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## Debate

# On the morality of deception - does method matter? A reply to David Bakhurst

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### Author's abstract

*Does it signify morally whether a deception is achieved by a lie or some other way? David Bakhurst (1) has challenged my view that it can signify. Here I counter his criticisms – firstly, by clarifying the terminology: What counts as a lie? Secondly, by exploring further what makes lying wrong. Bakhurst maintains that lying is wrong in that it infringes autonomy – and other deceiving stratagems, he says, do so equally. I maintain that lying is wrong in that it endangers trust – and other types of deceiving stratagems do not do so equally. Lying to patients, I contend, is an abuse of their trust. Other forms of their intentional deception need not be so, although, in our autonomy-minded culture, they are likely to be so.*

Does it signify morally whether intentional deception is carried out by lying or in a way that avoids lying, for example, by evasion or by being economical with the truth? The common view is that it does not. Whereas it is generally recognised that there is much to discuss regarding when intentional deception may be justified and why it is justified when it is, the method by which deception is achieved is often thought to be of no intrinsic moral significance.

Recently, in this journal, David Bakhurst has taken issue with an earlier article by me in which I challenged the common view (2). I argued that whereas we all have a strict duty not to lie, we are not all under a duty of this kind not to deceive intentionally in ways that do not involve lying. Professor Bakhurst disputes this claim and also my supporting argument concerning the wrongness of lying.

Briefly, I connected the wrongness of lying with the social need to preserve trust. I claimed that toleration of lying is generally destructive of trust and that toleration of other modes of intentional deception that do not involve lying need not be. Professor Bakhurst does not agree that lying deception is more destructive of trust than non-lying deception and, anyway, he rejects my trust-related explanation of

the wrongness of lying. He prefers to explain its wrongness as an 'affront' to a person's dignity and autonomy. He sees no reason why methods of intentional deceit which do not involve lying should be deemed to lessen or avoid the affront.

Here I wish to clarify and defend my position, refining it (I hope) in the light of Professor Bakhurst's criticisms.

### Clarifying the terminology

An obvious and immediate problem in resolving this dispute as to whether there is a general moral difference between non-lying intentional deception (which I will hereafter refer to simply as 'deception') and lying is: What is to count (conceptually) as lying? Here, at the risk of sounding dogmatic, I shall define lying as communication which asserts what the communicator believes (correctly?) to be false in order to mislead. We need not pause over the difficulty of whether or not to include 'correctly' in the above definition – that is irrelevant to our present purposes. But the inclusion of 'assertion' and 'communication' in the definition of lying are, I believe, essential and relevant to this debate.

Lying involves asserting. Suppose, though I do not myself support the LIB-DEMS, I put a sticker in my car window which declares, 'I support the LIB-DEMS' – that is, then, a lie. If, though, I put a sticker in my window which says, 'Support the LIB-DEMS', while it will be assumed, naturally, that I support the LIB-DEMS and chances are that in putting up this sticker I intend to deceive others into thinking so, I am not thereby lying. (Whether it comes to the same thing morally is, of course, another question. At the moment, let us stick to clarifying the terminology.) Assertions, of course, need not be verbal. They can be communicated by signs and gestures. A lie can be acted.

But an acted deceit is not a lie unless it is a *communication*. Nor, indeed is a false statement intended to deceive necessarily a lie, as it need not be a communication. Thus, if I, realising that you have your ear pressed against the keyhole of my door, say something false aloud in order to deceive you I am not lying to you. I cannot be lying to you as I am not in communication with you. In Shakespeare's *Much*

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### Key words

Truth-telling; trust, autonomy.

*Ado*, for example, Benedick and Beatrice are both successively and deliberately tricked by false statements they are intended to overhear: in neither case are they lied to (3).

Evidently Professor Bakhurst does not share these views as to what counts as lying. Thus, one of his examples, intended to refute my view that lying and deception are morally different, is the contrast between displaying a fake certificate in your office and telling an outright lie about your qualifications. On this account of lying that I have given, both practices involve lying and so I am not embarrassed by his claim that they amount to the same thing morally. In displaying a fake certificate in your office you communicate a false assertion just in order to mislead whoever comes into your room.

