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# The Virtue Of Truthfulness And The Military Profession: Reconciling Honesty With The Requirement To Deceive During War

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THE VIRTUE OF TRUTHFULNESS AND THE MILITARY PROFESSION:  
RECONCILING HONESTY WITH THE REQUIREMENT TO DECEIVE DURING WAR

by

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## DEDICATION

To my wife, to whom I owe not only my deepest respect and admiration, but also my inspiration and purpose. I am totally yours.

## ABSTRACT

The U.S. military regards truthfulness as a virtue, a quality captured in the terms ‘honor’ and ‘integrity.’ At the same time, military doctrine does little to hide the fact that military operations should endeavor to deceive the enemy. How can these two ideas, seemingly in conflict with each other, be reconciled? This dissertation examines the viability of the absolutist claim implicit in the term ‘truthfulness’ – namely, that to be *truth-full*, one must never lie, even to one’s enemies. In order for this absolute prohibition to be consistent with certain instances of allowable deception, lying and truthfulness, I argue, must remain conceptually distinct from deceptive acts and the intent to deceive. Taking this as a starting point, this dissertation sketches out guidelines for the virtue of truthfulness in the military profession. Taking as a given the U.S. military’s absolute rule against lying, which I conclude also includes the prohibition of perfidy, equivocation, and strict mental reservation, I explore the Just War Tradition and the absolutist tradition against lying. While the absolute rule against lying has been for the Just War Tradition a point of contention, both traditions have consistently condemned perfidy, or acts of bad faith. Likewise, perfidy is currently prohibited in the international law of war conventions. Yet perfidy – that is, acts of bad faith – I argue, are equivalent to lies, since every perfidious act extends an invitation to mutual trust insincerely or falsely. Each lie does essentially the same. In a lie, the speaker extends an invitation to mutual trust by communicating in the assertive context. The liar, however, is duplicitous and his invitation insincere, since the liar is making an assertion contrary to what he believes to

be true. When used instrumentally to deceive, lying and perfidy cause a given deceptive act to be illicit, always and without exception. In contrast, deceptive acts that do not extend a false invitation to trust leave open the possibility that they may be properly justified, such as in war. Armed with this fundamental understanding of what constitutes a lie, this dissertation attempts to take a first step toward identifying truthfulness as a virtue and proposes, in the practice of military deception, that one should never lie.

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# CHAPTER ONE

## INTRODUCTION

The similarity between the words ‘honor’ and ‘honesty’ is far from accidental. Both trace their origins to the Latin *honor*, a rather rich term that encompassed not only respectability but also rectitude or moral goodness. This ancient sense of honor, relating less to glory or recognition than to lasting esteem earned through a reputation for right conduct, has since been embraced by the Western Military Tradition and the military profession in general.<sup>1</sup> It is perhaps for these reasons that in the lexicon of modern American military professionals, the foundation of ‘honor’ is the virtue of honesty.<sup>2</sup>

When the first U.S. national military academy was established at West Point in 1802, the institution itself was first conceived as a place that would inspire young military officers to embrace honorable living. According to Morris Schaff, author of a memoir entitled *The Spirit of Old West Point*, the institution from its founding was designed to promote not only the ideals of courage and obedience to authority but also “the virtue of absolute honesty,” characteristics that Schaff says reflect “the character of [George] Washington and the best society at the time of the revolution.”<sup>3</sup> Today, the

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<sup>1</sup> Lewis Sorley, *Honor Bright* (United States of America: McGraw Hill, 2009), 2. See also U.S. Department of Defense. Joint Publication (JP) 1, *Doctrine for the Armed Forces of the United States* (Washington, D.C., March, 2013): B-2. According to U.S. military doctrine, the five principal virtues of the profession of arms are *duty, honor, courage, integrity, and selfless service*. Honor and integrity are directly related to the virtue of truthfulness.

<sup>2</sup> Under the definition of ‘honor’ in U.S. joint military doctrine, it states that military professionals should “never lie, cheat, or steal.” U.S. Department of Defense. Joint Publication (JP) 1-0, *Doctrine for the Armed Forces of the United States* (Washington, D.C., March, 2013): B-2.

<sup>3</sup> *Honor Bright*, 9.

Honor Code, a code under which every West Point cadet is bound, is captured in one simple sentence: “A Cadet will not lie, cheat, steal, or tolerate those who do.”<sup>4</sup> The code itself stands as both a call to abide by the virtue of truthfulness but also a rigorous standard of conduct.<sup>5</sup> Similar expressions of the same code have for decades been present at the other U. S. service academies, and the virtue of truthfulness has more recently been incorporated into the formal military doctrine of the U. S. Department of Defense.<sup>6</sup> In this way, virtually the same code of honor underlies the character development of all American military professionals, a principle that is built upon the simple rule *never lie*.

During war, however, the notion of absolute truthfulness expected of Army officers can sometimes appear to come in conflict with the demands of military necessity. This is because successful military strategy lends itself to the concealment of intentions, misdirection, and often even direct deception. For this reason, military commanders regularly employ feints and simulated attacks to hide their actual intentions from their adversary, camouflage and other techniques to mask their true location, or concealment and surprise to ambush unsuspecting foes. Some might suggest that these tactics generate false beliefs, and therefore the profession of arms is *necessarily in conflict* with the virtue of truthfulness.<sup>7</sup> This view often raises doubts as to the soundness of any absolute rule

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<sup>4</sup> U.S. Corps of Cadets, Pamphlet 15-1, *The Cadet Honor Code, System, and Committee Procedures* (West Point, New York: 11 November 2009), 1-1.

<sup>5</sup> Cadets that violate the honor code, to include offenses involving lying, are in many instances expelled from the academy.

<sup>6</sup> The honor code at the Air Force Academy, while worded slightly different, is essentially the same. At the Naval Academy, the code is known as the ‘Honor Concept,’ and it includes the prohibition against lying, cheating, and stealing but excludes the toleration clause. See also JP 1, B-2.

<sup>7</sup> This issue, generally speaking, is similarly raised by Thomas Aquinas in his *Summa Theologiae* (henceforth *ST*) II-II q.40 a.3 when he addresses the question of whether ambushes are morally permissible in war.

related to truthfulness and in turn calls into question how far the virtue itself can be applied.

The purpose of this dissertation is to suggest that truthfulness, and with it the absolute rule expressed in U.S. military doctrine, can in fact be preserved as a virtue in the profession of arms. As such, throughout this dissertation I shall put two absolutist positions to the test – (1) the rule against lying and (2) the presumption that deception is always wrong – in order to explore the possibility that the virtue of truthfulness and the use of deception in war may be reconciled. I shall conclude by suggesting that this reconciliation is in fact possible because, of the two rules, only the prohibition of lying can be held absolutely. In order to defend this claim successfully, however, it is crucial that the proper definitions for lying and other terms related to lying and deception be established. Consequently, one of the first tasks will be to define the following terms: truthfulness, deception, lying, and perfidy.

### **1.1 DEFINITION OF TRUTHFULNESS**

The first term that requires definition is ‘truthfulness.’ According to the *Oxford English Dictionary*, truthfulness is “the disposition to tell the truth.”<sup>8</sup> The word ‘veracity,’ sometimes used as a synonym, is similarly defined as “the quality or character in persons speaking the truth.” Both definitions, one might notice, make reference to some notion of telling or speaking. Perhaps this is because truthfulness applies, strictly speaking, only to that which is intentionally *communicated*.<sup>9</sup> If this is in fact the case,

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<sup>8</sup> *Oxford English Dictionary*, 2<sup>nd</sup> ed. (1989).

<sup>9</sup> Here, the terms ‘intentional’ and ‘intention’ also require definition. This definition will set the stage for the rest of the dissertation, especially the discussion on the principle of double effect in Chapter 6. By ‘intentional,’ I mean that the agent can give an accounting of why (ie. for what purpose) the act is being performed. Thus, the question ‘Why are you doing that?’ is relevant. The term ‘intention’ will refer to any goal (near-term, intermediate or ultimate) among the chain of reasons for acting. For further reading on this view of intention, see G. E. M. Anscombe, *Intention* (Ithaca: Cornell University Press, 1976), 24 and 34.

then truthfulness implies two things: (1) the communicated thoughts can be *attributed to a person* (this is often the speaker)<sup>10</sup> and (2) the thoughts are transmitted *to someone else*.<sup>11</sup> For this reason, every time someone is honest when communicating to another *what she thinks or knows*, we say the person is being truthful.

This understanding of truthfulness avoids the debate about what constitutes truth and about whether or not truth is even possible.<sup>12</sup> Instead, it suggests that the correspondence theory of truth, as it is sometimes called, best explains what we intuitively regard as truthfulness based upon its use in natural language.<sup>13</sup> Thomas Aquinas famously articulated this idea of truth as correspondence in his expression *adaequatio rei et intellectus* (the equation of thing and intellect).<sup>14</sup> In other words, truth is the correspondence between what is actually the case and what is thought. Applying this understanding of truth to communication, truthfulness becomes a measure of correspondence between what is actually the case (the ‘thing,’ in the mind of the speaker) and what is said – a thought, as it were, communicated often through words. Conversely,

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Following Aquinas, I shall in this dissertation assign acts their name based upon the intention, nonetheless recognizing that while a series of intentions often exist for every act, the most immediate intention is the ‘end’ from which the act receives its name. Aquinas says, “The end, in so far as it pre-exists in the intention, pertains to the will... and it is thus that it gives the species to the human or moral act.” *ST I-II q.1 a.3 ad.2*.

<sup>10</sup> This transmission of thoughts is usually accomplished using words, but sometimes it can be expressed through communicative signs, such as the nod of the head.

<sup>11</sup> It is, of course, possible for someone to speak on behalf of another, just as a diplomat often speaks on behalf of a head of state. In these instances, it seems that the thoughts may be attributed to the source of the communiqué (ie. the head of state) rather than the speaker (ie. the diplomat).

<sup>12</sup> For consideration of this problem as it relates to truthfulness, see Bernard Williams, *Truth and Truthfulness* (Princeton: Princeton University Press, 2002), 1-7.

<sup>13</sup> Correspondence is the most widely adopted definition of truth and has a distinguished list of modern adherents, such as Descartes, Hume, Kant, and Russell. See Jan Wolenski, “Contributions to the History of the Classical Truth-Definition” in *Logic, Methodology, and Philosophy of Science IX*, ed. Dag Prawitz et al. (Amsterdam: Elsevier Science, 1994): 488-89.

<sup>14</sup> Aquinas, *De Veritate* 1.2.

what we call falsehood involves a lack of correspondence, for example, between a speaker's thoughts and what the speaker communicates.<sup>15</sup>

Truthfulness, it also seems, is both the habituation of a minimum moral standard and an excellence. Aristotle describes truthfulness as such, as does St. Thomas Aquinas. For Aristotle, truthfulness is the quality of "straightforwardness."<sup>16</sup> "Someone with this character," he says, "seems to be a decent person... (and) is praiseworthy."<sup>17</sup> He also states, "Now in itself, falsehood is base and blameworthy, and truth is fine and praiseworthy."<sup>18</sup> Here, the praiseworthy quality that Aristotle identifies appears inextricably tied to the notion that a person should *always* be truthful. Aquinas invokes Aristotle to make a similar point,<sup>19</sup> calling the virtue of truth "that by which a person says what is true, in which sense one is said to be truthful. This truth or truthfulness must be a virtue, because to say what is true is a good act."<sup>20</sup> Like Aristotle, Aquinas implies that falsehood – the failure to make one's words *correspond* with one's thoughts – is always dishonest and therefore vicious. For these reasons, its use in natural language suggests (perhaps following Aristotle and Aquinas) that truthfulness is, at its essence, the habit of telling the truth and doing so consistently, without exception.

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<sup>15</sup> Such falsehood excludes statements made in certain situations in which the speaker is not held to an expectation or standard of truth, such as play-acting, childhood games of pretend, and many jokes – instances where the words communicated are not expressed in an assertive context. For a more detailed discussion of assertion and the assertive context, see Roderick Chisholm and Thomas Feehan, Thomas, "The Intent to Deceive," *Journal of Philosophy* 74 (March 1977): 151. Carson's concept of warranting is similar. See Thomas Carson, *Lying and Deception* (Oxford: Oxford University Press, 2010), 25-29.

<sup>16</sup> Aristotle, *NE*, IV.7, 64.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Aquinas, *ST II-II* q.110 a.3. Aquinas says, "The Philosopher says in Book IV of the Ethics that 'the lie is in itself evil and to be shunned, while truth is good and worthy of praise.'"

<sup>20</sup> Aquinas, *ST II-II* q.109 a.1.

I should add that truthfulness is not limited to avoiding falsehoods, but may also pertain to what is omitted throughout the course of a conversation. In other words, if a person hides the truth during questioning, especially if he does so improperly or unjustly, then it seems that person may also fail to be straightforward. For example, a military commander might ask a soldier about the whereabouts of a stolen piece of equipment, an item that he suspects is in the possession of his best friend. Refusing to disclose this information while under questioning could constitute unjust concealment and therefore could be said to lack truthfulness. Here, the moral evaluation extends beyond a simple test of statement-by-statement correspondence, and instead it seems to apply to the entire conversation, including what is intentionally left unsaid. For this reason, I shall suggest that truthfulness has two levels, so to speak: one governed by a moral absolute (never lie), and the other, pertaining to what is left unsaid, governed by some measure of justice (giving to another what is owed).

## **1.2 DEFINITION OF DECEPTION**

The next term that requires a preliminary examination is ‘deception,’ which I shall use interchangeably with the expression ‘an act of deceiving.’ The word ‘deceive’ comes from the Latin *decipere*, the conjunction of *capere* (to take) and *de-* (from). According to the *Oxford Dictionary*, its principal definition is “to ensnare... or get the better of by trickery; to mislead.” Its secondary meaning is “to cause to believe what is false; to mislead as to a matter of fact.” Notice that in both the primary and secondary meanings, deception at its essence involves ‘misleading.’

The terms ‘misleading’ and deception often carry a tone of moral judgment that is for the most part negative. Yet it’s when these terms are thought to be entirely negative –

and, hence, when deception is thought to be in violation of a moral absolute – that the problem reconciling truthfulness with military deception arises. Positing that deception is always wrong, some are led to believe that deceptions employed throughout the course of a war are necessary evils.<sup>21</sup> This same view tends to apply similar thinking to the rule against lying, leading to the conclusion that lies also can sometimes be a necessary evil, such as lying in order to win a war. Thus, according to this line of thinking, since deception and lying may sometimes be necessary evils, truthfulness must on occasion be subordinated to pragmatic concerns thought to carry greater weight.

To avoid this slippery slope and at the same time preserve the virtue of truthfulness, I shall instead make use of the term ‘deceive’ in a manner that is relatively neutral in tone but at the same time is closer to both its literal meaning and its broader sense.<sup>22</sup> The definition I shall use is the following: ‘*To deceive is to intentionally mislead by means of trickery, misdirection, or concealment.*’<sup>23</sup> The neutral tone I have adopted suggests that it may be legitimate, for example, to lead a person away from a situation in which that person intends to commit some harm against another. For example, a deceptive act might be legitimate if it leads a murderer away from his victim by throwing off the bloodhound’s scent, so to speak. The important point to highlight at the outset is

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<sup>21</sup> The view that some deceptive acts are necessary evils on the one hand assumes that by calling an act a deception we imply that the act is wrong and on the other hand accepts that we nevertheless are sometimes forced to choose a lesser evil. Machiavelli’s view is one of the most well-known examples. See for example Machiavelli, *Prince*, XVIII.

<sup>22</sup> Sissela Bok suggests something similar when she argues that a neutral tone should accompany the terms ‘secrecy’ and ‘secret,’ which she defines as that which is intentionally concealed. Sissela Bok, *Secrets: On the Ethics of Concealment and Revelation* (New York: Pantheon Books, 1982), 9.

<sup>23</sup> This account can be contrasted with that of Thomas Carson, who believes that ‘deceive’ always carries a negative tone. He therefore distinguishes ‘deceive’ from ‘mislead,’ which he says is the neutral term. The difference, according to Carson, is that deceiving includes an intention to cause others to have false beliefs, whereas ‘to mislead’ has the same effect but lacks the intention. I, however, shall use the terms deceive and mislead interchangeably, since I hold both to be fully intentional acts. See Thomas Carson, *Lying and Deception* (Oxford: Oxford University Press, 2010), 47.



that not all deceptive acts under this definition are necessarily wrong, such as concealing facts to lead a person away from some evil. This understanding leaves room for deceptive acts that, if morally justified, are permissible – a category that I shall distinguish from *deceit*, the deception-related term that seems to carry an entirely negative tone. Deceit, I shall say, is a deceptive act that is unjust.

A military example from recent history helps illustrate the neutral tone that sometimes accompanies the terms deceive and deception. The United States military devised and led a deception operation that occurred when coalition forces first began their offensive against Iraqi forces during the 1991 Persian Gulf War. In that conflict, the war plan sought “to deceive Iraqi forces regarding Coalition intentions and to conceal the Coalition scheme of maneuver.”<sup>24</sup> One way coalition forces sought to accomplish this was by using decoy military equipment, such as inflatable helicopters. Another method used was to array coalition ground forces in a way that gave the appearance that the main attack would come directly across the border from Saudi Arabia into Kuwait.

This false picture was painted just prior to the initiation of hostilities, whereupon coalition aircraft then destroyed the Iraqi air force and thereby removed Saddam Hussein’s ability to detect further coalition troop movements. This allowed coalition ground forces to execute what the coalition force commander, General Schwarzkopf, described as a “Hail Mary” pass, repositioning his forces hundreds of miles to the west and attacking into Iraq instead of Kuwait. The deception left American tanks free to enter Iraq and strike Saddam’s reserve divisions, his elite Republican Guard, from a direction

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<sup>24</sup> U.S. Department of Defense, *Conduct of the Persian Gulf War: Final Report to Congress* (Washington D.C., 1992), 102.

and at a time they were least expecting.<sup>25</sup> This case provides one relatively uncontroversial example of justified military deception, one that makes a strong case for how some deceptive acts may differ from deceit and by doing so helps undermine the ‘necessary evil’ claim. If certain deceptive methods used in the context of war are morally permissible, then it seems it is important to distinguish between those types of acts which can be morally justifiable and those acts related to deception which are always illicit.<sup>26</sup>

### **1.3 DEFINITION OF LYING**

The next term that requires both a definition and some preliminary discussion is lying, which I shall assume is a deception-related term, since lying tends to be accompanied by a deceptive intention. Furthermore, I shall assume that lying and truthfulness are entirely incompatible. This point must be emphasized, since truthfulness is the virtue currently under investigation.

The first thing to note is that definitions of lying vary. For this dissertation, this is no small matter, for depending upon which definition is used, the viability of the absolutist claim that I have suggested underlies the virtue of truthfulness – ie. that lies are never permissible – can be called into question. A singular definition must therefore be established, one that is consistent with the belief that truthfulness is in fact a virtue and that the rule against lying can be held as an absolute.

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<sup>25</sup> H. Norman Schwartzkopf, “Central Command Briefing,” *Military Review* (September 1991): 97.

<sup>26</sup> Throughout the history of warfare, justifiable deceptive acts carried out to gain a military advantage in war have been called stratagems (in Latin, *Strategema*). David Whetham defines stratagems as “attempts to gain military advantage over an opponent through the employment of acts intended to mislead, cause confusion or be unexpected so as to catch that opponent in an unprepared or disadvantaged state.” Whetham, 28.

Consider first the definition provided by the *Oxford English Dictionary*. A lie, it says, is “a false statement made with intent to deceive.” Understood without any further qualification, this definition has at least two points of potential confusion. First, it is possible that someone intends to lie but accidentally says what is true. For example, a father may wish to dissuade his toddler from watching TV by claiming that the TV is broken only to discover later, to his surprise, that it *was* in fact broken. His statement, he learns, was actually true, just accidentally so. Yet it seems his later discovery does not prevent his earlier statement from being a lie, since at the time of his utterance it was clear that he *intended* to communicate a falsehood. If the Oxford definition is taken at face value, however, it may excuse the father’s intended falsehood since his utterance, as it turns out, was not ‘a false statement.’

One way to avoid this problem is to understand the phrase ‘false statement’ in the Oxford definition to mean words that do not correspond to what the speaker thinks – in other words, a ‘false statement’ is an *intended* falsehood. Consequently, the terms ‘false statement’ and ‘falsehood’ will throughout this dissertation refer not to a materially false utterance – that is, that the statement fails to correspond to what is actually the case (ie. “It’s raining outside” when it is not). Instead, a falsehood, I shall say, occurs only when one’s statement fails to correspond to the contents of the speaker’s mind (ie. “It’s raining outside” *when I know* that it is not), which is to say that it is a formal falsehood – an intended false statement.

Second, the Oxford definition suggests that because lies are false statements intended to deceive, lying is a species of deceptive acts. At first glance, this might seem reasonable. False statements communicated while play acting, performing on stage, or

reading a work of fiction aloud are usually not intended to deceive, and rarely are such statements, even if they are false, called lies. A story read aloud beginning with the words “a long time ago” about fairies, monsters, and unicorns may be entirely false, but it would be improper to accuse the reader of lying. This is, in part, because we understand that the context of the utterance is fiction. From this realization, some might conclude only false utterances seeking to deceive, then, qualify as lies.

While lying may in fact include the intent to deceive, intended deception cannot be a necessary condition, because *the necessary and sufficient* conditions for a lie, it seems are that (1) it is understood the utterance is expressed in the assertive context and (2) the words do not correspond with what the speaker thinks or believes. It may even be possible, due to the very nature of an assertion, that to assert falsely in that context always involves misleading. However, what must be emphasized is that the intent to mislead is, strictly speaking, a subsequent intention; the intent to lie must come first. This is illustrated in the way natural language would describe the act: “He lied *in order to* mislead/deceive (as to the contents of his mind).” Thus, it seems evident that any definition suggesting that lying is a species of deceptive acts – as the OED definition does – is imprecise, since it is possible to imagine someone lying but not intending to deceive.<sup>27</sup>

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<sup>27</sup> One example might be a coerced false statement, such as a false confession made under interrogation. These kinds of confessions, it appears, occurred quite widely in the Soviet Union during Stalin’s reign. See Vasily Grossman’s *Everything Flows*, trans. Robert Chandler et al. (New York: NYRB, 2009), 61-64. An innocent victim would be forced to confess disloyalty or subversion toward the State, a confession the interrogators and victim both knew to be false. Sometimes the victim would agree to sign a false confession. Perhaps no intent to deceive was present in false statements of this kind, yet some could nonetheless count this type of forced confession as a lie inasmuch as the confessor believed the statement not to be true. Others might argue that such statements are not lies, but rather another type of utterance (ie. saying/mimicking/parroting what someone else wants you to say) and that the very nature of an assertion requires that some degree of deception is necessary in every false assertion. If this latter position is adopted,

Because the intent to deceive is not a necessary condition for a lie and therefore need not be included in the definition of a lie, this dissertation will avoid the OED definition. Instead, I shall use a definition that identifies the necessary and sufficient conditions and nothing more: *A lie is an assertion made contrary to what the speaker believes to be true.*<sup>28</sup> This definition is, incidentally, the definition most compatible with the absolutist view and at the same time best supports an explanation for how one can be truthful and yet engage in certain acts of military deception. It can be shortened to the simple synonymy ‘false assertion’ so long as ‘false’ is understood narrowly (ie. in the context of what the speaker thinks) and ‘assertion’ is understood as methods of direct communication that take place within an established assertive context (ie. that what is expressed is believed true).<sup>29</sup> In other words, all lies are *assertions expressed duplicitously* – duplicitous inasmuch as the words spoken fail to correspond to the beliefs that the speaker holds.

The definition presented above suggests that a person who lies need not intend to deceive but rather need only to assert contrary to the mind. One consequence of this understanding is that lying and misleading remain conceptually distinct, a view that will

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the intent to deceive would be present in every lie, but would nonetheless be superfluous to the definition, since the term “false assertion” would imply an intent to deceive is always present.

<sup>28</sup> This definition is the same definition given by Aquinas and henceforth adopted and maintained by the absolutist tradition. *ST II-II* q.110 a.1. Kant’s definition is virtually identical. He says that a lie is an “*intentional* untruth in the expression of one’s thoughts.” *Metaphysics of Morals*, 6:429.

<sup>29</sup> This is similar to the notion of assertion advanced by Alasdair MacIntyre, Roderick Chisholm, and Thomas Feehan. MacIntyre says, “To assert is always and inescapably to assert as true.” Alasdair MacIntyre, “Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?” in *The Tanner Lectures on Human Values* (Princeton, 1994): 311. Chisholm and Feehan call assertion an essentially normative concept and remark, “What one asserts is meant to be taken seriously.” Roderick Chisholm and Thomas Feehan in “The Intent to Deceive,” *The Journal of Philosophy* 74 (March 1977): 151. Carson’s concept of warranting is similar. He says, “a warranty of truth is a kind of guarantee or promise that what one says is true.” Carson, 25. Carson’s account of both lying and deception, however, is reliant upon the notion of truth and true beliefs, which in the case of lying may be irrelevant given that the speaker intentionally asserts something *he thinks* is false. Instead, I shall avoid this problem by characterizing lies as an act of intentionally violating (ie. choosing to violate) the assertive context.

allow this dissertation to distance lying from deceptive acts in general while nevertheless recognizing that the two are closely related: one, the act itself (lying) and the other, what is often the desired effect (to deceive).

To summarize the main points addressed so far, I have on the one hand presented the view that not all deceptive acts (eg. some military deception) necessarily involve lies nor do all unjustly hide the truth. If this assumption is correct, then deceiving does not necessarily violate truthfulness. I have also adopted the following definition pertaining to deception for this dissertation: ‘*to deceive is to intentionally mislead by means of trickery, misdirection, or concealment.*’ While I have suggested that some deceptive acts may be compatible with the virtue of truthfulness, I will nevertheless hold that lies, defined as *assertions made contrary to what the speaker believes is true*, are always untruthful and therefore contrary to truthfulness as a virtue.<sup>30</sup> The remainder of this dissertation will explore whether these positions can be maintained, the goal being to propose guidelines for the virtue of truthfulness within the military profession.

#### **1.4 ONE RELATED DEFINITION: PERFIDY**

The definitions presented to this point have shown that a connection exists between lying, deception, and truthfulness. The same can be said for perfidy, especially within the context of the military profession, since U.S. military doctrine states that perfidy is the term given for deceptive acts prohibited (absolutely) by the international law of war. The *Oxford English Dictionary* defines perfidy as a “deceitful violation of faith or promise.” This definition suggests that perfidy has two necessary conditions: (1)

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<sup>30</sup> This claim is similarly made by Kant, who calls lying “the contrary of truthfulness.” *Metaphysics of Morals*, 6:429 in Kant, *Immanuel Kant: Practical Philosophy*, trans. Mary Gregor (New York: Cambridge University Press, 2009), 552.

violation of faith and (2) deceit, which I have earlier defined as *unjust deception*. The weakness of this definition is twofold. First, it may be unclear what constitutes a violation of faith. Second, the definition requires a further evaluation of injustice.

Because of these problems and because this dissertation assumes that deception is conceptually distinct from both lying and perfidy, the definition of perfidy I shall use is the following: *Perfidy is a false invitation to enter into a condition of mutual trust, intentionally contrived and communicated by either a lie or another act of duplicity*. In this definition, I have replaced ‘violation of faith’ with the phrase ‘a false invitation to trust’ and have chosen the term duplicity rather than deceit since duplicity better identifies why perfidy is always a moral offense. The wrong of perfidy, I shall suggest, is that the promisor makes himself duplicitous – if in words, through a lying promise, and if implicitly, through outward signs signaling a tacit agreement that is nonetheless duplicitous. Such acts, I shall say, are synonymous with acts of bad faith.

Perfidy, from the Latin *perfidia*, is a derivative of *fides* (faith or trust), the notion ‘that which is promised will come about.’<sup>31</sup> Because of the close association between *fides* and promises, some consider perfidy to be the same as ‘breach of faith’ and in turn ‘breach of promise.’ This move, however, involves a failure to distinguish between the multiple senses that the expression ‘breach of faith’ carries. Instead, it is important to recognize that the expression has two and perhaps even three senses, only one of which is equivalent to perfidy. In this first and strictest sense, breaking faith can be understood as *acting* in bad faith. This is because *fides* expresses confidence in *a future intention* to carry out a promise, and it seems that to break that confidence by falsely signaling the

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<sup>31</sup> Isidore, *Etymologiarum* VIII 2.4.

promise *in the present* is to extend a false invitation to trust. Therefore, when breach of faith in this sense is used, it is denoting a breach of faith occurring in the context of making (or affirming) an agreement, which is the same as acting in bad faith (perfidy). Only in this strictest sense does breaking faith constitute a moral absolute.

The second sense in which breaking faith can be used pertains to broken faith (*fides*) as a consequence of an action. For example, one might feel that a person who has broken a promise, to some extent, cannot be trusted. That person has, in a sense, broken faith, and this revelation in turn weakens confidence in future promises. Yet this sense, one that is contingent on the consequences, cannot be used to express a moral absolute. Otherwise, the rightness or wrongness of the act would be determined based upon the consequences rather than the act itself. In other words, if the act of betrayal is discovered, the act would be wrong, but if it remains hidden, it could be deemed morally permissible. This kind of evaluation, however, is incompatible with both law and moral absolutes, both of which express rules of conduct in absolute terms. Since the kind of definitions this dissertation explores must be compatible with the international law of war, a consequence-based definition is insufficient.<sup>32</sup> For this reason and because my primary goal is to test the viability of moral absolutes relating to truthfulness, this dissertation will avoid the expression ‘broken faith’ in this sense – ie. as an act that breaks trust strictly as a consequence.

Furthermore, some may apply the phrase ‘breaking faith’ in a third sense, using it to describe instances in which a promise is intentionally broken. In other words, it might

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<sup>32</sup> Even rule-consequentialist positions recognize their own inability to maintain absolutist positions, since one can always imagine some catastrophic situation in which the rule must be broken for the sake of achieving what is thought to be the best overall outcome. See for example R. B. Brandt, “Utilitarianism and the Rules of War,” *Philosophy and Public Affairs* 1.2 (Winter, 1972): 145-165.



seem appropriate to say that a person breaks faith by acting in a way that intentionally breaks a promise. This sense, however, is problematic, especially when applied to breaking faith in the classical sense, since *fides* and promise, while related, are not synonymous. Faith is far more fundamental. In the classical understanding of the term, *fides* is the very notion of trust underlying the formulation of agreements and promises in general, a critical component of a well-ordered society.

What is it that provides for the role *fides* plays in serving as that which underlies all trust, which in turn is essential to the social order? It seems unlikely that *fides* is grounded on an absolute assurance that all promises will be carried out, which would rest upon the reliability of human beings – beings who are by nature error-prone and forgetful. It seems equally unlikely that *fides* is grounded on certainty about the future, a future which promises (to some extent) attempt to predict. On the contrary, given the changing nature of future conditions, promises in general seem wrought with unpredictability.<sup>33</sup> Instead, it is more likely that *fides* rests upon the commitment both parties share at the time agreements are made, a trust that is hinged upon truth, since every agreement involves a pledge or the expression of an intention that one assumes to be sincere and therefore true. If the idea of keeping faith expresses a commitment to the truth of every communicated intention, then breaking faith, properly speaking, must involve falsity of intention rather than the act of simply breaking a promise.

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<sup>33</sup> Indeed, any attempt to maintain all promises without exception would be a difficult endeavor. I may promise my wife, for example, that I will be home for dinner, but if I am involved in a car accident on the way home, it would be difficult to say that I was breaking faith by not arriving home on time. I may owe her an acceptable reason for my lateness, but it seems that my failure to keep my promise (ie. my failure to predict the time I would be home from work) would not itself constitute a breach of faith (as an act).

As such, in this dissertation the phrase ‘breaking faith’ (and also ‘violating faith’) will avoid the second and third senses just described. A broken promise may constitute a betrayal and can certainly injure trust, but only when one makes a promise insincerely does he intentionally undermine the universal presumption of truth that underlies all promise-making. For this reason, the expression ‘keeping faith’ and ‘acting in good faith’ used throughout this dissertation will be limited to this narrow sense, referring to remaining truthful while in the act of promise-making.

Faith (*fides*) goes beyond the simple trust that one person may hold toward another, an interpersonal trust that is merely another name for the belief in another person’s reliability. For example, I might think someone reliable and therefore trust him because I am confident that he will do what I want him to do, but it seems that this has little to do with faith in general. Instead, faith in its fullest sense seems to express how human reason dictates the need for sincerity when making promises.

It is this presumption of pledged sincerity that can be damaged, and it is therefore this damage that is of greatest concern when one says that faith has been violated or broken. When faith becomes damaged, St. Augustine says, it leaves “every brother appear suspect to every brother.”<sup>34</sup> Consequently, human reason, St. Augustine suggests, requires that every human being keep faith. Augustine expresses this notion of reciprocity and faith when he explains how lying breaks faith. He says, “[E]very liar breaks faith in lying, since he wishes the person to whom he lies to have faith in him, yet he does not

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<sup>34</sup> Augustine, *Contra Mendacium*, 4 (PL 40). Aristotle makes a similar claim in his *Rhetoric*, where he says that if good faith has been taken away, “human intercourse ceases to exist.” Aristotle, *Rhetoric*, I.15 1376b 14. This reading of Aristotle comes from Grotius. See Grotius, *De Jure Belli ac Pacis* (The Law of War and Peace), trans. Francis W. Kelsey (Indianapolis: The Bobbs-Merrill Company, Inc., 1925), III.25.1, 860.

keep faith.”<sup>35</sup> Every lie, because all lies must be expressed in the assertive context, includes a false invitation to mutual trust and is therefore perfidious (a breach of faith in the strict sense). In this way, the prohibition of perfidy and lying are not only moral absolutes, they are also each a different expression of the same moral offense: the intention to signal mutual trust in a way that is both false and duplicitous.

## 1.5 CHAPTER SUMMARY

Part of the purpose of this paper will be to argue that some deceptive acts, military deception in particular, can be reconciled with the virtue of truthfulness. It will also demonstrate that there is a rich historical position advocating an absolutist position with respect to perfidy and lying that does nothing to vitiate this claim about permissible deception. One finds this historical position at the intersection of three traditions, traditions that have matured over a considerable length of time, roughly 2000 years: the Western military tradition (discussed in Chapter 2); the Just War Tradition (discussed in Chapter 3); and the absolutist position against lying (discussed in Chapter 5).

With this historical lineage in mind, Chapter 2 first establishes the role that *military deception* has played in the history of warfare up to the present. First, it considers techniques used in ancient Rome and then explores the etymological roots of our modern terms relating to deception, some of which carry a tone of moral condemnation. The chapter then briefly examines the moral argument justifying military deception provided by St. Thomas Aquinas, which is then followed by a brief summary of the deception-related dictums of three military theorists: Clausewitz, Jomini, and Liddell Hart, theoreticians who helped to shape the three main approaches to military

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<sup>35</sup> Augustine, *De Doctrina Christiana* I.36 (34): “*Nemo enim mentiens, in eo quod mentitur, servat fidem. Nam hoc utique vult, ut cui mentitur fidem sibi habeat, quam tamen ei mentiendo non servat.*”

deception used in the 20<sup>th</sup> century. From there, the chapter transitions to contemporary theory, discussing Bell and Whaley's theoretical framework for understanding military deception and demonstrating the way in which their theory is insufficient. Finally, it describes the types of military deception endorsed in current U. S. military doctrine, distinguishing them from perfidy, the name given to deception-related acts currently prohibited by the international law of armed conflict.

Chapter 3 examines the rule against perfidy passed down through the centuries by the Just War Tradition. This chapter aims to show that the tradition has consistently placed the highest value on the preservation of faith. In this tradition, the most central tenet is that faith must never be broken with one's enemies in war. The discussion will include significant contributions to the topic made by the following figures: Cicero, St. Ambrose, St. Augustine, St. Thomas Aquinas, Alberico Gentilis, Francisco Suarez, and Hugo Grotius. It will conclude with a critique of the position adopted by Grotius, considered by many the 'father' of international law, who in many ways has inspired the rule against perfidy in the current law of armed conflict as codified by the Hague and Geneva Conventions.

Chapter 4 discusses what is in some ways the moral basis underlying the absolute duty never to act in bad faith. Using Spinoza and Kant, it will demonstrate that the requirement always to *act in good faith* is ultimately what reason demands. As such, the fully reasonable person must never commit perfidy, which is to say that one should never act in a way that intentionally undermines faith by engaging in either lies or other duplicitous acts that serve as an invitation to trust. The chapter concludes by considering Grotius's attempt to explain lying as a species of perfidy. While the association Grotius

makes between lying and perfidy is illuminating, I shall argue that Grotius's explanation ultimately fails because he suggests that the rule against lying and the rule against perfidy are both moral absolutes, while at the same time demonstrating that he is reluctant to commit to specifiable criteria compatible with moral absolutism.

Chapter 5 considers the various arguments behind the prohibition of lying articulated by the absolutist tradition. It begins by examining the definitions of lying championed by those who allow for exceptions to the rule, and it ends by addressing the strongest historical arguments in favor of the absolute rule made by Aristotle, St. Augustine, St. Thomas Aquinas, and Kant. In the end, it concludes by advancing the position that lying, like perfidy, is ultimately wrong because it is unreasonable, morally speaking.

Chapter 6 considers objections to the absolute rule against lying, objections that include a discussion of white lies, half-truths, equivocation, mental reservation, and the famous murderer at the door counterexample. The analysis of these criticisms presented in this chapter helps to more clearly identify the boundary between acting truthfully and being dishonest. At the same time, this chapter attempts to flesh out the distinctions between deceit, lying, and permissible acts of deception while helping to shed further light on the virtue of truthfulness.

## **1.6 MORAL ABSOLUTES**

There is one final concept that needs explanation, one that helps ground the three traditions I explore in this dissertation: the notion of moral absolutes. The idea that moral absolutes exist was perhaps first introduced into Western thought by Aristotle, who famously declared that in doing some acts “we can never be correct, but must invariably

be in error.”<sup>36</sup> In this saying, Aristotle suggests that there is a category of acts that are evil in and of themselves, acts that are wrong in every case. If Aristotle is correct, this category is significant in that it imposes a formal, universal standard on all human beings at all times. Some of these, such as rules against murder, rape, and pillaging, have been explicitly expressed in international law.<sup>37</sup>

Being aware of this category of exemption-less rules is also a prerequisite to understanding the Pauline principle, adopted by many contributors to both the just war tradition and the absolutist tradition against lying. The principle states, ‘never do evil so that some good might come about.’<sup>38</sup> If this principle is at all to be meaningful, then it must be coupled with a recognition that there is such a thing as intrinsically evil acts; otherwise, ends can easily justify all manner of evil means, which is exactly what the principle seeks to avoid. This dissertation adopts the position that lying and perfidy belong to this category of acts that are prohibited absolutely, thus constituting a moral absolute.

It could also be possible that deceit, which I have defined as unjust deception, is another such evil act. Indeed, by the negative tone attached to the term, one might think that term deceit describes a type of act that should be prohibited without exception. The problem with this position, however, is that deceit, as I’ve defined it, relies upon a further judgment of justice and, in turn, an answer to the question ‘What is just?’ Yet in order for moral absolutes to be a viable concept, each act that is ‘evil in itself’ must have its own

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<sup>36</sup> Aristotle, *Nicomachean Ethics* (henceforth *NE*) II.6 1107a 15 in *Nicomachean Ethics*, 2d ed., trans. Terence Irwin (Indianapolis: Hackett Publishing, 1999). The examples he provides are theft, murder, and adultery.

