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Ethics, Deception and Labor Negotiation

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ISSUE 3



Is Bluffing During Negotiations Unethical?

YES: Chris Provis, from "Ethics, Deception and Labor Negotiation," *Journal of Business Ethics* (Kluwar Academic Publishers, The Netherlands, 2000)

NO: Fritz Allhoff, from "Business Bluffing Reconsidered," *Journal of Business Ethics* (Kluwar Academic Publishers, The Netherlands, 2003)

ISSUE SUMMARY

YES: Ethics scholar Chris Provis examines bluffing within the context of labor negotiations and concludes that it does indeed constitute unethical behavior. Bluffing, he argues, is deception and therefore unethical, regardless of whether it occurs in or out of the negotiation process.

NO: University of California, Santa Barbara philosopher Fritz Allhoff presents a clever and unique defense of bluffing in business negotiations. The central tenet in Allhoff's position is that certain roles that we are required to assume allow us to morally justify behaviors that might otherwise be considered immoral.

In 1968, business scholar Albert Carr published an article in the *Harvard Business Review* entitled, "Is business bluffing ethical?" In this paper, now a classic of its kind in the field of business ethics, Carr argued that "most bluffing in business might be regarded simply as game strategy—much like bluffing in poker, which does not reflect on the morality of the bluffer." He noted that in other areas of life we expect people not to always be truthful, and we typically do not condemn them for doing so. In criminal trials, for example, no one expects the accused to tell the truth when he claims his innocence. "Everyone from the judge down takes it for granted that the job of the defendant's attorney is to get his client off, not to reveal the truth; and this is considered ethical practice" (Carr, 1968). The essence of Carr's argument is based on his view that ethics of business are different from the ethics of morality or religion. Carr's article both reflected, and supported, the dominant perspective on the relationship between

business and ethics at that time; namely, that business exists outside the normal bounds of ethical scrutiny. Therefore, behaviors such as bluffing—immoral in non-business settings—are "fair game" and not immoral in the business world.

Much has changed in the study and practice of business ethics since the publication of Carr's seminal article. The view that business is a human activity exempt from moral considerations no longer holds sway. The business scandals of the 1980s and 1990s focused much attention on corporate malfeasance and contributed mightily to the current intensive scrutiny of the behavior of American executives. Now, in the early part of the twenty-first century, the dominant view holds that corporations—and the executives who run them—have moral obligations to society beyond their traditional financial obligations to shareholders. Given the dramatic shift in how society views its relationship with the business community, it makes sense to ask whether attitudes toward bluffing in business transactions have changed as well. So, with that background, we present two articles with different answers to the question, is bluffing during business negotiations unethical?

Ethics scholar Chris Provis examines bluffing within the context of labor negotiations and concludes that it does indeed constitute unethical behavior. The basis of his analysis is the assertion that "other things being equal, it is wrong to deceive others or conceal information from them if doing so is likely to affect their actions and harm their interests." Bluffing, he argues, is deception and therefore unethical, regardless of whether it occurs in or out of the negotiation process. Thus, we are subject to the same degree of moral scrutiny in negotiations as we are in any other social interaction. "Negotiation," he writes, "is not a world set apart from our usual interactions with one another." Despite its rather simplistic charm, Provis's argument is not new. Many scholars past and present have rejected this analysis. So, to further bolster his position, he examines, and then rejects, the traditional arguments that the negotiation process, by its very nature, is a unique activity and cannot be subject to the same moral constraints as other forms of human behavior.

University of California, Santa Barbara philosopher Fritz Allhoff presents a clever and unique defense of bluffing in business negotiations. His argument rests on two very important papers supporting the legitimacy of bluffing: the afore-mentioned work of Albert Carr and a 1993 article by Thomas Carson. He examines the papers one at a time, pointing out the important points of each. And although he feels that both papers make positive contributions, he too concludes that both fail to convince the reader of the moral legitimacy of bluffing. Thus, the stage is set for Allhoff to present his unique argument.

The central tenet in Allhoff's position is that certain roles that we are required to assume "make acts permissible [or impermissible, or obligatory] that would otherwise be impermissible." He provides various non-business examples to show the validity of this "role-differentiated morality" before turning his attention back to bluffing in negotiations. As you read this article, do you accept his concept of role-differentiated morality? And if so, do you agree with his conclusion that bluffing is ethical?

Ethics, Deception and Labor Negotiation

... There has been widespread emphasis on the importance of trust amongst parties to the employment relationship. Trust seems to be bound up with ethical action, but there is some question about what is ethical in bargaining, particularly where deception and bluffing are concerned. Because it is possible for cooperative bargainers to be exploited, some writers suggest that deceptive behavior is an established practice that is ethical and appropriate. There are several problems about that view. It is questionable how clear and uniform such a practice has been, even amongst experienced negotiators; in many cases an appearance of bluffing can be explained as exchange of concessions where claims were genuine but parties make sacrifices in order to reach agreement. ... Deception cannot be justified as self-defense on the basis of a presumption that others will try to deceive us, since it is not reasonable to make a general presumption to that effect, and it is questionable to what extent bluffing and deception are necessary for self-defense, since there other techniques available by which parties can guard themselves against exploitation. Several factors explain why some writers endorse deception, including failure to make some important distinctions amongst different types of strategies.

