

When It's OK to Lie: The Case for Ethical Perjury

Prompt: *Suppose you are the sole witness in a murder case. The evidence against the accused is only circumstantial, but it is compelling. You know the accused is innocent, but your testimony will support the evidence and surely convict them. Under oath, you are asked a yes-or-no question. Do you lie or tell the truth? Defend your decision.*

Suppose you witness a murder whilst walking down the street. You watch a boss and his employee arguing, when the boss is suddenly shot from behind by an unknown assailant. The employee is arrested and tried as for first degree murder, accused of committing the crime over disagreements about his salary. During this trial you are called up to the stand to testify as a witness, and are asked, under oath, whether or not the suspect was arguing with the victim at the scene of the crime. You can confidently assume that telling the truth would result in the innocent defendant being convicted. However, by lying, you may be convicted of perjury. Assume that telling the truth would result in the innocent person being convicted for first degree murder, who will either receive a life sentence or capital punishment. Typically, lying is considered a dishonest and immoral act, especially when under the purview of the justice system. However, I will argue from the utilitarian position that the moral action to take in this scenario is to lie under oath in order to save the defendant from being convicted. This position is supported by a utilitarian view opposed to Kant's categorical imperative, and further refined through utility calculus and virtue ethics.

From the deontological perspective, lying violates the categorical imperative to tell the truth. According to Immanuel Kant, the categorical imperative is the doctrine that one should "Act only according to that maxim whereby you can, at the same time, will that it should become a universal law".¹ In other words, lying would be immoral even in a situation such as this, because lying cannot be applied universally, and moreover, adhering to the categorical imperative should be taken as an end in itself. Lying, therefore,

¹ Kant, Immanuel. *Groundwork of the Metaphysics of Morals*. Compass Circle, 2019.

is to be taken as a contradiction of conceivability insofar as it would violate the reliability of language.² If everyone were to lie, the notion of truth itself would become meaningless. This idea is further endorsed in Kant's "murderer at the door" thought experiment, where he argues that in a situation where a murderer at your door asks where your friend is, the morally necessary course of action is to tell the murderer your friend's whereabouts.³ Kant argues in his "On the Supposed Right to Lie from Benevolent Motives", that lying in any situation, even if it were to save one's friend from a murderer, would undermine the universal duty to tell the truth, and therefore would violate the ability of other individuals to know the truth, and limit their autonomy by disrespecting their status as ends in themselves.⁴

Inversely, from the utilitarian perspective, saving an innocent person by lying would be the morally necessary course of action. According to utilitarians, a moral act is one that maximizes the balance of utility in its consequences.⁵ In this situation, the act of telling the truth would result in the defendant being convicted of first degree murder. Inversely, the act of lying would result in the person being acquitted, but also poses a risk of your being charged with perjury. In terms of utility, the act of lying would have an overall positive utility insofar as it would save the defendant, and the act of speaking truthfully would have a negative utility as it would lead to the innocent person being judged as guilty (given that the result of unjust punishment for murder is more weighty than for perjury). Therefore, on the utilitarian account, lying to the courts would be the most moral action to take.

We can further nuance this position by representing the utility calculus in an expected utility chart that factors in a certain risk of perjury. Assuming that the punishment for first degree murder is far harsher

²Kant, Immanuel. "On a Supposed Right to Lie from Philanthropy (1797)." Immanuel Kant: Practical philosophy, 1898, 605–16. <https://doi.org/10.1017/cbo9780511813306.014>.

³ibid.

⁴ibid.

⁵Sinnott-Armstrong, Walter. "Consequentialism." Stanford Encyclopedia of Philosophy. Stanford University, June 3, 2019. <https://plato.stanford.edu/entries/consequentialism/>.

than the punishment for perjury, suppose that these outcomes have utility values of -10,000 and -1, respectively (for simplicity, also assume that uncessuccessfully lying would result in a guilty sentence, and not a mistrial). Further assume that the value of successfully lying is 10,000, given that you would be saving an innocent person from the noose. The corresponding utility table for lying would therefore be:

	Getting away with it	Getting caught
Lying	10,000	-10,001

Given the values of these outcomes, suppose that the probability of successfully lying is 70%.

