

## Kant on Lying as a Crime against Humanity

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Kant's *On a Supposed Right to Lie from Philanthropy* (*Über ein vermeintes Recht aus Menschenliebe zu lügen*)<sup>1</sup> was published in the September issue of the *Berliner Blätter* in 1797. It was written in response

<sup>1</sup> References to Kant's works in the text and footnotes are given parenthetically, according to the abbreviations listed below. Pagination is as follows: first to the volume and page number in the standard edition of Kant's works, *Kants gesammelte Schriften*, edited by the Königlich Preußischen Akademie der Wissenschaften, subsequently Deutsche, now Berlin-Brandenburg Akademie der Wissenschaften (originally under the editorship of Wilhelm Dilthey) (Berlin: Georg Reimer, subsequently Walter de Gruyter, 1900 – ); second, to the page number in the respective translation. Unless otherwise indicated, all emphases are in the original.

*A*: *Anthropology from a Pragmatic Point of View* (*Anthropologie in pragmatischer Hinsicht*) (1798), translated by Mary J. Gregor (The Hague: Martinus Nijhoff, 1974).

*AN*: *Announcement of the Near Conclusion of a Treaty for Eternal Peace in Philosophy* (*Verkündigung des nahen Abschlusses eines Traktes zum ewigen Frieden in der Philosophie*) (1796), translated by Peter Fenves, in Peter Fenves (ed.), *Raising the Tone of Philosophy: Late Essays by Immanuel Kant, Transformative Critique by Jacques Derrida* (Baltimore, MA: The Johns Hopkins University Press, 1993), 83-100.

*G*: *Groundwork of the Metaphysics of Morals* (*Grundlegung zur Metaphysik der Sitten*) (1785), translated by Mary J. Gregor, in *Practical Philosophy*, 37-108.

*LE*: *Lectures on ethics* (*Vorlesungen über Ethik*) (1924) translated by Peter Heath and edited by Peter Heath and J. B. Schneewind (Cambridge: Cambridge University Press, 1997).

*MM*: *The Metaphysics of Morals* (*Die Metaphysik der Sitten*) (1797), translated by Mary J. Gregor, in *Practical Philosophy*, 353-603.

*M*: *On the miscarriage of all philosophical trials in theodicy* (*Über das Misslingen aller philosophischen Versuche in der Theodizee*) (1791), translated by George di Giovanni, in *Religion and Rational Theology*, edited and translated by Allen W. Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996), p. 24-37.

*RL*: *On a supposed right to lie from philanthropy* (*Über ein vermeintes Recht aus Menschenliebe zu lügen*) (1797), translated by Mary J. Gregor, in *Practical Philosophy*, p. 611-615.

to the publication of a German translation of Benjamin Constant's *On Political Reactions* (*Des réactions politiques*) (1796) in the journal *Franckreich im Jahr 1797*, Part VI, No. 1. On p. 123 of the German translation Constant claims that there is "a German philosopher, 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" (*RL* 8: 425 (611)). Constant rejects the position of this German philosopher, arguing instead "The concept of a duty is inseparable from the concept of a 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 the truth that harms others" (*RL* 8: 425 (611)). The editor of the journal, Karl Friedrich Cramer, added a footnote to the claim about the "German philosopher," saying that "The author of this paper himself told me that the philosopher spoken of in this passage is Kant" (*RL* 8: 425 n. 1 (611 n. 1)). After Kant read the essay, he proceeded to write his response, a defense of the claim attributed to him by Constant, adding in a footnote, "I hereby grant that I actually said this somewhere or other, though I cannot now recall where" (*ibid.*).

Kant's *Supposed Right to Lie* continues to be one of the most controversial things he ever wrote, but even to this day many people do not understand the claim that he is defending. The claim is that it would be a crime – a legally punishable offence – to lie to a would-be murderer about the whereabouts of one's friend. That the claim that it would be a crime to lie to a would-be murderer is, importantly, a different and more serious claim than the claim that it would be unethical to lie to the would-be murderer. Not everything that is unethical in Kant's moral philosophy is also a crime.

Given the great controversy about this essay, it is almost comical that Kant relegates the *ethics* of lying to the would-be murderer to a single footnote, where he says: "I here prefer not to sharpen this principle to the point of saying: 'Untruthfulness is a violation of 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" (*RL* 8: 426 n. 1 (612 n. 1)). The reason why it is *unethical* to lie to the would-be murderer is that such a lie would be a violation of *the ethical duty to oneself* not to lie, which is a *perfect* ethical duty. As Kant might have said, he had *already* argued, earlier that year, in the *Doctrine of Virtue* (*Tugendlehre*), Part II of *The*

*Metaphysics of Morals (Die Metaphysik der Sitten)* (1797), that such a lie is unethical, at least by implication, since in that work he argued that every lie is unethical.

As he says, however, in this essay he is *not* discussing ethics. Instead, he is discussing *right (Recht)*. That is to say, he is discussing a matter of *law*. This much should be clear from the title of the essay, which is about a supposed "*Right*" to lie, that is, a *legal* right to lie. The question is whether such a lie is a crime – whether it is illegal, not whether it is unethical. And, as he might have said, he has *not* already argued that such a lie is a crime. (Indeed, as his editors insist, he had never *said* this).<sup>2</sup> In particular, he has not already argued that such a lie is a crime in his *Doctrine of Right (Rechtslehre)*, Part I of *The Metaphysics of Morals (Die Metaphysik der Sitten)* (1797), published earlier that year.

Indeed, one might go further. One might say that in the *Doctrine of Right* Kant said something that might be construed as a *rejection* of this claim. Or, at least, one might say that in the *Doctrine of Right* Kant says something that might be thought to support the claim that such a lie is *not* a crime. For, as other commentators have pointed out, the *Doctrine of Right* "expressly permits lying,"<sup>3</sup> that is, legally permits at least some lies. The passage in question is as follows:

This principle of innate freedom already involves ... his being 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 or sincere or untrue and insincere (*veriloquium aut falsiloquium* [truthful statement or untruthful statement]); for it is entirely up to them whether they want to believe him or not. (MM 6: 237-8 (393-4))

<sup>2</sup> Allen Wood, the editor of the volume of the Cambridge translation of Kant that includes this essay, writes in a footnote to Kant's statement ("I hereby grant that I actually said this somewhere or other") that "Heinrich Meier, editor of the Academy edition of this essay, states that no such place is to be found in Kant's previous works" (*Practical Philosophy*, 640 n. 3).

<sup>3</sup> Hiram Caton, "Truthfulness in Kant's Metaphysical Morality," in *Essays in Metaphysics*, ed. Carl G. Vaught (University Park, PA: Pennsylvania State University Press, 1970), 38 n. 57.

