Preamble: What Is the Subject?

My title is a come-on, but it suggests the issues the paper embraces. The notion of a professional liar suggests someone who tells lies for a living, perhaps someone who tells lies well, with conviction and with aplomb, certainly someone whose stock in trade includes the capacity to utter the well-judged falsehood. The sort of example I have in mind is the beau ideal of a British civil servant according to Lord Armstrong's testimony in the Spycatcher case: someone who is "economical with the truth" when he must be, who is not on such an occasion likely to squirm with embarrassment, nor to bluster out of a feeling that he is not carrying with conviction. He may even have a fastidious sense that he ought not to presume too far on his audience's credulity, lying to them in a tone that suggests that he certainly intends to deceive them, but that he does not propose that they should feel utterly foolish. A finance minister or one of his officials discussing the prospects for a devaluation of the currency might well pride himself on lying thus.

The paper does not explore the notion of the well told falsehood in the detail I would like, but relies on the thought that there might be such a thing as the well told professional lie to explore a very small part of the obligation to tell the truth and to lie under certain conditions as it attaches to the performance of certain professional roles. Obvious professions include doctors, lawyers, and politicians, and doubtless university teachers, too. I say a lot about the first, something
about the second, a little about the third, and maintain a
decorous silence about the last. I take it that we all know rather
too much about the fibs by which we prop up the morale of
students and colleagues.

Such novelty as is possessed by what follows lies in my
attempt to pursue the plausible but indistinct thought that to
sort out our ideas of when lying is permissible or perhaps even
mandatory we must understand what relationship the passing of
information and disinformation is serving. Lying within
marriage offers an example. The “little white lie” is acceptable
to a non-severe (relational) moralist because he or she takes the
survival of a marriage as a proper goal, and thinks the reply
“absolutely hideous” will not help it, even if it is the honest
answer to the question, “What do you think of my new suit?”
Severe moralists will deny it—William Godwin springs to mind
as an example of a man who would have destroyed a marriage
rather than hide the truth about his sentiments. But severe
moralists come in several flavors; Kantians are severe for other
reasons than severe utilitarians. A severe moralist who was also
what I am calling a relationship moralist would have to give as
his grounds for wishing the truth to be told even at the cost of
the marriage some such thought as this: the badness of a
marriage in which the parties did not disclose their deepest
feelings with absolute spontaneity is so awful that any
relationship that cannot be sustained on that basis ought to
expire forthwith. “Green tweed; what a question!” The rest of
us, I think, would feel that it was precisely the marriage
relationship that imposed especially strict duties of truth-
telling in many conditions and the obligation to lie intelligently
in others. This paper inspects the connection between kinds of
truth-telling (lie-telling therein included) and the relationships
in which they are embedded. I begin with a quick glance at
some familiar answers to the question why we ought to tell the
truth and not lie in general, not to say anything novel, but to
get some obvious ideas about the point of truthful and
untruthful speech into the open for discussion.
A general and powerful argument for truthfulness is that truthfulness has good results. But all consequentialisms run into the difficulty that (as with promise-keeping, just conduct, and similar issues) they cannot make truthfulness special. The consequentialist answer to, “What shall I say?” must always be, “Whatever does most good.” If you ask me when the bus goes, and I believe you would be happier if you thought it went sooner than it does, I will say it goes in ten minutes even though it goes in an hour. If I fear you will resent the lie, I may tell you it will go in an hour and a half, knowing your irritation at being lied to will vanish in your pleasure at not having to wait so long. I may decide that it is too difficult to know what you will feel and tell you the truth as a compromise. Irish and Greek social life used to depend a good deal on such shadings of the truth. The philosophical point, however, is merely that in a consequentialist perspective the truth of a statement occupies (apparently) no special position in my motivation in uttering it.

There are two difficulties. The first is that the truth must have some special standing. I cannot calculate what it is best to tell you unless I attend to what is as a matter of fact so. To make you happy with the early arrival of the bus, or to palliate its lateness by pretending it will come sooner than it will, I must know when it will come, and I must, therefore, mind about the truth in a way I do not acknowledge when I speak to you. Most people believe there is something wrong if I mind whether my own views are true, while I do not mind whether your views are true. The more telling objection is the second, that the consequentialist speech-practice suggested here is parasitic on non-consequentialist truth telling. If I came to think that you had not asked me what time the bus went in order to learn the truth but to make me feel good by being treated as an authority, my incentive to know what time the bus does go disappears. This suggests that consequentialism is
self-defeating as a total theory of truth telling. My wish to do you good by what I tell you will be frustrated if what you tell me of your wishes is not the truth. My calculations will be rendered indeterminate, so complex that the whole enterprise has to be given up.

