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**Kant's Spies**

<https://doi.org/10.1515/kant-2025-2005>

**Abstract:** This paper examines and critiques Immanuel Kant's strong opposition to espionage and related “infernal arts” as expressed in *Towards Perpetual Peace* and the *Metaphysics of Morals*. While Kant condemns espionage as a dishonorable stratagem that undermines the trust essential for lasting peace, this stance has received limited scholarly attention. The paper argues that Kant's rejection of espionage is more nuanced than a mere objection to dishonesty; rather, it is rooted in his political and legal philosophy, particularly his views on just war theory and the need for nations to establish a “rightful condition.” The analysis contrasts Kant's views with those of Grotius and Hobbes. Critically, the paper challenges Kant's position, suggesting that it aligns only with a narrow conception of espionage and overlooks its potential to foster international trust. By reassessing Kant's arguments, the paper highlights their relevance to contemporary debates on the ethical dimensions of espionage and warfare.

**Keywords:** espionage, trust, just war, peace

In an arcane passage in *Towards Perpetual Peace* (ZeF) and in a passing comment in the *Metaphysics of Morals* (MS), Kant expresses very strong opposition to espionage and related “infernal arts.” The sixth article of ZeF states that “No state at war with another shall allow itself such acts of hostility as would have to make mutual trust impossible during a future peace; acts of this kind include employing assassins (*percussores*) or poisoners (*venefici*), breach of surrender, incitement to treason (*perduellio*) within the enemy state, and so forth” (8:346). Kant calls these acts “dishonourable stratagems,” insisting that even in the middle of a war, at least “some trust in the enemy's way of thinking” must remain. Otherwise, hostilities risk passing into a war of extermination (*bellum internecinum*), where mutual annihilation and the destruction “of all right” would bring about perpetual peace “only in the vast graveyard of the human race.” His conclusion in ZeF is therefore that

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a war of this kind, and so too the use of means that lead to it, must be absolutely forbidden. But that the means mentioned above unavoidably lead to it is clear from this: that those infernal arts, being mean in themselves, would not, if they came into use, be confined for long within the boundaries of war, as for example the use of spies (*uti exploratoribus*), in which use is made only of others' dishonesty (which can never be completely eradicated); instead, they would also be carried over into a condition of peace, so that its purpose would be altogether destroyed. (Zef, AA 08: 347)<sup>1</sup>

In MS, Kant says something similar:

A state against which war is being waged is permitted to use any means of defense except those that would make its subjects unfit to be citizens; for it would then also make itself unfit to qualify, in accordance with the Right of Nations, as a person in the relation of states (as one who would enjoy the same rights as others). Means of defense that are not permitted include: using its own subjects as spies; using them or even foreigners as assassins or poisoners (among whom so-called snipers, who lie in wait to ambush individuals, might well be classed); or using them merely for spreading false reports – in a word, using such underhanded means as would destroy the trust requisite to establishing a lasting peace in the future. (MS, AA 06: 347)

This paper seeks to make sense of and criticize Kant's rejection of espionage (a stubborn practice that has been the subject of recent and intense normative analysis outside of Kant scholarship).<sup>2</sup> Kant's repudiation of the "infernal arts" has garnered scarce scholarly attention. Such neglect may be due to the fact that Kant's mention of the practice is indeed brief. Furthermore, Kant's grounds for opposing espionage may seem obvious; spying is, after all, a form of lying, and lying is famously at odds with the categorical imperative. Finally, spying may have been eclipsed in the eyes of many contemporary Kant scholars by other concerns related to warfare, such as assassination, another "infernal art," especially in relation to the unregulated use of drones deployed for the purposes of targeted killing. None of these reasons, as we shall see, warrant the lack of scholarly engagement with the subject. Brevity aside, Kant's rejection of espionage is more complex than it appears at first sight because it is rooted in more than the sheer repudiation of dishonesty, deception and the like.

The paper proceeds as follows. We begin in section one by examining – and characterizing as incomplete – the very few accounts that seek to explain Kant's opposition to spying, which connect this opposition to his ethical theory. Section two offers an alternative explanation, grounded in his political and legal philosophy and more specifically in his contractarian views at the international level (i. e. his ideas about the need for nations to exit the state of nature among nations and enter

<sup>1</sup> All references to Kant are cited by the *Akademie-Ausgaben* pagination. The translations are taken from the Cambridge Edition of the Works of Immanuel Kant, ed. by Paul Guyer and Allen Wood.

<sup>2</sup> Bellaby 2014; Cole 2015; Omand and Phythian 2018; Fabre 2022.

a “rightful condition”), including his just war theory. This section closely examines Kant’s views on espionage in ZeF and MS and their relation to his political and legal philosophy, as well as contrasting these ideas to those of authors such as Hugo Grotius and Thomas Hobbes, whose works must have informed Kant’s own view. Moving in a more critical direction, sections three and four offer an internal and external critique of Kant’s opposition to espionage. From the internal perspective, section three makes the case that if Kant’s opposition to espionage is to square with his just war theory, its target must be a very narrow conception of espionage, which needs to be spelled out. In other words, while some forms of espionage are clearly inconsistent with Kant’s theory, not all are. Section four further argues that, from an external perspective, Kant’s outright and uncompromising opposition to espionage is unconvincing insofar as it fails to consider the possibility that espionage might buttress, rather than undermine, trust among nations.

## 1 Unethical Spies?

Very few scholars have paid attention to Kant’s rejection (read: repudiation) of espionage, and those who have usually trace such rejection back to his ethics. Toni Erskine, for one, argues that Kant opposes the use of spies because the practice is not universalizable according to the categorical imperative.<sup>3</sup> Erskine argues that Kant’s opposition derives from two formulations of the categorical imperative: act only in such a way that the principle guiding your action might coherently become a universal law; and treat other rational actors as having value as ends in themselves, rather than solely as means to an end. Erskine writes that many activities related to the gathering of intelligence – particularly human intelligence collection – do not meet either criterion. Gathering information usually involves deception, as in cases of clandestine collection and even counterintelligence (e. g. the use of double agents, sending false messages). Erskine follows Onora O’Neill in showing why, for Kant, the attempt to universalize a maxim of deception leads to a contradiction in conception: “A maxim of deceiving others as convenient has as its universalized counterpart the maxim that everyone will deceive others as convenient. But if everyone were to deceive others as convenient, then there would be no trust or reliance on others’ acts of communication; hence nobody would be deceived; hence nobody could deceive others as convenient”<sup>4</sup>. The boundaries between truth and

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<sup>3</sup> Erskine, Toni: “As Rays of Light to the Human Soul? Moral Agents and Intelligence Gathering”. In: *Intelligence and National Security* 19 (2), 2004, 359–381.

