On Lying and the Role of Content in Kant's Ethics[1]

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Kant's 1797 essay *On a Supposed Right to Tell Lies from Benevolent Motives* is notorious for the obstacles it presents to those both sympathetic to his formalist project in moral philosophy and concerned to argue against critics that it does not yield a cold-hearted rigorism. Commentators have typically adopted one of two strategies in attempt to win for his view in the essay some degree of plausibility. Either it has been argued that a proper interpretation of the various formulas of the categorical imperative does not yield the stringent conclusions he urges there,[2] or that a clarification of structural features of his moral theory and of the objectives of the lying essay in particular can cast its apparent rigorism in a more acceptable light.

It is this latter strategy I shall pursue in this paper – motivated by a few lines in Mary Gregor's introduction to her translation of the *Tugendlehre*, where she warns us that a failure to bear in mind the various divisions of Kant's practical philosophy and the tasks and role of factual content unique to each of them is likely to result in an interpretation of his formalist project as empty and rigoristic.[3] This is essentially the view urged by H. J. Paton as well. The key to making sense of the lying essay, he tells us, lies in distinguishing the different kinds of laws at work at the various levels of analysis in Kant's moral theory, and the different kinds of exceptions that can be made to them.[4] While both he and Gregor agree that

[1] This paper was read May 7, 1988 at the University of Chicago conference, *Recent Perspectives on Kant*, in honor of Manley Thompson. I therefore wish to dedicate it to him. I owe thanks to the Deutscher Akademischer Austauschdienst for supporting my research in West Germany the summer of 1987, and also to Manfred Baum, Robert Fogelin and Walter Sinnott-Armstrong for their detailed comments on an earlier draft.

[2] For a recent example see Christine M. Korsgaard's *The Right to Lie: Kant on Dealing with Evil*, Philosophy and Public Affairs 15, no. 4 (Fall 1986): 325–349. Korsgaard argues that when we apply the Formulas of Humanity and of the Kingdom of Ends to the case in Kant's lying essay, the lie under consideration there turns out to be impermissible, but that the same is not true when we apply the Formula of Universal Law.

[3] Immanuel Kant, *The Doctrine of Virtue: Part II of the "Metaphysics of Morals,"* trans. Mary J. Gregor (Philadelphia: University of Pennsylvania Press, 1964). See also Chapter 1 of her commentary, *Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the "Metaphysik der Sitten"* (Oxford Basil Blackwell, 1963).

[4] See his *An Alleged Right to Lie: A Problem in Kantian Ethics*, Kant-Studien XLV, 1954. Other commentators who pursue a similar line of argument include: Marcus George Singer, *Generalization in Ethics* (New York: Atheneum, 1971), pp. 223–70; Hans Wagner, *Kant gegen 'ein vermeintes Recht, aus Menschenliebe zu lügen'*, Kant-Studien, vol. 69, no. 1 (1978): pp. 91–6; Günther Patzig, *Der kategorische Imperativ in der Ethik-Diskussion der Gegenwart* in *Tatsachen, Normen, Sätze* (Philipp Reclam jun. Stuttgart, 1980); and most recently John E. Atwell, *Ends and Principles in Kant's Moral Thought* (Dordrecht/Boston/Lancaster: Martinus Nijhoff Publishers, 1986), pp. 193–202.

Kant never draws the lines between the projects of his practical philosophy with perfect clarity, Paton goes so far as to say that in the lying essay it is Kant's own failure to keep the various divisions of his moral theory distinct that is responsible for the standard reading of his position there as rigoristic. There, on Paton's view, Kant mistakes a particular and exceptable moral law (not to lie) with the fundamental and exceptionless moral principle (the categorical imperative) – and argues from the point that the categorical imperative is unconditional in its application, to the point that the more specific moral laws derived from it are also unconditionally valid and therefore binding in all circumstances.

While I am not willing to go so far as to follow Paton in characterizing Kant's position in the lying essay as a confusion or "temporary indiscretion," "written in a bad temper in his old age," I think it is fair to say that the reputation the essay has won him is not entirely the fault of misinterpretations on the part of his readers. Although Kant does alert us to the fact that his concern there is to defend the duty of truthfulness from the point of view of right or law *[Recht]* rather than from the point of view of virtue or ethics, he does not sufficiently emphasize the significance of the *level* of analysis within his philosophy of law from which he is working. *We* react in bewilderment to his insistence that no one ever has a right to lie whatever the circumstances, because we think that the circumstances of this particular case are precisely what deserve special attention and call for some exception in the standard application of our moral rules. In our sensitivity to the many variables which complicate the case and constitute its uniqueness, we consider it from a point of view we would call "applied ethics" (or better, "applied law"). My intepretation of the lying essay in attempt to defend Kant against the charge of rigorism will depend on showing, however, that the heavy-handed stance he takes there must be understood in the context of a discussion that is distinct from the standpoint of applied practical philosophy – and that once it is understood in this way, a more human Kant emerges, as well as, I think, a more plausible moral theory.

The lying essay is particularly interesting just because an accurate interpretation of it requires a clarification of Kant's often ambiguous accounts of the various divisions of his practical philosophy and the tasks and role of factual content proper to each of them. When we apply the categorical imperative to test either the moral permissibility of a maxim or the legal permissibility of an action, we need to ensure that we have formulated the maxim or described the action in a way that captures the relevant features of the case in question; to do so we need in turn bear in mind the scope of our particular level of inquiry. The fact that Kant's *Metaphysik der Sitten* is intended to determine duty only for human nature as such rather than for

particular individuals in particular situations, for example, places constraints on the kind of content appropriate to the maxims and actions considered under its heading. So what I have referred to above as the "structural features" of Kant's practical philosophy must be carefully taken into account before it is possible to assess whether the categorical imperative – in any of its various formulations – is really as effective as he thinks it is in determining duty.

In the first two parts of this paper I provide an interpretation of the lying essay which relies on identifying its place among what might be called the more "foundational" and "formal" texts of Kant's practical philosophy. In parts III and IV, I discuss features of that division of his practical philosophy about which he says the least: the division of applied moral philosophy (in particular, applied law). I do this in order to gain an indication of how Kant might treat the lying essay case were he to consider it at the applied level. In general, my concern here is to draw attention to some of the neglected *non*-formal features of Kant's moral theory. While this does nothing to legimate his practical philosophy as a whole, it should add to our appreciation of its complexity – so much so as to rule out the charge that his formalism commits him to rigorism.

I

The case under consideration in the essay on lying is a familiar one: I have hidden a friend in my house, and a murderer appears at my door asking after my friend's whereabouts. I have, in this case, no option but to speak; the question, then, is whether I have a right to lie to the murderer at my door. The opinion of the French philosopher Benjamin Constant which Kant presents for us here is that the murderer has forfeited his right to truthfulness by virtue of his intention to injure. Since Constant holds that there are duties only where there are correlative rights, he concludes that we have no reason to claim that there is a duty to be truthful in this case.