Therefore the expected utility table for telling a lie would be:

Getting caught (-10,001 x 0.3)	-3,000.3
Getting away with it (10,000 x 0.7)	7,000

Total expected utility: 3,999.7

The utility table for telling the truth would be represented by a single possible outcome - the innocent person being unjustly punished.

Telling the truth	-10,000
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Total expected utility: -10,000

Given that 3,999.7 is greater than -10,000, utilitarianism favors lying even when factoring the risk of perjury. As a result, lying is the only act which can lead to any positive outcome, the act of lying will almost always have a higher expected utility than telling the truth which guarantees a negative outcome. Mathematically, the point at which the risk of perjury outweighs the positive outcome of lying would have to be significantly higher than the positive outcome of telling the truth (keeping all other values consistent, the negative value of perjury alone would need to be at least -46,670 in order to result in a total expected utility of lying below -10,000. This negative value exceeds that of false imprisonment for murder). This expected utility table also ignores possibilities such as the outcome of a mistrial, where you may be convicted of perjury but due to insufficient evidence the defendant is not charged for first degree murder. The outcome of this is still positive (9,999), as the defendant still avoids a false conviction.

Moreover, justice systems standardly treat unjust punishment asymmetrically to unjust acquittal. Blackstone's ratio outlines that "It is better that ten guilty persons escape than that one innocent suffer."⁶ Blackstone's ratio is built on the notion of protecting the innocent from false convictions. Philosopher Fritz Allhoff affirms this statement, appealing to notions of desert and liability.⁷ Under a retributivist view, punishment is given because people deserve it, not because it would produce any tangible good, and an innocent person simply does not deserve to be punished. Furthermore, one could consider that by convicting the innocent person, the judicial system will avoid further inquiry into the actual perpetrator, producing further negative utility consequences. Further appealing to this doctrine, it may even be appropriate to suppose that the negative value of false imprisonment should be more severe, or that the positive value of acquittal should be higher, as a false accusation should be more serious to a 10 to 1 ratio.

⁶Blackstone, William, David Lemmings, and Wilfrid R. Prest. *Commentaries on the Laws of England*. Oxford: Oxford University Press, 2016.

⁷Allhoff, Fritz. "Wrongful Convictions, Wrongful Acquittals, and Blackstone's Ratio." *Australasian Journal of Legal Philosophy*, 2018.

From the perspective of virtue theory, morality is characterized by a good will.⁸ The ethics of an individual's actions depends on their intent. In this case, a relevant concern for a virtue theorist would be doing the right thing for selfish reasons. Under a quality of will analysis, one could choose to tell the truth in this situation whilst appealing to Kantianism, but in reality act under the intent of avoiding perjury. This would be indicative of a selfish and malicious will, and is hence immoral under virtue theory.

To conclude on one last relevant issue: should you tell the truth and the defendant were to be executed for first degree murder as a result, then have directly and knowingly caused his death, and you are therefore a murderer. Furthermore, if the justice system can convict someone for first degree murder over circumstantial evidence such as 'the defendant was arguing with the victim', there may be issues to consider with the legal system itself. Given that the epistemic standard for criminal convictions need to be 'beyond a reasonable doubt', a situation where a single witness's testimony could change the outcome of a verdict may be indicative of flaws in the legal epistemology, as the court procedure fails to properly determine one's innocence and issues a guilty verdict without sufficient evidence. When the system itself is unjust, following the rules is not obviously the moral course of action. Thus, this thought experiment demonstrates a situation where it is permissible to lie. There can be such a thing as ethical perjury, when it leads to a positive balance of utility by saving an innocent person from execution.

⁸Hursthouse, Rosalind, and Glen Pettigrove. "Virtue Ethics." Stanford Encyclopedia of Philosophy. Stanford University, December 8, 2016. <https://plato.stanford.edu/archives/win2018/entries/ethics-virtue>.

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