<sup>4</sup> Onora O’Neill, quoted in Erskine 2004, 371–372.

deception, then, are erased. Along similar lines, deceiving another to obtain intelligence involves treating her merely as a means, for this “human source” cannot consent to the “transfer of knowledge.” This rubs against the second formulation of the categorical imperative. Again, Erskine relies on O’Neill’s interpretation of Kant, according to which “to use another is not merely a matter of doing something the other does not actually want or consent to, but of doing something to which the other *cannot* consent. For example, deceivers make it impossible for their victims to consent to the deceiver’s project”.<sup>5</sup>

In making this argument, Erskine notes that while Kant also develops an argument from trust in support of his lapidary criticism of espionage, this “is an ancillary factor in his indictment”<sup>6</sup> We believe this is a mistake. The text does not lend support to the idea that the argument from trust is “ancillary.” It is perhaps *the* central piece of his indictment. This is not to deny that one might construct a plausible objection to spying based on Kant’s ethics.<sup>7</sup> Our point, to which we now turn, is that Kant’s rejection of espionage is rooted as much in his legal and political philosophy as it is in his ethics.

## 2 Espionage: Sowing the Seeds of Distrust

The sixth preliminary article of perpetual peace holds that even in war, which belligerent states have chosen as a means to resolve disputes and establish rights, there must be a certain trust in the enemy. War, as Kant puts it, is “only the regrettable expedient for asserting one’s right by force in a state of nature” (ZeF, AA 08: 346), and without trust in the enemy, war devolves into a war of extermination (*bellum internecinum*), whose outcome is the annihilation of the other and of all right. Espionage is one of the infernal arts that undermine trust, and Kant goes as far as to claim (although he does not elaborate the point) that these infernal arts, “being mean

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<sup>5</sup> Erskine 2004, 373.

<sup>6</sup> Erskine 2004, 371.

<sup>7</sup> Although there are obvious continuities between his early (particularly his ethical) work and his later work, Kant’s political philosophy is not an “applied” version of his ethics – the categorical imperative writ large. As Elisabeth Ellis puts it, “Kant is consistently aware of the relation of moral arguments to the context in which they are made [and] rarely forgets to think about the political dynamics affecting questions of public ethics” (*Provisional Politics. Kantian Arguments in Policy Context* [New Haven, CT, 2008, 12]). On this point, see also Mika LaVaquer-Manty, *The Playing Fields of Eton: Equality and Excellence in Modern Meritocracy* (Ann Arbor, 2009) and Reidar Maliks, *Kant’s Politics in Context* (Oxford, 2017).

in themselves, would not, if they came into use, be confined for long within the boundaries of war" (ibid.). Let us put Kant's opposition to espionage schematically:

1. A war of extermination leads to mutual annihilation because each belligerent party believes that right is on its side and that the dispute can only be settled by force.
2. Mutual annihilation is to be avoided.
3. Some degree of trust in the enemy's *Denkungsart* is necessary
4. The infernal arts (assassination, poisoning, espionage) used in war undermine trust and could lead to a *bellum internecinum*.
5. Therefore, using the infernal arts is strictly prohibited.
6. Furthermore, the infernal arts will likely spill over to the situation of peace (*Friedenszustand*).<sup>8</sup>
7. To aggravate matters, the use of spies uses the lack of honor of others; it falls within the dishonorable stratagems (*ehrlose Stratagemen*) of war.
8. Espionage also renders citizens unfit to be citizens.<sup>9</sup>

In the rest of this section, we will unpack each of these points, returning to and expanding on them in subsequent sections as we develop the internal and external critiques. We will also elaborate on Kant's views by contrasting his ideas with those of the authors who may have influenced his views on espionage.

The arguments against espionage in ZeF and MS, although different, complement each other. ZeF is based on the aspiration of building trust between nations and on the transcendental principle of Public Law. MS is situated within his discussion of the rightful means of fighting a war. In both cases, Kant is reacting to the permissibility of espionage in international law, justified by jurists, politicians, and philosophers alike, such as Hugo Grotius, Thomas Hobbes, and Frederick the Great.

Consider Grotius. Despite referring to him as a "sorry comforter" (*leidige Tröster*), Kant was strongly influenced by his concept of trustworthiness. Grotius argues that trust should be extended to all individuals and nations, even enemies

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<sup>8</sup> Kant seems to suggest that once a state begins using these extermination methods, there is a high likelihood that they will continue to be used in times of peace. However, since he does not elaborate on this point further in either ZeF or MS, it is difficult to understand the reasons behind this extension. Nonetheless, explaining why this extension from war to peace occurs does not interfere with our broader argument about why a means like espionage is prohibited.

<sup>9</sup> It is important to mention that, although the arguments in ZeF and MS against the infernal arts are related to undermining trust, in Feyerabend's notes it is pointed out that the infernal arts are means of extermination because they "do not belong to the means through which one can resist the power of the other; instead they count only as extermination" (AA 27: 1394). Poisoning, burning to death, deception, spies, etc., are considered means of extermination because the other cannot use force to resist them.

during war. Trusting the enemy may seem contradictory, as “any sensible man does well to be forever on his guard against the enemy” (DFP 117)<sup>10</sup>. However, Grotius continues, “we ought to preserve our Faith for several reasons, and amongst others, because without that we should have no Hopes of Peace” (DJBP 3.25.1.1). In the chapter “Concerning Faith between Enemies” of his *De Jure Belli Ac Pacis* (DJBP), he writes that “it is one of the most inviolable Laws of Nature that we should perform what we promise” (DJBP 3.19.2.2), by which he means trust others, regardless of whether they are enemies or not. Being trustworthy is not only an obligation of natural law; it is also a pragmatic course of action. For a nation, trustworthiness translates into a higher likelihood of reaching agreements to secure peace. A trustworthy nation can benefit politically from its trustworthiness by lending greater credibility to negotiations, encouraging tax compliance, and offering a guarantee that peace agreements will be upheld. Grotius also considered the belief that war is a lawless scenario a mistake (DJBP, Prol. 2). As members of a universal legal community, we are always regulated by natural law, even in times of war.

With these ideas in mind, we may ask: are assassination, poisoning, and spying – and in general the infernal arts that trouble Kant – permissible in times of war? According to Grotius, these are permissible actions. With respect to spying in particular, he writes:

For so are Spies used, yet it is held lawful, by the general Consent of Nations, to send such, as Moses did, and such was Joshua himself [...] and that justly sometimes, by such as have manifestly a lawful Cause to make War, by others with Impunity, which the Law of Arms grants. But if there be any that will not make Use of such Service when offered, that is rather to be attributed to Magnanimity, and the Confidence of one's own Strength, than to an Opinion of its being unjust. (DJBP 3.4.23.3)

Contrary to Grotius, Kant argues that these hostilities are incompatible with the principles that would lead to perpetual peace. Kant begins by distinguishing between private relations and relations between states. Private individuals live within the state, so they can have either private or public ends. That means they can pursue any end that is consistent with the freedom of others. But states are in a more complex situation, as each needs to be considered legitimate while at the same time coexisting in a state of nature where they can act based on “what seems right and good to it” (MS, AA 06: 312). States, as public entities, must have only public ends. The primary goal of a state is to establish the civil condition, where the rights of each individual are guaranteed, exercised, and enforced by a legitimate political authority.

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<sup>10</sup> Schröder, Peter: “Trust (Fides)”. In: *The Cambridge Companion to Hugo Grotius*. Ed. Randall Lesaffer and Janne Nijman, 118–137; 121.

