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ON THE WRONGNESS OF LIES

—Cass Sunstein*

Abstract Why are lies wrong? The answer bears on continuing disputes about freedom of speech and the protection of lies and falsehoods. One answer, rooted in the work of Immanuel Kant, sees lies as a close cousin to coercion; they are a violation of individual autonomy and a demonstration of contempt. By contrast, the utilitarian answer is that lies are likely to lead to terrible consequences, sometimes because they obliterate trust, sometimes because they substitute the liar's will for that of the chooser, who has much better information about the chooser's welfare than does the liar. The utilitarian objection to paternalistic lies is akin to the utilitarian embrace of Mill's Harm Principle. It is possible to see the Kantian view as a kind of moral heuristic, welcome on utilitarian grounds. The Kantian and utilitarian objections to lying have implications for the family, the workplace, advertising, commerce, and politics, and also for constitutional law.

I. INTRODUCTION

We live in a period of grave concern about lies and lying – on social media, in newspapers, in personal life, in commerce, in government. This concern is highly relevant to intensifying disputes, in politics and constitutional law, about the appropriate approach to intentional falsehoods, involving (for example) COVID-19, candidates for public office, or past deeds and misdeeds.¹ It is also relevant to disputes about altered videos and deep fakes.² To come to terms with those disputes, it is necessary to have an adequate understanding of what is wrong with lies, when they might be justified, when they might be excused,

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¹ The leading Supreme Court decision is *United States v Alvarez* (2012) SCC OnLine US SC 73 : 567 US 709 (2012). *See generally*, Johan Farkas and Jannick Schou, *Post-Truth, Fake News and Democracy: Mapping the Politics of Falsehood* (Routledge 2020).

² *See*, Bobby Chesney and Danielle Citron, 'Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security' (2019) 107 California Law Review 1753.

and when they might be mandatory.³ With an eye on issues of policy and law, I aim here to make some progress towards that understanding, by focusing in particular on the wrongness of lying.⁴

An initial challenge is the existence of multiple definitions of the word ‘lie.’ According to a standard definition, summarising many efforts, “A lie is a statement made by one who does not believe it with the intention that someone else shall be led to believe it.”⁵ The definition is helpfully narrow. Among other things, it does not include false statements from people with various cognitive and emotional problems, who may sincerely believe what they are saying. Consider the case of confabulators, defined as people with memory disorders who fill in gaps with falsehoods, not knowing that they are false. Nor does the definition include people who believe what they say because of motivated reasoning. Such people might be spreading falsehoods, but if they do not know that what they are spreading is false, it does not seem right to describe them as ‘lying.’

Even if lies are narrowly defined in this way, it is hard to justify the view that they are always wrong. There are many compelling counter examples. To come to terms with the ethical issues, it is necessary to engage with some foundational questions. I will sketch them here and attempt to make a particular view plausible, without purporting to settle those questions.⁶

II. DAMAGE

Consider the following lies: (1) John Jones falsely says that he was born on September 21, when he was born on September 20. (2) Tom Wilson falsely reports that he likes coffee better than tea, when he actually likes tea

³ There is, of course, valuable literature. For a sampling, see, Sissela Bok, *Lying: Moral Choice in Public and Private Life* (Pantheon Books 1978); Christine Korsgaard, ‘What’s Wrong with Lying’ (*Harvard University*, Working Paper) <<https://www.people.fas.harvard.edu/~korsgaard/CMK.WWLyng.pdf>> accessed 20 February 2021; Paul Faulkner, ‘What’s Wrong with Lying’ (2007) 75(3) *Philosophy and Phenomenological Research* 535; Seana Shiffrin, *Speech Matters: On Lying, Morality, and the Law* (Princeton University Press 2016); Christine Korsgaard, ‘The Right to Lie: Kant on Dealing with Evil’ (1986) 15(4) *Philosophy & Public Affairs* 325.