While Kant agrees with Constant that in intending to harm and in unjustly compelling me to speak the murderer has forfeited his right to my truthfulness, he does not think that this consideration justifies me in lying. "[A]lthough by a certain lie I in fact do no wrong to any person," he tells us, "... I infringe the principle of justice in regard to all indispensably necessary statements generally ...; and this is much worse than to commit an injustice to any individual."[5] In lying, Kant says,

[5] Throughout the text of this paper I refer to Kant's essay, *Über ein vermeintes Recht aus Menschenliebe zu lügen* as simply the "lying essay," and in footnote references as *LE*. The quotations I include of this essay are taken from Thomas Kingsmill Abbott's translation provided in his collection, *Kant's Critique of Practical Reason and Other Works on the Theory of Ethics* (London: Longmans, Green and Co., 1909), pp. 361–365. Footnote references to this and other works by Kant (except where otherwise indicated) include in brackets page numbers of the Prussian Academy edition, and when necessary page numbers of the specified English translations. Here see [VIII, 429]; Abbott trans., p. 365.

"I cause that declarations in general find no credit, and hence that all rights founded on contract should lose their force; and this is a wrong which is done to mankind."[6] He therefore concludes in opposition to Constant that the duty of veracity is "an unconditional duty which holds in all circumstances"[7]; it is a duty that neither discriminates among persons nor takes into account the possible consequences of its application. It is, he says, "a sacred unconditional command of reason, and not to be limited by any expediency."[8]

The fact that veracity is considered in the lying essay under the heading of duties of justice explains why it is that Kant focusses his discussion there on the harm lying inflicts on others rather than on the harm or self-degradation the liar inflicts on himself. Because he injures humanity generally, the liar must be held legally responsible for all the consequences, even if after the lie is told the murderer only accidentally comes upon and kills his victim. The line Kant takes here, however, is more extreme than in other texts where he considers the duty of veracity from this same point of view. In both the *Vorlesung über Ethik* of 1775–80 and the *Rechtslehre* of 1797, he insists upon a position he explicitly denies in the lying essay. In the former texts he tells us that an untruth counts as a lie only if it "is immediately prejudicial to the right of another."[9] We needn't always share our thoughts with everyone; in fact, Kant thinks that it can be "dangerous" to do so, and that we often ought to "keep the shutters closed" and guard against the maliciousness of others.[10] Only if I have expressly given someone reason to expect truthfulness from me and then go ahead and deceive, do I violate that person's right, and tell not just a falsehood but, from a legal point of view, a lie.

Sometimes context alone makes it clear that truthfulness is not to be expected from me, as in the following example Kant provides in the *Vorlesung*: Suppose "my enemy" takes me by the throat and demands to know the whereabouts of my money. My false utterance in such an instance is not a lie on Kant's view because, as he puts it, "the thief knows full well that I will not, if I can help it, tell him the truth and that he has no right to demand it from me."[11] It is because he forces a confession from me that the thief loses any right or reason to expect that I will give him the information he wants. While on this condition alone Kant concludes that I cannot be said to have a duty to tell the truth, he notes further that I need not

[6] [VIII, 426]; Abbott trans., p. 362.
[7] [VIII, 429]; Abbott trans., p. 364.
[8] [VIII, 427]; Abbott trans., p. 363.
[9] *Anfangsgründe der Rechtslehre*, translated as *The Metaphysical Elements of Justice: Part I of the "Metaphysics of Morals"* by John Ladd (Indianapolis: Bobbs-Merrill Educational Publishing, 1965). [238 f.].
[10] *Eine Vorlesung Kants über Ethik*, ed. Paul Menzer (Berlin: Pan Verlag Rolf Heise, 1924), translated as *Lectures on Ethics* by Louis Infield (Indianapolis/Cambridge: Hackett Publishing Company, 1963). [Menzer 283 f.]; Infield trans., pp. 224 f. All page references in brackets to this text refer to the Menzer edition.
[11] Ibid. [Menzer 286 f.]; Infield trans., p. 227.

disclose the whereabouts of my money because this is information the thief will "abuse."

What is curious is that Kant's analysis in both the *Vorlesung* and the *Rechtslehre* seems very close to the viewpoint presented as Constant's in the lying essay. There, the person who appears at my door and demands to know whether I have my friend in hiding is identified as a "murderer" who leaves me no option but to speak. While Kant agrees with Constant that the murderer has forfeited his right to my truthfulness and that I therefore do no injustice to him in not telling the truth, he neither follows Constant in arguing that these considerations constitute a right to lie in this case, nor does he repeat his position in the *Vorlesung* and the *Rechtslehre* that in deceiving someone who unjustly compels me to speak, I tell not a lie but a falsehood. Since Kant's view in the lying essay is that making a false statement harms humanity generally, the distinction between falsehoods and lies falls away, and there can thus *never* be a right to lie.

There is no denying the categorical and unyielding nature of his stance here; but his position is equally remarkable for what it leaves out of consideration. Nowhere in the essay is a particular maxim formulated and tested against the categorical imperative. What some might suggest is the duty to save the life of the friend, furthermore, is never directly mentioned. Perhaps these omissions should not strike us as significant – since, after all, Kant claims here that *all* circumstances are irrelevant to the question of whether one ever has a right to lie. But upon closer reading, we discover that the circumstances he insists have no bearing on the case are those which arise in answer to the call of inclination, not duty. The duty of veracity, he says, is "not to be limited by any *expediency [Convenienzen]*" (my emphasis). Here, as in every other text (apart from the *Vorlesung*) in which we find his discussions of this particular duty, the only exceptions to it which he entertains and then rules out as morally impermissible are exceptions *in the service of inclination.*[12] His position in the *Vorlesung* is interesting because it is the one instance in which his discussion of possible exceptions to the requirement of veracity is broadened to include cases in which that duty comes into conflict with other duties. Not surprisingly, the line he takes there contrasts sharply with that of his other texts. In some circumstances, Kant says, "white lies" *[Notlügen]* are "enforced upon us by necessity":

> If force is used to extract a confession from me, if my confession is improperly used against me, and if I cannot save myself by maintaining silence, then my lie is a weapon of defense. The misuse of a declaration extorted by force justifies me in defending myself.[13]

And again:

[12] See in the *Grundlegung zur Metaphysik der Sitten* [402 f., 422, 429 f.]; in the *Kritik der praktischen Vernunft* [20 f., 69]; *Metaphysische Anfangsgründe der Tugendlehre* [428 – 30].
[13] *Vorlesung* [Menzer 288 f.]; Infield trans., p. 228.

