

Chapter 5

What Counts as Deception in Higher Education Development

Deni Elliott

Is development in higher education like a friendly poker game where development officers are allowed, by convention, to “bluff” foundations and potential donors? Or is it more like a business relationship where the development officers straightforwardly exchange goods, services, and goodwill on behalf of the institution in return for the donors’ dollars? Maybe it is like the lawyer-client relationship, in which the development officer has a fiduciary responsibility to the donor.

Which of these metaphors we choose for the donor-development officer relationship tells us something about the conventions of the relationship. What counts as deception depends in part on what kinds of expectations participants have of one another and what professional duties are implicit within the relationship. Not many people would claim that it is justifiable to deceive a potential donor, but just what should count as deception is not clear. The problem with deception is not that development officers say, “Yes, I think in this case it’s OK to lie, cheat, and steal.” Rather, in

questionable cases, they say that what they are doing is not really deceptive at all.

Here I provide a systematic analysis of what counts as deception in development with the goal of identifying those acts that require moral justification. If an act has the potential of causing an evil, then the actor has a duty to justify that action. Society could not continue if people were allowed to cause evils indiscriminately and without justification. We need to know what counts as deception because only then can we know which acts need justification and which do not.

Sometimes it is okay to withhold information. Failure to disclose is not the same as deception, even if the person from whom the information is withheld would very much like to know it. Therefore, in the interest of promoting ethical fund raising, it matters a great deal to know what counts as deception and what does not.

The Nature of Deception

To make the claim "I have been deceived" is to make a moral judgment, because to deceive is to violate a moral rule (Gert, 1988). When I use the word "deception" without attaching moral culpability—such as saying that a twisted street sign "deceived" me—I am not using the term in a literal context. When I say that a person deceived me, I imply that that person is blameworthy, although I may later find that her deception is justified.

A person can act deceptively even if no one ends up being deceived, or someone can feel deceived without the actor doing anything wrong. If I dress up like a doctor and am caught when I try to sneak past a hospital guard to get an exclusive interview with an ailing public official, I have acted deceptively. On the other hand, if I walk through a hospital corridor in white slacks and a jacket with no intention of being taken for a medical person and someone says "Oh, I thought for a minute that you were a doctor," I have not acted deceptively.

Some philosophers make a moral distinction between lying and more passive forms of deception, a distinction that is not helpful in the moral analysis. The problem with deception is that people want to avoid being led to have a false belief. They do not want to be misled, no matter what the method of misleading happens to

be. There is a morally relevant difference between lying and failing to disclose information, but the important distinction is not the passiveness of the actor. Let us look at a variety of deceptive acts, actions for which the actors are blameworthy unless they have justification. Note that passivity or activity is irrelevant.

A lies when *A* asserts a proposition, *p*, that *A* believes to be false with the intention of having *B* believe that it is true. If I tell you that I am a good athlete and I am not, I have lied to you.

There are also nonverbal moral equivalents to lying. *A* acts deceptively through a nonverbal equivalent to lying when *A* presents herself in a way intended to lead *B* to a false belief, such as in the example above of dressing up like a doctor. Nonverbal equivalents to lying include gestures and physical appearance. If I am not a police officer, but I dress up like a police officer in order to initiate a belief in others that I am a police officer, I have deceived in a way that is morally equivalent to a straightforward false utterance.

However, withholding information that one knows is not always deceptive, even if the person from whom the information is withheld ends up having a false belief. *A* acts deceptively through withholding only when the following conditions are met: (1) *A* intentionally withholds a proposition that she believes to be true, and *A* believes that withholding that proposition will lead *B* to form or maintain a false belief; and (2) *A*'s withholding of the proposition involves breaking a promise, cheating, disobedience to law, or failing to do one's duty.

The moral rules to which I refer are from philosopher Bernard Gert's moral system. They are ten in number: (1) Do not kill, (2) do not cause pain, (3) do not disable, (4) do not deprive of freedom, (5) do not deprive of pleasure, (6) do not deceive, (7) keep your promises, (8) do not cheat, (9) obey the law, and (10) do your duty (Gert, 1988).

First, I will lay out the general conditions under which withholding of information includes these other morally questionable acts, and then I will turn my attention to the relationships development officers share with donors.

Deception by Withholding Involving Breaking a Promise. If *A* promises *B* that he will never let anyone use their jointly owned

sailboat without getting *B*'s permission, and *A* subsequently lends the boat to some third person without telling *B*, then *A* has deceived *B*. He has acted deceptively by withholding information that he has promised to tell, and he continues to deceive *B* for as long as *B* erroneously believes that *A* has not lent the boat to anyone.

However, *A* is not acting deceptively in failing to tell his next-door neighbor that he lent the boat because there is no promise that he would tell.