Clearly, the discussion requires some basic assumptions about what is ethical and what is not. In particular, it is assumed here that other things being equal it is wrong to deceive others or conceal information from them if doing so is likely to affect their actions and harm their interests. There is room for further discussion of that assumption, but the following analysis is intended to pursue some of its implications rather than to defend it. The intention here is to suggest that negotiation is not somehow different, that we are subject to the same ethical constraints in negotiation as we are in other social interaction. Claims that negotiation is different are often based on claims about conventions and accepted practices and the need for self-protection, but those claims will be called into question. The view put here is that even though deception may sometimes be ethical (to prevent harm to others, perhaps), it is not especially so in negotiation. Negotiation is not a world set apart from our usual interactions with one another. ...

Deception, Bluffing and the Practices of Negotiation

It has been contended by some authors that there is an accepted practice of parties' bluffing when they state their "reservation prices": the least they will accept or the most they will yield. An example is Carr's article "Is Business Bluffing Ethical?", where he suggested that

Most executives from time to time are almost compelled, in the interests of their companies or themselves, to practice some form of deception when negotiating with customers, dealers, labor unions, government officials, or even other departments of their companies. By conscious misstatements, concealment of pertinent facts, or exaggeration—in short, by bluffing—they seek to persuade others to agree with them.

Carson and his colleagues have written similarly that

There can be no doubt that bluffing is an important bargaining tool. It can be employed to create impressions of enhanced strength as well as to probe the other party to find out the level of its critical sticking points.

"Bluffing" may seem a relatively innocuous tactic. Sometimes, the term may be used to refer just to exaggerated claims. However, it often goes beyond this to the case where a negotiator tries to convince the other party falsely that no further concessions can be made. Then, bluffing involves deception about what a bargainer is able or willing to accept, and there seems to be no clear line between that case and simple exaggerated claims, since sometimes it is just by exaggerated claims that a negotiator tries to produce a false impression. As Carr's statement implies, general acceptance of bluffing may be taken to imply acceptance of "conscious misstatements," "concealment of pertinent facts," "exaggeration" and presumably of other similar tactics. Many negotiators would think twice about some of these maneuvers. Nevertheless, bluffing is widely defended in academic literature. In fact, however, I shall argue that negotiators may bluff less often than many writers suggest: an appearance of bluffing sometimes results from the dynamics of concession exchange.

There can be no doubt that deception and bluffing are tactics which negotiators sometimes use. However, there is a question about how often they do so. It has been suggested that this is related to the degree of experience and sophistication of the negotiators. In his 1993 paper, Carson suggests that it is amongst "hardened and cynical negotiators" that statements about intentions or settlement preferences are not warranted to be true. Friedman and Shapiro say that "experienced labor negotiators expect that opponents will hide information and try to build up false perceptions about their limits and determination." They imply that MGB trainers may need to refrain from advocating openness and honesty because doing so can make them appear naïve.

It is certainly plausible that experienced negotiators are attuned to nuances in statements of position, and allow for them in what they say. As an example, we may take Ann Douglas' transcript of the Atlas case, where the

mediator comments at one point "see—if you went in there now and started to talk about a 35-hour week, you're dealing with experienced negotiators and they'd m—immediately read something that might not be there." It is also plausible to suggest that experienced negotiators are discreet at the outset of a negotiation. Earlier in that transcript, professionals show great mirth at the story of an error made by the president of a company in disclosing the company's real position in a negotiation.

However, it is questionable to what extent these examples confirm that negotiators generally practice "deception." Neither sensitivity to what other negotiators may infer, nor discretion at the outset of negotiation, amounts to deceptive conduct, and there are other accounts which paint pictures of honesty. Dufty recounts the comment of a union official who referred to employer representatives as "four honest men who called a spade a spade and laid their cards on the table and got down to business." Douglas' Atlas transcript elsewhere suggests that professional negotiators may condemn deception and concealment: for example, the union negotiator at one point expresses concern and anger that in a previous negotiation his management counterparts gained an advantage by such tactics:

They gave us the same business last time in here—in this same room, cried the blues all over the place . . . And immediately after the reopening negotiations were over, decentralization announcement is made in November. (Pause) So they're—they're in no position to give us that, "We're playin' nice and fair and square with you boys and girls."

Some well-known historical figures and some recent writers with wide experience of negotiation in other areas have advocated honesty rather than deception. Nyerger says that "honesty is unconditional" and that "a good negotiator should resist the temptation to be dishonest when dealing with a partner whose honesty is questionable." Williams reports a research project on the negotiating behavior of attorneys. It found that a significant majority used a cooperative approach rather than a competitive approach with an exaggerated opening position. There is evidence that while experienced negotiators may do better than naïve negotiators, that results not from deception or bluffing, but by their making more different proposals that they would find satisfactory. Overall, the actual behavior of negotiators does not present a clear, uniform picture. However, the evidence does suggest that deception is less consistent than often contended.

People's beliefs that deceptive behavior is widespread may be partly the result of a self-fulfilling prophecy. By acting deceptively in anticipation of deceptive behavior by others, we tend to elicit the sort of deceptive behavior we anticipate. This dynamic has been documented for competitive behavior in Prisoners' Dilemma situations in general, and it seems likely to apply to deceptive behavior in particular. We have noted that some experienced negotiators advocate honesty rather than deception, and this suggests that there is not a general practice of deception. However, the possibility of a self-fulfilling prophecy could explain why some people think there is.

