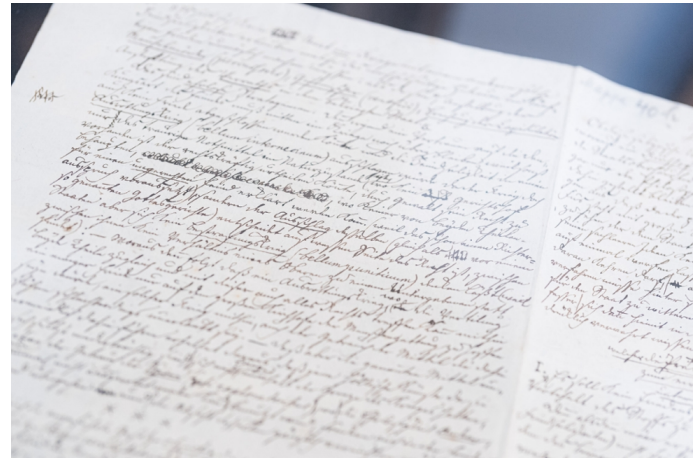


Kant's Puzzling Principle of Publicity in Perpetual Peace

Crimes and Vices, week 3

Plan for the class:

1. Some context
2. The negative principle of publicity
3. The positive principle of publicity
4. Kant on spies and the use of deception



Kant's handwritten draft for Perpetual Peace.

1 Some context

'Perpetual Peace' is one of Kant's more popular writings, both in terms of its accessibility and its impact. It is structured as follows:

1. Preliminary articles for peace.
2. Definitive articles for peace.
3. Two supplements, which discuss peace in relation to human history.
4. Two appendices, which discuss the relationship between morality and politics.

The preliminary articles are negative conditions that must be satisfied for lasting peace to be possible. The definitive articles are positive conditions that Kant thinks are sufficient for bringing peace about.

In the section we are looking at, Kant is trying to demonstrate that there is no deep conflict between politics (i.e., the exercise of power by the state in relation to its people, other states, and the people of other states) and the morality of right.

Related concern, raised by Lipping: how can the exercise of power over the citizens of a state by politicians be compatible with the freedom of the citizens?

"the human being is an *animal which*, when it lives among others of its species, *has need of a master* [...] who breaks his stubborn will and necessitates him to obey a universally valid will with which everyone can be free. But where will he get this master? Nowhere else but from the human species. But then this master is exactly as much an animal who has need of a master" (8:23).

2 The negative principle

"All actions relating to the rights of others are wrong if their maxim is incompatible with publicity" (8:381).

Kant clarifies:

For a maxim that I cannot *divulge* without thereby defeating my own purpose, one that absolutely must *be kept secret* if it is to succeed and that I cannot *publicly acknowledge* without unavoidably arousing everyone's opposition to my project, can derive this necessary and universal, hence a priori foreseeable, resistance of everyone to me only from the injustice with which it threatens everyone. (8:381)

"Every claim to a right must have this capacity for publicity, and since one can very easily appraise whether it is present in a case at hand — that is, whether or not publicity is consistent with an agent's principles — it can yield a criterion to be found a priori in reason that is very easy to use" (8:381).

2.1 Kant's examples:

1. **Rebellion:** "the maxim of rebellion, if one *publicly acknowledged* it as one's maxim, would make one's own purpose impossible" (8:382)
2. **Going back on an international promise:** "if a state (or its head) divulged this maxim of his, then every other would naturally either shun him or unite with others in order to oppose his pretensions, and this proves that politics, with all its cunning, would have to frustrate its own end on this footing (of openness), so that that maxim would have to be wrong" (8:383-84)
3. **Pre-emptive strikes by less powerful states on more powerful states:** "this maxim of political prudence, declared publicly, thus necessarily thwarts its own purpose and is therefore unjust" (8:384)
4. **A large state taking over a small state that splits its territory:** "this maxim makes itself impracticable by its openness"

Are Kant's explanations of the wrongfulness of the actions merely pragmatic or is there also a moral basis for them?

Kant's definition of politics: "Just as cleverness is the skill of using human beings (free beings) as means to one's own aims; so the cleverness by which someone uses an entire free people to his own aims is known as politics (art of state)" (23:346).

2.2 What does the negative principle require?

Perhaps universalisability. At first glance, it is superficially similar to Korsgaard's 'practical interpretation' of the categorical imperative universalisation test when applied to lying.