<sup>37</sup> See for example Geneva Conventions common article 3.

<sup>38</sup> Cf. Romans 3:8. Augustine makes this point with respect to lying, which he holds to be a moral absolute. See *Contra Mendacium* ix, 20-21. Grotius also makes reference to the principle in his discussion of ruses of war. *De Jure Belli ac Pacis*, III.1.6.

criteria without making reference to any other evaluative terms.<sup>39</sup> In other words, it is impossible to identify a universal standard for what constitutes deceit because in every instance a further evaluation of justice is required.

This same difficulty, however, does not occur for the rules against lying and perfidy as long as the definitions set forth in this chapter are used, since these definitions are both specifiable and at the same time do not include any terms that rely on other evaluative concepts, such as justice. Because the goal of this dissertation is to test the viability of these two absolute rules while proposing guidelines for how to remain truthful, the very notion of an absolute rule will therefore serve as an important reference-point to help express my ultimate thesis, that military deception and the virtue of truthfulness can in fact be reconciled.

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<sup>39</sup> John Finnis, *Moral Absolutes* (Washington, D.C.: Catholic University of America, 1991), 2. The absolutist tradition posits that there is one fundamental moral absolute, or absolute principle, underlying the virtue of truthfulness: never lie. According to Finnis, “absolute moral norms have the following characteristic: The types of action they identify are specifiable, as potential objects of choice, without reliance on any evaluative term which presupposes a moral judgment on the action.” Following Finnis, this dissertation will seek to identify specifiable criteria that are independent of any other moral terms such as unjustly, wrongly, or treacherously.

## CHAPTER TWO

### MILITARY DECEPTION THEORY AND ETHICS

If one were to explore the literature written on the topic of military deception, one would find that the words commonly used carry distinctive tones – positive, neutral, or negative. This tone is significant, for it implies a moral judgement. Perhaps this judgement is a reflection of an author’s particular view, or perhaps the word choice is attempting to capture a certain social attitude, given as it were by some court of public opinion. If we believe there is any credence whatsoever to Golden Rule or universalization-type principles in ethics, it seems that we need to pay attention to this tone, which in some sense conveys the social acceptability of certain deceptive acts, depicted in the choice of words used by the various authors. Whether or not one judges a certain deceptive act to be praiseworthy or blameworthy is often the result of imagining oneself having been deceived in a similar way, and this judgment is typically reflected in the way deceptive acts are commonly described.<sup>1</sup>

Being sensitive to this tone is important when engaged in any study on the ethics of military deception, this chapter will suggest, because the tone used can help us better understand which actions are generally considered permissible and which ones are thought to be treacherous. While there is undoubtedly a great deal of relativism embedded in such descriptions, it is nonetheless worthwhile to point out some degree of

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<sup>1</sup> Here, my methodology is in some sense following that of Aristotle, who uses *endoxa* (common opinions relating to what is said, also called the ‘wisdom of the city’), to ground his ethics. See Aristotle, *NE* I 4 1095a 14-21 and *NE* VII 1 1145b 4-8.



consistency, and perhaps even universality, in the tone used to describe certain deceptive acts, particularly those that involve breaking faith. Inasmuch as this lexicon reflects a certain time-tested wisdom – that is, collective judgments as to what is permissible and what is not – an understanding of these terms is useful to uncover the essence of what constitutes improper or unjust deceptions in war.

For example, words such as concealment, hiding, camouflage, disguise, feint, and surprise carry a permissive, neutral tone, and in the vocabulary of military deception doctrine these terms are favored.<sup>2</sup> Other terms such as deceit, lies, treachery, betrayal, perfidy, and fraud suggest a tone that is entirely negative, and these terms tend to be used either to describe impermissible acts or are used to recount historical examples of wrongful deception. While it may be true that in some cases the same deceptive act might be described positively by some and negatively by others, this chapter will attempt to identify deceptive acts that are for the most part universally condemned and as such are commonly described using terms with a negative tone.

The overall purpose of this chapter is to explain what is meant by military deception in general and then to shed light on the terms used to describe the class of deceptive practices that are widely considered impermissible in war. The chapter will begin by exploring examples of military deception from antiquity and then discuss the vocabulary of military deception established in classical Latin. Following a brief treatment of the subject by St. Thomas Aquinas, who makes a moral argument for the permissibility of military deception within the context of a just war, it will then examine theoretical arguments related to military deception from a strategic point of view. The

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<sup>2</sup> These terms appear in contemporary U.S. military doctrine. See, for example, U.S. Department of Defense, Joint Publication (JP) 3-13.4, *Military Deception* (Washington, D.C., January, 2012).

analysis will briefly explore the perspectives of three important military thinkers from the 19<sup>th</sup> and 20<sup>th</sup> centuries: Antoine-Henri Jomini, Carl von Clausewitz, and Liddell Hart. In the end, this chapter will attempt to bring into focus the proper goal for deceptive actions in war – hiding one’s intentions from one’s enemy. It will also suggest that there are certain deceptive acts that, even in the context of war, are widely considered unjust. These include making false promises and expressing other insincere invitations to trust, including those acts that use the protected status afforded by international law to gain military advantage. In the current language of international law, these prohibited acts are called perfidy.

## **2.1 CLASSICAL MILITARY DECEPTION IN THE LATIN WEST**

The most important treatise from Ancient Rome devoted to the topic of military deception is a work entitled *Strategematon* (stratagems), written by Sextus Julius Frontinus at the end of the 1<sup>st</sup> century A.D.<sup>3</sup> Frontinus’s stated purpose was to collect the most notable historical examples of military trickery and cunning and to catalogue them in a single volume.<sup>4</sup> The text was influential not for its analysis or theory, but rather for the various instances of military deception it provided. These examples serve to highlight the some of the fundamental types of military deception common to war. To illustrate these varieties, this section will group them under the four basic deception techniques presented in current U. S. military doctrine: the feint, demonstration, ruse, and display.<sup>5</sup>

The first two techniques, feints and demonstrations, attempt to deceive by arraying one’s own military forces in a way that provokes a favorable enemy reaction.

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<sup>3</sup> Barton Whaley, *Stratagem: Deception and Surprise in War* (Boston: Artech House, 2007), 47.

<sup>4</sup> Sextus Julius Frontinus, *The Stratagems*, trans. Charles Bennett (Cambridge: Harvard University Press, 1925; London: William Heinemann, 1961), I, 3-7.

<sup>5</sup> JP 3-13.4, I-9.

The difference between the two is that a feint involves a deliberate move to engage or come into contact with one's enemy, whereas a demonstration does not. By definition, a feint is an attack conducted with the purpose of deceiving one's enemy as to the actual location or time of the main attack.<sup>6</sup> Frontinus presents the following example of a feint used to ambush enemy troops in pursuit:

Sempronius Gracchus, when waging war against the Celtiberians... [sent] out light-armed troops to harass the enemy and retreat forthwith, [which] caused the enemy to come out; whereupon he attacked them before they could form, and crushed them so completely that he also captured their camp.<sup>7</sup>

In this case, Gracchus took advantage of the fact that his enemy would be eager to pursue a retreating foe, and he arrayed his forces in such a way as to cause the Celtiberians to believe that they were up against a weaker opponent. This example illustrates a feint because Gracchus's troops initiated the deception by launching an attack. Had Gracchus not attacked first with his lightly-armed troops but had only baited his enemy by making his troops seem vulnerable, the action might have instead been a demonstration (if no contact with the enemy was intended).<sup>8</sup>

The third technique presented in current U.S. military doctrine is the ruse, broadly defined as a trick or stratagem used to gain a favorable advantage by deceiving one's adversary and inciting him to act in a way that for the enemy is self-destructive.<sup>9</sup> The cleverness of a ruse is often its distinguishing feature. Frontinus provides the following example:

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<sup>6</sup> Ibid.

<sup>7</sup> Frontinus, II v 3, 135.

<sup>8</sup> U.S. military doctrine defines a demonstration as a show of force (a presentation of military capability) that does not involve an attack but that deceives one's adversary in order to gain a favorable advantage. Ibid.

<sup>9</sup> JP 3-13.4, I-9.

Leptines, the Syracusan... when waging war against the Carthaginians, ordered his own lands to be laid waste and certain farm-houses and forts to be set on fire. The Carthaginians, thinking this was done by their own men, went out themselves also to help whereupon they were set upon by men lying in wait, and were put to rout.<sup>10</sup>

The Carthaginians never imagined that Leptines would burn his own forts and farmhouses, and because of this made an erroneous assumption, one that led to their demise. Unlike Gracchus's feint, the success of Leptines's ruse did not rely on the deceptive way in which he deployed his forces into battle but rather on the misleading picture he painted for his adversary. Leptines was successful because his enemies mistakenly interpreted the reason the forts and farms were burning, whereby they fell into Leptines's trap.

The last technique given in U.S. military doctrine is the display, which involves the use of simulations and disguises to cause an enemy to misinterpret the true disposition of one's own forces.<sup>11</sup> Displays can be accomplished in two ways: simulations and disguises. Simulations differ from disguises in that simulations give the impression that military capability exists when it does not, whereas disguises hide capability that is actually present. The following example from Frontinus involves a display by simulating strength:

Alexander of Macedon, when the enemy had fortified their camp on a lofty wooded eminence, withdrew a portion of his forces, and commanded those whom he left to kindle fires as usual, and thus to give the impression of the complete army. He himself, leading his forces around through untraveled regions, attacked the enemy and dislodged them from their commanding position.<sup>12</sup>

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<sup>10</sup> Frontinus II v 11, 139.

<sup>11</sup> JP 3-13.4, I-9.

<sup>12</sup> Frontinus, II v 17, 141.

By keeping his army's campfires lit, Alexander simulated the appearance that his entire force remained in camp when it had actually moved. Alexander's display thus masked both his intentions and his true capabilities from the enemy, allowing him to gain the advantage in the attack by taking his unprepared enemy by surprise.

Taken together, these four deception techniques have one element in common: the goal of hiding one's true intentions from one's adversary in order to gain a military advantage. Because belligerents, quite naturally, endeavor to watch each other closely in order to gain the upper hand and because they are continuously making judgments and assumptions based upon the way their enemy appears to them, the concealment of one's purposes and capabilities has long been recognized as a vital element of successful warfare. In this way, fighting wars is very similar to football and other games involving trickery.<sup>13</sup> In both cases, stratagem and deception aim to mask, distract, desensitize, and confuse one's adversary in order to gain the upper hand and achieve victory.

## **2.2 THE CLASSICAL LANGUAGE OF DECEPTION IN WAR**

In the classical texts depicting examples of military deception, especially those written in Latin, the language used was for the most part positive in tone, although readers may occasionally find instances in which the terms expressed moral reproach.<sup>14</sup> Despite the rare use of such negative terms, it is nonetheless important to examine why negative terms might have been occasionally used, and this is important for at least two reasons. First, the negative terms can help us better appreciate the difference between

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<sup>13</sup> For a more developed account of this analogy, see Mattox 89-92.

<sup>14</sup> Everett Wheeler says, "The Greek and Latin vocabularies for stratagem have much to tell us about ancient attitudes toward this concept and how it was perceived... Except for a small minority of terms intended to cast ripples of moral reproach across its surface, a positive current flows steadily within the bounds of this concept... In general... Greeks and Romans preferred to call stratagem... a trick, a plan, wisdom, prudence, cleverness, and craft." Everett Wheeler, *Stratagem and the Vocabulary of Military Trickery* (Leiden: E.J. Brill, 1988), 109.

what we hold to be permissible deceptions in war and those which are condemned. Second, these terms facilitate a better understanding of the moral concepts that were later expressed by the authors of the Just War Tradition (presented in both Section 2.3 and Chapter 3), who for the most part wrote in Latin. The Just War Tradition is relevant to this dissertation because these same authors suggest that honesty and military deception are in fact reconcilable.<sup>15</sup>

As Everett Wheeler rightly notes, certain words in Latin have a neutral tone, a *vox media*.<sup>16</sup> I have listed the most noteworthy of the terms related to military deception in table 2.1. Note that the English word ‘deceive’ can correspond to either *fallere* or

**Table 2.1. Classical Latin Terms Relating to Deception in War**

<u>Positive:</u>	<u>Negative:</u>
<i>bona fides</i> (good faith)	<i>perfidia</i> (perfidy, violation of good faith) <sup>17</sup>
<i>dolus bonus</i> (good trick, stratagem)	<i>dolus malus</i> (evil trick, treachery)
<u>Neutral:</u>	<i>decipere</i> (to deceive wrongly or unjustly) <sup>18</sup>
<i>dolus</i> (trick or ruse)	<i>fraus</i> (fraud, intended injury, deceit) <sup>19</sup>
<i>fallacia</i> (misleading, deception)	<i>mendacium</i> (lie, false assertion) <sup>20</sup>
<i>fallere</i> (to mislead, deceive)	
<i>dissimulatio</i> (dissembling, concealment)	
<i>simulatio</i> (pretense)	

<sup>15</sup> By this, I mean those figures of the Just War Tradition from Augustine to Grotius. The continuity of these ideas will be discussed in detail in Chapter 3.

<sup>16</sup>Wheeler, 95.

<sup>17</sup> Ibid., 17.

<sup>18</sup> Wheeler discusses the apparent difference in tone between *fallere* and *decipere* and gives reasons to believe that *decipere* included a tone of moral condemnation. See Ibid., 76.

<sup>19</sup> Ibid., 52. Wheeler says that the transition of *fraus* from intended “injury” to “deceit” occurs through its use as a synonym for harming or damaging faith, which he calls “injury to *fides*.” Ibid., 64.

<sup>20</sup> Ibid., 79. According to Wheeler, *mendacium* is rarely used in anecdotes of military stratagems, and when mentioned is typically used to describe the actions of barbarian armies, such as Carthaginians, Ligurians, Germans, and Parthians.

*decipere* depending upon the moral tone conveyed (see Table 1.1).<sup>21</sup> Likewise, a good trick or stratagem is often given the name *dolus bonus*, whereas the term *dolus malus* (evil trick) is conveyed an exclusively negative sense.

Originally, the tone expressed in the Latin *dolus* was neutral. *Dolus* literally means ‘trick,’ ‘trap,’ or ‘device.’ It comes from the Greek δόλος, and its original meaning may have been a ‘bait for fish.’<sup>22</sup> According to Homer, the Trojan Horse was *dolus*.<sup>23</sup> Homer’s use of the term is consistently neutral in all his poetry, evidenced by the fact that not once does he criticize the use of *dolus* as a stratagem.<sup>24</sup> When Homer does use the term in a negative sense, he accompanies it with the adjective *kakos* (evil).

In classical Latin, the neutral tone of *dolus* is retained, and it often appears paired with the adjective *bonus* to denote its positive sense. As such, *dolus bonus*, or ‘good trick,’ became a synonym of ‘strategy’ and those that used such methods were both praised and considered morally justified in war.<sup>25</sup> For a deceptive act to be considered *dolus bonus*, it was necessary that the deception be accomplished while preserving faith (*fides*).<sup>26</sup> In contrast, a deceptive act that did injury to *fides* was often called *dolus malus* (an ‘evil trick’).<sup>27</sup>

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<sup>21</sup> Ibid., 76. The negative tone of *decipio* is expressed clearly by Augustine and others. For example, Augustine says, “Whoever thinks, moreover, that there is any kind of lie which is not a sin deceives [*decipiet*] himself sadly when he considers that he, a deceiver [*deceptorem*] of others, is an honorable man [*honestum*].” Augustine, *De Mendacio*, 21 (PL 40): “*Quisquis autem esse aliquod genus mendacii quod peccatum non sit putaverit, decipiet se ipsum turpiter, cum honestum se deceptorem arbitratur aliorum.*”

<sup>22</sup> Wheeler, 30.

<sup>23</sup> It should be noted that according to Virgil the Trojan horse ruse did involve a lie, albeit one not told directly by one enemy to another, but rather indirectly. When the Greeks pretended to depart Troy, they left behind a boy named Sinon, who upon being captured by the Trojans gave them a false story about the giant horse left behind, one that helped induce the Trojans to bring it into their city. Virgil, *Aeneid*, Bk II.

<sup>24</sup> Ibid., 103.

<sup>25</sup> See Ibid., 102.

<sup>26</sup> Ibid., 62.

<sup>27</sup> Ibid.

Beginning in the 2<sup>nd</sup> century A.D., however, *dolus* began to take on an entirely negative sense, effectively replacing the term *dolus malus*.<sup>28</sup> This change seemed to coincide with the Christian transformation of the Latin West.<sup>29</sup> For example, St. Jerome's Latin vulgate translation of the Gospel of Mark explicitly condemns *dolus* as evil: "From within the man, from his heart, come evil thoughts, adultery, fornication, murder, theft, greed, deceitful trickery [*dolus*], lewdness, an evil eye, blasphemy, pride, and folly. All these evil things come from within and defile a man."<sup>30</sup> The Italian 16<sup>th</sup> century jurist Alberico Gentilis expresses a similar tone in his use of *dolus*. He says, "*Dolus* is fraud, deception with the intent to cheat."<sup>31</sup> These examples suggest that by the early-modern period the tone associated with the term *dolus* had shifted from neutral to one that was primarily negative.

In addition to *dolus*, there are two other terms relating to military deception that often convey a neutral tone: *dissimulatio* (dissembling, concealment) and *simulatio* (pretense). According to Wheeler, the main difference between the two words is that one expresses hiding (*dissimulatio*) and the other showing (*simulatio*).<sup>32</sup> *Dissimulatio*, often

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<sup>28</sup> Ibid., 94.

<sup>29</sup> This can be contrasted with other terms in the lexicon of deception which in Medieval Latin retain their neutral tone. For example, Aquinas uses *insidiae* (ambush), *fallere* (to deceive), and *dissimulatio* (dissimulation) to denote permissible acts within the context of war. See Aquinas, *Summa Theologica* (henceforth *ST*) II-II Q.40 a3.

<sup>30</sup> Mark 7: 21-23. "*Ab intus enim de corde hominum cogitationes malae procedunt adulteria fornicationes homicidia furta avaritiae nequitiae dolus in pudicitia oculus malus blasphemia superbia stultitia omnia haec mala ab intus procedunt et communicant hominem.*" (my translation)

<sup>31</sup> "*Dolus est fraus, fallacia ad circumueniendum.*" (my translation) Gentilis, *De Jure Belli Libri Tres* II.4.

<sup>32</sup> Wheeler, 77-8. Grotius makes a similar claim. He distinguishes between two types of ruses (*dolus*) in war: one kind involving 'negative' acts, or acts of omission, which he calls dissimulation (*dissimulatio*), and the other kind involving 'positive' acts. The difference here seems to match the commission-omission distinction advanced by Roderick Chisholm and Thomas Feehan in "The Intent to Deceive," *The Journal of Philosophy* 74 (March 1977): 144-45. Positive acts, according to Grotius, can be further divided into two types. On the one hand, if the positive act is perpetrated by means of outward signs, Grotius calls it *simulatio*. On the other, if the positive act is carried out by means of words, Grotius calls it a lie (*mendacium*). Hugo Grotius, *De Jure Belli ac Pacis* (The Law of War and Peace), trans. Francis W. Kelsey (Indianapolis: The Bobbs-Merrill Company, Inc., 1925), III.1.7, 607.



translated as dissimulation in English, involves the concealment of one's purposes or an attempt to obscure, and because such acts were thought to do little harm to *fides*, *dissimulatio* for the most part carries a neutral tone. *Simulatio*, likewise, could carry a neutral tone, especially when it is used to describe simple pretense or disguise. In other cases, however, *simulatio* describes another form of showing: the active communication of falsity for the purpose of accomplishing some treacherous deed. In these instances, *simulatio* carries a negative tone.

The difference in tone associated with *simulatio* is evident in the following two examples. Frontinus explains how Titus Quinctius, when his army was about to be attacked in its camp by the Volscians, ordered his trumpeters to ride through the camp throughout the night sounding their trumpets. Meanwhile, he dismissed most of his army to sleep through the night. The pretense of strength (*simulatione*) held the Volscians off until morning, at which time Quinctius's fresh troops attacked the exhausted Volscians and easily defeated them.<sup>33</sup> This example of *simulatio* in the positive sense can be contrasted with a second example involving a disingenuous agreement. Julius Caesar uses the term *simulatio* to describe a treaty made under false pretenses by the German Ubii, who later attacked during the truce.<sup>34</sup> In this situation, Julius Caesar calls the treachery of the barbarian army *simulatio*, since the Ubii deceptively extended an invitation to trust (a form of showing) and exploited that trust to gain a military advantage. Perhaps it is on account of this latter type of *simulatio* that Aquilius Gallus and Sulpicius Rufus both include *simulatio* in their definitions of *dolus malus*.<sup>35</sup> Despite this inconsistency in the

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<sup>33</sup> Frontinus, II.xii.1.

<sup>34</sup> Julius Caesar, *Gallie Wars* 4.12.

<sup>35</sup> Wheeler, 78.

use of the word *simulatio*, the point to be emphasized is that *simulatio* sometimes described acts of treachery, signaling that some degree of showing is required to commit an illicit act of deception; *dissimulation*, in contrast, only described acts of hiding, which was never considered an impermissible activity during war.

### 2.3 THE JUST WAR TRADITION AND JUSTIFIED DECEPTION IN WAR

Perhaps the most famous moral defense for certain types of deceptive acts in war is given by one of the major figures in the Just War Tradition, St. Thomas Aquinas (13<sup>th</sup> c). Aquinas's treatment of the subject considers whether or not ambushes, because they intend to deceive, can be morally permissible. At the beginning of his discussion, he entertains the following hypothetical objection:

[A]mbushes and fraud seem to be opposed to faithfulness even as lies are. But since we are bound to keep faith with all men, it is wrong to lie to anyone, as Augustine states (*Contra Mend.* xv). Therefore, since one is bound to keep faith with one's enemy, as Augustine states (*Ep. ad Bonif.* clxxxix), it seems that it is unlawful to lay ambushes for one's enemies.<sup>36</sup>

By raising this objection, Aquinas implicitly poses the question of whether or not ambushes break faith with one's enemy. If ambushes really do break faith, the objection suggests, then ambushes must be morally impermissible since breaches of faith are always unjust.

Aquinas responds by suggesting that ambushes need not involve a breach of faith.

He says:

The object of laying ambushes is in order to deceive the enemy. Now a man may be deceived [*falleri*] by our words or actions... when we do not declare our intention or meaning to him... Wherefore much more ought the plan of campaign to be hidden from the enemy. For this reason among

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<sup>36</sup> Aquinas, *ST II-II* q.40 a.3 arg.1: "*Praeterea, insidiae et fraudes fidelitati videntur opponi, sicut et mendacia. Sed quia ad omnes fidem debemus servare, nulli homini est mentiendum; ut patet per Augustinum, in libro contra mendacium. Cum ergo fides hosti servanda sit, ut Augustinus dicit, ad Bonifacium, videtur quod non sit contra hostes insidiis utendum.*" (my translation)

other things that a soldier has to learn is the art of concealing his purpose lest it come to the enemy's knowledge, as stated in the Book on Strategy [*Stratagema* I, 1 by Frontinus]: Such concealment [*occultatio*] is the idea behind the kind of trap [*insidiis*] one may lawfully use in just wars. Nor can these ambushes be properly called fraudulent [*fraudes*], nor are they contrary to justice.<sup>37</sup>

Here, Aquinas suggests that concealment of one's purposes in a just war is a permissible activity, even if one of the intended effects is that the enemy be deceived. No unjust deception occurs, he seems to say, because a belligerent is fully justified in hiding his plans and intentions from his adversary. Nor does an ambush necessarily include a lie or a false promise, tacitly given or otherwise.<sup>38</sup> Therefore, some deception in war, including the intent to deceive that is presumably present in all ambushes, can be licit.

While Aquinas argues for the permissibility of some deceptive acts in war, he nonetheless insists deceptive stratagems that do in fact *break faith* are unjust and therefore can never be morally permissible.<sup>39</sup> Other Just War theorists such as Cicero, St. Ambrose, and St. Augustine had previously made similar arguments regarding breach of faith, all concluding that faith must be preserved with one's enemies in war. Reiterating this idea, Aquinas says that, if the aim is to deceive one's enemy, "the breaking of a promise [*non servatur promissum*]... is always unlawful. No one ought to deceive [*fallere*] the enemy in this way, for there are certain 'rights of war and covenants, which

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<sup>37</sup> Aquinas, *ST* II-II q.40 a.3. "...*insidiae ordinantur ad fallendum hostes. Dupliciter autem aliquis potest aliquis falli ex dicto vel facto nostro, quia ei propositum aut intellectum non aperimus... Unde inter cetera documenta rei militaris hoc praecipue ponitur de occultandis consiliis ne ad hostes perveniant; ut patet in libro stratagematum Frontini. Et talis occultatio pertinet ad rationem insidiarum quibus licitum est uti in bellis iustis. Nec proprie huiusmodi insidiae vocantur fraudes; nec iustitiae repugnant.*" (my translation)

<sup>38</sup> Following Aquinas, Suarez also states that "stratagems [*insidiis*] are permissible in war... in so far as relates to the prudent concealment [*occultando prudenter*] of one's plans; but not with respect to the telling of lies." Suarez, Francisco. *Selections from Three Works*, trans. Gwladys Williams et al. vol. II (English Translation), *De Triplici Virtute Theologica, Fide, Spe, et Charitate* (1621) (Oxford: Clarendon Press, 1944), disp. XIII: On war. VII.23, 852.

<sup>39</sup> The continuity of the Just War Tradition with respect to breach of faith and perfidy will be explored in detail in the next chapter.

ought to be observed even among enemies,' as Ambrose states."<sup>40</sup> Here, it is important to emphasize that Aquinas is condemning broken promises made with a secretive, deceptive purpose. An example of this kind of deception would be an insincere promise or treaty, such as the one alleged by Julius Caesar of the Ubi, made in order to launch a surprise attack. Aquinas's words condemn these kinds of deceptive acts because they involve an insincere invitation to trust (which may be either an explicit or a tacit promise) used instrumentally to accomplish a deception. Since such acts are contrary to good faith, this kind of deceptive act constitutes perfidy (acting in bad faith). So while Aquinas permits certain types of deceptive acts in war, such as laying an ambush, he also identifies at least one means of deception in war that is always illicit: duplicitous acts involving promises.

The belief that some deceptions in war are illicit, particularly those involving acts of bad faith, was maintained by the Just War Tradition throughout the Middle Ages and into the early modern period. Consequently, many of these authors attempted to adopt an absolutist position against perfidy, including other important contributors such as Giovanni da Legnano, Francisco Suarez, and Hugo Grotius.<sup>41</sup> Yet at the same time, the tradition recognized the moral permissibility of many forms of military deception in war – provided that the stratagems did not violate faith.

## **2.4 DECEPTION IN MODERN MILITARY THEORY**

As one might expect, deception and misdirection appear in many of the seminal texts of modern Western military theory. Barton Whaley groups the authors of these texts

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<sup>40</sup> Aquinas, *ST II-II* q.40 a.3. "*non servatur promissum... semper est illicitum. Et hoc modo nullus debet hostes fallere, sunt enim quaedam iura bellorum et foedera etiam inter ipsos hostes servanda, ut Ambrosius dicit, in libro de officiis.*"

<sup>41</sup> John M. Maddox, "Ethics of Military Deception," (Master's Thesis, U.S. Army Command and General Staff College, 1998), 55ff. It should be noted that Grotius, however, felt compelled to modify his definition of lying in order to maintain his absolutism, positing that a false assertion was not a lie if told to someone who had no right to the truth. For a more detailed explanation of the Grotian definition, see Chapter 5.

into three main schools of thought: classical, romantic, and the indirect approach.<sup>42</sup> The principal theorists of these three ways of thinking about deception – Jomini, Clausewitz, and Liddell Hart, respectively – each advocate approaches to the subject that are distinct from one another. Jomini, for example, discusses both tactical concealment and pretense, whereas Clausewitz seems to limit his treatment to deceptive practices that conceal. Liddell Hart differs from both Jomini and Clausewitz in that Hart emphasizes deception broadly and as an overall approach to war, illustrating the inherent deceptiveness (misdirection) behind all successful military strategy.

Regarded in the 19<sup>th</sup> century as the classical guide to waging war, the *Art of War* by Antoine Jomini (1779-1869) systematized the practice of generalship. Jomini's *Art of War* was inspired in part by his own personal experience as a general and chief of staff in Napoleon's army during the Napoleonic Wars. In that work, his brief discussion of military deception falls under a section entitled 'detachments' (ie. temporarily breaking one's army into smaller parts in order to accomplish a specific purpose). According to Jomini, dividing one's forces is a risky venture, but there are often good reasons to do so.<sup>43</sup> He lists seven reasons to create detachments, two of which involve deception:

To make a demonstration to draw the enemy in a direction where you wish him to go, in order to facilitate the execution of an enterprise in another direction.

To mask, or even invest, one or more fortified places for a certain time, with a view either to attack or to keep the garrison shut up within the ramparts.<sup>44</sup>

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<sup>42</sup> Whaley, 48.

<sup>43</sup> Jomini, *The Art of War*, trans. G. H. Mendell and W. P. Craighill (Philadelphia: J. B. Lippencott & Co. Reprint, Westport, CT: Greenwood Press, 1971), V xxxvi, 217.

<sup>44</sup> *Ibid.*, 221.

The first example he provides involves showing (therefore resembling *simulatio*) to complete a deception, while the second suggests concealment (*dissimulatio*). One way in which a demonstration may be accomplished, Jomini says, is to use small detachments to show or present one's own forces in a way that causes the enemy to react in a manner that facilitates one's actual plan of action. The second example involves hiding one's forces within a fort or garrison so that one's actual capabilities remain concealed. Because each of Jomini's examples are tactical deceptions (like Frontinus's examples) rather than a portion of grand strategy, Whaley calls Jomini's school the classical approach.<sup>45</sup>

The next modern theorist is Carl von Clausewitz (1780-1831), representative of what might be called a romantic view of military deception and the author of what is widely considered the most famous western text on the topic of war, *On War*.<sup>46</sup>

Clausewitz was a Prussian strategist during the Napoleonic wars. Like Jomini, his work does not include more than a brief discussion of deception. His discussion begins by expressing doubt as to the efficacy of ruses throughout the history of warfare. He says,

Yet however one longs to see opposing generals vie with one another in craft, cleverness, and cunning, the fact remains that these qualities do not figure prominently in the history of war. Rarely do they stand the welter of events and circumstances.<sup>47</sup>

Here, Clausewitz suggests that the fog and friction of war tend to make the careful and meticulous implementation of traps and trickery all but unrealistic. He further states, "To prepare a sham action with sufficient thoroughness to impress an enemy requires a considerable expenditure of time and effort, and the costs increase with the scale of the

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<sup>45</sup> Frontinus's examples of military deception were likewise generally tactical in nature, pertaining to advantage gained in single battles, rather than the kind of deception that attempts to win an overall strategic advantage in a war.

<sup>46</sup> See for example Martin van Creveld, *The Art of War* (New York: HarperCollins, 2005), 107.

<sup>47</sup> Carl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton: Princeton University Press, 1984), 202.

deception.”<sup>48</sup> In other words, elaborate deceptions, he says, are for the most part not worth the costs, in part because the effect on the enemy is often minimal.

Despite this air of skepticism toward deceptions, his treatment of the subject is nonetheless illuminating. In his introduction to his chapter on military deception (where he uses the German word *list*, meaning cunning or stratagem), he says:

The term “cunning” [*list*] implies secret purpose. It contrasts with the straightforward, simple, direct approach much as wit contrasts with direct proof. Consequently, it has nothing in common with methods of persuasion, of self-interest, or of force, but a great deal with deceit, which also conceals its purpose. It is itself a form of deceit, when it is completed; yet not deceit in the ordinary sense of the word, since no outright breach of faith is involved. The use of a trick or stratagem permits the intended victim to make his own mistakes, which, combined in a single result, suddenly change the nature of the situation before his very eyes.<sup>49</sup>

There are three important points to make here. First, Clausewitz is careful to distinguish between cunning and breach of faith. Breach of faith, he says, makes a deception deceit in its ordinary (negative) sense and is therefore not a proper use of deception. Second, the goal of military deceptions should not be to *force* the enemy into making a mistake, but rather to *allow* the enemy to make his own mistake.<sup>50</sup> Finally, Clausewitz suggests that cunning, properly conceived, involves the concealment of one’s true intentions (“secret purpose”). Because the enemy is always seeking to uncover his adversary’s plans, when one’s purposes are successfully hidden, the enemy may misjudge his opponent, and if this occurs the enemy often acts in a way that puts himself at a disadvantage.

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<sup>48</sup> Ibid., 203.

<sup>49</sup> Ibid., 202.

<sup>50</sup> This same point is echoed in the Army manual on the Law of War, which states, “a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself.” U.S. Department of the Army, Field Manual (FM) 27-10, *The Law of Land Warfare*. Change 1 (Washington, D.C., 1976), para 49.

Some may be astonished to learn that Clausewitz's treatment of military deception appears to include some sense of moral judgement, evidenced by the fact that he uses the terms deceit and breach of faith, both of which seemingly express moral condemnation.<sup>51</sup> This is because Clausewitz is widely thought to have abstracted warfare from all moral limits and social restraints, thus advocating wars independent of moral considerations.<sup>52</sup> "War," he says famously in *On War*, "is an act of force, and there is no logical limit to the application of that force."<sup>53</sup> This famous dictum is sometimes understood to mean that all manner of violence should be used as a means to bring about a war's end. For this reason, some have criticized Clausewitz for suggesting that restraint has no place in war.<sup>54</sup> Yet we see that when it comes to improper deception (ie. deceit in the ordinary sense), Clausewitz does in fact advocate some degree of restraint, discouraging acts of bad faith toward one's enemies.

While it might be the case that, in this instance, Clausewitz used terms conveying a negative tone to signal some degree of moral condemnation, it is also possible that he simply believed deceit and perfidy should not be used for practical or utilitarian reasons, reasons that will be discussed further in Chapter 3.<sup>55</sup> Thus, it may be possible that

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<sup>51</sup> In the Howard and Paret translation, the term used is 'breach of faith', but a more literal translation is 'breach of word.' He says, "*Sie ist sogar selbst ein Betrug, wenn das Ganze fertig ist, aber sie unterscheidet sich doch von dem, was schlechthin so genannt wird, und zwar dadurch, daß sie nicht unmittelbar wortbrüchig wird*" [It is itself a deceit as well when it is done, but still it differs from what is commonly called deceit, in this respect that there is no direct breach of word (my emphasis)]. Alternate translation is by J.J. Graham, published in London in 1873. Thus, it is possible that what Clausewitz had in mind was a prohibition against lying promises.

<sup>52</sup> Van Crevald, 109.

<sup>53</sup> Clausewitz, 77.

<sup>54</sup> For example, Liddell Hart comments, "(Clausewitz's) principle of force without limit and without calculation of costs fits, and is only fit for, a hate-maddened mob. It is the negation of statesmanship and of intelligent strategy – which seeks to serve the ends of policy." B. H. Liddell Hart, *Strategy*, 2d ed (New York: Meridian, 1967), 343.

<sup>55</sup> Some in the Just War Tradition have expressed consequentialist reasons for not breaking faith, such as the fact that after faith is broken, it is generally difficult if not impossible to reach an agreement to end hostilities. Therefore, if faith is broken between enemies, wars can drag on indefinitely.



Clausewitz indeed had little concern for moral principles adhered to for their own sake. Nevertheless, it does seem clear that as a matter of principle Clausewitz suggests some means of military deception, even if they might result in some military advantage, should be avoided.

Representing the third school of thought is Liddell Hart, a 20<sup>th</sup> century British military historian and strategist who argues that the most successful strategies throughout history include large-scale misdirection. Consequently, he recommends an overarching principle for fighting wars called the ‘indirect approach.’ The author of perhaps the most famous work on conventional warfare of his century, many credit Hart for inspiring German *Blitzkrieg* during the Second World War.<sup>56</sup> According to Hart, the best generals have always gone to great lengths to avoid direct conflict with the enemy and have instead used misdirection to gain the advantage before committing to battle. Hart was himself a former soldier who from his own experience during the First World War developed a deep disdain for what he took to be the mindless slaughter at the Western Front.<sup>57</sup> He believed that the widespread failure to employ methods of misdirection during World War I led to the staggering loss of life during that conflict.<sup>58</sup>

Inherent in Hart’s theory is the need to conceal one’s purposes from the enemy. In his most famous work (*Strategy*, 1929), Hart analyzes over two thousand years of military history and concludes that successful strategy always took one of two forms: strategic defense (such as a calculated withdrawal) followed by a tactical offense, or a strategy of offense (placing strategic pressure on the enemy) followed by a tactical

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<sup>56</sup> Van Crevald, 221.

<sup>57</sup> Ibid., 176.

<sup>58</sup> Hart, 162.

defense.<sup>59</sup> In either case, Hart argues that the indirect approach allows the enemy to misjudge one's true intentions by observing the overall strategic posture and assuming that the tactical actions would be similar.

Thus, according to Hart, the strategic appearance in wartime sets the tone for what the enemy expects, which makes it prudent to choose the opposite tactical action – in other words, *provide one set of appearances, and then do the unexpected*. Hart says that this type of misdirection “forms an indirect approach, and the psychological basis of both can be expressed in the words ‘lure’ or ‘trap.’”<sup>60</sup> In other words, successful generalship always includes the concealment of one's true purposes. Hart further remarks, “The most effective indirect approach is one that lures or startles the opponent into a false move – so that, as in ju-jitsu, his own effort is turned into the level of his overthrow.”<sup>61</sup> Hart's characterization of how to fight a successful war, described in terms of luring, trapping, or tricking one's enemy, sheds light on the fact that the concealment of one's actual plans and intentions is the proper reasoning behind all military deception.

Taken together, Jomini, Clausewitz and Hart demonstrate not only that there is a compelling reason to deceive one's enemy in war, but that success in war necessitates the concealment of one's own designs and capabilities. Warfare, Clausewitz says, is a contest of wills, but it is also a contest of wits, and outwitting one's opponent, to a large extent, requires the concealment of one's own plans of action. Again, the analogy between war and football is a helpful one to make, since excellence in both is in some ways determined by how well opponents disguise their purposes and mislead their adversaries.

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<sup>59</sup> Ibid., 146.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

Since belligerents are always seeking to uncover each other's intentions, hiding one's purposes through misdirection and other means can help to confuse one's enemy and cause him, in some sense, to make his own mistakes.

## **2.5 A CRITIQUE OF BELL AND WHALEY'S HIDING VERSUS SHOWING**

There is at least one contemporary theory of military deception, the theoretical framework that J. Bell and Barton Whaley call the "structure of deceit," that is at odds with the understanding of military deception I have presented to this point. Instead of characterizing military deception as concealment of purpose, Bell and Whaley argue that the essence of deception is to show what is false. To demonstrate in what way this view is problematic, I shall briefly examine their theory in light of this fundamental difference.