All the same, consequentialist arguments do count. Particularly in the selection of what we tell one another, we are constantly motivated by consequentialist considerations. These considerations usually relate directly to the welfare of the people we immediately encounter, and they are quite unsophisticated—we spend little time thinking how our conduct contributes to the persistence of widespread social practices. But these considerations cannot be bedrock in our motivation. If they are bedrock, it cannot be as part of the conscious deliberations of someone confronted by the question of whether to tell the truth. We should at the least need some kind of indirect consequentialist theory, perhaps one sustained by evolutionary considerations. The priority of non-consequentialist motivated truth telling and the felt intensity of the obligation not to lie regardless of consequences may be explicable in terms of the evolutionary value of coordination mechanisms of a certain sort; but any explanation of how these work through into the motivation of individuals will have to talk in familiar "selfish gene" terms, that is, in terms of the utilitarian benefits of non-utilitarian motivations. For my limited purposes, I point only to the obvious connection between truth-telling and effective social coordination and to the difficulty of giving a full-blown utilitarian justification of truth-telling.

Against the consequentialist perspective it is commonplace to set a Kantian view. Its structure and its problems are familiar. The rigor of the *Groundwork of the Metaphysics of Morals* runs into trouble as soon as one sets a competing moral obligation against it; the familiar question of whether we are really obliged to tell the truth about the whereabouts of the fugitives cowering under our bed to the murderer intending their death
is not difficult to answer, both in a utilitarian and in a non-utilitarian framework, but is hard to deal with if all we may work with is Kant's universalization theory. If all departures from strict truth-telling entail the absurdity that it is not the primary purpose of language to tell the truth, we must tell the murderer where his victim is holed up.

One route to solid ground is to invoke the right of the enquirer to have the truth told to him or her. Most discussions of truth-telling and lying concentrate on the liar. For many purposes it is better to concentrate on the would-be hearer. The obvious non-utilitarian way of dissolving Kant's problem is to insist (as Kant himself does elsewhere) that the murderer has no right to be told the truth. To be the beneficiary of the old rules of justice—"neminem laedere, honeste vivere, suum cuique tribuere"—you have to be playing the game fairly yourself. You cannot complain if the policeman takes away the car you have just stolen; you cannot complain that you are lied to when you are trying to murder someone. The question at stake, however, is the ground of the right to be told the truth. For the purposes of this paper, I bring autonomy to fore; and in general I think it is the most important of such grounds. Indeed, to the extent that other values come to the fore, the right to be told the truth diminishes and may become a right to have the truth withheld. Autonomy is the capacity to plan one's own life, to form and act on a scheme of one's own. If autonomy is the basis of the right to be told the truth, liars arrogate to themselves a manipulative control over their dupes and so violate the dupes' right to self-government. This may also be understood as an egalitarian claim about the distribution of power—that is, as the claim that nobody may exercise a control that treats others as means, even as a means to their own well-being. Kant's claim that it is the grossest tyranny to force others to be happy according to our conception of their happiness may not go far enough; we may wish to add that it is tyranny to make them happy even according to their own conception of their happiness. Autonomy, thus, provides one ground for the right
to be told the truth. This allows us to escape Kant's dilemmas. The murderously inclined has forfeited his right to be told the truth; he is hell bent on destroying the life, let alone the autonomy, of another, and, therefore, loses the rights of self-government that innocent persons possess. His hearers may tell him whatever strikes them as most apt to remove the menace of his presence, and that is that.

Where autonomy is a not a salient value, and something else is, the argument erodes to nothing. If I am suicidal and ask you where the sharpest knife in the house is, you have a duty to lie to me; if I am excessively neurotic and ask you whether you have any reason whatever to believe that I may be suffering from some frightful ailment, you have a duty to lie to me; if I am excessively optimistic and ask you whether it is not beyond the bounds of possibility that I shall win some lunatic piece of litigation, it is your duty to lie to me. Moreover, it is your duty to lie well, that is, convincingly, unembarrassedly, and in a kindly fashion.