Deception by Disobedience to Law. This is just as straightforward as breaking a promise. If I fail to disclose income to the IRS, I have acted deceptively; if I fail to disclose income to my neighbor, there is no deception.

Deception by Withholding Involving Cheating. Sometimes the withholding of information is cheating. Cheating refers to violations of rules (explicit or assumed) that govern people who function together within a system. Our societal conventions are rules of this nature. We all know what is expected when a stranger asks us for the time or for directions; we all understand the minimal expectations that govern letters of recommendation and the completion of credit or employment application forms. The withholding of information counts as cheating when someone conventionally expects that the information will be given.

For example, suppose that *A* stops to ask directions from stranger *B*. *B* listens with seeming attention while *A* says, "I'm trying to get from Hanover, New Hampshire to Woodstock, Vermont, so I'll just drive north on Route 5." *B*, by presenting herself as listening to *A*'s planned route, voluntarily enters into a social relationship that includes the convention of not intentionally misleading. If *B* withholds what she knows to be true, that is that Woodstock is nowhere near Route 5, she will have acted deceptively.

Other people on the street who have not entered into this special relationship with *A* have no similar obligation even though they may have heard the conversation and know that *A* is mistaken. It would be laudatory for *C*, standing nearby, to say to *A*, "Wait a minute, that's not how to get to Woodstock," but there is no special

obligation for *C* to do so. *C* would not have acted deceptively in keeping silent about *A*'s faulty sense of direction.

Deception by Withholding as a Failure to Do One's Duty. Duties to tell certain kinds of information are often required by professional relationships. For example, if your internist finds, during a routine medical examination, that you have a growth on the back of your hand that looks like a melanoma, she would be acting deceptively through a failure to do her duty if she withheld this information from you. If, on the other hand, a different physician were to notice the growth as he passed you on the street, he would have no duty to tell you his belief. The doctor on the street has no professional relationship with you and therefore no duty toward you.

A Few Words on Justification. These are all examples of deception, but it is not the case that all deceptive acts are necessarily immoral. Sometimes violations of the rule "Do not deceive" are justified.

Consent is one kind of justification: Sometimes we like to be deceived. When I go to a magic show, I give implicit consent to limited deception. I have not given consent for someone to lie to me about what time the show starts or how much the ticket costs, but, within the limits, it is justified for the magician to act deceptively.

Consent is a justification because an impartial, rational person could permit deception in cases of consent to be publicly allowed. For example, although it is a duty for doctors to tell patients their condition, a doctor would be justified in withholding details if a terminal patient said, "Doc, don't tell me when I'm getting near the end. I'll enjoy my life better if I'm not thinking about dying."

Deception in the World of Development

Let us take a look at some examples of situations where development officers might be tempted to withhold information from potential donors.

1. A development officer does not tell an alumnae donor that the college has made the decision to begin to matriculate men. The donor is in the process of handing over a check and reflecting with

pride that the college has managed to resist solving its financial problem by caving in to pressures to go coed.

2. A donor who is giving money for student activities with the express intent that "the young people not turn to homosexuality" is not told that the college is considering the establishment of a gay and lesbian student support group.

3. A donor is particularly supportive of a scholarship and assistance program for inner-city women admitted to the college. The development officer, who is hoping to increase the size of the gift, stresses the expenses of the program in such a way that the donor ends up believing, falsely, that the program's future is in danger.

4. A donor specifies that his gift should be used for educational purposes. Reasoning that everything the college does has an educational purpose, the development officer puts the gift in unrestricted funds, without so informing the donor.

Whether the development officers in these situations are acting deceptively depends on the nature of the relationship that exists between potential donors and development officers. The operative questions are (1) Is the development officer cheating if she fails to disclose the relevant information? and (2) Is disclosure of the information required through professional duty? (I have not included cases of promise-breaking or law violation because these cases seem reasonably straightforward.)

The essential professional duty for a development officer is to secure funds for the institution. Development officers also want to engage donors in continuing relationships with themselves as agents of the institution, but this is a secondary duty. Without the first it is alumni relations, not development.

No particular obligations toward donors follow from that professional duty of raising funds. What keeps that duty from being interpreted as "any means to an end" is that doing one's professional duty cannot cause others to suffer evils. That is, "I'm just doing my job" does not provide moral justification for causing people pain, depriving them of pleasure or opportunity, deceiving them, cheating them, or breaking promises made to them. Any special moral obligation to give information to the donor will follow from the conventions governing development officer-donor rela-

tionships from what is reasonable for people within that relationship to expect from one another.

It is clear, then, how the questions with which I began this discussion are relevant: Is the relationship like a poker game, like business, or like a trust? Different conventions govern these relationships, and the withholding of information that would not be deceptive in one relationship (for example, the poker game) would certainly be deceptive in another (for example, the fiduciary relationship).