Relying on the classical *dissimulatio* – *simulatio* distinction, Bell and Whaley build their deception theory around the assumption that all deceptive acts can be characterized as either 'hiding' or 'showing.'<sup>62</sup> They describe the relationship between these two concepts in the following way:

The basic purpose of hiding is to screen or cloak... by producing a cover. The basic purpose of showing is consciously to display the false which, perforce, must hide the real. In showing, the end result is to create an effect, an illusion of the false as real. All showing involves hiding, but hiding almost never involves showing.<sup>63</sup>

According to Bell and Whaley, the "end result" of all showing is to cause someone to have a false belief by creating an illusion. To accomplish this goal, a mix of hiding and showing may be used. Conversely, if the goal is to hide or conceal, Bell and Whaley argue that showing is rarely used.

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<sup>62</sup> J. Bowyer Bell and Barton Whaley, *Cheating and Deception* (New Brunswick: Transaction Publishers, 1991), 61.

<sup>63</sup> *Ibid.*, 52.

This conceptual framework for what underlies all military deception is in tension with the claim has been advanced earlier in this chapter – that the concealment of one’s purposes (hiding) is the proper intention of all military deception. This requires explanation. According to Bell and Whaley’s theory, the intention underlying most instances of hiding and showing is ultimately *to show* an illusion (ie. to cause someone to have a false belief). In contrast, when the intention is *to hide* (which would include the concealment of one’s purposes), showing, they say, is rarely used. If they are correct, then we would expect the four deceptive techniques described in military doctrine (ie. feint, demonstration, ruse, and display), because they all involve showing, would be intended to cause an enemy to have false beliefs rather than to hide one’s purposes. Yet this conclusion would suggest the previous claim about the essence of proper military deception (to conceal one’s purposes from the enemy) is mistaken.

Bell and Whaley’s assertion that concealment almost never involves showing, is also at odds with Donald Daniel and Katharine Herbig’s theory of A-type and M-type military deception. Not only would Daniel and Herbig argue it is incorrect to say that hiding is rarely accomplished by showing, but they would also say that in practice *most* military deception involves showing, and it does so in order to achieve the ultimate goal of hiding.

Daniel and Herbig characterize military deception as either “misleading” (M-type) or “ambiguity-increasing” (A-type).<sup>64</sup> M-type deceptions attempt to create (eg. by *showing*) a single, most plausible course of action in the mind of the enemy that is nonetheless contrary to what one intends (because the actual intention remains *hidden*).

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<sup>64</sup> Donald Daniel and Katharine Herbig, “Propositions on Military Deception” in *Strategic Military Deception*, eds. Donald Daniel and Katharine Herbig (New York: Pergamon Press, 1981), 5.

For example, a build-up of troops along the Saudi-Kuwaiti during the First Gulf War border might have signaled to Saddam Hussein that an attack was about to occur there rather than at the actual crossing point, which was hundreds of miles to the west.

If the main feature of M-type deception is that it shows one illusion, the central feature of A-type is that it shows many. A-type military deception creates the appearance (most often by *showing*) of many plausible alternatives to make one's true intentions impossible to detect (*hiding*). An example of A-type deception would be mobilizing troops all along a border, one that might stretch hundreds of miles, in order to conceal plans for a localized raid to seize a single town. Because the picture painted for the enemy leaves room for countless possibilities, the enemy is left unable to detect that which is planned – the actual intention.

In both examples, something is *shown* in order to *hide*. M-type deceptions show *something* (and thereby mislead) in order to conceal one's actual purpose; A-type deceptions show *many things* (and thereby create ambiguity) in order to conceal one's actual purpose. By classifying all forms of military deception in these terms, Daniel and Herbig suggest not only that Bell and Whaley's framework is insufficient (since hiding can in fact be accomplished by showing), but that proper military deception *always involves showing in order to hide*.

Daniel and Herbig support their theory by providing many historical examples, all of which show (or simulate) in order to hide one's actual intentions.<sup>65</sup> Perhaps the most

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<sup>65</sup> If the concealment of one's plans is the ultimate goal, but if nothing is shown, only hidden, it seems that the act is more likely to fall under the title of 'security' rather than 'military deception.' One element of security is the use of safeguards to hide military plans and other sensitive material from the enemy. The military manual defines the doctrinal term 'security' as "the condition that prevents unauthorized persons from having access to official information that is safeguarded in the interests of national security." U.S. Department of Defense, Joint Publication (JP) 2-0, Joint Intelligence (Washington, D.C., October, 2013),

vivid example is the Fortitude South deception achieved by the allies during the 1944 Normandy invasion. In order to keep the actual location of the invasion hidden from Hitler and the German Army, Allied forces simulated the presence of a large invasion force across the English Channel from Calais. The allies assembled dummy landing craft, simulated the radio traffic of an entire army group,<sup>66</sup> and ensured that there was nighttime vehicle lighting in the port and beach areas to suggest “round-the-clock busyness.”<sup>67</sup> In doing so, the Allies presented misleading signs (M-type deception) to hide the actual invasion force and cause the Germans to think that the main invasion would come at Calais. In the event the Germans detected the actual invasion force (assuming the allied intentions remained hidden), these simulations would simply produce ambiguity and therefore become elements of ambiguity-increasing (A-type) deception.<sup>68</sup>

One final problem for Bell and Whaley’s theory is that the terminology they use seems to ignore to the moral tone regularly attached to deception-related words. For example, Bell and Whaley say deception and ruses are equivalent to “cheating.”<sup>69</sup> Yet by characterizing all forms of military deception as cheating (which has an entirely negative tone) while making a case for the merits of deception in war, they are suggesting that

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GL-11. Thus, to hide in order to hide is more properly termed ‘security,’ whereas to show in order to hide, it seems, is what is meant by ‘deception.’

<sup>66</sup> 13,358 total simulated radio messages were sent by the Americans alone. Thaddeus Holt, *The Deceivers: Allied Military Deception in the Second World War* (New York: Scribner, 2004), 534.

<sup>67</sup> *Ibid.*, 540.

<sup>68</sup> Daniel and Herbig admit that their own distinction is not entirely clear-cut, saying that Fortitude South was 3/4<sup>th</sup> misdirection (M-type) and 1/4<sup>th</sup> ambiguity-increasing (A-type). Daniel and Herbig, 7. The Fortitude South ruse was so successful that Hitler, convinced that the main amphibious attack would come any day, kept his most capable forces in the Calais area six weeks after the Normandy invasion began. Holt notes, however, that in post-war interviews with German officers and a review of post-war documents, there was no evidence that the Germans detected any of the Allied simulations near the Calais crossing. Instead, the successful deception was likely the result of a wild overestimation of Allied strength and Hitler’s belief that the Normandy invasion was only a large-scale feint and that a second invasion would come any day. See Holt, 590.

<sup>69</sup> Bell and Whaley, 44.

moral principles relating to deception do not belong in the practice of waging war and the execution of sound military strategy. This approach, however, is incompatible with the belief that military professionals can remain virtuous in war, and it also seems to deny the possibility that the virtue of truthfulness can or should be a foundational element behind honorable military conduct.

## **2.6 INTERNATIONAL LAW AND CONTEMPORARY DECEPTION DOCTRINE**

The notion that certain types of deception are morally permissible in war has been a widely-held opinion among philosophers and jurists throughout the centuries, a view that is reflected in 20<sup>th</sup> century international law. For example, Hugo Grotius (1583-1645), considered by many to be the father of international law, argued that attempts to deceive one's enemy are permissible as long as no invitation to trust is involved.<sup>70</sup> He said, "all those stratagems of war *are just* which a prudent enemy has no reason to fear, and in which no pretense of friendship is involved" (my emphasis).<sup>71</sup> Grotius's words convey at least two ideas worthy of note. First, deceptive acts in war relate to justice.<sup>72</sup> Second, Grotius suggests that one type of deception is always impermissible and therefore inherently unjust, regardless of the circumstances: all attempts to deceive one's enemy while at the same time extending an invitation to trust, a crime he called *perfidia* (perfidy).

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<sup>70</sup> Hugo Grotius, *De Jure Belli ac Pacis* (The Law of War and Peace), trans. Francis W. Kelsey (Indianapolis: The Bobbs-Merrill Company, Inc., 1925), III.1.19

<sup>71</sup> John M. Maddox, "Ethics of Military Deception" (Master's Thesis, U.S. Army Command and General Staff College, 1998), 65. cf. Hugo Grotius, *Commentary on the Law of Prize and Booty [De Jure Praedae Commentarius]* (1604), Chapter VIII, trans. Gwladys L. Williams and Walter H. Zeydel (New York: Oceana Publications, 1964), 118.

<sup>72</sup> Similarly, the Civil War era general order written by the German-born Francis Lieber, an order that was one of the first codified expressions of right conduct in war, related permissible military deception to justice. It also related military deception, rightly conceived, to honorable conduct. In Article 101 it said, "deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare." Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863.

Today, international law acknowledges that most deceptive practices and stratagems are legitimate military activities in the context of war. The International Red Cross, drawing from the war conventions, lists the following permissible stratagems: surprises; ambushes; retreats or flights; simulating inactivity; constructing bridges which are not intended to be used; transmitting bogus signal messages with a view to their being intercepted by the enemy; pretending to communicate with troops or reinforcements which do not exist; constructing dummy airfields and aircraft; and putting up dummy guns or dummy tanks.<sup>73</sup> In Army doctrine, this is articulated as a single underlying principle behind permissible stratagems, expressed in the following way: “In general, a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself.”<sup>74</sup> Applying this principle, it concludes: “It would be an improper practice to secure an advantage of the enemy by deliberate lying or misleading conduct which involves a breach of faith.”<sup>75</sup> In other words, belligerents should expect to be deceived by their adversaries, but under situations when a direct invitation to trust is being extended, it is morally unreasonable, unjust, and therefore unlawful to deceive one’s enemy. Such deception is properly called deceit.

Perhaps for this reason, there are a number of rules specified in international law designed to outlaw deceit. The prohibition of perfidy is one of these rules, and it is the one rule that perhaps most broadly constrains military deception.<sup>76</sup> According to the law

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<sup>73</sup> International Red Cross, Customary Law, Ruse of War. [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule57](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule57). Accessed 4 June 2015

<sup>74</sup> FM 27-10, *The Law of Land Warfare*, sect. 49.

<sup>75</sup> *Ibid.*, sect. 50.

<sup>76</sup> The other rules prohibit a false flag of truce and an improper use of distinctive emblems, flags, and uniforms of the enemy. These rules are in some sense still related to the rule against perfidy, since these kinds of false signs invite the trust of the enemy using the existing rules of war only to betray that trust. International Red Cross, Customary Law. [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul](https://www.icrc.org/customary-ihl/eng/docs/v1_rul). Accessed 4 June 2015. In U.S. Military Doctrine, “unlawful deceptions” are called “perfidious acts.” JP 3-14, 1-10.



of armed conflict, perfidy is an act “designed to invite the confidence of the enemy to lead him to believe that he is entitled to, or is obliged to accord, protected status under the (law of armed conflict), with the intent to betray that confidence.”<sup>77</sup> While I have argued earlier that perfidy at its essence is simply a false invitation to trust, the law of war only explicitly prohibits those perfidious acts that take advantage of one side’s adherence to the law of war.<sup>78</sup>

Just as it was the case in classical Latin, modern international law retains the negative tone that accompanies the term perfidy (*perfidia*), which is reflected in the current rule against perfidy in the law of armed conflict. This rule establishes a minimum standard that all permissible military deception must meet, the requirement that deceptive acts do not involve an act of bad faith.<sup>79</sup> In contrast, the terms ‘military deception’ or ‘ruse of war’ commonly carry either a neutral or even a positive tone, and as legitimate activities, they help fulfill one of the primary goals behind all military operations – the concealment one’s purposes from the enemy.

## 2.7 CONCLUSION

Many believe deceiving another human being is wrong. Perhaps for this reason the term ‘deception’ often, if not in most cases, has a negative connotation. It may be the case that what is meant by ‘deceive’ in these instances is ‘to cause to believe what is false,’ which implies that someone intends, to some degree, to withhold knowledge from another. Knowledge, many believe, is a fundamental good, something of intrinsic value

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<sup>77</sup> International Red Cross, Customary Law, Perfidy. [http://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule65](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule65). Accessed 3 June 2014. This definition is repeated verbatim in JP 3-14, I-10.

<sup>78</sup> Ibid. Examples include using a medical vehicle (which has a protected status) to launch a surprise attack or using a white flag to feign surrender in order to stage an attack. See also FM 27-10, *The Law of Land Warfare*, para 53.

<sup>79</sup> According to John Mattox, the “idea of ‘good faith’ imposes itself as the sine qua non of morally acceptable military deceptions.” Mattox, 8.

sought for its own sake. Since knowledge, it's assumed, has intrinsic worth, it seems that it would be wrong to deny knowledge to another – it would therefore always be wrong to deceive, and thus 'deceive' would always carry a negative tone.

Yet 'Deceive,' this chapter has shown, sometimes carries with it a neutral tone, as it does when used in the context of military deception. The meaning conveyed in this sense has implications not only for military ethics, but also for ethical questions in general. The admission of this neutral tone undermines the presumption of inherent wrongness that some assume accompanies all deception and instead replaces it with casuistic questions of appropriateness and justice. Is it proper for me to withhold this information about myself? Does prudence demand that I conceal my true feelings in this social setting? Would I do wrong to mislead this child, for example, for his own good? Is it just for me to use this technique to deceive my enemy?

The first step toward reconciling the virtue of truthfulness with rare instances of just deception, such as military deception between belligerents, is to disassociate the term 'deceive' from a presumption of wrongness. By recognizing that intended deception can sometime be just, some of the tension between truthfulness and the practice of waging war is eased, bringing the overall argument advanced in this dissertation closer to its goal. Nonetheless, this chapter has suggested that if reconciliation is to be fully achieved, what it means to be truthful still must be established. What has been made clear to this point is that the criteria must include something other than simply the intent to deceive.

## CHAPTER THREE

### THE JUST WAR TRADITION AND THE RULE AGAINST PERFIDY

It is difficult to talk about the rules of proper conduct in war without dwelling at least in part on the Just War Tradition. The tradition itself is perhaps best known for its established criteria for when a war is just (referred to as *ius ad bellum*) and for its principles of justice that should be observed while fighting wars (*ius in bello*). It has also contributed in a significant way to the establishment of the international law of war as it exists today.<sup>1</sup> Taken together, these rules and principles of justice provide a reasoned approach for how morally upright individuals can be involved in bringing about the deaths of human beings, but to do so in a way that is honorable, virtuous, and just. Also included in these principles is a precept related to military deception, one that prohibits stratagems that violate faith.

From the beginning, the Just War Tradition has argued that acts of breaking faith are always impermissible, and this standard is now codified in international law as a rule against perfidy. In this dissertation, perfidy has been defined as *a false invitation to enter into a condition of mutual trust, intentionally contrived and communicated by either a lie or another act of duplicity*. In international law, perfidy involves false or insincere invitations to trust that use an enemy's compliance with the law of armed conflict to gain

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<sup>1</sup> See for example Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 3d ed. (Upper Saddle River, New Jersey: Prentice-Hall, Inc., 2004), 7 and Brian Orend, *The Morality of War*, (Peterborough, Ontario: Broadview Press, 2006), 10.

a military advantage.<sup>2</sup> The wording of these definitions differ slightly from one another, even though the essence is arguably the same: an abuse of good faith.<sup>3</sup> Under both characterizations, the connection between perfidy and deception is clear. Inasmuch as perfidy involves either lying with a deceptive purpose (as lying most often does) or duplicity, perfidy can be loosely understood as all military deceptions that involve bad faith, deceptions that the Just War Tradition suggests has always been morally impermissible.<sup>4</sup>

The purpose of this chapter will be to rearticulate the manner in which the Just War Tradition has condemned acts of bad faith, a position that eventually took on a legalistic expression in the work of Hugo Grotius. This philosophical lineage originated with Cicero in the 1<sup>st</sup> century B.C. and, after being affirmed by others in the tradition, reached its most detailed treatment in Grotius's *Law of War and Peace* (1625). In order to explain the development of this rule, this chapter will survey the tradition's arguments against violations of faith, exploring the writings of Cicero, St. Ambrose, St. Augustine, St. Thomas Aquinas, Gentilis, Suarez, and finally Grotius. In the end, it will attempt to show not only how the rule against acts of bad faith, as codified today in the international law of armed conflict, was not only inspired by the Just War Tradition, but also how it has for the most part remained consistent. Following Cicero, the tradition has held that

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<sup>2</sup> In Additional Protocol 1 (1977), the Geneva Convention defined perfidy as “acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.”

<sup>3</sup> International Committee of the Red Cross, Customary Humanitarian Law, Rule 65: Perfidy. [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule65#Fn\\_3\\_14](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule65#Fn_3_14), accessed 8 Sep. 2015.

<sup>4</sup> This connection is ‘loose’ because it is possible for some forms of perfidy to be free of a deceptive purpose, since lies that intentionally violate good faith qualify as perfidy but not all lies, as this dissertation argues, require a deceptive intention. *Supra* 11-12. Since most lies aim to deceive, however, it is worthwhile to associate perfidy with the class of acts that we call deceptive, especially in the context of war.

acting in bad faith is always a dishonorable act (ie. contrary to *honos*). This principle, transformed into a rule against perfidy, is directly related to the virtue of truthfulness insomuch as perfidy, as a false invitation to trust, always involves what amounts to a lying promise. Since lies and truthfulness are incompatible, so also is perfidy unable to be reconciled with the virtue of truthfulness.

### **3.1 FIDES AND PERFIDIA**

In classical Latin, the wrong implicit in the term *perfidia* (perfidy) stems from the immense value placed on the classical notion of *fides*, or faith. *Fides* was valued, most fundamentally, because it was central to the moral vocabulary of agreement, and the ancients recognized that agreements serve as the very basis of an ordered society.

According to the 7<sup>th</sup> century etymologist Isidore of Seville, the term *fides* conveys the assurance that, when a promise is made, it would be fulfilled. In Isidore's words, the term *fides* is the idea "that which is promised will come about."<sup>5</sup> Hence, whenever a promise or agreement occurred, *fides* was involved. Isidore says it is for this reason that *fides* is derived from the Latin *foedus*, meaning 'agreement' or 'pact.'<sup>6</sup> So closely were faith and promises connected that, in classical Latin, *fides* was often used as a synonym of the word *promissum* (promise). Furthermore, *fides* did not merely apply to explicit agreements, but also to the very notion of trust underlying all agreements and promises in general, including those that were implied or tacitly made.

To fulfill and preserve this trust was therefore to act in *good* faith, or *bona fide*. Cicero called good faith "truth and fidelity to promises and agreements" and the very

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<sup>5</sup> Isidore, *Etymologiarum* VIII 2.4.

<sup>6</sup> Everett Wheeler says that *fides* is an "extra-legal, fluid relationship of mutual confidence and obligations between parties." Everett Wheeler, *Stratagem and the Vocabulary of Military Trickery* (Leiden: E.J. Brill, 1988), 64.

foundation of justice.<sup>7</sup> Applying the same principle to his just war dictums, Cicero suggested that *fides*, as the cornerstone of the principal social virtue (justice), is not only necessary for the social order but also for the lasting peace that should be the primary goal behind all wars.<sup>8</sup> Not only did *fides* (through justice) ground the social order, it also – being the foundation of justice – formed the basis of moral respectability. This, he says, is because “nothing that lacks justice can be *honestum* (honorable).<sup>9</sup>

In classical Latin, if someone was to act in bad faith, that person would be guilty of *perfidia*.<sup>10</sup> Like *dolus malus* (an evil trick) and *fraus* (fraud), *perfidia* was not a neutral term but instead always conveyed moral reproach.<sup>11</sup> While the exact origin of the Latin word is uncertain, one possibility is suggested by Grotius, who says that the person guilty of perfidy commits his treachery ‘through faith’ (*per fidem*), establishing a trust with the intention of violating that same trust.<sup>12</sup>

Since this dissertation has defined perfidy as *a false invitation to enter into a condition of mutual trust, intentionally contrived and communicated by either a lie or another act of duplicity*, it is necessary to account for the inherent connection between perfidy and either lies or duplicitous acts in general. One way to understand this connection is to separate perfidy into two kinds. This chapter will suggest that perfidious acts occur when (1) lying promises are made during the course of explicit agreements, or when (2) duplicitous acts are committed in the context of tacit agreements. Both kinds of perfidy not only damage faith (as a consequence of the act being discovered), but more

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<sup>7</sup> Cicero, *De Officiis* I.VII (23).

<sup>8</sup> *Ibid.*, I.XIII (80).

<sup>9</sup> *Ibid.*, I.XIX (62).

<sup>10</sup> Wheeler, 17.

<sup>11</sup> *Ibid.*, 102.

<sup>12</sup> Hugo Grotius, *De Jure Belli ac Pacis* (The Law of War and Peace), trans. Francis W. Kelsey (Indianapolis: The Bobbs-Merrill Company, Inc., 1925), III.24.3.

importantly they signal that the moral agent in both cases *is intending to violate good faith* by virtue of one's perfidious act. This violation of faith occurs regardless of whether or not the lying/duplicitous act is made known. In other words, the treachery could remain a secret, but it would still constitute perfidy on account of the intention.

The following examples provided by the Roman strategist Frontinus illustrate in what way acts of perfidy involve bad faith.<sup>13</sup> Frontinus uses the term *perfidia* to describe one case of treachery involving Pharnaesus, who pretended to be allies with Ventidius but in reality was revealing information to Ventidius's enemy, the Parthian king. Frontinus says that Ventidius became aware that Pharnaesus was planning to betray him, and so he responded to Pharnaesus's perfidy (*perfidia*) by pretending to be afraid that the Parthians attack was going to come across the Euphrates and through an open plain, where he feigned weakness, rather than through the hills. Pharnaesus then advised his secret allies, the Parthians, to attack across the Euphrates, the place he believed Ventidius to be most vulnerable. The Parthians did as they were advised, and when they were occupied building a bridge to cross the river, Ventidius attacked and destroyed the Parthians and their king.<sup>14</sup> By calling Pharnaesus's duplicitous acts *perfidia*, Frontinus is condemning Pharnaesus's attempt to establish a trust duplicitously (ie. through a false tacit agreement) by pretending to be allies with Ventidius, when in reality he sought to give damaging information to the enemy.

In another example, Frontinus praises a Roman general who declines the offer to be party to an act of perfidy, one that nevertheless seemed to offer him a military

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<sup>13</sup> Frontinus's *Strategema*, written between 84 and 88 A.D., is the only surviving Latin text of its type, a guidebook for military strategy and in particular all manner of deceptions. Wheeler, 1.

<sup>14</sup> Frontinus, *Strategema*, I.1.6.

advantage. Once, Frontinus says, when the Roman general Camillus was besieging the city belonging to the Faliscans, a school teacher from within the walls smuggled the children of the Faliscans out and presented them to Camillus. The schoolteacher told Camillus that the Faliscans would be sure to give in to Camillus's demands if only the Romans would take these children hostage. Yet according to Frontinus, "Camillus not only spurned the teacher's *perfidia*," but rejecting this potential advantage, he bound the schoolteacher and sent him back into the city being flogged by the schoolchildren along the way. Upon hearing of Camillus's regard for justice and his refusal to involve himself in an act of bad faith, the Faliscans voluntarily surrender to him.<sup>15</sup> The reason why Frontinus describes the schoolteacher as perfidious, we might presume, is that the schoolteacher acted duplicitously by affirming but yet at the same time intending to break a tacit agreement with the Faliscans, one that promised to safeguard their children. In this example, Frontinus not only suggests that achieving military advantage by involving oneself in such acts of perfidy would, even in war, be unjust, but he also demonstrates how being committed to good faith, as Camillus apparently was, can ultimately work to one's greater advantage.

Frontinus's examples suggest that the ancients reacted to acts of perfidy with universal repugnance. This abhorrence is echoed in the 1<sup>st</sup> century historian Valerius, who says that *perfidia* is always evil in itself because it is directly opposed to good faith.

He says,

And now let a secret and tricky evil, *perfidia*, be drawn from its hideout. Its most efficient strengths are to lie [*mentiri*] and to deceive [*fallere*]. Its fruit, then certain when it has surrounded credulity with heinous chains, consist in a crime. It brings so much misfortune to mankind as good faith

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<sup>15</sup> Ibid., IV.4.1.



[*bona fides*] offers safety. Therefore it should have no less reproach than good faith gains praise.<sup>16</sup>

Valerius's claim that perfidy brings misfortune to mankind suggests that perfidy always carries a social cost. This consequence, perhaps, is that when faith is violated or broken, the general trust one has for his fellow man and mankind in general is always injured.<sup>17</sup> As such, lies and other duplicitous acts that involve a false invitation to trust, because such betrayals violate faith, were invariably looked upon as perfidious and thus evil in themselves.

### 3.2 CICERO: ONE MUST ALWAYS PRESERVE FAITH WITH ENEMIES

The idea of preserving an established trust, even during war, was an important theme in Cicero, an author who in many ways laid the foundation for the Just War Tradition. Cicero suggested that *fides* should be preserved at all costs, even with one's enemies. In his treatise *De Officiis* (46-43 B.C.) Cicero says, "if under stress of circumstances individuals have made any promise to the enemy, they are bound to keep their word even then."<sup>18</sup> Here, Cicero sets the stage for one of the enduring tenets of the Just War Tradition, which at its essence is the requirement always to act in good faith, even toward one's enemies.

While it is striking that Cicero's requirement to preserve faith should even apply during war, Cicero makes it clear that breach of faith is contingent upon a mutual understanding having been established. Otherwise, some promises might not be binding:

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<sup>16</sup> Valerius Maximus, *Factorum et Dictorum Memorabilium* praef. 9.6. "*Occultum iam et insidiosum malum, perfidia, latebris suis extrahatur. cuius efficacissimae vires sunt mentiri ac fallere, fructus in aliquo admisso scelere consistit, tum certus, cum credulitatem nefariis uinculis circumdedit, tantum inconmodi humano generi adferens, quantum salutis bona fides praestat. habeat igitur non minus reprehensionis quam illa laudis consequitur.*"

<sup>17</sup> Ibid.

<sup>18</sup> Cicero, *De Officiis*, trans. Walter Miller (London: William Heinemann Ltd., 1961), I.XII (39), 43. "*si quid singuli temporibus adducti hosti promiserunt, est in eo ipso fides conservanda.*"

Furthermore, we have laws regulating warfare, and fidelity to an oath must often be observed in dealings with an enemy: for an oath sworn with the clear understanding in one's mind that it should be performed must be kept; but if there is no such understanding, it does not count as violating an oath if one does not perform the vow.<sup>19</sup>

As an example, he argues that a broken promise made to pirates is not a violation of an oath. He says,

For example, suppose that one does not deliver to pirates the amount agreed upon in exchange for one's life, that would not be considered fraudulent – not even if one should fail to deliver the ransom after having sworn to do so; for a pirate is not included in the number of lawful enemies, but is the common foe of all the world; and with him there ought not to be any pledged word nor any oath mutually binding.<sup>20</sup>

Cicero explains that the reason why a promise made to a pirate need not be honored is that a pledged word only applies between lawful enemies. Here, Cicero is suggesting that a mutual 'understanding' (the tacit agreement that what is being promised is binding) is attached to all explicit agreements made between opposing sides in war, assuming the belligerents are lawful. Promises in such cases always include a tacit understanding that each side is bound to their word. Thus, if one's word is pledged and the context is such that the agreement is inviolable, then to break the agreement is to break faith.

While it is clear that Cicero intends to say something far-reaching and important about the need to act always in good faith, the rule he expresses is left rather unclear. First, the idea of a lawful enemy is somewhat ambiguous. Second, Cicero seems to say that if the promise is thought to be inviolable at the time it is made (and therefore the agreement is, perhaps, an 'oath') and if one party later breaks that agreement, then the

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<sup>19</sup> Ibid., III.XXIX (107), 385. "*Est autem ius etiam bellicum fideque iuris iurandi saepe cum hoste servanda. Quod enim ita iuratum est, ut mens conciperet fieri oportere, id servandum est quod aliter, id si non fecerit, nullum est periurium.*"

<sup>20</sup> Ibid. "*Ut, si praedonibus pactum pro capite pretium non attuleris, nulla fraus sit, ne si iuratus quidem id non feceris; nam pirata non est ex perduellium numero definitus, sed communis hostis omnium; cum hoc nec fides debet nec ius iurandum esse commune.*" (my translation)

breaker of the promise commits an injustice. The main problem with this characterization, however, is that it is difficult to ascertain what agreements carry this special quality of mutually understood inviolability.

### 3.3 ST. AMBROSE AND THE DISGRACE OF BREAKING FAITH

Four centuries later, St. Ambrose, writing his own treatise ‘on duties’ (*De Officiis*) inspired by Cicero’s work and written under the same title, addresses the question of whether the principles of justice Cicero advanced must be kept during war.<sup>21</sup> Ambrose not only affirms Cicero’s claim that faith must be preserved with one’s enemies, but he also suggests that faith must *always* be kept, regardless of who might be party to the agreement. He says, “[I]t is quite clear that good faith and justice need to be respected even in war, and there can be nothing honorable [*decorum*] about that person if good faith is violated [*violetur fides*].”<sup>22</sup> By saying that there can be nothing *decorum* about acts of breaking faith, Ambrose suggests the intent to break faith is always dishonorable and therefore disgraceful.<sup>23</sup> The reason, he says, is that the just man cannot be just without preserving faith:

The foundation of justice, then, is faith, for the hearts of the just meditate on faith, and the person who is just, and thus critical of himself, raises the edifice of his justice on the foundation of his faith; indeed, his justice is apparent every time he confesses the truth.<sup>24</sup>

Notice that the conditions for keeping faith, according to Ambrose, do not require a separate evaluation of whether or not one’s enemy is ‘lawful,’ as it did for Cicero. Rather,

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<sup>21</sup> Ambrose, *De Officiis*, trans. Ivor Davidson (Oxford: Oxford University Press, 2001), 2.

<sup>22</sup> Ibid., I.140, 199. “*Liquet igitur etiam in bello fidem et iustitiam servari oportere nec illud decorum esse posse si violetur fides*” (my translation).

<sup>23</sup> Davidson remarks that *decorum* is part of the standard vocabulary of Cicero, a lexicon that Ambrose inherits. Ivor Davidson, “Introduction” in Ambrose, *De Officiis*, 34-5.

<sup>24</sup> Ibid. I.142, 199. “*Fundamentum ergo est iustitiae fides: iustorum enim corda meditantur fidem, et qui se iustus accusat, iustitiam supra fidem conlocat: nam tunc iustitia eius apparet, si vera fateatur.*”

Ambrose suggests that the requirement to act in good faith is unconditional, since “the hearts of the just meditate on faith.” All breaches of faith, he suggests, reflect the ‘heart’ of the one making the promise. So the intention to break faith in any form, such as making a false oath, causes the perfidious person to disgrace himself. This disgrace is thus independent of the status of the other party to the agreement.

The rule against breaking faith that Ambrose voices thereby identifies the wrongness of violating faith in a way that differs from Cicero. Since Ambrose suggests that violating faith primarily brings dishonor upon the promise breaker, Ambrose is implying that faith must be kept with *all men*, including those who themselves have broken faith or have committed other acts of injustice.<sup>25</sup>

### **3.4 ST. AUGUSTINE AND KEEPING FAITH TO SECURE THE PEACE**

Following Cicero and St. Ambrose, St. Augustine (354-430 B.C.) also argued that one is bound to keep faith with one’s enemies in war. Augustine’s ideas about justice in war followed very closely the teachings of Ambrose.<sup>26</sup> In Augustine’s letter to Boniface, a Roman general and tribune of Africa, he repeats Ambrose’s admonition: “Indeed, faith when it is promised must be kept [*fides servanda est*] even with an enemy against whom he is waging war.”<sup>27</sup>

The reason why faith must always be kept, Augustine explains to Boniface, is that faith is instrumental to peace. Wars, he says, should not be fought merely to secure victory, which might warrant all manner of expediency, but rather to secure the peace that

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<sup>25</sup> This point is made by Grotius, who in doing so references Ambrose. See Grotius, III.19.1, 792.

<sup>26</sup> It should be noted that Augustine had intense admiration for Ambrose, Augustine’s own conversion to Christianity having reportedly occurred following a sermon delivered by Ambrose himself. Augustine, *Confessions*, trans. Henry Chadwick (Oxford: Oxford University Press, 2008), xx-xxi and 91-94.

<sup>27</sup> Augustine, *Epistolae* 189.6. “*Fides enim quando promittitur, etiam hosti servanda est contra quem bellum geritur.*” (my translation)

follows. Thus, it might be said, the *way* in which wars are fought is of supreme importance. He continues:

For we do not seek peace in order to stir up war, but we wage war in order to acquire peace. Be, therefore, a peacemaker even in war in order that by conquering you might bring to the benefit of peace those whom you fight.<sup>28</sup>

Augustine's words here echo those of Cicero, who says similarly, "War... should be undertaken in such a way as to make it evident that it has no other object than to secure peace."<sup>29</sup> Affirming what would become a central tenet of the Just War Tradition, Augustine argues that wars should always be fought justly. Just actions, in turn, require that belligerents maintain good faith.

Both Augustine and Cicero suggest that injustices in war only prolong conflict and foment popular resistance against an occupying army. Conversely, when combatants fight justly, only then does the attainment of a lasting peace become possible. From this teleological view of fighting with the ultimate end of war in mind, a view which recognizes that the way soldiers and armies fight carries far-reaching consequences, the Just War Tradition's principles of *ius in bello* (justice in war) were born.<sup>30</sup>

Wars, according to the tradition, should never be fought in a way that perpetuates further injustices. Writing in the wake of World War II, Liddell Hart follows this same line of thinking when he reflects on the errors made by Napoleon and Adolf Hitler. He says,

Hitler gave the art of offensive strategy a new development. He also mastered, better than any of his opponents, the first stage of grand strategy – that of developing and co-ordinating all forms of warlike activity, and all

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<sup>28</sup> Ibid. "*Non enim pax quaeritur ut bellum excitetur, sed bellum geritur ut pax acquiratur. Esto ergo etiam bellando pacificus, ut eos quos expugnas, ad pacis utilitatem vincendo perducas.*" (Teske translation)

<sup>29</sup> Cicero, *De Officiis* I.XXIII (80). "*Bellum autem ita suscipiatur, ut nihil aliud nisi pax quaesita videatur.*"

<sup>30</sup> For a brief summary of these principles, see Christopher, 25-26.

possible instruments which may be used to operate against the enemy's will. But like Napoleon he had an inadequate grasp of the higher level of grand strategy – that of *conducting war with a far-sighted regard to the state of the peace that will follow*.<sup>31</sup> (my emphasis)

Echoing Cicero and Augustine once again, Liddell Hart later concludes, “The object of war is a better state of peace... Hence it is essential to conduct war with a constant regard to the peace you desire.”<sup>32</sup> If wars should be fought justly for the sake of the peace that follows, then, given the interrelationship between good faith and justice explicitly advanced by the tradition, keeping faith with one's enemies is essential to achieving a lasting peace.

Indeed, it might be the case that faith is necessary to negotiate those cease-fire agreements that bring conflicts to a close, which may be one of the various practical reasons to preserve of faith. While Augustine likely had this instrumental concern in mind, Augustine's argument appears to be much broader, suggesting that any unjust conduct in war, including all violations of good faith, ultimately jeopardizes the chances of achieving a lasting peace in the aftermath of war. In this way, Augustine warns that all violations of faith in war are, in the long term, counterproductive and therefore unreasonable.

### **3.5 GENTILIS AND WHAT CONSTITUTES BREACH OF FAITH**

The next major figure in the Just War tradition addressing this notion of preserving *fides* is Alberico Gentilis, an Italian jurist to whom the preeminent Hugo Grotius acknowledges his debt of gratitude. Gentilis published the first edition of his

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<sup>31</sup> B. H. Liddell Hart, *Strategy*, 2d ed (New York: Meridian, 1967), 220.

<sup>32</sup> *Ibid.*, 338.

treatise on the laws of war in 1589 and his later edition in 1612.<sup>33</sup> While his ideas about violating faith are more permissive than Ambrose, Gentilis nevertheless holds the obligation to preserve faith in war to be absolute. Echoing the tradition, Gentilis argues that ‘Faith is the foundation of justice,’ and quoting Silius, he says, “He is the best soldier by far whose first and last thought is to keep faith in the midst of war.”<sup>34</sup> Yet Gentilis argues, agreeing with Cicero, that while there is an obligation to keep faith with one’s enemies, there is no obligation to fulfill promises when making them with pirates and brigands. In this way, Gentilis has a nuanced view of what constitutes breaking faith, suggesting that an insincere promise made to pirates is permissible because such enemies are ‘unlawful.’<sup>35</sup>

Nonetheless, when fighting against ‘lawful enemies,’ Gentilis says stratagem and trickery must never break faith. As an example, Gentilis condemns an instance of Roman equivocation during the Punic Wars when the Roman army made an agreement to spare the city (*civitas*) of Carthage but later destroyed the buildings of the city. The Romans justified their actions by saying that *urbs* (the buildings, all of which they eventually destroyed) is not the same as *civitas*. They explained that when they had made their promise to the Carthaginians and used the term *civitas*, they were only referring to the citizens. Thus, there was no obligation to preserve the buildings, only the people.

Gentilis, however, calls this Roman equivocation unjust, because the distinction between *urbs* and *civitas* was “not clear to the ears of the common people,” the difference

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<sup>33</sup> Henry Wheaton, *History of the Law of Nations in Europe and America* (New York: Gould, Banks, and Co., 1845), 51.

<sup>34</sup> Alberico Gentilis, *On the Law of War [De Jure Belli]* (1612), trans. John C. Rolfe (New York: Oceana Publications, 1964), II.iii, 144.

<sup>35</sup> *Ibid.*

being “too subtle and too generally neglected to be clear.”<sup>36</sup> Gentilis suggests the Romans might have changed the meaning of the term used in the original promise to serve their purposes, and by asserting that this was their original meaning, they were not being truthful. Quoting Cicero, he further remarks: “in keeping faith you must always bear in mind what you meant, not what you said.”<sup>37</sup>

While some might assume the breach of faith that occurred here was simply the fact that the Romans broke their promise, it seems that this explanation is insufficient. Gentilis suggests that the Romans either equivocated at the time the promise was made or later lied by justifying their destruction of the city.<sup>38</sup> Gentilis’s example therefore rightly constitutes perfidy because the Romans extended a false invitation to trust by either (1) equivocating at the time the agreement was made or (2) lying in retrospect to justify their breach of agreement. For this reason, Gentilis calls the Roman injustice a ‘fraud’ (*fraus*) and an ‘evil trick’ (*dolus malus*).<sup>39</sup>

### **3.6 SUAREZ’S PROPOSED EXCEPTIONS TO KEEPING FAITH**

Francisco Suarez (1548-1617), another major figure in the Just War Tradition, also addresses *fides*, but his understanding of what constitutes breach of faith avoids questions of perfidy, strictly speaking, and instead focuses on the rules associated with promise-keeping. Publishing his disputation on war in 1621, Suarez affirms the doctrine that faith should be kept with one’s enemies. However, the rule against breaking faith, according to him, does not apply if one of three stipulations are met: (1) war has not been

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<sup>36</sup> Ibid., II.4, 145.

<sup>37</sup> Ibid., II.4, 147; cf. Cicero, *De Officiis* I.40.

<sup>38</sup> A discussion of how equivocation is equivalent to lying occurs in Chapter 6.