Later in the article, Professor Bakhurst again parts company with me over what *counts* as lying. He takes up an example I had sketched of a situation in which a locum might wish to stave off a patient's question: 'Have I got cancer?', believing that the appropriate person to convey bad news to the patient was the patient's own doctor, temporarily away. Suppose the locum fully intended to get the patient's own doctor to respond truthfully and fully to the patient's query as soon as possible. I argued that meanwhile the locum could be justified in deliberately deceiving the patient – but not by lying. I suggested that the locum might retort to the query with: 'I don't know your case fully .... I have not talked about your case in depth with your specialist. You should talk to him.'

Professor Bakhurst comments: 'Nothing about the example suggests that it would be worse for the locum to tell a bold-faced lie, than to deceive the patient some other way. Indeed the words Jackson offers the locum *are* lies: he certainly knows the case well enough to answer the patient's question' (4).

Let us for the moment continue to concentrate on the conceptual issue. Whether or not *morally* the bold lie comes to the same thing, I still maintain, in line with my definition of lying, that the locum who answers evasively in the manner described here, need not be asserting any falsehood – though, of course, he intends to mislead. He intends to give the patient the impression that he does not know the answer though we may suppose he knows well enough. In short, the locum does not lie.

Professor Bakhurst proceeds to observe that in order to sustain the strategy of deliberate deception the locum may anyway eventually *have* to lie – for instance, if the patient puts the locum even more on the spot with pointed questions. Hence Professor Bakhurst declares that the endeavour to avoid lying by employing some non-lying form of intentional deception is 'as worthless in practice as it is dubious in theory' (4). But while I agree that the strategy I advocate may fail, I do not agree that if it does the locum 'has to' lie.

If I am right that everyone, doctors included, has a strict duty not to lie, then probably the locum

would not be justified, if deception failed, to resort to lying. With benign intent, the locum would have tried to stall. If he were put on the spot he would then be obliged either to tell the truth or refuse to answer (which in the circumstances would probably be as revealing as telling and less benign).

### **The moral difference between deception and lying**

The account which I have given of the conceptual difference between deception and lying settles nothing in respect of the moral significance of the distinction. Professor Bakhurst misrepresents what I take this to be. He takes me to be arguing that 'it is always morally preferable' to deceive in ways that avoid lying than to lie (4). But that is not my view at all. I argue simply that everyone is under a strict duty not to lie but not under a strict duty to refrain from deception by whatever method. It does not follow, nor do I think it is true, that non-lying forms of deception are always preferable – there are cases and cases. Stealing, I suppose, is morally more objectionable than borrowing without permission. But stealing a penny is less objectionable than borrowing someone else's spouse for the weekend, say, without permission.

Because Professor Bakhurst misunderstands me on this matter some of what he says is beside the point *viz* where he instances situations in which, as he says, there is 'simply no difference' between lying and deceiving by other means. He remarks, for example, that 'to trick someone into agreeing to an unnecessary course of expensive private treatment is just as wrong whether this is achieved by lying or deception. Here lying and deception come morally to the same thing' (4). I agree – agree, that is, that in this example deception would be wrong. Even so, the reason why deception would be wrong here is different from the reason why lying would be wrong, as I shall now try to show.

### **The wrongness of lying and the innocence of deception**

If we are to go beyond the intuitive level of arguing from examples, we need to pursue the question why lying is wrong when it is and to consider the implications for (non-lying) deception. Briefly, Professor Bakhurst's answer to why lying is wrong is that it infringes people's rights of autonomy and of dignity – and he proceeds to argue that deception does so equally. My answer to why lying is wrong is that characteristically it endangers trust – and I maintain that deception does not do so equally.

### **The wrongness of lying**

Because of the fragility of trust and the frequency of temptations to lie we need in order to preserve trust in society to uphold a firm rule against lying; a rule which has the effect of excluding lying from our con-

sideration as a practical option. For those who adopt this firm rule the question whether or not a lie might be allowable in this or that particular case, for example where trust appears not to be endangered, simply does not arise. They come to consider each case that arises with their minds already made up – some procedures, for example lying, are just *out of the question*. That is the mind-set, so to speak, of honest characters.

To be sure some flexibility may be built into the rule (though just how is something I pass over here – it deserves separate treatment). At any rate, however modified, the rule must be kept sufficiently strict so as nearly always to foreclose lying as an option.

