



Why deception is worse than coercion

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Received: 24 July 2023 / Accepted: 29 February 2024
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Abstract According to Kantians, coercion and deception are the two fundamental kinds of wrongdoing. Although this may be true, I wish to argue against two other related assumptions about coercion and deception held by Kantian as well as non-Kantians. One is the assumption that coercion is morally worse than deception, all things being equal. The other is the assumption that whenever coercion is morally permissible, deception is also morally permissible, all things being equal. Both of these assumptions, I argue, are false. Deception is morally worse than coercion, and deception is never morally permissible in virtue of the fact that coercion is morally permissible, whenever coercion is morally permissible.

Keywords Lying · Truthfulness · Aristotle · Mixed Action · Duress · Fraud · Hostage Negotiation · Sissela Bok · Seana Shiffrin · Joseph Betz

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Warum Täuschung schlimmer ist als Zwang

Zusammenfassung Nach Ansicht der Kantianer sind Zwang und Täuschung die beiden grundlegenden Arten von Fehlverhalten. Dies mag zwar richtig sein, doch möchte ich gegen zwei andere damit zusammenhängende Annahmen über Zwang und Täuschung argumentieren, die sowohl von Kantianern als auch von Nicht-Kantianern vertreten werden. Die eine ist die Annahme, dass Zwang moralisch schlechter ist als Täuschung, wenn alle Dinge gleich sind. Die andere ist die Annahme, dass immer dann, wenn Zwang moralisch zulässig ist, auch Täuschung moralisch zulässig ist, wenn alle Dinge gleich sind. Ich behaupte, dass diese beiden Annahmen falsch sind. Täuschung ist moralisch schlechter als Zwang, und Täuschung ist niemals moralisch zulässig, weil Zwang moralisch zulässig ist, wann immer Zwang moralisch zulässig ist.

Schlüsselwörter Lügen · Aufrichtigkeit · Aristoteles · Handlungen mit Mischcharakter · Nötigung · Betrug · Geiselerhandlung · Sissela Bok · Seana Shiffrin · Joseph Betz

According to Kantians, coercion and deception are the two fundamental kinds of wrongdoing. For them, wrongdoing consists of violating a person's autonomy, and both coercion (or force) and deception (especially lying)¹ violate a person's autonomy. Christine Korsgaard goes so far as to call coercion and deception the roots of all evil:

“More generally, there are two conditions under which your autonomy is violated. One is when force or coercion is used to make you contribute to an end. The other is when lies are used to trick you into contributing to an end. In both cases what is wrong is that you do not get to decide whether to contribute to the end or not. The conditions under which you are able to decide for yourself are that you have power over your own actions and knowledge of what is going on. And so force and coercion and lies are, according to this view, the most fundamental forms of wrongdoing—the roots of all evil.”²

One problem for the claim that coercion and deception are the two fundamental kinds of wrongdoing is that it does not seem controversial to distinguish between coercion that is morally wrong and coercion that is not morally wrong, whereas it is more controversial to distinguish between deception that is morally wrong and deception that is not morally wrong. Immanuel Kant himself defended the use of

¹ As will become clear, for the purposes of this article, I treat lying (mendacity) as a form of deception. I am less interested in the difference between lying and (non-mendacious) deception. Some of the authors I discuss do not consider lying to be a species of deception and/or consider there to be a much greater difference between lying and (non-mendacious) deception. This does not, however, affect my argument.

² Christine M. Korsgaard, “What’s Wrong With Lying?”, in *Philosophical Inquiry: Classic and Contemporary Readings*, ed. Jonathan E. Adler and Catherin Z. Elgin (Indianapolis, IN: Hackett, 2007), 584.

coercion by the state in his legal philosophy,³ whereas in his moral philosophy he argued that all lying is morally wrong,⁴ and in his legal philosophy he went so far as to argue that it should be a crime to lie to a would-be murderer to defend an innocent victim.⁵

My concern in this article is not to defend the claim that coercion and deception are the most fundamental kinds of wrongdoing. I am interested in two other, related assumptions about coercion and deception that are held by many Kantians as well as by many philosophers who are not Kantians. One is the assumption that coercion is morally worse than deception, all things being equal. The other is the assumption that whenever coercion is morally permissible, deception is also morally permissible, all things being equal. Both of these assumptions, I will argue, are false. First, deception is morally worse than coercion, all things being equal. Second, deception is never morally permissible in virtue of the fact that coercion is morally permissible (if coercion is ever morally permissible).

1 Two theses about coercion and deception

The first assumption about coercion and deception that I wish to argue against may be called the ‘Moral Asymmetry Thesis’:

“Moral Asymmetry Thesis: Although both coercion (or force) and deception (especially lying) are morally wrong, the use of coercion is more morally wrong than the use of deception, all things being equal. (Alternatively: Although both coercion (or force) and deception (especially lying) are morally wrong, the use of deception is less morally wrong than the use of coercion, all things being equal).”

According to the Moral Asymmetry Thesis, the use of coercion to, for example, get my wallet from me, is morally worse than the use of deception to get my wallet from me, all things being equal.

The second assumption about coercion and deception that I wish to argue against may be called the ‘Moral Entailment Thesis’:

“Moral Entailment Thesis: If the use of coercion (or force) is morally permissible in a situation, then the use of deception (including lying) is morally permissible in that situation, all things being equal. (Alternatively: The use of deception (including lying) is morally permissible in a situation if the use of coercion (or force) is morally permissible in that situation, all things being equal).”

³ Immanuel Kant, *Metaphysical First Principles of the Doctrine of Right (Metaphysische Anfangsgründe der Rechtslehre)* [1797], translated by Mary J. Gregor, in *Practical Philosophy*, edited and translated by Mary J. Gregor and Allen W. Wood (Cambridge: Cambridge University Press, 1996), 388f (6:231f).

⁴ Immanuel Kant, *Metaphysical First Principles of the Doctrine of Virtue (Metaphysische Anfangsgründe der Tugendlehre)* [1797], translated by Mary J. Gregor, in *Practical Philosophy*, 552f (6:429f).

⁵ Immanuel Kant, *On a supposed right to lie from philanthropy (Über ein vermeintes Recht aus Menschenliebe zu lügen)* (1797), translated by Mary J. Gregor, in *Practical Philosophy*, 611–615 (8:425–430).

According to the Moral Asymmetry Thesis, if the use of coercion to, for example, get my wallet from me is morally permissible in a situation, then the use of deception (including lying) to get my wallet from me is morally permissible in that situation, all things being equal.

It is important to understand the qualification “all things being equal” in both of these theses. In the two examples given, it means, at a minimum, that the coercion and the deception produce the same amount of economic harm. More generally, it means that the coercion and the deception produce the same amount of harm.⁶ It means that I am *equally* worse off, in terms of well-being, as a result of either the coercion or the deception.⁷

The Moral Asymmetry Thesis and the Moral Entailment Thesis for the most part go unargued for, and even go unstated (hence my referring to them as assumptions). I will argue that, on Kantian grounds as well as on non-Kantian grounds, these two assumptions are false.

2 The non-identity of coercion and deception

There is another assumption about coercion and deception that needs to be addressed before tackling the Moral Asymmetry Thesis and the Moral Entailment Thesis. This assumption may be called the ‘Non-Identity Thesis’ about coercion and deception:

“Non-Identity Thesis: Coercion (or force) and deception (including lying) are not identical, and neither is a form of the other.”