⁴ For an illuminating discussion of a neglected problem, at the intersection of ethics and law, see, Jill Elaine Hasday, *Intimate Lies and the Law* (OUP 2019). For a valuable and provocative treatment, focusing on the issue of trust, see Elizabeth F Emens, ‘On Trust, Law, and Expecting the Worst’ (2020) 133 *Harvard Law Review* 1963.

⁵ See, Arnold Isenberg, ‘Deontology and the Ethics of Lying’ (1964) 24(4) *Philosophy and Phenomenological Research* 463.

Isenberg adds: The essential parts of the lie, according to our definition, are three. (1) A statement - and we may or may not wish to divide this again into two parts, a proposition and an utterance. (2) A disbelief or a lack of belief on the part of the speaker. (3) An intention on the part of the speaker.

⁶ For an accessible overview, see, Sissela Bok, *Lying* (1978). For an influential treatment, see, William David Ross, *The Right and the Good* (OUP 1930). For a valuable and provocative account, see, Seana Shiffrin, *Speech Matters* (2016).

better than coffee. (3) Mary Higgins falsely says that her first car was a Toyota Camry, when it was actually a Honda Accord. All of these lies seem harmless. Because they are lies, they reflect something about the person who was responsible for them (perhaps they are capable of more, and worse), and after learning that one or another of these statements was a lie, the person with whom Jones, Wilson, or Higgins was speaking might be baffled, put off, or more. But unless we exercise a little creativity and add something to the context,⁷ these lies do not inflict damage.

By contrast, the wrongness of many lies consists largely in the damage they inflict or make possible. Some lies are best seen as a kind of ‘taking’ of people’s liberty or property – in the most extreme cases, even of their life. Consider, for example, a libel, falsely reporting that someone has committed a terrible crime (say, murder, rape, or assault), or falsely accusing a candidate for public office of corruption or drug abuse, or falsely stating that a neighbour was fired from his job for incompetence, or falsely stating that someone committed acts of race and sex discrimination. In common law, people have a property interest in their reputation, and a libel intrudes on that interest. In multiple ways, it can also compromise liberty.

False advertising can be seen in broadly similar terms. If a car company lies about the fuel economy of its cars, it effectively takes money from its customers, at least if they rely to their detriment on the lie. The same can be said about a company that attracts investors on the basis of lies about its products, or a politician who attracts voters on the basis of lies about his past. If someone files a police report, falsely reporting that someone has engaged in assault, the harm lies in the damage done to the criminal justice system (as well as to the person falsely accused). For many lies, the wrongness consists, in large part, in concrete harm; the lies are the instruments by which the harm is done.

My principal concern here lies elsewhere. What kind of violation is a lie, taken solely as such? What kind of damage does a lie inflict, because it is a lie? Suppose that a student lies to a teacher, claiming that she missed class because she was sick, when she was perfectly healthy. Or suppose that a romantic partner lies about his past, drawing attention to supposed achievements that are purely a figment of his imagination. Or imagine that a lawyer lies to a client, telling him that the client has an excellent chance of winning a lawsuit when in fact, the lawyer believes that his chances are very small. Or suppose that a teenager lies to a parent, claiming that she was working on homework with a friend at night, when in fact she was at a party. It is widely agreed that lies of this kind are generally wrong, apart from the damage that they inflict, or make it possible to inflict.

⁷ A person might, for example, misdescribe his tastes or his past to ingratiate himself, or in order to seem interesting.

