

## truth or consequences?

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The Wizard of Oz was a ruler who secreted himself in his castle and governed the Emerald City by deception and illusion. It was difficult enough just to get an audience with him, and the conditions attendant to petitioning the government (him) to redress one's grievances were just plain scary.

This alone would probably be enough to make many of us demand his impeachment, especially in these days when exposés of the facades of some of our rulers and political institutions are becoming so frequent. It seems that a basic guideline for "good government" today is TRUTH, in capital letters.

But in Oz, wisdom is taken very seriously, more seriously than truth: Glinda, Ozma and the Wizard all embody wisdom. Somehow, in our struggle for enlightenment and for bettering the human condition, truth has become idolized as the ace of trumps. Wisdom appears to be in danger of getting lost in the shuffle. It is not at all unlikely that this may lead to truth being treated as an end in itself, instead of a means to an end.

"How can I help being a humbug," said the Wizard, "when all these people make me do things everybody knows can't be done?" He ruled by deceit. Should he have been exposed by truth for what he really was: a frightened, timid little mortal, vigorously pulling levers to keep the illusion going?

No. Lying in itself isn't evil or wrong. It's the motive behind the lie—and the truth—which may be evil or virtuous. Dorothy knew this, knew that truth is properly a means to an end, not an end in itself or an idol. Although she penetrated the facade of the Wizard, she kept the truth to herself, for the benefit of the Lion, the Tin Woodsman and the Scarecrow.

"He [the Wizard] was a good man," said Dorothy, "even if he was a bad wizard." The Wizard wanted to give courage to the Lion, a heart to the Tin Woodsman and brains to the Scarecrow. He saw how vital these attributes were, but he also saw that he had a big problem in achieving his objectives. Yet he succeeded in giving all of them what they wanted and needed because they believed in him. He lied to them and the lie came true, because he was a wise man whose commitment to truth was subordinate to his commitment to the welfare of others.

But perhaps the Wizard was only a shrewd, common politician who relied on illusion to give people merely the symbols of what they wanted,

a point trenchantly made by Henry Littlefield in his provocative article “*The Wizard of Oz: Parable on Populism.*” The desires of the Scarecrow, the Tin Woodsman and the Lion, he argues, were not only self-deluding, but also self-induced. *The Wizard of Oz* to him is a Populist allegory, and he states that “throughout the story Baum poses a central thought; the American desire for symbols of fulfillment is illusory. Real needs lie elsewhere.”<sup>1</sup>

I wonder if that statement is completely accurate. Is it possible that the desire for symbols of fulfillment is real, and that fulfillment of at least some real needs might actually come about through the manipulation of symbols, by the creation and perpetuation of certain illusions?

I have concluded that most of us who teach for a living are bigots: we are strongly prejudiced in favor of learning and spreading truth, and we perpetuate this prejudice in our students. We’re prejudiced because we have not examined the case for deceit in either our personal or our social lives. I would like to suggest ways to begin such an examination here.

Much has been written about truth: the desirability of finding it, how to find it, where to find it. Little, however, has been written about whether or how to use it discreetly. People who do this are usually denounced as self-appointed censors who are bad, or self-seeking opportunists. Nearly all of the students in my political philosophy classes regularly denounce Plato for his Noble Lie. “He’s trying to keep the truth from the people! Down with him!”

But Plato wasn’t concerned with truth as an end in itself. He was mainly concerned with creating a city where the good, the fulfilled and the virtuous could be one and the same person, whether he be guardian or mechanic. The highest principle behind legislation for the city was Virtue, the excellence of the human soul. Plato was well aware of human weaknesses, the constant temptations lurking within and around us which militate against virtue, fulfillment and the good life. He saw the need for the Noble Lie, the myth of the metals, to further virtue and the good society: the greatest amount of caring for the city and for one another simply would not come about unless everyone was taught to believe that people are all brothers and sisters and should love one another.