Because the *Doctrine of Right* appears to (legally) permit lying to others when this "does not in itself diminish what is theirs," and since lying to a would-be murderer might reasonably be understood as just such a case, some commentators have argued that there is an "apparent discrepancy"<sup>4</sup> between what Kant argues in the *Doctrine of Right* and the claim that he defends in the *Supposed Right to Lie*. Others have gone so far as to argue that Kant "explicitly accepts here [in the *Doctrine of Right*] the view which he rejects in the essay 'On the Right to Lie,'" namely, that "as long as a lie is not intended to deprive someone of her rights or property it should not be prohibited by law."<sup>6</sup> Given that lying to a would-be murderer might reasonably be understood as a case of lying in which there is no intention to deprive someone of her rights and property, because there is no property at stake and because the would-be murderer has no right to take the life of the friend,<sup>7</sup> it does seem that this passage about lying in the *Doctrine of Right* supports the claim that lying to the murderer at the door is not a crime.

In this article I shall attempt to show why Kant believes that there is no discrepancy between this passage in the *Doctrine of Right* that (legally) permits lies that are not intended to deprive someone of his<sup>8</sup> rights or property, and the claim that he defends in the *Supposed Right to Lie* essay, namely, that a lie to a would-be murderer at the door about one's friends whereabouts is a crime.

<sup>4</sup> Sally Sedgwick, "On Lying and the Role of Content in Kant's Ethics," *Kant-Studien* 82 (1991), 58.

<sup>5</sup> H. J. Paton, "An Alleged Right to Lie; a Problem in Kantian Ethics," *Kant-Studien* 45 (1954), 199-200.

<sup>6</sup> Allen D. Rosen, *Kant's Theory of Justice* (Ithaca, NY: Cornell University Press, 2003), 70 n. 88.

<sup>7</sup> It is important that the would-be murderer in the example has no right to take the life of the friend. In the *Doctrine of Virtue* Kant considers the hypothetical case of a servant who has been ordered by his master "to say 'not at home' if a certain human being asks for him," namely, a "guard sent to arrest him"; the servant lies to the guard, and "as a result, the master slips away and commits a serious crime" (MM 6: 431 (554)). Even if the master were facing execution for his previous crimes, it would be a crime according to the *Doctrine of Right* for the servant to lie to the guard, since the guard is the arm of the state, and the state has the right to execute murderers.

<sup>8</sup> Here, unfortunately, the masculine "his" must be used since Kant holds that only adult males have property rights (MM 6: 314 (458)).

*Law vs. Ethics.* The first point to note about Kant's moral philosophy<sup>9</sup> is that it is divided into law (*Recht*) and ethics (*Ethik*). (At least, for my purposes, I shall refer to "*Recht*" as law, although this is a deliberate deviation from the practice of translating *Recht* as "right," or even as "justice."<sup>10</sup>)

Law consists of duties to perform (or omit) certain intentional actions. Ethics, meanwhile, consists of duties to freely adopt (or freely refrain from adopting) certain ends. As Kant says: "Ethics Does Not Give Laws for Actions (*Ius* Does That), But Only For Maxims of Actions" (*MM*, 6: 388 (520)). That Kant says that ethical duties are duties to freely adopt (or freely refrain from adopting)<sup>11</sup> "maxims" is his way of saying that they are duties to freely adopt ends, since maxims are simply rules or policies<sup>12</sup> for pursuing ends:

Kant sometimes says that wide duties are duties to adopt "maxims" rather than duties to adopt ends. This distinction is of no consequence. A maxim is a policy or rule one follows for the purpose of achieving an end. To be required to adopt a maxim is,

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<sup>9</sup> For Kant the "*doctrine of morals (philosophia moralis)*," or moral philosophy, is "divided into the system of the doctrine of the *doctrine of right (ius)*, which deals with duties that can be given by external laws, and the system of the *doctrine of virtue (Ethica)*, which treats of duties that cannot be so given" (*MM*, 6: 379 (145)). That is, moral philosophy is divided into law and ethics, which corresponds to the division between the *Doctrine of Right* and the *Doctrine of Virtue* in *The Metaphysics of Morals* (see Roger J. Sullivan, *Immanuel Kant's Moral Theory* (Cambridge: University of Cambridge Press, 1989), 14-15 n. 13).

<sup>10</sup> I hold that translating *Recht* as "right" or "justice" fails to establish a sufficiently different meaning from ethics in the mind of the English language user. While I agree with Allen Wood that "we therefore misunderstand the Kantian conception of "right" if we think of it as merely a philosophy of law and the state. Instead, right is a system of rational moral (*sittliche*) norms whose function is to guarantee the treatment of humanity as an end in itself by protecting the external freedom of persons according to universal laws" (Wood, *Kantian Ethics* (Cambridge: Cambridge University Press (2008) 162), I still believe that "law" as a translation of *Recht* does a better job of bringing home the distinction between ethics and *Recht*.

<sup>11</sup> For the sake of clarity, I shall sometimes refrain from using the refrain clause. Just note that the free refraining from adopting an end – such as freely refraining from adopting the end of malice – is something that ethics can also require.

<sup>12</sup> See O'Neill, *Acting on Principle, Acting on Principle: An Essay on Kantian Ethics* (New York, NY: Columbia University Press, 1975), 39f.

therefore, essentially the same as being required to adopt an end.<sup>13</sup>

The free adoption of ends will, of course, normally result in the performance of actions, namely, those actions or omissions necessary to achieve these ends.<sup>14</sup> However, the crucial difference between the two is that in the case of the law, the intentional action is sufficient for fulfilling the (legal) duty, whereas in the case of ethics, the intentional action is not sufficient for fulfilling the (ethical) duty. In the case of ethics, the free adoption of the end is necessary – and sufficient.

More explanation is in order here about what kinds of intentional actions (and omissions)<sup>15</sup> Kant is talking about that are prohibited (or required) by law. He calls them "external actions," and contrasts them with "internal" actions (*MM* 6: 218; 383). By "external actions" he means bodily actions (including speech acts) that people perform and that can bring them into contact with other people, the property of other people, animals, etc. All of these kinds of actions may fall under the law, at least in principle, for Kant. External actions do not include (the having of) states of mind, such as (the having of) intentions, feelings, beliefs, and emotions, and, in particular, the free adopting of ends. These "internal" actions cannot by themselves bring us into "external" contact with other people. (Unlike God or angels, we do not have the powers of telekinesis or telepathy). Furthermore, and more importantly, such "internal" actions or states of mind are not such that

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<sup>13</sup> Rosen, *Kant's Theory of Justice*, 93 n 33. As will become clear, I am indebted to Rosen's analysis of law in Kant's moral philosophy.