### Innocence of deception

Is (non-lying) deception just as subversive of trust as is lying? I suggest, not. We have to rely on others generally not to be liars. We do not have to rely on others generally to avoid seeking to give us a false impression. Of course, we do individually have special obligations not to deceive those towards whom we have *certain* fiduciary relationships and the relationship between doctors or nurses and their patients might seem to be an obvious instance. At least, it is obvious that trust is of crucial importance in this relationship and has always been recognised to be so. But do doctors' deceivings necessarily endanger or abuse their patients' trust? I think not.

Only if patients expect (reasonably) their doctors *always* to avoid deceiving, does their doing so necessarily undermine or abuse trust. Do not patients' expectations vary, reasonably, depending on circumstances? It is noteworthy that Professor Bakhurst supports his claim that non-lying deceiving in doctoring clearly endangers trust with an example from the context of seeking consent for surgery (4). In our society, nowadays, against the general background clamour for self-determination and resultant adjustments in medical practice, patients for whom surgery is contemplated have rights not just against being deceived but to being positively informed and advised so as to be empowered to make choices that are as much their own as possible. Deceiving, however achieved, in these circumstances would indeed involve (*prima facie*) a blatant betrayal of trust.

But what of the many other circumstances in which doctoring occurs: Is it always so clear that benignly motivated deceivings would involve a betrayal of trust? It is not. Just when deceiving does involve a betrayal of trust is not a matter to be settled *a priori*. Betrayal can only occur where those being deceived could reasonably have expected not to be. But what it is reasonable to expect is a highly contingent matter depending on culture, custom and circumstance.

To sum up, lying is wrong as a practice – toleration of the practice endangers trust. Deception is not

wrong as such but is where it involves a betrayal of trust *viz* where others are entitled to rely on us to avoid deceiving them.

### Lying, deception and trust

Professor Bakhurst states three objections to my account of the wrongness of lying. I will comment on these in turn.

#### THE FIRST OBJECTION

If I am right that the wrongness of lying is to be explained in terms of the necessity of preserving trust, then I am wrong, says Professor Bakhurst, in treating lying as on a different moral footing from other forms of intentional deception. Some lies do not undermine trust, for example white lies; we tolerate them. Many other forms of deception do undermine trust, especially in the context of doctoring; we do not tolerate them.

While I agree with Professor Bakhurst that some lies do not, and many non-lying forms of deception do undermine trust, I still maintain that lies *characteristically*, as non-lying deceptions do not, undermine trust.

A teaching which placed lying and deception on the same footing would, I believe, be inadequate for the preservation of trust – it would inevitably allow us too much discretion over when to lie and when not to. Yet to insist generally on the same strict rule against giving a false impression as against lying would be unreasonable. There are all sorts of situations, aside from trivial instances of polite hypocrisy in which legitimately we set out to give one another a false impression, for example when being interviewed for a job or in seeking to make friends with a new acquaintance. Quite generally we are wont to 'put on a front' in our dealings with one another.

To be sure there are circumstances in which we must not do so, where we have obligations to endeavour to give a full and accurate impression, for example the obligation in communication to our insurers to inform in 'utmost good faith' or, to cite Professor Bakhurst's example, the obligation to avoid giving a false impression when seeking consent from patients for surgery (4).

#### THE SECOND OBJECTION

Professor Bakhurst proceeds to argue that if doctors' duty not to lie turned upon the necessity to maintain trust, doctors would be absolved from such a duty in a society in which paternalistic-motivated deception were the norm; accepted, even welcomed, by patients. 'In such a society the relation between doctor and patient may be premised on the assumption that the doctor will protect the patient not only from illness but also from the cruel truth' (5).

Admittedly, if in such a society lying *as well as* other forms of deception were the norm, it would in

one sense of 'reasonable' be only reasonable to expect to be lied to. But in another sense of 'reasonable' it is reasonable to expect whatever one has a right to. If one has a right not to be lied to, that right does not cease to exist merely because it is regularly violated.

To be sure, in some societies doctors may be expected *as a matter of duty* to protect their patients from certain cruel truths. Patients, it may be said, have a right *not* to know. Even so, the duty to protect patients from cruel truths need not be assumed in such societies to legitimate lying *just* because it legitimates using other forms of deception. In such a society honesty could still be acknowledged to be a virtue – in doctors as much as in everyone else – only honesty would not always or even usually preclude evasiveness and the like on certain matters, for example by doctors trying to protect their patients from cruel truths. Honesty, in such a society, would not be confused with openness. Arguably, patients in fact fare better under regimens of openness. But that is a *separate* reason for opposing habits of deception in medical practice.