It is also widely though not universally⁸ agreed that some lies are acceptable or perhaps even mandatory. (If you insist that all lies are abhorrent, you are probably not a lot of fun). Consider the following propositions: (1) If an armed thief comes to your door and asks you where you keep your money, you are entitled to lie. (2) If a terrorist captures a spy and asks her to give up official secrets, she is under no obligation to tell the truth. (3) If you tell your children that Santa Claus is coming on the night before Christmas, you have not done anything wrong. (4) If you compliment your spouse on his appearance, even though he is not looking especially good, it would be pretty rigid to say that you have violated some ethical stricture. (5) If someone you love (say, your father) has a very serious illness, and you lie about how serious it is in order to preserve a sense of hope, you might not have violated any ethical stricture, though the issue is hardly clear-cut. (Was Bill Clinton wrong to lie about his relationship with Monica Lewinsky? I believe so, but not everyone agrees).⁹

These cases fall in different categories. The broadest point is that ‘white lies’ are generally regarded as acceptable, and many lies can be counted as white.¹⁰ We lie to spare people’s feelings, and that might not be objectionable; it might be an act of kindness, even a blessing. Facing serious dangers, you are entitled to lie to protect yourself and those you love (or merely like, or just want to keep safe). Lying can be a justified form of self-defense. No less than violence and coercion, lying might be a permissible way of avoiding serious threats. You might also lie if you think that doing so is necessary to help people to perform well. “You can definitely do this!” a tennis coach might say, even if he does not think that it is true; “the other guy looks tired,” the coach might add, even if he does not look tired at all.

In short, it appears to be widely agreed that lies are generally wrong, but that in defined circumstances, they are acceptable or even mandatory. But with respect to moral questions, widespread agreement cannot be achieved. To know whether existing ethical intuitions can be defended, we need to think about the appropriate foundations for ethical judgments.¹¹

⁸ See, Bok (n 3) for a discussion of absolutist or near-absolutist positions with respect to lies and lying. See also, Korsgaard (n 3) for what is easily taken as near-absolute ban on lying, on Kantian grounds.

⁹ See, Thomas Nagel, ‘Concealment and Exposure’ (1998) 27(1) *Philosophy and Public Affairs* 3.

¹⁰ See, Bok (n 3) for a discussion of white lies. Bok is more skeptical of them on ethical grounds, than I would be, but she recognises that some white lies are unobjectionable.

¹¹ Shiffrin (n 3) offers a distinctive argument against lying. She emphasises that that it is through communication that human beings share the contents of their minds with one another. Such sharing, she urges, is essential to our identity and development as moral agents. The distinctive function of sharing is, in her view, the clue to the wrongness of lying. Liars pervert the role of communication as the mechanism by which we share what we think. Lying “transforms a mechanism for exclusively conveying the truth into a mechanism for conveying both the false and the true.” See, Shiffrin (n 3) 23.

III. UTILITARIANISM

Many people are utilitarians; they want to maximise social utility.¹² It might seem that on utilitarian grounds, there is no particular reason to object to lies. Everything depends on their consequences. And indeed, Jeremy Bentham, founder of utilitarianism, embraced that conclusion: “Falsehood, taken by itself, consider it as not being accompanied by any other material circumstances, can never, upon the principle of utility, constitute any offense at all.”¹³ Henry Sidgwick, also a utilitarian, spoke similarly:¹⁴

But if the lawfulness of benevolent deception in any case be admitted, I do not see how we can decide when and how far it is admissible, except by considerations of expediency; that is, by weighing the gain of any particular deception against the imperilment of mutual confidence involved in all violations of the truth.

Martin Luther was not a utilitarian, but he showed strong utilitarian leanings when he asked, “What harm would it do, if a man told a good strong lie for the sake of the good and for the Christian church. . . a lie out of necessity, a useful lie, a helpful lie, such lies would not be against God, he would accept them.”¹⁵

A. What Lies Do

From the utilitarian standpoint, it is almost certainly good to have an ethical taboo on lies, which often create a great deal of harm. If people lie, they

Interestingly, Augustine spoke in very similar terms: “Now it is evident that speech was given to man, not that men might therewith deceive one another, but that one man might make known his thoughts to another. To use speech, then, for the purpose of deception, and not for its appointed end, is a sin.” — See, Saint Augustine, *The Enchiridion on Faith, Hope and Love* (Albert C Outler tr, Aeterna Press 2014).