> The forcing of a statement from me under conditions which convince me that improper use would be made of it is the only case in which I can be justified in telling a white lie *[Notlüge]*.[14]

Unfortunately, Kant does not spell out for us in this text just what he has in mind by the "improper use" of a confession extracted from me against my will. While the context of the first passage quoted suggests that I am permitted to tell a white lie in cases where I need, or rather have a duty to protect my right to property, it is tempting to conclude from the second passage that he intends his point to be taken more broadly, such that the "improper use" of a forced confession refers to its potential violation of any human right. But it is not clear from these passages that this is what Kant was saying; nor do they provide sufficient evidence that his position on the permissibility of white lies was meant to include cases in which the right worthy of defending is not my own, but that of someone else. All that we know is that Kant's position in the *Vorlesung* seems to contradict the hard line he takes in the lying essay, where he would appear to be committed to denying the permissibility of lying even in cases of self-defense. The two texts seem at odds, and we may wonder why it is that the more lenient position he holds in the *Vorlesung* is nowhere to be found in the pages of his much later discussion. Either he is just inconsistent, and Paton is right in saying that his rigidity in the lying essay reflects a "bad temper" in "old age,"[15] or there is something about its particular level of analysis and the task proper to it which can furnish us a more positive explanation.

II

Why is it that the fact that the duty of veracity can sometimes come into conflict with other duties occurs to Kant in the *Vorlesung* but nowhere else in his writings on morals? Why in the lying essay does he ignore the possibility that I may have a *duty* (and not merely a desire) to save the life of the innocent friend? While he does little to draw it to our attention, we notice upon close reading of the essay that Kant's principal concern there is with the possibility of a *foundation* of right or of a just legal system (with a "metaphysic of Right"). This is what he thinks is threatened by the viewpoint put forward by Constant. He agrees with Constant that a benevolent lie cannot injure the person who "unjustly compels me to speak," but argues that it wrongs humanity generally, in that it "vitiates the source of justice." Truthfulness is an unconditional duty because, in his words, it is "the basis of all duties founded on contract, the laws of which would be rendered uncertain and useless if even the least exception to them were admitted."[16]

[14] Ibid. [Menzer 289]; Infield trans., p. 228.
[15] Paton, *An Alleged Right to Lie*, p. 201.
[16] *LE* [VIII, 427]; Abbott trans., p. 363.

But why should Kant think that excepting the duty of veracity in special conflict situations would necessarily undermine the fabric of a just society? In this Section I will consider the significance of the fact that his analysis in the lying essay occurs at the level of a "metaphysic of Right," and then go on in Sections III and IV to ask whether the kind of rigorism we find there would follow him were he considering the same case from the standpoint of "applied law."

According to one commentator, what Kant is defending in the lying essay is "a fundamental modification of the traditional idea of humanity and its rigths."[17] Just as in the *Grundlegung* and the *Kritik der praktischen Vernunft* he opposes all attempts to ground morality in empirical or material principles, so in his various writings on the foundations of law he insists that an empirical account of natural right cannot adequately protect the innate right to freedom of individuals in their relations to one another. Traditional natural rights theories take as their point of departure ends and purposes such as happiness and the need to protect self-interest that human beings *in fact* have, or were taken to have at the time of their contracting out of a "state of nature." But Kant's view is that an appeal to any agreement's satisfaction of the factual ends of humanity at one time does not by itself demonstrate that that agreement was ever or is now *just*. Since ends attributable to us from an empirical point of view change over time and vary from person to person, they can never serve as grounds valid for the will of all and determining in all cases. That is to say, they can never have the necessary and universal status of law. Even supposing an empirical end such as happiness were unanimously adopted, such that we were to agree on the objects of desire and our means of obtaining them, the principle of happiness still could not claim the objective necessity of law, on Kant's view, because that unanimity would itself be something "merely contingent."[18] *My* own conception of happiness might one day come into conflict with the conception of happiness the social contract was intended to serve – and yet on this variety of natural rights theory I would nonetheless be compelled to obey as that contract required.[19]

In our attempt to provide a foundation of law, Kant urges that we proceed not from an appeal to empirical ends of human nature, but from the a priori principle that everyone by virtue of his or her humanity has a right to freedom – and derive

[17] Julius Ebbinghaus, *Kant's Ableitung des Verbotes der Lüge aus dem Rechte der Menschheit*. Reprinted in a new collection of his essays, *Sittlichkeit und Recht: Praktische Philosophie 1929–1954*, ed. Hariolf Oberer and Georg Geismann (Bonn: Bouvier Verlag Herbert Grundman, 1986), p. 416 (my translation).

[18] *Kritik der praktischen Vernunft* [26].

[19] In his essay *On the Old Saw: That May be Right in Theory But it Won't Work in Practice*, Kant says: "Regarding happiness no universally valid principle of legislation can be given. For both the circumstances of the time and the highly contradictory and constantly changing delusions in which each man seeks his happiness (and no one can prescribe for him where he should seek it) render all fixed principles impossible and unfit by themselves to serve as principles of legislation." [VIII, 298]; translated by E. B. Ashton (Philadelphia: University of Pennsylvania Press, 1974), p. 66.

from this a principle governing the rights of individuals in their external relations. "Justice," on this a priori account, is "the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom."[20] We *ought* to contract to leave the state of nature and form a "civil society," and our public laws *ought* to conform to the principle of justice, not in the name of contingent ends settled on by those who happen to be in power, but in the name of an "objective" or "rational" end of humanity determined a priori: the protection of individual freedom.

So what is from the Kantian perspective lacking in traditional natural rights theories is any necessary coincidence of the ends identified by those theories as worthy of protection, and ends common to all finite rational beings. Kant's fear is that unless there is some way to ground a system of law on the latter kind of end – unless it is possible to base law on a contract *to which we could all possibly consent*[21] – its enforcement will have to take the form of unlawful coercion. It is precisely to avoid *this* outcome and guard against any resulting infringement of human freedom that he insists that the foundational principles of justice must be universally binding and inviolable.[22] Contrary to what is so often assumed, here we can see that his rigorism follows from rather than precedes his reflections on the conditions of right. If the will of the people is to be adequately protected, first principles of law have to be such that they *could be consented to by all*; this, I take it, is what is intended by the requirement that they be unconditional in character.

While these considerations may win some sympathy for Kant's insistence upon the unconditionality of first principles of law, they hardly set our minds at ease with regard to his rigorism about lying. In the lying essay he tells us that the duty of veracity admits of no exception in its application, because it serves as "the basis of all duties founded on contract."[23] Since the possibility of any binding contract or agreement depends on the truthfulness of those consenting to it, even a benevolent lie will be said on his view to 'vitiate the source of justice'. There can therefore never be a right to lie, because this would in effect grant the destruction of the "*source*" of all right.[24]

It is not difficult to understand why so many have concluded that the extreme line Kant takes here is evidence that whatever may be right about his theory of the

[20] *Rechtslehre* [230].