In Book Seven of *The Republic*, Plato (speaking through Socrates) tells Adeimantus that “a convenient fiction,” a “single bold flight of invention,” is needed in order to keep the people in the community bound together in sympathy for one another. This was to be induced by bringing them to believe that all people were (allegorically) made of metal: gold, silver, iron, brass. Gold and silver people should rule; iron and brass should obey. If a child of gold is born into a family of brass, he should be given an opportunity to join the guardians, the rulers. Likewise, a child of iron born of golden parents should become a mechanic or farmer.

Now Karl Popper views this noble lie as akin to the propaganda of the Nazis, created to justify rule by a master race. But John Hallowell views it as teaching just the opposite: (a) All people share a common humanity; we’re all brothers and sisters. (b) People are unequal in natural endowments and potential for achievement. (c) There should be equality of opportunity in society; merit alone should determine one’s place.

Probably few of us would disagree with these concepts as Hallowell

interprets them. Furthermore, it would be “good” for us to believe in them. The problem arises in bringing people to believe in them in the first place. Hence, the need for the Noble Lie.

Beliefs, myths and illusions that contribute to the cohesion of the city and the fulfillment and progress of the individual are worthwhile. These values of personal fulfillment, virtue and social cohesion transcend truth, and if we are concerned with promoting these values, our commitment to truth must necessarily be conditioned accordingly. Truth, then, is not an absolute value, intrinsically precious. The teacher or philosopher who holds truth as intrinsically valuable and works for its widest possible distribution in society must also realize that he may be limiting or abandoning a responsibility for society’s welfare, because truth can damage and subvert, as well as elevate, individuals and societies.

I believe that most of us are at least vaguely aware that it is desirable (wise? virtuous? loving?) to make distinctions between individuals to whom we can and cannot tell certain truths, and the time when they should be told. Some “can take it” and are better for it; others may be seriously harmed, for truth can sometimes corrode self-confidence and mental health. It has been said that truth ought to be kept in a bottle marked “caution” and used only when necessary.

Shakespeare was well aware of the creative role of deceit:

When my love swears that she is made of truth,  
I do believe her, though I know she lies,  
That she might think me some untutored youth,  
Unlearned in the world’s false subtleties.  
Thus vainly thinking that she thinks me young,  
Although she knows my days are past the best,  
Simply I credit her false-speaking tongue:  
On both sides thus is simple truth suppressed.  
But wherefore says she not she is unjust?  
And wherefore say not I that I am old?  
Oh, love’s best habit is in seeming trust,  
And age in love loves not to have years told.  
Therefore I lie with her and she with me,  
And in our faults by lies we flattered be. (Sonnet 138)

I can’t think of anyone who doesn’t rely, if only unconsciously, on at least some illusions—myths, if you prefer—to help keep himself or his family functioning in an effort to live the good life. We foist illusions or myths on others for the same reason, although of course it’s also done for reprehensible purposes.

Illusions or myths can hold a person together, help make or keep him healthy. They can hold a family together healthily, and they can also help hold a nation together. Myths are a major ingredient of the social cement that helps keep people working together peacefully, creatively, and virtuously. To the extent that a myth serves a worthwhile purpose, I believe that anyone who urges promiscuous truth-telling without regard for personal or social consequences is doing himself, those he loves, and society as a whole (as well as future generations) a serious disservice.

Is honesty really the best policy always? Is it true that crime doesn’t pay? No. Evidence to the contrary abounds. But if we all weren’t encouraged during our formative years to believe these myths, we’d surely be preying on each other even more than we do now. And if we teach our students that these are lies, we’re helping to undermine a strong

force for honesty and law abidance in our society. I don't know if all people do share a common humanity, but I do hope the myth continues to be spread that we do.

We sometimes deliberately lie to our students who come in for counseling because they're doing poor work or their self-image is distressingly low. Lying to them may help them achieve, and that's part of our job. Believing, as the Wizard knew, *can* make it so! Convince a student that he *can* achieve, and he sometimes *will* achieve; the lie becomes a truth simply because it is believed.