One need not dispute Shiffrin’s claims about the role of communication to be puzzled about her claim about what makes lying wrong. In my view, perversion of the usual mechanism for conveying truth is not an independent reason to object to lying. We need to specify a wrong that lying *does*, to actual people, in order to deem lying wrong. Compare: To use a rug as an ashtray is not a moral wrong, unless it produces a fire. (I am aware that this is just a gesture toward an engagement with Shiffrin’s careful and detailed argument).

¹² I will speak throughout of utilitarianism, but we could readily use the term “welfarism”, which is more capacious, and which does not carry some of the baggage of utilitarianism with it. Those who prefer welfarism to utilitarianism might simply substitute that term. For discussion, see, Matthew Adler, *Well-Being and Fair Distribution: Beyond Cost-Benefit Analysis* (OUP 2011).

¹³ Jeremy Bentham, *The Principles of Morals and Legislation* (Prometheus Books 1988).

¹⁴ Henry Sidgwick, *The Methods of Ethics* (University of Chicago Press 1962) 316.

¹⁵ Cited by his secretary, in a letter in Max Lenz, ed, *Briefwechsel Landgraf Phillips des Grossmuthigen von Hessen mit Bucer*, vol 1.

destroy trust. If trust is destroyed, it becomes difficult for people to create productive relationships. As Sissela Bok puts it,

A society, then, whose members were unable to distinguish truthful messages from deceptive ones, would collapse. . . . The search for food and shelter could depend on no expectations from others. A warning that a well was poisoned or a plea for help in an accident would come to be ignored unless independent confirmation could be found.¹⁶

Even seemingly small lies, within the family or the workplace, can be corrosive, because they damage subsequent interactions, producing a constant question: *Can I trust what is being said now?*

In the family, lying can do serious harm, certainly in the long-run. Parents and children generally benefit from a strong norm against lying. If a wife cannot believe what a husband is saying, or vice-versa, things are probably going to break down. In markets, sellers may well lose if they lie, because people will not be willing to buy from them. An employer who lies to his workers may not stay in business for very long. For these reasons, a norm against lying is straightforward to defend in utilitarian terms. Doctors need to be trusted, and if they lie to their patients, they might not be able to be good doctors, because they forfeit trust.

B. Paternalistic Lies

Some liars are self-interested; they are attempting to get people to do what they want them to do, or to feel what they want them to feel. Other liars are altruistic. They lie to promote a cause. Some of the most interesting liars are paternalistic; they seek to get the person to do what is, in the liars' view, in that person's interest. But whenever one person lies paternalistically, there is a distinctive utilitarian objection to lying, which takes the following form. As a general rule, we might want to insist that choosers know what is in their best interest (at least if they are adults, and if they do not suffer from a problem of capacity, such as mental illness). They have unique access to their situations, their constraints, their values, and their tastes. If someone lies to them, choosers are deprived of the (full) ability to make choices on their own, simply because they are not given a fair or adequate chance to weigh all variables. If someone wants to help people to make better choices, his obligation is not to lie to them, but to inform them, so that they can themselves engage in such weighing.

On this view, a serious problem with paternalistic liars is that they lack relevant knowledge about the chooser's situation, tastes, and values. Lacking that

¹⁶ Bok (n 3).

knowledge, they nonetheless subvert the process by which choosers make their own decisions about what is best for them. Things are even worse if liars are focused on their interests rather than on those of choosers. It is in this sense that a self-interested liar can be said to be stealing from people – both limiting their agency and moving their resources in the preferred direction.