The Non-Identity Thesis is an important background condition for the two theses I wish to argue against. Nevertheless, I wish to defend the Non-Identity Thesis.

Although the Non-Identity Thesis is accepted by most philosophers, a few philosophers have rejected it, either explicitly or implicitly. Sissela Bok, for example, may be said to “conflate coercion and deception.”⁸ Although she is not a Kantian, Bok considers both deception and coercion to be violations of autonomy. It is clear from what Bok says that she considers deception to be a violation of a person’s autonomy:

“[...] those who have to cope with the consequences of deception. For them, to be given false information about important choices in their lives is to be rendered powerless. For them, their very autonomy may be at stake.”⁹

⁶ By ‘harm’ I mean what Richard Posner means by ‘harm’: “The harm must be tangible, secular, material—physical or financial, or, if emotional, focused and direct—rather than moral or spiritual” (“On Liberty: A Reevaluation,” in *On Liberty*, by John Stuart Mill, eds. David Bromwich and George Kateb (Yale University Press, 2003)). I include psychological harm under “physical” or “emotional” harm.

⁷ This qualification is important. As Korsgaard has said, “the use of force [as opposed to lies] may be wrong in an *additional* way, since if it is not used carefully the person who is forced may be injured, and using force means risking that possibility” (585 n. 11 (emphasis hers)).

⁸ Amit Pundik, “Coercion and Deception in Sexual Relations,” *Canadian Journal of Law & Jurisprudence* 28 (2015), 99.

⁹ Bok, xvii.

Instead of contrasting deception with coercion, however, she contrasts deception with “violence.” The result that it is possible for her to say that deception and violence “both coerce.” Deception and violence, that is, are forms of coercion:

“Deceit and violence—these are the two forms of deliberate assault on human beings. Both can coerce people into acting against their will. Most harm that can befall victims through violence can come to them also through deceit.”¹⁰

If deception is a form of coercion, then the Moral Entailment Thesis would have more support, at least assuming the truth of the Moral Asymmetry Thesis. This is because, if the use of coercion is morally worse than the use of deception (the Moral Asymmetry Thesis), and if deception is a form of coercion, then it is morally permissible to use a less morally worse form of coercion (deception) than a morally worse form of coercion, all things being equal—which is precisely the Moral Entailment Thesis.

However, if deception is a form of coercion, then this would seem to put pressure on the Moral Asymmetry Thesis. For, if deception is a form of coercion, then it may be asked why the use of one form of coercion (deception) is less morally wrong than the use of another form of coercion, all things be equal. Why, it may be asked, are they not morally equivalent. Of course, it is not impossible to argue that the use of one form of coercion (deception) is less morally wrong than the use of another form of coercion. But why hold that deception is a form of coercion in the first place? Why not, instead, hold that deception and coercion are different kinds of autonomy violations?

Bok is not the only philosopher who goes “as far as considering deception to be a form of coercion.”¹¹ Lars Svendsen explicitly rejects the Non-Identity Thesis. He says that “The most fundamental intuition behind the Kantian ban on lying is that lying is a form of coercion.”¹² He provides an explanation for his claim that deception is a form of coercion:

“Where knowledge gives power, he who is deceived is deprived of power. The lie transfers power to the liar from the person who believes the lie. If I succeed in my intention to lie to you, your thoughts will be directed according to my will rather than an independent reality. The lie deprives you of real choices of action, and can give you other goals and prompt the use of different means than those you would have chosen otherwise. You may well end up with a better result than you would otherwise have had—even one that, in the clear light of reflection, you think is the best imaginable—but I have equally deprived you of the opportunity to make a free and informed choice about which way to go.”¹³

According to this explanation, deception is a form of coercion because it is an exercise of power of the deceiver over the deceived. The deceived is “directed according to [the] will [of the deceiver],” and not their own will. The deceived does

¹⁰ Bok, 18.

¹¹ Pundik, 99 (speaking about another philosopher, but what he says here seems applicable to Bok, also).

¹² Lars Svendsen, *A Philosophy of Lying* (trans. Matt Bagguley) (London: Reaktion Books, 2022), 45.

¹³ Ibid.

what the *deceiver* wants them to do, not what the deceived wants to do. This is true even if it happens that what the deceiver wants them to do is for the good for the deceived and could be recognized as such.

However, Svendsen's explanation of why deception is a form of coercion is almost identical to what Korsgaard says about deception, and Korsgaard does not believe that deception is a form of coercion.

The claim that deception is a form of coercion should be rejected. As an important critic of Bok, Joseph Betz, has pointed out: "Lying is no kind of force, except in a metaphorical sense."¹⁴ Certain statements made by Korsgaard, such as "force or coercion is used to *make* you contribute to an end,"¹⁵ whereas "lies are used to *trick* you into contributing to an end,"¹⁶ point to an important difference between how coercion and deception operate, and support the Non-Identity Thesis. Indeed, even certain statements made by Bok, such as "But deceit controls more *subtly*, for it *works on belief* as well as action,"¹⁷ point to a difference between how coercion and deception operate and support their non-identity. Bok's example of deception as contrasted with "force," the deception of the general Othello by his ensign Iago, also points to coercion and deception being different: "Even Othello, whom few who have dared to try to subdue by force, could be brought to destroy himself and Desdemona through falsehood."¹⁸

To defend the Non-Identity Thesis and show that deception is not a form of coercion, it will be necessary to discuss coercion and deception in greater detail.

3 Aristotle on two types of coerced action: forced actions and mixed actions

In Bk. 3 of the *Nicomachean Ethics*, Aristotle discusses voluntary and involuntary actions. Some actions, he says, "come about as a result of force or on account of ignorance."¹⁹ An action that is "forced" is "something whose origin is external, since it is the sort of thing to which the person who is acting or undergoing something contributes nothing."²⁰ The examples he gives of actions that come about as a result of force are "if a wind ... should carry him off somewhere" or "if ... people who have control over someone, should carry him off somewhere."²¹ The latter example may be a case of kidnapping, but it is also consistent with being a case of being captured in battle, or of being handcuffed and taken away by the police. As regards actions

¹⁴ Joseph Betz, "Sissela Bok on the Analogy of Deception and Violence," *The Journal of Value Inquiry* 19 (1985), 220.

¹⁵ Korsgaard, 584 (my emphasis).

¹⁶ *Ibid.* (my emphasis).

¹⁷ Bok, 18 (my emphasis).

¹⁸ *Ibid.*, 18.

¹⁹ Aristotle, *Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (University of Chicago Press, 2011), 42 [1110a].

²⁰ *Ibid.*

²¹ Aristotle, 45 [1111a].

that come about “on account of ignorance,” he gives several examples, including the following: “someone could be ignorant of *what* he is doing ... by giving someone a drink to save him, one might kill him.”²² In these cases, he says, “since there may be ignorance about all these things that constitute an action, he who is ignorant of them is held to have acted involuntarily.”²³ Both actions that are “forced” (those where the person “contributes nothing”) and actions that are done “on account of ignorance” (those where the person is ignorant of what he is doing) are involuntary actions.