Conventions, Practices and Concession Exchange

Even though those points cast some doubt on it, the idea persists that it is both usual and ethical to use tactics like bluffing, exaggeration and distortion. The idea that tactics like these are ethical is supported with the claim that in such negotiation "some statements are *expected* to be untrue while others are not." On this view, a union statement that it will not settle for less than a 5% wage increase might be acceptable because the management negotiators know that the true figure is something less, and the union negotiators intend them to know. Carr suggested that there is no lying, or no deception, in negotiation, because people are interpreting one another's statements differently than usual. He quotes British statesman Henry Taylor's comment that "falsehood ceases to be falsehood when it is understood on all sides that the truth is not expected to be spoken." A series of writers about negotiation have suggested that much of the deception that occurs is ethically sound because the deceptive statements in question are not taken seriously and are not expected to be.

Now it is true that inferences may depend on context, as well as on the way the negotiator makes the statement. There may be some negotiations where all parties are aware that others are not committed to the positions they are stating, just as people may not be committed to what they say in many other situations, ranging from jokes to role plays. But a number of writers generalize beyond that. Carson says that "it is not expected that one will speak truthfully about one's negotiating position," while Strudler claims that "at the outset of the negotiation, both parties would know that they can expect lies." He says that "deception is a signaling and symbolic device," and that "the conventions of deception are often clear."

However, it seems too strong to say that the conventions are clear, in labor relations at least. If I bluff by saying that 10% is as high as I can go, then as Carson and his colleagues suggest, "even if I don't *expect* you to believe that 10% is my final position, I probably still *hope* or intend to deceive you into thinking that I am unwilling to offer as much as 12%." Still, it could be that there was at least an accepted norm which permitted deception in negotiation, so that listeners would not make all the same inferences they might outside of the negotiation context. Carr rests his argument on the analogy with games like poker, where bluffing and deception are sanctioned by the rules of the game. The implication is that even though each party may really be trying to deceive the other, each also knows that the other party is trying to do that. On this view, bluffing and similar tactics are genuine efforts to mislead, but they are not unethical since other negotiators can be expected to anticipate them and will be on their guard accordingly.

Perhaps this sort of idea lies behind the contention by Carson and his colleagues that "no one familiar with standard negotiating practices is likely to take at face value statements which a person makes about a 'final offer.'"

It could also be what Lewicki had in mind when he went so far as to suggest that

In fact, bargainers are *expected* to bluff in negotiation; if they did not inflate their desired objective and make concessions toward that goal, they would be accused of bargaining "unfairly" . . .

Self-Defense, Fairness, and Alternatives to Deception

. . . The point can be stated as one about fairness. People commonly enter into games at which they have some capacity and skill. However, where wages and conditions are determined by negotiation, that is not a game that people can ignore. Haggling and bluffing in some voluntary bargaining over the price of a carpet in an oriental bazaar may be enjoyable and satisfying for both parties, particularly if they do have a shared understanding of what they are about, but the situation is different if they have no choice but to participate, if they are bargaining over their livelihood, and if one party has more skill or power than the other. In that situation, tactics of bluffing and deception may be quite unfair.

Dees and Cramton's point is too strong as a general proposition, that in the absence of trust and reciprocity one is entitled to use otherwise immoral practices. However, we may still be inclined to feel that because we expect bluffing and deceptive practices from others, we are entitled to protect ourselves, and that means trying to deceive them in turn. However, there remain two major difficulties with that view. First, it is not reasonable to presume that other negotiators always try to deceive us. Second, even where we are uncertain about others' honesty, there are other strategies for us to use in response than trying to deceive them.

As to the first point, we have already raised some questions about whether there is a general practice of attempted deception amongst negotiators, and those can be supplemented by some general considerations. There is evidence that "the disposition to employ deception as a tactic is influenced by a wide variety of factors." These factors include individual differences, the relationship between the parties, what is at stake, and so on. Since there are many factors that affect whether another party will try to deceive us, and since there are at least some occasions where the other party will try to be honest, it seems reasonable to suggest that there is an obligation on us to try to discern whether the other party is trying to deceive us on any particular occasion. There is evidence that individuals differ in their levels of generalized interpersonal trust, and at the same time it is clear that there are significant differences in negotiators' expectations of one another as a result of differences in linguistic background and cultural norms.

Since there are differences amongst individuals and situations, prudence suggests that we ought to take account of these detailed differences so far as we can, and ethical requirements point in the same direction. If we simply act on the basis of some blanket assumption that "people always do it," we run two risks: the risk of obtaining a less satisfactory agreement than we might

otherwise, and the ethical risk that we may disadvantage another party who is being more frank and open than we realize. The overall implication is that we ought not act on any general assumption about others' lack of honesty or openness.

It is true, however, that we have only limited ability to detect others' attempts at deception. To decide quickly that the other is being honest can often carry significant risk. On the other hand, to be deceptive because of the mere possibility of deception by the other party may do them an injustice and may wreck any possibility of cooperation and trust. Is there a way out of that dilemma?

Fortunately, there are well-documented strategies that we can use to guard against deception by others without leaving ourselves too wide open. These tend to revolve around "indirect communication," including possibilities of fractional concessions and other indirect communication. Fractional concessions allow each party to take small initial risks which can grow into a process of reciprocal exchange resulting in agreement. A small concession may elicit one in return from the other party, by the process of 'reciprocity' mentioned above; this may allow another in response, and so on. Neither party risks a great deal more than the other at any particular point. Further, the concessions may have a communicative function. As well as inducing concessions in response, the willingness to make appropriate concessions can communicate willingness to cooperate, and information about one's interests and preferences. This can be supplemented by verbal interchange, and by other processes of indirect communication, which may include hints, non-verbal behavior and other "back-channel" communication. These can be used independently as well as in conjunction with concession exchange. Indirect communication allows each party to make offers or put suggestions which are ambiguous and therefore disavowable if the other does not respond, but which allow increasingly clear communication if both parties wish that to occur.

