

## May I Lie because I'm a Woman?

An Assessment on whether Deception in Negotiation Aimed  
at Balancing Discrimination Can Be Permissible

By Rebecca Tjaben-Stevens

### Abstract

This essay examines whether deception in negotiation aimed at balancing a disadvantage imposed through discrimination can be permissible, drawing on Carson's self-defense principle and the Revised Mutual Trust Principle by Dees and Cramton. It is assumed that deception in negotiation can be a useful tactic to gain an advantage over the other negotiating party but is morally wrong. First, it is argued that deception in negotiation aimed at balancing discrimination can be justified as an instance of self-defense, if discrimination is regarded as equally wrong as deception, and the negotiator is likely to be harmed and knows it and if deception is necessary to prevent harm. It is argued that an alternative justification is applicable in more cases: deception aimed at balancing discrimination is justified if the negotiator has no reason to trust the other party not to discriminate against her and if deception is necessary to prevent harm. As both accounts justify deception in negotiation only in few cases, caution is advised when promoting it as a suitable strategy to balance discrimination.

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## **1. Introduction**

Empirical research suggests that discrimination in negotiation exists, for example against women or people of colour. In this essay, I want to examine whether it could be permissible for a discriminated negotiator to deceive to balance a disadvantage imposed on her through discrimination. I define negotiation as “any situation in which two or more parties are engaged in communications, the aim of which is agreement on terms affecting an exchange, or a distribution of benefits, burdens, roles, or responsibilities”<sup>116</sup>. To start with, I offer support for the three underlying assumptions of my research question, of which the first is that discrimination against members of certain social groups in negotiation exists. My second assumption is that deception in negotiation is a useful tactic to gain an advantage over one’s negotiation counterpart. This implies that deception might be a useful strategy for a discriminated negotiator. But there is a problem with this idea, expressed by assumption three: deception in negotiation is regarded as morally wrong. This problem leads to my research question: can deception in negotiation aimed at balancing discrimination be morally permissible? First, I will assess whether it can be permissible as an instance of self-defense, building on Carson’s principle of self-defense. I will argue that deception in negotiation can only rarely be justified as an instance of self-defense against discrimination for two reasons. Firstly, a discriminated negotiator will often not know that he is under threat, what I regard as a necessary condition for an action to be justified as self-defense. Secondly, there are often alternative tactics to balance discrimination in negotiation and the necessity condition of self-defense is not fulfilled. After arguing that in most cases, self-defense is no suitable justification for deception aimed

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<sup>116</sup> J. Gregory Dees and Peter C. Cramton, ‘Promoting Honesty in Negotiation: An Exercise in Practical Ethics’, *Business Ethics Quarterly* Vol. 3, no. 4 (1993): 2.

at balancing discrimination, I will evaluate whether deception can be justified due to a lack of mutual trust, thereby referring to the Revised Mutual Trust Principle (in the following RMTP) by Dees and Cramton. I will argue that the RMTP is better suited because it does not require the negotiator to know of discrimination for deception to be justified. However, also the RMTP permits deception only when it's necessary. To conclude, I will argue that as those cases in which deception in negotiation aimed at balancing discrimination can be justified are rare, caution is advised when promoting it as a suitable strategy to balance discrimination.

## **2. Discrimination in negotiation**

In this essay, I assume the following definition of discrimination:

*Discrimination* consists of acts, practices or policies, that wrongfully impose a relative disadvantage on persons based on their (perceived) membership in a salient<sup>117</sup> social group of a suitable sort.<sup>118</sup>

This concept is a so-called moralized concept of discrimination, implying that discrimination only refers to incidents of *wrongfully*<sup>119</sup> imposing a relative disadvantage.<sup>120</sup>

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<sup>117</sup> A salient group is a group that is relevant to how social interactions are structured in different contexts, for example a group based on race, gender or religion. c. Kasper Lippert-Rasmussen, 'The Badness of Discrimination', *Ethical Theory and Moral Practice* 9 (2006): 169.

<sup>118</sup> c. Andrew Altman, 'Discrimination', ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy*, December 2016, <https://plato.stanford.edu/archives/win2016/entries/discrimination/>.