Other actions, Aristotle says, are “done on account of fear of greater harm or on account of something noble.”²⁴ The examples he gives of actions done on account of fear of greater harm include “casting off cargo in storms” and “if a tyrant should order someone to do something shameful while the tyrant has control over his parents and offspring, and if he should do it, they would be saved, but if not, they would be killed.”²⁵ About these actions he says that “whether this kind of thing is involuntary or voluntary admits of dispute.”²⁶ Aristotle refers to these actions as “mixed” actions because they seem both voluntary and involuntary,²⁷ but he says that “they are more voluntary [than involuntary], for they are choiceworthy at the time they are done and the end of the action accords with what is opportune at the moment.”²⁸ Mixed actions, therefore, are voluntary actions.²⁹

An involuntary action that comes about as a result of ignorance is not a coerced action. An involuntary action that comes about as a result of force—in particular, as a result of force exerted by other people—is a *coerced* action. When one is carried off somewhere by others, then one has been coerced into going somewhere. A voluntary action that is a mixed action—in particular, an action performed out of fear of harm being inflicted on other people or oneself by some other person—is also a *coerced* action. When one does something that the tyrant orders one to do to protect the lives of one’s parents or children, then one has been coerced into doing something.

²² Ibid.

²³ Ibid.

²⁴ Aristotle, 42 [1110a].

²⁵ Ibid.

²⁶ Ibid.

²⁷ As Karen Nielsen has said, rejecting the interpretation of mixed actions by Michael Stocker: “Aristotle importantly does *not* call mixed actions mixed because they are simultaneously ‘right, even obligatory,’ but somehow ‘wrong, shameful, and the like.’ Contrary to what Stocker maintains, the mixture is not a mixture of good and bad, right and wrong, advantageous or disadvantageous. Rather, coerced actions appear mixed insofar as they seem both voluntary and involuntary. If someone puts a gun to your head and asks you to do something shameful, we hesitate before calling your subsequent action voluntary. But at the same time, it is your choice to accede or resist, even if the choice is forced upon you” (“Dirtying Aristotle’s Hands? Aristotle’s Analysis of ‘Mixed Acts’” in the *Nicomachean Ethics* III, 1”, *Phronesis* 52 (2007), 273 [emphasis in original]).

²⁸ Aristotle, 42, 1110a.

²⁹ As Nielsen says, “[M]ixed act’ is not, after all, a category in Aristotle’s considered ontology. Rather, ‘mixed act’ is a provisional label attached to coerced acts before the puzzle about their true nature is sorted out. The label ‘mixed act’ picks out acts that *prima facie* mix voluntary and involuntary elements. But on closer examination, it turns out that such acts are voluntary” (Nielsen, 280).

4 Are coerced actions necessarily morally wrong?

I said above that Aristotle's first kind of coerced action—forced action—could include the action of being captured in battle or of being handcuffed and taken away by the police. Forced actions, therefore, do not seem to be necessarily morally wrong. A question that may be asked about his second kind of coerced action—the coerced mixed action—is whether such an action is always an action to do something typically shameful³⁰ in response to a threat to harm oneself or another in some way, or whether it could be an action to do something not typically shameful in response to a legitimate command that is backed up by the use of force. For instance, if police officers want to interrogate someone suspected of assaulting another law enforcement officer, and they shout through the door of the mobile home, “Come out with your hands up!”, and the suspect emerges from the mobile home with his hands up, is that a coerced mixed action on his part?³¹ Is this action any different, at the level of voluntariness, from my handing over my shillings to the highwayman who shouts, “Stand and deliver—you money or your life”?³² If it is not, then, assuming that it is not morally wrong for the police to demand that a suspect come out with his hands up in order to be interrogated about an assault on a law enforcement officer (whereas it is morally wrong to rob someone at gunpoint), it seems that neither of the two kinds of coercion outlined by Aristotle is necessarily morally wrong. It seems that there are morally permissible acts of both types of coercion.

Of course, it is possible to define coercion in such a way that (all) coercion is necessarily morally wrong, by defining it normatively, and in particular by defining it morally, such that coercion *necessarily* involves a violation of the moral rights of the person coerced.³³ However, this seems unnecessarily narrow and prescriptive. As Scott Anderson has pointed out, “If one holds the common view that coercion is rightly employed for purposes such as self-defense, defense of innocent others, and the enforcement of just laws,” then it follows that coercion “can be defined in non-moralized terms,” and “it’s unclear why we should suppose that it [coercion] is intrinsically (even *prima facie* or *pro tanto*) immoral, instead of simply noting that it is a very potent means, prone to abuse, and something that deserves ethical scrutiny

³⁰ I agree with Nielsen that Aristotle does not endorse performing actions that are *in fact* shameful. At most he endorses performing actions that are *typically* shameful but that are *not* in fact shameful given the particular circumstances: “My suggestion is that when Aristotle initially speaks of the man in the tyrant case as ‘doing something shameful’, he has in mind ‘stereotypically shameful’ acts. He wants to keep it an open question whether the man does something that is in fact shameful or in fact not shameful. [...] Acts that are ‘stereotypically’ shameful need not be shameful in particular circumstances. [...] in certain circumstances, actions that would otherwise have been shameful and base are justified, and do not dirty our hands or compromise our characters” (Nielsen, 285, 291, 295).

³¹ See A&E, *Live PD: Come Out with Your Hands Up*, Season 3, 30 August 2019 (https://www.youtube.com/watch?v=t8fj_OdiW5o).

³² For the explanation of the origin of his expression, see <https://www.phrases.org.uk/meanings/stand-and-deliver.html> [accessed 09 December 2023].

³³ See Cheyney C. Ryan, “The Normative Concept of Coercion,” *Mind* 89 (1980), 481–498.

³⁴ Scott Anderson, “Coercion,” *Stanford Encyclopedia of Philosophy* (January 2023).

whenever it is used.”³⁴ I will not assume that either kind of coercion outlined by Aristotle is necessarily morally wrong.

5 Hawley on two types of coercion

Katherine Hawley has said that although “there is no philosophical consensus about what constitutes coercion,” nevertheless, it “does seem relatively uncontroversial” to “distinguish between coercion which completely overwhelms the target’s will, making her incapable of choosing how to act in the relevant manner,” and “coercion which changes the relative appeal of the options between which the target is choosing.”³⁵ According to Hawley, “Physical imprisonment coerces a target in the first way,” and “Threatening to kill the target’s children if she leaves the room would typically coerce in the second way.”³⁶

Hawley’s contemporary distinction between two types of coercion maps on to the distinction made by Aristotle between forced actions and coerced mixed actions. I will use her terminology to refer to the two types of coercion in Aristotle, and more generally, to refer to two types of coercion.

I next wish to argue that the distinction in Hawley between two types of coercion overlaps with a distinction between two types of *duress* in contemporary legal philosophy—with the important caveat that duress, as opposed to coercion, is considered to be necessarily morally wrong.

6 Shiffrin on two types of duress

In *Speech Matters: On Lying, Morality, and the Law*, Seana Shiffrin discusses different kinds of duress. By ‘duress’ Shiffrin means “unjustified or wrongfully exerted coercion.”³⁷ Although Shiffrin does not define ‘coercion’ normatively, she does understand ‘duress’ normatively, as being necessarily morally unjustified or morally wrong.