Conclusion

Indirect communication requires some experience and skill, and one implication is that for negotiation to be both ethical and effective parties may need to have appropriate skills as well as good intentions. The ability to send and comprehend quite subtle verbal and non-verbal messages may be an important part of the process, and lack of those skills can inhibit trust and cooperation just as much as dishonest intentions may. That fact may go together with others to help account for the idea that dishonesty and deception are widespread in negotiation. The theme of this paper is that deception and bluffing are less common in labor negotiations than is contended in some literature, that they ought to be considered less ethical than suggested by that literature, and that they are less necessary than implied in that literature.

In explaining why those views are held, the fact that a lack of communication skill can look like dissimulation goes part of the way to account for them. Processes of self-fulfilling prophecy may also help to explain those views: deceptive bargainers may elicit deceptive behavior in response to their

own and so confirm their expectations. Another relevant factor is that the process of concession exchange can seem to be one in which parties move from false positions to real positions. A better account of the process recognizes that the parties are likely to have been making genuine exploratory claims which they then give up piece by piece in exchange for others doing so, in order to reach an agreement. Alternatively, it may be a process in which they clarify or revise their preferences. But in neither case need it involve deliberately misleading the other party.

Another part of the explanation why some writers report and endorse deceptive behavior may be a failure to make significant distinctions. "Bluffing," "concealment," "distortion," "deception," "conscious misstatements," "hiding information" and "lies" can be distinguished from actions that are often appropriate or necessary. If questioned by police, I may not lie to them, but I have a right to remain silent, and fundamentally the same distinction is available to negotiators. To decline to inform people about something is not necessarily to deceive them about it. How much a negotiator is obliged to tell another will depend on circumstances. For example, it may depend how the other party's interests are affected, and on their relative power. In many cases, we may be able to adopt the strategy Adler and Bigoness draw from Fisher and Ury, that "a principled negotiator need not disclose information or intentions so long as the negotiator makes clear that he or she is withholding information and is doing so for good reasons." Sometimes, there will be good reasons; sometimes, there will not. But there are much more likely to be good reasons for doing that than for lying or distortion.

There can be debate on how to apply some of the terms referred to above: for example, does "withholding information" amount to concealment? Does "bluffing" always involve deception, or only sometimes? It would be easy to become enmeshed in purely semantic disputes over matters like those. The answer may depend on details of the case. But it seems clear that not all of the dispute is a semantic one, and we can generalize to some extent. Strategies of "indirect communication" involve some withholding of information, but they do not involve "distortion," "deception" or "conscious misstatements." Negotiators who try deliberately to deceive others about their own intentions for the sake of pursuing their own advantage will generally be doing something unethical, even if they rationalize it as protecting themselves against possible exploitation, since there are usually other strategies of self-protection available. In practice there will be hard cases, as there are in many ethical matters. However, they can be made easier by taking care over detail, and not being misled by questionable ideas about how common deceptive practices are. Failure to analyze the various different sorts of tactics available can encourage behaviors which are unethical and which are inimical both to sound agreements and to good relationships between parties.

NO



Fritz Allhoff

Business Bluffing Reconsidered

1. Introduction

Imagine that I walk into a car dealership and tell the salesperson that I absolutely cannot pay more than \$10,000 for the car that I want. And imagine further she tells me that she absolutely cannot sell the car for less than \$12,000. Assuming that neither one of us is telling the truth, we are bluffing about our reservation prices, the price above or below which we will no longer be willing to make the transaction. This is certainly a common practice and, moreover, is most likely minimally prudent—whether our negotiating adversary is bluffing or not, it will always be in our interest to bluff. Discussions of bluffing in business commonly invoke reservation prices, but need not; one could misrepresent his position in any number of areas including the financial health of a company poised for merger, the authority that has been granted to him by the parties that he represents, or even one's enthusiasm about a project. The goal of bluffing is quite simple: to enhance the strength of one's position during negotiations.

Bluffing has long been a topic of considerable interest to business ethicists.¹ On the one hand, bluffing seems to bear a strong resemblance to lying, and therefore might be thought to be *prima facie* impermissible. On the other, many people have the intuition that bluffing is an appropriate and morally permissible negotiating tactic. Given this tension, what is the moral standing of bluffing in business? The dominant position has been that it is permissible and work has therefore been done to show why the apparent impermissibility is either unmotivated or illusory. Two highly influential papers have taken different approaches to securing the moral legitimacy of bluffing. The first, by Albert Carr, argued that bluffing in business is analogous to bluffing in poker and therefore should not be thought to be impermissible insofar as it is part of the way that the game is played. The second, by Thomas Carson, presented a more subtle argument wherein the author reconstrued the concept of lying to require an implied warrantability of truth and, since business negotiations instantiate a context wherein claims are not warranted to be true, bluffing is not lying.