<sup>119</sup> In this essay, I do not want to explore *why* discrimination is wrong. There are several accounts, e.g. stating that discrimination is wrong because of the harm it causes or because it demeans the discriminated. For a discussion of different accounts, see Altman, 'Discrimination'.

<sup>120</sup> c. Altman, 'Discrimination'.

When it comes to research on discrimination in negotiation, the most tested social group is the group of women, based on the attribute gender.<sup>121</sup> Firstly, it cannot be claimed that women are generally discriminated against in negotiation, as findings on gender in negotiation are diverse and partly contradictory. This comes to no surprise, considering the variety of negotiations and several meta-analyses<sup>122</sup> have identified a rationale for the apparent contradictory research results. They suggest that certain characteristics of a negotiation determine whether gender plays a role or not. Riley Bowles offers a framework of such characteristics to predict when gender will influence negotiation: the degree of ambiguity of the situation<sup>123</sup> and the presence of gender triggers, which are situational factors increasing the impact of gender in negotiation. As an important real-world type of negotiation, namely salary negotiation, falls into the category of negotiations prone to gender discrimination<sup>124</sup>, finding strategies for discriminated negotiators to overcome the resulting disadvantages is highly relevant.<sup>125</sup>

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<sup>121</sup> In this essay, I want to focus on gender based discrimination, but my argument also goes for discrimination due to other social attributes, such as race.

<sup>122</sup> c. Hannah Riley and Linda Babcock, 'Gender as a Situational Phenomenon in Negotiation', *LACM 15th Annual Conference; and KSG Working Paper No. RWP02-037*, September 2002, 3; c. Deborah M. Kolb, 'Negotiating in the Shadows of Organizations: Gender, Negotiation, and Change', *The Ohio State Journal on Dispute Resolution* Vol. 28, no. 2 (2013): 245.

<sup>123</sup> According to Riley Bowles, in an ambiguous situation, which is a "weak" psychological situation, it is not clear how to negotiate and in deciding how to do so, negotiators come to draw on gender norms and stereotypes (c. Riley Bowles, 17)

<sup>124</sup> c. Hannah Riley Bowles, 'Psychological Perspectives on Gender in Negotiation', *Faculty Research Working Paper Series*, October 2012, 13–14.

<sup>125</sup> Hannah Riley Bowles offers a first approach to practical tactics for women facing negotiation (c. Riley Bowles, 24-29)

### 3. Deception in negotiation

In the following, I want to define deception, examine in what way it is an effective strategy in negotiation and assess the ethical status of deception in negotiation.

In this essay, I define deception in negotiation following Dees and Cramton:

“*Deception* is any deliberate act or omission by one party taken with the intention of creating or adding support to a false belief in another party”<sup>126</sup>

What is important to note is that deception does not only refer to lying, which entails making a false statement<sup>127</sup>, but also to misrepresentation, selective disclosure of information or bluffing.<sup>128</sup>

Deception can be a strategy to gain an advantage in negotiation, as the amount of information each party holds is often decisive for the outcome of a negotiation.<sup>129</sup> Dees and Cramton distinguish three types of deception in negotiation: *deception about the matter under negotiation*<sup>130</sup>, *deception about future actions* and *deception about settlement preferences*<sup>131</sup>. All three types can give the deceiving negotiator an advantage which would be lost if the counterpart knew her private information.<sup>132</sup>

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<sup>126</sup> Dees and Cramton, ‘Promoting Honesty in Negotiation: An Exercise in Practical Ethics’. 3

<sup>127</sup> or a statement which its maker believes to be false

<sup>128</sup> c. Terry L. Boles, Rachel Croson, and J. Keith Murnighan, ‘Deception and Retribution in Repeated Ultimatum Bargaining’, *Organizational Behavior and Human Decision Processes* Vol. 83, no. 2 (November 2000): 236.

<sup>129</sup> c. Francesca Gino and Catherine Shea, ‘Deception in Negotiations: The Role of Emotions’, in *The Oxford Handbook of Economic Conflict Resolution*, ed. R. Croson and G. Bolton (Oxford University Press, 2012), 47.

