including by lying, were rightly not punished is that people cannot be legally obliged to take steps to stop others’ wrongdoing or for refusing to do actions that are wrong in general, such as lying and killing.<sup>22</sup>

### Concluding Remarks

I would like to conclude by drawing out what I take to be two further advantages of Kant’s account. These concern our understanding of war heroes. It is important to remember that under normal circumstances where there is no danger to oneself, assisting others by moral means is an act of beneficence and thus a duty of virtue and not a duty of justice according to Kant. Under the extraordinary circumstances of war, however, actions of active resistance involve wrongful acts against a powerful, unjust occupying power, which include the risk of being unjustly killed as a result. The people taking part in the resistance movement in WWII were risking their lives by undertaking violent actions against the Nazis in an effort to increase the likelihood that rightful conditions were possible in the future. Doing this is neither a duty of justice nor a duty of virtue according to Kant. Being a hero is not something anyone can be legally or ethically required to do. This is why many of those who took part in the active resistance were publicly acknowledged—by means of various national medals of honor—as heroes after the war was over. Kant’s account makes perfect sense of why we see some actions as heroic, or supererogatory (going beyond duty), and others not.

Finally, note that this analysis brings to light an aspect of war heroes’ experiences that more popular accounts fail to make good sense of. According to these more popular accounts, violent heroic responses to aggressors are morally right and hence unproblematic. These accounts therefore struggle to capture the moral cost or stress those who use violence against aggressors so often experience. For example, it is a known fact that members of resistance movements during WWII typically struggled with sadness and depression, nervous disorders and various other psychological problems later on in life. On the more popular accounts, this is at the very least strange.<sup>23</sup> After all, these individuals did what was right; they



acted heroically by violently resisting the unjust aggressors. Indeed, on the more popular accounts, it seems that mental suffering or even failure simply to feel good about what one has done actually reveals a lack of virtuous character. On these accounts, virtuous people would feel as good about violently resisting aggressors as they feel about being generous, friendly or compassionate. In contrast, the Kantian view I have defended can make sense of this puzzling phenomenon without attributing to the war heroes a lack of virtuous character. One reason why members of resistance movements often find their past experiences so difficult to deal with issues from their use of violence. They committed *generally* wrongful actions against other human beings. By fighting the Nazis, the heroes did not wrong the Nazis, but they did wrong in the highest degree by undertaking generally wrongful (violent) actions against other human beings under conditions where rightful interaction was impossible. They killed and injured other human beings because rightful coercion, as enabled by a public authority and public courts, was impossible. Hence, they were facing conditions in which their only possible, *active* response was to use might consistent with a rightful future. And although they bore no fault or responsibility for their situation as they were forced into their situation by the Nazis themselves—it was the Nazis’ fault—their violent response is still coming at a moral, in the sense of normative, cost. As embodied human beings, therefore, we can be forced into situations from which there are no morally unproblematic exits.<sup>24</sup> Hence, even if we manage to act heroically by fighting the aggressors, there is a moral cost involved as it involves acting in ways inconsistent with rightful interaction. That so many of the WWII war heroes later found their violence hard to live with is therefore not a symptom of their lack of virtuous character, but rather a reflection of their commitment to virtue and right—or morality in general—under circumstances where virtuous, rightful interaction was coercively deprived them. I would like to thank Lucy Allais, Zach Hoskins, Arnt Myrstad, Arthur Ripstein, Shelley Weinberg and the two anonymous reviewers at the Journal for Social Philosophy for their input on the ideas and presentation of this paper. Thanks also to the audience at the Twenty-Sixth International Social Philosophy Conference (NASSP), July 30–August 1, 2009, St. Joseph’s University, Philadelphia, and to the audience and my commentator Robert Clewis (Gwynedd-Mercy College) at the APA Eastern Division meeting, Philadelphia, December 27–30, 2008, for their stimulating responses to earlier versions of this paper.