<sup>39</sup> Gentilis primarily uses the Latin ‘*fraus*’ to describe unlawful deception, although he does use ‘*dolus malus*’ once, when he, referring to Isidore, remarks, “But that grammarian, whoever he was, or whoever was the originator of the phrase, does not move me to his epigram, ‘Shameful the victory won by craft’, unless he had in mind evil craft (*dolo malo*), of which we shall presently speak.” Ibid. II.3, 143.



declared; (2) the enemy has already broken faith; or (3) the circumstances have changed such that promise-breaking may be excusable.

With respect to the first condition on when it may be permissible to break faith (*fidem frangere*), Suarez says:

Generally speaking, such an act [*fidem frangere*] is not permissible, since it involves patent injustice... However, this is true only provided that the promise shall have been made from the beginning of the war, by a just and mutual agreement in such a way as to be binding.<sup>40</sup>

The agreement that Suarez refers to here, an agreement occurring at the beginning of war, is the initial agreement to fight – the formal declaration of war. One part of this agreement, albeit tacitly given, is that no injustice is committed when one side brings about the death of soldiers from the other.<sup>41</sup> This, Suarez says, is because

...injustice is in no wise done to a person who knowingly consents [to an action]; and [in the situation under discussion] the two sides are voluntarily fighting with each other, since, I assume, the war is waged by mutual agreement, and *after proclamation*.”<sup>42</sup> (my emphasis)

Just as each side tacitly agrees that targeting enemy combatants is permissible, so also does each side agree, Suarez suggests, that faith should never be broken. Yet since these conditions take effect only after a formal declaration of war occurs, the rule prohibiting violations of faith is, according to Suarez, not fully absolute. Rather, it is limited to the context of a *declared* war.<sup>43</sup>

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<sup>40</sup> Suarez, Francisco. *Selections from Three Works*, trans. Gwladys Williams et al. vol. II (English Translation), *De Triplici Virtute Theologica, Fide, Spe, et Charitate* (1621) (Oxford: Clarendon Press, 1944), De Charitate, disp. XIII: On war. VII.23, 852.

<sup>41</sup> Ibid., VII.22, 851.

<sup>42</sup> Ibid.

<sup>43</sup> This language ('declared war') is problematic since few of the armed conflicts in the last century have been formally declared. Some might argue that the very notion is rather outdated. Yet a more charitable reading of Suarez would interpret him as requiring that a war (or armed conflict), at a minimum, be recognized by both sides, involving perhaps a tacit mutual understanding.

Suarez further weakens the rule against violating faith in his second condition, suggesting that it may be permissible to break faith with one's enemy if the enemy has already broken faith. He says, "if one side has perchance violated faith [*fidem violavit*], the other side will be entirely freed from its own obligation."<sup>44</sup> Suarez's innovation, which seems to depart from Ambrose's 'hearts of the just' claim, nevertheless fails to clarify what "to be entirely freed" means. Is the belligerent freed from all promises, both those made in the past and yet to be made? Some might say that the innocent party is only freed from the obligations of the agreement that has been broken but not from the obligations of faith in general.

Yet because Suarez suggests that every war begins with a tacit agreement and because this agreement includes the obligation always to keep faith, once faith is broken and the initial promise associated with the declaration of war is voided, the general obligation to maintain faith seems no longer to apply. This interpretation, which may in fact be what Suarez had in mind, sheds light on the lingering tension present within the tradition since Cicero, a tension between those who suggest that the rule against breaking faith is absolute and those who suggest the rule against violating faith is conditional.

Suarez's third stipulation pertains mainly to the proper justification for broken promises rather than providing another condition for when it might be permissible to break faith in the strictest sense. This stipulation accounts for changing conditions.

Suarez says that breaking faith does not occur if

...any change in circumstances has occurred, such as when the promises in question cannot be kept without grave loss. In that event, the opposing side must be warned that it is not possible to keep the promise made to it;

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<sup>44</sup> Ibid, 853.

and after [either side] has issued this declaration, it is freed from the pledge. However, such a declaration is seldom to be permitted.<sup>45</sup>

Note that this last condition requires that the side desiring to renege on a promise declare its intention to do so openly. Thus, if the conditions have changed and the intent to break the promise has been openly expressed, no breach of faith is committed, says Suarez. Here, Suarez's condition applies to breach of faith as a consequence, a sense or meaning of 'breach of faith' that I have nonetheless avoided since it merely acknowledges that a promise may sometimes be broken justly. For Suarez, this occurs only if the side breaking the pledge is forthcoming.

While these stipulations may, on the surface, seem reasonable, Suarez's first two conditions nevertheless create problems for the consistency of the Just War Tradition for two reasons. First, by suggesting the rule against violating faith only applies within the context of a *declared war*, the condition seems to excuse any violations of faith that might have taken place during the vast majority of the wars fought by the United States in the last century, since many have included no formal declaration.<sup>46</sup> Others in the Just War Tradition, however, suggest that every belligerent should always preserve faith, since good faith is ultimately a matter of honor and individual integrity. The second problem involves correctly judging whether one's enemy has broken faith. This determination, it seems, could easily be flawed. As wars progress, allegations of treachery, however unsubstantiated they might be, could thereby lead to the abandonment of the general obligation to keep faith. If this was to occur, once a war came to its conclusion, faith could be damaged to so great a degree that there would be little ability to negotiate an

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<sup>45</sup> Ibid.

<sup>46</sup> Only five wars, for example, have been declared in all of U.S. history (War of 1812, Mexican-American War, Spanish-American War, WWI, and WWII).

armistice, cease-fire, or war termination treaty. Considering these problems, one can see why Suarez's first two conditions do not support an absolutist view and, therefore, why they are not compatible with a legal formulation for perfidy, such as the one currently given in international law or that articulated by his successor, Hugo Grotius.

### **3.7 GROTIUS'S RULE AGAINST PERFIDY**

Not only does the Dutch jurist Hugo Grotius (1583-1645) occupy a place of importance in the Just War Tradition, but his ideas have also earned him the distinction of being called by many 'the father of international law.'<sup>47</sup> The event that perhaps shaped Grotius's ideas more than any other was the Thirty Years War (1618-1648), the devastating trans-European conflict that culminated with the creation of the modern nation-state system.<sup>48</sup> His seminal work, the three volume *Law of War and Peace* (1625), was in some sense written in response to the tragedy of this war.<sup>49</sup> Grotius intended it to be a guide for kings and princes in the proper handling of international conflicts. In his prologue, he stated his purpose as such:

I have had many and weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in

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<sup>47</sup> This opinion is shared by a number of sources: Hamilton Vreeland, *Hugo Grotius: The Father of the Modern Science of International Law* (New York: Oxford University Press, 1917): 171; Christopher, 66; and James Turner Johnson, *Just War Tradition and the Restraint of War* (Princeton: Princeton University Press, 1981), 42. It is also echoed in U. S. Military doctrine: U. S. Department of Defense, "Law of Armed Conflict Deskbook" (Charlottesville: U. S. Army Judge Advocate General's Legal Center and School, 2012), 12.

<sup>48</sup> For Germany, the loss of life was proportionally greater than even that of the Second World War, and the economic and material destruction was nearly as extensive. Geoffrey Parker, *The Thirty Years War* (London: Routledge and Keegan Paul, 1984), 215. The war ended with the Peace of Westphalia, the agreement between the Habsburg monarch, Spain, France, Sweden, the Dutch Republic, and the Princes of the Holy Roman Empire, establishing the political order of Europe which remains largely intact to this day.

<sup>49</sup> It should be noted that the Francis Kelsey translation of this work is only mildly superior to the more widely accessible Jean Barbeyrac translation. Both seem to overlook the neutral/negative tone distinction described in detail in Chapter 2 of this dissertation. For example, neutral terms in classical Latin such as *dolus* (trick or ruse) are most often translated as 'deceit,' which in English carries a negative tone. Grotius's work, however, in many ways amounts to a comprehensive study of classical sources, and if he was wishing to express 'deceit' and thus convey an entirely negative tone, he would have perhaps instead used the Latin '*deceptio*' (deceit, deception) or *dolus malus* (evil trick).

relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly let loose for the committing of all crimes.<sup>50</sup>

In writing the *Law of War and Peace*, Grotius chief concern was to prevent unconstrained and limitless conflict, the kind that had become commonplace during the Thirty Years War. Interestingly, in Book III, the only book singly devoted to defining unlawful acts in war, he places a considerable amount of emphasis on questions of keeping faith and perfidy.<sup>51</sup>

According to Grotius, ruses of war that are perfidious are always impermissible. The reason why such stratagems should be condemned absolutely, he thought, is because it is always wrong to use oaths to deceive one's enemy. Being a lawyer, Grotius approaches the topic of illicit deception from a legal perspective, seeking to express in the form of a rule the distinction between what is permissible and what is impermissible. At the beginning of Book III, he considers whether *dolus* (a stratagem or ruse) is always impermissible, and he concludes that *dolus* is not the essence of the illicit act.<sup>52</sup> Citing Augustine yet borrowing from Aquinas, Grotius acknowledges that it is often wise, and for that matter justifiable, to use ruses to conceal the truth.<sup>53</sup> Grotius states, "For since

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<sup>50</sup> Grotius, Prolegomena, 20.

<sup>51</sup> Book III begins with a chapter on deception and lying, readdresses such matters in Chapter XIX under the title "Concerning Faith between Enemies," and concludes with a chapter entitled "The Conclusion, with Admonitions to preserve faith and seek peace." Grotius believed that the very notion of preserving faith not only excluded most lying in war but also was essential to the successful resolution of armed conflict.

<sup>52</sup> Ibid., III.1.6, 605. It is worthwhile to note that Kelsey translates *dolus* as 'deceit,' whereas I retain the neutral tone of classical Latin by translating *dolus* as 'ruse' and use 'deceit' only as a translation for *dolus malus*. This is consistent with Grotius, who says that *dolus* does not fall under the class of acts that are evil in themselves. Ibid., III.1.6-7.

<sup>53</sup> Ibid., III.1.7, 607. Both Aquinas and Grotius attribute the following remark to Augustine: "*veritatem occultare prudenter sub aliqua dissimulatione* (it is lawful to hide the truth prudently under some dissimulation)." Grotius's quotation is actually taken verbatim from Thomas Aquinas rather than Augustine himself. See *ST II-II Q.110*. We know this because Augustine never mentions the word *dissimulatione*, but instead uses *veritatem occultare* (to hide the truth). Aquinas and Grotius, by using

you are not required to reveal to others all that you know or desire, it follows that it is often permissible to dissimulate (*dissimulare*), that is to conceal (*occultare*) and hide (*tegere*) some things from some persons.”<sup>54</sup> He further notes that the Greek fathers referred to this kind of dissembling as ‘good management’ (οἰκονομία) rather than fraudulent deceit (ἀπάτην) in the strict sense.<sup>55</sup>

Grotius then distinguishes between what kinds of ruses are lawful and which are unlawful. Echoing Gentilis, Grotius says a ruse is illicit whenever a ‘common agreement’ is violated. To support this conclusion, he says,

Words, then, and signs, and the written characters we have mentioned, were invented as a means of expression under a mutual obligation; as Aristotle called it, ‘by convention’. This is not the case with other things. Hence it comes about that we may avail ourselves of other things, even if another person will derive therefrom a false impression.<sup>56</sup>

Grotius is in some sense suggesting that a special tacit agreement is in place whenever words and other direct communicative signs are used that require all men, by convention, to stay true to their word.<sup>57</sup> It is important to note that when Grotius uses the term ‘agreement’, he is including both explicit agreement as well as unspoken, “tacit

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*dissimulatione*, signal that both took dissimulation and concealment to be synonymous. Augustine says, “[C]oncealing the truth is not the same as putting forth a lie. Although everyone who lies wants to conceal the truth (*occultare veritatem*), not everyone who wants to conceal the truth lies.” *Contra Mendacium* 10. Augustine adds, “Generally, we conceal the truth not by lying but by keeping quiet.” (*Plerumque enim vera non mentiendo occulimus, sed tacendo*) *Ibid.*, 23.

<sup>54</sup> Grotius, III.1.7, 607.

<sup>55</sup> *Ibid.*, III.1.8, 609. See also Wheeler, 30-32. According to Everett Wheeler, *apate* (ἀπάτην) was the Greek equivalent of the Latin legal term *fraus*, meaning malicious injury or damage. In the legal context, *fraus* meant fraud. Wheeler, 63.

<sup>56</sup> *Ibid.*, 608

<sup>57</sup> *Ibid.* It is important to note that Grotius, however, admits exceptions to the rule against making false assertions (ie. lying) by allowing for officious (harmless) lies, but he makes no exceptions to the rule against perfidy. He says, “We must, however, bear in mind that what we have said regarding falsehood [ie. that they are sometimes permissible] is to be applied to assertions, and such indeed as injure no one but a public enemy, but not to promises. For by a promise, as we have just begun to say, a new and particular right is conferred upon him to whom the promise is made.” More will be stated about this point in relation to assertions in general in Chapter 5.

agreement[s]” (*pacto tacito*).<sup>58</sup> One type of a tacit agreement (made by way of convention), Grotius suggests, occurs when two parties make an oath to one another. This is because the agreement itself seems to contain a tacit agreement that the promise made is sincere (ie. that both sides intend to keep the agreement). Grotius would not only say that parties should always enter a formal treaty sincerely (lest they break this tacit agreement), but that they also have a responsibility to ensure there is a shared understanding of the words being used.<sup>59</sup> Conversely, if no tacit agreement exists, he says, then a ruse involving pretense or other positive acts of falsehood may be permissible.<sup>60</sup> Perfidy, however, is always wrong because perfidy, he says, involves pledging an oath in order to deceive and therefore do so unjustly.<sup>61</sup>

Building upon this idea, Grotius argues that whenever agreements are in place, as is often the case when enemies agree to a cease fire, treaty, or armistice in war, both parties are morally bound to enter the agreement in good faith and with the intention of fulfilling its obligations. Again quoting Augustine, Grotius asserts, “When faith is pledged, it must be kept even with an enemy against whom war is being waged.”<sup>62</sup> The

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<sup>58</sup> Ibid., III.1.11, 613 and III.1.18, 619.

<sup>59</sup> Ibid., III.1.19, 620. Grotius says, “In the same place we have furthermore stated that in an oath we do not, as we do in other speech, admit that interpretations not wholly without warrant may be put upon words, in order to absolve us from falsehood; but we do require that the truth be spoken with the meaning which a man listening is supposed to understand in perfect good faith.”

<sup>60</sup> Therefore, signs that signal an agreement, such as the display of a white flag to signal surrender, are according to Grotius just as binding as agreements made with words. Such signs, if they disingenuously extend an invitation to trust through either signs or words and then to break that trust, commit perfidy. Ibid. III.24.3-5, 857-59.

<sup>61</sup> Ibid., III.1.19., 602. This absolutist tone is expressed in the following remark: “Obviously, then, we must abhor the impiety of those who did not hesitate to assert that it is proper to deceive (*fallere*) men by oaths just as boys do by means of dice.”

<sup>62</sup> Ibid., III.19.1, 792. Cf. Augustine, *Epistle ad Boniface* CCV. A similar sentiment is expressed by Cicero, supported by examples from Roman military history of the Romans following this rule. See Cicero, *De Officiis* I.xxiii (80).

reason, says Grotius, is that even enemies should be afforded the basic human dignity that is given to *all men*.<sup>63</sup>

In this way, Grotius follows the Just War Tradition, affirming the prohibition against violating faith, yet he adds further precision by describing in detail what he holds to be the rule against perfidy. Faith is violated, according to Grotius, whenever one side extends an invitation to trust (namely, that one tacitly agrees to be straightforward) but does so deceptively and therefore disingenuously. Like Ambrose, Grotius uses an absolutist tone in his own particular formulation of the rule. Demonstrating that he is borrowing more from Ambrose than from others in the tradition, such as Cicero, Gentilis, or Suarez, Grotius affirms the Ambrosian dictum that “[F]aith must be kept even with the perfidious (*perfidis*).”<sup>64</sup> Recall that this notion is in direct conflict with Suarez, who had said in his second condition that both parties are freed from their obligations once one side violates faith.

According to Grotius, one reason why faith must never be broken with one’s enemy is that the ability to make agreements between enemies depends upon faith, either expressed or implied, including those agreements that bring a war to its conclusion.<sup>65</sup> If peace treaties were no longer possible because faith had been entirely destroyed, then wars might go on needlessly, if not indefinitely. It is this claim about the instrumentality of faith, explicitly stated by Grotius, which is the same idea now echoed in the current

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<sup>63</sup> Grotius states, “Those who are enemies do not in fact cease to be men.” Grotius, III.19.1, 792.

<sup>64</sup> Ibid., III.19.13, 799. Gentilis, Grotius’s predecessor, had said that faith may be broken with the one who has already broken faith: “For faith should not be kept with one who does not keep faith.” Gentilis, *De Jure Belli Libri Tres* III.24, 712. See also Suarez, disp. XIII: On war. VII.23, 853.

<sup>65</sup> Grotius, III.20.1, 804.



Army manual on the law of armed conflict.<sup>66</sup> There it says, “Absolute good faith with the enemy must be observed as a rule of conduct.”<sup>67</sup>

While Grotius’s rule against perfidy is professed in absolute terms, it does not apply to promises made to someone who has extorted a promise by means of an unjust fear.<sup>68</sup> In this way, Grotius clarifies the earlier exception made by Cicero, attempting to preserve the perfect duty never to break faith but at the same time stating that faith is not owed to pirates and brigands. A promise made under coercion, then, is according to Grotius no promise at all.

Grotius accounts for this narrow exception by arguing that rights, including “the right arising from a promise,” can be forfeited.<sup>69</sup> The rights of pirates appear to be one such example.<sup>70</sup> Pirates he suggests, by exacting a promise by means of coercion, can forfeit their right to good faith. This is because some rights can be annulled:

We require, moreover, that this right be valid and continuing at the time the statement is made; for it may happen that the right has indeed existed, but has been taken away, or will be annulled by another right which supervenes, just as a debt is cancelled by an acceptance or by the cessation of the condition.<sup>71</sup>

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<sup>66</sup> The manual states, “Traacherous or perfidious conduct in war is forbidden because it destroys the basis for a restoration of peace short of the complete annihilation of one belligerent by the other.” U.S. Department of the Army, Field Manual (FM) 27-10, *The Law of Land Warfare*. Change 1 (Washington, D.C., 1976), para 50.

<sup>67</sup> *Ibid.*, para 49.

<sup>68</sup> Grotius, III.19.4, 795.

<sup>69</sup> See *ibid.*, III.19.3, 794 and III.1.11, 614. See also further discussion in Chapter 5 of this dissertation.

<sup>70</sup> *Ibid.*, III.19.5, 796. This point is taken from Cicero, who says, “Furthermore, we have laws regulating warfare, and fidelity to an oath must often be observed in dealings with an enemy: for an oath sworn with the clear understanding in one’s mind that it should be performed must be kept; but if there is no such understanding, it does not count as violating an oath if one does not perform the vow. For example, suppose that one does not deliver the amount agreed upon with pirates as the price of one’s life, that would be accounted no injury – not even if one should fail to deliver the ransom after having sworn to do so.” Cicero, *De Officiis* III.XXIX (107) (my translation)

<sup>71</sup> Grotius, III.1.11, 614.

Perfidy, according to Grotius's rule, only occurs when the rights of the other party in an agreement remain intact. In this way, Grotius attempts to explain the wrongness of perfidious acts, a point that had been lacking within the Just War Tradition prior to him, and he does so by making *fides* contingent upon rights. Since rights can be taken away, an insincere promise or a deceptive agreement between enemies is illicit only if the other party's rights have not been forfeited.

### **3.8 A CRITIQUE OF THE GROTIAN RULE**

Up to the time of Grotius, the Just War Tradition had not expressed in a systematic way exactly what constituted a violation of faith. Instead, the tradition simply expressed the imperative that faith must always be kept with one's enemy, even in war. Yet it was unclear whether the determination of what constituted a breach of faith depended upon the act, the consequences, or both. Some, such as Augustine, suggested that the consequence of breaking faith exacted a significant social cost: that future agreements between two warring parties would be difficult, if not impossible, to obtain.

Grotius, in setting out to establish the rule against perfidy, therefore needed to establish criteria for what acts violated faith, which he did using two conditions. Perfidy, he said, occurs (1) every time an oath or promise is used to deceive, provided (2) that both parties remain lawful combatants and therefore do not forfeit their rights. The right in question is the right to good faith, which Grotius suggests is in place as long as the belligerents engaging in acts of war toward one another have not forfeited their rights. Good faith is therefore, according to Grotius, contingent upon rights.

There is at least one troublesome aspect to this particular characterization of perfidy, however. If the right to good faith can be forfeited, then some might argue that

all unjust aggressors forfeit their rights at the start of every war, since the very act of starting a war is itself a grave injustice committed by an aggressor. Since wars traditionally begin with an act of aggression, it would seem that nearly every war would have one side that is owed good faith and the other which is not. Surely this is not what Grotius had in mind when he formulated the rule against perfidy.

Instead, the Grotian rule appears to be much more nuanced. Only those within a small category of belligerents (ie. pirates and thieves who extort through fear), Grotius suggests, can actually forfeit their right to good faith.<sup>72</sup> The problem, nevertheless, involves deciding what kinds of extortion or injustice warrant losing the right to good faith and which do not. Grotius, unfortunately, leaves the answer to this question ambiguous. The result, therefore, is that Grotius's rule against perfidy has a major shortcoming, one that prevents it from being a moral absolute. This is because the ciceronian principle "when faith is pledged, it must be kept even with an enemy"<sup>73</sup> contains, for Grotius, the further evaluative condition of 'rights.' Perhaps it is for this reason that international law has refused to incorporate Grotius's particular formulation, opting instead to adopt a rule that by legal standards could be held without exception.

### **3.9 CONCLUSION**

Despite the problems this chapter has suggested are present in the Just War Tradition up to and including Grotius, one thing is certain: the tradition unanimously condemned violations of faith. According to the tradition, there are at least three reasons

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<sup>72</sup> Grotius, III. 19.3, 794 and III.1.11, 614

<sup>73</sup> The expression Augustine (and hence Grotius) uses is *fides servanda est*, literally meaning faith must be watched over, or preserved. This provides yet another reason to think the principle may have been directed toward preserving faith (in general) rather than keeping a particular promise. Ibid., III.19.1. Cf. Augustine, *Epistle ad Boniface* CCV. See Cicero, *De Officiis* I.XXIII (80).

why violations of faith during war are wrong: (1) they undermine the faith needed to bring conflicts to a close by means of agreement; (2) they are counterproductive insomuch as the injustice they commit jeopardizes the lasting peace that all wars should seek to achieve; and (3) they are, by some accounts, intrinsically evil acts. By the mid-17<sup>th</sup> century, the tradition's position was well established. Given Grotius's seminal role in the ultimate establishment of the laws of war that are in place today, it comes as no surprise that perfidy as defined in the war conventions would in some sense resemble Grotius's own rule. The conventions, however, make no mention of Grotius's added condition of rights forfeiture, signaling that this second condition has proved to be untenable from the perspective of international law.

To avoid this problem, the definition of perfidy presented in this dissertation also avoids mention of rights. Instead, I define perfidy as the following: *Perfidy is a false invitation to enter into a condition of mutual trust, intentionally contrived and communicated by either a lie or another act of duplicity.* This definition contains important aspects of Grotius's characterization, such as the idea that perfidy is an insincere attempt to establish trust by means of a promise (including both explicit promises *and* tacit agreements). Furthermore, it incorporates the ideas advanced by the tradition prior to Grotius, such as '*fides servanda est* (faith must be preserved) with one's enemies' and 'it is wrong to *fidem frangere* (to break faith) or *fidem violare* (to violate faith).' Both breaking faith and violating faith in the strictest sense, I have suggested, involve an act that *intends to invite a false mutual trust*. I have called this perfidy, an act of bad faith. A lying promise is one example of a perfidious act, since the promisor makes an explicit agreement disingenuously and, as such, extends a false invitation to

trust through his lie. If perfidy is committed by means of an insincere *tacit* agreement, then the act is perfidious on the same grounds: it is still a duplicitous false invitation to trust.

## CHAPTER FOUR

### THE MORAL DUTY TO ACT ONLY IN GOOD FAITH

The philosophical arguments presented by three historical figures – Spinoza, Kant (implicitly), and Grotius – all suggest that there is a duty never to act in bad faith, and for Spinoza and Kant this duty is absolute (perfect). The reason why these arguments are significant is that, if successful, they can help provide a warrant for the rule against perfidy emerging from the Just War Tradition and formally codified today in international law. Yet the rule first articulated by the Just War Tradition, I have said, is a rule not against perfidy but against breaking faith, a rule that seemed to be grounded on the consequences of damaged faith. It was not until this rule combined with Grotius’s legalism that it evolved from a consequence-based prohibition into something resembling a moral absolute.

Early on, the Just War Tradition primarily expressed the wrongness of breaking faith with one’s enemies during war in light of two consequences: (1) violations of faith imperil the ability to end conflicts by means of agreement; and (2) violating faith is counterproductive in so much as it hinders the achievement of a lasting peace. Yet in order for the rule against perfidy to apply beyond war and, for that matter, to be held absolutely, as Grotius’s legalistic approach attempted to do, the wrong must reside in the act itself rather than the consequences alone. In other words, the wrong cannot be that faith *might be* damaged, as it were, but rather that the act itself, an act of bad faith, is somehow *intrinsically wrong*. Grotius explained this intrinsic wrongness in terms of

rights, but that account was not without its problems, as Chapter 3 has shown. As such, more must be said. This chapter, therefore, will attempt to explain why there is a moral requirement to act always in good faith by presenting arguments proposing that the contrary action, an act of bad faith, is always contrary to right reason.

Acting in bad faith, I have said earlier, is equivalent to perfidy, which I have defined as *a false invitation to enter into a condition of mutual trust, intentionally contrived and communicated by either a lie or another act of duplicity*. Acts of bad faith and perfidy should be distinguished from the term ‘betrayal’ or the phrase ‘breach of trust,’ which may occur any time promises are broken. Broken promises, however, do not necessarily involve bad faith. One reason for this is that perfidy, in its strict sense (as an act of bad faith), must always include either a lie or another act that invites a false faith. An *unfulfilled* promise, which may constitute a betrayal or breach of trust, is clearly something different. Broken promises may do damage to trust (*fides* in the consequentialist sense), causing someone to consider the promise-breaker less reliable or to lose faith in promises in general. However, this is not the same as perfidy, which is an act that can be evaluated independent of the consequences. With this distinction in mind, I shall use the remainder of this chapter to explore the moral duty to act in good faith, concluding that there is a strong moral basis behind the perfect duty never to act in bad faith.

#### **4.1 SPINOZA ON ACTING IN GOOD FAITH**

In his *Ethics*, Baruch Spinoza (1632-1677) states that “The free man never acts *dolo malo*, but always in good faith” (my translation).<sup>1</sup> The reason for this is, according

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<sup>1</sup> Spinoza, *Ethica* IVp72: “*Homo liber nunquam dolo malo, sed semper cum fide agit.*” I shall begin this discussion by leaving *dolo malo* in the original Latin, not only because of the extensive treatment term

to Spinoza, that violating faith is always unreasonable and the ‘free man’ always acts in accordance with reason. Before I analyze Spinoza’s rule against acting in bad faith any further, one apparent contradiction needs to be considered, one that relates to the distinction between a breach of promise and an act of bad faith.

Some might argue that there is one major difficulty involving Spinoza’s good faith proposition, since Spinoza himself in his *Political Treatise* presents his own example of how a rule against breaking faith cannot be absolute.<sup>2</sup> For example, when a pact is made between countries to form an alliance, Spinoza suggests that if one country were later to choose to withdraw from that alliance, it may rightly do so. He says,

[E]very commonwealth has full right to break a treaty whenever it wishes, and it cannot be said that it acted treacherously (*dolo*) or perfidiously (*perfidia*) because it dissolved the pledge (*fidem solvit*) as soon as the reason for fear or hope had been removed.<sup>3</sup>

Spinoza holds that voiding a promise (*fidem solvendem*) under such circumstances is licit because countries are in a state of nature with one another, so if one party makes a pledge and then later the circumstances change, it is by a ‘natural right’ that it may be permitted to break the pledge.<sup>4</sup>

Yet if Spinoza allows nations to break promises, then it seems his good faith proposition might be contradictory, since he admits that it is often *reasonable* to violate faith. This apparent contradiction, however, can be avoided through a careful reading of

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given to the term in Chapter 2, but also because any English equivalent requires careful explanation. There, I defined *dolus malus* as an evil ‘trick,’ ‘trap,’ or ‘device.’ Since it is in the ablative case here, an approximate translation could be ‘with maliciousness’ or ‘with duplicity.’ I have chosen ‘with evil designs.’

<sup>2</sup> Spinoza, *Political Treatise* in *Complete Works*, trans. Samuel Shirley (Indianapolis: Hackett, 2002), 3.14, 694.

<sup>3</sup> Spinoza, *Political Treatise*, 3.14. “*ac proinde unicuique civitati ius integrum est solvendi foedus, quandocumque vult, nec dici potest, quod dolo vel perfidia agat, propterea quod fidem solvit, simulatque metus vel spei causa sublata est*” (my translation).

<sup>4</sup> *Ibid.*, 2.12, 686.



his *Political Treatise*, where he distinguishes between breach of promise and acting in bad faith.

The term that Spinoza uses, *fidem solvendam* (dissolving a promise), is different from the term he uses for acts that are treacherous or perfidious. If one side simply fails to honor a promise, nothing inherently treacherous has occurred, in part because “no one makes a contract respecting the future except in light of the circumstances of the time; when these change, the entire situation must be reconsidered.”<sup>5</sup> Here, Spinoza presupposes that the treaty in question has been entered into sincerely – that is, the treaty was made in good faith. Therefore, this type of broken promise does not constitute *perfidia* or *dolus malus*, according to Spinoza, if the intention to honor the treaty was present at the time the agreement was made.

Spinoza says that the natural right to break certain promises, however, does not annul the requirement to maintain ‘good faith:’ “[W]hat we here say does not imply the annulment of that good faith which sound reason and religion bids us keep.”<sup>6</sup> Because of this, we might understand him as saying that the requirement always to act in good faith holds absolutely. Thus, Spinoza suggests that the permissibility of breaking promises is a matter that must be judged relative to the situation, with its own set of conditions. On the other hand, he argues in both his free man proposition and his *Political Treatise* that acting in bad faith is always wrong, an offense that is never characteristic of the free man.

#### **4.2 FREE MEN AND THE UNREASONABLENESS OF ACTING *DOLO MALO***

There are two preliminary questions that need to be addressed when considering Spinoza’s good faith proposition (“A free man never acts *dolo malo*, but always in good

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<sup>5</sup> Ibid, 3.14, 694.

<sup>6</sup> Ibid., 3.17, 695.

faith”): (1) What, according to Spinoza, constitutes a ‘free man?’ and (2) What role does the ‘free man’ play in Spinoza’s *Ethics*? In order to answer these questions, a brief sketch of Spinoza’s view of human nature is required. According to Spinoza, man in general is held in an irreversible state of bondage to his emotions. Despite this, Spinoza nevertheless believes that humans have the potential to escape the firm grip of the emotions and instead be guided by reason. The model for what it means to be fully reasonable is outlined in his description of the ‘free man.’

Spinoza’s *Ethics* features two key elements that relate to the free man, concepts that appear most prominently in Part IV: (1) the *conatus* doctrine and (2) his view of human freedom. These two elements create a natural tension for Spinoza, a tension that Spinoza resolves during the course of the proof and scholium accompanying his good faith proposition. I shall address this tension shortly. First, however, a brief explanation of Spinoza’s *conatus* doctrine is necessary.

Spinoza says that to act from one’s *conatus* is “to act, to live, to preserve one’s own being (these three mean the same) under the guidance of reason, on the basis of seeking one’s own advantage.”<sup>7</sup> Thus, to act from one’s *conatus* is live by the dictates of reason, which includes and is most fundamentally based upon the preservation of one’s own being. Because of one’s *conatus*, Spinoza says, a human being always seeks his own advantage. This foundational principle, which explains the inclination toward self-preservation found in all living beings, is a doctrine which can be traced back to the pre-

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<sup>7</sup> Spinoza, *Ethica*, IVp24: “*agere, vivere, sum esse conservare (haec tria idem significant) ex fundamento proprium utile quaerendi.*”

Stoic philosophers of ancient Greece.<sup>8</sup> Spinoza gives this concept the name *conatus* and makes it the fundamental principle of his deterministic system.<sup>9</sup>

Spinoza says that man's *conatus* is essentially the natural appetite to increase in his own power [*potentia*], an appetite that is equivalent to man's essence and which drives him in accordance with human nature.<sup>10</sup> He believes that human beings are necessarily determined by their *conatus*, and for this reason, not only is *conatus* the fundamental principle of human nature, it is also the sole measure of human virtue.<sup>11</sup>

Despite the centrality of the *conatus* principle to human nature, when Spinoza says that humans are in bondage, he says this not because of their *conatus* but because of their inability to control their emotions.<sup>12</sup> The *conatus*, according to Spinoza, can be fully compatible with reason, but the emotions cannot. It is the emotions, therefore, that serve as the obstacle to freedom, preventing human beings from acting fully in accordance with the dictates of reason. Human freedom, then, involves emancipating oneself from one's emotions and acting entirely from reason. The 'free man' thus becomes the human exemplar, the ideal man who *is fully reasonable*.

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<sup>8</sup> For a very comprehensive treatment of the philosophical lineage of the doctrine of self-preservation, see Harry Wolfson, *The Philosophy of Spinoza* (Cambridge: Harvard University Press, 1948), 196-97. Wolfson tells a detailed story about the historical connection between the Stoic term ὁρμη, an idea that was shared by Christian philosophers such as Augustine and Aquinas and retained by Spinoza in his term *conatus*. Although the Latin words used by Augustine (*vult*), Aquinas (*appétit*), and Spinoza (*conatus*) are different, Wolfson argues that the essential concept is identical, owing its origin to the Greek word ὁρμη (impulse, striving).

<sup>9</sup> Hobbes also uses the term *conatus* and incorporates it into his own deterministic understanding of human nature.

<sup>10</sup> See for example Spinoza, *Ethica* IIIp9s and IIIp35d.

<sup>11</sup> Ibid., IVp24: "To act in absolute conformity with virtue is nothing else in us but to act, to live, to preserve one's own being (these three mean the same) under the guidance of reason, on the basis of seeking one's own advantage." *Ex virtute absolute agree nihil aliud in nobis est, quam ex ductu Rationis agere, vivere, sum esse conservare (haec tria idem significant) ex fundamento proprium utile quaerendi.*

<sup>12</sup> Ibid., IV pref.

Spinoza divides the *conatus* into two types: the *conatus of the body* and the *conatus of the mind*. While emotions can have an effect on both the *conatus of the mind* and the *conatus of the body*, Spinoza nevertheless suggests that the body is more vulnerable to its influence.<sup>13</sup> Two competing principles thereby arise: *conatus of the body*, which follows the dictates of reason but is often shaped by the emotions; and *conatus of the mind*, which operates on the dictates of reason alone. The *conatus* of the body involves, primarily, the preservation of one's physical being, while the *conatus* of the mind involves, primarily, the endeavor to understand, which also includes the impulse toward non-bodily self-preservation. Spinoza uses this distinction to clarify what he means by virtue:

[W]hatever we endeavor according to reason is nothing else but to understand. Again, since this *conatus of the mind* wherewith the mind, in so far as it exercises reason, endeavors to preserve its own being is nothing else but a conatus to understand... this conatus to understand... is therefore the primary and only basis of virtue.<sup>14</sup> (my emphasis)

Virtue is, according to Spinoza, directly related only to *conatus of the mind*. Thus, virtue is related to the *conatus of the body* only indirectly (insomuch as the mind needs the body to exist). As such, the body's tendency toward self-preservation is only virtuous insomuch as it furthers the *conatus of the mind* and the endeavor to understand.

At this point, an explanation of how the *conatus* doctrine is in tension with Spinoza's notion of human freedom is necessary, a tension that is revealed most fully in his good faith requirement, Proposition 72. In the scholium to Proposition 72, Spinoza considers whether or not the free man's drive to preserve his physical being (*conatus of the body*) might warrant an exception to the free man acting in good faith. Spinoza says,

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<sup>13</sup> Ibid., IIIp9s.

<sup>14</sup> Ibid., IVp26.

The question may be asked: ‘What if a man could by perfidy free himself from imminent danger of death? Would not consideration for the preservation of his own being be decisive in persuading him to be perfidious?’<sup>15</sup>

What if the only way to save one’s life was to act in bad faith?<sup>16</sup> By raising this question, Spinoza is essentially pitting one dictate of reason, the principle of bodily self-preservation, against another, the principle requiring the free (and hence fully reasonable) man always to act in good faith.

Interestingly, the response Spinoza gives to this conflict in principles is not couched in terms of the ‘free man,’ but rather in terms of all men. He says,

I reply in the same way, that if reason urges this [ie. to act in bad faith], it does so for *all men*; and thus reason urges men in general to join forces and to have common laws only *dolo malo* [with evil designs]; that is, in effect, to have no laws in common at all, which is absurd.<sup>17</sup> (my emphasis)

Spinoza says that even a single perfidious act, even if it be *in extremis* when one’s life is threatened, is always against the dictates of reason. To support this conclusion, Spinoza universalizes the act of bad faith to show that perfidy is always unreasonable. If perfidy was reasonable, he says, then laws and other agreements between persons would be made in bad faith (ie. without the intention of honoring the agreement). The implication Spinoza makes here is, perhaps, that society could not hope to function – that is, to make

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<sup>15</sup> Spinoza, *Ethica* IVp72s: “*Si iam quaeratur: ‘Quid si homo se perfidia a praesenti mortis periculo posset liberare, an non ratio suum esse conservandi omnino suadet ut perfidus sit?’*”

<sup>16</sup> Perfidy, or ‘an act of bad faith’, is an important term for Spinoza, as it was for Grotius. Grotius reserves the term ‘perfidy’ [*perfidia*] for those offenses deserving only the strongest censure. In his chapter entitled “Good Faith Between Enemies” (Bk III, Ch 19), the terms ‘faith’ and ‘perfidy’ are used throughout to emphasize one of his main themes: during war belligerents, and even mortal enemies, must always keep faith with each other, even if one side has already committed perfidy. See Grotius, *Law of War and Peace*, BkIII, Ch19, SectXIII: “Faith must be kept even with the perfidious” [*Servandum fidem ac perfidies*].

<sup>17</sup> Spinoza, *Ethica* IVp72s: “[*R*]espondebitur eodem modo: ‘*Quod si ratio id suadeat, suadet ergo id omnibus hominibus, atque adeo ratio omnino suadet hominibus, ne nisi dolo malo paciscantur, vires coniungere et iura habere communia, hoc est, ne revera iura habeant communia, quod est absurdum.*’” (my translation)

laws and to order itself – if acting in bad faith was reasonable. Perfidy is therefore, according to Spinoza, always against the dictates of reason.<sup>18</sup>

Spinoza seems to say that acting in bad faith is always morally impermissible. Yet one might object to this interpretation by claiming that proposition 72 was not intended as a rule of conduct since the language he uses is descriptive rather than normative.<sup>19</sup>

Spinoza, some might say, simply describes what the free man *does*. We should conclude, therefore, that the unreasonableness of perfidy should be understood as merely a descriptive proposition about the free man and not an ethical principal for all men. Yet it seems, given Spinoza's tone and overall purpose of his *Ethics*, that a normative standard is both implied and intended.<sup>20</sup> Spinoza conveys this by describing freedom and the life of the free man throughout his *Ethics* as *intrinsically desirable*.<sup>21</sup> If Spinoza is read in this light, then one can infer that the reasonable human choice is *always* to pursue true freedom and therefore always to act in good faith.