Problem 1: different scope. The categorical imperative tests the permissibility of acting on a given maxim. Passing the test is *sufficient* for the maxim's permissibility. The negative principle of publicity is merely a *necessary* condition for the permissibility of a political maxim.

Problem 2: uninformative. Publicity would add nothing to the explanation of the wrongfulness of the maxim. Any explanation would already be captured by a failure of universalisation.

Another strategy: acceptability by the public. But which public?

The empirical public? A political maxim is wrong if it would arouse opposition from the actual public.

Problem: not plausible. This makes matters of right contingent on what people actually believe.

The idealised public? A political maxim is wrong if and when it would arouse opposition from an idealised public.

Problem: uninformative. If we assume that the relevant idealised public is one that is committed to principles of justice, and it is at the bar of those principles that a give political maxim is either accepted or rejected, isn't Kant here just saying "Don't act such that your actions conflict with political morality"? If so, the idea of publicity isn't adding anything at all.

Another strategy: the aim of the state. Freedom requires coordination, and coordination requires publicity. Maxims which cannot be publicised if they are to be successful are contrary to the state's coordinating role.

In Kant's examples, the relevant end is not revolution, breaking a promise, or success in war. Rather it is the end of coordinating the pursuit of ends in a way compatible with everyone's freedom.

"the universalised maxim contradicts itself when the efficacy of the action as a method of achieving its purpose would be undermined by its universal practice" (Right to Lie, p. 328).

On Korsgaard's view, a lying promise (for example) is wrong because the success of the action requires that the agent's ends remain secret.

Various 'publics' in Kant's writings.

1. The reading public
2. The community of university scholars
3. The community of philosophers
4. The people as a whole
5. The ideal public of agents demanding justice

See Davis, "Kantian 'Publicity' and Political Justice" in *History of Philosophy Quarterly* 1991 for the ideal public reading.

Put another way, **no claim of right that could not form part of a coordinated system of right can be a claim of right at all.**

3 The positive principle

"All maxims which *need* publicity (in order not to fail in their end) harmonise with right and politics combined" (8:386).

This is not at all clear. Kant continues:

"... if this end is to be attainable *only* through publicity, that is, by the removal of all distrust toward the maxims of politics, such maxims must also be in accord with the right of the public, since only in this is the union of the ends of all possible." (8:386)

This does not really help. Kant continues: "I must leave further elaboration and discussion of this principle to another occasion" (ibid.).*

* He never returns to this in published works.

3.1 What do commentators think?

García-Marzá: "[...] this second principle not only requires that the maxim be reciprocally visible and known, but it also appears to require the public's assent and agreement.

[...] The process now entails that the open collective will of all those involved be accepted."

Lipping: "the second, positive, principle actually indicates the way how not only to make this experiment feasible, but also how to ultimately arrive at the legislation which would accord with morality. All that the ruler has to do, according to the positive principle, is to put legislative measures and governmental proposals to the public and ensure the conditions for their public examination and discussion." (121)

Wood: "Again, the crucial question is how the policy relates to the general will on which the community is founded. If its success depends on its enlisting the support of the population on behalf of the general will, then it follows that the policy coincides with the general will and is therefore just. The positive principle of publicity should be seen as resting on this basis."

Doubts: Despite the agreement amongst the commentators, I find it hard to see this in the text.

A clarification from Kant's drafts: "Moral maxims require publicity when their moral end is possible only when all others are likewise morally disposed, which cannot be effected if one does not universally communicate one's principles, i.e. makes them public" (23:320).

For Kant, all rights require publicity in the sense of belonging to an enforced system of right. So, a suggestion: the negative principle rules out claims of right that are inconsistent with a system of rights, and the positive principle affirms the necessity of such a system for any individual claim.

"Kant's principle of publicity: the intrinsic relation between the two formulations" in *Kant-Studien* 2012: 107.

"Kant's principle of publicity" in *Politics and Teleology in Kant*, p. 87.

Returning to the problem raised above: uses of power by politicians over citizens in order to enforce a system of rights is a way in which politics and freedom are consistent.

4 Spies and deception

INITIAL QUESTION: What is the relationship between publicity and deception?

Kant against spies:

"those infernal arts, being mean in themselves, would not, if they came into use, be confined for long within the boundaries of war, as for example the use of spies [...], in which use is made only of *others'* dishonesty (which can never be completely eradicated); instead, they would also be carried over into a condition of peace, so that its purpose would be altogether destroyed" (8:347).