<sup>14</sup> H. A. Prichard always worried that one could be struck with paralysis at any moment. He also believed that ought implies can. As a result, he argued that moral duties were only duties to *set oneself* to act (or omit), and not duties to *act* (or omit). See his 'Acting, Willing, Desiring,' in *Moral Obligation*, ed. J. O. Urmson (Oxford: Clarendon Press, 1949), 187-198. Kant agrees with Prichard – or, perhaps, Prichard agreed with Kant. Kant says that "Even if, by a special disfavor of fortune or by the niggardly provision of a stepmotherly nature, this will should wholly lack the capacity to carry out its purpose – even if with its greatest efforts it should yet achieve nothing and only the good will were left (not, of course, as a mere wish but as the summoning of all means insofar as they are in our control) – then, like a jewel, it would still shine by itself, as something that has full worth in itself" (*G* 4: 394; p. 50).

<sup>15</sup> Again, for the sake of clarity, I shall sometimes omit the omission clause. Just note that the omission of an action is an action. Indeed, it is 'performed.'

they can be made to conform to the law, since they, or at least some of them, are not under our control. "Internal" actions, or states of mind, therefore fall outside of the law for Kant. There can be no thought crime.

"External actions" are nevertheless *intentional* physical actions (unlike, say, sneezes, or reflex (pseudo-) actions). The law against murdering other people,<sup>16</sup> for example – as Kant says, grimly, "If, however, he has committed murder he must die" (*MM* 6:333; 474) – imposes a duty to omit a certain kind of intentional physical action. That is, murder requires a *mens rea* (guilty mind). Otherwise it is not murder.<sup>17</sup> Hence, the physical actions that are subject to the law, while external, nevertheless *include* internal actions, or least states of mind, and must be understood in this way. "External actions" are not merely 'external behavior.'

Intentional physical actions can be performed from a variety of motives.<sup>18</sup> I can, for example, omit murdering someone else from the motive of duty, or from the motive of self-interest, or from the motive of some inclination (such as my affection for the would-be victim). Since the law is concerned with intentional physical actions, and not at all with the motives behind them, I fulfill the legal duty – I obey the law – not to murder someone else just by omitting from murdering the other person, from *whatever* motive. Crudely put, it does not matter, from the point of view of the law, why one does not murder other people, so long as one does not murder other people. Nevertheless, since it does very much matter from the

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<sup>16</sup> Kant says, in the *Doctrine of Virtue*, that killing oneself is "murdering oneself" that "Killing oneself is a crime (murder)" that is "committed... against oneself" (*MM* 6: 422; 546-547). It is not clear that this claim is consistent with the rest of the *Doctrine of Right*, however, since all laws are supposed to be laws about one's intentional actions towards others, and not towards oneself.

<sup>17</sup> Kant actually talks about the "*inner wickedness*" (*MM* 6: 333; 474) of murderers.

<sup>18</sup> Here it is important not to confuse "the very different ideas of Motive and Intention" (John Stuart Mill, *Utilitarianism*, in *Mill: Utilitarianism*, ed. Samuel Gorowitz (Indianapolis, IN: Bobbs-Merrill, 1971), 25 n 3). What Mill goes on to say here is extremely interesting: "The morality of the action depends entirely upon the intention – that is, upon what the agent wills to do. But the motive, that is, the feeling which makes him will so to do, if it makes no difference in the act, makes none in the morality: though it makes a great difference in our moral estimation of the agent" (*ibid.*, 25). If one replaced "morality" with *legality*, and "moral estimation" with *morality*, Mill's distinction would be identical to Kant's distinction between legality and morality, which will be discussed later (which is not, importantly, the same as the difference between law and ethics).

point of view of the law that people perform or omit certain intentional physical actions, and since people cannot be relied upon to act on the motive of duty, even though this motive is *always* available and is *always* sufficient (such is not the case with inclinations), the law *motivates* people to fulfill their legal duties – to obey the law – *mediately*. It *threatens* people with a sanction, which is always a harm,<sup>19</sup> and which *must* be carried out if they fail to obey the law, that is, if they break the law.<sup>20</sup> Since it is contrary to people's interest to suffer a harm, they always have a motive – namely, self-interest – to fulfill their legal duties, that is, to obey the law:

Kant's position is not that the law can directly compel the adoption of particular motives or the formation of specific intentions. He holds the opposite view that intentions and motives cannot be enforced through external coercion. Kant's point is that the threat of sanctions serves to persuade individuals to obey the law for prudential reasons.<sup>21</sup>

As Kant himself says:

It is clear that in the latter case this incentive which is something other than the idea of duty must be drawn from pathological determining grounds of choice, inclinations and aversions, and among these, from aversions; for it is a lawgiving, which

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<sup>19</sup> Kant insists that punishment is a harm: "For, although he who punishes can at the same time have the kindly intention of directing the punishment to this end as well, yet it must first be justified itself as punishment, that is, merely as harm, so that he who is punished, if it stopped there and he could see no kindness hidden behind this harshness, must himself admit that justice was done to him" (*CPR* 5: 37; 170).

<sup>20</sup> Kant is very clear that it is *immoral* not to punish law-breakers to the full extent of penalty: "The law of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaimonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantage it promises" (*G* 6: 331: 473).

<sup>21</sup> Rosen, *Kant's Theory of Justice*, 85. Rosen's use of the term "persuade" here is curious. Surely it is stretching the meaning of the term "persuade" to say that the threat of a harm *persuades* people to do something. Someone who does not cheat on her taxes out of fear of being audited and fined, or even imprisoned, is hardly said to be *persuaded* not to cheat.

constrains, not an allurements, which invites. (MM 6: 218-219; 383)

Since it is metaphysically possible, and therefore morally possible, to make people perform intentional physical actions by means of the threat of a sanction if they fail to do so, people can be 'coerced' to intentionally physically act. *People can obey the law under duress*. People can obey the law involuntarily, or 'unfreely,'<sup>22</sup> such as from the fear of the gallows, in addition to doing so from freely adopting an end. In the case of the law, *all that is needed is conformity* of their intentional actions and omissions to the law. Freedom is irrelevant to the fulfillment of legal duties, i.e., to obeying the law. It is conformity by any means necessary, as it were.

