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## Lying: Moral Choice in Public and Private Life

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LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE.\* By Sissela Bok. New York: Pantheon Books. 1978. Pp. xxii, 326. \$10.95.

*O what a tangled web we weave,  
When first we practice to deceive!*<sup>1</sup>

Parents, clergymen, and teachers warn us throughout our lives of the evils of dishonesty, yet lying remains among the most consistent characteristics of human behavior. Why is lying bad? Are lies ever justifiable? How can a society evaluate the merits of some of its most accepted and pervasive patterns of deception? Sissela Bok's recent book probes these disconcerting questions perceptively, intelligently, and readably. Although she fails to provide indisputable answers, she demonstrates that the issues are susceptible to rational discussion by sensitive individuals.

The first third of the book establishes the theoretical background to Bok's view of the subject. She adopts a broad definition—a lie is any statement made with the intention to deceive—to give her analysis maximum scope. She then presents capsule criticisms of two approaches moral theorists have traditionally taken to the issue of deception. Building largely on the hypothetical situation in which a lie may be necessary to save a life, she rejects the rigid Kantian theory which condemns all lies.<sup>2</sup> Nevertheless, she rejects with equal vehemence any simple-minded utilitarian approach that would permit a prospective liar to balance the benefits and harms that he believes a lie would cause. Such an approach ignores the damage a lie does to the liar himself (in energy expended to cover up, in loss of credibility should he be discovered, and in increased propensity to tell future lies) and the damage it does to the overall level of trust in communication throughout society. Even more dangerous is the fact that the liar's perspective is often biased: he underestimates the risk of discovery and overestimates the consequential benefits of a lie. Finally, Bok points out that the liar is prone to ignore the significant difference between lies that tend to become institutional practices (such as placebo prescriptions by physicians) and lies that are truly isolated occurrences.

The author's system for determining the justifiability of any lie is based in moral philosophy<sup>3</sup> and has three essential compo-

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\* This book review was prepared by an Editor of the *Michigan Law Review*.

1. SIR WALTER SCOTT, *Marmion*, in 5 THE WORKS OF WALTER SCOTT, ESQ. 1, 343 (Edinburgh 1813).

2. For a modern neo-Kantian view of lying, see C. FRIED, RIGHT AND WRONG 54-78 (1978).

3. Bok appears to have been strongly influenced by the thinking of R.F. Harrod. She

nents. Primary is the "principle of veracity": Lies are not neutral—they always have harmful side effects; therefore, a lie is never justified if there is an adequate truthful alternative. The second feature of Bok's system is a refined utilitarianism: A lie for which no truthful alternative exists is to be evaluated according to its costs and benefits, but *all* costs must be considered—costs to the liar, to the deceived, and to society. All costs cannot be considered, however, unless one subdues one's biases and appreciates all perspectives—that of the liar and that of the dupe, that of the individual case and that of the general practice which includes the case. Finally, the author invokes the "principle of publicity": To be morally justified, a lie must be defensible before the community of "reasonable persons" in general. Such an audience would, in theory, be able to adopt the perspective of the deceived as easily as that of the liar and would therefore check any biases to which a single individual or profession may be victim.

The author does not attempt a complete theoretical scheme that could unambiguously determine the merits of any lie. Such an ambition would necessitate, among other things, a thorough definition of the "reasonable person" and a precise value judgment concerning the relative importance of the individual and the group. This modesty does not diminish, however, her book's contribution to the discipline of applied ethics. Bok's principles harbor a moral judgment which coincides with many traditional democratic majoritarian values and which therefore will resonate with many readers' intuitive processes of rationalization. Even if her principles do not specify the direction in which the scales will ultimately tip in an individual case, they suggest factors to be considered and procedures by which to weigh them.

In the remainder of the book, Bok applies her principles to several widely acknowledged patterns of deception, patterns which many deem justified. Her analyses of such topics as white lies, lies to children, lies for "the public good" (Bob Woodward and Carl Bernstein receive particularly pointed criticism), lies to the sick and dying, and lies in letters of recommendation will surely provoke many a fascinating dinner-table discussion. Few readers will be able to escape the author's conclusion that our society has been far too glib in its acceptance of mendacity when-

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includes an excerpt from Harrod, *Utilitarianism Revised*, 45 MIND 137, 147-54 (1936), and excerpts from other notable essays on deception, in a valuable thirty-nine page appendix to her book.

ever a greater good is arguably promoted.<sup>4</sup>

Of special interest to lawyers is the latter part of chapter XI, in which Bok discusses the attorney-client privilege. She begins with Monroe Freedman's argument that a lawyer has a professional responsibility to build upon his client's testimony in arguing before a court, even when he has strong grounds to think the testimony perjurious.<sup>5</sup> Although Bok implicitly suggests that more lawyers accept Professor Freedman's view than is the case,<sup>6</sup> her substantive analysis sharpens a decade's debate.<sup>7</sup> In particular, her publicity principle suggests that the legal profession's attempt to define the privilege has courted moral bias by failing to consult laymen.

The problem here, as with many other deceptive professional practices, is that the questions are too often left up to the professionals themselves, whereas the issues obviously touch the *public* welfare immediately. There is, then, a great need for a wider debate and analysis of these issues. . . . Such a debate would have to go far beyond the confines of the American Bar Association and the teaching of professional responsibility in law schools. [P.162]

Bok does not want public control of the debate; rather, she wants the public to participate in and to know about its resolution. When thirty-eight percent of the nation agrees that "most lawyers would engage in unethical or illegal activities to help a client in an important case,"<sup>8</sup> a profession anxious to regain its dignity might heed such friendly criticism.

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4. This acceptance is satirized in J. R. Pope's conclusion to Scott's famous epigram quoted in the text at note 1 *supra*:

But when we've practiced quite a while  
How vastly we improve our style!

Quoted in ESPY, AN ALMANAC OF WORDS AT PLAY 215 (1975).

5. See M. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975); Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 MICH. L. REV. 1469 (1966).

6. For a thorough evaluation of the current views of the courts and the organized bar, see Wolfram, *Client Perjury*, 50 S. CAL. L. REV. 809 (1977).

But see M. FREEDMAN, *supra* note 5, at 38, which cites a survey in which 90% of the attorneys responding stated that they would call a perjurious client to the stand and question him in the normal manner. The discrepancy between the attitudes expressed publicly by scholars and the actual practices of courtroom lawyers may indicate the ethical strain felt daily by many attorneys. It would seem, therefore, that all members of the profession would benefit from an intensive public effort to clarify the lawyer-client relationship.

7. See, e.g., G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* 120-35 (1978); Lefstein, *The Criminal Defendant Who Proposes Perjury: Rethinking the Defense Lawyer's Dilemma*, 6 HOFSTRA L. REV. 665 (1978); Polster, *The Dilemma of the Perjurious Defendant: Resolution, Not Avoidance*, 28 CASE W. RES. L. REV. 3 (1977).

8. B. CURRAN, *THE LEGAL NEEDS OF THE PUBLIC* 232 (1977).

Sissela Bok's work may dissatisfy purists who seek a fully developed philosophical theory of lying. To people who face difficult moral choices in their daily lives, however, *Lying* is a persuasive invitation to tackle those choices head-on and a demonstration that a few theoretical guidelines can prove powerful allies in the ethical struggle.