First, there is what Shiffrin calls “blunt” duress.³⁸ This is “coercion so blunt that some do not count it as coercion at all.”³⁹ To explain “blunt” duress, Shiffrin cites the Supreme Judicial Court of Massachusetts contracts case, *Fairbanks vs. Snow* (1887), a leading American precedent for how duress makes a contract voidable.⁴⁰ In his

³⁵ Katherine Hawley, “Coercion and Lies,” in *Lying: Language, Knowledge, Ethics, and Politics*, eds. Eliot Michaelson and Andreas Stokke (Oxford: Oxford University Press, 2018), 235.

³⁶ *Ibid.*

³⁷ Seana Valentine Shiffrin, *Speech Matters: On Lying, Morality, and the Law* (Princeton, NJ: Princeton University Press, 2014), 47.

³⁸ *Ibid.* Strictly speaking, Shiffrin talks about “blunt” coercion. However, given that duress is understood normatively, and coercion is not, I prefer to speak of “blunt” duress.

³⁹ Shiffrin, 47.

⁴⁰ *Fairbanks vs. Snow*, 145 Mass. 153 (1887). See D. J. Lanham, “Duress and Void Contracts,” *The Modern Law Review* 29 (1966), 615–621.

opinion, Oliver Wendel Holmes, Jr., talks about “agreements with forced signatures that ‘turn the ostensible party into a mere machine.’”⁴¹ He provides the following hypothetical case of “blunt” duress:

“No doubt, if the defendant’s hand had been forcibly taken and compelled to hold the pen and write her name, and the note had been carried off and delivered, the signature and delivery would not have been her acts; and if the signature and delivery had not been her acts, for whatever reason, no contract would have been made, whether the plaintiff knew the facts or not.”⁴²

A “forced signature,” which turns the person who is signing into a “mere machine,” is an example of “blunt” duress. It “reflects nothing whatsoever about your will or your responsibility.”⁴³

Shiffrin contrasts “blunt” duress with “transparent” duress.⁴⁴ “Transparent” duress is coercion that “involves specific and direct pressure intentionally exerted on a victim to circumvent her rational agency or unjustly distort her choice situation.”⁴⁵ *Fairbanks vs. Snow* was a case that involved “transparent” duress, which Holmes refers to as “agreements made under threat or fraud.”⁴⁶ In this case, a wife signed a promissory note as a result of “duress and threats on the part of her husband.”⁴⁷

Shiffrin’s explanation of “transparent” duress makes it clear that it is coercion that is necessarily wrong: it is coercion that “unjustly” distorts her choice situation or that is “exerted on a victim to circumvent her rational agency.” Although Shiffrin does not say so explicitly, because “blunt” duress is a form of duress, “blunt” duress is coercion that is necessarily unjustified or morally wrong. Both “blunt” duress and “transparent” duress are therefore necessarily morally wrong. Nevertheless, it is possible to see “blunt” duress as merely a morally wrong form of coercion that completely overwhelms the person’s will (that does not seem to be necessarily morally wrong), and “transparent” duress as merely a morally wrong form of coercion that changes the relative appeal of the options between which the person is choosing (which does not seem to be necessarily morally wrong).

7 Shiffrin on “duress by fraud”

In her discussion of different kinds of duress, Shiffrin also mentions “duress by fraud.”⁴⁸ Although she does not give an example of such duress, she explains “duress by fraud” as when “the coerced party does not know the circumstances of her choice

⁴¹ Shiffrin, 47. Although “‘turn the ostensible party into a mere machine’” is given as a quotation from the case, I cannot find it in Holmes’s opinion, and I will treat it as Shiffrin’s expression.

⁴² *Fairbanks vs. Snow*, *ibid.*

⁴³ Shiffrin, 47.

⁴⁴ Shiffrin, 49.

⁴⁵ *Ibid.*

⁴⁶ Shiffrin, 47.

⁴⁷ Shiffrin, 52.

⁴⁸ *Ibid.*

and so is unaware that those circumstances are tainted or morally sub-par.”⁴⁹ Shiffrin distinguishes between “transparent” duress, in which the victim is often afraid but is also aware of what is happening and may experience powerlessness, and “duress by fraud,” in which the victim is not aware of what is happening, and hence is not typically afraid, or experiencing powerlessness, although they may later feel humiliation for having been deceived, as follows:

“Transparent duress will often trigger fear in the victim, but it also orients the victim to the nature of the transaction. Transparent duress may inspire a painful sense of overt subordination and powerlessness. Duress by fraud, by contrast, deprives the victim of the opportunity to apprehend and respond in real time to the crime against her. Also, because trickery is involved, duress by fraud may later trigger a distinct feeling of humiliation by the victim for being duped.”⁵⁰

In talking about the “coerced party” in the case of such duress, Shiffrin appears to be assuming that fraud is a form of coercion. However, her descriptions of “transparent” duress and “duress by fraud” are sufficiently different that they appear to describe different types of action rather than two forms of one type of action (coercion). Shiffrin’s cited source for her account of “duress by fraud” is Judith Jarvis Thomson, but Thomson always talks about “coercion or fraud,” without subsuming fraud into coercion, and provides very different examples of each type of action, such as “holding a gun to your head,” for coercion, and “lying to you,”⁵¹ for deception. Holmes, it should be noted, also distinguished between “threat or fraud” in writing about the case of duress voiding a contract.

Contract law distinguishes between fraud and duress: “Some restrictions on freedom have long been recognized as necessary to *preserve* freedom. Thus, contract parties are protected from fraud, duress, and other conduct inappropriately interferes with their freedom.”⁵² Without further argument from Shiffrin, fraud will not be considered a form of coercion. In particular, fraud will not be considered the form of coercion in which the relative appeal of the options between which the person is choosing is changed. Fraud will continue to be understood as a form of deception.

8 Deception and ignorance

Shiffrin’s explanation of “duress by fraud” as “the coerced party does not know the circumstances of her choice”⁵³ is actually similar to what Aristotle calls actions that come about “on account of ignorance,” at least from the vantage point of the person who is ignorant. This is true despite the fact that Aristotle did not consider actions

⁴⁹ Ibid.

⁵⁰ Shiffrin, 52, n. 12.

⁵¹ Judith Jarvis Thomson, *In the Realm of Rights* (Cambridge, MA: Harvard University Press, 1990), 351.

⁵² Mindy Chen-Wishart, *Contract Law* (Seventh Edition) (Oxford: Oxford University Press, 2022), 14 (emphasis in original).

⁵³ For the moment, I will leave out the remainder of her description, which includes the condition that those circumstances are “tainted or morally sub-par.”.

that come about as a result of ignorance to be either forced actions or mixed actions (and hence, he did not consider actions themselves to be coerced actions).