This was demonstrated by Rosenthal and Jacobson in their controversial book *Pygmalion in the Classroom*. In their words, "the central proposition of this book is that one person's prophesy of another's intellectual performance can come to determine that other's intellectual performance."<sup>2</sup>

In this same vein, Galen the physician said in the second century A.D.: "He cures most in whom most are confident." There is abundant truth in this. Consider the effectiveness of placebos in medical treatment. Frederick Evans, in his review of placebo studies, found that in a typical clinical situation three patients out of twelve will gain no relief from any medication, whether morphine or a placebo. Five of the twelve patients will greatly benefit from morphine but placebos won't help them much. The remaining four, or one-third of the patients, will have their pain reduced equally well by both morphine and a placebo. "The sensitive physician who is skillfully practicing the art of medicine will maximize the placebo effect, and thus help his patient at a minimum possible risk. Drugs such as morphine may be addicting. Sugar pills are not."<sup>3</sup> Robert Coles reports that

In 1961, Henry K. Beecher, professor of anesthesiology at the Harvard Medical School, published in the *Journal of the American Medical Association* an article called "Surgery as Placebo." He described a new operation to relieve angina pectoris, and reported that the benefits of it were the result "of what happened in the minds of the patients and the surgeons involved." Experiments revealed that surgeons who believed enthusiastically in the new method brought relief to patients four times as often as the skeptical surgeons did. It even turned out that a feigned operation, done under anesthesia and believed by the patient to be a complicated surgery, was equally effective.<sup>4</sup>

In contrast is fanatical devotion to truth of the sort exemplified in Kant's declaration that it is one's duty to answer truthfully the question of "a caller bent on murder" who asks whether the victim he seeks is at home, if one cannot evade answering. "It is a sacred command of reason, unlimited by any considerations of convenience, which bids us unconditionally to be truthful in all our declarations."<sup>5</sup> Thus abstractions can become idolized with no regard for social consequences. Had the Wizard followed such procedures, he never would have been able to fulfill the needs of the Lion, the Tin Woodsman or the Scarecrow. Pascal commented on this more than three hundred years ago: "We make an idol of truth; for truth without charity is not God, but His image and idol, which we must neither love nor worship."

Machiavelli, another advocate of deceit when necessary, saw that it was of primary importance for the ruler to do the best he could with what-

ever materials he had to work with. In sixteenth-century Italy, the materials were arbitrary and capricious princes, greedy nobles, and a populace which inclined toward sloth and indifference. Throughout history politicians have resorted to his advice whenever they considered it expedient to do so. When criticized for their actions, the politicians simply use Machiavelli's own defense: the particular breach of morality is in the public interest and thus justifiable.

"Situation ethics" of this type isn't a new concept; theologians of the Middle Ages called it "conscience and casuistry": general principles of conduct must be considered in light of specific situations and circumstances. Sometimes it's necessary to violate one ethical value in order to achieve another of superior importance. The politician, whether he be a Renaissance prince or the Wizard of Oz, must be very aware of the problems involved in applying general principles to specific cases, since the welfare of the people is dependent on his decision. An equal caution applies to individuals:

During World War II, a protestant pastor living in France rescued many Jews from the Nazis, secluding them in his attic. To prevent the police from being too curious, he drilled his children in deliberate lying: in response to questions from the police, they were to say that their father had no visitors. Their innocence, plus their ability to lie effectively in response to their father's training, possibly saved many a Jewish life. In one sense, the father, who preached the virtue of truth-telling in his sermons, was being Machiavellian. But he justified his actions on the ground that so far as he could see there was a conflict between the command to tell the truth and the command not to kill: had his children told the truth, they might have been guilty of cooperating in the execution of Jews.<sup>6</sup>

Today, among college instructors of political science the most popular definition of politics is that it is the pursuit and exercise of power. Confucius, however, defined politics as "that which sets things right." The Wizard of Oz combined these concepts, fortunately for the Lion, the Tin Woodsman, and the Scarecrow.