For these reasons, the utilitarian objection to paternalistic lying is rooted in the same concerns that underlie Mill's Harm Principle.¹⁷ Mill insists that the individual "is the person most interested in his own well-being," and the "ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else." When society seeks to overrule the individual's judgment, it does so on the basis of "general presumptions," and these "may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases." If the goal is to ensure that people's lives go well, Mill concludes that the best solution is for public officials to allow people to find their own path. Consider in the same vein F.A. Hayek's remarkable suggestion that "the awareness of our irremediable ignorance of most of what is known to somebody [who is a chooser] is *the chief basis of the argument for liberty*."¹⁸ These points apply to liars no less than to those engaged in coercion.

C. Excusable or Obligatory Lies

Still, the norm against lying, whether paternalistic or not, can be overcome on utilitarian grounds.¹⁹ In some cases, lies are *obligatory* on those grounds, because they do more good than harm. It is not morally obligatory to let someone with a gun know how to find the person he intends to kill.²⁰ It might well be morally obligatory to lie, if the goal is to save that person's life.

In many other cases, utilitarians will not be clear that lying is prohibited, and they will have to know far more about the context in order to decide. Return to the case of a doctor who might not tell a patient the truth about a patient's condition, believing that an unduly optimistic account of the situation is in the patient's interest. In such cases, the utilitarian assessment may not be simple. We can debate what kinds of lies, from doctors, are permissible, but some cases of deception are hardly clear-cut. Or consider a teacher or a coach who distorts the truth, or lies, to increase confidence or improve performance. We can imagine cases that a utilitarian would find difficult, and also cases in which a utilitarian might end up comfortable with a lie. The appropriate conclusion is that for utilitarians, there are strong reasons to disapprove of lying,

¹⁷ See, John Stuart Mill, *On Liberty* (JW Parker and Son 1859).

¹⁸ Friedrich Hayek, 'The Market and Other Orders' in Bruce Caldwell (ed), *The Collected Works of F.A. Hayek* (2013) 384.

¹⁹ See, Bok (n 3) for valuable engagement with an assortment of problems, with frequent reference to utilitarian balancing (even though Bok rejects the view that utilitarianism provides an adequate framework for moral assessment of lies and lying).

²⁰ For a Kantian view of this problem, see, Korsgaard (n 3).

and even to develop rules and presumptions against lying, but case-by-case judgments are often required.

It is true that on rule-utilitarian grounds, it might be best to avoid those judgments in some contexts, because of the potential costs and errors of case-by-case inquiries. This is especially so in light of the fact that prospective liars may, in a sense, cook the books, by overstating the benefits and understating the costs of deceiving people. As noted, motivated reasoning might well lead them in that direction. But we have seen enough to know that a universal rule against lying would be impossible to defend on utilitarian grounds. When and whether narrower rules are justified cannot be answered in the abstract.

IV. DEONTOLOGY

Many people are not utilitarians; they believe that people should be treated with respect, and as ends rather than means. (In Kant's words: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.")²¹ Kantians think that what makes lying wrong is not that it causes more harm than good, but that it treats people disrespectfully, even with contempt. Kantians might also think that the moral prohibition on lying is absolute, or at least nearly so. St. Augustine wrote, "To me, however, it seems certain that every lie is a sin."²² Kant thought similarly: "Truthfulness in statements which cannot be avoided is the formal duty of an individual to everyone, however great may be the disadvantage accruing to himself or to another."²³ Kant explained: "By a lie a man throws away and, as it were, annihilates his dignity as a man."²⁴

Contemporary Kantians believe that the problem with lies is that they deny agency to those who are subject to them. Lies are disrespectful.²⁵ As Christine Korsgaard puts it, "Lying is wrong because it violates the autonomy of the person to whom you lie."²⁶ And indeed, a feeling of disrespect captures the intensely negative reaction of people who have been subject to lies. This may be most true of cruel or self-interested lies, but it is also true of paternalistic lies, that is, of lies that people tell for their own good. As Korsgaard notes, "since it is my own good that is involved and I have a special right to decide what it is good for myself, paternalistic lies are in a way worse than others."²⁷

²¹ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (CUP 1785) 429.