Let us take a look at how two professional organizations, the Council for the Advancement and Support of Education (CASE) and the National Society of Fund Raising Executives (NSFRE), describe the development officer-donor relationship within their codes of ethics.

Among other things, CASE suggests that "institutional advancement professionals" should use "words and actions [that] embody respect for truth, fairness, free inquiry, and the opinions of others; should safeguard privacy rights and confidential information" (CASE, 1982). Although the CASE code does not mention donors in particular, it is reasonable to assume that they are included in how development officers ought to act in relation to others.

The NSFRE code is more explicit. Professional fund raisers, we are told in the preamble, recognize a trusteeship that includes assuring "donors that their purposes in giving are honestly fulfilled." Specifically, the code tells us that "members should encourage institutions they serve . . . to use donations only for the donors' intended purposes." In addition, "Members shall make full disclosure to employers, clients, or, if requested, potential donors all relationships which might pose, or appear to pose, possible conflicts of interest." It seems that while full disclosure of potential conflicts is required on its face to employers and clients, disclosure to donors is not required, absent a direct question. (See any issue of the *NSFRE Journal*.)

The NSFRE code suggests, in its reference to trusteeship, that there may be a professional duty to the donor. However, since members are required to encourage the institutions that they serve to use donations only for the donors' intended purposes, it may be too strong to stipulate that assuring the donors that their purposes

are fulfilled is a professional duty. Development officers cannot assure donors of anything without the power to carry out the promise.

It certainly seems to be a convention of the relationship, however, that donors designate use of their gifts and that development officers be responsible for seeing that donors' wishes are fulfilled. Development officers can attempt to influence the designation, but when the donor hands over the gift, there is an understanding that the donor's wishes will prevail. And, in the interest of truth (in the CASE code) or in assuring the donor that their purposes are being fulfilled (in the NSFRE code), the development officer can legitimately be expected to disclose any information relevant to the donor's intention.

That is why cases 1 and 4 are examples of development deception. The development officer can be sure, in case 1, that the donor would not make the donation if she knew that the college had decided to admit men. The development officer is therefore acting deceptively in accepting the donation without disclosing the pertinent fact. To the extent that the decision has not been made public, the development officer has an obligation at least to suggest that the donor wait a week (or however long it will be before the public announcement is made) before writing the check.

In case 4, the development officer is acting deceptively in following the letter rather than the spirit of the donor's intentions. The development officer has an obligation to uncover what the donor has in mind and to restrict the gift accordingly.

When trying to decide when he or she has a duty to disclose information, the development officer should consider (1) whether the withheld item of information relates directly to the potential gift and (2) whether the information might make the donor reconsider his or her gift. All information relating directly to the gift should be disclosed. (But information that might make the donor reconsider must be disclosed only if it also relates directly to the gift.)

It is that last stipulation that makes case 2 borderline. First, the college is considering starting a gay and lesbian support group; no decision has been made. And even if the decision had been made, whether that information relates directly to the potential gift depends on whether the gift would be used to fund the group. If, for

example, the donor had said, "I want my gift to go to athletics; that's a great deterrent to homosexuality," there would be no need to disclose the support group to the donor. While it might be laudatory for a development officer to do some careful consciousness raising with such a donor, it is not a case of cheating if she does not.

Case 3 involves deception of a different sort. This is also a case of withholding, but rather than withholding negative information, this development officer is withholding positive information, so that the overall picture painted for the donor is not reflective of reality. The unjustified withholding of positive information can be just as deceptive as the unjustified withholding of negative information.

The development officer-donor relationship, at least as alluded to within two professional codes, is more like a trust than a business or bluffing relationship. The convention is that donors have a right to expect that development officers will provide an honest assessment of the context for their philanthropy.

It is hard to imagine a situation when it would be justifiable to deceive a donor. Paternalism provides justification for deception some of the time for some professions, and the prevention of large societal evils justifies deception at times for others. For example, it might be justified for an emergency room doctor to withhold some information from an accident victim in shock who is demanding to know the medical conditions of other family members. Or it might be justified for a black reporter to pretend to be seeking housing to investigate a report that a white-owned real estate agency was discriminating against minority buyers.

Donor-development officer relationships rest on a gift exchange, an action that is ideal rather than required behavior. Philanthropists are praised for their beneficence, but they are not compelled to be gift givers. To justify deception, one must balance the evil caused by deceiving against that caused by refraining from deceiving. The evil caused by the deceptive withholding of information to donors includes loss of credibility to the profession of fund raising and the cheating of individual donors. Since the donor's act is not morally required, no evil is caused if the development officer refrains from deceiving. The nature of gift giving implies a special obligation for the fund raiser to be honest with potential donors

even if the fund raiser's primary professional duty is to the institution rather than to the donor.

References

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