The actions of states should be public rather than private, and thus they must be regulated by public principles. This is the importance of the transcendental formula of public right, better known as the principle of publicity. This principle has traditionally been understood as a principle of public dialogue (Habermas, Deligiorgi), the legitimacy of laws (Lipping), or legislative decision-making (Beade).<sup>11</sup> While publicity can extend its application to these fields, it is often overlooked that the main purpose is to pave the way towards perpetual peace, regulating state actions to avoid “the vast graveyard of the human race” (ZeF, AA 08: 347). States must act as if seeking to establish a civil condition, where actions are consistent with the purpose of leaving the state of nature behind and entering a condition where law reigns supreme.

The principle of publicity has two formulations – one negative, one positive. We will first explain the negative principle, as it is the one that Kant develops in detail. The negative formulation allows us to identify unjust actions through a simple examination:

For a maxim that I cannot divulge without thereby defeating my own purpose, one that absolutely must be kept secret if it is to succeed and that I cannot publicly acknowledge without unavoidably arousing everyone's opposition to my project, can drive this necessary and universal, hence a priori foreseeable, resistance of everyone to me only from the injustice with which it threatens everyone. (ZeF, AA 08: 381)

In the negative formulation, the principle is not examined through the universalization of the maxim, as would be the case with the categorical imperative, but through a practical principle that presupposes an ideal dialogue between an agent and an ideal public that reacts to the agent's maxim.<sup>12</sup> My maxim is unjust if, for it to succeed, I must keep it secret. On the other hand, if publicly disclosed, it would necessarily provoke the rejection of everyone, as the injustice of my maxim threatens all. Through the principle of publicity, the “infernal arts” are seen as unjust because they must remain secret to succeed, and if they are made public they are necessarily rejected by the audience. Kant applies this principle to the case of a preemptive attack in the face of the excessive growth (*potentia tremenda*) of another state. In

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11 Beade, Ileana: “La publicidad como criterio de justicia. Un análisis del principio trascendental del derecho público en Hacia la paz perpetua de Immanuel Kant”. In: *Revista de Estudios Kantianos* 6 (2), 2021, 184–211; Deligiorgi, Katerina: “Universalizability, Publicity, and Communication: Kant's Conception of Reason”. In: *European Journal of Philosophy* 10, 2002, 143–159. Habermas, Jürgen: *The Structural Transformation of the Public Sphere*. Cambridge, MA., 1989 [Strukturwandel der Öffentlichkeit, 1962]; Lipping, Jüri: “Kant and the Two Principles of Publicity”. In: *The European Legacy* 25 (2), 2020, 115–133.

12 Beade 2021, 195–196.

this case, according to Kant, the maxim to increase combat strength must be kept hidden, as its disclosure would “only bring on the trouble still more certainly and quickly” (ZeF, AA 08: 384). If my maxim cannot be made public without simultaneously failing, then it is unjust. Although Kant did not analyze it in the light of the publicity principle, espionage would be the very first of the infernal arts to flout the principle, because secrecy is of its essence.

While the negative formulation identifies unjust maxims, the positive formula allows maxims that are consistent with right. The positive formulation states: “All maxims which need publicity (in order not to fail in their end) harmonize with right and politics combined” (ZeF, AA 08: 386). Although Kant leaves “further elaboration and discussion” of this principle for another occasion, the goal of the principle is “the removal of all distrust toward the maxim of politics” (ibid.), so that any public action pursued by states is trustworthy. By eradicating all forms of distrust among states, trust becomes the foundation for secure coexistence, ensuring the prevention of unjust attacks. If “establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of [it]” (MS, AA 06: 355), allowing “infernal arts” is inconsistent with the pursuit of peace among states, as they perpetuate distrust and hinder the transition to a civil condition. In sum, while the negative formulation identifies injustices, the positive formulation indicates maxims that are reliable for states. If the maxim is just and fosters trust, then public actions do not arouse suspicion, and agents who undertake them are therefore reliable.<sup>13</sup>

Kant’s deep concern with the eradication of distrust is also at the basis of his disagreement with Hobbes. In the *Leviathan*, spies figure prominently in a crucial and famous passage:

But though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbours; which is a posture of war.<sup>14</sup>

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<sup>13</sup> However, as we will argue in detail later, it is important to acknowledge that the principle of publicity does not categorically rule out all forms of secret actions by states. For instance, espionage, when conducted for defensive purposes, can align with public principles if the gathering of information serves the public good and is consistent with the mutual rights of states. This means that the actions can be made unknown without necessarily opposing the rights of the citizens of the state conducting the espionage or those of the state being spied upon, as long as there is a reciprocal understanding of such actions.

<sup>14</sup> Hobbes, Thomas: *Leviathan*. Ed. with an Introduction and Notes by J. C. A. Gaskin. Oxford 2009; ch13: 63.



The Latin version of this passage is slightly different. Hobbes writes explicitly that suspicion (or “jealousies,” in this translation) among agents leads to the use of spies (*uti exploratoribus*). Kant may have used the Latin expression following Hobbes. The allusion to Hobbes, however, is significant beyond the use of the word *exploratoribus*. *Leviathan* draws a direct link between diffidence and war and then defines spying as “a posture of war.” Hobbes famously argued that nations are in a state of nature in relation to each other and therefore cannot trust each other.

Along similar lines, in *De Cive* Hobbes argues that two things are necessary for the defense of a people: “To be warned, and to be forearmed.” In the state of nature, there is no such thing as peace, but rather a “breathing time, in which one enemy observes the motion and countenance of the other”<sup>15</sup>. In this context, the state requires “that there be some who may as near as may be, search into, and discover the counsels and motions of all those who may prejudice it.” So, according to Hobbes, in order to protect the city, “[t]hey who bear Rule can no more know what is necessary to be commanded for the defense of their subjects without spies, than those spiders [the spies] can when they will go forth, and whether they shall repair, without the motion of those threads” (ibid.). Since no single nation has the assurance that other nations will refrain from attacking them, they may permissibly stand in a posture of war, spying on each other to be on the alert.

For Hobbes, then, the necessary suspicion that arises in the state of nature justifies the use of spies to protect against future invasions. The use of spies is a permissible response to the assurance problem, that is, the idea that a commitment to peace, and commitments in general, is empty unless a sovereign, and in this case a *global sovereign*, exists to force the parties to follow through. Hobbes, however, believed that a global Leviathan was not a plausible solution. By contrast, while Kant agreed that a global sovereign was out of the picture – there ought not to be one, since such an institution would be impractical and could easily glide towards despotism – he believed that world peace could potentially be approached without one. Kant offered a novel solution to the assurance problem. He argued that a federation of republican states could “decrease the likelihood of war”<sup>16</sup>. However, he was explicit that this federation could only hold back the “stream of hostile inclination” with the constant danger of its breaking out (ZeF, AA 08: 357). Kant acknowledged the impossibility of creating a world state and suggested that peace, independent of the internal regime types, was never entirely secure (MS, AA 06: 350).<sup>17</sup> A republican consti-

<sup>15</sup> Hobbes, Thomas: *De Cive*. Ed. Howard Warrender. Oxford 1987, 13: 7.

<sup>16</sup> Caranti, Luigi: *The Kantian Federation*. Cambridge 2022, 11.