²² St Augustine, *On Lying (De Mendacio)* (CreateSpace Independent Publishing Platform 2017).

²³ Immanuel Kant, 'On a Supposed Right to Lie from Altruistic Motives', *The Doctrine of Virtue* (Mary J Gregor tr, 1964) 92-96.

²⁴ Immanuel Kant, 'The Doctrine of Virtue' (1965) 75(2) Virtue.

²⁵ Korsgaard (n 3); Faulkner (n 3).

²⁶ Korsgaard (n 3) 1.

²⁷ *ibid* 18. Korsgaard's broadest argument is worth quoting at length:

More generally, there are two conditions under which your autonomy is violated. One is when force or coercion is used to make you contribute to an end. The other is when lies are used to trick you into contributing to an end. In both cases what is wrong is that you do not

To appreciate the Kantian objection, suppose your employer lies to you, to get you to stay very late after work; that someone you are dating lies to you about his (not really) glorious career, to get you to like him; that your spouse lies to you, to convince you to go to a dreaded dinner party; that your teacher tries to get you to devote hours to help him with his own project, and lies to persuade you to do that. Lying is a twin sibling to manipulation, or maybe even a form of it,²⁸ and for Kantians as for utilitarians, it is a close cousin to coercion. Like coercion, it takes away the agency of its objects and subjects them to the will of others. And if lying is wrong because it is disrespectful, and treats people as mere means, the ethical taboo might be taken to be near-absolute, or at least very strong.²⁹ Lies can even be seen as a form of violence. Like force, they deprive people of the ability to decide for themselves. Online and in real life, our felt reaction to lies and liars is best captured in this way.

Empirical work supports this conclusion. For example, the economist Uri Gneezy finds that in experimental settings, people do not only focus on their own gain from lying; they also care about the harm that lying may cause others.³⁰ In a variety of experiments, he finds that the average person will not lie when doing so would benefit her by a little but harm another person by a lot. In other words, there is a moral taboo on lying that leads people to ask: Do I gain something by lying? Even if they do gain, they will not lie if other people lose more than that. There appears to be an implicit judgment to the effect that lying is immoral, at least if it produces losses for others. Purely self-interested lying is a moral wrong.

Even if we think that lying is disrespectful, and that it violates people's autonomy, we are likely to want to make some distinctions. We might think that there is a strong presumption against lying (ever), but contrary to Kant, we might insist that the presumption can be overcome if the stakes are either very low or very high. Some lies are so small and minor that it would be excessive to insist that a moral wrong has been committed.³¹ It might be disrespectful

get to decide whether to contribute to the end or not. The conditions under which you are able to decide for yourself are that you have power over your own actions and knowledge of what is going on. Force and coercion, on the one hand, and lies, on the other, undercut these conditions. And so force and coercion and lies are, according to this view, the most fundamental forms of wrongdoing - the roots of all evil. Morality demands that we resist the ever-present temptation to *manage* things ourselves, and instead share our decisions - and so our knowledge and our power - with all who are concerned.

²⁸ Faulkner (n 3).

²⁹ Korsgaard (n 3).

³⁰ See, Uri Gneezy, 'Deception: The Role of Consequences' (2005) 95(1) American Economic Review 384.

³¹ See, Isenbergh (n 5) 475, urging:

That where the offense is small enough, the concept of moral wrongness seems to become inapplicable, just as it does in the violation of some petty rules of etiquette. I once remarked to a class in ethics, in the course of a substantially true story, that I had lived a year in the

to lie to a thief with a gun, but perhaps the thief has forfeited his right to our respect.³² As Korsgaard puts it, “we do think that the paternalistic use of force is sometimes justified,” and similarly “we also think that there is such a thing as a justified paternalistic lie.”³³ We might think that some lies are more disrespectful than others. If white lies are acceptable, it is because they are not all that disrespectful (they might be kind), and because they are a tolerable and even welcome part of life. A world of universal truth-telling would turn out to be quite painful. On ethical grounds, an across-the-board taboo on lying would not be suitable for the human species. On utilitarian grounds, such a taboo would be morally unacceptable, and some Kantians would agree.