I think that both papers are on the right track to the solution to the problem, but that both authors' positions are problematic. In this paper, I will consider the arguments of both Carr and Carson, and I will present my criticisms

of their ideas. Drawing off of their accounts, I will then develop my own argument as to why bluffing in business is morally permissible, which will be that bluffing is a practice that should be endorsed by all rational negotiators.

2. Albert Carr

Carr's article is somewhat informal and therefore lacks clear and rigorous argumentation. His thesis, however, is that business is a game, just like poker, and that bluffing is permitted under the rules of the game. To strengthen the analogy between business and poker, he points out that both business and poker have large elements of chance, that the winner is the one who plays with steady skill, and that ultimate victory in both requires knowledge of the rules, insight into the psychology of the other players, a bold front, self-discipline, and the ability to respond quickly and effectively to opportunities presented by chance.²

Even if we grant Carr that there are no morally relevant disanalogies between poker and business, which seems dubious, he still has a problem by trying to legitimize bluffing on the grounds that it is permitted by the rules of the game.³ As Carson has pointed out, Carr seems somewhat confused as to how we determine the rules of the game.⁴ In some passages, Carr seems to think that convention determines the rules, whereas in others he seems to think that the law delineates boundaries and all acts within those boundaries are permissible. Regardless, neither of these standards can help to establish the moral legitimacy of bluffing.

The reason is that either one of these moves would violate a long standing principle in moral philosophy, dating back to David Hume, that one cannot reason from what is the case to what ought to be the case.⁵ There have been numerous conventions, such a discrimination, that have nevertheless been immoral. And there have also been numerous practices, such as slavery, that have been legally sanctioned but that are also immoral. Facts about the way that the society operates or about the way that the law is, can not be used to derive values. The two supports that Carr gives for the moral permissibility of bluffing are precisely the sorts of considerations that are patently disallowed in moral philosophy.

Carr hints at, but does not discuss, a potentially more promising notion, that of consent. Certainly bluffing in poker, and most likely bluffing in business, is a practice to which all involved parties consent, which is more than can be said for other conventions. But since the fact-value divide makes convention wholly irrelevant, consent would have to do the entirety of the work, and not merely be used to identify a special kind of convention. This is clearly not what Carr has in mind, and I do not propose to read it into his argument. Furthermore, I still do not think that consent alone establishes permissibility. Just as I may consensually enter a poker game knowing full well that bluffing might happen, I may consensually travel to a dangerous neighborhood knowing full well that a crime against me might happen. Since my consent in the latter case does not provide moral license for the act against me, consent can similarly not be used to legitimize bluffing in the former.

3. Thomas Carson

Carson approaches the problem from a different direction, though he arrives at more or less the same conclusion. His strategy is to deny that bluffing is a form of lying and, in order to make this argument, he takes issue with the conventional idea that lying is a false statement made with the intent to deceive and proposes instead that "a lie is a false statement which the 'speaker' does not believe to be true made in a context in which the speaker warrants the truth or what he says."⁶ Bluffing is certainly lying on the traditional definition; the bluffer's statement is false and it is intended to deceive. But Carson thinks that his definition of lying excludes bluffing. Why? He argues that the second requirement, the warrantability of truth, is largely absent in negotiations. There are some claims made during negotiations that convention dictates to be warranted as true, such as claims to have another offer on the table. If I were to claim that I had another offer while I did not, this would be a lie because it would satisfy both parts of Carson's requirements. Claims about reservation prices, however, do not carry implied warrantability of truth—as a matter of fact, nobody ever takes such claims to be literally true. Carson therefore thinks that bluffing is not lying and should therefore not hold the moral disapprobations that we confer on lying.

There are, I think, two problems with Carson's defense of bluffing. The most obvious one is that, even if bluffing is not lying, it does not follow that it is morally permissible. It might be wrong for some other reason. For example, we might want to distinguish between lying and other kinds of deception which are still morally objectionable. Imagine that I leave my children home for the weekend and tell my oldest son that his girlfriend is not allowed in the house. If I call home to ask my younger son what my older son is doing and am told "he is talking to his friend Robert," this might be strictly and literally true only because his girlfriend is in the kitchen getting something to drink and is currently unavailable for conversation. The answer, though true and not a lie, is deceptive insofar as it masks a fact that my younger son knows to be salient. Or I might ask my older son directly whether his girlfriend is in the house and he truthfully answers no because she is still in transit to the house. Again, this answer is not a lie, but is deceptive. If we find such behavior morally objectionable, which many of us would, then the absence of lying alone does not secure moral license. And if it is not morally objectionable, some argument has to be given as to why; it certainly not intuitively obvious that all non-lying deceptions are morally permissible. Therefore, the most that Carson's argument can establish is that bluffing does not carry the same *prima facie* wrongness that lying does, not that it is morally permissible, which is his desired conclusion.

The second problem is that Carson's account still requires the same dependence convention that caused trouble for Carr. Carson admits that he will not pursue specific guidelines to determine whether a context involves implied warrantability of truth, but the examples that he gestures at are suggestive of conventionality playing a strong role.⁷ For instance, he says that statements made in negotiations between experienced negotiators are understood to be not warranted as true. But this is only the case because it is a matter of convention;

we could easily imagine another society wherein negotiators do not bluff, but are honest about their reservation prices. We have already seen why convention alone cannot provide any reason to think that a practice is morally permissible.⁸ To say it another way, we can meaningfully ask whether a practice is morally permissible *despite* its being conventional. A defense of bluffing must extend beyond mere conventionality and into the realm of moral philosophy, else it is doomed to violate the fact-value divide.