To appreciate the importance of illusion in understanding one part of our political system, we can begin briefly with Edmund Burke's concern with social cohesion and the threats to it from abstract reason and the political metaphysics of his time. To him, prejudice and tradition were more accurate guides to explaining civil society and guiding its policies, and religion was an essential ingredient of an orderly society. Mulford Sibley cites Burke's concern with the potential conflict between peace and truth:

He placed so high a value on the former—and by the term he apparently meant the absence not only of physical conflict but also even of serious verbal clashes—that he made the primary test of whether truth should be spread abroad the likelihood or unlikelihood that it might ruffle the peace. Truth was uncertain at best, whereas the existence of a stable peace was a fact that could not be doubted.<sup>7</sup>

A stable political system is not something to be taken lightly, especially in times of rapid change. As one observer put it, the big trick of

successful government is somehow to get the rulers and the ruled on the same side. This may involve subordinating truth to other values, such as progress, with a minimum of social disruption or violence. A brief analysis of judicial decision-making can help illustrate this point.

One of the most unusual features of our political system is judicial review; it is rarely found in other political systems. Even here it has been controversial ever since Chief Justice Marshall, speaking for a unanimous U.S. Supreme Court in 1803, assumed this power for the judicial branch of the national government. Nowhere in the U.S. Constitution is it expressly delegated to the court. No state constitutions expressly grant the power of judicial review to state supreme courts, yet all have come to exercise it.

For generations, American students have had drummed into them the idea that ours is a political system of separation of powers together with checks and balances. The separation of powers aspect is the more heavily emphasized; certainly separation of powers is a reality in our political system. The actual law-making activities of the courts, however, are rarely elaborated on below the college level in our educational system or in the popular media. It is one of our myths that courts “interpret” or “discover” the law, not make it, and that the U.S. Supreme Court in particular is “above politics.” Arthur North calls this a “friendly conspiracy,” begun in the last century by people of good intention—lawyers, judges, professors and social scientists—who deeply revered and respected the Supreme Court.<sup>8</sup> They wanted to keep the reputation of the Court above the disreputable politicking of the nineteenth century, and therefore they refused to admit that the Court was deeply involved in politics, the pursuit and exercise of power. Both conservatives and liberals have perpetuated this myth through the generations.

Apparently one reason for spreading this misleading conception of the actual functioning of the Court is a widely held belief, perhaps often subconscious, that people will more readily accept the Court’s more controversial lawmaking if it’s called adjudication. Another possible reason could be that judicial review seems so obviously undemocratic. Why should “nine old men” have such power, especially since—according to one of the two basic views which have emerged in arguments about judicial review—judicial review has resulted in drastically changing the Constitution?

The other view holds that the Supreme Court through its power of judicial review has played a significant role in holding the nation together. Proponents maintain that instead of wrecking the Constitution, judicial review has helped to enable it to survive and evolve with the times, to meet the everchanging needs and demands involved in promoting both a stable and progressive political system. The Court—as well as the President who nominates its members and the Senate, which votes on its nominees—does consider decisions in the light of current social trends.

All judges, for example, will agree that the rule of precedent should be observed in judicial decisionmaking, yet they disagree on which precedent is controlling in a given case. Prior to *Baker v. Carr* in 1962,<sup>9</sup> for example, a majority of the Supreme Court had held repeatedly that matters of legislative apportionment were not justiciable issues, that it would be disastrous for the Court to enter this “political thicket.” In the *Baker* case, the court reversed itself; a majority held that the *Baker* case was to be decided on the equal protection clause of the Fourteenth Amendment, and since equal protection issues have always been justic-

iable, the Court could and should intervene. Both sides agreed that precedent should be adhered to, but they disagreed on which precedent. Change resulted, but precedent seemed to be adhered to. The Court made the change because Congress and the state legislatures would not make it.