*Truth in Relationships*

I gallop rapidly over this familiar terrain for two reasons. The first is that I want to put the idea of a right to the truth based on autonomy to some work. The second is that I want to suggest—I do not produce a very compelling argument—that the varied attractions of the considerations I have sketched lead us to the need for a positive account not only of the duty not to lie, but of what truths we ought to tell and to whom. This is what I somewhat grandly term an account of "truth in relationships"; that is, an account of why doctors ought to tell the truth to their patients, lawyers to their clients and the courts, and politicians to the public at large, and on that basis, what truths they ought to tell them, and what evasions and positive untruths they may properly resort to. The structure of what follows is, therefore, simple: I try to say something about
the multiple relationships involved in medicine, law, and politics, investigate how far a consideration of the autonomy of the parties involved will take us, and stray off into some tangled thickets by suggesting that autonomy in a Kantian sense is often less important than the preservation of a kind of narrative cogency to which we are perhaps irrationally but very deeply attached. I hesitate to say that doctors, lawyers, and politicians also aim at the novelist's truth, since I am sure it would encourage bad behavior if they believed it; but it is the direction in which this paper goes.

We distinguish between telling the truth and blurting it out; we distinguish between telling the truth and rubbing it in. We distinguish between helpful and unhelpful truth telling; we do not count as truthful someone who merely manages to utter statements that do not diverge from literal accuracy. Too many medical practitioners meet their requirement to secure the full and informed consent of patients by giving them a pile of illiterate technical prose to read; that is not truth telling in the proper sense. What we look to is their readiness to enter into their questioner's search for information, to steer by his map, so to speak, and help him work out the lay of the land according to his own needs. This is a relation of autonomy as usually understood, but it perhaps takes more literally than a Kantian would the idea that people should be the authors of their own life stories, and is less attached to the idea that only moral principled action or transparently rational action is autonomous. It is that aspect of the subject that the rest of this paper explores.

*Doctors*

It is, in our culture anyway, unavoidable that the relationship we start with is that between the doctor and the person presenting with symptoms. It is worth recalling that not in every culture would this be true, and also that there are many
situations in our own culture where the patient (senile, comatose, or mad as they may be) is not a subject in the relationship, but the object of a different relationship. It is a platitude that the doctor-patient relationship is both awkward and difficult to characterize. Medical textbooks have begun to realize just how difficult it is but are still struggling for a persuasive vocabulary, partly because the two concepts they have generally relied on—professionalism and beneficence—do not do all the work we need. To begin with another platitude, we treat doctors as a curious mixture of priest and mechanic; conversely, patients enter the relationship in a curious frame of mind in which guilt mingles with anger at the mechanical malfunctioning of their body. There are good reasons why this is so. One is that we spend the best years of our lives—the very earliest years—learning to organize the way we appear as embodied social actors; I do not imply anything so elaborate as Freudian theories about the psychological impact of toilet training, only observe that the maintenance of the decorum and predictability on which society is built demands of us the meticulous management of our bodies and their peculiarities. This control and management and our ability to deploy our bodies for social interaction is threatened when our bodies go seriously wrong. Hence, the guilt; we feel, so to speak, embarrassed in anticipation of what may become failures to behave properly. Hence, too, a measure of anger at the culpable failure of the equipment on which we so intimately rely for the maintenance of our good opinion of ourselves.

This embarrassing background helps us make some headway with the question of what truth to tell, and that of where “economy with the truth” may be in order. It illuminates the importance of autonomy, and the kind of vulnerability on which we earlier thought the right to hear the truth might be based. If patients face the problem of reassembling their attitudes toward their bodies and themselves, as in difficult cases they must, the thought that the doctor must do better
than brutally hand out “the facts” is a very bare beginning of wisdom. What is wanted is co-conspiracy; the patient needs to be able to work out an appropriate schema for understanding and dealing with the unpleasantness she or he faces, and it is hard to say anything very definite about what this will be like in the abstract. It certainly means that there will be well-told lies told in the interest of a larger truth.

One thing one can say is that people will have very different views about it, according to how they see much else about themselves and the world. Freud’s famously angry, “bei welchem Recht?” when his doctor tried to give him a pain-killing dose of morphine toward the end of his final illness illustrates a heroic conception of how to handle the confrontation with imminent extinction. The body might crumble, but the will remained. A patient with so firm a grasp on his own view of the matter presents few practical difficulties. Conceptually, he is interesting because he violates the thought that the brutal handing out of facts is inappropriate; it is his wish that they should be brutally put and brutally understood, and his understanding of the task of the patient is that he has a duty to face them with a ruthless refusal to comfort himself with illusions. The difficulty is not only that few of us are quite like that, but rather than we are pretty unsure quite how we might be under such conditions. It is this that tempts doctors to utter verbal bromides; insecurity and uncertainty look like simple weakness, and weakness needs comforting.