[21] "Just as long as it is not self-contradictory to assume that all the people consent to ... a law ..., the law is in accordance with justice." *Old Saw* [VIII, 299]; Ashton trans., p. 67.

[22] In his words, "Unless there is something which *rationally* compels immediate respect, such as human rights, all influences upon choice will be incapable of curbing human freedom." (my emphasis) *Old Saw* [VIII, 306]; Ashton trans., 74. See also Kant's discussion of these points in his *Rechtslehre* § 44 [312 f.].

[23] *LE* [VIII, 427]; Abbott trans., p. 363.

[24] *Ibid.* [VIII, 426]; Abbott trans., p. 362. This, I take it, is why Kant says further in the lying essay that for the duty of veracity to admit of exceptions would be "self-contradictory." [430]; Abbott trans., p. 365.

a priori foundation of law, it can't possibly work in practice. But it is important that we draw out some further implications of his level of analysis in the lying essay. As I mentioned above, it is curious that his treatment there of the case of the murderer at my door is so insensitive as to ignore the possible duty I have to protect the life of my friend, and to construe the conflict in question as merely that between duty and expediency. This can be explained, however, in terms of the objectives unique to the essay. What Kant feared most – and what he thought Constant was guilty of – was 'accommodating justice to politics,' or granting a right to lie in the service of self-interest. Kant supposedly had reason to suspect that Constant's call for occasional lenience in the application of strict principles was politically motivated – that behind his argument that an overly rigid adherence to law can contribute to the destruction of society lurked the wish to advance the interests of the anti-Jacobin movement to which he belonged.[25] Without going into these historical details, the important point is that Kant believed that this kind of move was open only to a system of law based on merely conditional principles; but, for reasons we have just reviewed, such a system had to be inadequate from his point of view as a guardian of human rights.[26]

I said above that the fact that Kant's discussion in the lying essay occurs at the level of a "metaphysic of Right" can aid us in understanding his rigorism, or at least his peculiar failure there to consider the case under discussion as presenting a conflict between competing duties. Summing up, this is evident for two reasons: First, in his concern to defend the a priori foundation of law, the target of his attack is any system of law which, because based on merely contingent ends of human nature, can allow their exception in the name of prudence or expediency. This is what he thought was behind Constant's call for lenience in our application of first principles, and is what provides the context in light of which we should understand his insistence upon the unconditional nature of the duty of veracity. Second, the level of his analysis precludes any investigation into the concrete application of first principles to cases in experience, including cases in which conflicts among duties might arise. It is easy to understand how we might be misled about this, since it does appear that in discussing the case of the murderer at my door Kant is working in the lying essay from within the domain of applied law. But we need to be on guard about this example for just the same reason we need to be on guard about the four examples presented in the *Grundlegung*. We need to bear in

[25] For a discussion of the political and historical context of Kant's relation to Constant, see esp. Robert J. Benton, *Political Expediency and Lying: Kant vs. Benjamin Constant*, in Journal of the History of Ideas, Vol. XLIII, No. 1 (January – March, 1982), pp. 135 – 144. See also Ebbinghaus, note 16 above.

[26] Speaking of traditional rights theories, Kant says in *On the Old Saw*: "Having assumed the idea of an original contract ... to be something that must have happened in *actual fact*, they believe the people to have always retained the right to depart from the contract whenever, in the people's own judgment, there is a gross departure from it." [301 f.]; Ashton trans., 69 f.

mind that without venturing outside the realm of a "metaphysic of Right" Kant can exclude as impermissible exceptions in the name of prudence or expediency *as a class*, simply by reflecting on the nature of duty as he has defined it. Whether duty may on some occasions be excepted to on *other* grounds (on *moral* grounds), whether Kant is able to provide us some objective means of arbitrating among duties when they conflict – these are questions which belong outside that domain of inquiry which has as its task the determination of the foundation of duty.

III

So nothing about the lying essay resolves the question of how the case considered there would be settled were it raised not merely as an example of the fact that for Kant duty can never be overridden by expediency, but as an example of how – when applied to experience – our various duties can sometimes come into collision with one another. To my knowledge, the best account of what Kant's analysis of the case in the lying essay might look like were he considering it from the point of view of applied law is given in John E. Atwell's recent commentary, *Ends and Principles in Kant's Moral Thought*.[27] Atwell rightly emphasizes the distinction in Kant between the writing of public law by the legislative branch of government and its application to particular cases in the courts. As he reads Kant, a right to lie could never be written into law for just the reason we reviewed above: since truthfulness is a condition of the possibility of all contracts and agreements without which "civil society" could not exist, and since the primary function of civil society is to guarantee and protect human rights, it would be contradictory to grant a right which itself undermined the basis of all right.[28] Kant's view that there can never be a right to lie proceeds, as Atwell notes, from an a priori determination of the formal conditions of civil society.

But as Atwell also points out, once we move from a consideration of what may be written into public law to the actual decisions made in court, Kant's reasoning begins to lose some of its rigoristic character. While in telling a lie to the murderer at my door I am legally responsible for the consequences, a judge may decide that my wrong-doing ought to go unpunished. The appeal here would be to what Kant refers to in his *Rechtslehre* as "subjective" necessity.[29] While I never have a right to lie, on Atwell's reading of Kant, situations may arise in which no form of lawful punishment could be worse than the consequences of not lying. In such cases, a judge may recognize a "subjective" necessity which, while establishing no new right, nonetheless grants the liar "immunity from punishment."[30]

[27] See note 3 above.

[28] See Atwell, *Ends and Principles*, p. 198.

[29] *Rechtslehre* [235 – 6]; See also *On the Old Saw* [300 n.]; Ashton trans., p. 68 n.

[30] *Rechtslehre* [236].

What is so valuable in Atwell's commentary is that he draws out the importance of distinguishing Kant's a priori derivation of first principles of law necessary for the possibility of civil society from the level of analysis at which those principles are brought to bear on the treatment of actual cases. The task of the legislative branch of government is neither to predict and write into public law its proper application, nor to determine the form of punishment appropriate in each case. These kinds of decisions, which belong under the heading of "applied law" in Kant's legal theory, are left in the end in the hands of the judge.