### Notes

<sup>1</sup> Throughout this paper, I refer to all of Kant’s works by means of the Prussian Academy pagination.

I have used Mary Gregor’s translation of Kant’s practical works, as found in Mary Gregor, transl./ed., *Immanuel Kant: Practical Philosophy* (New York: Cambridge University Press, 1996).

<sup>2</sup> I use “justice” and “right” synonymously in this paper.

<sup>3</sup> Kant says in a footnote (8: 426) that “I here prefer not to sharpen this principle [that ‘truthfulness in statements that one cannot avoid is a human being’s duty to everyone’] to the point of saying: ‘Untruthfulness is a violation of a duty to oneself.’ For this belongs to ethics, but what is under

discussion here is a duty of right. The doctrine of virtue looks, in this transgression, only to *worthlessness*, reproach for which a liar draws upon himself.”

- <sup>4</sup>The “Doctrine of Right” is part of the *Metaphysics of Morals*. Since Kant published *The Metaphysics of Morals* in the same year (1797) as he published “On the Supposed Right to Lie from Philanthropy,” it seems reasonable to consider the analyses provided in the former, which was published first, as relevant background when interpreting the latter. Kant could not have reasonably foreseen that the “Doctrine of Right” would be given so little attention for the next 200 years. And even though the closeness of publication can explain why Constant was unaware of Kant’s distinction between justice and virtue, the better interpretation of Kant will incorporate the arguments from the “Doctrine of Right” when thinking about “On a Supposed Right to Lie.”
- <sup>5</sup>As mentioned Kant explains that “On a Supposed Right to Lie from Philanthropy” is written in response to Benjamin Constant’s essay “On Political Reactions” (8: 425). For an extensive engagement of the discussion between Constant and Kant, see David Sussman, “On the Supposed Duty of Truthfulness: Kant on Lying in Self-Defense,” in *The Philosophy of Deception*, ed. Clancy Martin (Oxford: Oxford University Press, 2009), 225–43. Sussman, Jacob Weinrib (“The Juridical Significance of Kant’s ‘Supposed Right to Lie,’” *Kantian Review* 13, no. 1 [2008]: 141–70) and Allen W. Wood, Ch. 14, “Lies,” in *Kantian Ethics* (New York: Cambridge University Press, 2008), 240–58) agree with me on the importance of reading Kant’s remarks on lying to the murderer at the door from the point of view of the *Doctrine of Right*. Sussman defends lying in cases of self-defense; Weinrib’s paper, like mine, focuses more on situating the discussion in the overall context of the *Doctrine of Right*, whereas Wood’s paper engages lying both from the point of view of right and from the point of virtue. Given our common starting point, there is significant agreement among us. A major difference of focus between my paper and those of Sussman, Weinrib and Wood is that they do not aim to solve the puzzle raised by making the liar a private person who lies to an alleged public official (“the Nazi officer”). The reason why this particular case of lying is important to Kant’s theory is that even if one can establish that a private case of lying is permissible on Kant’s view, it is not clear that Kant can ever endorse lying to a public official. Because Kant’s political theory is often read in absolutist ways, this is a particularly pressing issue for many.
- <sup>6</sup>I provide a fuller interpretation of Kant’s conception of rightful interaction in “Kant’s Non-Voluntarist Conception of Political Obligations: Why Justice Is Impossible in the State of Nature,” *Kantian Review* 13, no. 2 (2008): 1–45, and in “Kant’s Non-Absolutist Conception of Public Legitimacy: How Public Right ‘Concludes’ Private Right in ‘The Doctrine of Right,’” *Kant-Studien* (forthcoming).
- <sup>7</sup>Kant adds in a footnote (6: 238) that “The only kind of untruth we want to call a lie, in the sense of *bearing upon rights*, 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.” Kant, in 6: 295ff, also discusses defamation as a case of lying “bearing on rights.” In addition, note that, as emphasized by Wood in “Lies,” Kant oftentimes (even if not in the previous quote), uses the term “lies” in a technical sense that does not follow common sense. For example, in the *Doctrine of Virtue*, Kant says, “In the doctrine of right an intentional untruth is called a lie only if it violates another’s right . . .” (6: 429). The reason why I avoid using Kant’s technical sense of lying is simply that I think it is not needed to communicate his philosophical position and that the presentation of his view is clearer if I avoid it and rather use “lying” in a way consistent with common sense. Also note that I discuss Kant’s private right account of lying in more detail in “A Kantian Conception of Free Speech,” in *Free Speech in a Diverse World*, ed. Deirdre Golash (New York: Springer, 2010), 39–55.
- <sup>8</sup>For example, Kant argues that “Truthfulness in statements 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 although I indeed do no wrong to him who unjustly compels me to make the statement 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 (though not in a jurist’s sense), that is, I bring it about, as far as I can,