Although Aristotle does not discuss how a person comes to be ignorant, it is consistent with his account that a person could be, for example, “ignorant of *what* he is doing” because he has a mistaken belief about what he is doing as a result of being deceived. Such ignorance would be ‘disbelieving ignorance’, as it has been called: “One way to make someone ignorant about a particular matter is to intentionally cause her to have a false belief. In other words, you might *deceive* her ... [this is] to put us into a state of what Rik Peels calls *disbelieving ignorance*. That is ... to make us ignorant of one thing by getting us to believe the opposite.”⁵⁴

Shiffrin’s explanation of “duress by fraud” makes it clear that she understands fraud as necessarily wrong: the person being defrauded is unaware that the circumstances of her choice are “tainted or morally sub-par.” However, it is unclear from what she says if she believes fraud to be necessarily wrong simply because it is a form of *deception*, or because it is a form of *morally wrongful* deception. It would be possible for her to believe the former. She holds that “the negotiator misrepresenting to the hostage-taker whether his requests have been or will be met, to effect a release of hostages”⁵⁵ is morally wrong, despite the fact that others hold this to be a morally justifiable act of deception. Nevertheless, I take it that she believes the latter. Although she holds that it is morally wrong to promise a would-be murderer, intent upon killing your innocent friend, that one is telling the truth, *and then* lie to them about one’s friend’s whereabouts, she holds that it is not morally wrong to lie to the would-be murderer about one’s friend’s whereabouts, absent such a promise.⁵⁶

I have argued that it is possible to understand “blunt” duress as merely a morally wrongful form of that coercion that completely overwhelms the person’s will, and “transparent” duress as merely a morally wrongful form of that coercion that changes the relative appeal of the options between which the person is choosing. Hence, it is possible to hold that neither coercion that completely overwhelms the person’s will, nor coercion that changes the relative appeal of the options between which the person is choosing, is necessarily morally wrong. I have also argued that fraud, which is a form of deception, should not be considered a form of coercion of either kind, and that what happens to the victim of fraud (and to the victim of deception more generally) is similar to what happens to those who suffer from ignorance and who perform their actions “on account of ignorance.” I have also pointed out that Shiffrin considers fraud to be necessarily wrong.

In arguing that fraud, which is a form of deception, is not a form of coercion (of either kind), I have been defending the Non-Identity Thesis, and attempting to demonstrate that deception is not a form of coercion. I want to continue to defend the Non-Identity Thesis by arguing, on Kantian grounds, that deception (in general)

⁵⁴ Don Fallis, “Is Making People Ignorant as Bad as Deceiving Them?”, in *Perspectives on Ignorance from Moral and Social Philosophy*, ed. Rik Peels (New York, NY: Routledge, 2017), 120.

⁵⁵ Shiffrin, 31.

⁵⁶ See Shiffrin, “Lies and the Murderer Next Door,” chapter one of *Speech Matters: On Lying, Morality, and the Law*, 5–46.

may be distinguished from coercion of either kind, insofar as it is necessarily morally wrong, and morally worse than either kind of coercion.

9 Why deception is necessarily morally wrong and morally worse than coercion

In Kant's *Groundwork of the Metaphysics of Morals*, the second formula of the Categorical Imperative, the Formula of Humanity, is stated as follows:

“So act that you use humanity, whether in your own person or in the person of another, always at the same time as an end, never merely as a means.”⁵⁷

Kant does not provide any example of using coercion in the *Groundwork*, but he does provide the following account of how one treats another person when making a false promise (or lying promise) that one will pay them back a sum of money if they lend it:

“[H]e who has it in mind to make a false promise to others sees at once that he wants to make use of another human being *merely as a means*, without the other at the same time containing in himself the end. For he whom I want to use for my purposes by such a promise cannot possibly agree to my way of behaving toward him, and so himself contain the end of this action.”⁵⁸

To act towards another person (to lie to them that I am only *borrowing* the money) in a way that necessarily precludes their agreement to doing what I want them to do (to *give* me the money), is to ignore their capacity to set their own ends for themselves (to make the decision as to whether or not to give me the money). However, the capacity to determine one's own ends for oneself is what Kant calls humanity: “The capacity to set oneself an end—any end whatsoever—is what characterizes humanity (as distinguished from animality).”⁵⁹ Hence, to act towards a person in a way that precludes the possibility of their giving agreement to doing what I want them to do is to treat them as something that does not have humanity. Persons, however, have humanity. When one fails to treat a person as something that has humanity, one fails to treat them as person. One treats them as a “mere means,” as a thing—as a non-person. Treating a person as a “mere means,” as a non-person, is morally wrong.⁶⁰ To deceive another person is to act towards them in such a way that, necessarily, there is no possibility of them agreeing to doing what one wants them to do. To deceive another person is, necessarily, to treat them as a mere means, as a thing—as a non-person. Therefore, deception is, necessarily, morally wrong.

⁵⁷ Immanuel Kant, *Groundwork of the Metaphysics of Morals (Grundlegung zur Metaphysik der Sitten)* [1785], translated by Mary J. Gregor, in *Practical Philosophy*, 80 [4:429] [emphasis in original].

⁵⁸ Kant, *Groundwork of the Metaphysics of Morals*, 80 [4:430] [emphasis in original].

⁵⁹ Kant, *Metaphysical First Principles of the Doctrine of Virtue*, 522 [6: 392].

⁶⁰ For a more detailed version of this argument, see my “Kant and the Perfect Duty to Others Not to Lie,” *British Journal for the History of Philosophy* 14 (2006): 653–685.

What about coercion? Here, it is important to distinguish between the two types of coercion outlined above—coercion that completely overwhelms the person’s will, and coercion that changes the relative appeal of the options between which the person is choosing.

It seems that one cannot, to use Aristotle’s example, agree to being kidnapped (it would not be kidnapping if one did). It seems that one cannot, to quote from Holmes’s hypothetical case of “blunt” duress, agree to signing a document when one’s “hand [has] been forcibly taken and compelled to hold the pen and write [one’s] name.”

It also seems that one cannot, to use Aristotle’s other example, ‘agree’ to carrying out the order from the tyrant to do something typically shameful, while he has control over your family, to save them. The very fact of the threat seems to undercut the ‘agreement.’ When one ‘agrees’ to signing a document after being threatened by one’s husband with violence or abandonment (etc.), as in the actual case before Holmes, the very fact of the threat seems to undercut the ‘agreement’ in this “transparent” duress.

In both kinds of coercion, therefore, it seems that to coerce another person is to act towards them in such a way that, necessarily, there is no possibility of them agreeing to doing what one wants them to do. It seems that to coerce another person is, necessarily, to treat them as a mere means, as a thing—as a non-person. As has been said, it seems that “the coercer is not treating the coercee as an agent, but as an object to be manipulated.”⁶¹ Therefore, it seems that coercion is, necessarily, morally wrong.

If this is correct, then it would seem to make deception and coercion equivalently morally bad, on Kantian grounds. I will argue below that to coerce another person is *not* necessarily to treat them as a mere means, as a thing—as a non-person. However, even if it were granted that, in coercing someone, one is necessarily treating the other person as a mere means, as is the case with deception, it is still possible to argue that there is an important difference between coercion and deception. Or at least, there is an important difference between deception and the second kind of coercion, the coercion that changes the relative appeal of the options between which the person is choosing. As Jovan Babic has argued, the victim of this kind of coercion is *aware* of being coerced. (The duress, after all, is “transparent”). Although the victim of this kind of coercion is being made use of “*merely as a means*,” they are not totally an instrument of the will of the coercer. By contrast, the victim of deception is, necessarily, not aware of being deceived. The victim of deception is totally an instrument of the will of the deceiver.⁶²

If I am a bank robber holding a gun to your head, and you are a bank teller, then you may well hand over the bank’s money to me, but you are aware that you are carrying out my will. You are aware that you are being made use of merely as a means. You are carrying out my will knowingly—and will resist carrying out my

⁶¹ Elinor Mason, “Coercion and Integrity,” *Oxford Studies in Normative Ethics*, Vol. 2, ed. Mark Timmons (Oxford: Oxford University Press, 2012), 201.