But what is problematic in Atwell's analysis is the way in which he thinks Kant would decide the lying essay case at the applied level. Is "punishmentlessness" all that could be granted the liar in light of the features unique to the case? If we compare the example Kant offers of the appeal to "subjective" necessity in his *Rechtslehre* to the lying cases both in his *Vorlesung* and in the lying essay, we notice the following point of disanalogy: In the *Rechtslehre*, we are to imagine two men shipwrecked, both in equal danger of losing their lives, one finally pushing the other overboard.[31] Since no lawful punishment could be greater than the loss of life, Kant tells us that although culpable, this "act of self-preservation through violence" is nevertheless unpunishable.[32] Kant introduces his consideration of this example with a point that Atwell appears to overlook: "The question under discussion," Kant says, is "whether I am permitted to use violence against someone *who himself has not used it against me*."[33] (my emphasis) Here the "act of self-preservation through violence" is aimed at a person who is presented as neither committing nor even intending to commit an act of moral evil.[34] This is what makes pushing him overboard a crime, even though it is under these circumstances unpunishable.

[31] *Rechtslehre* [235]; *On the Old Saw* [300 n.]; Ashton trans., 68 n.

[32] It may sound here as if Kant is departing from his retributivist theory of punishment, in that he seems to be claiming that punishment for the crime is dropped because it could never in this case "have the effect intended" (i. e., serve as a deterrent). The conclusion he reaches is however compatible with his retributivist approach: punishment must reflect the severity of the crime. Here a murder is committed, but it is murder in self-defense or out of "necessity." The proper form of punishment is therefore no punishment at all. Kant surely believes that no form of lawful punishment could prevent this particular crime; but perhaps he draws our attention to this fact not in order to support the view that the sole purpose of punishment is deterrence, but to emphasize the extenuating circumstances of the case, in light of which punishment, *on retributive principles*, would have to be considered inappropriate. Or perhaps this passage reflects the view he presents in the *Vorlesung* that punishments imposed by governments are always deterrent, while punishments "imposed by a being who is guided by moral standards are retributive." [Menzer 66 f.]; Infield trans., p. 55.

[33] *Rechtslehre* [235].

[34] In discussing this same example in *On the Old Saw*, Kant emphasizes that the person pushed overboard is someone "who is not injuring me nor even causing the danger threatening [my life]," I therefore have an "unconditional duty" not to take his life. [300 n.]; Ashton trans., 68 n.

In the lying essay, however, the "murderer" at my door can hardly be called morally innocent, in light of the intention he is described of having of doing away with the life of my friend. And in the *Vorlesung*, I am permitted by "necessity" to tell a "white lie," because I know in the case in question that my truthfulness will be put to "improper use." So these cases have less in common with that of the shipwrecked men than Atwell thinks. There the appeal to "subjective" necessity establishes no objective right, because there a crime is clearly committed.

The question I have is whether on a Kantian analysis of the lying essay case at the applied level more might be awarded the liar than simply, as Atwell claims, the status of "punishmentlessness" – "more" meaning legal inculpability and even a right to lie. In a footnote in his essay *On the Old Saw*, Kant tells us that there is one kind of appeal to "necessity" which *does* establish a "right to do wrong" – one kind of case in which, while some duty is violated, one is judged not just unpunishable but legally inculpable as well. This is the kind of case in which, in his words, "an *absolute duty* conflicts with one that, though perhaps major, is still only a *conditional duty*."[35] At first glance, this principle would seem to have no application whatsoever to the case in the *Vorlesung*, where on the standard reading of Kant's characterization of particular duties, both my obligations to protect my property and not to lie are understood to be "perfect" and therefore also "absolute."[36] Nor would this principle appear to establish any right to lie in the case in the lying essay. Again on the standard reading, the conflict there is typically read as one between my "absolute" duty not to tell a lie and the "imperfect" or merely "conditional" duty I have to save the life of my friend. In application to this case, the principle would only seem to confirm the conclusion that on Kant's analysis there can be no grounds for granting a right to lie.

In the remaining pages of this paper, I will challenge this view and argue that at the applied level Kant's legal theory *does* recognize such a right. This will require presenting an alternative to the "standard reading" of these cases. Since Kant thinks that the only situation in which there can be an objective "right to do wrong" is when an "absolute" duty overrides a duty that is "conditional," I am going to have to defend an interpretation of these cases according to which the obligation to tell the truth turns out to be in some sense conditional in the face of overriding or "absolute" moral requirements. As I see it, the "standard reading" of the above conflicts mischaracterizes the duties in question. This is because it overlooks the fact that a proper identification of duties in Kant and determination of their status as either "absolute" or "conditional" in any given scenario has to take into account the particular level of analysis at which he is working. Earlier we saw that a failure

[35] Ibid.

[36] My duty to protect my property is a "perfect" duty of virtue to myself as a moral being. Due to the humanity in my own person, I ought not to allow others to treat me as a means only. As Kant puts it in the section "On Servility" in his *Tugendlehre*: "Be no man's lackey. – Do not let others tread with impunity on your right." [435].

to recognize certain structural features of his practical philosophy could lead us to mistake his discussion in the lying essay for an exercise in applied law. Now I will stress the importance of bearing those features in mind for the purpose of gaining a more accurate account of his characterization of particular duties.[37]

IV

First, what is the status of perfect duties in Kant?[38] From the examples we are given in the *Grundlegung*, we might at first be led to assume that he thinks that they admit of no exception whatsoever – that they are "absolute." The maxim to tell a lying promise as well as the maxim to commit suicide, he says there, "cannot even be *thought* as a universal law of nature without contradiction."[39] But in his definition of perfect duties in that same text, what he tells us is that this kind of duty permits no exception "*in the interest of inclination.*"[40] The message he conveys to us there, then, is not that perfect duties never allow exception, but that they cannot be overridden on non-moral or merely subjective grounds. They admit no *arbitrary* exception.

Reading elsewhere in Kant's texts, this conclusion seems to be confirmed. What in the *Grundlegung* appeared on first reading as an "absolute" prohibition against suicide, for example, turns out to yield its ground in the face of other moral requirements which Kant considers to be overriding. In his remarks in the *Old Saw* on the case of the shipwrecked men, he tells us that the duty to preserve one's own life is unconditional, but only provided that in doing so one does not have to

[37] It is not clear to me that Kant *ever* considers the possibility that there may be real moral dilemmas – cases of conflict in which (on the definition proposed by my colleague Walter Sinnott-Armstrong) one is caught between two or more "non-overridden" moral requirements. Kant claims in the notorious passage in the Introduction to his *Metaphysik der Sitten* [224] that, "a conflict of duties and obligations is inconceivable"; but this could mean either (i) that such dilemma situations never in fact arise or (ii) that they are morally irrelevant just because one cannot be morally obligated to do what one cannot do (i. e., answer to two or more "mutually opposing" requirements at once). That Kant never to my knowledge discusses cases of moral dilemmas supports the first interpretation; but there is some evidence in favor of the second as well. In the *Vorlesung* he tells us that, "No two Obligations can clash, because what is rendered morally necessary by one cannot be made otherwise by another." ([Menzer 25 f.]; Infield trans., p. 20) A few paragraphs further on he says that, "Obligation ... presupposes the use of freedom." Taken together, we might understand these passages to mean that, as I said above, one cannot have a duty to two or more "mutually opposing" requirements at the same time. (This interpretation is however undermined by the fact that the case Kant cites to illustrate his point is not one in which two non-overridden requirements clash, but one of a conflict between a "conditional" and a "categorical" obligation.)