that statements (declarations) 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” (8: 427). This is also why, I believe, Kant later asserts that “the duty of truthfulness . . . makes no distinction between persons to whom one has this duty and those to whom one can exempt oneself from it, since it is, instead, an *unconditional duty*, which holds in all relations” (8: 429). Lying as such does not wrong another person (“in the jurist’s sense”), but one does wrong in general by doing one’s best to ensure that no one believes anyone else, whether for contractual or other purposes.

<sup>9</sup>I believe this interpretation is in line with Kant’s response to the scenario in which telling the truth entails that the murderer finds the victim. Here, having told the truth must be considered “merely an accident . . . not a free deed (in the judicial sense). For, from one’s right to require another to lie to one’s advantage would follow a claim opposed to all lawfulness. Every individual, however, has not only a right to but even the strictest duty to truthfulness in statements that he cannot avoid, though they may harm himself or others. Thus in telling the truth he himself does not, strictly speaking, do the harm to the one who suffers by it; instead, an accident causes the harm. For he is not at all free to choose in the matter, because truthfulness (if he must speak) is an unconditional duty” (8: 428). Because truthfulness is an unconditional duty, justice cannot punish its citizens for failing to lie even if they had (truthfully) promised to lie. Another way to interpret Kant here is to invoke the “right of necessity.” Kant’s example is the situation in which two shipwrecked persons share a plank and the plank can save only one of them. He states, “the deed of saving one’s life by violence is not to be judged *inculpable* . . . but only *unpunishable*” (6: 235f). Saving one’s life by pushing the other off the plank is a wrong action, but not a punishable action. The reason is, Kant argues, that it is impossible to be motivated by the threat of death punishment to accept death. Hence, even though it is wrong to sacrifice the other to save oneself, it is not punishable.

<sup>10</sup>This is not the place to give a comprehensive interpretation of Kant’s private right argument in the *Doctrine of Right*. I provide that in “Kant’s Non-Voluntarist Conception of Political Obligations” (see note 6).

<sup>11</sup>See 6:307f: “Given the intention to be and to remain in this state of externally lawless freedom [the state of nature], human beings do *one another* no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent. . . . But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence.”

<sup>12</sup>For the purposes of this paper I am somewhat simplifying Kant’s account. For example, the analysis is complicated by the fact that Kant thinks that a person innately owns her own body and there are no indeterminacies regarding the borders of her body. Nevertheless, problems concerning procedural justice—actual determinations of guilt and proper sentencing—do exist. Hence, even punishment for corporal wrongs requires a public authority on Kant’s account. You have a right to stop aggressors, even violently, but there is no rightful punishment in the state of nature.

<sup>13</sup>It is because rightful coercion is impossible in the state of nature that Kant calls the state of nature a state of war and a state of violence (6: 307, 312, 344).

<sup>14</sup>For my interpretation of Kant’s public right sections, see “Kant’s Non-Absolutist Conception of Political Legitimacy” (see note 6).

<sup>15</sup>Mary J. Gregor, transl./ed., *Anthropology from a Pragmatic Point of View* (The Hague: Martinus Nijhoff, 1974).