⁶² Jovan Babic, “Die Pflicht, nicht zu lügen – Eine vollkommene, jedoch nicht auch juristische Pflicht” [The Duty Not to Lie—A Perfect, but also not Legal Duty], *Kant-Studien* 91 (2000), 433–446.

will, perhaps, if given the chance. As Babic claims, “one can defend oneself [...] And there are other possible strategies: counterattack, fleeing, hiding, mimicry.”⁶³ As Shiffrin says about transparent duress (quoted above), “Transparent duress will often trigger fear in the victim, but it also orients the victim to the nature of the transaction.” However, if I am a con artist tricking you into giving me money on the pretext of paying for the church’s new roof, and you are my innocent mark, you are not even aware that you are carrying out my will—you are not even aware that you are being made use of merely as a means. Because you are unknowingly carrying out my will, you will not have any thought about resisting my will. As Shiffrin says about fraud (quoted above), “fraud, by contrast, deprives the victim of the opportunity to apprehend and respond in real time to the crime against her.”

Babic contrasts deception and violence in this way, according to which the victim of deception is totally a mere means, a pure instrument of someone else’s will, whereas the victim of the second kind of coercion (“violence”) is not totally a mere means, not totally a pure instrument of someone else’s will:

“in violence the victim is not *totally a mere means* In deceit the victim is utterly and totally *helpless!* She does not even know she is ‘used’ (for a deceit) at all [...] In deceit [...] [t]here is *no, not even non-voluntary, participation* in what’s happening with the deceived or manipulated person. She is converted into a pure instrument of somebody else’s will.”⁶⁴

What about the first kind of coercion, coercion that completely overwhelms the person’s will, such as when I am kidnapped, or my hand is forcibly taken and compelled to hold the pen and write my name? This kind of coercion seems similar to deception. The options for resistance are more limited or are non-existent. Nevertheless, there is a difference between this kind of coercion and deception. In the first kind of coercion, one is aware of what is happening to one, such as when one is kidnapped by being dragged from one’s bed in the middle of the night. Or one is unaware of what is happening to one, such as when one is kidnapped by being chloroformed and carried from one’s bed while one is unconscious. In deception, however, one is not aware of what is happening, *and* one believes, mistakenly, that *something else* is happening. For example, one believes that one is getting picked up at the airport by one’s MI6 team in Berlin, when in reality one is being ambushed by the KGB.⁶⁵ One even assists the deceivers with their secret plan by, for example, handing over one’s bags to them. In the case of deception, one unknowingly *participates* in being treated merely as a means.

Deception is therefore the most complete form of treating someone merely as a means. In deception, one is being used merely as a means, and one believes that one is *not* being used merely as a means. One is converted into being a “pure instrument of somebody else’s will,” whereas one believes that one is *not* being

⁶³ Babic, summary translation of “Die Pflicht, nicht zu lügen – Eine vollkommene, jedoch nicht auch juristische Pflicht” [The Duty Not to Lie—A Perfect, but also not Legal Duty], e-mail communication, 23 May 2021.

⁶⁴ Ibid. [Emphasis in original].

⁶⁵ See *Atomic Blonde* (2017), directed by David Leitch.

converted into being a pure instrument of somebody else's will. One is treated as a thing, as a non-person, whereas one believes that one is being treated *as an end*, as a person. After Korsgaard says that "Lies and force are wrong in exactly the same way. They violate people's autonomy,"⁶⁶ she adds in a footnote, "In fact it is arguable that lies are a *deeper* violation of another's autonomy, since when you lie you do not merely ignore the fact that your victim has his own reason, you make use of it: if he were not a rational being, lying wouldn't be a way of getting him to do something."⁶⁷

10 Are coerced actions *not* necessarily morally wrong?

If deception is the most complete form of treating someone merely as a means, then deception is a greater violation of autonomy than either of the two kinds of coercion. If Kantians hold that coercion and deception are the two fundamental kinds of wrongdoing, because both are violations of autonomy, then they must hold that deception is morally worse than coercion, all things being equal, because deception is a greater violation of autonomy than coercion. But if they hold that deception is morally worse than coercion, all things being equal, it follows that they must reject the Moral Asymmetry Thesis.

The verdict that deception is morally worse than coercion, all things being equal, because deception is a greater violation of autonomy than coercion, nevertheless leaves one issue unresolved. It is consistent with deception being morally worse than coercion, all things being equal, that coercion is (also) necessarily wrong. Even if deception is morally worse than coercion, all things being equal, both deception and coercion could be necessarily wrong. According to the Moral Entailment Thesis, if the use of coercion is morally permissible in a situation, then the use of deception is morally permissible in that situation, all things being equal. But if coercion is *never* morally permissible in any situation, then it is *false* that the use of coercion is morally permissible in any situation. However, if it is false that the use of coercion is morally permissible in any situation, then it is true that, if the use of coercion is morally permissible in a situation, the use of deception is morally permissible in that situation, all things being equal. (Consider the analogous claim: if murder is morally permissible in a situation (something that is false), then torture is morally permissible in that situation (something that is also false), all things being equal.)

It needs to be resolved, therefore, whether coercion is necessarily morally wrong. I want to conclude by arguing that, unlike deception, coercion is not necessarily morally wrong.

⁶⁶ Korsgaard, 585.

⁶⁷ Korsgaard, 585 n. 11.

11 Betz on Bok and the analogy of the use of coercion and the use of deception

In addition to claiming that deception is a form of coercion, Sissela Bok has argued that deception is morally permissible. Joseph Betz has helpfully reconstructed Bok's argument for the permissibility of deception. I shall follow Betz's reconstruction of her argument.

In the case of a "a crazed murderer" who is pursuing an "innocent man," Bok agrees with the "strict tradition"⁶⁸ (which includes Kant⁶⁹ as well as Augustine⁷⁰) that if one makes an intentionally untruthful declaration to the murderer with the intention that he believes it to be true, then one is indeed telling a *lie* to the murderer, as opposed to merely "deceiving by saying what is false."⁷¹ Bok rejects the tradition of "redefining lying,"⁷² which includes Kant's opponent, Benjamin Constant,⁷³ as well as Hugo Grotius,⁷⁴ according to which a lie "should be redefined as an intentional untruthful declaration to another person *who has the right to the truth*."⁷⁵ As, according to this redefining tradition, it only possible to lie to someone if that person has a right to the truth,⁷⁶ it follows that, because the murderer has no right to the truth, "one does not lie in making an intentionally untruthful declaration to him [the murderer] to save the innocent life,"⁷⁷ and one may go ahead and make an untruthful declaration to the murderer to deceive him—which isn't a lie. Bok rejects the tradition of redefining lying, according to Betz, because it is "not forthright,"⁷⁸ and sticks to the "strict tradition" of Kant and Augustine, which does not redefine lying to deal with cases such as that of the murderer.