4. Bluffing, Role-Differentiated Morality, and Endorsement

I will now develop what I think is the correct solution to the problem of bluffing in business. As I said earlier, I think that both Carr and Carson start off on the right track, but then go wrong for the reasons that I have presented.⁹ In particular, both authors appeal to games in order to argue for the permissibility of bluffing in business; Carr uses a poker analogy and Carson argues that claims made during bluffing are similar to claims made during the game of Risk. But the problem that both authors have is that they infer moral legitimacy from the rules of their games, and this inference cannot be made. What we need is not an appeal to convention, but rather a moral argument that legitimizes bluffing within those games and that can be extended to bluffing in business.

One way that we could get this is to invoke what has become known as role-differentiated morality. Conventional wisdom within ethics has held that ethical rules are universal, and that everyone should be bound by the exact same moral laws. But work in professional ethics has recently come to challenge this idea.¹⁰ These applications have come most auspiciously in legal ethics, where legal ethicists have often sought to defend ethically objectionable practices of lawyers (such as discrediting known truthful witnesses and/or enabling perjurious testimonies) on the grounds that the lawyer's role, that of zealous advocate, carries different moral rules than non-lawyer roles.¹¹ Though the applications have certainly been controversial, the underlying idea, role-differentiated morality, has garnered wide support.

Put simply, role-differentiated morality suggests the following three claims:

1. Certain roles make acts permissible that would otherwise be impermissible.
2. Certain roles make acts impermissible that would otherwise be permissible.
3. Certain roles make acts obligatory that would otherwise not be obligatory.

In this paper, I do not wish to provide an extended defense of the plausibility of role-differentiated morality; this has been done by other authors (including the two I cited above), and I do not feel that I have anything of value to add. What I will say in defense of the idea here is that it has tremendous intuitive resonance, as I think can be clearly shown through examples. In support of the first claim, we might say that soldiers fighting a just war are morally permitted

to kill, whereas ordinary civilians are not. In support of the second claim, we could suggest that college professors should not have sexual relationships with their students (nor bosses with their subordinates), regardless of the act being consensual. In support of the third claim, we might claim that parents have special obligations to their children, such as providing for them and caring for them, that non-parents would not have towards the same child. I think the self-evidence of these examples gives strong support for the notion of role-differentiated morality.

Now, we can return to bluffing and ask whether some roles should allow for its moral permissibility.¹² I think that it is pretty clear that yes, some roles do allow for bluffing, while others definitely do not (though it remains, for now, an open question under which one bluffing in business falls). Some roles clearly do not morally permit bluffing. For example, consider a relationship between a husband and a wife. They have duties to each other to be honest and not to manipulate each other to secure advantages in negotiation. We might even want to say that negotiating, which is a necessary precondition for bluffing, is not the sort of activity in which husbands and wives should partake. Negotiating assumes conflicting aims of the negotiators and pits them against each other as adversaries, whereas husbands and wives should, ideally, share the same goals and cooperate. When disagreements do occur (such as on how much to pay for a new house), they should not negotiate against each other to determine their collective reservation price but rather should debate the issue and build a consensus as a unified front. I think that husband or wife is a role in which bluffing is not morally permissible,¹³ but there are others, such as any fiduciary role wherein one is morally bound to be fully open with another.

There are, on the other hand, roles under which bluffing is morally permitted. Both Carr and Carson suggested that bluffing is permitted in games, and I think that they are exactly right. But they got the reason wrong, convention alone cannot deliver moral permissibility. Whatever justifies bluffing in these cases needs to have moral, rather than merely descriptive, force. I think that the key to these cases is that the players involved in the game actually *endorse* the practice of bluffing; people play these games for fun, and bluffing makes the games much more fun. If bluffing did not exist in poker, and everyone's bet merely reflected the strength of their hands, there would be no game at all since the final results would all be made apparent. Thus, insofar as anyone even wants to play poker in a meaningful way, he is committed to endorsing the practice of bluffing. Bluffing in Risk is similarly explained; bluffing adds an exciting (though in this case non-essential) element to the game to which players are attracted. If this were not the case, we would certainly expect a proliferation in strategy games in which there were no bluffing via diplomacy, and this is certainly not what we see. Bluffing, in some games, is a welcome feature in which participants actually want to be involved.

Is endorsement a moral feature? Absolutely. Imagine that my son takes \$20 out of my wallet. There could be two scenarios leading up to this act. In one, he asks me for the money and I endorse his taking it (to pay the deliveryperson for pizza, let's say) and, in the other, he does not ask and instead takes it without my permission. Obviously he acted permissibly in the first

scenario and impermissibly in the second, and it was my approval, or endorsement, of his actions that is the *only* morally relevant difference. Therefore, endorsement carries with it the moral force to legitimize certain acts (or practices), and I think that it is precisely what is necessary to legitimize bluffing in games.¹⁴

I hope to have established both the plausibility of role-differentiated morality and that bluffing is permitted in some roles, but not in others. I can now return to my central aim and ask under which category bluffing in business falls. I think that bluffing in business is permissible for the same reason that it is permissible in games, namely that the participants endorse the practice. To explain why, let us return to the example with which I started. When I go to the car dealer with a reservation price of \$12,000, what that means is that, all factors considered, that car has to me a utility marginally greater than the \$12,000 does. *Ex hypothesi*, I am already willing to spend the \$12,000; if that were the best that I could do, I would accept the offer. Any price that I can achieve below \$12,000 would obviously be an improvement on the situation. Bluffing and negotiating are the mechanisms wherein I can achieve a final sale at a price beneath my reservation price and, insofar as any rational agent would welcome that end, he should also endorse its means.