<sup>17</sup> Kant's arguments against a world state do not seem to rule out the possibility of a world state with a federalist structure (Pallikkathayil, forthcoming). For an insightful study on these debates and the federalist structure in Kant's philosophy, see Caranti, 2022.

tution would put a check on monarchs who attempted to push their nation into war for self-interest and vainglory, as the people would suffer the consequences. Kant's republicanism is, of course, not Rousseau's.<sup>18</sup> Kant's republicanism does not entail that citizens must actively participate in the manner of direct democracy. Rather, he means that the monarch must follow the general will, adopting the sovereign's (the people's) point of view. In Kant's view, republics must form a voluntary association, which decreases the likelihood of war but does not guarantee perpetual peace.

Since republicanism, mutual trust, and a voluntary federation are Kant's solutions to the assurance problem, eliminating espionage among nations is all the more important for him. The same is true in relation to incitement to treason (*perduellio*). Nations at war must avoid actions that undermine trust – a condition for a durable peace – and that preserve the possibility of leaving the state of nature and entering a civil condition. Entering a civil condition involves settling disputes according to civil law, but if every nation at war followed the principle “When we can protect the nation only with spies, we should proceed in this way,” then nations could not count on each other to keep the promise to settle disputes according to law. Using spies would involve a principle that would hinder lasting peace and life under civil conditions if it became universal law. The principle of refraining from espionage is crucial to Kant's vision of a world where nations operate under civil conditions and resolve disputes through law rather than through deceptive practices.

There is one further category of argument we shall discuss. In MS, Kant writes that espionage is an illegitimate means of defense because “a state against which war is being waged is permitted to use any means of defense except those that would make its subjects unfit to be citizens; for it would then also make itself unfit to qualify, in accordance with the Right of Nations, as a person in the relation of states (as one who would enjoy the same rights as others)” (MS, AA 06: 346). A state that employs these “underhanded means” not only hinders lasting peace but also disqualifies its citizens as persons, because it uses them as mere means, which contradicts the concept of personhood. Therefore, such a state would fail to establish a civil condition or uphold the principles of a civil state.

But if the sovereign cannot employ its people as a mere means, why can it employ its people for war? According to § 55 of MS, the sovereign and its citizens have a duty to maintain a civil condition, which includes defending the state against a (potential) enemy seeking to destroy the civil condition. Consistent with this obligation, the sovereign has the power to call upon its citizens to defend the nation, but it can only do so through legitimate means of defense. Spying is an unjust means

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<sup>18</sup> For a more extensive discussion on the difference between Kant's republicanism and Rousseau's, see Caranti, 2013.

of defense because it cannot be public, so the sovereign who uses his citizens as spies is using citizens as means, which would be inconsistent with the personhood of citizens. Moreover, citizens must not serve as spies even if they do so voluntarily. The argument for this is analogous to the argument against voluntary slavery. For Kant, contracts only occur between persons. A contract of slavery implies that one of the parties ceases to be a person and becomes a thing. If contracts are only binding between persons, then a contract by which one party becomes a thing is inconsistent and therefore not binding. In the case of espionage, Kant is very serious in stating that spying on others disqualifies people from the concept of citizenship. Therefore, even if a citizen wanted to adopt the role of a spy, the contract would not be binding because, according to Kant, they would lose the status of a person.<sup>19</sup>

One final point to underscore is that for Kant espionage is *strictly* prohibited. There is no flexibility with respect to its prohibition as there might be with respect to other practices. In Kant's word, it is *leges strictae* as opposed to *leges latae*. We will come back to this point later.

### 3 Peace with Spies?

So far, we have laid out Kant's opposition to spying based on an examination of his arguments in MS and ZeF and on a consideration of his likely interlocutors on the subject. We will supplement this work on both scores below, but it is now time to raise some criticisms of Kant's position. In this section, we claim, from an internal perspective, that his opposition to espionage is inconsistent with his own theory of just war, unless he entertains an extremely narrow understanding of espionage. In other words, we acknowledge that Kant's rejection of espionage is a consistent part of his just war theory as it relates to some incarnations of espionage, but, we claim, there is a just cause (self-defense) for espionage, and a just manner of conducting it (targeted espionage), that need not be at odds with the desiderata of Kant's legal and political philosophy.

While he did not explicitly set out to develop a just war theory in the way that, for example, Samuel Pufendorf did a few decades earlier, Kant did lay out many of the elements of one such theory, particularly in MS. Just war theories have four

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<sup>19</sup> The basic idea is that people cannot desire whatever they want; their ends must be in accordance with principles of law. While a person may desire slavery, slavery is contrary to the law, so voluntary slavery has no binding force under the law. The same goes for espionage. If espionage is an illegitimate means, no agreement between wills for espionage can be legitimate. For Kant's argument against voluntary slavery, see Ripstein, 2009.

dimensions. The standard dimensions are *jus ad bellum* (what justifies waging a war) and *jus in bello* (what is the proper way to conduct a war). Two further dimensions have received increasing attention in recent years: *jus ex bellum* (the proper way to exit war) and *jus post bellum* (the proper way to address the consequences of the war). For the purposes of our internal critique of Kant's rejection of espionage, let us focus on the *jus ad bellum* and *jus in bello* components of Kant's just war theory. We will turn to *jus post bellum* concerns as we discuss our external critique of Kant's rejection of espionage.

We already mentioned Grotius and Hobbes as probable theoretical sources of his repudiation of spying. There is another possible source, one closer to him, personally and politically. Several decades before *Perpetual Peace* (1795) was published, Frederick the Great penned a chapter titled "Spies and Their Use and How One Obtains News about the Enemy" in his *General Principles of Warfare* (1748). Kant must have had this text in mind when he wrote disapprovingly about *uti exploratoribus*. Nothing in the chapter (its implicit justification for the use of spies, its discussion of specific forms of espionage, even its overly pragmatic tone) is likely to have garnered Kant's praise. He must have considered it, along with Frederick's foreign policy more generally, the least defensible dimension of Prussian enlightened absolutism.

In *General Principles of Warfare*, a work reeking of Machiavellian pragmatism, Frederick justifies espionage merely on the grounds of knowing "the enemy's intentions" in order "to have an edge on him." He describes four types of spies: "common citizens who indulge in this craft, double agents, spies in important positions, and, finally, those who are forced into this unpleasant business." Frederick discourages the use of the first type because of its unreliability. By contrast, he encourages the use of double agents infiltrated into the ranks of the enemy both to "spread false information" and to acquire valuable information. In turn, when a double agent is caught among one's ranks, one must obtain "every possible advantage from this delicate situation," providing him with false information. Frederick recommends "bribery" to recruit spies and closes the chapter admonishing the military strategist to pay spies "generously," because those "who [risk their] neck to serve you [deserve] to be rewarded for it." He even supports more unsavory, last-resource practices to obtain intelligence from the enemy:

If one has no other means in hostile territory to procure news of the enemy, there remains only one option, even though it is harsh and cruel. You take a well-off citizen, who has house and home, wife and children, and you give him a clever man, whom you disguise as a servant, but who must understand the local language. The citizen must take him along as a coachman and go into the enemy camp, under the pretext of complaining about some injustice he has suffered. At the same time, you threaten him: if he does not bring back your man after a sufficient time in the enemy camp, then his wife and children will be beaten and his house will be

ransacked and set on fire. I had to use this method when we were in the camp at Chlum, and I was successful with it.<sup>20</sup>

This is an unflattering portrayal of espionage, and there is much to say about it. Let us focus on *jus ad bellum* considerations first. Espionage in Frederick's opus is in the service of an unjust war. The text was written in the aftermath of the first two Silesian Wars, which were unjust wars of expansion. Frederick, the *roi conquérant*, not only invaded Silesia and Saxony but also partitioned Poland. Many examples found in the *General Principles of Warfare*, including those pertaining to espionage, are derived from Frederick's firsthand experiences in his conquests and aggressive foreign policy.