However, although Bok agrees with the "strict tradition" that making an intentionally untruthful declaration to the murderer to save an innocent life is a lie, she disagrees with the "strict tradition" of Augustine and Kant that such a lie is also morally impermissible.⁷⁹ Bok believes that a lie told to a murderer to save the life

⁶⁸ Bok, 14. Another name for the position held by those belonging to the "strict tradition" is rigorism (about lying).

⁶⁹ See my "The Truth about Kant on Lies" in *The Philosophy of Deception*, ed. Clancy Martin (Oxford University Press, 2009), 201–224.

⁷⁰ See my "Saint Augustine," *Encyclopedia of Deception*, ed. Timothy R. Levine (Sage, 2014): 827–829.

⁷¹ Betz, 223 (cf. 217–218).

⁷² Betz, 217.

⁷³ Benjamin Constant, *Des Réactions Politiques* (Paris, 1797).

⁷⁴ Hugo Grotius, *The Rights of War and Peace (De iure belli ac pacis (1625))*, edited by Richard Tuck (Indianapolis, IN: The Liberty Fund, 2005).

⁷⁵ Betz, 217.

⁷⁶ For more on normative definitions of lying that require a lie to violate someone's right to be a lie, see my "The Definition of Lying," *Stanford Encyclopedia of Philosophy* (forthcoming).

⁷⁷ Betz, 217.

⁷⁸ Betz, 218. Betz suggests that Bok rejects the tradition of redefining lying for at least two other reasons: because it "smuggles in a moral term which in itself needs evaluation" (i.e., a right to the truth), and because "it might be wrong to mislead even if doing so is not defined as lying" (Betz, 218).

⁷⁹ It is important to note that those philosophers who redefine lying to deal with cases such as the murderer believe that lies (as they understand them) may *never* be told. In that sense, they are also strict.

of an innocent person is a “justifiable lie,” as opposed to “justifiable because it is not a lie.”⁸⁰ She prefers “a more permissive” tradition that “allows lying for good reasons.”⁸¹ (This would seem to place Bok in the company of philosophers such as Plato and John Stuart Mill, who justified lying.⁸²)

Because she ultimately disagrees with the “strict tradition” and holds that there are genuine lies that are morally permissible, Bok needs an argument for why there are lies that are morally permissible. According to Betz, the only argument that Bok provides, in a work that is otherwise highly critical of lying, is the argument that in a situation in which it is morally permissible to use “force,” it is morally permissible to lie. This is because, according to Bok, the use of a lie is “at times more permissible” than the use of force. As Betz says:

“If Bok opposes Augustine and Kant, then, but does not use the [redefining lying] argument of Constant and Grotius in doing so, what argument does she use? Though she finds additional support, I estimate that the argument which she considers her main one is what she calls ‘the analogy between the use of force and the use of deception’ [...] The analogy is succinctly stated in the form of a rhetorical question by Bok: ‘If to use force in self-defense or in defending those at risk of murder is right, why then should a lie in self-defense be ruled out? Surely if force is allowed, a lie should be equally, perhaps at times more, permissible’ [...]. She does not give more of an answer to her question than this and she always states the analogy with equal succinctness. For instance; ‘Deception— [...] like violence—can be used also in self-defense’ [...] ‘Just as force would be justifiable as a means to prevent the murder, so it would be right to achieve the same objective through a lie’ [...] ‘We have already seen how the attempt to avoid serious harm can justify a lie, just as it allows the recourse to force’ [...] Finally, ‘whenever it is right to resist an assault or a threat by force; it must then be allowable to do so by guile’ [...] Since Bok does not give more explanation and defense of this analogy when she states it, she must take it to be intuitively clear and in no need of elaboration [...]”⁸³

Although it seems that Bok believes that her analogy between the use of force and the use of lying is intuitively clear and in no need of elaboration, Betz states that Bok may have taken her argument from Henry Sidgwick, whom she quotes in the appendix to her book, as follows:

⁸⁰ Betz, 217.

⁸¹ Betz, 218.

⁸² For more on the “strict tradition” prohibiting all lying that includes Augustine and Kant, and the “permissive tradition” justifying some lying that includes Plato and Mill, see Alasdair MacIntyre, “Truthfulness, Lies, and Moral Philosophers: What Can We Learn from Mill and Kant?”, in *The Tanner Lectures on Human Values*, Vol. 16 (Salt Lake City: University of Utah Press, 1995), 307–361. For a friendly amendment, see my “Classical Philosophical Approaches to Lying and Deception,” in *The Oxford Handbook of Lying*, ed. Jörg Meibauer (Oxford University Press, 2018), 13–14.

⁸³ Betz, 218–219.

“if we may even kill in defense of ourselves and others, it seems strange if we may not lie, if lying will defend us better against a palpable invasion of our rights; and Common Sense does not seem to prohibit this decisively.”⁸⁴

Betz rejects Bok’s argument for morally permissible lying on the basis of an analogy with the morally permissible use of force. As I pointed out earlier, according to Betz, “Lying is no kind of force, except in a metaphorical sense.” According to Betz, “no right to use force, contrary to Bok’s analogy, entails a right to lie. The rule for the employment of one morally problematic means, physical force, does not entail a justification for the employment of a quite different and perhaps more problematic means, lying.”⁸⁵ That is, Betz considers lying and physical force to be different (i.e., he upholds the Non-Identity Thesis), and he even considers lying to be a “more problematic” kind of action than the use of “physical force” (i.e., he rejects the Moral Asymmetry Thesis). As a result, Betz rejects Bok’s analogy between the use of force and the use of deception (i.e., he rejects the Moral Entailment Thesis).

In support of his rejection of Bok’s analogy between the use of force and the use of deception, Betz provides a hypothetical fugitive murderer case (not far removed from actual cases he has written about⁸⁶) in which he asserts that it is morally permissible to use force—indeed, morally permissible to use lethal force—against a fugitive murderer, even though it is not morally permissible to lie to him:

“Consider this case in which, most people would agree, it is right to kill but not right to lie. The police have surrounded a house in which a fugitive murderer has sought refuge. They may rightly storm his hiding place if he refuses to surrender and, if he fights back, even kill him. But this does not mean that the police would be right in getting him to surrender by lying to him, by telling him that they have no intention of prosecuting him for murder if he surrenders. The right to kill him does not entail, a fortiori, a right to lie to him.”⁸⁷

Betz’s argument has been defended by those who are hostage crisis negotiators and who argue that it is important to maintain trust and avoid lying in hostage crisis situations in order to achieve successful outcomes.⁸⁸ As I pointed out earlier, Shiffrin is opposed to “misrepresenting to the hostage-taker” in order to secure the release of hostages. It seems that Shiffrin might agree that in the case of the fugitive murderer, if the only options to end the stand-off are to lie to him to get him to surrender or to kill him, then killing him is morally permissible, whereas lying to him is not.

Betz’s argument against the permissibility of lying on the basis of the permissibility of the use of force, or coercion, seems sound. His example is persuasive, and

⁸⁴ Betz, 219.

⁸⁵ Betz, 220.

⁸⁶ See his “Moral Considerations Concerning the Police Response to Hostage Takers,” in *Ethics, Public Policy and Criminal Justice*, eds. Frederick Elliston and Norman Bowie (Cambridge, MA: Oelgeschlager, Gunn & Hain, 1982), 110–132.