Furthermore, other than bluffing, I cannot think of another reasonable procedure for the buyer to lower the sale price below my reservation price (or for the seller to raise the sale price above his reservation price). I might, for example, try to do so by force or threats, but these are obviously immoral. I might also make outright lies, such as to assert that the dealer across town has already guaranteed me a lower price. As Carson has already argued, this seems seriously immoral. So I think it is quite reasonable to suppose not only that the prospective buyer would endorse bluffing, but that there are no other reasonable alternatives.

One response to my position might be that bluffing does help the individual but that in negotiations there is not one, but two bluffers, and that the addition of the second cancels out all advantage to the first. Therefore, bluffing would should not actually be endorsed, since it yields no expected improvement, and maybe even eschewed on the grounds that it takes time and energy. However, I do not see how the addition of another bluffer really changes anything. If the car dealer will go as low as \$10,000 and I will pay as high as \$12,000, then we would both agree to (and, *ex hypothesi*, be happy with) any transaction at any price between and including \$10,000 and \$12,000. Assuming that the reservation price of the buyer is higher than the reservation price of the seller, the issue is not whether the two parties will come to mutually agreeable terms, the question is just what those terms will be. Ideally, each party would like to be able to bluff while having his opponent's position be transparent, but since that is obviously not a possibility, both should welcome bluffing as an opportunity to improve their positions.

It is also interesting to note that, without bluffing, the idea of negotiations itself almost (though not quite) becomes incoherent. Suppose that bluffing were not practiced, but that parties merely met and announced their respective reservation prices. I tell the car dealer that I will give him \$12,000 for the car

and she tells me that he will take as little as \$10,000 for the car. Now what? I do not even know how to settle on a transaction price other than to do something arbitrary such as splitting the reservation window in half and settling at \$11,000. This seems like the wrong answer for a number of reasons. Such resolutions could be inefficient (i.e. not Pareto optimal), not utilitarian, unfair to those who negotiate well, etc.¹⁵ Negotiating is, I think, an essential part of business. To reach a transaction price, it makes the most sense for the buyer to start low and the seller high, and to reach some agreement in the middle. By announcing reservation prices, we would be creating a system that I find less attractive and, furthermore, would give the participants every reason to transgress and to bluff.

Finally, I think that there really is a lot of merit in the analogies between business negotiating and games (despite the criticisms by Koehn and others). But I would go further than claiming that it is *like* a game, it seems to me that it is a game. Perhaps this is not true in the sense that negotiators are drawn to their work because they find it amusing, this is false in a wide number of cases and I certainly do not mean to trivialize many serious negotiations. But if two parties come to the negotiating table and the reservation price of the buyer is higher than the reservation price of the seller, then we already know that, *ceteris paribus*, the transaction will occur and, furthermore, it will occur at a price to which both parties are amenable. It seems to me that the occurrence of the transaction and the satisfaction of the parties is what is really important, where the price falls within the reservation window just determines what each party gains (in terms of money not spent or extra money earned) *in addition to* a mutually beneficial transaction. Whether the stakes are millions of dollars or not, the parties are still merely trying to secure money that they would otherwise be satisfied without.

Notes

1. The first important paper was Albert Carr's "Is Business Bluffing Ethical?" *Harvard Business Review* January/February 1968, pp. 143-153. John Beach later reflects upon the treatment that the topic received in the years since Carr's publication (though Beach is somewhat critical of this response). See his "Bluffing: Its Demise as a Subject unto Itself," *Journal of Business Ethics* 4 (1985), pp. 191-196. Then, Thomas Carson reconsiders Carr's classic treatment of the subject and proposes an alternative conception of business bluffing; see "Second Thoughts about Bluffing," *Business Ethics Quarterly* 3(4) (1993), pp. 317-341. There are also numerous other examples within the literature, though I take these to be the most important.
2. Carr (1968), p. 72.
3. Daryl Koehn has, for example, argued that the analogy between business and poker is quite weak; he takes nine features that exist in games and argues that few, if any, of these exist in business. For the sake of argument, I am willing to grant Carr's analogy; I think that, even with this analogy, he is unable to secure the conclusion that he desires. See Koehn's "Business and Game-Playing: The False Analogy," *Journal of Business Ethics* 16 (1997), pp. 1447-1452. Norman Bowie also argued against the legitimacy of adversarial models (such as poker) as proper characterizations of bargaining and negotiating. See his "Should Collective Bargaining and Labor