But espionage may be conducted in the pursuit of a loftier goal, namely self-defense in the face of unjust aggression. We think that self-defense yields two versions of the justification for spying in accordance with Kant's theory, one moral and the other legal and political. From a moral perspective, some scholars, like Orend, argue that Kant articulates a "right to self-defense," which includes a "right to anticipatory attack."<sup>21</sup> Both rights entail the permission to spy, at least to some degree. Otherwise, these rights are rendered significantly weakened. It is clear why Kant would endorse a right of self-defense. As Orend argues, wars of self-defense do not violate the categorical imperative. All rational agents could act on the exact same principle of action; in acting, full respect is paid to their rational agency. Orend "runs" the categorical imperative procedure to show why self-defense is acceptable (why it is a maxim that can be universalized). The reasoning would go along the following lines: when faced with rights-violating aggression, I reserve the right to employ those measures, including armed force, necessary for self-defense. Every rational agent can endorse such a maxim of permissible self-protection. There is no contradiction here. In short, it is unclear why the right to self-defensive espionage could not be turned into a maxim. Neither of the two dimensions of the categorical imperative – universalization and respect for rational agency – is thereby violated.

From a legal perspective, according to Kant, there is only one innate right: the right to freedom, defined as "independence from being constrained by another's choice" (MS, AA 06: 237). My freedom extends as far as my actions are consistent with the freedom of others. As long as I act with my body, I need exclusive possession of it. Nobody can interfere with me unless I authorize it. This right is innate because it requires no establishment: I am born with the right to be free. The right of self-defense is simply the right to protect my own body, as a reflection of the

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<sup>20</sup> Friedrich II, King of Prussia, "Spies and Their Use and How One Obtains News about the Enemy" (1748), published in: *German History Intersections*, <<https://germanhistory-intersections.org/en/knowledge-and-education/ghis:document-4>> [April 14, 2025].

<sup>21</sup> Orend, Brian: "Kant's Ethics of War and Peace". In: *Journal of Military Ethics* 3 (2), 2004, 161–177.

protection of my rights. If someone attempts to attack me, they are trying to violate my freedom, and when I prevent that attack, I am simply defending my freedom. Suppose I notice your intention to push me, either for fun or as an intended attack. I have the right to protect myself, which may involve, for example, parrying the push. According to Kant, “if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i. e., wrong), coercion that opposes this hindrance to freedom is consistent with freedom in accordance with universal laws, and thus, it is right” (MS, AA 06: 231). If anyone tries to impose their will on me, I can reject their position. Similarly, the state, as a political entity, cannot be arbitrarily interfered with, and therefore it has the right to self-defense.

As previously stated, Kant opposed preemptive attacks because publicizing such intentions would accelerate the attack. However, MS takes a more favorable view of the right to preventive attack (*ius praeventionis*):

another state's being the first to undertake preparations, upon which is based the right of prevention (*ius praeventionis*), or even just the menacing increase in another state's power (by its acquisition of territory) (*potentia tremenda*). This is a wrong to the lesser power merely by the condition of the superior power, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate. (MS, AA 06: 346)

If a state feels threatened by the preparations for an attack by another state or by an excessive increase in power, it may launch a defensive attack. This right is based on the right of self-defense. But, while the theoretical justification of the right of prevention seems clear, its practical application remains uncertain. Is the perception of risk enough to justify launching an attack, or is it necessary to gather further information? If a state has the right to develop its military, when does that development count as wrong for others? How do we determine the right time to attack a country that is enhancing its strength? The point of raising these questions is to establish that states cannot make a commitment to refrain from espionage *unless* they are under threat *because ascertaining whether they are under threat is precisely the point of espionage*. As Seumas Miller rightly argues with respect to intelligence work, every epistemic endeavor is undertaken from a position of ignorance: Is there a threat? What is its nature? The content of the end of the endeavor is, by definition, unknown. “Accordingly, any prior moral assessment of the contemplated epistemic action is necessarily radically incomplete, since it depends in large part on the moral costs attaching to the realization of the epistemic end, i. e., of being in possession of the answers to the questions sought – something which is, to reiterate, by definition unknown.”<sup>22</sup> By the

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<sup>22</sup> Miller, Seumas: “Rethinking the Just Intelligence Theory of National Security Intelligence Collection and Analysis: The Principles of Discrimination, Necessity, Proportionality and Reciprocity”. In: *Social Epistemology* 35 (3), 2021, 211–231; 216.

same token, repealing an armed attack also requires that states have foreknowledge of the intentions, capabilities, and weaknesses of the aggressor. In the face of the possibility of a preventive attack, espionage seems to be, under certain conditions, a viable option both for protecting against external assaults and maintaining civil conditions among states. For the right of self-defense not to be hollow, it must give states permission to predict armed attacks. This requires that states have the right to acquire information indicating whether they might face imminent attack.

Following the principle of publicity, even intelligence actions should be announced in due time. If a nation consistently refuses to declare its intentions sincerely and there are clear indications of contrary intentions, then, before launching a frontal attack, espionage becomes a possible means of maintaining peace between nations. However, it should be undertaken solely for the purpose of identifying whether the potentially harmful actions of an enemy correspond with what they say. One might argue that a right to suspicion is justified. If a nation refuses to halt, for example, the growth of its weaponry, the possibility of using spies to defend one's own nation and launch an attack at an opportune moment arises. In short, then, the swift growth of a state's offensive power draws attention from weaker nations. If there is no public explanation for such growth, preventive espionage can gather information about their intentions and facilitate a proper decision on whether to launch a defensive attack.

Let us now turn to *jus in bello* concerns. Kant rightly objected to specific incarnations of unrestrained espionage. In the passage from the *General Principles of Warfare* quoted previously, Frederick advocates a kind of espionage that has no objection to involving innocent civilians who are not liable to be harmed. This is in flagrant disregard of *jus in bello* principles, most notably the principle of discrimination (i. e., belligerent action must distinguish between civilians and combatants and for the most part spare the former), and such forms of espionage must have troubled Kant deeply. Kant likely viewed these actions as demonstrations of how citizens are utilized as mere instruments for waging war – a point he elaborated on in MS.