Plainly, the doctor is in a position to take a paternalistic role in this relationship, and there well may be situations in which she or he must do so. But whether we are quite happy to shove all of this into the box labeled paternalism needs a bit of self-consciousness. Sometimes the pedigree of the doctor’s takeover is what counts; other times not. It is one thing to take over all the serious decision-making when the patient consents to this, another when the patient is in no condition to consent or refuse. What we call paternalistic intervention mostly occurs in conditions where the deep concern for the object of one’s
concern that marks the dealings of real fathers and real children is absent, and even more importantly where the kind of intuitive knowledge that operates between parent and child is missing from the clinical relationship. (I say this *ceteris paribus*, of course; the relationship between some doctors and their patients that existed in some British communities and doubtless in many American ones too was sometimes an object lesson in the deft passing of control from one agent to another.)

I do not think there is much to be said beyond this until we come to what I want to tackle shortly, the creation of satisfactory narratives of survival and death. The one thing perhaps worth saying is negative. It is not enough to insist simply on the overwhelming value of autonomy or the Kantian principle of treating persons as ends and not means—this latter is entirely compatible with the cherishing affection that leads doctors to palliate the harshness of medical reality in their discussions with patients, and autonomy is not self-evidently the most important value always at stake. Moreover, a sensitivity to cultural differences is surely in place here. Some of us do want to be the pilots of our ships and the captains of our souls to the bitter end, others of us are prepared to relax a little or even quite a lot. It is highly unlikely that these ambitions vary only among individuals and not between cultures.

It is right to concentrate on the relationship between doctor and patient, because that is the relationship on which everything else is founded. Still, it is not the only relationship involved in medicine. One important one is that of medical practitioners to one another. Here, many more issues rear their heads. The first is the way in which confidence in one another's handling of a case is maintained; one obvious objection to lying to patients is that it makes it hard for two practitioners to talk to one another in front of the patient. More generally, various kinds of professional etiquette may serve a valuable role in not reducing everyone to a state of
anxiety—that is, by encouraging us not to blurt out every doubt we feel about a diagnosis and prognosis—but may also kill off patients needlessly by making practitioners feel they cannot ventilate doubts about one another’s competence even when it is highly necessary to do so. In all this, the subject of lying and truth telling has to be broadened into the subject of misleading and veridical communication, since, as everyone knows but few of us know how to describe perspicuously, the cooperative performance of complicated and stressful tasks calls out a considerable amount of bodily communication, designed, as Erving Goffman used to argue, both to facilitate the operations of the group and to protect the self-esteem of the individual members one by one.

By the same token, the immediately off-duty communication of such stressed groups offers a nice study in the “not-exactly-truthful, not-exactly-false.” As a thirteen-year-old I admired the surgeon who told me my appendix was so ready to be removed that he had been tempted to use the knife and fork he had just used at dinner, though I later became much too squeamish to think I might do Goffman style fieldwork and eavesdrop on a surgical team. The only point I wish to make about all this is that style and culture will be enormously important, and that the Kantian universalism so common in standard treatments of medical ethics misses the point that the morally interesting work is mostly done by the time we have decided that even in this setting and given the local criteria for conveying what is going on to one another this was a piece of deliberately non-veridical communication. To call it a lie in that open and shut fashion is really to announce the decision that it ought not to be told.

If the main dramatis personae of the comedy of illness are patients and their immediate helpers, we ought not to neglect the relationship between medical practitioners and the wider society. One powerful argument for a professional ethic of scrupulous truth-telling even in the face of benevolent temptations to lie or palliate unpleasant truths is that we hope
for advances in medical science, and as in all walks of intellectual inquiry, honesty is almost always the only route. Counter-examples, such as Paul Feyerabend's account of a rhetorically effective but not particularly veracious Galileo, only possess some force where what is at stake is the maintenance of an authority structure that allows research to continue—as when cardinals must be got onto Galileo's side. Because medicine is both an applied science and an expensive one, the temptation to exaggerate one's successes and shove one's failures under the rug is strong, especially when outside agencies do not look kindly on doubt and hesitation. But these issues I take to belong to the simpler and less interesting part of the field of professional ethics. They are, nonetheless, extremely important; the cry of "Lysenko" is somewhat vulgar, but it is a powerful argument all the same. But I want to return to two much messier issues.