#### 4.3 GARRETT'S REJECTION OF THE ABSOLUTIST INTERPRETATION

To this point, I have attempted to show how Spinoza's Proposition 72 conveys a moral rule against acting in bad faith. However, at least one prominent Spinoza scholar,

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<sup>18</sup> Spinoza reinforces this message throughout his proof and scholium by relying almost entirely on the language of agreement, a vocabulary that in the classical Latin was grounded by the term *fides*. The terms he uses are *pacisci* (to agree), *coniungere* (to join together), *convenire* (to harmonize or come together), and *iura communia* (common laws), all of which point to the indispensability of *fides*.

<sup>19</sup> William Frankena, for example, argues that Spinoza's 'ethical egoism' cannot rightly be called a 'morality' and therefore should not be viewed as having normative content. William Frankena, "Spinoza's 'New Morality': Notes on Book IV" in *Spinoza: Essays in Interpretation*, ed. Eugene Freeman and Maurice Mandelbaum (LaSalle, Illinois: Open Court, 1975), 85-100.

<sup>20</sup> See Spinoza, *Ethica*, preface. Spinoza states in the Preface to his *Ethics* that his ultimate goal is to explicate the 'way leading to freedom,' an objective that was likely meant to suggest the best and most reasonable way for a human being to live.

<sup>21</sup> Don Garrett, for example, describes the model that the free man presents as "inherently motivating." Don Garrett, "'A Free Man Always Acts Honestly, Not Deceptively': Freedom and the Good in Spinoza's Ethics" in *Spinoza: Issues and Directions*, ed. Edwin Curley and Pierre-Francois Moreau, 221-238 (Leiden, Netherlands: E. J. Brill, 1990), 234.

Don Garrett, has a different interpretation of Spinoza's proposition. Despite his own acknowledgement of the inherently motivating character of Spinoza's ethics, Garrett nonetheless calls into question the universal moral applicability of Spinoza's free man proposition in his article entitled "A Free Man Always Acts Honestly, Not Deceptively: Freedom and the Good in Spinoza's Ethics." Garrett's essay, written over two decades ago, is undoubtedly the most comprehensive treatment of Proposition 72 that can be found in the literature. Perhaps for this reason and because of the respect Garrett demands as a Spinoza scholar, it also appears to be the most influential.

The first point to mention is one of translation. Some of the English words Garrett uses are different from the ones I have chosen. For example, rather than using 'with good faith' (*cum fide*), Garrett uses the term 'honesty,' and instead of *dolo malo* (with evil designs), Garrett uses 'deception.' Based in part upon his translation, Garrett reads Spinoza as saying that all deceptive acts are unreasonable, at least for the free man. This surely creates a problem for Garrett, as it would for this dissertation, since there are good reasons to consider some deceptive acts morally permissible, as I attempted to show in Chapter 2. In contrast, my translation suggests that, according to Spinoza, only acts of bad faith are unreasonable.<sup>22</sup> While acting in bad faith may be instrumental to accomplish certain deceptive intentions, all deception, especially when it is understood in its broadest sense as 'leading away from,' is not necessarily perfidious.

Despite this difference in the English words used, Garrett's treatment of Spinoza's proposition nevertheless deserves consideration. Garrett alternative interpretation begins

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<sup>22</sup> There are other reasons to favor a more literal translation of the expression *cum fide agit*, among them the fact that the other terms Spinoza uses throughout the proof and scholium also belong to the language of agreement.

with the claim that Spinoza's proposition seems to apply not to *all men* but only to *the free man*, whom he calls the 'ideal human being.' This ideal, according to Garrett, represents the 'concept of a limit.'<sup>23</sup> Understood in these terms, Garrett says that what is good for actual humans can often differ from what is good for 'ideal human beings.' Absolute honesty is an example of one such virtue. It might not be good, Garrett argues, for one to be absolutely honest. For this reason, Garrett says, the proposition cannot apply to actual human beings since "circumstances can arise in which one's physical life can be preserved only by actions that would normally be regarded as deceptive" and thus "deception may under some circumstances nevertheless be good for actual human beings."<sup>24</sup>

The first problem, as I've already mentioned, involves the fact that Garrett's argument relies upon a faulty translation. The statement, "deception may under some circumstances nevertheless be good for actual human beings" is fairly noncontroversial given the broad definition of deception established in this dissertation. This, however, is not what Spinoza's proposition condemns. Spinoza says that the free man never acts in *bad faith*, so it is not the intent to deceive that he prohibits absolutely, but rather perfidy – the intent to lie while making a promise.

Even if Garrett was to concede that the proposition applies not to deception but to acts of perfidy, he could further object by arguing that, according to Spinoza, human beings can never be entirely freed from their bondage to the emotions and become like 'free men.' Therefore, Garrett would say that to hold oneself to the same standard as

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<sup>23</sup> Garrett, 231.

<sup>24</sup> Ibid., 226 and 230. Garrett may have felt compelled to arrive at this conclusion, perhaps because others have called Spinoza's proposition 'puzzling' and even 'wrong.' See for example Jonathan Bennett, *A Study of Spinoza's Ethics* (United States: Hackett Publishing, 1984), 317.



Spinoza's moral exemplar (ie. the free man) is simply unrealistic. While it may be true that Spinoza considers humans to be inescapably bound to their emotions, it is perhaps more plausible to think Proposition 72 and the other 'free man' propositions (P67 and P69-71), given once again the purpose of Spinoza's *Ethics*, reflect duties for all men inasmuch as men *should* strive to act in accordance with reason.<sup>25</sup> Thus, hope for humanity lies in its ability to act as the free man does. Furthermore, among the free man propositions that he provides, which total a mere five in number, Spinoza expresses only proposition 72 in absolute terms. As such, he suggests the imperative 'never act in bad faith' is his only absolute moral duty.

Perhaps this is the reason why Spinoza challenges his *conatus* doctrine directly in Proposition 72. By doing so, he resolves the tension between what might appear to be two competing absolutes: the fundamental inclination to preserve one's existence, and the imperative never to act in bad faith. In the end, he shows that the principle of acting in good faith rather than the principle of self-preservation is most elemental to human freedom.

#### **4.4 KANT'S CONDEMNATION OF PROMISES MADE IN BAD FAITH**

Like Spinoza, Immanuel Kant (1724-1804) also addresses acting in bad faith, although Kant's treatment is couched in terms of the lying promise. In his *Groundwork for the Metaphysics of Morals*, Kant demonstrates how the lying promise, which I have said is the essence of all acts of bad faith, is always contrary to the categorical imperative.

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<sup>25</sup> Propositions 67-73, his 'free man propositions', include the following dictums which could also be counted as rules: (p67) "A free man thinks of death least of all things"; (p69) The free man is prudent in his courage; (p70) "The free man... tries as far as he can to avoid receiving favors [from ignorant people]"; (p71) "Only free men are truly grateful to one another"; (p72) "The free man never acts with *dolo malo*, but always acts with good faith." Spinoza *Ethica* IVp67-73.

Incidentally, of all the wrongful acts Kant identifies in the *Groundwork*, the one he appeals to most often is the false promise, perhaps because there is such a strong intuitive basis for presuming that lying promises are always wrong.<sup>26</sup>

Avoiding the lying promise is, according to Kant, a perfect duty to others.<sup>27</sup> He expresses his example in the following way:

[Someone] finds himself urged by need to borrow money. He well knows that he will not be able to repay it but sees also that nothing will be lent him unless he promises firmly to repay it within a determinate time. He would like to make such a promise, but he still has enough conscience to ask himself: is it not forbidden and contrary to duty to help oneself out of need in such a way?<sup>28</sup>

Applying the first formulation of the categorical imperative, Kant responds by saying that the lying promise, if universalized, would necessarily contradict itself.<sup>29</sup> If the maxim to “promise whatever [one] pleases with the intention of not keeping it” was made a universal law, he says, “no one would believe what was promised him but would laugh at all such expressions as vain pretenses.”<sup>30</sup> In other words, promises would essentially become meaningless.<sup>31</sup> If a lying promise is in some sense an attempt to render all promises meaningless, then the act communicates a pledge while at the same time undermining it, making the act itself contradictory. Because of this inherent contradiction, all lying promises, Kant suggests, are contrary to reason.

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<sup>26</sup> Immanuel Kant, *Groundwork of the Metaphysics of Morals* (henceforth *GMM*) in *Immanuel Kant: Practical Philosophy*, ed. and trans. Mary Gregor (New York: Cambridge University Press, 2009), 4:402-403; 4:422; and 4:429-430.

<sup>27</sup> The perfect duty to others is one of the four divisions of duties in the *Groundwork*. By perfect duty, Kant means that it can be held without exception and thus that it qualifies as an exceptionless rule, a moral absolute. The four divisions are: (1) perfect duties to self; (2) perfect duties to others; (3) imperfect duties to self; and (4) imperfect duties to others.

<sup>28</sup> *Ibid.*, 4:422.

<sup>29</sup> Kant’s first formulation of the categorical imperative states, “I ought never to act except in such a way that I could also will that my maxim should become a universal law.” *GMM* 4:402.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*, 4:403. Kant says, “there would properly be no promises at all.”

Kant also applies the second formulation of the categorical imperative to the same example.<sup>32</sup> He says that the person who wants to promise falsely to borrow money, knowing that he has no intention of paying it back, treats another human being merely as a means and not also as an end.<sup>33</sup> This is clear, he says, because the lender “cannot possibly agree” to the insincere borrower’s chosen end of this action. The problem, says Kant, is that the insincere borrower violates the dignity of another person by seeking to use him as a mere means. According to Kant, in order to treat another human being with dignity, the person on the receiving end of the act “must be able to contain in [himself] the end of the very same action.”<sup>34</sup> In this example, it must be possible for the borrower to choose the same end (ie. that the promise be false and the money not be returned), which Kant suggests is unthinkable given that the lender is a rational human being. Hence, the person committing the lying promise fails to treat the potential lender also as an end because he makes it impossible for the other person to *reasonably* consent, and therefore he fails to treat the person with dignity (ie. immeasurable worth).<sup>35</sup>

Every human being, according to Kant, has dignity because of the human capacity for autonomy.<sup>36</sup> This autonomy, he says, is the freedom of the will, by which a person chooses to act independent of all natural inclinations and in accordance with the moral law.<sup>37</sup> Since the moral law is the product of pure practical reason, every act that fails to

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<sup>32</sup> Kant’s second formulation of the categorical imperative states, “Act in such a way so that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.” *GMM* 4:429.

<sup>33</sup> *Ibid.*, 4:429.

<sup>34</sup> *Ibid.*, 4:430.

<sup>35</sup> *Ibid.*, 4:434. Kant says, “What... is raised above all price and therefore admits to no equivalent has a dignity.” The source of this dignity is autonomy, which is present in every human being by virtue of its rational nature. 4:436.

<sup>36</sup> *GMM* 4:436.

<sup>37</sup> See Kant, *Critique of Practical Reason* (henceforth *CPrR*), 5:87, 5:29, and 5:81. In the *Groundwork*, Kant defines the ‘will’ as such: “The will is a capacity to choose *only that* which reason independently of

comply with the moral law but instead follows one's inclinations is in some sense unreasonable.<sup>38</sup> Any act that is strictly in accordance with one's inclinations is also a violation of human autonomy (ie. the freedom to act in accordance with the moral law), and for this reason such acts damage the dignity of the moral agent. For this reason, Kant says that every person who lies "annihilates his dignity as a human being."<sup>39</sup> Therefore, the lying promise is doubly wrong, according to Kant. First, it violates the dignity of the person who is being used (merely as a means) to fulfill one's natural inclinations. Second, it violates the dignity of the person who tells the lie, since it is a rejection of his autonomy (since the act itself is contrary to the moral law). While these may seem to be separate accounts, according to Kant they are not, since they have the same source of wrongness: any violation of the categorical imperative and therefore the moral law is wrong, ultimately, because it is unreasonable.

#### **4.5 WHY PROMISE KEEPING CANNOT BE A PERFECT DUTY**

Using the first two formulations of the categorical imperative, Kant thereby demonstrates there is a perfect duty to refrain from all lying promises. Could the same be said about breaking promises? The simple answer is 'no;' promise keeping (in general) as a duty cannot be held perfectly because promise keeping can conceivably result in promises falling into conflict with one another. For example, I may take an oath to

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inclination cognizes as practically necessary, that is, as good." Unlike other grounds of obligation, the moral law is unconditioned and for this reason it is also absolute. See *CPrR* 5:26 and 5:32.

<sup>38</sup> *CPrR* 5:31. Kant holds that lying of any kind is contrary to the universal moral law and pure practical reason. To demonstrate our intuitive sense for this law, he provides the following example: "Suppose that an acquaintance whom you otherwise liked tried to justify to you his having given false testimony by first pleading what he asserts to be the sacred duty of his own happiness and then by recounting all the advantages he had acquired by doing so, pointing out the prudence he had observed in order to be secure from discovery even by yourself, to whom he reveals the secret only because he can deny it at any time; and suppose he were then to affirm, in all seriousness, that he has fulfilled a true human duty: you would either laugh in his face or shrink back from him in disgust." *CPrR* 5:25.

<sup>39</sup> Kant, *Metaphysics of Morals* (henceforth *MM*), 6:429.

remain loyal to my country and may also pledge to remain loyal to my religion, but if one day my country required me to act against my religion (eg. to renounce or act contrary to my religious beliefs), my promises would be conflicting. Likewise, I may promise to be at my child's soccer game after work and may also promise to help my co-worker prepare a presentation before the end of the day, only to discover that I cannot accomplish both. Promises, because of their very nature, have the propensity to fall in conflict with one another. Therefore promise-keeping, as a general category of acts, must be imperfect.

In contrast, perfect duties cannot ever come in conflict with each other because, according to Kant, all perfect duties have as their ground of obligation the unconditional moral law, which cannot conflict with itself.<sup>40</sup> Promises, Kant would say, have a grounding that contains a composite of conditional elements: the end which is being pledged together with the conditional indissolubility of promises. Because each of these elements are conditional, promise keeping cannot be a moral absolute.

In order for Kant's claim about conflicts in duties to be logically possible, all perfect duties (ie. those that must be adhered to under all circumstances) must either have a clear order of precedence (an unlikely prospect) or they must necessarily be prohibitions – ie. negative duties. Because Kant neither provides such a hierarchy nor does he suggest that one could exist, it seems Kant is suggesting that perfect duties must restrict us (as the rules against murder, lying, and suicide do), in contrast to duties that compel someone to act a certain way (such as helping a friend or developing one's talents), which are positive duties.<sup>41</sup> In other words, I could conceivably find myself in a

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<sup>40</sup> Ibid., 6:224.

<sup>41</sup> Kant provides two examples of imperfect duties, both of which are positive rather than negative: helping a friend who is in need, and the duty to develop one's own talents. GMM 4:423.

situation, given the limitations of time, in which I would have to choose between helping my friend and developing my talents (two positive duties) and would therefore find myself conflicted, but it would be inconceivable to imagine a situation in which I was conflicted because of two negative duties (eg. not lying and not committing murder). This is because it is always possible to further restrict myself, and if all perfect duties necessarily restrict, then they need not come into conflict.

Hence, promise keeping cannot be a perfect duty for still another reason: the notion of a promise itself (independent of what is being promised) does not restrict. Promises simply express a positive commitment, a commitment to act or not to act in a certain way at some time in the future based upon conditional grounds of obligation. In some sense, every stated intention communicates such a commitment and is likewise a promise. When I state that I intend to do something, for example, aren't I committing myself to do what I say I intend to do? Yet how often do our intentions not materialize, despite our best efforts? Since the grounds of such commitments are conditional, they cannot be absolutely binding, and even if such commitments reflect restrictions given in the moral law, it is not our pledge that serves as the absolute (unconditional) ground of obligation, but rather the moral law itself.<sup>42</sup> So while it might seem the duty *never break a promise* resembles a restriction (hence providing the possibility that it may be a perfect duty), this cannot be the case.

Does this mean that the duty to act in good faith, because it similarly expresses a positive act and therefore resembles a positive duty, cannot be perfect? Some might

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<sup>42</sup> See Kant, *Critique of Practical Reason*, 5:29-30. According to Kant, the moral law cannot be outweighed by any other grounds of obligation. He says, "It is therefore the moral law... that first offers itself to us and, inasmuch as reason presents it as a determining ground not to be outweighed by any sensible conditions."

imagine finding themselves in a situation of two ‘musts,’ one of which being ‘I must act in good faith.’ If musts (as opposed to ‘must-nots’) are positive, then it seems they can come in conflict. If this is true, then Spinoza’s “The free man... always acts in good faith” proposition can be neither a perfect duty nor a moral absolute.

The first way this objection might be answered on behalf of Kant and Spinoza is to propose that good faith, like truthfulness, is a positive duty with an embedded negative duty (or series of negative duties). Truthfulness, I have said, includes the negative duty never lie, but it seems it also includes the rule ‘never extend a false invitation to trust.’<sup>43</sup> Furthermore, the duty seems also to include the rule ‘never engage in unjust deception (deceit).’ Yet to say that these three prohibitions encompass all of truthfulness is perhaps insufficient, since truthfulness, I have suggested, is a virtue and therefore an excellence rather than a minimum standard. Therefore, it may also be possible that truthfulness contains an additional subset of imperfect elements that make it both perfect *and imperfect*. If the same is true for good faith, then the perfect duty ‘never act in bad faith’ may perhaps be its main feature, but good faith may also include an imperfect element as well.

Another way this apparent tension between Kant and Spinoza might be resolved begins with the question ‘What exactly does Spinoza mean by good faith?’ This is a question that Spinoza leaves unanswered, and it is a term that, while historically and

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<sup>43</sup> Thomas Aquinas suggests that refraining from false invitations to trust is a moral absolute under the title of ‘*simulatio*.’ He says, “Just as a man lies when he signifies by word that which he is not, yet lies not when he refrains from saying what he is, for this is sometimes lawful; so also does a man simulate, when by outward signs of deeds or things he signifies that which he is not, yet he simulates not if he omits to signify what he is.” Therefore, “*simulatio* is properly a lie so to speak.” Aquinas, *Summa Theologiae*, II-II q.111 a.1.

legally important, is often criticized for being ambiguous and even elusive.<sup>44</sup> One possibility would be to say that acting in good faith is simply doing nothing that does damage to faith. Yet this would define acts of good faith (ie. the rightness of those acts) in terms of the consequences. Kant would resist this diagnosis, evidenced in part by the anti-consequentialist tone of his moral philosophy in general, but also shown in the way that he rejects pragmatic reasons for adopting the principle of good faith when making promises. He says,

I must reflect on whether the matter might be handled more prudently by proceeding on a general maxim and making it a habit to promise nothing except with the intention of keeping it. But it is soon clear to me that such a maxim will still be based only on results feared. To be truthful from duty, however, is something entirely different from being truthful from anxiety about detrimental results... For, if I deviate from the principle of duty this is quite certainly evil; but if I am unfaithful to my maxim of prudence this can sometimes be very advantageous to me.<sup>45</sup>

If the meaning of ‘acting in good faith’ were to be determined by the consequences, then according to Kant this would no duty at all – regardless of whether it be positive or negative. Instead, Kant’s view is that all acts receive their rightness or wrongness *independent of the consequences*, requiring an evaluation of the act itself. One example is the requirement never to lie, a negative duty derived from the moral law.

It is also possible that Spinoza’s proposition, since uses absolute terms, is meant to do nothing more than express a negative duty in positive terms. In other words, acting in good faith for Spinoza is perhaps equivalent to ‘never acting in bad faith,’ so unlike truthfulness it might be the case that good faith has no imperfect element. If this is correct, then this may help to explain why Spinoza presents his proposition using

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<sup>44</sup> Markus Kotzur, “Good Faith,” *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2013): 1; <http://opil.ouplaw.com>, updated 17 March 2015.

<sup>45</sup> Kant, MM 4:402-403.



contrasting elements: “The free man never acts *dolo malo*, but always in good faith.”<sup>46</sup> *Dolo malo* is contrasted with *fides*, and therefore, it seems, *dolo malo* represents the privation of *fides*: bad faith. The essential description of acting in bad faith is a false invitation to trust.

Because I have said acting in bad faith is synonymous with perfidy, and since perfidy necessarily involves a lying promise, it is reasonable to consider good faith conceptually related, if not inseparably linked, to the virtue of truthfulness. Not only does Kant seem to illuminate this aspect of truthfulness, but it is also apparent in the legal description of good faith provided by the *Encyclopedia of Public International Law*:

The principle of good faith requires parties to a transaction to deal honestly and fairly with each other, to represent their motives and purposes truthfully, and to refrain from taking unfair advantage that might result from a literal and unintended interpretation of the agreement between them.<sup>47</sup>

This description indirectly refers to important concepts that will be discussed in the following chapter (Chapter 5: The Moral Rule against Lying), such as intention, assertive context, shared meanings, and questions of justice. Before entering into that discussion, however, this chapter will return to Grotius in order to explore the possibility that the rule against lying is actually part of the moral duty always to act in good faith.

#### **4.6 GROTIUS AND TRUTHFULNESS AS A SPECIAL CASE OF GOOD FAITH**

Perhaps one of the most interesting suggestions made by Grotius is the notion that *all lies* are in some sense lying promises. He arrives at this conclusion because a tacit agreement, he says, exists every time a verbal exchange takes place. For Grotius, this

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<sup>46</sup> Spinoza, *Ethica* IVp72.

<sup>47</sup> Anthony D’Amato, “Good Faith,” *Encyclopedia of Public International Law* (New York: North-Holland, 1992):559-601.

tacit agreement, present in all verbal discourse, is a matter of ‘convention.’ Invoking Aristotle, Grotius says, “Words, then, and signs, and the written characters we have mentioned, were invented as a means of expression under a mutual obligation; as Aristotle called it, ‘by convention.’”<sup>48</sup> Perhaps inspired by this Grotian notion,<sup>49</sup> Spinoza’s proof attempts to show the absurdity of, on the one hand, intending to enter an agreement by ‘coming together in words’ (and hence establishing a condition of mutual obligation) but on the other hand intending to do so *dolo malo* (with evil designs that undermine *fides*, the concept upon which all agreements depend).<sup>50</sup>

When Grotius wrote his *Law of War and Peace*, which predated Spinoza’s *Ethics* by a quarter century, he suggested that all lies are tacit agreements made disingenuously. According to Grotius, verbal discourse relies upon an implicit assumption that when people enter into conversation with one another, a tacit agreement is being made that what is spoken by the speaker is believed true. Grotius says,

Insofar as the notion of lying is forbidden by its very nature... no other account can be given than this: it is the violation of a standing right... that

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<sup>48</sup> Hugo Grotius, *De Jure Belli ac Pacis* (The Law of War and Peace), trans. Francis W. Kelsey (Indianapolis: The Bobbs-Merrill Company, Inc., 1925), III.1.8, 608

<sup>49</sup> Some Spinoza scholars have acknowledged the connection between Spinoza and Grotius, such as J.M. Alter and more recently Matthew Kisner. See Matthew Kisner, *Spinoza on Human Freedom* (Cambridge: Cambridge University Press, 2011), 117 n12. Spinoza had a copy of Grotius’s seminal work *De Jure Belli ac Pacis* in his own personal library. This voluminous work by Grotius, who like Spinoza was Dutch, was no doubt highly respected in Spinoza’s day.

<sup>50</sup> Spinoza’s proof that follows proposition 72 (Part IV) says, “If the free man, in so far as he is free, were to act *dolo malo*, he would be doing so in accordance with the dictates of reason (for it is in this respect that we term him free), and thus to act *dolo malo* would be a virtue, and consequently (by the same proposition), in order to preserve his own being, it would be better for every man to act *dolo malo*, that is (as is self-evident) it would be better for men to come together in words only, but to be contrary to another in reality, which is absurd.” Spinoza, *Ethica* IVp72s. *Si liber homo quicquam dolo malo quatenus liber est, ageret, id ex dictamine rationis ageret (nam eatenus tantum liber a nobis appellatur) atque adeo dolo malo agere virtus esset (per propositionem 24 hujus) et consequenter (per eandem propositionem) unicuique ad suum esse conservandum consultius esset dolo malo agere hoc est (ut per se notum) hominibus consultius esset verbis solummodo convenire, re autem invicem esse contrarios, quod (per corollarium propositionis 31 hujus) est absurdum.*

human beings who engage in verbal discourse owe to one another and is thus understood by a kind of tacit agreement.<sup>51</sup>

If there is in every conversation a certain, fundamental sentiment of mutual sincerity established by way of a tacit agreement, then to enter into conversation with the intention of breaking that agreement is a lying promise. Since lying promises are acts of bad faith and every lie is arguably a lying promise, every lie is also an act of bad faith. If this is true, then good faith is the fundamental quality of the truthful man, since the expectation established by way of ‘convention’ or mutual agreement is that only those thoughts that are believed true will be asserted.<sup>52</sup>

The notion that an act of bad faith occurs coincident with every lie hinges on the idea that a lie is a false expression of one’s own opinion, an act that (even if the lie intends to deceive) is distinct from other deceptive acts because the lie takes advantage of the invitation to mutual trust implicit in all discourse. Roderick Chisholm and Thomas Feehan explain this idea in the following remark:

What distinguishes lying as such from the other types of intended deception is the fact that, in telling the lie, the liar gives the indication that he is expressing his own opinion. And he does this in a special way – by getting his victim to place his faith in him.<sup>53</sup>

Notice that this manner of characterizing lies suggests that the wrongness of the lie involves not so much the deception as it does the act of bad faith. Hence, one consequence of this conclusion is that false assertions become a species of perfidy, or bad

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<sup>51</sup> Grotius, *De Jure Belli ac Pacis*, III.1.11: “[M]endacii, qua naturaliter illicitum est... nulla videtur alia dari posse praeter repugnantiam cum iure existente... quam homines colloquentes his quibus colloquantur debere quali pacto quodam tacito intelligentur.”

<sup>52</sup> Grotius, III.1.10. The lie, Grotius says, occurs when “that which is consciously uttered with a meaning that is at variance with the idea in the mind.” Notice that the essence of the formal definition of a lie is expressed here, the definition I established in Chapter 1: proximate “A lie is an assertion made contrary to what the speaker believes to be true.” *Supra* 12.

<sup>53</sup> Roderick Chisholm and Thomas Feehan in “The Intent to Deceive,” *The Journal of Philosophy* 74 (March 1977): 149.

faith, rather than a species of deception. This characterization is also helpful for the absolutist, for a firm line can therefore be drawn between (1) those acts that are evil in themselves (ie. perfidy, lies) and (2) deceptive acts, the rightness or wrongness of which is often relative to the situation.<sup>54</sup>

The fundamental assumption behind Grotius's treatment of lying is that once two parties have come together in an exchange of words (assuming this exchange is in the assertive context), a standing, tacit agreement of truthfulness always holds. Because of this assumption, if men were to assert words that are contrary to what they believe – in other words, to make assertions in violation of the agreement they are affirming by the very act of entering into conversation – then every false assertion would constitute not only a lie, but also a lying promise.

#### **4.7 PROBLEMS WITH THE GROTIAN POSITION**

The main problem with Grotius's characterization of lying is not the fact that he associates assertive statements with a standing tacit agreement and lies with acting in bad faith, but rather the condition that he attaches to the definition, one that makes lying contingent upon rights. This condition, incidentally, is essentially the same condition he attaches to perfidy: if the recipient has no right to good faith, then it is impossible to commit perfidy. Likewise, Grotius holds that if the recipient has no right to the truth, then

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<sup>54</sup> Recall that this dissertation, following Aquinas, has assigned names to acts based upon the intention. At the same time, this dissertation recognizes that many intentions can exist simultaneously, such as when one act has a proximate intention, intermediate intentions, and a long-term intention. For example, I may, in a single act, intend to lie (proximate) to deceive my enemy (intermediate) in order to gain a military advantage (intermediate) and win the war (long-term end). The act in this example, then, may be called both a lie and a deceptive act. See *supra* 3, n9.

what is expressed cannot be a lie (*mendacium*), but only a ‘falsehood’ (*falsiquim*). Thus, lies are contingent upon both a right to good faith and a right to the truth.<sup>55</sup>

The idea that rights factor into the calculus of whether an act is permissible or impermissible, and by extension the very name of the act, is unique to Grotius, having no precedent in the Just War Tradition. Recall from the previous chapter that while Grotius describes the right to good faith as a right due to all men, even those who are perfidious,<sup>56</sup> he nonetheless states that the right to good faith may be forfeited. Rights forfeiture, Grotius argues, can occur when an injustice warranting the forfeiture of that fundamental right has been committed. Therefore, ‘atrocious criminals’ can forfeit their right to life and property, he says, which allows them to be deprived of life or property as punishment. Grotius explains:

[I]f we take into account the law of nature, atrocious criminals, who do not belong to any state, can be punished by any person whatsoever. But those who can be punished with the loss of life can also be deprived of their property and rights, as the same Cicero rightly said: ‘It is not contrary to nature to despoil, if you can, the person whom it is lawful to kill.’ Among the rights of such a person is the right arising from a promise. This right, therefore, can be taken from him as a penalty.<sup>57</sup>

Here, Grotius establishes an analogy between a criminal forfeiting his right to life and the same criminal forfeiting his right to good faith. Because it is proper to punish criminals, Grotius is suggesting that it is permissible to betray (and even lie to) criminals as a result of their crimes.

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<sup>55</sup> Grotius is regarded as the first major figure to explain the rule against lying in terms of rights. Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1999), 37.

<sup>56</sup> Grotius, suggesting this point, says “Those who are enemies do not in fact cease to be men” and, citing Ambrose, also says “[F]aith must be kept even with the perfidious (*perfidis*). Grotius, III.19.1, 792 and III.19.13, 799. Aquinas likewise had said, “...we are bound to keep faith with all men.” Aquinas, *ST II-II* q.40 a.3 arg.1.

<sup>57</sup> Grotius, III.19.3, 794.

Not only did Grotius hold that the right to the truth could be forfeited, but he also believed that a falsehood could be told in at least two other situations, situations that did not involve a forfeiture of rights due to punishment. In these examples, Grotius suggests that the right to good faith either *does not exist* or can simply be *taken away by one's sovereign*. He says falsehoods, for example, may be told to infants and madmen, because such people “do not have liberty of judgment.”<sup>58</sup> Because they lack free judgment, “it is impossible for wrong to be done to them in respect to such liberty.”<sup>59</sup> Since infants and madmen do not have freedom of thought and because their thoughts are not restricted in any way by our falsehoods, Grotius says, they have no right to the truth.

Grotius also says that a sovereign is permitted to express falsehoods to his subjects. Citing Plato, Grotius proposes that a sovereign may assert falsely because he has “a right superior to all the rights of another.”<sup>60</sup> This conclusion is rather troubling, particularly in modern democracies, given that good faith between a constituent population and its elected officials, it seems, is essential to the political health of a country and respect for law and order among its citizens.

Yet there is another problem with Grotius's position, revealed by way of his analogy between the right to good faith and the right to life. If falsehoods may be told to criminals because it is possible for criminals to forfeit their basic rights, such as their right to life, then what is to stop the analogy from working both ways? It seems the argument that some may be told falsehoods may likewise be used to propose that the some people can be denied their right to life. Could we then say the insane, children, and

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<sup>58</sup> Ibid., III.I.12, 614.

<sup>59</sup> Ibid.

<sup>60</sup> Grotius, III.I.15, 616. Cf. Plato, *Republic*, trans. G.M.A. Grube in *Complete Works*, ed. John Cooper (Indianapolis: Hackett Publishing, 1997), Book I, 389b-c, 1026.

even ordinary citizens (that is, if their rights are contingent upon the whims of the sovereign), can therefore be deprived their right to life on the same grounds? In its most extreme form, this conclusion could be used to justify state-sponsored murder of the helpless and the insane. Yet there seems to be little preventing this line of reasoning, once the permissible falsehood argument is accepted, other than the rather weak claim that the analogy works only in one direction and not both.

Even if Grotius's two exceptions to the rule against lying were retracted and instead the only exception allowed was the forfeiture of rights based upon wrongdoing (such as lying to pirates), the exception would still yield a series of problems, difficulties that will be addressed in the context of the 'murderer at the door' example in Chapter 6. This is not to say, however, that Grotius's way of thinking is entirely flawed. His underlying assumption about how a tacit agreement exists every time two people enter into conversation with one another and the association he makes between lying and acting in bad faith are useful and can help explain the wrong inherent in all insincere promises. In fact, if the 'right to the truth' condition is omitted, Grotius's position may not only be viable, but it may also be consistent with the absolutist tradition that prohibits perfidy and lying without exception.

#### **4.8 CONCLUSION**

Spinoza and Kant both suggest that acting in bad faith (perfidy) is wrong because such acts are unreasonable, absurd, and contradictory. Perfidy, an act that involves the attempt to enter into an agreement disingenuously and therefore in bad faith, is (if the agreement is explicit) the same as a lying promise. Yet it is possible to commit perfidy implicitly as well – that is, by entering into a tacit agreement duplicitously. By positing

that every act of entering into conversation with another involves making a tacit agreement that what is spoken is believed true, Grotius suggested that every lie is also, in a sense, a lying promise, only one that is tacitly expressed – that is, a verbal exchange in which *truth* is disingenuously promised. Since there is a strong intuitive basis for the wrongness of all lying promises, not to mention a natural tendency for society to shun the practice, it seems that arguments positing an absolute rule against all perfidious acts, independent of the philosophical systems from which they have been derived, are at least plausible.

Nonetheless, some may feel that this conclusion presupposes to some extent the wrongness of lying and the goodness of truthfulness. Indeed, Kant used ‘truthfulness’ to help describe the wrong inherent in all lying promises; hence, truthfulness for Kant seemed to require no further explanation. For the purposes of this dissertation, more fidelity is needed. To help achieve this, the moral basis for the rule against lying must be further explored, which will be the task of the next chapter. Just as this chapter has attempted to bring to light the duty to act in good faith by identifying the wrongness of acting in bad faith, so also will the next chapter seek to bring the virtue of truthfulness into fuller focus by examining the moral basis behind the rule against lying.



## CHAPTER FIVE

### THE ABSOLUTIST TRADITION AND THE RULE AGAINST LYING

The fact that habitual lying is incompatible with the virtue of truthfulness is relatively irrefutable. We would not say that liars are truthful people, nor would we describe truthful people as those who lie. Lying, it might be said, is fundamentally opposed to truthfulness. Determining what truthfulness demands of us will be the task of the next two chapters of this dissertation.

Lying, at its essence, involves the expression of some falsehood. Consequently, the principal definitions of lying all include some reference to intentional falsehood – that is, stating what is known (or believed) to be false. While there is this common element among the varied definitions of a lie, differences arise when additional conditions are added to the definition. The most popular conditions added to the definition are (1) a falsehood is a lie only if it includes the intent to deceive and (2) a falsehood is a lie only if the listener has a right to the truth.

For this reason, the definitions of a lie tend to fall under one of three major categories. Some require that the speaker merely assert contrary to what he believes to be true, the criterion of *intended falsehood*. Some add the requirement that an ‘intent to deceive’ be present, and these definitions make *intended deception* a necessary condition for all lies. Others add the condition that the recipient *have a right to the truth*. Between the three categories, the distinctions are significant, for with each added criterion, the minimum requirements for what constitutes a lie becomes more stringent.

In the next two sections, I shall consider the plausibility of these added criteria and conclude that the necessary and sufficient condition for what constitutes a lie should not include these additions. Adding these conditions – the right to the truth or the intent to deceive – suggests that the wrongness of lying can be characterized in these terms. Instead, I argue that the view held by the absolutist tradition is to the contrary; the wrong of lying is duplicitous assertion. Following this discussion, the chapter will examine the reasons why, according to the absolutist tradition, duplicitous assertion is always wrong, concluding that the wrongness of lying resides in the fact that all lies, ultimately, are unreasonable.

### **5.1 WHY A RIGHT TO THE TRUTH IS NOT NECESSARY FOR A LIE**

In this section, I will take for granted the common intuitive notion of what constitutes a lie and simply ask, ‘Is a falsehood a lie only if the listener has a legitimate right to the truth?’ In other words, should the definition of a lie, no matter what the definition contains, always include the clause ‘to someone who has a right to the truth?’ The idea that someone could avoid lying and yet still knowingly express falsehoods appears to have had as its first major proponent Hugo Grotius, who distinguished between *falsiquum* (falsehood) and *mendacium* (lie) on the basis of this condition. Yet according to Kant, having a ‘right to the truth’ is an absurd notion. If Kant is correct, then the additional criterion Grotius adds is problematic.

Definitions eliciting a right to the truth are perhaps the least suited for the absolutist point of view, in part because of the inherent ambiguity that comes from having a moral term (lying) be defined by another moral term (rights).<sup>1</sup> If one adopts this

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<sup>1</sup> True moral absolutes, as John Finnis explains, must be specifiable without reference to any evaluative term and thus cannot be defined using moral terms such as ‘wrongful,’ ‘rights,’ or ‘justice.’ Therefore, if

definition, his understanding of what constitutes a lie becomes contingent upon the rights of the person who is addressed by the speaker. The definition also suggests that lies are actually a species of unjust acts. ‘Right to the truth’ definitions are in some sense saying that if one communicates a falsehood justly, then it is not a lie. For many, this approach seems quite reasonable. Lies do harm to others, and it would therefore follow that lies are a type of injustice – justice being the primary social virtue, guide for proper interactions between human beings, and first virtue of social institutions.<sup>2</sup> Others may argue that ‘the right to the truth’ only opens the door to a broad range of exceptions, making it possible for falsehoods to be excused by simply providing a plausible justification based on the situation (ie. one that accounts for the justice of the act).

A reply to this proposal that all lies must violate a ‘right to the truth’ is provided by Immanuel Kant, who directly addresses the issue in his response to Benjamin Constant. Constant, criticizing Kant’s absolutist rule against all lying in light of the example of the classic case involving the ‘murderer at the door,’ argues that a murderer has no right to know the truth about his intended victim’s whereabouts.<sup>3</sup> In his argument, Constant suggests that the proper definition of a lie be ‘a falsehood told to someone who has a right to the truth.’<sup>4</sup> Part of the appeal this definition elicits is that room is made for

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lying is defined in terms of a right to the truth, and since rights must be further evaluated, then it would seem that lying would merely be wrong by definition. John Finnis, *Moral Absolutes* (Washington, D.C.: Catholic University of America, 1991), 1-9. See also *supra* 22 n40.

<sup>2</sup> See for example John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999), 3-4.

<sup>3</sup> Kant, “On a supposed right to lie from philanthropy” (henceforth OSRL) in Mary Gregor, ed. and trans., *Immanuel Kant: Practical Philosophy* (New York: Cambridge University Press, 2009), 8:425. Constant had posed the example of a murderer at the door, who asks whether his enemy is in the house. Constant’s claim was that “To tell the truth is a duty, but only to one who has a right to the truth.”