[38] In what follows I am again indebted to Mary Gregor's commentary *Laws of Freedom*, especially Chapters VII – X.

[39] *Grundlegung* [421 n.].

[40] Ibid. (my emphasis).

commit a crime.[41] In the *Vorlesung* he says that, "If a man cannot preserve his life except by dishonouring his humanity, he ought rather to sacrifice it."[42] He follows his discussion of the prohibition against suicide in the *Tugendlehre* with a number of "Casuistic Questions" and asks, for example, whether it is "self-murder to hurl oneself to certain death ... in order to save one's country?"[43] So Kant does suggest in these texts that while the duty not to commit suicide is unconditional when our option is acting from inclination, it may permit exception in the face of overriding moral requirements. The same goes for other perfect duties as well. While I have an "unconditional duty" not to take another's life, this admits of exception if that person is threatening or endangering mine.[44] Contrary to what we may have thought at first, it appears that we do have examples in Kant of perfect duties which are not strictly speaking "absolute." But if this is true, we are at a loss to explain the hard line he urges in the lying essay. What we lack is an account of why his theory seems to permit necessary or moral exceptions to some perfect duties, but not to the perfect duty of veracity.

As it turns out, however, this formulation of Kant's position on perfect duties is not correct. The so-called "exceptions" mentioned above to the prohibition against suicide, for example, turn out not to be exceptions at all when that prohibition is subject to more careful definition. On close reading of the *Grundlegung* we learn that it is not suicide as such that Kant finds morally impermissible, but suicide in the service of self-love. We discover more precisely what this means only when we leave the abstract level of discussion in that text and move to his consideration of various applications of duty in other works of his practical philosophy. There may be cases in which I am morally required to give up my life in the name of my duty to my country, my honour, or towards others. Should this occur, it is not because these duties have warranted exception to the perfect duty I have to preserve my life; for, again, it is not simply self-preservation as such that that duty commands. Kant's more fully articulated view is that what is required of me without exception is that I not dispose of myself, in his words, as "a means to an arbitrary end."[45]

These observations should draw our attention to the fact that what is prohibited and required by duty in Kant must always be understood relative to the objectives of the particular realm of inquiry in which he is working. Since his concern in the *Grundlegung* is not with the application of duty but with its a priori foundation, all that we learn there about the duty not to commit suicide is that it is absolute in the sense that it can never be overridden by inclination. We discover more precisely what he intends by this prohibition only when we move beyond the context of that discussion to consider it in relation not just to the interests of inclination,

[41] *On the Old Saw* [300 n.]; Ashton trans., p. 68 n.

[42] [Menzer 196]; Infield trans., p. 156.

[43] [422].

[44] *On the Old Saw* [300 n.]; Ashton trans., 68 n.

[45] *Tugendlehre* [422].

but to the many other duties that bind us. Then we learn that it is not simply human life as such that Kant considers worthy of our unyielding protection, but a particular kind or quality of life. Loosely speaking, we might say that with respect to the interests of inclination the duty of self-preservation is absolute, but when considered in relation to other duties that are overriding it is merely conditional. We have seen, however, that what happens to the prohibition against suicide when it conflicts with other moral requirements is not that it loses its unconditional or absolute character, but that it undergoes more careful definition. We learn that while Kant thinks it is always impermissible to take one's own life in the service of self-love, he also believes that there are cases in which such self-sacrifice is morally required. Again, this is not evidence that on his view the perfect duty of self-preservation admits of exception; rather, it is further elaboration of what he thinks is unconditional in what that duty commands. In any case, we can see how an accurate understanding of the character of any duty in Kant requires sensitivity on our part to the context of his analysis.

When we move from the *Grundlegung* to the *Metaphysik der Sitten*, his treatment of individual duties gains some refinement; but even in that text his level of discussion is still quite abstract because what he considers is the application of duty only to human nature as such – introducing into his investigation factual content pertaining to the ends of finite rational beings in general, rather than to the ends of particular individuals in particular situations. Inspite of its abstract level of analysis, we learn there what we could not have gathered from the *Grundlegung*: that duties valid for human nature as such sometimes conflict with one another. When the conflict is between a person's honor and her life, it is as we have seen her life on Kant's view that must yield ground. While this is more informative than the vague accounts of particular duties given in the *Grundlegung*, the *Metaphysik der Sitten* does not provide guidance as to how the duties its puts forward as valid for humanity as such are to be applied to the concrete realm of experience – it does not, as Kant admits, offer a 'schematism' of its principles.[46] While I may know that duty commands that all finite rational natures ought to protect their honor, this general principle does not determine how I am to act in any given situation, taking into account my own unique ends and the other obligations that bind me. But it is only at this most concrete level of analysis – where the factual content relevant in a particular situation is brought fully into account – that we learn exactly what duty requires of us. Since this level of what Kant refers to as applied ethics or applied law is just what he never gives us in his practical philosophy, we have to conclude that we *never* get a fully articulated or precisely formulated account of individual duties in Kant.

Returning to his position on the status of perfect duties, we have seen that it is correct to say that he thinks that when properly defined, they allow no exception – not just no exception in the name of inclination – but no exception *at all*. This

[46] *Tugendlehre* [467 f.].

is supposed to follow from the kind of obligation they, as opposed to imperfect duties, command. While imperfect duties admit a certain "latitude" or "play-room" in their application, perfect duties (properly formulated) command "strict" or "narrow" duty, in Kant's terminology.[47] They prohibit particular actions, while imperfect duties prescribe only that we adopt certain ends as our maxims. For this reason, he thinks that they are able to achieve a precision in their formulation not possible in the case of imperfect duties. This is furthermore supposed to explain why his discussions in the *Tugendlehre* of duties of ethics are followed by casuistry, while the same is not true of his discussions of duties of law.[48] While ethics prescribes that I adopt as my end the maxim of beneficence, for example, it leaves unspecified just how I am to carry this end out. That will depend, Kant tells us, on my own "needs" and "temperament"; it is a matter that "must be left to each to decide ... for himself."[49] But because of the kind of obligation perfect duties command, they allow no such latitude; when properly defined, they are, again, "absolute" or "unconditional."[50]

This, then, is why Kant insists in the lying essay that, "All practical principles of justice must contain strict truths." They can contain only "the closer definition of their application to actual cases," he says, "... and never exceptions ..., since exceptions destroy the universality, on account of which alone they bear the name principles."[51] We find this view in his 1795 essay on *Perpetual Peace* as well. While strictly speaking there can be no exceptions to principles of law, they do admit of limitation when applied. But such "limiting conditions" ought not to be appended to specific prohibitions, or written into law. "Otherwise," Kant warns us, "we shall have merely general laws (which apply to a great number of cases), but no universal laws (which apply to all cases) as the concept of law seems to require."[52]

[47] *Tugendlehre* [389].