By contrast, conformity of intentional actions (or omissions) to ethical duties is *not sufficient* for ethics. *Freedom is essential* to the fulfillment of ethical duties. Or, if it is preferred, *motive is essential* to the fulfillment of ethical duties, where the *only* motive that will suffice is the motive of duty. Ethical duties are duties to *freely* adopt (or *freely* refrain from adopting) ends. One does not fulfill an ethical duty *unless* one does so freely. To refer to an example of Kant's in the *Groundwork*, I do *not* fulfill the ethical duty not to overcharge you if I omit overcharging you from self-interest (word will get around and I will lose money) or from fear of being put in the stocks:

For example, it certainly conforms with duty that a shopkeeper not overcharge an inexperienced customer, and where there is a

good deal of trade a prudent merchant does not overcharge you but keeps a fixed general price for everyone, so that a child can buy from him as well as everyone else. People are thus served *honestly*; but this is not nearly enough for us to believe that the merchant acted in this way from duty and basic principles of honesty; his advantage required it (G 4: 397; 53)

The merchant is 'honest' in the sense that his intentional acts of charging the same price to every customer conform to the ethical duty. However, he is not, or at least, we cannot assume that he is, 'honest' in the sense that he does this because it is right, because it is morally required, because it is the ethical thing to do, etc. But this is what *ethics* requires, as opposed to the law. This is the *true* meaning of being honest.<sup>23</sup> Hence, if we assume that he charges the same price to everyone out of a desire to make a profit (which is not an 'immoral motivation,' but simply a motivation that *fails* to be moral),<sup>24</sup> he lacks the virtue of honesty. His intentional acts of charging

<sup>23</sup> This is the reason, I take it, that the first use of the word "honestly" in the paragraph is in italics in the original text, and the second is not. Italics are the equivalent of scare-quotes.

<sup>24</sup> It should be noted here that the shopkeeper's maxim is not an immoral maxim. It is 'In order to make a profit, I will charge every customer the same price for the same goods,' or whatever, and this maxim can indeed be universalized. It is not immoral, I hope, to charge every customer the same price for the same goods. Shelley Kagan has said about this example: "Presumably, we will all agree that giving correct change is a morally permissible (indeed morally obligatory) thing to do. And so we would agree that when the shopkeeper does this his action is morally permissible; he is conforming to the moral law. This is true even though he acts out of fear – acts for the morally wrong reasons. Thus, despite the fact that the maxim he acts on is unsound, that it would (as we may suppose) fail FUL, it remains true that the action he performs is morally permissible" ('Kantianism for Consequentialists,' in *Groundwork for the Metaphysics of Morals: Rethinking the Western Tradition*, ed. and trans. Allen W. Wood (Yale: Yale University Press, 2002), p. 127). What Kagan says here about the shopkeeper acting for the "morally wrong reasons" is quite wrong. First, he acts out of *self-interest*, not fear. Kant says he is a "prudent" shopkeeper. Second, self-interest is *not* a morally wrong reason to do something. If one does something morally wrong, what is morally wrong is *what one does, the intentional action*, and not the reason, or motive, behind it. See Mill, in Note 26 above, who says that "The morality of the action depends entirely upon the intention – that is, upon what the agent wills to do." The problem with self-interest, then, is not that it's morally wrong. In fact, self-interest is *incapable* of being morally wrong,

<sup>22</sup> As I see it, intentional actions and omissions that are 'coerced' by the threat of a sanction for non-performance are examples of "mixed" actions and omissions in Aristotle: "But what about actions done because of fear of greater evils...? These sorts of actions, then, are mixed, but they are more like voluntary actions" (*Nicomachean Ethics*, 2<sup>nd</sup> ed., trans. and ed. Terence Irwin (Indianapolis: Hackett, 1999), Bk. III, Chap. 1, § 4-6, 1110a, 5-13; 30). Cases of genuinely "involuntary" actions, however – actions "coming about by force or because of ignorance" (Bk. III, Chap. 1 § 4-6, 1110a, 5-13; 30) – would not be intentional actions at all. If someone much stronger than me literally holds me down and puts a gun in my hand and presses my finger on the trigger and I shoot someone and he dies, or if I give "someone a drink to save his life" and I "kill him" (Bk. III, Chap. 1 § 17 1111a, 15; 32), then I have *not* broken the law to omit murdering others, because I have *not* murdered anyone. I am not guilty of the crime of murder. There is no 'strict liability' in the *Doctrine of Right*.

every customer the same price *fail* to fulfill the *ethical* duty not to overcharge people.

People cannot be coerced by others to *freely* adopt (or refrain from adopting) ends, since that would be a contradiction in terms. People can only, as it were, *coerce themselves* (by self-constraint) into freely adopting or refraining from adopting ends. (This is the difference between what Kant calls 'external' coercion and 'internal' constraint, although strictly speaking 'external coercion' is mediated by my internal mental states). Self-coercion, however, is actually freedom, not coercion:

That is to say, determination to an *end* is the only determination of choice the very concept of which excludes the possibility of constraint *through natural means* by the *choice* of another. Another can indeed *coerce* me *to do* something that is not my end (but only a means to another's end), but not to *make this my end*; and yet I can have no end without making it an end for myself. To have an end that I have not myself made an end is self-contradictory, an act of freedom which is not yet free. – But it is no contradiction to set an end for myself that is also a duty, since I constrain myself to it and this is altogether consistent with freedom. (*MM* 6: 381-382; 514)

Since it is not metaphysically possible, and hence not morally possible, to coerce someone to freely adopt (or refrain from adopting) an end, which is what the fulfillment of ethical duties requires, and since it is metaphysically possible, and hence morally possible, to coerce people to perform (or omit)

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since it can't be *either* right or wrong. Only intentional actions (and omissions) can be right or wrong. The problem with self-interest is that it simply *lacks* moral value. As Mill says, "But the motive, that is, the feeling which makes him will so to do, if it makes no difference in the act, makes none in the morality: though it makes a great difference in our moral estimation of the agent." Curiously, even Mill uses "moral estimation" here, which, according to the *Oxford English Dictionary*, is "esteem considered as a sentiment," and thus, has basically the same meaning as Kant's own judgement of "esteem" (*G*: 4:398; 53). The shopkeeper's maxim does *not* fail FUL (i.e., the Formula of Universal Law test of the Categorical Imperative), because that test is not a test for *virtue*. It is a test for *immorality*. And the shopkeeper's intentional action is *not* immoral. What the shopkeeper lacks, clearly, is *virtue*. And Kant has another test for *that*. It is the "esteem" test. And the shopkeeper's intentional action *fails* that test.

intentional actions, which is what the law requires, the essential difference between ethics and law concerns the possibility of being externally coerced to fulfill the duties of either: "What essentially distinguishes a duty of virtue from a duty of right [legal duty] is that external constraint to the latter kind of duty is morally possible, whereas the former is based only on free self-constraint" (*MM* 6: 383; 515). Only what is coercible is enforceable, however. Therefore, whereas ethical duties are *unenforceable*, legal duties – i.e., laws – are *enforceable*.