⁸⁷ Betz, 219.

⁸⁸ See Francis V. Bourke, Jr., “Lying During Crisis Negotiations: A Costly Means to Expedient Resolution,” *Criminal Justice Ethics* 14 (1995), Winter/Spring 1995, 49–62.

his argument that “Neither is more basic in its justification than the other”⁸⁹ seems cogent.

Betz himself believes that lying is never morally permissible. He has said elsewhere that “It can also be argued that a justified lie is like a moral murder: both notions are self-contradictory ones. Lying is in itself wrong, just as murder is,”⁹⁰ and he says here that “lying [is] not in principle justifiable,”⁹¹ and that “‘justifiable lies’ ... is a self-contradictory term if all lying is wrong.”⁹² He does not consider this position to be an extreme one: “Just as it is not extreme to say that all violence is prohibited or all murder is prohibited, so it is not extreme to say that all lying is prohibited.”⁹³

Betz is not troubled about an exceptionless prohibition on lying because he belongs to the tradition of redefining lying: “lying is that kind of deception which it is wrong to use because it violates a person’s right to the truth.”⁹⁴ According to him, “Constant and Grotius’s way of opposing Kant, and their definition of lying, must be adopted,”⁹⁵ and “what will look like a lie to the inadequately informed person”⁹⁶ is not, in fact, a lie. Citing an example provided by Bok, he says that “the student would not lie who says what is false to his teacher when the latter asks about the student’s father’s drinking problem, and asks it in front of the whole class, for the teacher does not have the right to know this.”⁹⁷ Betz even goes so far as to say that the redefining lying tradition accords with the use of ‘lie’ in ordinary language: “The ordinary language would seem to insist that, if it is justifiable, it is not a lie”⁹⁸ (cf. “is the only definition which makes sense of the ordinary way of talking which distinguishes the bad behavior, lying, from the neutral behavior, deception”⁹⁹). According to Betz, it is only deception, not lying, that is morally permissible. Indeed, Betz suggests that (nonmendacious) deception is morally neutral: “If it is not lying it is deception only, and deception is morally neutral” (cf. “force and deception can be justified [...] Both words, rather, mark permitted morally neutral behaviors on the same level.”¹⁰⁰)

It is not necessary to agree with Betz on the need to redefine lying to deal with cases such as the murderer, or even to agree with him that lying is never morally permissible, in order to find his objection to Bok’s argument against the

⁸⁹ Betz, 222.

⁹⁰ Betz, “Moral Considerations Concerning the Police Response to Hostage Takers,” 123.

⁹¹ Betz, 222.

⁹² Ibid.

⁹³ Betz, 223.

⁹⁴ Betz, 222.

⁹⁵ Betz, 224.

⁹⁶ Betz, 223.

⁹⁷ Betz, 224. The example can be found in Dietrich Bonhoeffer, *Ethics (Ethik [1949])*, translated by Neville Horton Smith, and edited by Eberhard Bethge (New York, NY: Touchstone, 1995), 362.

⁹⁸ Betz, 222.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

permissibility of lying on the basis of the permissibility of force (or coercion) sound, and his counterexample successful.

12 Why coercion is not necessarily morally wrong

It is possible to provide a Kantian interpretation of Betz's counterexample to Bok. In the case of the fugitive murderer, it is possible to hold that the police do not treat the fugitive murderer as a mere means when they kill him (having no alternative but to lie to him to get him to surrender), whereas they would treat him as a mere means if they lied to him to get him to surrender.

Thomas Nagel has argued that extremely hostile behavior—even lethal force—toward another person is compatible with treating them as an end in themselves, and not a mere means:

“A coherent view of this type will hold that extremely hostile behavior toward another is compatible with treating him as a person – even perhaps as an end in himself. This is possible only if one has *not* automatically stopped treating him as a person as soon as one starts to fight with him. If hostile, aggressive, or combative treatment of others always violated the condition that they be treated as human beings, it would be difficult to make further distinctions on that score *within* the class of hostile actions. ...But the fact is that ordinary people do not believe this about conflicts, physical or otherwise, between individuals, and there is no more reason why it should be true of conflicts between nations.”¹⁰¹

The use of lethal force against a fugitive murderer who refuses to surrender and fights back against those trying to apprehend him, absent other facts, does not seem to be a case of treating him as a mere means. If killing a fugitive murderer is the *only* way to apprehend him, then this seems morally permissible, and consistent with Kant's position that one may never treat a person as a mere means—and yet that one must, for example, execute convicted criminals.¹⁰²

This argument may be put as follows. The fugitive murderer *can* agree to my way of behaving toward him, and so himself contain the end of my action, insofar as he *can* agree that if anyone (himself included) becomes a threat to the innocent lives of others, and if the only way to apprehend him is to kill him, then he may be killed. All of us *can* agree to this. Therefore, he whom I intend to kill in order to protect the innocent lives of others *can* agree to my killing him. In killing him, I am not treating him as a mere means.

Generalizing from the particular case of the use of lethal force against a fugitive murderer, it seems that the use of either of the two kinds of coercion discussed above is not necessarily treating another person as a mere means. All of us can agree to be coerced if we become a threat to the innocent lives of others and if the only way to prevent us from harming innocent others is to coerce us, either

¹⁰¹ Thomas Nagel, “War and Massacre,” *Philosophy and Public Affairs* (1972), 2, 134.

¹⁰² Kant, *Metaphysical First Principles of the Doctrine of Right* (*Metaphysische Anfangsgründe der Rechtslehre*) [1797], 472f (6:331f).

by overwhelming us with physical force (including killing us), or by changing the relative appeal of the options between which we are choosing (including telling us to come out with our hands up or be subjected to physical force). In being coerced in either of these two ways, we are not being treated as a mere means. Importantly, this is not true about deception. It is not logically possible to agree to be deceived about a particular matter (one would not then be deceived about it), and it is not even logically possible to agree to be deceived about matters in general (since one would remove the basis of trust necessary for the deception).¹⁰³ This means that whereas deception is necessarily morally wrong, coercion, of either kind, is not necessarily morally wrong.

13 Conclusion

It has been shown, on Kantian grounds, that coercion is morally permissible in certain situations. It has also been shown, on Kantian grounds, that deception is necessarily morally wrong. It follows that Kantians must reject the Moral Asymmetry Thesis. They must also reject the Moral Entailment Thesis. I would further argue that, on the basis of the truth of the Non-Identity Thesis, and a better understanding of deception and coercion, everyone has good reason to reject both the Moral Asymmetry Thesis and the Moral Entailment Thesis.¹⁰⁴

Conflict of interest J.E. Mahon declares that he/she has no competing interests.

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¹⁰³ See my “Kant and the Perfect Duty to Others Not to Lie,” note 60, *supra*.

¹⁰⁴ This article was first presented as a paper at “Truth and Lies in Politics,” a conference held at Sigmund Freud University, on 28 March 2023. I would like to thank the conference participants for their comments on the original paper, especially Jennifer Saul, Verena Wagner, and Simone Dietz, as well as the conference organizers, in particular Lars Allolio-Näcke. I would also like to thank the late Hans Werbik for inviting me to participate in the conference, which afforded me the opportunity to present on this topic. This article is dedicated to the late Katherine Hawley.