Another aspect of the dealings of the medical community with the public is the creation of an informal conception of "illness" in the community at large. I mentioned the obvious polarity between views that conceive of doctors as priests and views that conceive of them as auto mechanics. Now I want to say a bit about the appropriate models of illness that go with them. So long as medical technique did more to shorten life than to prolong it—until about 1920, that is—a plausible way of looking at illness was to see it as a blow dealt by fate. Since doctors could not do much to relieve it or cure it, they could only assist the patient through the process of recovery or dying. Of course, one might think that for the most part their assistance was not likely to do much good even in that task. Most descriptions of the pointless bloodletting and poisoning that medicine involved before the twentieth century suggest that patients did well to keep out of the doctors' way.

Still, for theoretical purposes at least, we may suppose that in the late twentieth century, it is possible to render patients physically comfortable, whether or not we can cure them, so that one minimal medical task is simply to keep the patient
comfortable. With that as a basis, the two models of the medical role have some room to maneuver. One concentrates on teaching people to see themselves as managing a complex piece of machinery; the other concentrates on teaching people to work through the experience of illness, pain, dependency on medical attention, and so on. Both, be it noticed, find room for the idea of the good patient as well as the good doctor; the patient must contribute to the performance that makes one or another vision of illness, cure, failure, and death canonical for the wider society.

The notion of being a good patient is one that is much disliked and quite rightly, for it can mean being a patient who gives the medical profession no trouble, and, thus, a patient who fails to announce his or her needs, and so forth. There is another notion that deserves a bit more respect, and that is the notion that the patient can contribute to the other half of a continuous dialogue, on one level by reinforcing the idea of medicine as a superior kind of technique, at another by reinforcing the idea of medicine as part of a social practice whereby people are both braced and comforted in their experiences of pain and anxiety. The doctor's professional obligation to tell the truth, therefore, can be cashed out in numerous ways that impinge on everyone, patient and others. Sisela Bok and others have talked good, if commonplace, sense about the ways in which lying goes wrong in clinical conditions—and many of the points she makes are those I have just made. The less commonplace point she makes is the beneficial effects of careful truth-telling when people spend, as they nowadays do, rather a lot of their declining years in institutions. I only want to add the thought that her catalogue of the good sense put out by the British hospice movement is a bit metaphysically unambitious. That is, she takes it for granted that people have various needs and anxieties which can be taken care of consistently with everyone being strictly honest. The further twist is that getting people to that point may demand a heightened self-consciousness about how we
define illness, and of society's role in its cause and cure, and of the proper bearing of its victims. American doctors, for instance, are prone to complain of the nihilism of British doctors, by which they mean the tendency of British doctors to tell their patients that they must learn to live (and sometimes to die) with whatever ailment they have diagnosed and not to encourage them to try all possible means of redress. The British are prone to be glad that they do not spend the last few months of life in an American hospital.

This is where the issue of selecting the truths worth telling becomes salient. Suppose you have a 25 percent chance of recovering after some grim treatment; it is, thus, true that you have a 75 percent chance of not recovering. You may take the view that the glass is a quarter full, or that it is at best three-quarters empty. Which you think is "the truth"—that is, what is worth saying in the circumstances—does not affect the literal truth of the propositions you might utter, but its broader truth hangs on the entire surrounding context of beliefs about such matters as how great an evil death is, how endurable various sorts of pain are, what aspects of life do and what do not depend on perfect health. Medical practice must make a great difference to how the public at large sees this. There is a great deal of public anxiety about what will happen to one in a hospital or nursing home; Sisela Bok ties all this in to the topic of lying by complaining (quite rightly) that most attempts to evade the overt and covert questions of patients in such circumstances misfire—they add to the patients' anxiety rather than relieving it. But that might be described as "poor" lying.