No lying to the murderer at the door:

"Truthfulness in statements that one cannot avoid is a human being's duty to everyone, however great the disadvantage to him or to another that may result from it; and although I indeed do no wrong to him who unjustly compels me to make the statement if I falsify it, I nevertheless do wrong in the most essential part of duty in general by such falsification, which can therefore be called a lie" (8:426).

For Kant, I do not wrong the murderer at the door by lying, but I do wrong 'humanity' in general.

Question: Is there a way of justifying the use of spies on Kantian grounds? Does it matter if we can't?

This comment appears in the context of the sixth preliminary article for peace:

"No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace; acts of this kind are employing *assassins* or *poisoners*, *breach of surrender*, *incitement to treason* within the enemy state, and so forth" (8:346).

4.1 Fabre on the use of deception

"Some agent, D, deceives another agent, L, when he knowingly causes or allows her to form or retain false beliefs about some facts" (93).

Deception is thought to be wrong for many reasons, including:

Deception can take many forms, i.e.: "D can deceive L by concealing information, p, which (D knows) L would regard as relevant to her interaction with D. D can also deceive L to the effect that p by implying, falsely, that p. He can deceive her by lying to her outright, by forging evidence, or by double-bluffing" (94).

- It abuses trust
- It bypasses consent
- It is freedom restricting
- It impairs communicative relationships
- It undermines cooperation, etc.

Consider Fabre's revised murderer-at-the-door case:

Murderer-at large Murderer is planning an attack on someone who, he mistakenly believes, has betrayed him. Via his unwitting associates, I plant a false trail of evidence leading him to what he mistakenly thinks is victim's house. (97)

What should Kant, or a Kantian, say about this case?

Now consider a case of espionage more generally:

Infiltration 1 Green is locked in a conflict with Blue, a quasi-state organization intent on conquering swathes of territory via a mixture of conventional and terroristic means. Asset strikes up relationships with Blue's guerrilla fighters, concealing his identity and true allegiances. He collects information about a possible attack on Green, which he passes on to Green's intelligence agencies. Green aims to eliminate those fighters before they can strike. (98)

Fabre calls this case 'easy', "because the individuals who are being deceived are liable to being killed anyway and Green knows that. On the plausible assumption that the right not to be killed is more stringent than the right not to be deceived, those agents *a fortiori* are liable to being deceived" (99).

4.2 Fabre against Shrifin

"On Shrifin's view, whether an instance of lying is morally permissible depends on the content of what is being said. The murderer is asking you to tell him where his intended victim is. Were you to tell him the truth, you would providing him with what he needs in order to pursue his evil end *qua* evil end" (107).

But what if the murderer asks you where he can get some water? This does not forward his evil end *qua* evil end (drinking water is not in itself wrongful), but rather provides him with a necessary condition for pursuing his evil end.

Shrifin says you must not lie in this case.

On the basis of this, Fabre claims that Shrifin would say the following in relation to espionage:

1. Lying in order to save a potential victim from a wrongful attack would be permissible.
2. Non-mendacious deceptive tactics in order to deprive a wrongful attacker of what he needs to further his unjust ends *qua* unjust ends would be permissible.
3. Any deceiving tactics aimed at acquiring secrets or protecting secrets would be impermissible.
4. Any deceiving tactics aimed at depriving unjust attackers of the means necessary to pursue their unjust ends would be impermissible.

Objection 1: identity of victim. Those who carry out state-run deception operations are often the same people who lives and livelihoods are at stake. "Suppose that you are the thirsty murderer's victim and do not have the means to defend yourself here and now. You can, however, pretend that you are not who you are, and, noticing his desperate need for water, send him the wrong way. It seems unreasonably demanding to insist that you must not lie other than to thwart his unjust ends *qua* unjust ends, even if lying would enable you to incapacitate him *tout court*" (108).

Objection 2: lying and peace. "deception in the service of espionage or counter-intelligence operations need not destroy peace. France and Germany have done rather well, cooperation-wise, in the last sixty years..." (108) despite several wars and deception operations between them.

Kant on defensive killing: "For the issue here is not that of a wrongful assailant upon my life whom I forestall by depriving him of his life (*ius inculpatae tutelae*) in which case a recommendation to show moderation (*moderamen*) belongs not to right but only to ethics" (6:235). When another is going to kill you, you do not owe them any moderation in your response.

Shrifin *Speech Matters: On lying, morality and the law*, Princeton University Press 2014.

"On Shrifin's Kantian view, in so far as good faith between belligerents is necessary for peace, deceptive operations of that kind, which undermine it, are morally condemnable" (108).