V. POLITICAL LIES (VERY BRIEFLY)

Turn to political lying in this light. When actual or prospective leaders lie to citizens, they treat them with contempt. They deny a central premise of democracy — the sovereignty of the citizenry. Political liars do not enlist guns or spears, but they use what is, in an important sense, their moral equivalent. They act as if citizens are mere instruments for their use.

On utilitarian grounds, the objection is more complicated, but it is not weaker. If politicians lie, they induce a kind of democratic vertigo. When citizens learn that a leader has lied to them, many of them will feel rage. After a while, they might become indifferent. They might well tune out. In either case, leaders who lie cut the legs out from under democratic processes, by making it difficult or impossible for citizens to know whom to trust. They discredit the very idea of self-government. All things become doubtful. Frances Hutcheson, the eighteenth-century philosopher, anticipated the resulting situation: “Suppose men imagined there was no obligation to veracity, and acted accordingly... Men would only speak in bargaining, and in this too would soon lose all mutual confidence.”³⁴

VI. TABOO AS HEURISTIC

The choice between utilitarian and Kantian approaches, in general and in the context of lying, raises exceedingly large issues, and I will rest content with an assertion here, alongside a sketch of a position.

city of Rochester, in a house with a front lawn. None of this was true; but I intended that the students should believe it; and they did. I corrected the lie before the hour was over. My purpose in telling it was to illustrate a point in the ethics of lying; and I thought I could do so effectively only by first ‘victimising’ the class.

³² For a discussion, see, Bok (n 3); Korsgaard (n 3).

³³ Korsgaard (n 3) 19. Her own understanding of this exception is exceedingly narrow.

³⁴ Frances Hutcheson, *A System of Moral Philosophy* (1st edn, Bloomsbury Publishing 2006).

The utilitarian position is right. The moral taboo on lying must be defended by reference to its consequences. Those consequences are often very bad. Among the bad consequences is the feeling or perception of contempt and disrespect, which means that even if Kant did not capture the foundations of the prohibition on lying, he was keenly aware of, and highly responsive to, the affective reaction of those who are subject to lies. That reaction is a central part of a host of terrible effects from lying, and it can initiate a host of others, including the vicious cycle of lying and distrust (and sometimes violence).

In my view, the standard objections to utilitarian accounts of lying suffer from two defects.³⁵ First, they fail to recognise that such accounts can and should take on board the full set of terrible effects (including the adverse effects on liars themselves, and the downstream effects of lies). Second, they proceed as if the imperfect fit between utilitarian accounts on the one hand and strong moral intuitions on the other stands as an indictment of utilitarianism, rather than a reason to question those intuitions.³⁶

It is indeed reasonable to speculate that most people's moral intuitions are roughly Kantian, not utilitarian. When we are objects of lies, our assessment is often best summarised by something like a howl of pain and by saying, "That was an insult and a horrible form of disrespect," rather than, "That will lead to bad results." And on strictly utilitarian grounds, the fact that we feel strong and immediate moral disapproval and even revulsion to lies, might well

³⁵ An illuminating objection comes from Hutcheson (n 34) 9, urging that the utilitarian view does not provide a very coherent explanation of why paternalistic lies are usually wrong. For on this view, the reason not to tell paternalistic lies is that people are the best judges of what constitutes and promotes their own good. But for consequentialism to work, we must have an objective and empirically determinable notion of what is good. And once we have such a notion, it looks as if it is going to be possible for some people to be experts about the good life.