*Legality vs. Morality*. The distinction between law and ethics allows for us to understand another important distinction in Kant's moral philosophy, a distinction within ethics. It is a distinction between two types of compliance with an ethical duty, and it is modeled on the distinction between law and ethics. This is the distinction between *legality* and *morality*. Importantly, although perhaps confusingly, legality has nothing to do with the law. It is merely the name for the quality something has of being *in conformity with ethics*. Since conformity is the quality that is most associated with the law, however, because conformity is sufficient for obeying the law, the name for conformity with ethics in Kant's moral philosophy is "legality." An intentional action<sup>25</sup> (or omission) that is performed not as a result of freely adopting (or freely refraining from adopting) an end that is required by an ethical duty, but from, say, self-interest, or from an inclination, and that nevertheless conforms with (is not contrary to) an ethical duty, has merely *legality*. However, the *exact same* intentional action (or omission), when it is performed as a result of *freely adopting* (or *freely refraining from adopting*) an end that is required by an ethical duty, has not merely legality (although, of course, it does have that), but *morality*:

What is essential to the moral worth of any actions is *that the moral law determine the will immediately*. If the determination of the will takes place *conformably* with the moral law but only by means of a feeling, of whatever kind, that has to be presupposed in order for the law to become a sufficient determining ground of the will, so that the action is not done *for the sake of the law*, then the action will contain *legality* indeed but not *morality*. (*CPR* 5: 71; 198)

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<sup>25</sup> I do not say "physical" here since there are actions in ethics that are not physical.

Needless to say, intentional actions (and omissions) that are performed as a result of adopting an end that is *prohibited* by an ethical duty (an end that is *prohibited* by morality), or that are performed as a result of *refraining from adopting* an end that is *required* by an ethical duty (an end that is *required* by morality), do not even have legality. *A fortiori*, of course, they lack morality. Instead, such intentional actions and omissions have a different quality: *immorality*. They are intentional actions or omissions that are *contrary* to ethical duties (and contrary to the corresponding law, where it exists).<sup>26</sup> For these intentional actions and omissions, it cannot possibly be the case that they are performed because it is the ethical thing to do. As Kant says in the *Groundwork*:

I here pass over all actions that are already recognized as contrary to duty, even though they may be useful for this or that purpose; for in their case the question of whether they might have been done from duty never arises, since they even conflict with it. (G 4:397; 52)

It should be noted, however, that intentional physical actions and omissions are not the only things that can have legality and morality. The mere free adopting of an end that is required by an ethical duty, or the mere free refraining from adopting an end that is required by an ethical duty, has morality, even if it fails to result in the performance of any intentional actions or omissions, because of “the niggardly provision of a stepmotherly nature,” i.e., some obstruction, internal (e.g., sudden migraine) or external (e.g., sudden kidnapping). As Kant says:

A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself and, regarded for itself, is to be valued incomparably higher than all

<sup>26</sup> The murder of another person, for example, is an intentional physical action that is contrary to the law as well as being contrary to ethics. However, intentionally eating so much that I become “stuffed with food” (MM 6:427; 550), which is contrary to the perfect ethical duty to myself not to intentionally stupefy myself, is an intentional physical action that is contrary *only* to an ethical duty (it involves me using myself, in my body, as a *mere* means to my own end, namely, pleasure). There is *no* law to omit intentionally stuffing myself with food. This immoral action is *not* against the law.

that could merely be brought about by it in favor of some inclination and, indeed, if you will, of the sum of all inclinations. (G 4: 394; 50)<sup>27</sup>

Clearly, it is possible to fulfill *all* laws by freely adopting (or freely refraining from adopting) the relevant ends, since all that is required for fulfillment of *these* duties is conformity, and that can be achieved by intentionally acting or omitting to act in the ways that result from the free adoption, or free refraining from adopting, of the relevant ends.

Indeed, all legal duties of right are included in ethics, even if ethics also has its own duties. All duties of right are indirectly ethical.

*Lies in Ethics*. It is now possible to contrast what Kant says about lies in ethics with what he says about lies in the law. For Kant a lie, at a minimum, is an intentionally deceptive untruthful assertion. More could be said here about the different criteria – an *assertion* as opposed to a mere statement, an assertion that is untruthful, i.e., *believed* to be false (but, importantly, that may be true), and an assertion that is *intended to deceive* about its *contents* – but this detail is not necessary for the purposes of contrasting what Kant has to say about lies in ethics with what he has to say about lies in the law.<sup>28</sup>

In the lectures on ethics Kant says that a lie “In the ethical sense” is such that “it compromises every intentional untruth, or every intentionally false [declaration]<sup>29</sup> of my disposition” (LE 27: 605 (351)). He says the same in the *Doctrine of Virtue*: “Lying (in the ethical sense of the word), intentional untruth as such” (MM 6: 430 (553)).

Importantly, Kant includes a lie to oneself, or an “internal lie,” as a lie in the ethical sense. As he says in an essay, *Announcement of the Near Conclusion of a Treaty for Eternal Peace in Philosophy* (*Verkündigung des nahen Abschlusses eines Traktes zum ewigen Frieden in der Philosophie*, 1796) written the year before *The Metaphysics of Morals*:

<sup>27</sup> Given what it is possible for the “sum of all inclinations” to bring about, this is pretty good going for a single free adoption of an end.

<sup>28</sup> For more on these criteria, see my “The Truth About Kant On Lying,” in *The Philosophy of Deception*, ed. Clancy Martin (Oxford: Oxford University Press, 2009), 201-224. I draw upon this essay for most of the following sections, also.

<sup>29</sup> I have substituted “declaration” for “statement”, since the word used by Kant is “*Erklärung*”, which is best translated as “declaration.”

It is possible that not everything a person holds to be true is *true* (for everyone can *err*), but in everything that one says, one must be *truthful* (one ought not to *deceive*); it may be that a confession is merely inward (before God) or also outward. The transgression of this duty of truthfulness is called *lying*, and, for this reason, there can be external lying as well as internal mendacity; as a result, it can happen that both sorts of mendacity are united or that they contradict each other. But lying, whether it be inward or outward, is of two kinds: (1) if one states something to be true that one knows to be untrue; (2) if one states something to be *certain* that one nevertheless knows to be subjectively uncertain. (AN 8: 421-2 (93))

Kant again discusses the lie to oneself in the *Doctrine of Virtue*:

A lie can be an external lie (*mendacium externum*) or also an internal lie. – By an external lie a human being makes himself an object of contempt in the eyes of others; by an internal lie he does what is still worse: he makes himself contemptible in his own eyes and violates the dignity of humanity in his own person. And so, since the harm that can come to others from lying is not what distinguishes this vice (for if it were, the vice would consist only in violating one's duty to others), this harm is not taken into account here. (MM 6: 429 (552))

Although a lie to oneself is not a lie that harms others, Kant does add that the telling of lies to oneself is the source of telling lies to others:

But such insincerity in his declarations, which a human being perpetrates on himself, still deserves the strongest censure, since it is from such a rotten spot (falsity, which seems to be rooted in human nature itself) that the ill of untruthfulness spreads into his relations with other human beings as well, once the highest principle of truthfulness has been violated. (MM 6: 430-1 (554))

The “duty of truthfulness” (MM 6: 404 (532)) in the *Doctrine of Virtue* is an ethical duty not to lie. The ethical duty not to lie is a duty to oneself not to lie to oneself or to others. As Kant says in the *Anthropology from a Pragmatic Point of View* in 1798:

[T]he sole proof a man's consciousness affords him that he has character is his having made it his supreme maxim to be truthful, both in his admissions to himself and in his conduct toward every other man (A 7: 295 (160)).

