

Commentary

An Unreasonable Assumption: A Reply to Strudler

Charles N. C. Sherwood

London School of Economics and Political Science, UK

Alan Strudler's "Lying about Reservation Prices in Business Negotiation: A Qualified Defense" challenges a number of claims I make in a prior essay, "A Lie Is a Lie: The Ethics of Lying in Business Negotiations." Here, I examine Strudler's critique and seek to refute his various arguments—in particular, those based on assumption of risk and the signalling value of reservation price lies.

Key Words: business ethics, negotiation, lying, consent, assumption of risk

This is a reply to a commentary, in this journal, by Alan Strudler, "Lying about Reservation Prices in Business Negotiation: A Qualified Defense." This in turn is a response to an essay of mine, again in this journal, "A Lie Is a Lie: The Ethics of Lying in Business Negotiations." The central claim of that original essay is that lying in business negotiations is pro tanto wrong and no less wrong than lying in other social contexts. Strudler's subsequent critique focuses on a particular aspect of lying in negotiations, that regarding reservation prices. He defends lies of this kind on the grounds that those deceived willingly assume the risk of being lied to. He further argues that such lies play an important signalling role, easing the path to agreement. In this reply, I challenge both these claims.

In [Section 1](#), I question whether Strudler is entitled to treat reservation price lies as distinct, in moral terms, from other lies concerning facts relevant to a negotiation. In [Section 2](#), I defend my claim that a broad consent to lying in negotiations is untenable because, if it did exist, it would render the dialogue of negotiation all but meaningless, a result that the negotiating parties can surely not intend. In [Section 3](#), I challenge Strudler's defence of lying based on assumption of risk. I argue that this assumption of risk, when not fully voluntary, is really an imposition of risk, and as such morally inadmissible. In [Section 4](#), I use one of Strudler's own examples to refute his claim that reservation price lies are a useful form of signalling that helps parties reach agreement. Instead, I argue that such lying is more likely to frustrate attempts to reach agreement, eroding trust and thus jeopardising social cooperation. In [Section 5](#), I argue that contrary to the views of many practitioners lying about reservation prices is unnecessary. There are strategies available to protect the negotiator's bargaining position without recourse to lying. Finally in [Section 6](#), I conclude,

reasserting my claim that a lie is a lie, and no less of a lie just because it is part of a business negotiation.

1. RESERVATION PRICES—A UNIQUE CASE?

First, a comment on the target of Strudler's critique. He is focused on lying about *reservation prices*, that is, the highest price a buyer is prepared to offer and the lowest price a seller is prepared to accept. This is both astute and reasonable. It is astute because it challenges my argument on what many would regard as its weakest ground. And it is reasonable because I do indeed argue that it is (at least, *pro tanto*) wrong to lie in a negotiation in any way, and that by implication must include lying about one's reservation price.

What I would question, though, is whether one can carve out a distinct moral domain for reservation prices, that would allow one to argue that lying about reservation prices is morally acceptable, while lying about other elements of a negotiation is not. By focusing on reservation prices, Strudler seems to suggest that they are a special case, subject to a different moral sanction. But reservation prices are not so easily distinguished from other matters of fact relevant to a negotiation. And, therefore, lying about one's reservation price cannot comfortably be treated according to some fundamentally different moral principle from that applied to other relevant facts.

Let me try to illustrate the problem. A defender of lying about reservation prices would presumably be comfortable, even if it were untrue, with a statement of the sort: "That's my best price, I am not prepared to pay more than £10,000." Equally acceptable, I suspect, would be a slightly more emphatic statement such as "That's my limit, I *cannot* pay more than £10,000." This, in turn, is very similar to "That's as much as I can pay, I only *have* £10,000." But note that we have now moved from lying about personal feelings/preferences/intentions to lying about a matter of fact. Either I only have £10,000 or I don't. And the argumentative slippery slope can be easily extended and indeed often is in practice. The seller might counter by creating fictitious rival bidders: "There is a lot of interest from other buyers," "I have another buyer at a significantly higher price," "I have another buyer who is at a higher price and prepared to pay cash today," and so on. Meanwhile the buyer could counter that they too will pay cash that day, even though in reality they cannot access sufficient funds until the next day, or the end of the week.