The point I am after is different. It is that evasion reflects a general uncertainty about what story the public at large is able to live with. My sense is that it is harder to establish any such story in a society like the United States, where doctors and patients and public at large are such a cultural mix. Nobody who has become halfway sympathetic to the philosophy of science predicated on the idea that all inquiry involves the
negotiation of accounts of reality will have any less sympathy with the idea that the negotiation of accounts of life and death will be exceedingly difficult across cultures and across groups with very different capacities to make their accounts stick. But the claim to be examined is that the aim of truth-telling is to allow people to set their lives, ailments, recoveries, and deaths in a satisfactory narrative structure.

This brings me to my last thought about the truth-telling ethics of medicine. What I would like to be able to do is give a coherent account of the idea of narrative adequacy. I cannot do that, but I can perhaps motivate the search for such an account. The thought is this. There are various established narratives with which we feel at ease; the view, current since Aristotle, that proper dramatic renditions require adequate means of arousing and resolving anxiety, exciting fear and sympathy, displaying characters in circumstances where they will behave bravely or basely, and so on is hard to resist even if it is hard to do very much with. But it is surely true that people have strong feelings about being allowed to enact their own version of the drama, whatever it might be. Even decent, humane commentators such as Sisela Bok, Cicely Saunders, and Ronald Higgs—all of whom say much that seems incontrovertibly wise and just—miss part of the point.

Human beings want to act in a good story. The story is that of their life and eventually death. Neither the vision of doctor as mechanic nor as priest quite does the trick—or rather they can work rather well some of the time, but they work rather badly in conjunction. The otherwise fit and healthy person who cheerfully takes his malfunctioning body in for a bit of repair and then goes home with a machine he no longer distrusts may be thought of as acting in terrible bad faith by Heideggerians and their friends; on my account, it is a perfectly adequate narrative under those conditions. The difficulty arises when the repairs will not work, and he is faced with the fact that he cannot throw this one away and get a new one. Unlike the Heideggerians, I do no think this knowledge lurks
underneath our cheerful pretense that we regard our bodies in the same light as our cars and bicycles. But it plainly gets stressed as a narrative structure the more ill one is; then the fact that this is also me is impossible to overlook or sideline. Then, what is needed is a narrative of endurance and death. At this point, I fear there is little of a compelling kind one can say about what kinds of truth-telling will assist it. Roughly, I cannot see further than the view that people who cast themselves in a combative and heroic mold actually need a certain brusqueness and bloody-mindedness from their (at this point not exactly) healers, while people who cast themselves in a more acquiescent mold need a story that emphasizes the possibilities of a quiet departure and time for a peaceful good-bye. In non-terminal illnesses, much the same is true; some people will be driven more or less mad by being encouraged to acquiesce in the restrictions their illness imposes, while others will be looking for a way of diverting their attention from the restrictive aspect toward what emerges when one ceases to be impressed by that.

Lawyers

Much of this apparatus makes sense in the conduct of the law. Lawyers and doctors are subject to many similar temptations: the patient who wants useless tests or the litigant who wants to fight a hopeless case is either a source of easily earned fees or someone who needs to be told to stop fooling himself, a course of action that will yield no fees and lose a client; again, in a liberal society like ours, the question whether we should think that a man who wastes his money is simply gratifying a legitimate taste or is engaged in a self-destructive course from which we are professionally obliged to deter him is harder to answer than in many other societies in which the individual's wishes count for less. Still, the context of the argument is very different. In some sense, the patient's
encounter is between himself and his illness; everyone else and everything else is an adjunct to that primary reality. The lawyer’s ultimate point of reference is not the client’s grievance, but how that grievance can or cannot be resolved in court. Much of what anyone would say about honesty toward a patient nonetheless applies to lawyer-client relations. The crux comes at the point where we put lawyer plus client in the context of an adversarial system. The morality of American law focusses less strenuously than that of English law on the proposition that the lawyer is the servant of the court even more than he is the hired help of the client. It is as though American lawyers are taught early on that the question is, “How far may I go in assisting my client?” so that the duty not to mislead the court is seen as a constraint on the way the hired help may assist those who have hired it, while English lawyers are taught that their duty is to help the court do justice for (or to) their client, and the client’s interest in having justice done one way rather than another is a constraint on how one helps the court. Whether anything much hangs on this in practice, I am not sure. It is pretty clear that no English court would tolerate the pre-trial shenanigans commonplace in expensive American cases, but that is not to say that British lawyers are any less inclined than their American counterparts to stretch the truth or leave it in darkness as suits their client’s interests.