The *Doctrine of Virtue* is exclusively concerned with a lie in the ethical sense and the ethical duty not to lie. Here Kant pointedly distinguishes between a lie in the non-ethical sense in the *Doctrine of Right*, and a lie in the ethical sense:

In the doctrine of right an intentional untruth is called a lie only if it violates another's right; but in ethics, where no authorization is derived from harmlessness, it is clear of itself that no intentional untruth in the expression of one's thoughts can refuse this harsh name. (MM 6: 429 (552))

The immorality of lying consists in what one does *to oneself* when one lies. The human being, as a natural being, has a natural capacity to communicate her/his thoughts. The human being, as a moral being, can use the human being, as a natural being, to communicate her/his thoughts. The end of communicating her/his thoughts is an end that is “in agreement with” the end that the human being has as a natural being. However, the human being, as a moral being, can also use the human being, as a natural being, to communicate what are not her/his thoughts. To do this is to lie. The end of communicating what are not her/his thoughts is an end that is contrary to the end that she/he has as a natural being.

When one lies, one (as a moral being) uses oneself (as a natural being) as a mere means to an end. When one lies, one (as a moral being) treats oneself (as a natural being) as a “speaking machine”, that is, as a thing:

But communication of one's thoughts to someone through words that yet (intentionally) contain the contrary of what the speaker thinks on the subject is an end that is directly opposed to the natural purposiveness of the speaker's capacity to communicate his thoughts [...] The human being as a moral being (*homo noumenon*) cannot use himself as a natural being (*homo phaenomenon*) as a mere means (a speaking machine), as if his



natural being were not bound to the inner end (of communicating thoughts), but is bound to the condition of using himself as a natural being in agreement with the declaration (*declaratio*) of his moral being and is under an obligation to himself to *truthfulness*. (MM 6: 429 (552))

Since to lie is to treat oneself as a thing, it follows that to lie is to treat oneself as something less than a human being: "By a lie a human being throws away and, as it were, annihilates his dignity as a human being" (MM 6: 429 (552-3)). However, one is a human being, and to treat oneself as something less than a human being, that is, as a thing, is a wrongful act against oneself:

But his way of pursuing this end is, but its mere form, a crime of a human being against his own person and a worthlessness that must make himself contemptible in his own eyes. (MM 6: 430 (553))

From this it follows that one has a duty to oneself not to lie to oneself or to others: "The human being as a moral being... is under obligation to himself to *truthfulness*" (MM, 6: 429 (p. 552)). That is, one has a duty to freely refrain from adopting the end of communicating what are not one's thoughts (either to oneself or to others). It is not enough, to fulfill this duty, not to lie – to not adopt the end of communicating what are not one's thoughts. One must not adopt this end from the motive of duty. Consider again the 'honest shopkeeper.' If he does not lie to his customers, but tells the truth from the motive of self-interest, then he is not fulfilling the ethical duty not to lie.

The violation of this duty, that is, lying, is a vice (MM 6: 428 (552)). Indeed, lying is the greatest violation of the duty to oneself as a moral being to preserve oneself as a moral being: "The greatest violation of a human being's duty to himself regarded merely as a moral being (the humanity in his own person) is the contrary of truthfulness, *lying*" (MM 6: 429 (p. 552)). The fulfillment of this duty is a virtue: "*Truthfulness* in one's declarations is also called *honesty* and if the declarations are promises, *sincerity*; but, more generally, truthfulness is called *rectitude*" (MM 6: 429 (553)).

There is much that could be said about this argument in the ethics against lying, which is not the concern of the *Supposed Right to Lie*. For one thing, Kant assumes "the natural purposiveness of the speaker's capacity to communicate his thoughts." Even if it were true that speakers have a natural

capacity to communicate their thoughts (something that is rejected by those who would argue that this is merely one function of the capacity for communication), it is not clear if or how this extends to *self-communication*. Furthermore, this end of the communication of thoughts is an end given by *nature*, and is not an end given by reason. It is not clear what the relevance of this natural end is to an agent's obligatory ends. Most importantly, however, the duty to oneself not to lie is supposed to be an example of a duty "merely as a moral being" (MM 6: 428 (552)). It is *not* supposed to have anything whatsoever to do with oneself as a *natural* being. Kant's argument against lying in the ethics relies, however, upon using oneself as a natural being as a mere means to an end. In this sense, it can be said to fail to do what it is supposed to do as an argument against lying in the ethics.

*Lies in the Law (Juristic Sense)*. A lie in the legal sense – or, strictly speaking, a lie in the juristic sense<sup>30</sup> – is much narrower than a lie in the ethical sense. As Kant says about "lie" in the *Doctrine of Virtue*: "jurists insist upon adding for their definition, that it must harm another (*mendacium est falsiloquium in [praejudicium]*<sup>31</sup> *alterius* [a lie is an untruthful statement that harms another])" (MM 8: 426 (612)). That is to say, in order for a lie to be a lie in the juristic sense, it must harm or injure (or at least, be intended to harm or injure) a particular other person.

In several places in his lectures on ethics Kant is more precise, and says that a lie in the juristic sense is a "*falsiloquium dolosum in praejudicium alterius*," an intentionally deceptive untruthful assertion that harms another:

The jurist recognizes and applies this only insofar as it involves a violation of the duties towards others (*officii juridicorum* [juridical duties]), and he understands thereby a *falsiloquium dolosum in praejudicium alterius*; he is therefore looking to the consequences and relation to others. (LE 27: 604-5 (350-1))

In *sensu juridico* [legal/juridical sense] the *mendacium* is a *falsiloquium dolosum in praejudicium alterius*, but in *sensu ethico*

<sup>30</sup> As I will explain, Kant holds that there are two senses of a lie in the legal sense.

<sup>31</sup> There is good reason to believe that there is a misprint in the Latin in *Kants gesammelte Schriften* here (possibly as a result of a misprint in the original publication), and that it should be *praejudicium* instead of "*praeiudicium*."

[ethical sense] it is already any deliberate untruth. (LE 27: 701 (427))

In his lectures on ethics he explains the distinction between a lie in the ethical sense and a lie in the juristic sense:

Hence an untruth differs from a lie in this, that both, indeed, contain a *falsiloquium*, i.e., a declaration whereby the other is deceived, but the latter is uttered with an associated intention to injure the other by the untruth. Hence, too, a lie is subject to judicial reprimand, at least an offence, but not as an untruth. In ethics, though, every *falsiloquium*, every knowing deception, is impermissible, even though it be not immediately coupled with an injury, and would not be imputable *coram foro juridico* [before a court of law]. (LE 27: 700 (426-7))

To harm or injure a particular other person is to violate that person's rights. A lie in the juristic sense, therefore, is a lie to a particular other person (or particular other persons) that violates this particular person's (or these particular other persons') right(s).