Many would characterise this as just part of the "to and fro" of a healthy negotiation. But, in almost indistinguishable steps, we have moved from a supposedly innocent subterfuge about one's negotiating position to an escalating series of lies about matters of fact. My point is that many of the claims that negotiators in practice make to signal the strength of their negotiating position rely on conscious lies regarding matters of fact—lies relating to their own financial position, the availability of alternative transactions, or other situational factors. Strudler seeks, in moral terms, to distinguish such lies regarding one's negotiating position, and/or negotiating leverage, from other types of lie that might, for example, relate to the terms of an offer or the qualities of the product or service under negotiation. But can they be

so easily distinguished? Why is it less wrong to lie about the existence of a competing offer than to lie about the condition of a house or the mileage on a car? Both may have the same influence on the outcome of the negotiation. And both are lies.

I do accept that, as an empirical matter, many readers will feel that there *is* a moral difference between lies that relate to reservation prices and lies of other kinds. They will generally be more tolerant of the former than the latter. But should they be? Even if there is a difference at a theoretical level, which I doubt, at a practical level one seems to lead all but inevitably to the other. A lie about a reservation price nearly always invokes a lie about related matters of fact.

This is important because Strudler wants us to accept the moral permissibility of lying about reservation prices—something many people find intuitively reasonable—without extending that moral permissibility to other aspects of a negotiation involving matters of fact—something many people find intuitively much less acceptable. But Strudler does not do enough to show that there is a morally relevant difference between the two. Indeed, there is no clean divide. And this is particularly the case when it comes to how practitioners actually behave in practice.

2. TACIT CONSENT—OR NOT?

In my previous article (Sherwood 2022, 609–13), I offered two arguments to the effect that a negotiator may not assume that a counterparty has validly consented to being lied to. The first was somewhat theoretical; the second, much more practical. Strudler's critique focuses on the former.

The theoretical argument was simply that, if all the parties to a negotiation really did consent (explicitly or tacitly) to being lied to, then that would render the subsequent negotiating dialogue all but meaningless—an apparently absurd outcome. Indeed, so absurd that it is not credible that such a universal consent exists in the first place. I offered various examples to illustrate this but let me now adopt one of those outlined by Strudler himself (2023, 766–67). Let us imagine that you and I are both enclosed in a room without windows. I undertake to put my head outside, see if it is raining, and report back on this. However, before I do so, I ask your permission that I may lie on my return about whether it is raining or not, and you consent to this. Furthermore, let us assume that it might be in my interest to mislead you as to the weather conditions. I duly go outside, inspect the weather, and return back. Is there now a meaningful discussion to be had between us as to whether or not it is raining? It seems to me not. Remember that I have a possible interest in misleading you, and we have already agreed that what I may say can fairly be true or untrue. Since you have no independent way of validating what I say, you may as well ignore it.

Strudler (2023, 767) proposes a route around this problem, but it is ineffective. He suggests that a negotiating party, even if they cannot be assumed to have consented to any particular lie, may nonetheless be assumed to have consented to some (but only some) of what is said being lies. The lie in this case relates not to a particular proposition but to a member—an unidentified member—of a set of propositions. This, though, does not materially alter the situation. If some of the statements made

in a negotiation may be lies, then of course any individual statement may be a lie. And, in that case, the negotiator again cannot rely on *any* statement made. Once more the resulting negotiating dialogue is all but meaningless.

It might be countered that the tacit agreement to lying attaches only to some specified *area* of the negotiation. That is possible but it does not undermine the central point. To illustrate, I will draw on an example from the previous article (Sherwood 2022, 611). Consider the case of a used-car salesman and customer. The salesman might argue that, while he would never lie about the car's brakes, there is nonetheless a tacit understanding that he may lie about the air-conditioning. Given that, it is of course possible for the two parties to have a meaningful conversation about the brakes. But, if both salesman and customer really have tacitly agreed that whatever words the salesman utters in relation to the air-conditioning need not relate in any way to the truth, what possible purpose can a discussion of the air-conditioning fulfil? It is meaningless. My point is that, where there is such an understanding that lying is acceptable, there is little meaningful discussion to be had *in that area*. To return to the distinction drawn by Strudler (2023, 763) at the outset, if the tacit permission to lie attaches only to the reservation price, then it certainly is the case that statements made concerning other elements of the negotiation may be meaningful. But any discussion of the reservation price itself ceases to be substantively meaningful.