Korsgaard adds:

the consequentialist view leaves too much scope for telling paternalistic lies. As I have said, it is not even clear that there is a general presumption against them. Yet most of us think that there is. When somebody lies to you for your own good, and you find out about it, you usually think the liar is a presumptuous busybody, and you resent his action. Paternalism is considered out of line when we are dealing with normal sane and healthy adults.

Insofar as Korsgaard relies on what "most of us think", I do not believe that her argument is convincing. She might be referring to a moral heuristic, one that usually works well, and that must be defended on utilitarian grounds. (That is my preferred account.) Insofar as Korsgaard relies on skepticism about "an objective and empirically demonstrable notion of what is good", I think she is too skeptical. To be sure, Millian's strictures about the importance of deferring to choosers are an important reason to adopt a strong presumption against paternalistic lies – on utilitarian grounds. Korsgaard refers to those strictures, *see*, Korsgaard (n 3) 11, but her response seems to me too brisk:

But the fact is that the consequentialist theory affords us no grounds for making this kind of claim. Consequentialists do not care who makes the mistakes but only how bad they are. The idea that it is better for people who make their own mistakes really comes from our third view, which is Kantian.

³⁶ *See*, Joshua Greene, 'Beyond Point-and-Shoot Morality: Why Cognitive (Neuro) Science Matters for Ethics' (2014) 124(4) *Ethics* 695.

be celebrated. This is a moral sentiment that plausibly increases utility. Our revulsion works against case-by-case assessments that might well turn out to be self-serving. Recall that prospective liars are not exactly trustworthy (so to speak) when they are deciding whether lying is justified on utilitarian grounds. They are likely to overvalue the benefits (to them) and to undervalue the costs (to others). They might well ignore the downstream effects of lying. And if people feel a kind of guilt or shame when they lie, even in cases in which lying is justified, all the better; anticipated guilt or shame probably works, in the real world, as a deterrent to lying that is not justified.

In these circumstances, the norm against lying should be seen as a moral heuristic, one for which we ought to be profoundly grateful.³⁷ But as a matter of principle, our moral intuitions should not be given authority; they ought not to be taken as decisive of what morality requires.³⁸ They must be scrutinised. Importantly, we are much better off when moral intuitions against lying are both strong and widespread, because lying generally leads to bad consequences. If people do some kind of cost-benefit analysis before deciding whether to lie, they may have one thought too many,³⁹ and they will almost certainly lie too much. But the reason that lying is bad is that it leads to bad consequences, even if that conclusion does not fit at all well with our moral intuitions.

To say that Bentham was right is not meant to question the moral taboo on lying, though it does force us to be clear about the assortment of consequences of lies, and on occasion, to go case-by-case, recognising that context may make all the difference. And I am endorsing a utilitarian approach, rather than a Kantian one, even though I believe that we need more and stronger *legal* restrictions on lies.⁴⁰ Kantians might well embrace that claim. Utilitarians might do so as well, especially if they are willing (as they should be) to take on board the emotional consequences of lies, to those who are subjected to them, and the corrosive systematic effects of lies and lying.

³⁷ *ibid*; Cass R Sunstein, 'Moral Heuristics' (2005) 28(4) *Behavioral and Brain Sciences* 531 (2005).

³⁸ I mean this as a concern about the illuminating discussion in Bok (n 3), from which I have learned a great deal. In objecting to utilitarian approaches to lying, Bok also can be taken not to take account of the very wide range of relevant consequences, which tend to firm up, rather than to weaken, the moral taboo on lying, defended on utilitarian grounds.

³⁹ *See*, Bernard Williams, *Moral Luck* (CUP 1982). An instructive discussion is Elinor Mason, 'Do Consequentialists have One Thought Too Many?' (1999) 2(3) *Ethical Theory and Moral Practice* 243.

⁴⁰ *See*, Cass R Sunstein, 'Falsehoods and the First Amendment' (2020) 33(2) *Harvard Journal of Law and Technology*; Sunstein (n 37).