<sup>4</sup> John Milton defined lies similarly, saying that “Falsehood is incurred when any one, from a dishonest motive, either perverts the truth, or utters what is false *to one to whom it is his duty to speak the truth*... It is better therefore to say that stratagems, though coupled with falsehood, are lawful for the cause above assigned....” (my emphasis). John Milton, *De Doctrina Christiana*, Book II in *The Works of John Milton*, Vol. XVII (New York: Columbia University Press, 1934), II.13.

so-called harmless falsehoods, such as lies to murderers – ‘just lies,’ which Grotius and Constant would say are really not lies at all.

While the murderer at the door example will be treated in greater depth in the next chapter, one important point that Kant makes about the definition itself is relevant here. Constant’s main argument was that the murderer at the door forfeits certain rights, among them a right to the truth.<sup>5</sup> Kant’s response to Constant highlights what he takes to be a logical error:

[T]he expression ‘to have a right to the truth’ is meaningless... For to have a right to a truth objectively would be tantamount to saying that, as in the case with what is yours or mine generally, it is a matter of one’s *will* whether a given proposition is to be true or false; and this would give rise to extraordinary logic.<sup>6</sup>

Kant is saying that the truth value of what is expressed (since truth, in this sense, is correspondence between what is thought and what is said) cannot be contingent upon whether or not someone makes a claim to that truth (which is a matter of one’s will). Otherwise, the listener’s will, rather than the speaker’s words and intention, would determine whether or not what someone says is a lie.

To illustrate this problem, imagine that I tell my brother I own a red truck when in reality I do not. If my brother places no claim (as he does towards his own property) to know the actual contents of my mind – let’s say because he’s indifferent as to the truth of my statement – then under Constant’s reasoning I do not lie to him, since he therefore

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<sup>5</sup> Constant’s argument has become a popular objection for those who deny that an absolutist position against lying can exist. Sidgwick, for example, follows Constant when he asserts that veracity should not hold in every situation, saying: “a general right of each man to have truth spoken to him by his fellows... may be forfeited or suspended under certain circumstances.” Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Indianapolis: Hackett, 1981), 315. Just as a criminal forfeits his right to his security when he is committing a crime, Sidgwick says, it seems reasonable to conclude that some can forfeit their right to be told the truth.

<sup>6</sup> *OSRL* 8:426.

has no right to know the truth. Yet it seems strange that my statement might or might not be a lie depending upon whether or not my brother claims this truth, which is a matter of his will (given that he does so rightfully).

Lies, according to Kant, cannot be like other matters of what is owned or due (which pertains to rights). Instead, it seems that a statement is a lie simply because the assertion fails to correspond with what the speaker knows to be true (if the lack of correspondence is intentional). Perhaps some might consider a lie either right or wrong based upon their own judgement of rights or justice, excusing some while condemning others, but this issue of rightness and wrongness is a different question altogether. The question at hand is whether the condition ‘a right to the truth’ can be *part of the definition* of a lie, and Kant explains that if this is included, it results in a logical error. For this reason, Kant says the ‘right to the truth’ criterion added to the definition of a lie is meaningless.<sup>7</sup>

## **5.2 WHY THE INTENT TO DECEIVE IS NOT NECESSARY FOR A LIE**

According to Alasdair MacIntyre, the rule against lying has two competing traditions: one that has been adopted by those that say the rule against lying is absolute and the other by those who grant exceptions.<sup>8</sup> Among the absolutists, which include Augustine, Aquinas, and Kant, the definition for what constitutes a lie is unanimous: *A lie*

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<sup>7</sup> This is not to say that lies cannot sometimes be a matter of rights, which Kant would call lies in the juristic sense. Juristic lies are lies that violate rights because they do harm, but this type of lie does not account for all lies, since many seemingly do no harm but according to Kant are nonetheless illicit. Kant says, “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.” Kant, *Metaphysics of Morals* (henceforth *MM*), 6:429.

<sup>8</sup> Alasdair MacIntyre, “Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?” in Grethe B. Anderson, ed., *The Tanner Lectures on Human Values* (Salt Lake City: University of Utah Press, 1995), 316.

is an assertion made contrary to what the speaker believes to be true.<sup>9</sup> The special feature of this definition is that the moral prohibition hinges simply upon correspondence (*adaequatio rei et intellectus*) and its accompanying truth value, determined by comparing the assertion with what is believed true.

Augustine, the first in the absolutist tradition to issue a comprehensive treatment of absolute honesty, uses lack of correspondence to define lying in *De Mendacio*, his first treatise on the subject. He says, “He lies, moreover, who holds one opinion in his mind and who gives expression to another through words or any other outward manifestation.”<sup>10</sup> For this reason, the commandment ‘Thou shalt not bear false witness’ encompasses every lie, since every asserted statement gives testimony to one’s mind.<sup>11</sup> While this characterization of a lie seems to make the definition clear, in Augustine’s second treatise on the subject the intent to deceive seems to be added as an additional criterion. In this treatise, called *Contra Mendacium*, he says that “a lie is a false signification told with the intention of deceiving.”<sup>12</sup> The apparent inconsistency between these two definitions has for centuries been a source of debate.<sup>13</sup> Did Augustine think that

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<sup>9</sup> *Supra* 3.

<sup>10</sup> Augustine, *De Mendacio*, III 3 (PL 40): “*Quapropter ille mentitur, qui aliud habet in animo, et aliud verbis vel quibus libet significationibus enuntiat.*” Among the many ways in which Augustine characterizes a lie, this one is the most widely accepted. See for example Boniface Ramsey, “Two Traditions of Lying and Deception in the Ancient Church,” *Thomist* 49 (1985): 504-05. Of note, Augustine’s definition includes non-verbal signs, which would include expressions such as a head nod or thumbs-up, but could perhaps include other nonverbal expressions that are more indirect. On this point, Aristotle seems to agree. Aristotle says, “Let us now discuss those who are truthful and false, both in words and in actions – that is to say, in their claims [about themselves].” *NE* IV.7 1127a 19-21. Aquinas also makes this same point. Aquinas remarks, “And so when it is said that ‘a lie is a false signification by words,’ the term ‘words’ denotes every kind of sign. Wherefore if a person intended to signify something false by means of signs, he would not be excused from lying.” Thomas Aquinas, *Summa Theologiae*, II-II q.110 a.1 ad.3: “*Et ideo cum dicitur quod mendacium est falsa vocis significatio, nomine vocis intelligitur omne signum. Unde ille qui aliquod falsum nutibus significare intenderet, non esset a mendacio immunis.*”

<sup>11</sup> *Ibid.*, V 6.

<sup>12</sup> Augustine, *Contra Mendacium*, 12 (PL 40): “*Mendacium est quippe falsa significatio cum voluntate fallendi.*”

<sup>13</sup> Julius Doeszynski, *Catholic Moral Teaching about the Morality of Falsehood*, Ph.D. diss. (Catholic University of America, 1949; Reprint, Createspace: 2011), 20.

a lie is false assertion, or did he think that a lie is falsehood expressed with the intent to deceive?

If Augustine's statement in *Contra Mendacium* is used as a definition, then the 'intent to deceive' criterion could signal the wrongness of lying resides in the attempt to deceive, not in the lack of correspondence. In other words, if simple lack of correspondence is not necessarily a lie and if a lie must also be accompanied by a deceptive intention, then lying seems to be wrong on account of the desired deception, not the intentional falsehood. One way to resolve this tension is to recognize that the word Augustine uses for 'deceive' in *Contra Mendacium* carries a neutral tone (*fallendi*) rather than the negative *decipiendi* – the type of deceiving (deceit) thought to be wrong by definition. This lexical difference suggests that Augustine did not consider deception the essence of a lie and therefore the source of its wrongness. Therefore, there is reason to believe the statement from *Contra Mendacium* is not really Augustine's definition, but is instead an acknowledgement of the simple truth that lying, in most if not all cases, is used *instrumentally* to deceive.

One further argument against the former interpretation is that Augustine returns to his original description of a lie in an even later work, the *Enchiridon*, where he again defines lying as a simple lack of correspondence. There, he says,

Nor is a man in any way free from a lie who with his mouth unwittingly speaks the truth, but with his will, so far as he knows, lies... [O]ne who knowingly intends to lie... has one thing hid within his heart, another ready on his tongue, and this evil is the very essence of lying.<sup>14</sup>

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<sup>14</sup> Augustine, *Enchiridon de Fide, Spe, et Caritate*, 6 (PL 40): "nec ullo modo liber est a mendacio qui ore nesciens verum loquitur, sciens autem voluntate mentitur... qui mentiendi animum sciens gerit.. aliud tamen clausum in pectore aliud in lingua promptum est, quod malum est proprium mentientis" The *Enchiridon* was written a year after *Contra Mendacium*, his last work specifically devoted to the question of lying.

The reason why a person might hide one thing in his heart but yet express something else with his tongue is likely to complete a deception, but it seems that Augustine was not convinced that it be necessary. The evil of the lie, Augustine states very clearly, is assertion with a ‘double heart’ (*duplex cor*).<sup>15</sup>

Thomas Aquinas makes this same point in his own extensive examination of the subject of lying. In fact, in his *Summa Theologica* he appears to have been eager to clarify any confusion that might have existed in Augustine. He does so by distancing the definition of a lie from deception. According to Aquinas, not only are the intent to deceive and the intent to assert contrary to the mind distinct intentions, but the difference is morally significant. Aquinas distinguishes the two intentions in the following way. He says,

[T]he intention of a disordered will may bear on two things: one of which is that a falsehood may be told; while the other is the proper effect of a false statement, namely, that someone may be deceived.<sup>16</sup>

The intent to lie and the intent to deceive are distinct, Aquinas says, because they each are oriented toward separate objectives.<sup>17</sup> The first intention, the intent to lie, involves the simple desire to assert a falsehood, while the other, the intent to deceive, involves the larger purpose of carrying out a deception. He says further, “As to the intent to introduce falsity into another’s mind by deceiving him, this does not enter into the very species of lying, but is a kind of finishing touch.”<sup>18</sup> In other words, when lying is used to carry out a deceptive act, lying is always the proximate intention, while the intended deception is

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<sup>15</sup> *De Mendacio*, 3.

<sup>16</sup> Aquinas, *Summa Theologiae* (henceforth *ST*), II-II q.110 a.1: “*Intentio vero voluntatis inordinatae potest ad duo ferri, quorum unum est ut falsum enuntietur; aliud quidem est effectus proprius falsae enuntiationis, ut scilicet aliquis fallatur.*”

<sup>17</sup> See *ST* II-II q.110 a.1.

<sup>18</sup> *ST* II-II q.110 a.1: “*Quod autem aliquis intendat falsitatem in opinione alterius constituere fallendo ipsum, non pertinet ad speciem mendacii, sed ad quandam perfectionem ipsius.*”



always an intention that is more distant. This is expressed in the lexical form ‘He lied *in order to* mislead (ie. deceive) his listener as to his true thoughts.’ The expression ‘in order to’ signals the subsequent purpose, or intention, of the act reflected in the verb ‘lied.’ It should also be noted that while lying is an act that is often used to accomplish the subsequent goal of deceiving, the reverse is never true. It would be rather strange, indeed, to say that someone ‘deceived in order to lie.’ Thus, Aquinas seems correct in saying that deception is a kind of fulfillment under which the lie is often enlisted as a contributing part.

For this reason, Aquinas suggests that a lie is a simple act that declares or signifies, while in the assertive context, that which fails to correspond to the content of the mind.<sup>19</sup> The intent to deceive is therefore not a necessary condition for a lie. If there is any reason for Aquinas to omit the intent to deceive from the definition of a lie, it is to further distance lying as a moral absolute from judgments about the permissibility of deceptive acts, which he suggests are judged situationally by applying the virtue of justice. In other words, deceptive acts, given that such acts are not themselves intrinsically evil, receive their moral evaluation from the overall justice or injustice of the act given the totality of the circumstances. Perhaps it is for this reason that definitions of a lie implying this sort of evaluation, such as definitions including ‘an intent to deceive’ or ‘a right to the truth,’

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<sup>19</sup> Under this definition, the lie has three essential components. First, the liar must intend to communicate falsely. Second, the material act of lying must involve a mismatch between what is asserted and the contents of the mind. Third, the lie must be asserted through either words or signs. Thus, Aquinas says, “[T]he meaning of lying is taken from formal falsehood, namely from someone having the intention to declare what is false; this is indicated by the fact that the word ‘*mendacium*’ is derived from the lie being in opposition to the ‘mind’ [*contra mentem*].” *ST II-II q. 110 a. 1*: “...*ratio mendacii sumitur a formali falsitate, ex hoc scilicet quod aliquis habet voluntatem falsum enuntiandi. Unde et mendacium nominatur ex eo quod contra mentem dicitur.*”

tend to depart from the absolutist view.<sup>20</sup> If both tend toward subsequent judgements regarding justice, each appear to make justice the determining factor between what constitutes a lie and what is a permissible falsehood. Yet for the absolutist tradition, using justice as the determining criterion is hopelessly vague, creating a blurred line that cannot sustain an absolutist interpretation. Instead, if the essence of a lie is simply to assert falsely, a specifiable condition already exists that can be held absolutely without requiring further moral evaluation.

### 5.3 ARISTOTLE AND LIES AS A VIOLATION OF CONVENTION

In the remaining sections of this chapter, I shall highlight four of the ways in which the absolutist tradition has condemned lies universally, the goal being to show how the rule against lying has been proposed as a moral absolute. The first way to characterize the prohibition of lying as an exceptionless rule was voiced by Aristotle, who Alasdair MacIntyre regards as the first principal contributor to the absolutist tradition.<sup>21</sup> According to Aristotle, a lie is a violation of convention and therefore is an act considered blameworthy by society. Aristotle explains this idea of the convention governing verbal expression in *De Interpretatione*, where he conveys his definition of a proposition. Propositions, he says, are sentences that can hold a truth value:

Every sentence is significant (not as a tool but, as we said, by convention), but not every sentence is a statement-making sentence, but only those

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<sup>20</sup> Sissela Bok, for example, who denies that the rule against lying can be held absolutely, defines a lie as “any intentionally deceptive message which is *stated*.” Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1999), 1. In contrast, Kant, who shares the absolutist view, defines a lie in a way that is virtually identical to the definitions used by Augustine and Aquinas. He states: a lie is “an intentionally untrue declaration to another.” *OSRL* 8:426. Elsewhere, he says a lie is an “intentional untruth in the expression of one’s thoughts” [my emphasis]. *MM* 6:429. Perhaps signaling Augustine’s influence, Kant also says a lie is ‘to have one thing held in the heart and another brought forth from the tongue’. *MM* 6:429: “...*aliud lingua promptum, aliud pectore inclusum gerere*.” cf. Sallust, *The War with Catiline* 10.5.

<sup>21</sup> MacIntyre, 315.

which there is truth or falsity. There is not truth or falsity in all sentences: a prayer is a sentence but is neither true or false.<sup>22</sup>

Propositions, he says, are established by way of convention (universal agreement), a convention that allows true and false statements to be communicated. In this dissertation, I have called this an assertion. Thus, Aristotle implies that asserting falsely violates a universal rule, since assertions communicate propositions and are universally recognized as such.<sup>23</sup>

This characteristic places assertions in a special relationship with the virtue of truthfulness. According to Aristotle, actions that violate this rule are always vicious. In his *Nicomachean Ethics*, he says, “Now in itself, falsehood is base and blameworthy, and truth is fine and praiseworthy; in this way the truthful person... is praiseworthy, and... the tellers of falsehoods are blameworthy.”<sup>24</sup> By using the phrase ‘in itself,’ Aristotle suggests that to violate the convention that applies to assertions is always base and therefore never permissible.<sup>25</sup> The lie, then, falls under the category of acts that are evil in-and-of-themselves and therefore do not admit of a mean:

Now not every action or feeling admits of the mean. For the names of some automatically include baseness. For all these and similar things are called by these names because *they themselves*, not their excesses or deficiencies, are base. Hence, in doing these things we can never be correct, but must invariably be in error. (my emphasis)<sup>26</sup>

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<sup>22</sup> Aristotle, *De Interpretatione* 4, 17a 1-3, trans. W.D. Ross. in *The Complete Works of Aristotle*, ed. Jonathan Barnes (Princeton: Princeton University Press, 1984), 26.

<sup>23</sup> Aquinas, for example, took Aristotle to be saying that certain conventions were universal, such as the rule against breaking promises unjustly: “The right which follows the inclination proper to the nature of man, i.e., precisely as he is a rational animal, the jurists call the right of the peoples (*jus gentium*) because all people are accustomed to follow it, for example, that agreements are to be kept.” Thomas Aquinas, *Commentary on Aristotle’s Nicomachean Ethics*, rev. ed., trans. C. I. Litzinger (Notre Dame: Dumb Ox Books, 1993), V.7 1134b 19-20, 325-26.

<sup>24</sup> Aristotle, *Nicomachean Ethics* (henceforth *NE*), 2d ed., trans. Terence Irwin (Indianapolis: Hackett Publishing, 1999), IV.7 1127a 28-31, 64.

<sup>25</sup> MacIntyre also seems to characterize the rule against lying as a matter of convention, one that transcends the bounds of a particular natural language. MacIntyre, 312-13 and 337. Nevertheless, he is unconvinced that the rule should be held absolutely. *Ibid.*, 349.

<sup>26</sup> Aristotle, *NE* II.6 1106b 10-16, 25.

Considered in this light, Aristotle suggests that false assertions are always illicit. Perhaps this is because without truth-making sentences, human communication would not be possible.<sup>27</sup> Therefore, to violate the very convention that makes propositions possible is in itself a vicious act.

Attributing an absolute rule against lying to Aristotle may to some seem improper, however, since Aristotle also states that the virtue of truthfulness involves a mean between excess and deficiency. In Book II he says, for example, “In truth-telling, then, let us call the intermediate person truthful, and the mean truthfulness,”<sup>28</sup> and again in Book IV he states, “The intermediate person is straightforward, and therefore truthful in what he says and does, acknowledging the qualities he has without exaggerating or belittling.”<sup>29</sup> Some might think that Aristotle, here, is saying that truthfulness is not absolute, but rather it is a mean that falls at the intermediate between saying too much and saying too little about oneself – between being boastful and self-deprecating. If this is true, then lying, some might argue, might be necessary to achieve this mean and to avoid, as Aristotle says, being either boastful or self-deprecating. Therefore, lying cannot be evil-in-itself.

There are problems with this reading of Aristotle on at least two accounts. First, this objection seems to conflate the virtue of truthfulness with the absolute rule against asserting falsehoods, which for Aristotle more likely serves as a precondition for truthfulness rather than the other way around. At the same time, it seems that

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<sup>27</sup> Aristotle makes a similar statement about formal agreements (in general) in his *Rhetoric*, where he says that “if these lose their binding force, human intercourse ceases to exist.” *Rhetoric* I.15 1376b 14.

Aquinas’s comment is more direct. He says, “it would be impossible for men to live together, unless they believed one another, as declaring the truth one to another.” *ST* II-II q.109 a.3 ad. 1.

<sup>28</sup> *Ibid.*, II.7 1108a 20-23, 27.

<sup>29</sup> *Ibid.*, IV. 7 1127a 24-25, 64.

truthfulness, according to Aristotle, involves more than simply avoiding falsehoods. Avoiding the evil act (the lie), one might say, is but the first step toward reaching truthfulness as an excellence (virtue).

Second, the objection seems to present a false dilemma by suggesting that a lie may be the only way to avoid being boastful or self-deprecating (and therefore achieve truthfulness as a moral excellence), which is to say that a lie might be necessary to achieve truthfulness – a proposal which itself sounds contradictory. If one was attempting to avoid the excess (boastfulness), it seems there are ways to avoid being boastful that do not involve lying, such as by merely omitting some of what could be said. One option might be to choose not to ‘speak one’s mind,’ which often is prudent (a matter of practical wisdom) and therefore a form of justified concealment. If one was trying to avoid the deficiency (self-deprecation), then a lie would likely be a poor choice. In fact, it is hard to imagine a situation in which a lie would be necessary to avoid being self-deprecating, since self-deprecation involves either concealing too much or saying things that are not true in order to appear humble, etc. For these reasons, the argument that the rule against lying is incompatible with Aristotle’s doctrine of the mean, upon further examination, does not appear to hold much merit.

#### **5.4 AUGUSTINE: LIES ARE DUPLICITOUS**

Unlike Aristotle, who seems to ground the rule against lying on a universally-held rule of semantics, Augustine characterizes the wrong of lying primarily in terms of disingenuousness and duplicity.<sup>30</sup> The person that lies, Augustine explains, presents himself as sincere when he in fact is not. Therefore, people who lie are, as it were,

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<sup>30</sup> For more on this view, see Paul Griffiths, *Lying: An Augustinian Theology of Duplicity* (Grand Rapids: Brazos Press, 2004), 30.

making implicit promises of sincerity while at the same time speaking contrary to what they believe to be true. The result, Augustine says, is a violation of faith: “[E]very liar breaks faith in lying, since he wishes the person to whom he lies to have faith in him, yet he does not keep faith.”<sup>31</sup> Faith is violated because the liar is breaking the tacit agreement made in the very act of asserting (at the very moment the implicit agreement is being made, during the exchange of words). The false expression of sincerity, then, is in some sense a lying promise, and because this act involves pledging good faith while simultaneously violating it, this act of duplicity is an act of bad faith.<sup>32</sup>

Augustine sheds light on the duplicity present in every lie in the following remark: “He lies, moreover, who holds one opinion in his mind and who gives expression to another through words or any other outward manifestation. For this reason the heart of a liar is said to be double.”<sup>33</sup> The double heart (*duplex cor*) is for Augustine both the foundation of every lie and at the same time the source of its wrongness.

One might respond to Augustine by accusing him of presupposing the wrongness of duplicity. What exactly makes duplicity either wrong or disordered? The answer, Augustine suggests, is that duplicity is in inherent opposition to the principle of unity.

Augustine says that if something is unified, then it appears desirable and even beautiful, whereas disintegrated things are the object of reproach. Augustine expresses this idea in his treatise *On the True Religion* when he remarks, “we naturally disapprove

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<sup>31</sup> Augustine, *De Doctrina Christiana* I.36 (34): “*Nemo enim mentiens, in eo quod mentitur, servat fidem. Nam hoc utique vult, ut cui mentitur fidem sibi habeat, quam tamen ei mentiendo non servat.*”

<sup>32</sup> Augustine’s condemnation of duplicitous acts that break faith by extending a false invitation to trust was partially adopted by Grotius, who called this type of act perfidy. Augustine suggests the duplicity underlying an offer of false trust is both the essence of lying and the source of its wrongness.

<sup>33</sup> *Ibid.*, 3 (PL 40): “*Quapropter ille mentitur, qui aliud habet in animo, et aliud verbis vel quibuslibet significationibus enuntiat. Unde etiam duplex cor dicitur esse mentientis.*”

of all that departs from unity and tends toward its opposite.”<sup>34</sup> Augustine also argues that unity relates directly to truth, a relationship that he describes in the following way: “We can understand that there is something so resembling the sole unity and principle of all unity that it coincides with it and is identical to it. This is truth...”<sup>35</sup> Therefore, the truthful man is not only unified, but also beautiful. He says,

For, when I put before my mind’s eye the intellectual beauty of him from whose mouth nothing false proceeded, then... I am so enflamed by love of such great beauty that I despise all human considerations that call me back from there.<sup>36</sup>

Even a single lie, Augustine proposes, corrupts the beauty of the truthful man. Therefore, because the duplicity inherent in every lie always despoils, all lies must always be illicit.<sup>37</sup> It is perhaps for this reason that the words Augustine chooses to express his condemnation of lying are voiced so strongly. He says for example, (1) “there is no lie

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<sup>34</sup> Augustine, *De Vera Religione* 36 (PL 34): *Naturaliter improbamus quidquid ab unitate discedit, atque in eius dissimilitudinem tendit.*” Augustine also explains the inherent desirability of unity in *De Ordine*: “Do not friends seek unity in friendship? The more they attain it, the friendlier they become. A people is a unity of citizens, for whom nothing is more dangerous than dissention. What does ‘to dissent’ mean if not ‘to think differently’? An army consists of many fighting men. Is it not true that such a number is the more undefeatable, the more united it is?... Why, on the other hand, is sorrow painful? Because it attempts to undo unity.” *De Ordine* II 18.48 (PL 32): “*Amici quid aliud quam unum esse conantur? Et quanto magis unum, tanto magis amici sunt. Populus una civitas est, cui est periculosa dissensio: quid est autem dissentire, nisi non unum sentire? Ex multis militibus fit unus exercitus: nonne quaevis multitudo eo minus vincitur, quo magis in unum colt?... Dolor unde perniciosus est? Quia id quod unum erat dissicere nititur.*”

<sup>35</sup> Augustine, *De Vera Religione* 36 (PL 34): “*Datur intellegi esse aliquid, quod illius unius solius, a quo Principio unum est quidquid aliquo modo unum est, ita simile sit ut hoc omnino impleat ac sit idipsum; et haec est Veritas... Si enim falsitas ex iis est quae imitantur unum, non in quantum id imitantur, sed in quantum implere non possunt; illa est Veritas quae id implere potuit, et id esse quod est illud; ipsa est quae illud ostendit sicut est.*”

<sup>36</sup> Augustine, *Contra Mendacium* 18 (PL 40): “*Cum enim proposuero ante qualescumque oculos cordis mei intellegibilem illius pulchritudinem, de cuius ore falsi nihil procedit; quamvis... tamen sic amore tanti decoris accendor, ut cuncta quae inde me revocant humana contemnam.*”

<sup>37</sup> Augustine says, “How can lying claim truth as its advocate? Or does truth conquer for her adversary so as to be conquered by herself? Who can abide this absurdity? Therefore, let us not in any way hold that they who declare that sometimes we ought to lie are truthful in declaring so, lest – and this is most absurd and foolish to believe! – the truth teach us to be liars.” Augustine, *Contra Mendacium* 19 (PL 40): “*Quomodo mendacium patronam sibi adhibet veritatem? An adversario suo vincit, ut a se ipsa vincatur? Quis hanc absurditatem ferat? Nullo ergo modo dixerimus, eos qui asserunt aliquando esse mentiendum, id asserendo esse veraces; ne, quod est absurdissimum et stultissimum credere, veritas nos doceat esse mendaces.*”

which is not contrary to truth;”<sup>38</sup> and, echoing the book of wisdom, (2) “the mouth which lies kills not the body but the soul.”<sup>39</sup> Hence, a lie is always, according to Augustine, an intentionally duplicitous assertion opposed to both unity and truth, and for this reason the rule against lying is absolute.

## 5.5 AQUINAS AND LYING AS A VIOLATION OF THE NATURAL LAW

Aquinas borrows heavily from Augustine, taking Augustine to be an authority on the subject, but he also adds to Augustine’s argument by showing how lies are opposed to the natural law, the “first principles of human action.”<sup>40</sup> Like Augustine, Aquinas’s condemnation of lies is without exception, and for this reason he, too, belongs to the absolutist tradition. Aquinas says, “lying is inherently evil, an action that involves a disordered objective.”<sup>41</sup> According to Aquinas, there is nothing about the circumstances or consequences that can justify a lie. A lie is always wrong because false assertion is intrinsically disordered and hence evil in itself.

Aquinas believes that all lies are disordered acts because the proximate intention of every lie (ie. the near-term objective, or immediate goal) is to say what is false. This act, he says, is an act of the will, the *voluntatem falsum dicendi* (the will to say what is false).<sup>42</sup> By saying that the act itself is disordered, he is pointing out the lie’s inherent incompatibility with the natural law, a law that he says is “appointed by reason.” Reason,

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<sup>38</sup> Augustine, *Contra Mendacium*, 3 (PL 40): “*Nullum est enim mendacium quod non sit contrarium veritat.*”

<sup>39</sup> Augustine, *De Mendacio*, 6 (PL 40): “*os autem quod mentitur, non corpus, sed animam occidit.*” Cf. Wisdom 1.11.

<sup>40</sup> *ST I-II* q.94 a.1 ad.2.

<sup>41</sup> *ST II-II* q.110 a.3: “*Mendacium autem est malum ex genere. Est enim actus cadens super indebitam materiam...*”

<sup>42</sup> A popular online translation confuses this point by translating *voluntatem falsum dicendi* as ‘the will to deceive,’ which Aquinas clearly states is not part of the formal falsehood (ie. the essence of the lie). See Aquinas, *Summa Theologica*, trans. Fathers of the English Dominican Province, 2d rev. ed. (1920; online edition, 2008), q.110 a.1.



he says, is related to order in various ways.<sup>43</sup> One such order is the order of natural things that reason merely beholds, the natural order. Another order is the moral order, which involves the operations of the will. The natural law pertains to both. One beholds the natural law; the other is subject to it. Truthfulness in turn relates to the natural law in the following way:

Now there is a special order whereby our externals, whether words or deeds, are duly ordered (*debite ordinantur*) in relation to some thing, as sign to thing signified: and thereto man is perfected by the virtue of truth.<sup>44</sup>

The expression *debite ordinantur* expresses a certain obligation that all human beings have to the natural law, which is revealed by the natural order and which constitutes the *sine qua non*, as it were, of the moral order. This obligation is not only to the natural law itself, but to every other human being by virtue of the fact that human beings are social animals:

Since man is a social animal, one man naturally owes another whatever is necessary for the preservation of human society. Now it would be impossible for men to live together, unless they believed one another, as declaring the truth one to another. Hence the virtue of truth does, in a manner, regard something as being due.<sup>45</sup>

While the social obligation expressed here is important to Aquinas, the true ground for his absolutism is not an obligation to others, but the obligation to the natural law, which

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<sup>43</sup> Aquinas names four ‘orders’ relating to human reason at the beginning of his commentary on Aristotle’s *Nicomachean Ethics*. He says, “There is one order that reason does not establish but only beholds, such is the order of things in nature. There is a second order that reason establishes on its own act of consideration [ie. rational philosophy, or logic]... There is a third order that reason in deliberating establishes in the operations of the will [ie. moral philosophy]. There is a fourth order that reason in planning establishes in the external things which it causes, such as a chest and a house.” Aquinas, *Commentary on Aristotle’s Nichomachean Ethics*, I.1, 1-2 .

<sup>44</sup> *ST II-II q.109 a.2* “*Est autem specialis quidam ordo secundum quod exteriora nostra vel verba vel facta debite ordinantur ad aliquid sicut signum ad signatum.*”

<sup>45</sup> *ST II-II q.109 a.3 ad. 1* “*quia homo est animal sociale, naturaliter unus homo debet alteri id sine quo societas humana conservari non posset. Non autem possent homines ad invicem convivere nisi sibi invicem crederent, tanquam sibi invicem veritatem manifestantibus. Et ideo virtus veritatis aliquo modo attendit rationem debiti.*”

makes it possible for human beings to know what acts are intrinsically disordered. Lies are one of these acts. He says, “[A] lie has the quality of sinfulness not only because it injures one’s neighbor, but also because of its being disordered in itself.”<sup>46</sup> A lie may indeed cause harm, but regardless of the harm that lies might or might not cause, it is always an evil act because of its opposition to the natural law.

Equipped with these preliminaries, it is perhaps easier to understand what Aquinas meant when he presents what many have thought to be his main explanation for the wrongness of lying. Aquinas remarks, “[S]ince words are naturally signs of intellectual acts, it is *unnatural* and *undue* for anyone that he should signify by words something that he does not have in his mind” (my emphasis).<sup>47</sup> According to John Finnis, this is a “dark statement,” since some have interpreted Aquinas as saying that lying is contrary to the natural function of speech.<sup>48</sup> Since speech, it seems, has many functions and only one of these is to make assertive statements, this pronouncement appears problematic.

It is unlikely, however, Aquinas is saying that lies are wrong because they are contrary to the natural function of speech. Lies, according to Aquinas, are intrinsically disordered, so it is perhaps more reasonable to presume Aquinas is speaking about the natural order (since he says ‘*unnatural*’) and the moral order (since he says ‘*undue*’), arguing lies are contrary to both. If this is correct, then a lie is unnatural and undue because every human being “naturally owes” one another truthfulness because of the

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<sup>46</sup> *ST II-II q.110 a.3 ad.4*: “...*mendacium non solum habet rationem peccati ex damno quod infert proximo, sed ex sua inordinatione.*”

<sup>47</sup> *ST II-II q.110 a.3*: “...*cum enim voces sint signa naturaliter intellectuum, innaturale est et indebitum quod aliquis voce significet id quod non habet in mente.*”

<sup>48</sup> John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998), 155.

natural law, which is another way of saying that every human being is duty-bound always to abide by the natural law and never lie.

I should mention that my view here is somewhat at odds with an excellent piece of scholarship written by Paul Griffiths, which I nevertheless recommend, entitled *Lying: An Augustinian Theology of Duplicity*. Griffiths undertakes what he calls an ‘Augustinian reading’ of Aquinas’s treatment of mendacity, and he concludes that Aquinas’s account is deficient because Aquinas places the virtue of truthfulness under justice. Griffiths argues that Aquinas’s treatment of lying must be taken in the larger context of the *Summa*, the second part being an account of human beings, which is divided into sections describing the seven virtues – the three theological followed by the four cardinal virtues. He notes that truthfulness and lying are found in two questions, Questions 109 and 110 respectively, questions that are within the section devoted to the virtue of justice. According to Griffiths, not only is the subordination of lying to justice made clear in Aquinas’s structure, but Aquinas also makes explicit mention of this connection by saying that the virtue of truthfulness is “annexed” to justice.<sup>49</sup> Griffiths thus suggests that Aquinas’s view is a ‘mistake’, since justice is a complex matter and the subordination of truthfulness to justice cannot hope to retain the rigorism of Augustine’s absolute rule.<sup>50</sup>

I would respond to Griffiths’s objection on behalf of Aquinas in the following way. While there exists an association between truthfulness and justice because they both, as Aquinas says, have something in common, this does not negate the possibility that truthfulness as a virtue might contain within itself its own moral absolute.

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<sup>49</sup> See *ST* II-II q.109 a.3.

<sup>50</sup> Griffiths, 174.

Truthfulness is related to (and therefore ‘annexed’ to) justice, according to Aquinas, for two reasons. First, a lie is always directed towards another person and thereby must have some relationship to justice.<sup>51</sup> Second, lies are, according to Aquinas, always in violation of what he calls the ‘moral debt’ (*debitum morale*). “This virtue does not regard legal debt,” he says, “which justice considers, but rather the moral debt, in so far as, out of equity, one man owes another a manifestation of the truth.”<sup>52</sup> The absolutist tone conveyed here suggests that this ‘moral debt’ is not a debt that arises based upon particular circumstances, but rather a standing debt which every human agent owes to every other person. This debt is incurred because every human being lives under the natural law, which confers an obligation to abide by the natural and moral orders and, specifically, the special order relating to truthfulness. Therefore, Aquinas might say that the debt we bring upon ourselves when we enter into conversation with another human being is, at a minimum, a duty to abide by the rule against lying.

Francisco Suarez, a 16<sup>th</sup> century Thomist and Jesuit scholastic, similarly argues that lies are in violation of the natural law. Suarez, while explaining the natural law and the intrinsic character of certain moral actions, says,

Lying, for example, is not evil because it is adjudged by reason to be evil; rather, the converse is true, that lying is adjudged evil because it is essentially evil; therefore, it is not judgment that measures the evil of this action, and consequently, it is not a prohibitory law on the subject. Wherefore other conclusions may be proved by the converse reasoning, as follows: the action in question is evil for this reason, namely, that in its very essence it is out of harmony with rational nature; hence, [that] nature itself is the standard by which this action is measured, and, consequently, that nature is the natural law.<sup>53</sup>

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<sup>51</sup> *ST II-II* q.109 a.3.

<sup>52</sup> *Ibid.*, “*haec virtus attendit debitum legale, quod attendit iustitia, sed potius debitum morale, in quantum scilicet ex honestate unus homo alteri debet veritatis manifestationem.*”

<sup>53</sup> Suarez, Francisco. *Selections from Three Works*, trans. Gwladys Williams et al. vol. II (English Translation), *De Legibus, ac Deo Legislatore* (1612) (Oxford: Clarendon Press, 1944), II. v.3., 179.

Suarez argues that some acts, such as lying, are evil for no other reason than for the fact that they are intrinsically disordered and therefore contrary to the natural law. In this way it can be said, as Aquinas does, that lying is ‘unnatural and undue:’ unnatural because it is always opposed to the natural order, and ‘undue’ because it is *always* opposed both to the moral order and *the virtue of justice*.

For many, Aquinas and Suarez’s defeasible notion of the natural law might seem entirely unsatisfying. Furthermore, the fact that an absolute rule against lying does not square with the moral intuitions of most people makes his claim even more troublesome.

Yet Suarez insists that the natural law ‘embraces’ our proper moral principles.<sup>54</sup>

According to Suarez, such rules fall under the category of moral conclusions “which cannot become known save through rational reflection.”<sup>55</sup> Within this category, some are more easily recognized, he says, such as adultery and theft. Others, however, “require more reflection, of a sort not easily within the capacity of all.”<sup>56</sup> The moral principle which prohibits lying in all circumstances, the absolutist tradition insists, is one such principle.

## **5.6 KANT: LIES ANNIHILATE HUMAN DIGNITY**

Among the philosophers that make up the absolutist tradition, Kant is sometimes thought to have expressed the absolutist position most rigorously. Of the many times Kant discusses the rule against lying, his strictest treatment is found in his “Doctrine of Virtue,” published in 1797. Written seven years before his death, the “Doctrine of Virtue” was the final book of his *Metaphysics of Morals*, his last major treatise on ethics. The

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<sup>54</sup> Ibid. II.vii.4, 210.

<sup>55</sup> Ibid. II.vii.5, 211.

<sup>56</sup> Ibid.

chapter entitled “The Human Being’s Duty to Himself Merely as a Moral Being” begins with the following statement: “The greatest violation of a human being’s duty to himself... is the contrary of truthfulness, lying.”<sup>57</sup> Here, Kant asserts that the practice of lying must always be condemned because “By a lie a human being throws away and, as it were, annihilates his dignity as a human being.”<sup>58</sup> This dignity, according to Kant, grounds the universal duty that we all share: to treat every human person always as an end, including humanity in one’s own person. By lying, he says, we make *ourselves a mere means* to some hypothetical end that is only possible, and for this reason, lying is always wrong.

According to Kant, a person uses himself *only* as a means every time he tells a lie, treating himself as a kind of ‘speaking machine.’ By doing so, the liar is in violation of a moral duty to himself:

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 obligation to himself to *truthfulness*.<sup>59</sup>

As a moral being we are always, Kant says, under the obligation to fulfill the duty always to be truthful.<sup>60</sup> One part of this duty is to refrain from telling lies, a perfect duty. Like other perfect duties to oneself, lying is always impermissible because the moral law

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<sup>57</sup> Kant, *Metaphysics of Morals* (henceforth *MM*), 6:429.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, 6:430.

<sup>60</sup> For a more detailed explanation of the perfect-imperfect distinction, see James Edwin Mahon, “Kant and the Duty Not to Lie,” *British Journal for the History of Philosophy* 14 (2006): 669.

restricts us in a way that is irrevocable, regardless of the benefits we otherwise would imagine that our falsehoods could bring about.<sup>61</sup>

Presumed, expected, or foreseen consequences are for Kant therefore irrelevant.<sup>62</sup>

Likewise, the wrongness of lies have nothing to do with consequences; even the harm that the liar does to himself fails to provide the grounds for why lies are always wrong.