This distinction is important in addressing a common objection to my suggestion of hypothetical meaningfulness in such negotiations. What if a bidder says, "my best price is £10,000." Surely, the objection goes, that cannot under any circumstances be meaningless. After all, there is now an offer on the table. But there are two distinct statements here. The first is an offer of £10,000; the second is a claim that this is the highest price that will be offered—that is, a claim concerning the party's reservation price. It is perfectly possible for the former to be meaningful; and the latter to be meaningless. Assuming that the negotiating parties have a code that requires them to stand behind any actual offers made, then the offer itself equates to the discussion above concerning the brakes. It is certainly meaningful. But, if the second element relating to the reservation price is governed by a tacit understanding that lying is acceptable, then it equates to the discussion above concerning the air-conditioning. In other words, it is meaningless.

To be clear, I am not arguing that all statements about reservation prices are meaningless. I am instead making a hypothetical claim: that such statements would be meaningless *if* there were a genuine understanding (explicit or tacit) among all negotiating parties that they may lie about such statements. Furthermore, I am arguing that such a contingent result would be absurd. My real point is of course that such a universal understanding (explicit or tacit) does *not* exist in the first place, thus removing the absurdity. There is no universal acceptance that lying in a negotiation is morally permissible, and this is the case whether such lying relates to reservation prices or anything else.

I should reiterate that this more theoretical argument (Sherwood 2022, 609–12) was only the first of two arguments that I offered previously. The second (Sherwood 2022, 612–13) made the *empirical* observation that, as a matter of fact, there is no

universal consent to such lying. As Thomas Carson (2005, 401) writes, “It is simply false that *all* participants in business negotiations endorse the practice of misstating one’s reservation price.” And, in the absence of such universal consent, lying of this kind must leave some parties wronged. Or, at least, that wrong cannot be extinguished solely on the basis of consent.

I will not pursue this line of debate further here, because at the end of the day Strudler and I agree on the larger issue. Both of us conclude that what I term the “argument from consent” cannot of itself justify lying in a negotiation, whether that be lying about reservation prices or lying about other matters. Instead, I will move on to discuss Strudler’s own proposed defence of lying.

3. ASSUMPTION OR IMPOSITION OF RISK?

While Strudler shares my scepticism concerning the argument from consent, he advocates instead a quite similar defence of lying, only based on an assumption of risk. “When a person knowingly and voluntarily exposes herself to a risk, there is a presumption that she cannot reasonably complain when the risk materializes, even if she did not consent to the risk: she assumes the risk” (Strudler 2023, 769). Applying this to a negotiation, Strudler believes that such an implied assumption of risk can, in certain circumstances, legitimise lying on the part of those others negotiating.

I confess that I find the distinction being drawn here, between consent and assumption of risk, to be a fine one—at least, a fine one in the context of a negotiation. As Strudler (2023, 769) points out, assumption of risk is most typically employed in a legal context. In law, consent is something that is usually given quite formally, nearly always communicated in some way, often in writing. This perhaps leaves a more distinct role for a less formal assumption of risk. And, indeed, Strudler (2023, 769) identifies the “crucial” difference between the two as this one of “communicative intent.” Consent in his view requires such communication, while assumption of risk does not. Perhaps he is right, although this distinction seems less clear to me outside the formality of a law court.

Let us, though, put the differences between the two aside and focus instead on the key similarity: voluntariness. The important common feature, shared by the two, is that the consenting or risk-assuming party takes on the implied burden or risk *voluntarily*. Consent that is not given voluntarily is at best compromised, and at worst wholly invalid. Similarly, and as Strudler (2023, 769, 770) himself recognises, any assumption of risk entails that one takes on that risk “knowingly and voluntarily.”