- Relations Be Less Adversarial?." *Journal of Business Ethics* 4 (1985) 283-291. Robert S. Adler and William J. Bigoness also challenge adversarial models in their work and find Carr's poker analogy to be flawed. See "Contemporary Ethical Issues in Labor-Management Issues in Labor-Management Relations," *Journal of Business Ethics* 11 (1992), pp. 351-360.
4. Carson (1993), 324-325.
 5. *A Treatise of Human Nature*, ed. P. H. Nidditch, 2nd ed. (Oxford: Oxford University Press, 1978) III.I.1.
 6. Carson (1993), p. 320. I assume that speaker is placed in scare quotes in order to allow for the possibility of non-verbal lying, such as when someone gives false directions by pointing in the wrong direction without saying anything. This definition results partly from earlier work by Carson and a criticism that he consequently received from Gary Jones. To trace through this, start with Thomas Carson, Richard Wokutch, and James Cox's "An Ethical Analysis of Deception in Advertising," *Journal of Business Ethics* 4 (1985), pp. 93-104. Jones's criticism can be found in "Lying and Intentions," *Journal of Business Ethics* 5 (1986) 347-349. And, finally, Carson's response is in "On the Definition of Lying: A reply to Jones and Revisions," *Journal of Business Ethics* 7 (1988), pp. 509-514.
 7. Carson (1993), pp. 321-322.
 8. And, in an interesting recent article, Chris Provis argues that bluffing (or, more precisely, deception) is not as ubiquitous in business as everyone often assumes; he thinks that the appearance of bluffing can often be accounted for by genuine concessions. If Provis is correct, then Carson's reliance on conventionality is empirically flawed. Or, as I argue, the reliance on convention is conceptually flawed (in order to secure moral permissibility). So, either way, the approach will not work. See Provis's "Ethics, Deception, and Labor Negotiation," *Journal of Business Ethics* 28(2) (2000), pp. 145-158.
 9. As I have indicated, other authors have also criticized the two approaches. What I have tried to do however, is be as charitable as possible: to grant all of their assumptions (the analogies, the adversarial nature of negotiating, Carson's definition of lying, etc.) and then aspired to show that they still cannot, even on their own terms, secure their desired conclusions.
 10. An especially good and influential article is Richard Wasserstrom's "Lawyer's as Professionals: Some Moral Issues," *Human Rights Quarterly* 5(1) (1975).
 11. Monroc H. Freedman, "Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions," *Michigan Law Review* 27 (1966).
 12. This step of my argument might be overly pedantic, and I might fare just as well if I skipped it and went directly to arguing for bluffing in business contexts specifically. However, I do think that it is an important part of the conceptual framework that I want to establish.
 13. This is obviously not to say that husbands or wives cannot bluff in business situations, just that a husband cannot bluff *qua* husband nor a wife *qua* wife. The husband or wife who bluffs in business is not bluffing *qua* husband or *qua* wife, but rather *qua* businessperson.
 14. John Rawls has argued that it is not morally permissible sell oneself into slavery (i.e., even if I endorsed the sale, it is still immoral). See his *Theory of Justice* (Cambridge: Harvard University Press, 1971). This poses an interesting objection to my idea that endorsement alone suggests *prima facie* permissibility. There are two ways that I could respond. First, I could disagree with Rawls and argue that any decision made by free and rational agents should be honored (so long as it did not harm others), that to do otherwise would show lack of respect for the being's rational nature. I am personally inclined towards this

view, though I know that many are not. The other way that I could go would be to argue that Rawls' point merely indicates that people cannot voluntarily give up their rights and that consenting to being bluffed is not problematic since we do not have the moral right to be told the truth. I think that either of these responses could be profitably developed, though I will not do so here.

15. The "Split-the-Difference" theory of negotiating is discussed by Roger Bowlby and William Schriver in their "Bluffing and the 'Split-the-Difference' Theory of Wage Bargaining," *Industrial and Labor Relations Review* 31(2) (January 1978), pp. 161-171. Their discussion, however, is quite empirical and numerical rather than normative.

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POSTSCRIPT

Is Bluffing During Negotiations Unethical?

One of the central questions inherent in the business negotiation process concerns the morality of using deception (i.e., bluffing) as a means of achieving one's goals. The traditionally accepted view held that business is an activity akin to a game and, as such, is played according to its own set of rules. From this perspective, bluffing during negotiations not only falls within the rules of the game, but constitutes accepted, reasonable behavior as well. In recent years, however, the belief that business plays by a different set of rules from the rest of society has been overthrown and replaced with a new perspective. The dominant viewpoint now demands much greater corporate responsibility and accountability to society on the part of executives and their firms. Managerial behavior is subject to much greater moral scrutiny now than at any other time in American history. It's not surprising, then, that the moral legitimacy of bluffing as a common business behavior has come under question in recent years.

The first of the two articles presented here argued that the original justifications for the moral legitimacy of bluffing are deficient. Scholar Chris Provis, in his reassessment of the long-standing dominant viewpoint, rejects the suggestion that business is analogous to a game in which the rules not only allow, but encourage, bluffing as a legitimate behavior. He also rejects the contention that bluffing is necessary as a form of negotiating self-defense: If I don't bluff, I'll be at a major disadvantage since my opponents will. As you read Provis's article, did you find his arguments to be persuasive?

In the second article, philosopher Fritz Allhoff argues that bluffing is morally permissible when individuals are acting in certain roles, such as a negotiator. He also contends that reasonable people will want to allow for bluffing in the negotiation process. Indeed, he states that without bluffing, "the idea of negotiations itself almost (though not quite) becomes incoherent." How about Allhoff's clever attempt at justifying bluffing? Do you feel his argument is sound?

Suggested Readings

- Albert Carr, Is business bluffing ethical? *Harvard Business Review*, January/February, 1968.
- Thomas L. Carson, Second thoughts about bluffing. *Journal of Business Ethics*, vol. 3, no. 4, 1993.
- T. L. Carson, R. E. Wokutch, and J. E. Cox Jr., An ethical analysis of deception in advertising. *Journal of Business Ethics*, vol. 4, 1985.

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