However, other kinds of espionage need not contradict *jus in bello* principles. Frederick stresses the importance of acquiring information valuable for intelligence purposes. Admittedly, as Cécile Fabre rightly claims, since such information is almost never voluntarily shared, it needs to be uncovered piecemeal through complex and long organization, and through deception, manipulation, and the like (including practices like fabricating evidence, misleading by implication, and concealing information).<sup>23</sup> Now, there are many kinds of deception. Fabre herself

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<sup>23</sup> Fabre, Cécile: *Spying through a Glass Darkly: The Ethics of Espionage and Counter-Intelligence*. Oxford 2022, 92–112.

distinguishes between *protective* deception, typical of counterintelligence operations protecting secret information to thwart the enemy's intention, and *acquisitive* deception, which seeks to obtain the enemy's information.

Fabre offers a hypothetical example of espionage through acquisitive deception involving the nations "Green" and "Blue": "Green's services have identified a high-level Blue commander who, they have good reason to believe, is preparing an attack on Green's soil. They encourage Asset to insert himself in the commander's live-in entourage, including his innocent family members, with a view to spying on him, thereby also gathering information about his family."<sup>24</sup> By contrast, Operation Crossbow during the Second World War is an example of protective deception in counterintelligence operations. Towards the end of the war, Germany's long-range rockets were used to attack strategic sites in London. The Allies misled Germany into shortening the rocket's range, which spared part of the city severe damage. Taking a page from Frederick's *General Principles of Warfare*, the Allies accomplished this by, among other things, using a double agent who supplied the German High Command with false information.<sup>25</sup>

While it may be contended that espionage via acquisitive deception is impermissible by Kant's standards (for reasons we will discuss in a moment), it would be a mistake to extend the condemnation to protective deception. Assuming that the cause is just, as it was in Operation Crossbow, infiltrating a double agent is a permissible strategy on the part of a nation seeking to protect its civilians. Drawing on Seana Shiffrin's discussion of Kant's morality of lying,<sup>26</sup> Fabre shows that protective deception along the lines of Operation Crossbow is in keeping with Kant's ethics.<sup>27</sup> Shiffrin considers a modified version of Kant's famous example of the murderer at the door. Shiffrin's Kant would hold that you may deceive the murderer by providing false information were he to ask you if the victim is hiding in your house, lest you become his accomplice. It is permissible, perhaps even mandatory, to deprive him of the means (in this case, truth) he needs to pursue his unjust ends *qua* unjust ends. Operation Crossbow finds a similar justification: it was permissible to deceive German generals to send the rockets away from densely populated areas to save lives.

Admittedly, contrary to protective deception through counterintelligence, some types of espionage would not be permissible at the bar of Kant's ethics, as when Green inserts Asset into the personal *milieu* of Blue's commander, or when Frederick's spy deceives (and even threatens) the wife and children of the local, well-

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<sup>24</sup> Fabre 2022, 102.

<sup>25</sup> See Fabre 2022, 98.

<sup>26</sup> Shiffrin, Seana Valentine: *Speech Matters: On Lying, Morality, and the Law*. Princeton 2014.

<sup>27</sup> See Fabre 2022, 106–109.



off citizen. These are tactics in which a nation deceives another acquisitively as a means of procuring its secrets or offensively as a means of protecting its own, as well as tactics aimed at depriving a nation of the all-purpose resources it needs to pursue both unjust ends and non-wrongful ends. To see why these forms of espionage are objectionable from Kant's perspective, return to the example of the murderer at the door, with a slight variation. You must not deceive a dehydrated murderer by telling him, falsely, that there is a well where he can quench his thirst in the direction opposite to where the victim is hiding, a lie that would in effect save the victim's life. According to Shiffrin, you must tell the murderer the truth (the real location of the well), even if you thereby give him, indirectly, what he needs to pursue his unjust deeds (meet his basic need for water). And you must do this, says Shiffrin in Fabre's reconstruction of her argument, because no matter how egregious his wrongdoing, the murderer remains worthy of respect; the lie would undermine the prospect of redemption, which he must receive.<sup>28</sup> Extrapolating, for Shiffrin's Kant, espionage that includes deceptive practices of this second kind is morally objectionable in so far as it undermines good faith between belligerents or political communities, which is necessary for durable peace. The point we want to underscore in this section is that Kant's ethics cannot uphold a blanket prohibition on espionage. While spying in certain ways may be impermissible, doing so in other ways could pass Kant's standards.

Now, does espionage erode trust between belligerents or political communities? Fabre rightly rejects this objection, arguing that espionage or counterintelligence need not undermine peace.<sup>29</sup> We agree, and this is a point that takes us to our external critique of Kant and to *post bellum* considerations. We now turn to elaborate on this critique.

## 4 Espionage as a Tool for Trust

### 4.1 The Infernal Art of Peace?

Let us now turn to what we have called the external criticism of Kant's rejection of espionage. The point is not to identify points of tension within his theory that arise as a consequence of his blanket indictment of espionage but to claim that such an indictment is unconvincing once we consider certain relevant empirical circum-

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<sup>28</sup> See Fabre 2022, 107.

<sup>29</sup> See Fabre 2022, 108.

stances. We advance two claims. First, Kant is wrong that spying necessarily undermines trust and leads to perpetual war. In fact, the opposite might be true. Second, it is unclear why Kant's prohibition on spying is strict rather than permissive, which forecloses the possibility of tolerating espionage as a transitional measure.

Kant insists that trust among belligerent parties is critical for securing peace. According to Orend, this is an original feature of Kant's just war theory – it threads together *jus ad bellum*, *jus in bello*, and *jus post bellum* in a way that other just war theories do not.<sup>30</sup> That is, any state that is considering resorting to war must not only fulfill *jus ad bellum* criteria but commit itself in advance to avoiding breaches as far as possible to norms of *jus in bello* and *jus post bellum* as war unfolds. Orend suggests that Kant's argument is that the means employed in warfare must not imperil the possibility of durable peace. Kant speaks of “underhanded means” (MS, AA 06: 347), under which he includes espionage, as would destroy the “confidence” necessary for “establishing a lasting peace in the future” (ibid.) These are therefore *strictly* prohibited.

The main problem with this view is its underlying belief that trust secures compliance between nations (compliance, that is, in the steps toward peace). Nations will comply with their obligations, particularly in the realm of security, on the condition that all other nations will do likewise. The deployment of spies by one nation, in this view, will signal to others a lack of commitment to peace; it will show them that the spying nation is untrustworthy. At play here seems to be a risk-assessment or predictive view of trust, to use a contemporary term (Hoffman).<sup>31</sup> What motivates trustworthy behavior, according to this view, is self-interest or social constraints. Hardin's notion of “encapsulated interest” is an example of this view.<sup>32</sup> The problem for Kant, if he indeed holds a predictive view of trust, is that under such a view espionage (or some forms of it, at any rate) is quite compatible with peace-seeking. In other words, the source of compliance is not trust but mistrust – admittedly a moderate amount thereof, but one sufficiently great to warrant the use of spies. Suppose nations A and B wish to avoid a war of annihilation. In Kant's picture, by using spies, A will bring both nations to the brink of war, for such a move may be detected by B, which will turn the relationship into one of distrust, increasing the likelihood of armed conflict. On a different picture, before cooperating and during the first stages of cooperation to achieve peace, nation A wants to avoid the risk of nation B's defecting. A has at its disposal conventional verification and assurance

<sup>30</sup> Orend, Brian: “Kant's Ethics of War and Peace”. In: *Journal of Military Ethics* 3 (2), 2004, 161–177.