#### THE THIRD OBJECTION

Professor Bakhurst's final objection to my account of the wrongness of lying is that it 'offers the wrong kind of reasons why we should be moral (5). It locates the importance of truth-telling in the social need for trust to be preserved. Professor Bakhurst objects, drawing analogy with the rule against framing the innocent, about which, he surmises, I might offer a similar explanation of its wrongness. He protests: 'The *moral* reason why the police should not frame people, whatever the social utility of so doing, is because these people are *innocent*, and not because of the unhappy consequences of the truth coming out. The latter is surely not a moral reason at all! By the same token, the reason my doctor should not lie to me (or otherwise deceive me) is not because of the possible consequences of breaking some social rule, but because something is wrong with lying or deception *as such*' (5).

But it is a mistake to suppose, as Professor Bakhurst does here, that you can simply extrapolate directly from the rationale behind a moral rule the motivation appropriate to those who virtuously follow the rule. On my account, social utility comes into the explanation of why honesty is a moral virtue and why we need a strict rule against lying but it does not come into the explanation of what motivates those who are honest. Thus, I have argued that the motivation appropriate for resistance to lying is a firm rejection of the practice and unwillingness therefore to entertain the possibility of lying in this or that case. What Professor Bakhurst calls the 'exception problem', whether it is all right to lie when in one's particular circumstances it is apparent that trust is not being put at risk, does not arise.

#### Trust v autonomy

Finally, let us consider whether the wrongness of lying and of deception *when* it is wrong is better explained in relation to the preserving of trust, as I think, or in relation to respect for autonomy, as Professor Bakhurst thinks? I do agree with Professor Bakhurst that doctors' deceivings are indefensible where they happen to infringe patients' rights of autonomy. As we have already remarked, when consent is being sought for surgery, for example, patients have a right not to be deceived, even, if need be, to be undeceived, to be informed. Whenever doctors use deception to infringe their patients' rights of autonomy, they act dishonestly, they betray their patients' trust. Patients do, after all, reasonably expect, and are entitled to expect, their rights to be respected.

So far, so good. But are deceptions indefensible *just* when they infringe the right of autonomy of those being deceived? I think not. At least, they can involve betrayal of trust, where autonomy is not being interfered with. Patients sometimes lie to their doctors that they have been taking their medication as instructed: such lies betray trust but do not make any inroads on the doctors' autonomy – they do not interfere with the doctors' rights of self-determination, of being able to make important decisions concerning their own lives.

One reason why we are tempted to lie is in order to manipulate others into making choices we think appropriate (in which cases we *may* be interfering with their rights of self-determination). But that is only one among a variety of reasons why we might be tempted to lie. Doctors, for example, may lie to avoid embarrassment (to themselves, their patients, their colleagues) or they may lie to save time or they may lie to sustain hope. In providing a *general* explanation, then, of the wrongness of lying or of deception when that is wrong trust would seem to be a more promising candidate than autonomy.

Moreover, I suggest, whereas honesty is a universal moral virtue – in any society doctors have a duty not to lie and not to use deception to betray their patients' trust; the moral rights of autonomy – who has these, under what conditions they apply, what duties correspond – is a more contingent culture-relative matter. It seems to me, therefore, wholly conceivable that there should be societies in which honest doctors practise benign deception on their patients quite regularly – as a matter of course.

But, to end on a note of agreement with Professor Bakhurst, in our own very autonomy-minded culture, the moral acceptability of doctors' deceivings depends very much on what degree of autonomy patients reasonably expect to exercise, and to be helped to exercise, when they go to their doctors.

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## References

- (1) Bakhurst D. On lying and deceiving. *Journal of medical ethics* 1992; 18: 63–66.
  - (2) Jackson J. Telling the truth. *Journal of medical ethics* 1991; 17: 5–9. Professor Bakhurst first took issue with my line on lying and deception when I presented a version of Telling the Truth at Queen's University at Kingston, Ontario, Canada philosophy colloquium in October 1990. I am much indebted to the Philosophy Department at Queen's and especially to Professor Bakhurst for their comments and criticisms.
  - (3) I discuss this and other examples in Honesty in marketing, *Journal of applied philosophy* 1990; 7: 53.
  - (4) See reference (1): 64.
  - (5) See reference (1): 65.
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