In the *Doctrine of Right* Kant says that the original right that belongs to every person by virtue of her/his humanity is the right to freedom. The right to freedom is the right to act without the interference of others "insofar as it can coexist with the freedom of every other in accordance with a universal law" (MM 6: 237 (393)). This right to freedom includes the right to act towards others in such a way that "does not in itself diminish what is theirs." Lying to another person "does not in itself diminish what is theirs":

This principle of innate freedom already involves... his being 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 or sincere or untrue and insincere (*veriloquium aut falsiloquium* [truthful statement or untruthful statement]); for it is entirely up to them whether they want to believe him or not. (MM 6: 237-8 (393-4))

By "diminish what is theirs" Kant means deprive the particular other person of what is rightfully his. What is rightfully a person's includes property, and through contract, the promised performance of something by a person (MM 6: 245–287 (401–434)). Lying to a particular other person does not, by itself, entail intending that this person be deprived of what is rightfully his. Not every lie is such that, if the other person believes it, it deprives her/him of what is rightfully his. However, certain lies are such that, if the other person believes it, it deprives him of what is rightfully his. In telling such a lie, the liar does intend that the other person be deprived of what is rightfully his. Kant gives an example of such an untruthful statement:

Telling an untruth intentionally, even though merely frivolously, is usually called a *lie* (*mendacium*) because it can also harm someone, at least to the extent that if he ingenuously repeats it others ridicule him as gullible. The only kind of untruth we want to call a lie, in the sense *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 (*falsiloquium dolosum*). (MM 6: 238 n. 1 (394 n. 1))

Lying to another person that "I have fulfilled my contract with you" entails intending that this other person be deprived of what is rightfully his, namely, the promised fulfillment of the contract. It entails intending that this person's rights be violated. Hence, this lie is a lie in the juristic sense. It is a *falsiloquium dolosum in praejudicium alterius*. It is punishable by law.

The *Doctrine of Right* is exclusively concerned with a lie in the juristic sense, a *falsiloquium dolosum in praejudicium alterius*. As Kant says, "In the doctrine of right an intentional untruth is called a lie only if it violates another's right" (MM 6: 429 (552)).

Kant does not mention a specific duty not to lie in the *Doctrine of Right*, nor does he provide an argument for such a duty. The reason for this is that there is no further wrong in telling a lie in the juristic sense than that of (intending to) harm or injure a particular person by depriving him of what is rightfully his. Harming or injuring a person by depriving a person of what is rightfully his is wrong insofar as it is a violation of his property rights, his contract rights, etc. The wrongness of telling a lie in the juristic sense, therefore, just is the wrongness of violating a person's property rights, rights based on contract, etc.

Nevertheless, there is a juristic duty not to lie in the *Doctrine of Right*. It is a duty to refrain from performing a certain intentional physical action – *telling a particular other person or persons a lie that violates their rights*. It does not matter, in order to fulfill this duty, why one does not tell such a lie, so long as one omits it. A person who tells such a lie, for whatever reason, has committed a *crime*, and must be punished.

Every lie in the juristic sense is also a lie in the ethical sense. However, many lies in the ethical sense are not lies in the juristic sense. Importantly, a lie to a would-be murderer at the door of my house, looking for my friend, is *not* a lie in the juristic sense. This is because, as Kant says in the *Supposed Right to Lie* essay, “I indeed do no wrong to him who unjustly compels me to make the statement if I falsify it” (RL 8: 426 (612)). One does *not* violate the rights of the would-be murderer by lying to him. Such a lie is not a lie in the juristic sense. Therefore, such a lie is not a crime – or at least, is not a crime according to this argument.

*Lies in the Law II (Third Sense of Lie)*. In addition to a lie in the ethical sense, and a lie in the juristic sense, there is a third sense of a lie in Kant’s moral philosophy, which also falls within law. This third sense of a lie that also falls within law first appears in the lectures on ethics. Here Kant talks about a lie as a “*falsiloquium in praejudicium humanitatis* [untruthful statement harms humanity].” Every lie to another person harms humanity (generally):

*A mendacium* is thus a *falsiloquium in praejudicium humanitatis* even when it is not also in violation of any particular *jus quaesitum* [special right] of another. In law a *mendacium* is a *falsiloquium in praejudicium alterius*, and cannot be anything else there, but from the moral viewpoint it is a *falsiloquium in praejudicium humanitatis*. (LE 27: 448 (203))

Every lie to another person is a lie that violates a “right of mankind,” or a right of humanity (generally), namely, the right to enter into and maintain a civil society:

It is therefore possible for a *falsiloquium* to be a *mendacium* – a lie – though it contravenes no right of any man in particular. Whoever may have told me a lie – I do him no wrong if I lie to him in return, but I violate the right of mankind; for I have acted contrary to the condition, and the means, under which a society of

men can come about, and thus contrary to the right of humanity. (LE 27: 448 (203))

Every lie in the juristic sense is a lie in this third sense. However, not every lie in this third sense is a lie in the juristic sense. A lie in this third sense is broader than a lie in the juristic sense, since a lie does not have to harm or injure another particular person to be a lie in this third sense. Nevertheless, this third sense of a lie is narrower than a lie in the ethical sense, since the lie must be a lie to another person, and *cannot* be a lie to oneself.

The question arises, whether a lie that affects nobody’s interests, and does nobody any harm, is likewise a lie? It is, for I promise to speak my mind, and if I fail to speak it truly, I do not, indeed, act in *praejudicium* of the particular individual concerned, but I do so act in regard to humanity. (LE 27: 449 (204))

In the lectures Kant gives several examples of lies in this third sense that are not lies in the juristic sense. One example is the lie told to someone who has lied to one. Since the liar has forfeited his rights by his lie, one cannot violate his rights by lying to him. One can only violate the right of mankind or humanity: “Whoever may have told me a lie – I do him no wrong if I lie to him in return, but I violate the right of mankind” (LE 27: 448 (203)).

Another example of a lie in this third sense that is not a lie in the juristic sense is publishing a lying report. Here there is no particular other person to whom the lie is told, and hence, no violation of the rights of a particular other person. However, the right of humanity is violated. However, the right of humanity that is violated, it seems, is the right to pursue and acquire knowledge:

If a man publishes a false report, he thereby does no wrong to anyone in particular, but offends against mankind, for if that were to become general, the human craving for knowledge would be thwarted; apart from speculation, I have only two ways of enlarging my store of information: by experience, and by testimony. But now since I cannot experience everything myself, if the reports of others were to be false tidings, the desire for knowledge could not be satisfied. (LE 27: 447-8 (203))

In the *Supposed Right to Lie*, it is a lie in this third sense that Kant has in mind. The *Doctrine of Right* is only concerned with lies that harm particular individuals – lies that violate the rights of particular individuals. That is, the *Doctrine of Right* is only concerned with lies in the juristic sense. Since the would-be murderer has forfeited his rights by his setting out on a course of murder, one cannot intend to violate his rights by lying to him. One can only violate the right of humanity by lying to him:

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 the jurist's sense) (RL 8: 426 (612)).