<sup>31</sup> Hoffman, Aaron M.: “A Conceptualization of Trust in International Relations”. In: *European Journal of International Law* 8 (3), 2002, 375–401.

<sup>32</sup> Hardin, Russell: “Trust in Government”. In: *Trust and Governance*. Ed. Valerie Braithwaite and Margaret Levi, 9–27. New York 1998.

techniques to make sure B complies. But these are of limited purchase. Espionage can do the work, at least provisionally, of complementing verification (Baker).<sup>33</sup>

Along these lines, Baker writes that state leaders may be hesitant to begin negotiations with a partner suspected of misrepresenting “strategic issues that bear on treaty compliance”<sup>34</sup>. Uncertainties may abound about the negotiating partner's preferences, intentions, and capabilities, and these may undermine cooperation. Espionage can contribute to defeating this hesitancy. It provides information that allows “state leaders to better appreciate their partners' negotiating positions, and thereby encourages the facilitation of strategic dialogue.” Thus, Baker argues that “[w]ith espionage available as a means by which to ensure parties are upholding their end of a security bargain, nations are more likely to cooperate within functional areas to achieve peace”.<sup>35</sup> Bitton offers the famous Strategic Arms Limitation Talks (SALT) treaties, negotiated between the US and the Soviet Union, as an example of the idea that espionage may be a precondition for basic trust.<sup>36</sup> Both superpowers, which had effectively reciprocal positions, faced the problem of monitoring performance. So they both chose not to interfere with the “monitoring mechanisms” – the effective equivalents of espionage – that the agreements put into place. This demonstrates that espionage can play a role in “enabling minimal trust and maintaining stable treaties.”

Take another example from the Cold War. George Blake, the paradigmatic double agent of the Cold War, was an officer of the British intelligence agency M16 and a spy for the Soviet Union. In 1955, he revealed to Soviet authorities that the British were preparing to tap phone landlines in the areas controlled by the Soviet Union in Berlin, the paradigmatic city of spies during the Cold War. The phone taps, along with the fact that the Soviets knew about them, afforded both parties reassurance that an impending attack was not forthcoming from either side, thus stabilizing their relations in the early stages of the Cold War.<sup>37</sup> In light of this analysis, it may not be an overstatement to claim, as the paradigmatic spy-turned-ruler Vladimir Putin did apropos Blake, that “[i]n the years of his difficult and intense service, he made a truly invaluable contribution to ensuring strategic parity and preserving peace on the planet”<sup>38</sup>.

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33 Baker, Christopher D.: “Tolerance of International Espionage: A Functional Approach”. In: *American University International Law Review* 19 (5), 2003, 1091–1113.

34 Baker 2003, 1105.

35 Baker 2003, 1108 f.

36 Bitton, Raphael: “The Legitimacy of Spying Among Nations”. In: *American University International Law Review* 29 (5), 2014, 1009–1070; 1043, n. 107.

37 Fabre 2022, 67.

38 McFadden, Robert: “George Blake, British Spy Who Betrayed the West, Dies at 98”. *The New York Times*. December 26, 2020.

## 4.2 Let's Be Permissive!

Kant is emphatic that espionage must be strictly, rather than permissively, prohibited in virtue of its detrimental effects on peace prospects. Interestingly, however, other practices, which would seem to be equally or even more detrimental to the achievement of peace than espionage – such as treating the state as personal patrimony – could in Kant's view be temporarily tolerated. Why does Kant endorse a strict rather than a lax prohibition on spying? We think that Kant might have been inclined to reject espionage in the way he did for two reasons. First, he failed to appreciate its potential contribution to achieving peace, which would give it some provisional legitimacy, a quality that he discovered in other practices and that made him more tolerant of them. Second, Kant put espionage on a par with all the other “infernal arts” of warfare that do indeed seem to be an obstacle to peace, such as assassinations, spreading false rumors, and so on. For the most part, however, these other practices lack the redeeming quality that espionage may have. We explore these two considerations in the lines below.

To make sense of – and reject – Kant's *strict* rejection of espionage, we first need to make a few observations about a feature of his political work that Elisabeth Ellis calls provisionalism,<sup>39</sup> an approach that will come to full fruition in MS but that is already present in ZeF. In the realm of politics, in the absence of universally authoritative political judgments, rights must be provisional:

Kant takes the conclusions of his ethical work for granted in his political theorizing; he treats corollaries of the categorical imperative as conclusive principles of political right. However, in his political theory his concern is not simply to lay out another ideal system of politics, however well or ill grounded, but to understand the relationships among pragmatic politics, public applications of moral judgment to political practice, and the processes of political change. Kant does construct an ideal republican political system, but his main theoretical innovation lies elsewhere, in his account of provisional rights.<sup>40</sup>

And what is provisional right? Ellis continues: it “is a response to the inevitable uncertainties that arise from the hybrid, half-ideal, half-empirical world of politics” (ibid.). Or, as Kant himself argues in the MS: “Always leave open the possibility [...] of entering into a rightful condition” (ZeF, AA 08: 347). In ZeF, damaging international trust through the use of spies, assassins, and false promises undermines the possibility that a country may enter into peaceful relations with others later. Therefore, such practices must be eradicated. On the other hand, other practices

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<sup>39</sup> Ellis, Elisabeth: *Provisional Politics. Kantian Arguments in Policy Context*. New Haven, CT, 2008.

<sup>40</sup> Ellis 2008, 7.

(e. g. treating the state as personal patrimony) are a clear violation of right but may still be tolerated because they do not foreclose the possibility of entering a rightful condition (the patrimonial ruler may move the nation toward progress). This means, among other things, that tolerating “a conclusively unjust domestic situation may be provisionally legitimate”<sup>41</sup>. Provisional right contrasts starkly with the more familiar picture of Kant’s theory as offering inflexible, conclusive principles.

Could anything infuse espionage with provisional legitimacy? We have already offered some insights that help to answer this question. Espionage can give belligerent parties some assurances and serve as a verification system. There are other considerations. First, Youngjae Lee argues that one has a moral duty to gather intelligence and share military secrets in order to level the global playing field and help weaker countries, who do not have access to such intelligence.<sup>42</sup> Kant, as we saw in the previous section, was deeply concerned with asymmetries of power in international relations.

Second, drawing on Kant’s views on trust, Marguerite La Caze argues that while it is true that we must banish deceptive practices, allowing political trust to grow and thus enabling peace, it is also true that the first steps toward the construction of trust might involve interactions that are not fully sincere: a pretense of peace, as when victims and perpetrators agree to work together out of the sheer necessity of doing so.<sup>43</sup> The aspiration is that this *modus vivendi* will transform into genuine trust. Put succinctly, when theorizing about trust she seems ready to admit that some degree of pretense, of insincerity, is tolerable and perhaps necessary. Even Kant, she points out, was willing to relax his strictures against insincerity insofar as outward shows of respect and affection to others can lead to their reality.