Kant states,

[S]ince 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. Neither is the harm that a liar brings upon himself; for then a lie, as a mere error in prudence, would conflict with the pragmatic maxim, not the moral maxim.<sup>63</sup>

Lies receive their intrinsic wrongness, says Kant, not from practical concerns such as the damage to one's personal reputation. Rather, lies are wrong because they violate the moral law, the source of dignity in each human person:

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.<sup>64</sup>

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<sup>61</sup> *MM* 6:429. For Kant, the concept of duty is fundamental to his moral philosophy, in part because desired consequences, such as the avoidance of harm, have no bearing on an act's moral worth. Acting *from duty* – that is, conforming oneself to the objective moral law – is therefore the only criterion of morality.

<sup>62</sup> On the irrelevance of consequences and how dignity is, by comparison, infinitely more important, Kant says, “Has not every even moderately honorable man sometimes found that he has abstained from an otherwise harmless lie by which he could either have extracted himself from a troublesome affair or even procured some advantage for a beloved and deserving friend, solely in order not to have to despise himself secretly in his own eyes? When an upright man is in the greatest distress, which he could have avoided if he could only have disregarded duty, is he not sustained by the consciousness that he has maintained humanity in its proper dignity in his own person and honored it, that he has no cause to shame himself in his own eyes and to dread the inward view of self-examination?” Kant, *Critique of Practical Reason* (henceforth *CPrR*), 5:87-88.

<sup>63</sup> *MM* 6:429.

<sup>64</sup> *Ibid.*

Herein lies the wrongness of every deliberate falsehood: the liar is essentially throwing away his rational nature, the same rational nature that makes every human being hold immeasurable worth. As such, lying is always unreasonable.

Kant's argument that lies ultimately are contrary to reason relies not only upon his notion of human dignity, but also upon his concept of personality.<sup>65</sup> In the *Metaphysics of Morals* he says,

[C]ommunication of one's thoughts to someone through words that yet (intentionally) contain the contrary of what the speaker thinks on a subject is an end that is directly opposed to the natural purposiveness of the speaker's capacity to communicate his thoughts, and is thus a renunciation by the speaker of his personality.<sup>66</sup>

Lying, according to Kant, is both an annihilation of one's dignity and a renunciation of one's personality. The significance of one 'renouncing his personality' is found in his *Groundwork*, where he introduces his 2<sup>nd</sup> formulation of the Categorical Imperative – the principle that humans must always remain as an end in themselves:

A human being alone, and with him every rational creature, is an *end in itself*... hence this subject is to be used never merely as a means but as at the same time an end. We rightly attribute this condition even to the divine will with respect to the rational beings in the world as its creatures, inasmuch as it rests on their *personality*, by which alone they are ends in themselves.<sup>67</sup>

According to Kant, human beings are ends in themselves because of their 'personality,' which for him means that they are both *rational* and *accountable* beings. This term, 'personality,' differs in an important way from Kant's more widely recognized term 'humanity.' Humanity conveys only man's dignity – that is, his immeasurable worth. It is

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<sup>65</sup> We should note that in Kant's ethics, 'reason' is the distinctively human faculty that makes the moral law the 'determining ground of the will' for all men and which gives men access to the moral law. This access is in Kant's words "natural to even the most common human reason and is easily observed." See *CPrR* 5:72 and 5:87.

<sup>66</sup> *MM* 6:429.

<sup>67</sup> *CPrR* 5:87.



in man's personality, however, that man has both dignity *and responsibility* (for his actions).<sup>68</sup>

So when a person lies and thereby renounces his personality, he is rejecting two things: (1) his dignity, and (2) responsibility for his actions. One renounces his dignity when he makes himself a means rather than an ends. This is because dignity is inseparably tied to man's existence as a 'moral being.'<sup>69</sup> Every lie, since it involves using oneself as a mere means, is a rejection of one's dignity. A lie also involves, as it were, an attempt to escape culpability as a moral being. The liar's false self, which Kant describes as a mere "deceptive appearance of a human being," is in some sense an attempt to feign what would otherwise appear to be an outward desire to be morally accountable.<sup>70</sup> This is because when a person lies, he is both claiming to be truthful while at the same time pretending that the beliefs he has falsely expressed are imputable to him, when in reality they are not. So in a lie, the liar prevents his actual beliefs from being attributed to him by asserting false beliefs in their place. In this way, a lie involves an attempt to hide one's own moral culpability.

A lie is therefore, according to Kant, intrinsically wrong on two accounts. First, by making the self a mere means, the liar attempts to throw away his dignity, a dignity he receives by virtue of being a moral agent who is being capable of living in accordance with reason. Second, the lie is also an attempt to free oneself from accountability to the

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<sup>68</sup> According to Kant, 'animality' applies to man in so much as he is a 'living being'; 'humanity' pertains to "him as a living being and at the same time *rational* being"; and finally 'personality' refers to "that of a being who is rational and at the same time *capable of imputation* [of actions to him]." See Kant, *Religion within the Bounds of Reason Alone*, 6:26.

<sup>69</sup> *MM* 6:430.

<sup>70</sup> *Ibid.*, 6:429.

moral law, and so a person that lies does so in spite of the responsibility that pure practical reason demands of him.

### **5.7 CONCLUSION: LIES ULTIMATELY ARE UNREASONABLE**

The four philosophers I have chosen to examine from the absolutist tradition each maintain that lies are evil-in-themselves, and therefore, according to each, it is never morally permissible to lie. Furthermore, within all of the preceding arguments save perhaps Aristotle's, the arguments ultimately posit that lies are fundamentally opposed to right reason. Augustine says that lies are duplicitous and to act duplicitously while extending an invitation to trust is to act unreasonably. Aquinas says that lies are contrary to the natural and moral orders, orders based upon right reason. Kant says that lies are violations of human dignity, and since the source of dignity is the human capacity to make moral judgments rationally, that violation is, as it were, an offense against reason itself. In this way, the tradition speaks with one voice. This fundamental claim is that the intentional assertion of falsehood is never morally reasonable, a conclusion that, as a perfect duty and a moral absolute, forms the foundation of the virtue of truthfulness.

## CHAPTER SIX

### OBJECTIONS TO THE RULE AGAINST LYING

Despite the fact that ‘lying’ is a pejorative term and that calling someone a ‘liar’ is perhaps one of the most offensive things that can be said, most people nonetheless balk at the idea of maintaining this as an absolute rule. As terrible as lying might seem, many are uncomfortable with any attempt to apply the rule universally, and for this reason it is not unusual to hear the same standard refrain of counterexamples. One such counterexample is deception in war.<sup>1</sup> Jon Latimer, in his book *Deception in War*, makes his own appeal to the various counterexamples in the following way:

Everybody employs deception at times, either to gain an advantage or for more altruistic reasons. Although adults reprimand their children for lying, they themselves lie all the time, especially to their children. Deception is such an integral part of our lives that we often fail to recognize it.<sup>2</sup>

The first thing to notice, in light of what I have said in the preceding chapters, is that Latimer suggests deception and lying are interchangeable terms, an idea the absolutist tradition rejects. This is rather expected, since non-absolutists are likely to cling to one of the two definitional categories of lying that add conditions to the rule, such as ‘the intent to deceive.’ Those who hold views similar to Latimer might say that if a lie is simply a statement that intends to deceive and if the essence of lying is therefore deception, then there is no moral difference between deceiving and lying.<sup>3</sup> Thus, since deception is

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<sup>1</sup> See for example Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1999), 135-145 and Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Indianapolis: Hackett, 1981), 315.

<sup>2</sup> Jon Latimer, *Deception in War* (Woodstock, NY: Overlook Press, 2001), 1-2.

<sup>3</sup> Latimer’s view is common in the 20<sup>th</sup> century literature on military deception. In addition to Latimer’s book, see also J. C. Masterman, *The Double-Cross System in the War of 1939 to 1945* (New Haven: Yale

inescapable in war, it seems that it is impossible to hold the rule against lying as a moral absolute.

Yet from the point of view of the absolutist tradition, and for that matter anyone who holds truthfulness to be a virtue, Latimer's understanding of what constitutes a lie is wrought with problems. 'Lying' and 'deceiving' cannot be used interchangeably. If they are, the result is either accepting certain intrinsically evil acts as 'necessary' or allowing exceptions to the rule against lying, which (if truthfulness is held as a virtue) results in contradiction.

As such, the focus of this chapter will be to address a few of the most vexing counterexamples to the rule against lying. In doing so, this chapter will attempt to illustrate the boundary between what the absolutist tradition suggests is a lie and what is not, distinguishing lying from other forms of deception that also involve methods of communication, some of which may be morally justifiable. By examining these counterexamples and responding to them on behalf of the absolutist tradition, this chapter will attempt to shed further light on the virtue of truthfulness. It will also suggest that there is a close correlation between the virtue of truthfulness and the virtue of courage.

## **6.1 WHITE LIES AND OTHER SO-CALLED HARMLESS LIES**

Among the terms in our modern moral lexicon that are used to describe lies, the term 'white lie' perhaps ranks as the one least likely to be condemned. White lies are lies that appear entirely harmless, either because the good that the lie might accomplish pales in comparison to the infraction committed or because the lie is thought to be relatively

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University Press, 1972); J. Bowyer Bell and Barton Whaley, *Cheating and Deception* (New Brunswick, NJ: Transaction Publishers, 1991); Barton Whaley, *Strategem: Deception and Surprise in War* (Boston: MIT Center for International Studies, 2007); Anthony Cave, *Bodyguard of Lies* (New York: Harper and Row, 1975); and Bok, 135-136 .

free from negative consequences.<sup>4</sup> According to Sisella Bok, these lies are “the most trivial forms that duplicity can take.”<sup>5</sup>

Yet the success of Bok’s claim partly relies upon the assumption that the essential characteristic of deceptive acts and lies are ultimately the same, a conclusion that follows naturally from her own definition of a lie. “A lie,” she says, “is a false statement told with the intent to deceive.”<sup>6</sup> Bok’s definition makes intended deception a necessary condition for a lie, thereby suggesting that lies are merely a species of deceptive acts. If a lie is simply a type of deceptive act, then it is difficult to understand why a special type of wrongness suddenly arises simply because an intent to deceive accompanies a statement. Henry Sidgwick, the 19<sup>th</sup> century utilitarian, makes this point when he says, “if deception is to be practised (sic) at all, it is mere formalism to object to one mode of effecting it more than another.”<sup>7</sup> In other words, if lies are deceptive acts, then the rule against lying appears arbitrary when we consider that many types of deception are practiced regularly without a second thought given to them (eg. deceptive acts in war).

Sidgwick, in his defense of white lies, therefore appeals to the notion that since deceptions are often justified, lies may likewise sometimes be permissible. Calling into question the rule itself, he suggests that lies may be justified in the same way as deceptions by using a similar calculus, a utilitarian one.<sup>8</sup> Among the examples of licit lies he names are those told to children and the sick. He says,

Most persons would not hesitate to speak falsely to an invalid, if this seemed the only way of concealing facts that might produce a dangerous

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<sup>4</sup> Bok, 57.

<sup>5</sup> Ibid.

<sup>6</sup> See for example Sisella Bok’s definition. Ibid., 13.

<sup>7</sup> Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Indianapolis: Hackett, 1981), 317.

<sup>8</sup> Sidgwick says, “The duty of Truth-speaking is sometimes taken as a striking instance of a moral rule not resting on a Utilitarian basis.” Ibid., 448.

shock... (or) to children, on matters upon which it is thought well that they should not know the truth.<sup>9</sup>

According to Sidgwick, when it comes to lying no other principle seems to square with 'Common Sense' except the utilitarian calculus. As such, a weighing of costs and benefits is necessary:

I do not see how we can decide when and how far [lying] is admissible, except by considerations of expediency; that is, by weighing the gain of any particular deception against the imperilment of mutual confidence involved in all violation of truth.<sup>10</sup>

Sidgwick recognizes the fact that deception can damage mutual confidence, but he also believes that damage can be outweighed by the benefit produced by the deceptive act. Because such considerations might also eclipse the damage done to 'mutual confidence' as a result of a lie, he concludes that the rule against lying is far from absolute.<sup>11</sup>

The problem that Sidgwick presents, then, is that what appears to be the trivial nature of some lies is often far outweighed by the benefit that can be gained. Livy provides a colorful example from military history of victory snatched from the jaws of defeat thanks to what some might think was a clever white lie told to a Roman army at the battle's decisive point:

The Romans, whose paucity of numbers made them more sensible of their loss, would have retreated had not the consul called out that the enemy on the other wing were in flight, and by this well-timed falsehood roused the army to fresh effort. They made a charge and converted a supposed victory into a real one.<sup>12</sup>

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<sup>9</sup> Ibid., 316.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 317.

<sup>12</sup> Livy, *History of Rome*, II.64.

Why should a general not be permitted to tell a falsehood to his own troops if the lie could in fact secure victory? Aren't white lies in such cases justifiable, and wouldn't the soldiers to whom the falsehood has been told, in retrospect, commend the subterfuge?

Responding to this objection – one that argues for the profitability of an occasional white lie – is indeed difficult. The first thing to point out is that Sidgwick and other proponents of white lies are not attempting to alter the definition of a lie in order to account for the permissibility of such acts. A harmless lie is still a lie, so it must be stated rather clearly that what Sidgwick and others propose is to grant exceptions to the rule. Allowing exceptions to the rule against lying, however, makes even those with utilitarian sympathies somewhat uncomfortable. Sidgwick concedes, “neither is Utilitarianism decided, as the utility of maintaining a general habit of truth-speaking is so great, that it is not easy to prove it to be clearly outweighed by even strong reasons for violating the rule.”<sup>13</sup> Here we see Sidgwick recommending a rule-utilitarian position, one that recognizes the long-term utility of adhering to the rule against lying. But if that is the case, at what point is the cost of breaking the rule outweighed by the benefit?

Augustine might respond on behalf of the absolutist tradition by insisting that even seemingly harmless lies nevertheless do damage to faith, and violations of faith always carry a serious consequence. Augustine says, “when regard for truth has been broken down or even slightly weakened, all things will remain doubtful.”<sup>14</sup> Elsewhere, he says, “Do you see where this evil tends? It tends not only to make us appear suspect to them and them to us, but it tends, and not without cause, to make every brother appear

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<sup>13</sup> Sidgwick, 449.

<sup>14</sup> Augustine, *De Mendacio*, 10 (PL 40): “*Fracta enim vel leviter diminuta auctoritate veritatis, omnia dubia remanebunt.*”

suspect to every brother.”<sup>15</sup> It is possible that a lie told by a father to his children or by a general to his troops, regardless of the apparent good accomplished, can nonetheless cause those to whom a lie has been told to wonder whether future assertions, whether coming from the general or from (for that matter) anyone else, can be believed. This doubt can undermine not only all assertive conversations in general, but also all promises, since the result is that the good word of truthful men will fall into question.

Augustine also provides a more direct answer to the utilitarian objection with the following comment, appealing indirectly to the Pauline principle (‘do no evil so that some good might come about’).<sup>16</sup> If it is permissible for the goodness of the outcome to outweigh the wrongness of lying, he says,

[W]hy do we not suppress authentic wills and testaments and put false ones in their place, so that the unworthy, who would do no good with their inheritances and bequests, may be deprived of them in favor of those who feed the hungry, clothe the naked, welcome travelers, ransom captives, and build churches?<sup>17</sup>

Here, in an appeal to our moral intuitions, Augustine suggests that there are times when there seems to be every good reason to allow exceptions to what we otherwise know to be wrong, but still we do not.

False assertions, Augustine argues, are evil acts that we know are wrong no matter how much good we presume they might accomplish. Lies, furthermore, are not to be confused with those situations we avoid that *seem* evil.<sup>18</sup> For this reason, he says,

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<sup>15</sup> Augustine, *Contra Mendacium*, 4 (PL 40): “*Videsne quo tendat hoc malum? ut scilicet non solum nos illis, ipsique nobis, sed omnis frater omni fratri non immerito videatur esse suspectus.*”

<sup>16</sup> *Supra* 19. Cf. Romans 3:8. The principle is often expressed as ‘no means *mala in se*,’ is also a central tenet of the Just War Tradition. See for example Brian Orend, *The Morality of War* (Toronto: Broadview Press, 2006), 123.

<sup>17</sup> *Ibid.*, 144.

<sup>18</sup> Augustine says, “Of course, it makes a difference for what reason, for what end, with what intention anything is done. But, those things that are clearly sins ought not to be done under any pretext of a good



[S]ometimes a result must be accomplished by a lie, which one detests, in order that something more detestable may be avoided. In regard to this concession, however, men make a mistake, because they substitute things that are worthless for those that are precious. For, when it has been granted that a certain evil may be done in order to avoid a greater evil, then each one proceeds to measure evil, not according to the norm of truth, but according to his own desire and habit. Hence, he considers that evil greater which he himself dreads more, not that which actually should be avoided more.<sup>19</sup>

According to Augustine, men sometimes wrongly judge other things to be worse than lies. Therefore, they lie so that some dreaded thing might be avoided, but in doing so they sacrifice their integrity and virtue, which are priceless. Thus, they *commit* evil in order to *avoid* what is thought to be a greater evil, but what they fail to realize is that this choice is in fact misguided.

If Kant was to respond to the white lie objection on behalf of the absolutist tradition, he would likely state his answer somewhat differently. According to Kant, the rule against lying is a perfect duty to oneself. As such, harm need not be present for a lie to be wrong, and for this reason the wrongness of a lie is expressed in relation to the liar himself. He says,

Lying... need not be harmful to others in order to be repudiated; for it would then be a violation of the rights of others. It may be done out of frivolity or even good nature; the speaker may even intend to achieve a really good end by it. But this way of pursuing this end is, by its mere form, a crime of a human being against his own person.<sup>20</sup>

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reason, for any supposedly good end, with any seemingly good intention.” Augustine, *Contra Mendacium*, VII (PL 40), 143.

<sup>19</sup> Augustine, *De Mendacio*, 18. “*interdum mentiendo faciendum esse quod oderis, ut quod amplius detestandum est devitetur. Sed in hoc errant homines, quod subdunt pretiosa vilioribus. Cum enim concesseris admittendum esse aliquod malum, ne aliud gravius admittatur; non ex regula veritatis, sed ex sua quisque cupiditate atque consuetudine metitur malum; et id putat gravius, quod ipse amplius exhorrescit, non quod amplius revera fugiendum est.*”

<sup>20</sup> Immanuel Kant, *The Metaphysics of Morals* in Mary Gregor, ed. and trans., *Immanuel Kant: Practical Philosophy* (New York: Cambridge University Press, 2009), 6:430.

Lies, he says, always destroy the dignity of humanity within one's own person. To have 'dignity,' Kant says, is to be without price and therefore have immeasurable worth.<sup>21</sup> So even if Kant allowed for the rule-utilitarian's weighing of the rule against the good that can be accomplished, which he does not, Kant would nonetheless resist such weighing and instead insist that human dignity can never be weighed against the desire that some good be accomplished. Human dignity, Kant would say, is incommensurable, and therefore it is always wrong to 'annihilate one's dignity' by telling a lie, no matter how harmless the lie might seem or how much good it might accomplish.

## 6.2 HALF-TRUTHS

Another objection to the absolute rule against lying might begin in the following way. It seems that in order to maintain the rigorism of the absolutist position, the absolutist must permit some hiding, bending, or contorting of the truth in order to account for situations where deception seems clearly justified. In other words, it seems possible to be less than straightforward toward someone but yet to treat them justly. Plato provides one example:

Everyone would surely agree that if a sane man lends weapons to a friend and then asks for them back when he is out of his mind, the friend shouldn't return them, and wouldn't be acting unjustly if he did. Nor should anyone be willing to tell *the whole truth* to someone who is out of his mind.<sup>22</sup> (my emphasis)

Plato suggests it would be wrong to enable an insane man to harm himself or others, so to deceive him by withholding the truth would be just. Thus, if the whole truth should not always be told, then omitting some truths, it seems, may be morally justifiable.

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<sup>21</sup> Kant, *Groundwork of the Metaphysics of Morals* (henceforth *MM*) in *ibid.* 4:434.

<sup>22</sup> Plato, *Republic*, trans. G.M.A. Grube in *Complete Works*, ed. John Cooper (Indianapolis: Hackett Publishing, 1997), Book I, 331c.

Yet according to Sisella Bok, this way of thinking arises only because some have insisted upon what she takes to be an overly-strict standard (ie. the exceptionless rule against lying). She remarks rather cynically, “Whenever a law or rule is so strict that most people cannot live by it, efforts to find loopholes will usually ensue; the rules about lying are no exception.”<sup>23</sup> Such loopholes, she suggests, are what we call half-truths.

While Bok and others reject the idea of a distinction between lies and permissible half-truths, Kant considers the distinction morally significant. Kant divides half-truths into two types: *reservatio mentalis* (mental reservation), a form of dissimulation or concealment, and *aequivocatio* (loosely translated as equivocation), a form of simulation.<sup>24</sup> This is consistent with what I suggested in Chapter 2: neither dissimulation (hiding) nor simulation (showing) are evil-in-themselves and therefore it is possible, in some specific instances, for these methods to be justified so long as they do not include lies.

Kant’s explanation of the philosophical basis for permissible half-truths is recorded in his *Lectures on Ethics*.<sup>25</sup> There, it is noted that men have no moral obligation to reveal all that is in their hearts, to have “a mirror in each man’s heart so that his disposition might be visible to all.”<sup>26</sup> Instead, we have an obligation to exercise “prudent reserve.” One of his students attributes the following to Kant:

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<sup>23</sup> Bok, 15,

<sup>24</sup> Immanuel Kant, *Lectures on Ethics* (henceforth *LE*), trans. Louis Infield (Indianapolis: Hackett Publishing, 1963), 229.

<sup>25</sup> There is a caution, however, in using this as a source for Kant. As Bok explains, “Paul Menzer reconstructed and published these student notes in 1924, calling them *Lectures on Ethics*... he especially cautioned against drawing conclusions about Kant’s moral philosophy merely from these notes, since the students taking them were quite unschooled... And it is especially important when it comes to judging Kant’s views on lying. He was extremely stern on this subject in all his published writings.” Bok, n15, 296.

<sup>26</sup> *LE*, 224. Here, Kant references Momus, the god of mockery and censure, who demanded that a door be made in the breast of all men so that he might see their secret thoughts.

There is such a thing as prudent reserve, which requires not silence but careful deliberation; a man who is wisely reserved weighs his words carefully and speaks his mind about everything excepting only those things in regard to which he deems it to be reserved.<sup>27</sup>

Kant suggests mental reservation and *aequivocatio* can be used licitly to conceal (if practical wisdom dictates) a portion of one's thoughts, and therefore these methods *can be* applied in exchanges of words, even assertive conversations. Not only does this seem reasonable, but few would deny that the social order depends to some extent upon verbal restraint, since men could hardly live with one another if every person knew what every other person was thinking. If this notion of permissible half-truths is at all plausible, then the next task must be to identify which half-truths can be licit and to compare them with the kind of half-truths that constitutes lies and are therefore always impermissible.

### 6.3 NEWMAN AND EQUIVOCATION

According to John Henry Newman, *aequivocatio* means to intentionally make a statement using words that have two different senses. The term itself, he says, has two senses, one of which is equivalent to the English 'equivocation,' while the other is not.<sup>28</sup> *Aequivocatio*, he says, can be divided into "equivocation properly speaking" (ie. a play on words made while asserting, which is morally impermissible) and "evasion" (ie. justly stating some truth while realizing that the hearer will likely draw an illogical or untrue conclusion).<sup>29</sup> A fairly colorful example involving *aequivocatio* appears in much of the philosophical literature on lying. It is the story of St. Athanasius fleeing from agents of the Roman Emperor.<sup>30</sup> Newman relates the story as such:

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<sup>27</sup> *LE*, 225.

<sup>28</sup> John Henry Newman, *Apologia Pro Vita Sua* (Oxford: Oxford University Press, 1913), 449.

<sup>29</sup> *Ibid.*, 449-450.

<sup>30</sup> See, for example, Alasdair MacIntyre, "Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?," in *The Tanner Lectures on Human Values*, ed. Grethe B. Anderson (Salt Lake City: University of Utah Press, 1995), 336; Bernard Williams, *Truth and Truthfulness* (Princeton: Princeton

[Athanasius] was in a boat on the Nile, fleeing persecution. And he found himself pursued. On this he ordered his men to turn his boat round, and ran right to meet the satellites of Julian. They asked him, Have you seen Athanasius? And he told his followers to answer, “Yes, he is close to you.” They went on their course (as if they were sure to come up to him), and he ran (back) to Alexandria, and there lay hid till the end of the persecution.<sup>31</sup>

While the phrase ‘he is close’ makes the statement true in the literal sense, this was not the meaning that the questioners were expecting. Instead, the emperor’s agents interpreted the answer as meaning ‘Athanasius is just down the river and you are about to overtake him.’ Newman suggests that employing the word ‘close,’ which in this case carries two different senses, is morally justifiable (and according to Newman, therefore, an “evasion”) only if (1) Athanasius was about to be unjustly detained (and therefore he had *justa causa* to mislead) and (2) the statement cannot be counted as a lie (ie. an intrinsically evil act).<sup>32</sup> Since it did seem that Athanasius had just cause to mislead (because, being a saint, his capture was surely unjust!) and that he did not assert contrary to the mind, Newman suggests that his statement does not count as equivocation.<sup>33</sup> If this were true, then Athanasius’s statement would qualify as an evasion and therefore be just, thereby avoiding ‘equivocation’ – the type of half-truth that counts as a lie.

While this distinction seems useful, the remaining question is, ‘What, besides justice, makes certain misleading statements equivocations and others only evasions?’

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University Press, 2002), 102; Peter Geach, *The Virtues* (Cambridge: Cambridge University Press, 1977), 114; and Jennifer Saul, *Lying, Misleading, and What is Said* (Oxford: Oxford University Press, 2012), 2.

<sup>31</sup>Newman, 450.

<sup>32</sup> Following this line of thinking, Kant says, “If a man tries to extort the truth from us and we cannot tell it to him and at the same time do not wish to lie, we are justified in resorting to equivocation in order to reduce him to silence and to put a stop to his questionings.” Kant, *LE*, 229. Kant’s translator here has chosen the word “equivocation,” although it seems Kant likely is instead expressing the equivalent of Newman’s term “evasion” (*aequivocatio* in the morally permissible sense) rather than strict “equivocation,” which Newman recognizes carries an entirely negative tone in the English language.

<sup>33</sup> Newman, 452.

Newman would perhaps answer by explaining the distinction between a formal lie and a material lie, a distinction that has its origin in Aquinas. Aquinas defined formal falsehood as ‘the intention to declare what is false,’ which he contrasted with material falsehood, falsehood that may lack the intent to lie.<sup>34</sup> Newman uses this distinction to propose, rather tentatively, *the possibility* that a material lie may be a permissible means of intentionally misleading by words.<sup>35</sup> For example, in the Athanasius story the words ‘he is very near’ seem to be a material lie inasmuch as the agents of Justin understood the expression as meaning ‘just down the river.’ Thus, judgements about what constitutes a material lie rely in part upon how the statement is understood by the recipient. Conversely, the formal lie involves only what is understood by the speaker, not the recipient, and if that understanding does not correspond to the contents of the speaker’s mind, then it is a lie, strictly speaking (ie. a formal lie). As such, Newman proposes that equivocation in the strict sense *always* includes the intention to lie – that is, that equivocations necessarily include the intention to assert that which is contrary to what one believes true.

Some might object to this distinction between evasions and equivocations as being rather arbitrary. How, some might ask, can Athanasius’s misleading statement be counted as morally justified *aequivocatio* (evasion) and not equivocation? And what is

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<sup>34</sup> Aquinas names the lie’s necessary formal condition as follows: “[T]he meaning of lying is taken from formal falsehood, namely from someone having the intention to declare what is false; this is indicated by the fact that the word ‘mendacium’ is derived from the lie being in opposition to the ‘mind’ [*contra mentem*].” Aquinas, *Summa Theologica* (henceforth *ST*) II-II q.110 a.1: “...*ratio mendacii sumitur a formali falsitate, ex hoc scilicet quod aliquis habet voluntatem falsum enuntiandi. Unde et mendacium nominatur ex eo quod contra mentem dicitur.*”

<sup>35</sup> The material lie may have been what Newman had in mind when he made the somewhat surprising statement, “For myself, I can fancy myself thinking it was allowable in extreme cases to lie, but never to equivocate.” Newman, 452. That he is speaking of material and not formal lies, this is evidenced in the statement that follows. He continues, “Luther said, ‘*Peccata fortiter* [sin boldly].’ I anathematize the formal sentiment, but there is truth in it, *when spoken of material acts.*” (my emphasis)

the difference between Athanatius's use of double meaning and Gentilis's example of the Roman equivocation that resulted in the destruction of Carthage?<sup>36</sup>

One way to sort out this difference is to examine each set of statements in the context of the three criteria of a lie: (1) a material falsehood must occur (ie. the words failed to correspond to what was believed true in the mind of the speaker); (2) the falsehood must be expressed in an assertive context; and (3) the falsehood must be intentional (a formal lie).<sup>37</sup> In this example, one might conclude that the Romans intentionally used the word *civitas* in a way that conveyed falsehood because, as it turned out, they were not in the least bit committed to sparing the city. Therefore, because the Romans were trying to trick the Cathaginians into surrendering by making a false (lying) promise, it seems criteria #1 and #3 are met.

That leaves the second criterion – whether or not the Roman statement constitutes an assertion, since in order for a lie to occur, that which is expressed must be asserted. When something is asserted, the listener understands that a certain guarantee (or implicit promise) is being made that what is being communicated is believed true by the speaker.<sup>38</sup> Furthermore, because assertions are a type of proposition, they must have a truth value. The truth value, of course, is dependent upon the meanings of the terms

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<sup>36</sup> *Supra* 36-7. Gentilis explains that the Roman army made an agreement to spare the city (*civitas*) of Carthage but later destroyed the buildings of the city. The Romans tried to justify their actions afterwards by saying that *urbs* (the buildings) were not part of what is meant by *civitas*, claiming that *civitas* referred only to the citizens and that the citizens had, in fact, been preserved. Alberico Gentilis, *On the Law of War [De Jure Belli]* (1612), trans. John C. Rolfe (New York: Oceana Publications, 1964), II.4, 145.

<sup>37</sup> These criteria are derived from the simple definition established in Chapter 1: a lie is an intentional false assertion. *Supra* 5.

<sup>38</sup> Thomas Carson calls this implicit promise 'warranting.' Such statements can be contrasted with non-assertive statements such as questions, commands, fictions, and jokes. Carson says, "In the context of a work of fiction or when saying something in jest, one is not guaranteeing the truth of what one says." Thomas Carson, *Lying and Deception* (Oxford: Oxford University Press, 2010), 25-6.

expressed. And if the assertion is to be properly understood, these meanings must be mutually shared by both the speaker and the recipient.

The question that equivocations therefore give rise to is, ‘Who is responsible for ensuring that the meanings are mutually shared, and to what extent?’ In the Athanatius example, when his companions asserted ‘he is close to you,’ it seems they bore little responsibility for the false inference of his pursuers.<sup>39</sup> The false inference, one might say, was the result of their own unjust motives, the pursuit of an innocent man. Had the Roman soldiers been Athanatius’s friends, they perhaps would have responded to the statement quite differently, stopping to ask more questions rather than continuing down river in haste. Athanatius’s misleading statement, which nonetheless left open the possibility of proper understanding, did not in itself remove the possibility that his pursuers would make a true inference; it merely confirmed their malice.<sup>40</sup> Following this reasoning, it could be said that Athanatius’s statement was not a lie on two accounts. First, it may have been the case that the statement was not intended falsehood, since it left open the possibility of a true inference (eg. if the Roman soldiers were actually friends). Second, even though the statement was an assertion, it seems that a reasonable person would grant that Athanatius had fulfilled his obligation to establish shared meaning. Therefore, he was not responsible for his pursuers’ mistaken inference.

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<sup>39</sup> I call this a ‘false inference’ because the truth value was false (ie. the understood meaning of the statement did not correspond with the contents of the speaker’s mind). Conversely, ‘a true inference’ would be one that properly corresponds.

<sup>40</sup> Partly for this reason, perhaps, international law permits deceptions in which the communicator bears no responsibility for ensuring that meaning is understood. The military manual states this notion as such: “a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself.” U.S. Department of the Army, Field Manual (FM) 27-10, *The Law of Land Warfare*. Change 1 (Washington, D.C., 1976), para 49.



In contrast, it seems that the Romans in Gentilis's example did in fact fail in their responsibility to ensure that a shared meaning had been established when they made their promise to spare the city (*civitas*) of Carthage. First of all, the Roman statements were made in the context of a formal agreement, and in such instances both parties have a responsibility to ensure that the meanings of all statements are mutually understood, in part because each party is extending to the other an invitation to trust. To enter knowingly into a formal agreement fully aware that certain meanings would be misunderstood is to make a lying promise. Therefore, when the Romans made their assertion, not only did it seem they intended to express what they knew was false, but they also failed to fulfill the fundamental responsibility of the assertive context (ie. shared meanings), and by doing so, they were guilty of equivocation.

The criteria for what constitutes an equivocation, which according to Newman is equivalent to a lie, can thus be derived from the criteria for a lie stated earlier. Criteria #1 (material falsehood) and #3 (intentional falsehood) are retained, and condition #2 (the statement or expression is asserted) should be amended as follows: A statement constitutes equivocation if and only if (1) the falsehood (ie. words failing to correspond to what was believed true in the mind of the speaker) is intentional; and (2) the falsehood is expressed in an assertive context *and in a way that properly fails to fulfill one's responsibility for shared meanings*. Conversely, the criteria for what constitutes licit evasion (a just deceptive act), then, is the following: (1) the act does not include either a lie or equivocation; and (2) there is a just cause for making a misleading statement. Thus, Athanasius's reply can, in light of Newman's distinction, be properly called an evasion and not equivocation (a lie).

#### 6.4 MENTAL RESERVATION AND THE PROBLEM OF FULL DISCLOSURE

The next type of half truth to examine involves a form of concealment called mental reservation. Recall that the definition of a lie used in this dissertation is the following: *A lie is an assertion made contrary to what the speaker believes to be true.*<sup>41</sup> This definition requires that the contents of one's mind correspond to what is being said, and if this condition fails to obtain, the false assertion, it seems, is a lie. Yet, in the fullest sense, this is a hopelessly unrealistic demand. We speak in sentences, and it would be impossible to express the entire content of one's mind in a single sentence. Some things must be omitted, and necessarily so. Consequently, some things, it might be said, are always kept in reserve within the mind – hence the term, *reservatio mentalis*.

Yet in the literature on lying and deception, the term mental reservation has a narrower connotation and its tone is often quite negative.<sup>42</sup> Mental reservation in this context, often called 'strict mental reservation,' involves the omission of some fact or belief that, if added, would alter the truth value of a statement to make it true.<sup>43</sup> One example would be if I were to say "There are no Jews hiding in my house" but in my mind added the qualification "that is, Jews who deserve to be executed."<sup>44</sup> Such statements, it seems, are clearly lies, since the assertion corresponds to a belief about a known state of affairs (ie. that the person is in fact hiding in the house), yet the speaker

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<sup>41</sup> *Supra* 5.

<sup>42</sup> See for example Bok, 35-7.

<sup>43</sup> Thomas Slater, "Mental Reservation," *The Catholic Encyclopedia* vol. 10 (New York: Robert Appleton Company, 1911). Accessed 17 Jun 2015. <<http://www.newadvent.org/cathen/10195b.htm>>

<sup>44</sup> I am indebted to Peter Pagan for this example.

intends that the statement lack what is needed to make it true. Thus, the statement is intended falsehood, a lie.<sup>45</sup>

When mental reservation does not include intended falsehood, however, it avoids meeting the three criteria of a lie. Likewise, the speech act or expression may be morally permissible. Some call this form of mental reservation ‘wide mental reservation’ and have suggested that this method of communication can be a means of licit deception.<sup>46</sup> This is because, following the original meaning of *reservatio mentalis*, there seem to be instances in which statements that omit or conceal some truths may be morally justified.

The following pair of examples help illustrate the idea that some wide mental reservation may be morally justified. Imagine a mischievous son who is caught by his parents sneaking out his window in the middle of the night. He answers the question ‘Where do you think you’re going?’ with the statement ‘I’m going out into the yard for some fresh air.’ While it is true that he was going into the yard, the son omits the fact that the trip across the yard was only the first leg in his trip to a party at a friend’s house. Imagine now an American soldier who, while attempting to escape a prison camp, was caught by a North Korean guard. In the subsequent questioning, the interrogator asks the same question, and the American soldier gives the same answer as the wayward son. In neither case do the respondents seem to employ strict mental reservation, since their intentions did in fact include ‘going outside’ and the statements themselves need nothing else added to be true. Consequently, both seem to employ wide mental reservation as a means of concealing the *full* truth.

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<sup>45</sup> Often described as an invention of Catholic casuistry, strict mental reservation was nevertheless formally condemned by Pope Innocent XI in 1679. Julius Dorszynski, *Catholic Teaching about the Morality of Falsehood* (Ph.D. diss., Catholic University of America, 1949; Reprint, Createspace: 2011), 29.

<sup>46</sup> *Ibid.*, 30.

Yet are both answers morally permissible? Those that define a lie as ‘a false statement told with the intent to deceive,’ like Sissela Bok, would tend to say that the son and the soldier have lied since they both utter intentionally deceptive statements.<sup>47</sup> While it is true that both respondents make misleading statements, to call them lies not only seems imprecise, but it also seems to ignore the actual point needing evaluation: whether or not it is just, under certain circumstances, to conceal certain facts.

Cases involving mental reservation are better suited for evaluation using the absolutist definition this dissertation has adopted. From that definition, the *criteria for what constitutes a lie* are (once again):

- (1) *a falsehood* (where words/signs fail to correspond to what is believed true in the mind of the speaker)
- (2) *made in an assertive context* (where the speaker holds some degree of responsibility for shared understanding)
- (3) *that is intentional*

First, the words spoken in both examples do correspond, so a reasonable person could say the statement does not involve falsehood. Second, the context is in fact assertive, and a reasonable attempt to establish shared meanings seems to have been made. Third, neither seemed to intend to express falsehood, evidenced by the fact that they both chose a plausible statement that was partially true instead of a statement that was entirely false (eg. “I must have been sleepwaking”). Therefore, one may conclude that neither statement was a lie.

Yet the question of whether both responses were morally justified still remains, a question that requires the implementation of a second set of criteria I shall call the *standards of justified mental reservation*, which incidentally are the same criteria I would

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<sup>47</sup> See Bok 12.

assign to instances of *justified deception*. These criteria are equivalent to the ones used in the previous section to suggest that the Athanatius statement was morally justified.<sup>48</sup> I

shall now state them formally as such:

- (1) the act or utterance cannot be counted as a lie or perfidy (ie. an intrinsically evil act)
- (2) a *justa causa* to mislead or conceal the truth must be present

As noted, a rather convincing case can be made to absolve both the son and the soldier of lying. Assuming this is correct, the first criterion is met. What remains, then, is a determination of whether the son's concealment of his true intentions meets the demands of justice (arguably no) and whether the soldier's dissembling is just (arguably yes). Therefore, by applying the two criteria to each example we might conclude that the soldier's answer constitutes licit wide mental reservation while the son's reply is illicit wide mental reservation and is therefore not properly truthful. (Given the deceptive intention and the fact that it is unjust, the son's concealment of facts would rightly be called a deceitful act.)