It is extremely difficult to avoid concluding that judges make the law and apply their own values, and are influenced by the political, economic, and social environment in which they act. If the law—in the opinion of the Court—needs to be changed, and the legislative branch either won't or can't do the job, courts also sometimes resort to legal fictions or to "judicial activism." A writer in the *Harvard Law Review* defined a legal fiction as "a device for attaining desired legal consequences or avoiding undesired legal consequences."<sup>10</sup> What is euphemistically called "judicial activism" is simply judicial invasion of the legislative or executive branch. Its goal is the promotion of what the judiciary considers desirable social ends by assuming decision-making power in certain areas previously considered the domain of the executive or legislative branch. The use of judicial review, judicial activism and legal fictions enable judges to get things done which they feel should not be postponed any longer.

All this, of course, doesn't negate the concept of separation of powers, since judges can always be impeached and their appointment or election to the court involves several political steps. But it does constitute a significant breach in the separation of powers doctrine, and this breach is often soft-pedaled by those who fear that it might result in undesirable political response from a hitherto relatively placid populace.

An interesting example of the use of a legal fiction occurs in Mark Twain's humorous and profound account of the jailbreak of Jim, in *The Adventures of Huckleberry Finn*. Tom and Huck are trying to figure out the best way to free Jim from the shack in which he is imprisoned. Huck, the more practical of the two, simply wants to get Jim out by the most expedient, practical method: picks and shovels. Tom, after futilely explaining to Huck that breaking a person out of prison had to be done in a certain time-honored way, says that using case-knives is the only proper way to free Jim: "It don't make no difference how foolish it is, it's the *right* way. And there ain't no *other* way, that ever I heard of, and I've read all the books that gives any information about these things. They always dig out with a case-knife."

Huck, still unconvinced, eventually gives in and that night joins Tom in digging, using nothing but case knives. So they dig and dig with case-knives until midnight, but they don't get any closer to freeing Jim. Tom, exhausted, remarks,

"It ain't no use, Huck, it ain't a-going to work. If *we* were prisoners . . . , we could keep it up right along, year in and year out, and do it right, and the way it ought to be one. But *we* can't fool along; we got to rush; we ain't got no time to spare."

"Well, then," says Huck, "what are we going to do, Tom?"

"I'll tell you. It ain't right, and it ain't moral, and I wouldn't like it to get out; but there ain't only just the one way: we got to dig him out with the picks, and *let on* it's case knives."

“Now you’re talking!” I says; “your head gets leveler and leveler all the time, Tom Sawyer,” I says. “Picks is the thing, moral or no moral; and as for me, I don’t care shucks for the morality of it, nohow. When I start in to steal a nigger, or a watermelon, or a Sunday-school book, I ain’t no ways particular how it’s done so it’s done. What I want is my nigger; or what I want is my watermelon; or what I want is my Sunday-school book; and if a pick’s the handiest thing, that’s the thing I’m a-going to dig that nigger or that watermelon or that Sunday-school book out with; and I don’t give a dead rat what the authorities thinks about it nuther.”

“Well,” he says, “there’s excuse for picks and letting on in a case like this; if it warn’t so, I wouldn’t approve of it, nor I wouldn’t stand by and see the rules broke—because right is right and wrong is wrong, and a body ain’t got no business doing wrong when he ain’t ignorant and knows better. It might be the answer for *you* to dig Jim out with a pick, *without* any letting on, because you don’t know no better but it wouldn’t do for me, because I know better. Gimme a case-knife.”

He had his own by him, but I handed him mine. He flung it down and says:

“Gimme a *case-knife*.”

I didn’t know just what to do—but then I thought. I scratched around amongst the old tools, and got a pickax and gave it to him, and he took it and went to work, and never said a word.

He was always just that particular. Full of principle.

So they finally dig Jim out the wrong way, but the only practicable way under the circumstances. Still, custom and precedent were followed, as in some judicial decisions where the judges feel it necessary to call a pickax a case-knife.

Most state constitutions or statutes forbid state legislatures to enact laws applying to a specific county. Yet the state courts have permitted their legislatures to classify counties for legislative purposes. California, for example, has fifty-eight counties, and the legislature has created fifty-eight classes of counties in California. So when the California legislature enacts a law “applicable to all counties of the twelfth class,” it of course applies to only one county. The state constitution of Missouri forbids more than four classifications of cities, yet the Governor’s Advisory Commission on Local Law Reform in 1967 discovered over 167 additional classifications of municipalities based either on population or location.<sup>11</sup>

But since judges (and legislators) can readily transform pickaxes into case-knives, precedent will ostensibly prevail. And if the spirit of the law is to survive, it may be necessary to break the letter of the law.