One final aspect that grants espionage provisional legitimacy relates to Kant’s insistence that nations must be structured politically as republics, by which he means that they must have a clear separation of powers and a *Rechtsstaat*. A republican constitution will greatly reduce the sovereign’s inclination to go to war (in contrast to the monarch’s impulse towards self-aggrandizement) and give assurance to other nations that resort to war will not be arbitrary. The obvious objection to Kant’s republicanism is that it imposes a political arrangement on nations that might otherwise choose a non-republican constitution or might need time to construct such a political arrangement. Bitton discusses this point and advances espio-

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<sup>41</sup> Ellis 2008, 5.

<sup>42</sup> Lee, Youngjae: “Punishing Disloyalty? Treason, Espionage, and the Transgression of Political Boundaries”. In: *Law and Philosophy* 31 (3), 299–342; 334.

<sup>43</sup> La Caze, Marguerite: *Ethical Restoration after Communal Violence: The Grieving and the Unrepentant*. Lanham 2019; 78–81.

nage as a solution.<sup>44</sup> Noting the devastating costs, for states, of adopting a constant posture of high alert to avert the threat of war, he argues that the solution is that states know the strategic intentions of their neighbors in advance. It follows that states have a duty of basic transparency about strategic intentions. A properly transparent structure, following Bitton, calls for institutions that are typical of liberal democracies: free elections, parliamentary oversight, and a free press. However, the fact that transparency is structurally characteristic of liberal states leads to another problem: the problem of liberal political imperialism. One way to circumvent the problem of “liberal imperialism” is espionage. Along these lines, Bitton follows a Rawlsian hypothetical contract to argue that a rule allowing espionage would be acceptable to all parties as an instrument for enforcing a duty of basic transparency among nations. Even if we do not endorse this point about liberal imperialism, we can grant that constructing a republic à la Kant would be a herculean task of institution-building. The fact that espionage is a transitional response to the problem of republican institution-building furnishes it with provisional legitimacy.

Let us now turn to the second point: Kant classifies spying under the heading of the infernal arts, alongside assassination, poisoning, and the use of snipers. Putting all these “arts” in the same bag, however, is a mistake. While espionage, or rather, some forms of espionage, can contribute to peacebuilding, the same cannot be said for these other practices. We turn to examine two of the infernal arts to make this case.

Take first the case of assassinations, or targeted killings, to use the more contemporary term for the practice. Endorsing Kant’s reference to assassinations in ZeF, Jeremy Waldron claims that such a stratagem “is something vicious one becomes, a dishonourable character that one takes on, one that cannot then be sloughed off just as soon as the circumstances that call for targeted killing have passed”<sup>45</sup>. The concern here seems to be one not only about the moral character of the assassin, but also about the fact that such a character, not being of the kind one can simply cast off in the eyes of others, particularly those of the enemy, will impede peace. Empirical cases can be invoked in support of this view. Tobias Kelly<sup>46</sup> and Ron Dudai and Hillel Cohen<sup>47</sup> argue that one consequence of Israel’s policy of targeted assassinations is the weeding out of moderate and conciliatory agendas on the Palestinian

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<sup>44</sup> Bitton 2014, 1029–1030.

<sup>45</sup> Waldron, Jeremy: “Can Targeted Killing Work as a Neutral Principle?”, New York University Public Law and Legal Theory Working Papers, 2011, 1–14, at pp. 10–11. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=178](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=178).

<sup>46</sup> Kelly, Tobias: “In a Treacherous State: The Fear of Collaboration among West bank Palestinians”. In: *Traitors: Suspicion, Intimacy, and the Ethics of State-Building*. Ed. Tobias Kelly and Sharika Thiraganama. Philadelphia 2010.

<sup>47</sup> Dudai, Ron and Cohen, Hillel: “Triangle of Betrayal: Collaborators and Transitional Justice in the Israeli Palestinian Conflict”. In: *Journal of Human Rights* 6 (1), 2007, 37–58.

side – agendas that are essential to peace but are automatically branded as “collaborationist.” Similarly, in the context of the targeted killing of nuclear scientists involved in the Iranian nuclear program, William Tobey claims that such killings may negatively affect the chances of “a negotiated solution to a nuclear proliferation issue by elevating the levels of hostility and mistrust within the targeted program.”<sup>48</sup> At any rate, the point we want to underscore is that advocates of targeted killings will have a harder case to make in support of the view that assassinations do *not* imperil the prospects for peace. This case is easier to make, we think, with respect to espionage.

Consider now the dissemination of false rumors, or disinformation, and how the practice leads to distrust. According to Kant, disinformation gives rise to a particular political wrong. In his view, the state’s duties are exclusively public, entailing the responsibility to uphold and preserve the civil condition. A vital element in maintaining these conditions is sincerity in public communications, both domestically and in a state’s relations with other states. Sincerity plays a crucial role in fostering political agreements and enforcing laws. Given that sincerity is a fundamental requirement for preserving civil conditions, it becomes the state’s obligation not to propagate disinformation. However, when it fails to uphold this duty and spreads disinformation – prior to or during war, or even absent an armed conflict – it undermines its own integrity and perpetuates an environment of distrust, hindering the achievement of perpetual peace. In other words, disinformation is an instrument of aggression. The Cold War is teeming with instances of disinformation, which became the preferred mode of destabilization for both the United States and the Soviet Union, as Thomas Rid has amply documented.<sup>49</sup> By contrast, preventive espionage serves the sole purpose of gathering information about potential attacks, aiming to either prevent them or initiate diplomatic negotiations before they occur. Unlike disinformation, espionage focuses on obtaining reliable information that has not been made public or shared among cooperating nations.

In sum, preventive espionage, along with efforts to strengthen cooperation between nations, differs significantly from other unethical practices mentioned by Kant. It is important to emphasize that espionage, under certain conditions, can be tolerated as a means to achieve peace. However, this does not mean endorsing all forms of espionage or turning all citizens into spies. Rather, it is intended to gather essential information for establishing peace and cooperation in states that might be at risk of conflict.

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<sup>48</sup> Tobey, William: “Nuclear scientists as assassination targets”. In: *Bulletin of the Atomic Scientists* 68 (1), 2012, 61–69; 66 f.

<sup>49</sup> Rid, Thomas: *Active Measures. The Secret History of Disinformation and Political Warfare*. New York 2020.

## 5 Conclusion

In this paper, we conducted an internal and an external critique of espionage in Kant's philosophy. Our internal critique maintained that, at the very least, it is possible to justify espionage when used in self-defense. The purpose of this type of espionage is to gather enough information to assess whether the disproportionate increase in a nation's armament is aimed at an attack. According to Kant, a state has the right to self-defense as well as preventive attack. Although both rights have clear justifications, their practical application depends on specific conditions. If a state is increasing its military power and refrains from providing precise information about its intentions, then the use of espionage is justified to obtain the information needed to determine whether an attack is necessary. This type of espionage is a gradualist option to avoid a major conflict. On the other hand, our external critique maintained that, although Kant sees espionage as undermining trust between nations, as it contradicts the principle of publicity, this is not necessarily the case. Espionage can contribute to establishing trust between nations by enabling the realization of agreements and pacts among them, thus bringing them closer to achieving peace.

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