The distinction between just and unjust mental reservation is further demonstrated by what is described in the West Point Honor manual as 'social tact.'<sup>49</sup> This idea is roughly equivalent to Kant's notion of 'prudent reserve,' the prudent choice of words expressed in social settings, which spare feelings and demonstrate civility.<sup>50</sup> Kant takes such matters of politeness to be casuistical as long as one's duties toward oneself and others are fulfilled, and by this he suggests that the concealment of true feelings may be

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<sup>48</sup> By morally justified, I mean that the act does not violate a moral absolute while fulfilling the requirements of justice and practical wisdom, the natural law, or in Kantian terms, the categorical imperative.

<sup>49</sup> USCC PAM 15-1, *The Cadet Honor Code, System, and Committee Procedures*, 1-8.

<sup>50</sup> See *ibid* and *LE*, 225.

morally justified. In this way, wide mental reservation offers a licit means of expressing *some* of one's thoughts (since the ones expressed are, in fact, properly truthful) while at the same time omitting those bad or harmful thoughts one should prudently refrain from communicating.

The difference between unjust mental reservation and social tact (sufficiently justified) might be illustrated as such. When my wife asks me if I like her dinner, if I tell her that her burnt meatloaf was 'the best dinner I've ever had', I clearly lie to her. However, I merely conceal some of my true feelings if I say 'the meatloaf is very good', which could very well mean 'Compared to other dinners, this dinner is very good' or 'I'm hungry and I don't mind eating burnt meatloaf.' The fact that I may be somewhat disappointed with the burnt meatloaf is a feeling that I may have prudent reason to conceal. On the other hand, if I conceal other things from my wife in response to other questions, such as 'How is our financial situation?' when the fact is I had recently gambled away our life savings in Las Vegas, I arguably do her an injustice. What is more, by not telling her what has happened when she inquires (or for that matter by not being straightforward with her as soon as the tragedy happens), it is likely I am engaging in a form of dissembling that is not morally justified.

This section has explored the meaning of mental reservation, and in the process I have made a number of distinctions. First, there is one type of mental reservation, called strict mental reservation, which is a lie. Strict mental reservation involves lying because the speaker intends to omit terms that, if added, would make the statement true. In the absence of such terms, the statement is false. The other type of mental reservation is wide mental reservation, a form of conversational concealment that may or may not be morally

justified. Wide mental reservation requires an evaluation of whether or not the omission of certain facts, while engaged in a conversation with another person, is just. If the omission of facts is unjust and the intent to deceive exists, then the act is an illicit deceptive act, an act of deceit.

## **6.5 THE MURDERER AT THE DOOR**

Questions about the permissibility of deception, white lies, half truths, and the rule against lying all seem to collide spectacularly in what is perhaps the greatest of all counterexamples to the absolute rule against lying: the murderer at the door. First voiced by Augustine as a potential counter-example to his own absolutist position, the murderer at the door has for centuries been at the center of the philosophical debate on the ethics of lying.<sup>51</sup> Augustine elaborates on the dilemma by asking us to imagine a situation in which pursuers seek a man we are hiding and they ask us not where he is, but rather whether or not the pursued man is in a certain place. The inquiry, then, demands a simple ‘yes’ or ‘no.’ This, he says, presents a formidable dilemma, for in this situation even our silence betrays our friend:

If we know that he is there, we betray him by keeping our silence or even by saying that we will not tell whether he is there or not. For in this way, the one who is searching realizes that he is there, because, if he were not there, the person who did not wish either to lie or to betray the man would make no answer other than he was not there.<sup>52</sup>

Augustine suggests that both remaining silent and giving a truthful answer betrays the person being pursued, and so some might think the only way out of the dilemma is to give a false answer (a lie).

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<sup>51</sup> Augustine asks, “If anyone should flee to you for protection and you were able to free him from death by a single lie, would you not tell that lie?” *De Mendacio*, V 6 (PL 40), 60.

<sup>52</sup> *Ibid.*, XIII 24 (PL 40), 85.

Yet according to Augustine there is in fact another way to resolve the dilemma. Augustine says the proper way to respond to the murderer is to say, “I know where he is but I will never disclose it.”<sup>53</sup> This answer is neither a ‘yes’ nor a ‘no,’ but rather a true statement that in some sense misdirects the questioner. Because it misleads, the response is therefore a deceptive act under my definition, yet it is one that makes it “possible that the investigator will turn his attention from that place to you, in an effort to induce you to betray where he is.”<sup>54</sup> What Augustine is proposing in this situation is that we should refuse to lie and instead act courageously, even to the point of inviting harm upon ourselves, if need be, in order to protect our friend and avoid lying. He concludes, “Whatever you suffer for this act of fidelity and kindness, then, is not only judged an unmerited but even praiseworthy.”<sup>55</sup> Courage, it might be said, is a willingness to suffer injury for the sake of something greater than oneself. In this situation, Augustine suggests, courage is required to make the morally correct choice.

Some might say that this kind of response to a murderer can easily backfire, and if it does we risk bringing harm upon both our self and our friend. Commenting on the potential ‘harm’ that might come about by our refusing to lie, Augustine says, “the sin belongs to the person who does the deed...he should suffer and courageously endure those things which he is not permitted to prevent by his own sins.”<sup>56</sup> Augustine again suggests that some situations, for reasons outside our control, demand courage from us, perhaps both moral and physical. The thing that we must avoid, first and foremost, is an evil act *our own* doing.

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid., IX 15, 75.



Thirteen centuries later, Benjamin Constant raised the same objection, this time in response to Kant's rigorous rule against lying, complaining that "the moral principle 'it is a duty to tell the truth' would, if taken unconditionally and singly, make any society impossible."<sup>57</sup> The error in this absolute rule, Constant suggests, is that it aids murderers and others who intend to do harm, placing society at a grave disadvantage. Kant, however, disagrees. He says that if there is no duty to tell the truth when a murderer comes to the door, then it would have to be that we instead have *a duty* to lie. If we have a duty to lie, this duty must therefore include as a matter of principle an attempt to bring about "as far as I can, that statements (declarations) in general are not believed." Yet this principle, he says, "harms humanity generally, inasmuch as it makes the source of right unusable."<sup>58</sup> By saying that a duty to lie 'makes the source of right unusable,' Kant is appealing to that concept upon which he believes all societies rely: contracts. He says, echoing both Aristotle and Aquinas, that if the falsification of the truth is a duty, then "all rights which are based upon contracts would lose their force."<sup>59</sup> Thus, a duty to lie to the murderer constitutes an attempt to undermine the very basis of the social order. This maxim (or personal principle of acting) is one that seeks to harm humanity and therefore cannot be compatible with the moral law. Hence, Kant says the duty must be that I may never lie, a duty that Kant argues (instead of making society impossible, as Constant claimed) actually *makes* society possible.

There is yet another way that the murderer at the door example seemingly opposes the absolutist position, one voiced by Henry Sidgwick. In his chapter on the

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<sup>57</sup> Kant, "On a supposed right to lie from philanthropy" (henceforth OSRL) in Mary Gregor, ed. and trans., *Immanuel Kant: Practical Philosophy* (New York: Cambridge University Press, 2009), 8:425.

<sup>58</sup> *Ibid.*, 8:426.

<sup>59</sup> *Ibid.* See Aristotle, *Rhetoric* I.15 1376b 14 and Aquinas, *ST* II-II q.109 a.3 ad. 1.

virtue of truthfulness (veracity), a chapter he likely wrote with Kant in mind, Sidgwick argues that if we are justified using violence to stop a murderer, then surely we are permitted to lie. He says, “so if we may even kill in defense of ourselves and others, it seems strange if we may not lie.”<sup>60</sup> Sidgwick’s argument here appeals to the moral intuition and common belief that we are morally justified to kill in self-defense.

In order to issue a reply to Sidgwick’s claim on behalf of the absolutist tradition, a brief examination of the moral justification for self-defense is necessary. Thomas Aquinas lays out this justification perhaps most famously in the section on murder found in his *Summa Theologica*. Expressed in that text is the criteria that has now become known as the doctrine of double effect.<sup>61</sup> Aquinas’s doctrine permits a private person to *bring about the death* of another human being given that the following conditions have been met:

- (1) that one’s intention is to save one’s own life;
- (2) that the act itself is not intrinsically evil (eg. murder, the killing of an innocent man);<sup>62</sup>
- (3) that the act does not use more violence than is necessary (otherwise the act would be disproportionate).

Applying this criteria to the murderer at the door example, double effect suggests that I may be morally justified using violence to defend myself and others from a murderer who intends to do harm.<sup>63</sup> This is because acts may have two effects, one which is intended

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<sup>60</sup> Sidgwick, 315.

<sup>61</sup> Aquinas, *ST II-II* q.64 a.7.

<sup>62</sup> The Doctrine of Double Effect (DDE) is most often stated as having four criteria. I have chosen to express it as having only three, omitting the Pauline Principle, because the criterion ‘that an evil effect is not brought about as a means to the desired good effect’ is in some sense superfluous, given that all evil acts and effects (by evil, I mean intrinsically so) are already prohibited by criterion #2. See Joseph Boyle, “Toward Understanding the Principle of Double Effect” in P. A. Woodward, *The Doctrine of Double Effect* (Notre Dame: University of Notre Dame Press, 2001), 11-12.

<sup>63</sup> Aquinas, *ST II-II* q.64 a.7. This principle has been applied to the defense of others, given that those being defended are innocent and that their lives are in danger.

and the other which is beside the intention. Aquinas says, since “moral acts take their species according to what is intended, and not according to what is beside the intention,” directing lethal force toward an assailant need not be an act of killing, properly speaking.<sup>64</sup> Rather, it may be properly called an act of self-defense as long as the intention truly is defensive, the means employed are not intrinsically evil (eg. lethal force), and I do not use more violence than is necessary to stop the attacker.<sup>65</sup> If Aquinas’s doctrine is right, then the moral intuition that tells us it is permissible to bring about the death of a murderer in self-defense is only correct inasmuch as the act meets the three criteria of double effect.

Following Sidgwick’s analogy, may the criteria of double effect then be used to justify lying under the same circumstances? At first glance, it seems that it should. Given that the intention is to save one’s own life (or that of another) and that the first criterion is therefore met, we must then ask in light of the second criterion, ‘Is the intended falsehood an intrinsically evil act?’ One could claim this act of communicating falsehood is not an intended lie (an evil act) but rather, like the lethal force applied in the self-defense example that Aquinas provides, an intended act of self-defense.

The problem with this claim, however, is that it seems the proximate intention when one lies to a murderer is actually ‘to intentionally say what is false’ (ie. to tell a lie),<sup>66</sup> evidenced by the fact that the lie is being used instrumentally to mislead the murderer (ie. to deceive) and thereby protect innocent life. Deceiving and protecting are therefore both subsequent ends, whereas the lie (the intentional falsehood) is used as the

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> ‘To intentionally say what is false’, Aquinas says, is the essence of a lie. *ST II-II* q. 110 a.1.

means to accomplish those ends. In contrast, if one uses violence in self-defense, the act itself (ie. lethal force) is not an intrinsically evil act, since the force applied, while capable of causing death, need not bring about death in every case. Furthermore, if the subsequent intention is proper, the act may also be characterized as an act of ‘protecting’ (ie. an attempt to defend or stop the attack), which in turn makes it possible to licitly bring about the murderer’s death so long as it is not intended. In contrast, the lying to defend example uses an evil act (lying) as a means to accomplish the intention of protecting, so the act may be called ‘protecting’ but it must also be called ‘lying.’

One way to test whether the proximate intention may be ‘killing’ rather than ‘applying lethal force’ is to ask whether the defender would be satisfied if he merely disabled the murderer. If disabling the murderer would be an acceptable outcome, then it seems neither the proximate intention nor the intended effect is killing. However, if the act was instead directed toward killing as the proximate intention, it seems the defender would not stop the violence until the murderer had perished (proof that killing is the intention and death is in fact the intended effect). The same could not be said for a lie. Lying is always a proximate intention, so it would be impossible for the lie to be the unintended effect. This is because the lie is the *means* (and as such, the cause) of both deceiving the murderer and defending against him (both effects). Therefore, if lies are intrinsically evil acts as the absolutist tradition maintains, the second criteria cannot be met.

## **6.6 MISGIVINGS: KORSGAARD AND MACINTYRE**

A number of contemporary philosophers have used the ‘murderer at the door’ example to give credence to a non-absolutist position, among them Christine Korsgaard

and Alasdair MacIntyre. Korsgaard, a well-known Kantian scholar, criticizes Kant's rigorism, dismissing his rule against lying as 'ideal theory.' In her essay "The Right to Lie: Kant on Dealing with Evil," she concludes by saying, "it is not feasible always to live up to this ideal, and where the attempt to live up to it would make you a tool of evil, you should not do so."<sup>67</sup> By insisting that the lie told to the murderer at the door is morally justified, she seems to imply one of two things. First, she may be acknowledging that while lying to the murderer is wrong (given what ideal theory proscribes), it is a wrong that under the circumstances must be done in order to stop a greater evil from occurring.<sup>68</sup> If this the case, Korsgaard seems to be advocating, in the style of Machiavelli, a lesser of two evils approach.<sup>69</sup> Second, she could be blending a limited form of consequentialism with her own Kantian thinking, departing from Kant's idealism when it seems that adhering to the categorical imperative would likely lead to "disastrous results."<sup>70</sup> If she is following this second alternative, then her brand of Kantianism is, ironically, in direct opposition to the anti-consequentialism underlying Kant's entire system of ethics. Given the claims she uses to support her argument, it is likely that Korsgaard's position is a mix of both.

Korsgaard's reluctance to accept the absolutist position in the face of the murderer at the door counterexample is shared by others, the Aristotelian Alasdair MacIntyre included. After raising the murderer at the door example, MacIntyre suggests that the rule against lying should be stated as such:

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<sup>67</sup> Christine Korsgaard, "The Right to Lie: Kant on Dealing with Evil," *Philosophy and Public Affairs* 15 (Autumn 1986): 349.

<sup>68</sup> Korsgaard shows further evidence of this when she claims that special principles must be used "when dealing with evil." *Ibid.*

<sup>69</sup> See *Supra* 7, n21.

<sup>70</sup> *Ibid.*, 344.

The rule is therefore better stated as ‘Uphold truthfulness in all your actions by being unqualifiedly truthful in all your relationships and by lying to aggressors only in order to protect those truthful relationships against aggressors, and even then only when lying is the least harm that can afford an effective defense against aggression.’<sup>71</sup>

MacIntyre’s recommendation seems to imply the same two positions I have attributed to Korsgaard – namely, that when faced with an aggressor one should lie because it is better to (1) choose the lesser of the two evils (2) in order to minimize the harmful consequences. In this way, Korsgaard and MacIntyre both argue that it is permissible to lie to an aggressor rather than betray an innocent person.<sup>72</sup>

If Augustine had the opportunity to respond to this composite position adopted by both Korsgaard and MacIntyre, he would perhaps begin by first resisting the lesser evil claim. The idea of a ‘lesser evil’ in this example, he might say, is terribly imprecise, since there is actually only one true evil being deliberated: the lie. This is because the evil, he says, “belongs to the person who does the deed.” Since neither telling the truth nor remaining silent are ‘evil acts,’ the only evil act being considered, strictly speaking, is the lie.<sup>73</sup> As such, refusing to tell a lie is what we must always do.

Underlying Augustine’s position is the presupposition that intrinsically evil acts do in fact exist, lying and murder being two. It may be true that the murderer is about to commit a grievous act, but it is his act, not ours. According to Augustine, our task is to do

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<sup>71</sup> Alasdair MacIntyre, “Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?,” in *The Tanner Lectures on Human Values*, ed. Grethe B. Anderson (Salt Lake City: University of Utah Press, 1995), 357.

<sup>72</sup> Here, I use the word ‘betray’ rather loosely to suggest that both silence and a straightforward answer would both be ‘acts’ – one an act of omission, and the other an act of commission. However, remaining silent would not, in most cases, constitute an act of betrayal, since the immediate intention (from which the act is named) would likely be something other than betraying one’s friend.

<sup>73</sup> Augustine, *De Mendacio* IX 14, 75.

everything in our power to prevent an evil act from occurring *without committing an evil act ourselves*. He says,

[W]e desire to prevent and we do prevent them from doing it so far as lies within our power; not only do we refrain from joining them in their evil doing, but we condemn it as vigorously as we can.

Lying is an evil act while failing to prevent a murder is not. Thus, the lesser of two evils claim is actually a false-dilemma, one that overstates one ‘evil’ (not stopping the murder) while not fully appreciating the moral prohibition against all intrinsically evil acts (such as lying).

In response to the second position held by both Korsgaard and MacIntyre – the consequentialist idea that because we should minimize disastrous effects, on rare occasions we should use harmless lies to prevent a great evil from occurring – Augustine would say, appealing to the Pauline principle, that it is always wrong to “do evil so that good may come from it.”<sup>74</sup> This, according to Augustine, marks the limit of consequentialist thinking: it is permissible and even morally required to act in a way that will bring about a good effect, but it is never permissible to do evil in order to accomplish it.

Furthermore, Augustine might argue that there are some harmful effects that Korsgaard and MacIntyre are perhaps overlooking. By lying, the real harm that occurs does not involve the murderer, but rather the liar harms himself and society in general. Augustine refers to these harmful effects when he describes society’s reaction to the lying friend:

Wishing to be helpful by lying, he is held unreliable when he speaks the truth. Wherefore, either the good are not to be believed, or they are to be believed who hold that a lie is sometimes necessary, or it is not to be

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<sup>74</sup> Augustine, *Contra Mendacium* XV 32, 166. Cf. Romans 3:8.

believed that the good ever lie. Of these three possibilities, the first is dangerous and the second foolish. The conclusion is, then, that the good never lie.<sup>75</sup>

Augustine suggests that we will not fully trust those who lie to murderers, nor will we trust those who say that we should. This is because lies, if told without remorse, kill the soul.<sup>76</sup> Those who are remorseless, Augustine suggests, will continue to commit or endorse the same evil acts, whereas those who have remorse, he believes, will strive to do good in order to make up for their evil.<sup>77</sup> Therefore, as a matter of sound social policy (and sound consequentialist thinking as well), Augustine would perhaps say the only reasonable conclusion is to insist that to be good, we must never lie.

## 6.7 CONCLUSION

The reason why two highly respected contemporary philosophers, each from vastly different philosophical schools, would reject the absolutism of Augustine, Aquinas, and Kant is doubtless the result of the immense challenge the murderer at the door presents. The counterexample comprises, all at once, at least three objections in one. The first involves the strong presumption that murder must be stopped whenever possible, and the absolute rule against lying seems to deny this. Second, it is difficult to see why even so-called ‘harmless’ lies (eg. white lies) should be disallowed given the catastrophic consequences they may be able to prevent. Third, it seems that the murderer

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<sup>75</sup> Augustine, *De Mendacio*, VIII 11, 71. “*volens enim cum mentitur esse aptus, fit cum verum dicit incertus. Quamobrem aut non est credendum bonis, aut credendum est eis quos credimus debere aliquando mentiri, aut non est credendum bonos aliquando mentiri: horum trium primum perniciosum est, secundum stultum; restat ergo ut nunquam mentiantur boni.*”

<sup>76</sup> In *De Mendacio*, Augustine asks, “[A]re you going to give false witness and kill your own soul?” Augustine, *De Mendacio* XIII 22, 83.

<sup>77</sup> Augustine remarks, “It is one thing, I maintain, to say: ‘Because we have already sinned, let us do good,’ and another to say: ‘Let us sin in order to do good.’ The one says: ‘Let us do good because we have done evil,’ but the other: ‘Why should we not do evil that good may come of it?’ *Contra Mendacium* XV 32, 166.



(sometimes characterized as a Nazi) has no right to the truth, and even if he did, it seems that he has forfeited that right by virtue of his evil intention.

Each of these objections has been addressed in detail in the previous two chapters, so to recount how Augustine, Aquinas, or Kant might reply here would be overly repetitive. Yet what may be said in conclusion, on behalf of the absolutist tradition, is perhaps something about the virtue of truthfulness and the effect that exceptions to the rule have on this virtue. Absent a rule against lying that maintains strict absolutism, the virtue of truthfulness seems to be wrought with contradiction. To say that we often must lie in order to be truthful is, by most lights, absurd. However, for those who think that it is impossible to live up to the absolutist ideal, many believe that the only alternatives left are to scoff at the idea of ‘absolute honesty’ or to deny that truthfulness ranks as an actual virtue.

Yet it seems that the virtue of truthfulness need not require that the *full truth* always be told. The tradition maintains, it is true, that lies must always be avoided, but deceptive speech acts or acts of concealment that are morally justified, such as answers that evade the direct line of questions posed by a murderer, may nonetheless qualify as being ‘truthful’ while avoiding lies. Therefore, it seems, there are in fact realistic ways out of the dilemma for those who are ‘absolutely honest.’

The debate over how to respond to the murderer might ultimately involve differences over what constitutes moral courage. For many, this is a matter of faith in absolute moral principles.<sup>78</sup> According to the picture of truthfulness painted by the absolutist tradition, the rule against lying is one such principle. This principle is vividly

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<sup>78</sup> The list of true moral absolutes may indeed be rather short. This dissertation has mentioned only five: prohibitions against lying, murder, adultery, suicide, and theft.

depicted in an actual ‘murderer at the door’ dilemma, recounted by Corrie ten Boom in her book *The Hiding Place*. Sometime in 1942, German soldiers stormed a Dutch house looking for working-age males. Two young men, brothers, were hidden inside a trap door covered by a rug under the kitchen table:

‘Where are your men?’ the shorter soldier asked Cocky in clumsy, thick-accented Dutch.

‘These are my aunts,’ she said, ‘and this is my grandfather. My father is at his school, and my mother is shopping, and –’

‘I didn’t ask about the whole tribe!’ the man exploded in German. Then in Dutch: ‘Where are your brothers?’

Cocky stared at him a second, then dropped her eyes. My heart stood still. I knew how Nollie had trained her children – but surely, surely now of all times, a lie was permissible!

‘Do you have brothers?’ the officer asked again.

‘Yes,’ Cocky said softly. ‘We have three.’

‘How old are they?’

‘Twenty-one, nineteen, and eighteen.’

Upstairs we heard the sounds of doors opening and shutting, the scrape of furniture dragged from walls.

‘Where are they now?’ the soldier persisted.

Cocky leaned down and began gathering up the broken bits of cup. The man jerked her upright. ‘Where are your brothers?’

‘The oldest one is at the Theological College. He doesn’t get home most nights because –’

‘What about the other two?’

Cocky didn’t miss a breath.

‘Why, they’re under the table.’

Motioning us all away from it with his gun, the soldier seized a corner of the cloth. At a nod from him, the taller man crouched with his rifle cocked. Then he flung back the cloth.

At last the pent-up tension exploded: Cocky burst into spasms of high hysterical laughter. The soldiers whirled around. Was this girl laughing at them?

‘Don’t take us for fools!’ the short one snarled. Furiously, he strode from the room and minutes later the entire squad trooped out...<sup>79</sup>

Here, the respondent told the truth, but the brothers nevertheless remained undiscovered because the soldiers understood ‘under the table’ to mean ‘under the draped tablecloth.’

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<sup>79</sup> Corrie ten Boom, *The Hiding Place* (Uhrichsville, Ohio: Barbour Publishing, 1971), 92-93.

They did not imagine that there would be a trap door under the rug, and perhaps neither did they imagine that the little girl would be telling the truth.

Some could claim that her statement ‘they’re under the table’ was not the whole truth and therefore dishonest, but it seems that this kind of diagnosis would be terribly overstated. She *did* tell the truth, and in doing so she accepted the possibility that her brothers might be discovered because of her words. In short, she was courageous.<sup>80</sup> And even if there was any degree of half-truth or concealment involved, most would say that this was clearly justified.

The murderer at the door counterexample having been fully considered, it seems that a general outline of the virtue of truthfulness, albeit in broad brushstrokes, has begun to take shape. According to the absolutist tradition, the basic demand of truthfulness requires that we avoid all lies, but it also requires that we refrain as much as possible from half truths as well, except under such circumstances in which practical wisdom and justice render it permissible.

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<sup>80</sup> Corrie ten Boom attributes the courage demonstrated here to Cocky’s mother, since it was she who trained her children to always be honest and who afterwards insisted, “God honors truth-telling with perfect protection!” Ibid., 93.

## CONCLUSION

### TRUTHFULNESS IN THE MILITARY PROFESSION

After having evaluated the moral arguments provided by the absolutist tradition, it is perhaps worthwhile to conclude by mentioning the practical interest the military has in the virtue of truthfulness. One major reason the U.S. military values truthfulness is because truthfulness builds trust. If a country does not trust its military or if professionals within a military organization do not trust each other, the institution itself risks being dysfunctional. Without trust, a citizenry is likely to doubt whether its military will properly and reliably defend them; without trust, the necessary elements that underlie an effective fighting force, such as unit cohesion, obedience to orders, the willingness to make personal sacrifice, risk being imperiled.

For this reason, trust and the need to build trust is emphasized in current U.S. military doctrine. Army doctrine, for example, describes trust as the ‘bedrock’ of the Army profession, and the U.S. military doctrine for all branches of service goes so far as to suggest that ‘trust’ is the principal reason why military professionals should act ethically and morally.<sup>1</sup> Following this thinking, former chairman of the Joint Chiefs of Staff GEN Martin Dempsey argues that military professionals must uphold the values that underpin our profession *for the sake of building trust*.<sup>2</sup> The values GEN Dempsey is referring to are the ‘joint values’ of the Armed Forces of the United States: duty, honor,

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<sup>1</sup> See for example Army Doctrinal Publication (ADP) 1, *The Army* (Washington D.C., September 2012), 2-1 and Joint Publication (JP) 1, *Doctrine for the Armed Forces of the United States* (Washington, D.C., March, 2013), B-2. (Henceforth JP 1.)

<sup>2</sup> Martin Dempsey, “America’s Military – A Profession of Arms White Paper,” 2012.

courage, integrity, and selfless service. Two of these (honor and integrity) directly relate to truthfulness.<sup>3</sup>

The relationship between honor and integrity as values and truthfulness as a virtue is woven into the etymology of the two former terms. Honor takes its roots from the Latin term *honos*. This term most often translates into English as ‘honor.’ Yet the classical meaning of *honos* is slightly different. Rather than denoting general feelings of respect or esteem, as ‘honor’ often does in English, *honos* in the classical sense instead conveys a sense of *moral respectability*. This is evident in the meaning of its adjective derivative, *honestus*, used to describe those who are morally upright, respected, or *honest*. It is from this term that the English words honest and honesty originate – an origin suggesting the ancients thought truthfulness served as the foundation for all morally respectable behavior.

Similar to honor, integrity also suggests strict adherence to a set of moral principles, one of which is truthfulness. Taken from the Latin *integer*, meaning whole or one, the term integrity implies a sense of moral whole-ness. When communication and agreements are involved, this wholeness – or oneness – is often expressed in the word ‘sincerity’ (from the Latin *sincerus*, meaning clean or pure). Thus, it seems that having integrity and being a sincere person is to have the same essential element: being whole and pure, singular in both thought and word, rather than being duplicitous of heart, outwardly asserting one thing yet believing or intending another. Because such acts of duplicity are not whole or pure, they cannot be called sincere, and neither can they be the mark of true integrity. I mention this connection between integrity, oneness, and purity

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<sup>3</sup> JP 1, B-2.

because the essence of both lying and perfidy, I have said, is to act in a way that is ‘double’ rather than as a unified, integrated whole. This is why Augustine argued that the ‘double heart’ is the interior condition that serves as both the cause of every lie and also the source of its wrongness.

Honor and integrity are also related to one another through the Latin notion of *fides*, the foundational idea that underlies the ancient vocabulary of agreement. *Fides*, most fundamentally, expresses the idea that what is promised will be fulfilled. Translated into English as both faith and trust, *fides* has two senses. The first denotes honest agreements (either explicit or tacit), and this sense involves what I have called ‘good faith.’ To be honest or sincere while making promises is to act in good faith (*bona fides*) – ‘good,’ because the promiser is truthful and genuine in expressing those parts of the agreement he intends to fulfill.

*Fides* in its second sense conveys the expectation that a promise will be fulfilled. This expectation has more to do with reliability and capability than it does with truth. From this expectation, the duty or obligation to deliver on one’s promises receives its moral force. Because there is an expectation that those who promise will deliver on what they have pledged, there is a universal belief that those who make promises *should* do what they say they will do, given that the promise is reasonable and that the promisor has the requisite ability (ie. ‘ought’ implies ‘can’).

Of the two senses the term *fides* bears, it is the first sense that most closely relates to honor and integrity, the two values the U.S. military associates with truthfulness. This is because the first sense expresses the general expectation that a person of integrity is always sincere and truthful when he makes agreements. Likewise, this same expectation

holds for the honorable person. From the general belief this expectation of truthfulness will be fulfilled, which is presumably the U.S. military's aim by naming integrity and honor 'values,' trust is developed, nurtured, and maintained.

For this reason, *fides* can also be translated into English as trust, and by trust we usually mean, most fundamentally, the *belief* in the reliability, truth, ability, or strength of something. When this reliability relates to the truth of one's expressed intentions or thoughts, either through what is promised or in what someone asserts (each assertion, itself, involving a tacit promise), trust in some sense becomes the byproduct of perceived truth, since trust involves *believing in someone* and one such belief is that others are expressing themselves truthfully. In these ways, truthfulness not only relates to *fides*, but it also serves as a prerequisite to *fides*, integrity, and honor, and in turn trust.

A return to the central issue at hand – namely, the subject of truthfulness in the military profession – is at this point apropos. If trust is so important to the military and if truthfulness is so instrumental to building trust, it seems we must identify what it means to be truthful. Throughout this dissertation, I have explored one possibility, inspired by the absolutist tradition, for what constitutes the proper guidelines for this virtue in order to help inform what it means to be truthful as a military professional. Two formidable obstacles have loomed large in the background: the practice known as military deception, which to some seems inherently opposed to truthfulness but at the same time is seemingly so necessary to the prosecution of wars; and misgivings about the contention that lying must be prohibited absolutely.<sup>4</sup>

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<sup>4</sup> Here, I remind the reader of a specific statement from U.S. military doctrine presented in Chapter 1: "never to lie, cheat, or steal." *Supra* 1 n2. From JP 1-0, B-2. In the minds of many, the absolute tone of this rule is troubling. Part of the goal of this dissertation has been to show how this rule can be maintained.

I have argued that to overcome the first obstacle, deceptive acts must be separated into two kinds: those that are illicit and those that are not. In the international law of armed conflict, illicit deceptions fall under the title ‘perfidy’ (false invitations to trust). While international law only explicitly prohibits false invitations to trust that take advantage of an enemy’s willingness to abide by the law of armed conflict (thus making perfidious acts those stratagems that undermine the law itself), there is good reason to believe the rule suggests *all false invitations to trust should be prohibited*. The reason this is the case, I have said, is that every false invitation to trust involves entering into a tacit agreement in bad faith. Breaking faith (in this sense of the term, the sense I have employed throughout) jeopardizes the cessation of hostilities and other formal agreements made between belligerents, because when a belligerent commits a perfidious act, the trust underlying the very ability to make agreements risks being destroyed.

There is a certain imprecision in what has been said that must be highlighted before going any further. Strictly speaking, perfidy is not a type of deception, a point I have emphasized but one that is perhaps glossed over in the military manuals. Deception and perfidy, I have argued, are conceptually distinct, just as deception and lying are, even if it is true that perfidy and lying may most often (or even always) include deceptive intentions. As such, this dissertation has arrived at the following conclusions. Deception (a desired effect, or ‘finishing touch,’ as Aquinas calls it) is untruthful only when an untruthful act (such as lying or perfidy) is used instrumentally to deceive. Furthermore, a perfidious act can never be truthful, because perfidy involves either an explicit lie or an insincere tacit agreement (which is also a lie, so to speak). Thus, if perfidy is used as a



means of deceiving, such as may be the case in war, then that means of deception is always illicit.

The somewhat surprising consequence of this thinking is that not all deceit, which I've defined as any deceptive act that is unjust (and therefore illicit), necessarily violates truthfulness. The reason this is the case is that the desire to accomplish a deception does not by itself violate truth. When a person commits an act of unjust deception (deceit), he fails to be truthful only if he asserts something that is a lie or expresses himself in a way is not properly truthful (such as an unjust half-truth). As such, deceit (properly speaking) violates truthfulness only inasmuch as a lack of truthfulness is enlisted instrumentally to achieve a deception.

From this conclusion – namely, that deceptive intentions and truthfulness must be examined with separate criteria – the dissertation took a first step toward identifying guidelines for the virtue of truthfulness. The next step was to carefully define the class of acts that are always untruthful: lies and perfidy (which is also lie, so to speak). In the Just War Tradition, more attention is paid toward the absolute rule against perfidy than lying, and for this reason the earlier chapters of this dissertation focused on perfidy rather than lying.

It is worthwhile to recall that within the Just War Tradition, the theoretical framework credited with providing much of the foundation for the international law of war, there is disagreement over how broadly the absolute rule against lying and bad faith may be applied. This disagreement occurs between two opposing camps: those that believe the rule should be understood absolutely, and those that believe good faith is a requirement except in cases when the enemy is unlawful, such as in the case of pirates.

This proposed exception is particularly relevant today, given that the U.S. military has in recent years faced unlawful combatants (terrorists and other fighters not sanctioned by a state or other proper authority) more often than it has lawful combatants.

Those within the tradition, such as Hugo Grotius, who on the one hand did not believe the rule should apply to verbal exchanges with unlawful enemies did so by appealing to *what is owed* to such enemies, a question of justice. According to Grotius, pirates have not a right to the truth, and so good faith is not owed to them. This view contrasts with the view held by those who refused to allow exceptions, the absolutists, many of whom did not see bad faith as being contingent upon judgements about justice but instead characterized bad faith as an illicit act that was a reflection of the liar's interior duplicity. Given the definition of lying and perfidy we have employed throughout this dissertation, the first of these two views and the Grotian exception are both problematic. If every act of bad faith involves, so to speak, a lying promise, then it seems the enemy's status as either lawful or unlawful should have no bearing on whether or not a false assertion is a lie or an act of bad faith is perfidy. So while Grotius did not call false assertions to pirates lies but instead *falsehoods*, this diagnosis seems to ignore the fact that a moral absolute must have its own embedded criteria, and that criteria must be based upon the agent's interior intention, which determines the act and what it should be called. Thus, external considerations such as the lawfulness of one's enemy cannot provide the essential criteria for what constitutes a lie if the rule against lying is to be absolute and truthfulness is to be a virtue.

Perhaps for these reasons, Kant argued that 'a right to the truth' is meaningless. This did not mean that truthfulness is never a matter of rights or justice, but rather that the

*definitions* of lying and perfidy – two moral absolutes that can never be reconciled with truthfulness – cannot be contingent upon rights either earned or lost by another.

According to the absolutist tradition, the obligation never to lie may be the result of a moral debt, but it is a debt that always applies. It is not a debt owed to any one person, but a debt to morality itself.

If what defines a lie cannot be contingent upon matters of justice, one of two possibilities remain: lying, and with it acts of bad faith, must always be wrong, or else lies must sometimes be permissible. Yet if the virtue of truthfulness is to be grounded by something greater than the uncertainties of justice or the whims of pragmatic calculation, which we have good reason to believe that it is, then the rule against lying must have both its own criteria and its own reasons for why it is always wrong. This is the central contention of the absolutist tradition.

The strongest arguments in this vein belong perhaps to Augustine, Aquinas, and Kant. Kant argued that the significance of lying is not what the lie does to the recipient, but to the speaker. Every lie, he says, destroys the dignity of the person communicating the lie, and because human dignity has immeasurable worth, all lies are always wrong. Aquinas argued that the intent to lie and the intent to deceive are separate intentions and that all lies are intrinsically evil because lies violate the natural law. Augustine argued that lying is an act of duplicity, an act rooted in the desire to establish a mutual trust insincerely and therefore in bad faith. Because the very order of society depends upon faith (*fides*) and because the ‘double heart’ is inherently undesirable, Augustine says it is always wrong to lie, no matter what good may presumably be accomplished.

From this conclusion, the dissertation arrived at its second proposition: because lying is not consistent with truthfulness and because lies are always wrong, the rule against lying succeeds in providing a warrant for the virtue of truthfulness. This prohibition is helpful, since it provides the most fundamental guideline for how to be truthful in the military profession. Since lying involves deliberately asserting something different from what the speaker believes is true, any attempt to speak falsely is directly counter to being *truth-full* and therefore the virtue of truthfulness. This prohibition applies even when the truth and good faith potentially put someone in danger, as Augustine, Spinoza, and Kant each argue, and for this reason truthfulness often requires the virtue of courage, a virtue that is likewise extolled in the military profession.

Truthfulness is considered a moral excellence in the military profession not only because it suggests the presence of other virtues, such as courage, but because it is directly related to *fides*, the confidence members of a society or institution have in the binding force underlying all promises and agreements. Lying is contrary to *fides* because with every lie a false invitation to trust is being made – an insincere tacit agreement, as it were, that the words being asserted are believed true. The false invitation to trust is also the essence of perfidy, an act of bad faith by which one party to an agreement makes a lying promise. In this way, the virtue of truthfulness contains two absolute prohibitions: the rule against lying and the rule against perfidy.

Some, in an attempt to avoid lying, may be tempted to use equivocation and strict mental reservation, both of which, I have argued, are equivalent to lying. While these, since they are types of lies, are always illicit, each resemble a corresponding act that avoids lying and therefore may be morally permissible. I have called these forms of

concealment evasion and wide mental reservation. In order to provide greater fidelity to the virtue of truthfulness, the criteria distinguishing evasion from equivocation and wide from strict mental reservation have been laid out in detail in Chapter Six. What is less clear is whether all instances of *unjust* evasion or unjust wide mental reservation necessarily violate the virtue of truthfulness. Perhaps this issue deserves more attention beyond this dissertation. In the meantime, the preliminary guideline I would offer is that any act expressing a false invitation to trust, through either words *or signs* (and thus explicitly *or implicitly expressed*), is an act always contrary to the virtue of truthfulness.

Taken together, the guidelines this dissertation has presented help to inform how the virtue of truthfulness can be exercised in practice, especially within the military profession. Once a military accepts that truthfulness is in fact a virtue, even among members of that profession who engage in war, the most obvious consequence is the realization that the activity known as military deception cannot be without limits. False invitations to trust directed toward one's enemy must always be avoided. This prohibition does not preclude the use of other forms of deception, such as disguise, camouflage, concealment, misdirection, and ruses of war. Their use, however, must never directly signal an offer of mutual trust with the intention of violating that trust. This would be an act of bad faith.

Still, opportunities to communicate directly with one's enemy in war and extend an offer of mutual trust are extremely limited, and when such opportunities afford themselves to belligerents, they are generally avoided out of prudence – that is, to retain the ability to make treaties, truces, and the like. If an enemy is lawfully deceived, it is usually the result of poor or faulty inferences; the desire to gain an advantage leads an

enemy to guess his opponent's intentions and designs and to guess wrongly. Helping one's enemy make these erroneous inferences is part of the art of generalship, the essence of strategy. Yet to accomplish this, a general need not sacrifice his honor; it is not only possible that he remain truthful, it is necessary, morally speaking. This conclusion, in turn, gives credence to the absolute principle at the heart of this dissertation: to mislead one's enemy and be victorious in the practice of waging just war, a military professional need not and should not lie.

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