If Plato correctly defined justice as the harmonious interaction of all a system’s parts, then legal fictions dramatize the truth that judicial discretion—and deceit—can be vital for the pursuit of justice. Many disagree, of course. Arthur North believes that this friendly conspiracy has outlived its usefulness and also that we should now accept the simple truth that the Court is actually engaged in the politics of governing the nation.

Stewart Alsop disagreed in a column he wrote in 1971 shortly before his death, when the U.S. Senate was considering William Rehnquist's appointment to the Court. After Alsop relates the origin and cultivation of the "useful myth," he states:

The Warren Court, like the "nine old men" of Roosevelt's day, was really making laws, in the name of judicial review and the Fourteenth Amendment. It was making laws, moreover, that would never have been passed by the legislative branch. So it was natural for conservative legislators to be infuriated by the liberal Warren Court. And it is natural for liberal legislators to vote against Rehnquist because he is very much a conservative.

There is only one rather illogical reason for not doing so. This is that to confirm or reject Supreme Court nominees on purely political and ideological grounds, without any valid cover-reasons, could destroy the myth. And the destruction of the myth could destroy the Court.<sup>12</sup>

Courts in the United States possess neither the purse nor the sword, and the effectiveness of courts in general and the U.S. Supreme Court in particular depends on the faith we have in it. To Alsop, this faith is directly proportional to the belief that the court is above politics. If the myth is destroyed, so may be the court, and then we could have an extremely serious political and constitutional crisis.

Those who wield power over others—doctors, teachers, politicians, parents or Wizards—must be aware of the role of illusion in the lives of people and in the peace and cohesion of a nation. Kant, however, recommended that civilized people should not subordinate truth to anything, regardless of consequences. Unfortunately, the inhabitants of Oz didn't have the benefits of Kant's teachings on truth. As the Witch of the North said to Dorothy, "You see, the Land of Oz has never been civilized, for we are cut off from all the rest of the world."

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## footnotes

1. *American Quarterly*, 16 (Spring, 1964), 47-58, 57.
2. In Janet D. Elashoff and Richard E. Snow, *Pygmalion Reconsidered* (Belmont, California, 1971), 82.
3. Frederick J. Evans, "The Power of a Sugar Pill," *Psychology Today*, 7 (April, 1974), 56, 59.
4. Robert Coles, "What Can You Expect," *New Yorker*, April 19, 1969, quoted in Elashoff and Snow, *Pygmalion Reconsidered*, 79.
5. Immanuel Kant, *Concerning an Ostensible Right to Lie for Human Charity* (1797), as quoted in Fritz Medicus, *On Being Human* (New York: Frederick Ungar Publishing Company, 1973), p. 203.
6. Mulford Q. Sibley, *Political Ideas and Ideologies* (New York, 1970), 308.
7. *Ibid.*, 504-504. See Burke's *Speech on the Relief of Protestant Dissenters* (1773).
8. Arthur A. North, *The Supreme Court: Judicial Process and Judicial Politics* (New York, 1966), 191.
9. 369 U.S. 186.
10. Oliver R. Mitchell, "The Fictions of the Law," 7 *Harvard Law Review*, 249, 253, quoted in Lon R. Fuller, *Legal Fictions* (Stanford, 1967), 73. Fuller states that a legal fiction "is but one of a large class of devices, all of which may serve, intentionally or otherwise, to obscure the growth of the law, and that it may often be a matter of accident whether a given reform takes place under the cover of one device or the other."
11. *Report of the Governor's Advisory Council on Local Government Law* (Jefferson City, Missouri, 1968), 12.
12. Stewart Alsop, "The Myth and William Rehnquist," *Newsweek*, December 6, 1971, 124.