[48] Because of the "play-room it allows in its imperfect duties," Kant says, "ethics ... inevitably leads judgment to pose the question of how a maxim should be applied in particular cases; and since the answer gives us another (subordinate) maxim, we can always inquire again after a principle for applying this maxim to cases that may come up. And so ethics falls into *casuistry*, which has no place in the doctrine of Law." (*Tugendlehre* [410]).

[49] *Tugendlehre* [392].

[50] I do not mean to suggest in this paragraph that Kant's distinction between perfect and imperfect duties is unproblematic. Far from it. He gives us, for example, two incompatible definitions of imperfect duties: In the *Grundlegung* [421 n.] he implies that they admit of exception by inclination, but in the *Metaphysik der Sitten* [389] he says that they admit only of moral exception ("permission to limit one maxim of duty by another"). It is furthermore puzzling why his discussion of perfect duties to oneself in the *Tugendlehre* is followed by casuistry, in light of his remark [410] that only imperfect duties admit of casuistic questions. I make no attempt to settle these questions here, but refer my reader again to Chapters VII–X of Gregor's *Laws of Freedom*, as well as to Chapter Four of Onora Nell's *Acting on Principle: An Essay on Kantian Ethics* (New York: Columbia University Press, 1975).

[51] *LE* [VIII, 430]; Abbott trans., p. 365.

[52] *Perpetual Peace* [347 n.]; translated by Lewis White Beck in his collection of political essays

As Gregor has pointed out, this goal of precision in the formulation of prohibitions is not so easily achieved.[53] It certainly is not achieved within the scope of the *Rechtslehre*. Kant informs us in his preface to that work that it will contain a discussion of justice only "so far as it belongs to the outline of an a priori system" – a discussion of the "elements" *[Anfangsgründe]* of law, not of its application to cases in experience. But as we have seen, the more removed our investigation is from the "empirical practice of law," the less we know what law exactly prohibits. While the various refinements of law or "limiting conditions" which emerge with our consideration of concrete cases cannot be written into public law or included in the discussion of the *Rechtslehre*, according to Kant, they are nonetheless an integral feature of the empirical practice or judgment of law in the courts. It is here that law gains its greatest precision – here where it is left for the judge to decide, for example, whether this particular act of taking another's life in this particular instance counts as a violation of duty.[54]

As far as I can tell, there is no reason why the above analysis of Kant's treatment of the prohibition against suicide should not apply to his prohibition against lying as well. It should explain the apparent discrepancy I noted above between his insistence in the lying essay that lying is impermissible no matter what, and the more lenient approach he takes both in the *Vorlesung* and in the *Rechtslehre*. It is his view in the *Vorlesung*, remember, that "white lies" are allowed in cases of "necessity"; and in the *Rechtslehre* he tells us that a falsehood is only a lie from a legal point of view if it injures the rights of another. These latter discussions offer instances not of "exceptions" to the unconditional duty of veracity, but (I shall argue) of its limitation or "closer definition."

With regard to the case in the *Vorlesung* we can perhaps now understand why Kant grants the liar not merely immunity from punishment, but legal inculpability as well. Were someone to present himself at my door and threaten my life or property, that person could hardly be called morally innocent. For that reason I commit no crime in lying in self-defense and have in this instance a right to lie. Just as Kant tells us that my unconditional duty not to take another's life is conditioned upon that person's not threatening mine, so we might say that his view here about the duty of veracity is that it is unconditional provided my truthfulness

by Kant, *Kant on History* (Indianapolis: The Bobbs-Merrill Company, Inc., 1963), p. 91. See also *Rechtslehre* [233]. Jurisprudence, Kant says there, "wants to know exactly (with mathematical precision) what the property of everyone is."

[53] See Gregor, *Laws of Freedom*, pp. 102–3.

[54] We can see how the role of the judge in Kant's philosophy of law is analogous to the role of casuistry in the *Tugendlehre*. This point is brought out both by Gregor in *Laws of Freedom*, p. 103, and by Atwell in *Ends and Principles*, p. 201. The art of correctly subsuming a particular instance or case under a general rule or law is on Kant's view a "natural gift" that cannot be taught. There are, he says, "no rules for judgment." See *Kritik der reinen Vernunft* [A 133/B 172]; *On the Old Saw* [274]; Ashton trans., p. 41; *Anthropologie in pragmatischer Hinsicht* [199].

is not to be used unlawfully against me. Loosely speaking, it is a duty that can become "conditional" in the face of overriding moral requirements. Strictly speaking, it is a duty that is "absolute" – but only when subjected to "limiting conditions" or "closer definition" in its application to concrete cases. Contrary to the above-mentioned standard reading, the conflict under consideration in the *Vorlesung* is not between the perfect or absolute duty I have to protect my life or property and the perfect or absolute duty I have to tell the truth, for there *is* no duty to tell the truth obligating me in this case. Kant's claim in this text that white lies are permissible in cases of "necessity" supports the interpretation that it is not the duty of veracity as such that is absolute, on his view, but the duty of veracity under certain conditions. This is compatible with the position he urges in the *Rechtslehre* as well, where he tells us that one is not legally culpable for every falsehood one utters, but only for those falsehoods which are properly speaking "lies" in that they can be said to injure or violate the rights of another.[55]

When we turn finally to the case in the lying essay, we see why the standard reading which takes it to present a conflict between the perfect duty of veracity and the imperfect duty of beneficence is again of little help. That interpretation is plausible only if we abstract from the contingent features which complicate the case and account for its uniqueness. It ignores not just the fact that the person demanding to know the truth is supposed to be a "murderer," but also the fact that the help needed by the friend in hiding is in this instance of particular urgency. As an alternative to the standard reading we might simply apply the formula Kant provides in the *Rechtslehre* and have the matter over and done with: Even though this time it is not *my* life which is at stake but that of a friend, I am nevertheless neither punishable nor culpable for deceiving the murderer at my door. Here, as in the kind of case we are given in the *Vorlesung*, my falsehood is not a lie, legally speaking, because I cannot violate a criminal's rights when I act in attempt to prevent his crime.