<sup>16</sup>For a compelling defense of viewing the Nazi regime as an instance of barbarism, see Arthur Ripstein, Ch. 11, “Revolution and the Right of Human Beings as Such,” in *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), 325–52.

<sup>17</sup>Note that I’m only dealing with this issue from the national point of view. Dealing with the issue of whether or not taking part in Nazism also violated international criminal law, including a “crime against humanity,” is beyond my concerns in this paper.

<sup>18</sup>In practice, the actual legal systems often failed. This was due to many factors, including corruption of the system and the simple, tragic fact that so many people—from all segments of society—had

actively taken part in the Nazi movement. But this empirical issue is not my concern here. The aim is to show that Kant is able to make theoretical sense of what they aimed to do, even if they failed in practice for various non-ideal reasons.

<sup>19</sup> According to Kant, as is often pointed out, citizens do not have a right to coercive resistance against the sovereign (6: 319f). Kant makes this argument in the public right section of the “Doctrine of Right” because he takes himself already to have shown in the previous section (the doctrine on private right) that rightful relations are impossible in the state of nature. Hence there cannot be a *right* to return to a state of nature (to revolution). As entailed by the argument above, coercively resisting the Nazis and other brutes is not, however, to engage in coercive resistance against the sovereign as Kant uses this term, as the Nazi regime was not a legitimate public authority. That is, it is not considered revolution. Rather, the violent resistance against sovereigns that Kant actually denies a right to, on my reading, occurred not when resistance movements violently fought the Nazis, but when the Nazi regimes took over each European state—including the first state, Germany itself. The illegitimate revolutionaries on Kant’s analysis were therefore the Nazis and not the defenders of the occupied, just regimes. (The argument will be somewhat different in a geographical area where there has never been a minimally just state. In these areas there cannot be coercive resistance to the sovereign as it has never existed, but instead it will be some persons trying to establish civil society against and despite others’ unreasonable or barbaric attempts to stop them).

<sup>20</sup> For example, Vidkun Quisling—a Norwegian citizen and the Nazi “prime minister” in occupied Norway during WWII—was sentenced to death for having committed public crimes of treason and private crimes against other citizens in accordance with Norwegian laws existing before WWII. The actual sentencing of Quisling, for both the public and private crimes, can be viewed at <http://www.youtube.com/watch?v=yOQOT3axaPs>. For Kant’s distinction between private and public crimes, see (6: 331).

<sup>21</sup> Naturally, these people must be distinguished from those who were not threatened but still told the Nazis where to find those in hiding—whether it was out of sympathy with the Nazis or self-interest. Those who volunteered information were legally responsible for aiding the Nazis in this way.

<sup>22</sup> It may also be worth pointing out that, to the best of my knowledge, no European legal systems abolished their laws according to which people can be held legally responsible for unintended, bad consequences of lying, whether to potential wrongdoers or others. Hence, if a person unilaterally decided to lie to a Nazi, which in turn led to the capture of the Nazi’s innocent victims, the person lying could be responsible for the bad consequences of the lie. But I also do not know of any cases where this happened. Typically, the lies told resulted from agreements between those hiding and those hiding them, which, as we saw above, entailed that the liar would not be responsible if the people hiding chose to flee. And, of course, under these conditions they didn’t flee unless they realized that the Nazis didn’t believe the lies and so were already searching the houses.

<sup>23</sup> Note that one cannot simply ascribe this to having experienced a lot of human suffering or having seen the dark side of human beings as those who didn’t actively take part in the resistance also experienced this.

<sup>24</sup> Contrast this active, violent resistance with the passive, non-violent resistance promoted by, for example, Mahatma Gandhi. Because it is non-violent, passive resistance does not come at the moral cost involved in violent resistance. Notice, however, that choosing not to fight the aggressors and instead subject oneself to or merely voice one’s objections to others’ aggressions against their victims seem to involve its own moral cost, albeit different in nature. Hence also passive, non-violent resistance is not a morally unproblematic exit.