Here Kant insists that the lie told to the would-be murderer is indeed harmful, although it is harmful to “humanity generally,” since it undermines the source of all rights – all law – by undermining the state itself:

Thus a lie, defined merely as an intentionally untrue declaration to another, does not require what jurists insist upon adding for their definition, that it must harm another (*mendacium est falsiloquium in [praeiudicium]<sup>32</sup> alterius*). For it always harms another, even if not another individual, nevertheless humanity generally, inasmuch as it makes the source of right unusable. (RL 8: 426 (612))

Kant expands upon the meaning of this claim about the lie to the would-be murderer being a wrong:

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 the 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. (RL 8: 426 (612))

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<sup>32</sup> See Note 31.

Telling any lie is, at least in principle, an act of bringing it about that statements or declarations or assertions are not believed, and thus, at least in principle, is an act of bringing it about that all contracts are undermined, and that civil society is undermined. However, to undermine civil society is to wrong humanity (in general). It is a wrong that is inflicted upon everyone in civil society. Hence, *not lying*, or being truthful,<sup>33</sup> is required, in order to avoid wronging everyone in civil society: “truthfulness is a duty that must be regarded as the basis of all duties to be grounded on contract, the law of which is made uncertain and useless if even the least exception to it is admitted” (RL, 8: 427 (613)). It is a duty that is owed to everyone: “Truthfulness in statements that one cannot avoid is a human being's duty to everyone” (RL, 8: 426 (612)). It is an unconditional duty: “To be *truthful* (honest) in all declarations is therefore a sacred command of reason prescribing unconditionally, and one not to be restricted” (RL, 8: 426 (612)).

In the *Supposed Right to Lie*, Kant says that lying to the would-be murderer can be a crime if it contributes, without your intending it (i.e., by accident), to another crime: “Such a well-meant lie *can*, however, also become by an *accident (casus)* punishable in accordance with civil laws” (RL 8: 427 (612)). If you lie to the would-be murderer that your friend is not at home, and your friend leaves the house unbeknownst to you “so that the murderer encounters him while he is going away and perpetrates his deed on him,” then “you can by right be prosecuted as the author of his death” (RL 8: 427 (612)). This would be a case in which your lie makes you an accomplice in the murder of your friend – in which you are partly legally responsible for the death of your friend: “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 be” (RL 8: 427 (613)). By contrast, if you tell the truth to the would-be murderer, then, no matter what happens, you are not liable for any crime that ensues: “But if you have kept strictly to the truth, then public justice can hold nothing against you, whatever the unforeseen consequences might be” ((RL 8: 427 (612)). That is, if you tell the truth to the would-be murderer, and he uses this information to murder your friend, then you are not in any part legally responsible for the death of your friend.

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<sup>33</sup> The duty to be truthful in whatever assertions one does make, as opposed to volunteering truthful assertions (being candid), is an important one. The duty of truthfulness in Kant is only the duty not to lie. It is not the duty to be candid. See my “Kant on Lies, Candour and Reticence,” *Kantian Review* 7 (2003), 101-133.

However, Kant also says that the lie to the would-be murderer, all by itself, is a crime: "Such a well-meant lie *can*, however, also become by an *accident* (*casus*) punishable in accordance with civil laws; but what escapes being punishable merely by accident can be condemned as wrong even in accordance with external laws" (*RL* 8: 427 (612)). If the lie to the would-be murderer does manage to deceive him about your friend's whereabouts, and he fails to murder your friend, then you are still guilty of an action that "can be condemned as wrong even in accordance with external laws." As another commentator has said: "But suppose, what is more likely to occur, that the house-owner lies to the would-be murderer, the innocent friend is saved, and soon thereafter the police apprehend the intruder. Everything turns out well – except, according to Kant, the house-owner may be charged with violating the juridical duty not to lie."<sup>34</sup> It does not matter what motive is behind such a lie. Even if the motive of philanthropy, love of fellow man, i.e., beneficence, is behind such a lie, the lie is still a crime.

Because every lie to another person is a crime in this way, Kant believes that there is no discrepancy between the *Doctrine of Right* and the claim that he defends in the *Supposed Right to Lie* essay, namely, that a lie to a would-be murderer at the door about one's friends whereabouts is a crime.

Even if there is no discrepancy between the two, however, there remains the question of what it means to wrong humanity in general without wronging a particular individual. In the *Doctrine of Right* there is at least one place in which Kant discusses the case of a crime that is perpetrated against 'humanity.' This is the crime of bestiality, i.e., sex with an animal, a crime in which there is no particular person whose rights have been violated:

But what is to be done in the cases of crimes that cannot be punished by a return for them because this would be either impossible or itself a punishable crime against *humanity* as such, for example, rape as well as pederasty or bestiality? The punishment for rape and pederasty is castration (like that of a white or black eunuch in a seraglio), that for bestiality, permanent expulsion from civil society, since the criminal has made himself

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<sup>34</sup> John E. Atwell, *Ends and Principles in Kant's Moral Thought* (Dodrecht: Martinus Nijhoff, 1986), 200.

unworthy of human society. [...] The crimes mentioned are called unnatural because they are perpetrated against humanity itself. (*MM* 6: 363 (498))

The problem with bestiality as an example of a wrong that is perpetrated against humanity, as opposed to a particular person, is that the example simply begs the question. It is not at all clear, if there is indeed no violation of the rights of a particular person, how this intentional action can be a crime, on Kant's account of law. As another commentator has pointed out:

Bestiality is proscribed on the grounds that it is a "crime against humanity in general." What this means is never made clear. Kant nowhere argues that humanity "in general" possesses any rights. Indeed, Kant's taxonomy of rights appears to include only differing kinds of individual rights. Since Kant does not argue that bestiality infringes any individual rights, it is not obvious what he means by describing it as a crime against humanity.<sup>35</sup>

For this reason I have not here given the third sense of a lie – the second legal sense – a name. The proper name for it is a lie 'in the sense of right,' but since I here identify right with law, and since there is already a legal sense of 'lie,' namely, the juristic sense, it seems that this name cannot be used.

The real problem for Kant, therefore, is whether he can independently defend the category of a 'crime against humanity in general' in his theory of law, and then argue that a lie told to a would-be murderer is an example of such a crime. The *Supposed Right to Lie* does not itself provide an argument for this category of crime.

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<sup>35</sup> Rosen, *Kant's Theory of Justice*, 21.