Let us for a moment take seriously the official thought that the lawyer’s duty is to assist the court in determining the just outcome in a case. Some people suppose that this should rapidly lead us to abandon the adversarial procedures of the common law in favor of the inquisitorial procedures of European law. It is, however, obvious enough that the contrast between the two systems is less sharp than one might suppose. The defendant in a criminal case has a lawyer whose task it is to try to get his client off, and in trials with much in the way of public interest, French lawyers seem no less energetic than American lawyers in trying to persuade public opinion that the case has been brought by people full of assorted prejudices.
Whichever formal system one envisages, the need for two opposed sides to present an argument is readily defensible; even the Holy See appoints an *advocatus diaboli* when contemplating canonization. Flaws in a case will only be uncovered if there are people whose task it is to uncover them.

This is the easy part. The next part is the difficult one. Police withholding evidence are manifestly lying to a court, even though they need not speak a word to do so. Lawyers who set up a smokescreen of delay and obfuscation with the aim of provoking procedural slips that will allow endless appeals are not lying, but they are impeding the discovery of the truth. Here, the conventional sloppy thought that it is the job of the prosecution to get convictions and of the defense to stop them is a real impediment to justice. *The* job—I say this for brevity, though it is obviously silly to suppose that we can pick one out, let alone secure agreement on what it is—is to keep the practice of managing social life according to law rather than brute force and blind vengeance “on the road.” Law as an institution demands a degree of self-restraint even in the protection of one’s client’s interests; if this was not so, there would be no particular reason not to intimidate the opposing side’s witnesses or bribe their lawyers to throw the case. One piece of self-restraint is to eschew the shortcut of lying one’s way to victory.

Put like this, we are in danger of falling into the merely commonplace. To say that lawyers must subordinate themselves to the doing of justice is not much stronger than saying that doctors ought to try to heal their patients. The very idea of doing justice has something like an intrinsic connection with truth in a way that curing illness does not, but that makes little difference. What we ought to look at is the thought that justice has to be manifest in the operations of a court. This is where we get back to the thought that one of the things doctors do is help patients establish a satisfying narrative of the experience of illness and recovery or the reverse. An under-explored thought is that in something of the same way that negative
campaigning is coming close to destroying the capacity of the political elite to legislate and administer, the hardball tactics of many lawyers and the cynicism of the public about their honesty are beginning to undermine the rule of law. When we think of what truth is to be told and how it is to be told, we can begin to see what is needed. As things stand, the temptation is to demonize the perpetrators of crime and even the committers of common or garden variety civil wrongs, trying to play on the superstitious tendencies of juries and the ressentiment that is an increasingly marked characteristic of the American in his public capacity. The natural defense is to accuse one's opponents of assorted forms of malice and deceit and to subordinate a carefully conducted trial to the techniques of negative campaigning.

This is where notions such as that of professional decorum can play a role; we tend, and no doubt rightly, to think etiquette deals with much less important matters than ethics, but Hobbes may have had the insight we need when he referred to "the small morals." Besides paying proper attention to the facts of the matter, and nothing I say is meant to denigrate them, a court needs to exhibit a narrative cogency that is more concerned with how the truth gets told, and what attitudes toward it the participants exhibit. What I have in mind is the thought that the cogency of a trial is something like the cogency of a novel or other literary work; its rhetoric and structure ought to be adapted to reinforcing the story of our commitment to conducting our affairs according to law, with whatever that entails in the way of acknowledging the threats and dangers that legality encounters. This is why the current passion for bamboozling juries is so dangerous; if the story that is implied, if not overtly stated, is that they are expected to react irrationally and thoughtlessly according to whatever set of prejudices and incompetencies they were selected for, then they will make foolish judgments. This would be a problem in this country, since an inquisitorial system, in which the judge is supposed to act as the dispassionate seeker of truth, requires
an elitism of style and much else that is hard to square with the way judges here are appointed or elected.