But Strudler then draws a parallel that entirely fails to acknowledge the significance of this shared requirement for voluntariness. Strudler (2023, 770) cites, as an example, American football, where a player by joining the game clearly communicates an acceptance of risk, in this case the risk of being tackled. Strudler then seeks to draw a similar implication for the assumption of risk of being lied to in business negotiations. But there is a crucial difference here. The decision to play American football, like the decision to play poker, is clearly a *voluntary* assumption of risk. Nobody is forced to play American football. By contrast, most of those in business are, by virtue of their employment, *obliged* to participate in negotiation. As they

progress in their careers, it often becomes an unavoidable requirement of their job. They have no choice. Their mere participation cannot, therefore, of itself signal a voluntary acceptance of being lied to, whether tacit or assumed.

The same is typically true of a first-time car buyer negotiating with a used-car salesman, or a couple purchasing their first home. These are essential purchases. And they are often highly stressful experiences for those involved. Many participants would avoid such experiences if they possibly could but, if they need a car and somewhere to live, they have little choice. Thus, many in these roles do not “assume” the risk of being lied to. They have that risk *imposed* upon them. And, I would argue, wrongfully so.

Are there then any circumstances, any contexts, where a case could be made for an assumption of risk? Possibly, yes. But those circumstances would need to meet two demanding criteria, the very two criteria identified by Strudler himself: knowledge and voluntariness. Knowledge in this case implies a clear understanding among all the parties that in a negotiation of this kind lying about reservation prices is to be expected. Voluntariness requires that the goods or services involved are sufficiently trivial that any party to the negotiation may decline to participate without any sense of real loss.

Are there then any environments where these criteria might be met? Again possibly, yes. The context that comes most easily to mind is that of the tourist bazaar, a case that I highlighted in the previous article (Sherwood 2022, 613). Here there is such widespread acceptance of reservation price lies that very few tourists could honestly claim ignorance of the practice. Furthermore, the goods are typically of low value and seen as entirely inessential. The tourist bazaar is perhaps the closest we get to a negotiating environment that might fairly be described as a game. Statements like “at that price, I go out of business and my children don’t eat tonight” are not generally taken seriously and are felt by many to be more playful than sincere. Indeed, some of these untruths may not be seen as lies at all, given that they are hardly likely to deceive or disadvantage the recipient—see the definition of lying in the previous article (Sherwood 2022, 606).

But I struggle to conceive of many other cases of this kind. One might think of rare coins or other collectibles. And yet of course one person’s inessential good is another person’s lifetime pursuit.

In conclusion, we need to be very careful in judging that a counterparty has assumed a risk of being lied to. It may be a convenient conclusion to reach. But all too often that party is not assuming the risk. Instead, they are having that risk imposed upon them.

4. SIGNAL OR OBSTACLE?

Strudler (2023, 771–74) concludes by appealing to a practical argument, with a consequentialist underpinning. Reservation price lies, he claims, can provide a useful signalling device that eases the negotiating process. And he continues, “in the case of deception about reservation prices, the destructive prospects seem comparatively small and the potential benefits substantial” (774). This is to some

extent an empirical contention. Does lying over reservation prices provide useful signals that help parties reach agreement and thus promote social cooperation; or does this lying frustrate transactions that might otherwise have been possible, and thus breed a mistrust that over time undermines such social cooperation?

Both in his recent article and in a past piece, Strudler (1995, 816; 2023, 771–72) describes a personal experience, which he feels illustrates his point. I find this odd because, in my view, it is an equally persuasive illustration of the very opposite. Strudler recounts an incident in Madrid, when a taxi driver “feigned shock” at the sight of Strudler’s extensive luggage, declaring that there was simply too much to be accommodated in the car (a lie). Strudler took this at face value and chose to rent a car instead, leaving the taxi driver outraged that Strudler had not sought to negotiate further. Strudler sees this as evidence of the importance of correct signalling. But the obvious lesson is surely that lying can, *and often does*, stand in the way of a transaction that otherwise would benefit all parties. It can frustrate the objectives of all those negotiating and, furthermore, leave a sense of ill-feeling that undermines long-term trust.

Strudler might argue that this particular failed negotiation was a so-called “single shot” transaction and that therefore trust does not really come into it. But this is clearly a story he tells regularly and each time one of us hears it, we no doubt make a mental note to be wary of Madrid taxi drivers. Ultimately lies take their toll.

