

## Right to Lie?

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There does, and ought to, exist a right to lie. Not in the self-contradictory or nonsensical sense that is sometimes said to be a right to revolution or, as Hobbes suggested, a right not to go voluntarily to one's own execution. Rather, there is a right to lie in the plain and ordinary sense that in appropriate circumstances the state, particularly the democratic state, ought to encourage or at least protect lying.

For the purposes of the law of fraud, lying is generally held to be a deliberate falsification of an existing state of facts, but such a view is far too narrow. Blackstone's definition is: "a variance between oath and belief," or, as applied to everyday conditions, a variance between statement and belief. If there is a variance between what the speaker says and his inner thoughts most of us will simply take him to be lying.

Each of us has been taught that lying is erosive to discourse, disruptive to sound personal relations, and anathema to the proper conduct of public business. In practice, however, the right to lie is the ordinary man's political and religious asylum. It is the risk-venturer's source of credit. It is at the heart of that central institution of political democracy, the secret ballot. The practical function of the secrecy of the ballot is to permit the labor-union member to be a closet Republican and the Union League Club member to be a secret socialist.

That lying is useful and necessary to discourse and helpful to sound personal relations can hardly be doubted. To maintain a position in which one does not believe in order to test one's own ideas and those of the other participants in the dialectic is surely one of the oldest intellectual devices. It is, of course, robbed of its vitality if one discloses that it is only an exercise. Indeed, despite its rigor, legal argument enjoys a poor reputation and is widely thought to be shallow precisely because of the fact that the arguers are not arguing from conviction.

In serious intellectual development there come times of change and shift. Very frequently a formerly held idea crumbles long before its replacement has taken shape, and in order to form a new idea it is necessary to maintain the old one, even though belief in it is lacking. Most men in such circumstances are unable to declare themselves totally adrift, and continue to profess the old idea until the new shore is clearly in sight.

A rule of *caveat emptor* ["buyer beware"] in intellectual matters is a good one; and to rely upon the fact that, as a condition of discourse, all participants are telling the truth as they know it is risky and leads to much too great a reliance on the signature and much too little attention to the signal.

In personal relationships, the love affair must surely and obviously be the prime proof for the utility of lying. One sage has observed that the three most commonly employed lies are: "It's in the mail," "Let's have lunch," and "I love you."

Within the psychological structure, dreams offer an interesting example of how lying is worked into man's nature. The truth of what's going on in the unconscious would awaken us and it is therefore disguised and misrepresented, i.e. lied about, by the use of symbols and disguises, thus making sleep possible and life bearable.

All of this, it may be objected, is whimsical enough in its place, but when it comes to dealing with the government it is only right and proper that in every instance when called upon to state the facts to the government or to the voters, the citizen ought to do just that. However, it is perfectly clear that many publicly announced standards are unrealistic, and that what the government wants is a conventional and customary answer and not the truth. Learned Hand may be cited as an authority for this contention. A college teacher of French and German named Schmidt sought to become an American citizen and necessarily had to demonstrate that he was "of good moral character." He swore, however, that "Now and then I engaged in an act of sexual intercourse with women. These women have been single and divorced women. As to the frequency of these acts, I can only state that they occurred now and then. My last such act took place about half a year ago with an unmarried woman." Learned Hand found that he "was in every way qualified as a citizen, except that, in a moment of what may have been unnecessary frankness, he verified an affidavit..." (containing the above-quoted passage).

Judge Hand's remarks may be read in two ways: the first is that the exception to qualification to be a citizen is the man's sexual activity as disclosed; the second and equally plausible reading is that the exception to the man's qualification to be a citizen is that he was so unnecessarily candid that he revealed himself to be lacking in a correct understanding of democratic institutions, failing to distinguish when the government wants to hear the truth and when it wants to hear the conventional pieties.

The adjudication of pornography is another rich vein where perjury serves to harmonize changing social standards. Works that are plainly pornographic are found to have redeeming social importance by a variety of academics. What in many, if not all, cases they really think is that it is not a bad thing for people to read dirty books. Pornography in the literal sense, the writing of a whore, was pulled into the light of day, by professors and others treating it as a document of social conditions, in the *Fanny Hill* case.

Many important questions of social policy are being resolved by the courts against the interests of privacy, individual freedom, and individual integrity simply because it is not generally thought good rhetoric to invoke the right to lie. Centralized computer-bank storage of information on individuals is frequently attacked on the ground that it permits too much snooping into private matters. One of the strong arguments to be made against it is that it makes it harder for someone to lie. One is reminded of the story of the Englishman who bet his friend that he could, without leaving the club where they were both staying, cause the Archbishop of Canterbury to disappear. The following day the Archbishop disappeared in mysterious circumstances, and when the loser paid the bet he asked how the disappearance was accomplished. The reply was, "I sent him a telegram reading 'ALL IS DISCOVERED. FLEE! A FRIEND.'"

All of the notions of fairness and justice contained in paying one's debt to society, overcoming the past, making a new life, and starting fresh rely in part, at least, on the ability to lie successfully. As surely as a democratic society must efficiently detect spies and punish criminals it must give to its citizens the right to hold unorthodox or unpopular views, to keep the delicate and intimate details of their private lives closed except as they choose to reveal them. It must protect the ability of citizens to live several different lives during the course of one lifetime. In order to do so the state must recognize and protect the right to lie.

**ESSAY TOPIC:** For what specific reasons does Kasanoff support a right to lie? To what extent do you agree with his arguments?