This solution assumes, of course, that the *Rechtslehre* offers us Kant's definitive account of the legal status of lying. While I know no way of proving this assumption true beyond a shadow of a doubt, the argument of the above pages at least clears away an obstacle to our accepting it. We discovered in our discussion of Kant's treatment of perfect duties that we ought not to take his insistence upon the unconditional character of the duty of veracity at face value. It is not truthfulness as such or in every situation which he thinks is required of us by law, but truthfulness under certain conditions. And this view turns out to be compatible with the line he takes in the *Rechtslehre*, according to which only certain falsehoods count as lies from a legal point of view.

What about the obligation I have to my friend in hiding? Is it simply the imperfect duty of beneficence that binds me, as the standard reading would have it? The title of the lying essay seems to indicate as much, in that the question Kant raises there

[55] *Rechtslehre* [238 n.].

is whether lying is ever legally permissible *out of beneficence ("aus Menschenliebe")*. But this is misleading for two reasons: As we saw above, he construes the case under discussion as presenting a conflict not between the competing duties of veracity and beneficence, but between the duty of veracity and mere expediency. Furthermore, we can find evidence elsewhere in his writings on practical philosophy that he does distinguish among various kinds of human needs requiring help from others. He says in the *Tugendlehre* that the imperfect duty of beneficence commands that we make the happiness of others our end, and so lend a helping hand whenever we can.[56] The duty allows for latitude in how it is to be carried out due to the diversity of our needs and of our capacities to meet them. But in the *Rechtslehre* Kant acknowledges one kind of case which tolerates no such latitude, and requires from us a particular act in response to a particularly dire need. The case I have in mind is given in his discussion of mandatory taxation for the purpose of social welfare. There he tells us that the state has the duty to require of the wealthy that they, "provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves."[57] It is not sufficient, he says, to raise money "merely through voluntary contributions"; rather, funds must be exacted from the wealthy in order to provide the poor what they need "in order to stay alive." So here Kant concedes that in some cases – cases of dire need – a great deal more is required from us than merely that we adopt as our end the happiness of others.[58]

These observations challenge the interpretation according to which the obligation I have to my friend in hiding is no more than the imperfect duty of beneficence and therefore too weak to override the perfect duty of veracity also thought to bind me in this case. They suggest that were Kant to look at the case from the standpoint of applied law he would place much greater weight on the duty to try to save the life of the friend than he does in his discussion in the lying essay. This is far from settling precisely how Kant's verdict would go were he to assume the role of the judge charged with the task of deciding the case in court. But we are after all dealing here with a problem in applied law – and, as I noted above, this is a division of practical philosophy which he never gives us.

[56] *Tugendlehre* [451].

[57] *Rechtslehre* [326]. This passage was drawn to my attention by Jeffrie G. Murphy in his commentary, *Kant: The Philosophy of Right* (London and Basingstoke: Macmillan and Co. Ltd., 1970), pp. 145–6.

[58] We fail to respect the imperfect duty of beneficence not when we commit or omit a particular act, but when we adopt as our maxim a general indifference towards others. (*Grundlegung* [423]) When we fail to respect a perfect duty, however, it is because we either commit or omit a particular act (e. g., in committing suicide, or in failing to preserve our own life). Here it appears that Kant treats the requirement that the wealthy provide for those in great need as a perfect rather than imperfect duty.

V

Of the objections that might be raised against my argument of the above pages, there are two which I want to say a few words about here. First, it may appear that I rely too heavily upon passages in Kant's *Vorlesung* – a piece of work that belongs to his "pre-Critical" period, and is based upon the notes of his students rather than written by his own hand.[59] Since I believe that his treatment of lying in that text is consistent with the view he defends twenty or so years later in both the *Rechtslehre* and in his essay *On the Old Saw*, however, I am not convinced that we need worry very much about when the *Vorlesung* was written or by whom. In any case, my account of Kant's position on the legal status of lying doesn't require reference to that work at all. The view he offers there that white lies are in cases of necessity permissible is compatible with if not the letter at least the spirit of his later discussions. Kant's theory as he presents it in those discussions supports the view that there will indeed be cases in which a particular falsehood (a "white lie") will be not just unpunishable but legally inculpable as well. There may on his theory, then, be a right to lie; but such a right may be granted only at the level of deciding actual cases in court, *never* at the level of a "metaphysics of Right."

Second, there is one passage in the lying essay which appears to fly unequivocally in the face of the particular line of argument I have been urging. While Kant concedes that Constant is correct in insisting that *some* unconditional principles require "middle principles" to insure their most effective application, he finds fault with Constant's claim that this is true of the unconditional principle of veracity as well.[60] Kant says very simply that the duty of veracity admits no such "middle principle" in its application to experience; and this would seem clear evidence against my argument that distinguishing his various levels of analysis saves him from rigorism at least in the area of applied law.[61]

More than any other passage in the essay, I admit that this one makes Paton's appeal to Kant's "bad temper" and "old age" extremely seductive. But I still think that another explanation can be provided if we recall the context of Kant's analysis and the fact that he was engaged in a polemical exercise against Benjamin Constant. Since the kind of lenience Constant was advocating in the application of strict

[59] Such might be an objection of Georg Geismann. See his *Versuch über Kants rechtliches Verbot der Lüge* in *Kant: Analysen – Probleme – Kritik*, ed. Hariof Oberer and Gerhard Seel (Königshausen & Newmann, 1988), pp. 293–316. According to Geismann, the fact that the *Vorlesung* is "pre-Critical" explains Kant's willingness there to allow exceptions to the duty of veracity.

[60] The example Kant discusses is the unconditional principle of equality (as in equal participation in the formation of civil laws), which cannot be strictly applied but requires the middle principle of representation in government. [427 f.]; Abbott trans., p. 363 f.

[61] Geismann cites this passage as evidence that the duty of veracity occupies a special place in Kant's (Critical) moral philosophy in that unlike other duties, it allows of no exception even when it undergoes specification in application to concrete cases. See his *Versuch über Kants rechtliches Verbot der Lüge*, p. 314.

principles of justice signified in Kant's mind an attempt to accommodate justice to politics, his response was to assert dogmatically: no exceptions to strict principles *at all*. Kant's writings on practical philosophy include many examples of his worries about the tendency to accommodate justice to politics, or more generally, to trade a priori for material principles. And as we have seen, we often find him seeming to argue that since justice can never be overridden by expediency and ethics can never be overridden by inclination, principles of law and morality admit no exception whatsoever. When in the *Vorlesung* he concedes that white lies are in cases of necessity permissible, he hastens to add that the appeal to necessity poses a "difficult point for moral philosophers," in that it is so easily abused. "[I]f necessity is urged as an excuse," he warns, "it might be urged to justify stealing, cheating and killing, and the whole basis of morality goes by the board."[62] Here we see very clearly the presence of a worry which he is never without in his writings on practical philosophy – a worry which I think explains his tendency to so frequently misrepresent his own view.

[62] *Vorlesung* [Menzer 288]; Infield trans., p. 228.