This incident in Madrid also highlights a point I made at the outset. The lie of which Strudler approves is not actually a lie about the taxi driver’s reservation price. It is a lie about the luggage capacity of the car. The driver knows that the car’s capacity is sufficient to accommodate the luggage, but he denies this. The lie is, I accept, connected with the negotiation around the taxi driver’s reservation price. But that is the point: a lie about a reservation price leads almost unavoidably to a lie about a matter of fact, in this case the carrying capacity of the car. In practice, there is no neat division between the two. If we start by offering moral absolution to reservation price lies, then we almost inevitably conclude by offering a similar absolution for many other related untruths.

5. AN UNNECESSARY UNTRUTH

A final point often overlooked, especially by practitioners: lying, including lying about one’s reservation price, is unnecessary. Many accept that lying is presumptively wrong but at the same time see it as unavoidable. This is simply not the case.

The work of Richard Shell is instructive here. Strudler (2023, 773) cites Shell as a supporter of his own permissive view regarding “deception about one’s bottom line.” However, this is based on an early article (1991, 93) focused on the *legal* position. In more recent work, in particular the second revision of his seminal *Bargaining for Advantage*, Shell identifies with what he himself describes as “the Idealist School” (2018, 181–83). Shell argues that negotiators should “*never lie*” (2018, 189) and lays out a number of strategies for addressing awkward questions about one’s reservation price (2018, 190). As evidence for the viability of these strategies, Shell points to his own research into the negotiating practices of Warren

Buffett, perhaps the world's most highly regarded investor, and "living proof that idealism can work in the real world" (2018, 182).

In my prior article, I laid out my own thoughts on how to avoid disclosing one's reservation price while at the same time avoiding lying (Sherwood 2022, 623–24). I will not repeat them all here but will highlight one: adopt a policy of never discussing "best" or "final" offers and stick to it—even when it might be tempting to use such terminology. By establishing such a consistent policy, you make it very difficult for a counterparty to judge whether you have more room or not to make further concessions with regard to price or other terms. It is possible then to avoid lying without undermining one's bargaining position, but this does take some discipline and forward planning.

6. CONCLUSION

Many arguments have been offered in defence of lying in business negotiations, including those based on consent, self-defence, the "greater good," fiduciary duty, and practicality. Strudler has added to these with his assumption of risk. All these arguments make the case, in one form or another, for what I have called the "special exemption." They claim that there is something special about a business negotiation that exempts negotiators' behaviour from the usual moral rules that apply in society more generally. In my previous essay and in this further commentary, I have attempted to refute these various arguments, and to reassert the continuity of morality across the different domains of life.

This response has focused closely on a particular set of arguments made by Alan Strudler but, in closing, let me briefly broaden the debate. It seems that the subject of lying has never been so topical, and rarely so worrying. Whether the accusations of lying are fairly targeted at those such as President Donald Trump, ex-Prime Minister Boris Johnson, and current President Vladimir Putin, I leave for others to judge. What is clear though is that these accusations extend well beyond global politics to many other walks of life, not least among them the world of business. What is most unsettling about this is the manner in which so many seem increasingly prepared to accept such dishonesty. This reflects an apparently widely held view that various arenas of debate and information exchange are in some way exempt from the broader prohibition on lying. Political campaigning and global diplomacy would appear to be among them. So too, it seems, would elements of the broader negotiation process, particularly as they apply to business. My objective in the previous article and in this response has been to challenge the moral basis for any such "exemption." In short, a lie is a lie, and does not cease to be so, just because you are a head of state or a real estate negotiator.

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CHARLES N. C. SHERWOOD (c.n.sherwood@lse.ac.uk), MA(Cantab), MBA(Harvard), MSc (LSE), PhD (LSE), worked at the Boston Consulting Group prior to a thirty-year career in private equity. As a founder partner of Permira, he was engaged in all aspects of the firm's business, ultimately chairing the holding company board. He played an extensive part in leading the firm's negotiating teams. He is currently a member of the extended faculty of the philosophy department at the London School of Economics and Political Science, lecturing and teaching business and organisational ethics. His research focus is the ethics of negotiation.

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