As you see, I have nothing to say against all the standard views about legal ethics other than that it is late in the day to tell young people that they ought not to rob or deceive their clients by the time you see them in law school; so much they have either learned at that parents' knees or it is a bit late. I am more curious about stretching the two ideas of not infringing the autonomy of individuals and that of enabling them to tell a satisfactory story about their own lives in such a way as to get an enlarged notion of professional truth-telling—professional lying included. I suspect many of you will think that this is a bit feeble in the face of the greater and lesser lies that are involved in plea-bargaining, in proposals for restructuring under Chapter 11, in cases like Iran-Contra, over-assurances of good parental behavior in child custody cases, and just about everywhere else you might look. My thought is that working ethics—professional ethics—needs a somewhat different take. We need to be more sensitive to that grey area in which we all in fact work, where we neither behave as Kantian rigorists and insist on telling the truth that would send our clients to jail for thirty years, nor lie our heads off whenever we safely can to save our client thirty thousand bucks on his tax return. Nor do I wish to say any of this in the skeptical accents of critical legal theory; the idea that a coherent account of legal truth-telling belongs in an account of an open, flexible, non-brutal, but evidently constructed apparatus of social control is not a deflationary thought.

**Politicians**

The joke, of course, is that there are lies, damned lies, and statistics; the coda is that there are liars, damned liars, and politicians. Once again, I have no urge to dispute all the sensible and careful things that have been said about the need
for scrupulousness in a democracy; my own autonomist inclinations take me down the same street as Dennis Thompson, thinking that where lies must be told for national security, to avoid economic chaos as with devaluation, and to protect privacy politicians are the less to be blamed as they own up as swiftly as the emergency allows, and as they confine their deceit to areas within which there is some sort of prior consensus that we do not or may not expect absolute frankness. If we may not know about the intimate details of other people's private lives, then we may not learn them from politicians, and they may not tell us and must lie if there is no other way out. Most of this is not difficult to talk sense about in consequentialist terms. Unemployment figures ought not to be cooked, casualty figures may be the day after the battle but ought not to be five years after the war. Meticulous work on vexed issues such as the nature of the requirement that officials give not even the appearance of official impropriety needs doing, and I am glad it is being done.

I want to run one last lap around my situational and narrative account. In some ways, politics is where it is most at home; my conception of illness and of the doing of justice is to a degree political. That is, it is based on the thought that the extended conception of professional truth is that professionals have a duty to help sustain a successful narrative of medical and legal practice, giving proper weight to the several interests of patients, clients, colleagues, judges, families, and the public. This is a political activity to the extent that it requires a negotiated agreement about how we are to see important activities, and, therefore, what we feel about their outcomes. I make a few brief remarks about the case of politics because it is so tempting to make a very long speech about the present incapacity of both politicians and the public to tell the truth or hear it when it is spoken. It would be multiply ill-mannered to make any such speech, and I shall not do it.

Democratic politics rests on the thought that in some fundamental fashion we and those who conduct our public
business are equals. They are not “delegates” in a hired help sense, but they are not members of a caste with special powers and talents entitled to soothe us with Platonic or other sorts of golden lie. They are supposed to persuade us of the rightness of their views, and they are supposed to do so without misleading us. They can decently appeal to their superior knowledge in some matters, but in general they are obliged to treat as free and equal citizens and, therefore, to get our assent by telling us the truth.

But, the difficulty we presently face is the reverse of the usual professional ethics example. There the patient wants to hear the truth and the doctor hides it, or the client wants a dispassionate estimate of his chances of winning a case and the lawyer will not give it. The public presently shouts very loudly about the untruthfulness of politicians, but will not listen if it is told the truth. This presents politicians with a familiar prisoner's dilemma problem, in which each of them would lose to unscrupulous opponents by trying to tell the truth regardless, but all of them do worse than they would do if they could collectively tell the truth. Why? Because lying both about their own proposals and their opponents' proposals, characters, and everything else does what I suggested would undermine good natured lying about bus departure times; it induces cynicism and resentment, so that even the victorious politician is unable then to govern with any confidence. Voters convinced that all politicians are liars are in a deep way ungovernable; they will neither trust each other, nor the politicians who are supposed to advance and secure support for collective projects of a socially useful kind; and they will collectively do worse than they need—as indeed they do. It will be said that what is needed is the restoration of trust, and that is no doubt true; and if there were general trust, my relaxed view about truth and falsity would come back to life. That is, my view that politicians must sustain a narrative in which their authority and our acceptance of it are both preserved—and good things are then achieved that make it easier to keep that
narrative going—permits the well-judged lie on those occasions when shading the truth will do more to preserve trust than to weaken it. In current conditions, I fear that the idea of a well-told lie begins to collapse. A well-told lie needs a background of trust and general honesty in order that intelligent lying can achieve the good it should achieve. Against the background of mutual distrust that characterizes too much contemporary politics, what I really need to write is another paper entirely—on the subject of the well-told truth.