<sup>130</sup> Normally one party has privileged access to information about the subject matter. For example, the seller of a used car could withhold information about former accidents to realize a higher price.

<sup>131</sup> Settlement preferences are the terms on which negotiators are willing to come to an agreement, such as the reservation price or timing issues.

<sup>132</sup> c. Boles, Croson, and Murnighan, ‘Deception and Retribution in Repeated Ultimatum Bargaining’, 236.

My research question, whether deception in negotiation aimed at balancing discrimination can be permissible, assumes that deception in negotiation is morally wrong - otherwise, why should foregone discrimination be necessary to justify it? The rationale for my assumption is that there seems to be a widely held moral intuition against deception in negotiation.<sup>133</sup> Besides that, an argument for the claim that deception in negotiation is wrong is typically built grounded on one of four ethical theories. Deception in negotiation “raises concerns on Kantian, utilitarian and justice grounds”<sup>134</sup> and could also be regarded as morally wrong due to conflicting with some *prima facie* duties, as William David Ross<sup>135</sup> defined them.<sup>136</sup>

#### **4. Is deception in negotiation aimed at balancing discrimination permissible?**

The idea behind this paper is that a discriminated negotiator might use deception to balance discrimination in negotiation. In the following, I want to examine whether this tactic can be permissible. Therefore, I will assess whether two concepts which philosophers have offered to justify deception in negotiation under certain circumstances, the self-defense principle by Carson and the Revised Mutual Trust Principle by Dees and Cramton, can base such a justification.

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<sup>133</sup> c. Thomas Carson, ‘Second Thoughts about Bluffing’, *Business Ethics Quarterly* Vol. 3, no. 4 (1993): 324.

<sup>134</sup> J. Gregory Dees and Peter C. Cramton, ‘Shrewd Bargaining on the Moral Frontier: Toward a Theory of Morality in Practice’, *Business Ethics Quarterly* Vol. 1, no. 2 (1991): 2.

<sup>135</sup> c. Carson, ‘Second Thoughts about Bluffing’, 326.

<sup>136</sup> The aim of this paper is to evaluate whether deception in negotiation aimed at balancing discrimination might be justified. As my argument whether such a justification can succeed or not is focused on reasons independent of why deception is wrong (hence independent of the underlying ethical theory), I will not explore this point further.

#### *4.1 Justifying deception as an instance of self-defense against discrimination*

The reader might already have noticed that the idea of justifying deception to balance the disadvantage imposed through discrimination resembles the concept of self-defense, after which an act which would otherwise be wrong, is permissible to protect oneself from harm. An example of self-defense would be the following: if A stands in front of B with a knife and threatens to injure B, it is permissible for B to deceive A to protect herself (for example scream “look, the police!”). Carson offers a justification for deception in negotiation as self-defense. Referring to moral intuitions, he argues that deception in negotiation is immoral. Yet, to justify deception in negotiation under certain circumstances, he introduces a principle of self-defense which he defines in two forms: the principle SD, based on a Rossian theory of right and wrong<sup>137</sup> and the principle SDU, based on Utilitarianism<sup>138</sup>. In the following I will assess how successful Carson’s general idea of a self-defense principle is for justifying deception aimed at balancing discrimination in negotiation. A general form of Carson’s principle of self-defense, extracted from his SD and SDU, could be the following:

For any act *a* such that doing *a* to someone is ordinarily impermissible, X’s doing *a* to Y is permissible (or less impermissible) provided that

- 1) The other party Y is doing or trying to do the same (“or doing something against which there is an equally strong moral presumption”<sup>139</sup>),<sup>140</sup>
- 2) X is likely to be harmed as a result, and

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<sup>137</sup> c. Carson, ‘Second Thoughts about Bluffing’, 326.

<sup>138</sup> c. Carson, 330.

<sup>139</sup> Carson, 327; c. Carson, 330.

<sup>140</sup> For Carson, as he defines the moral status of deception referring to moral intuitions, „morally impermissible“ equals “there is a substantial moral presumption against this act”.

- 3) X's doing *a* to Y is necessary to prevent or mitigate this harm.<sup>141</sup>

Applying the self-defense principle to the case of interest (deception in negotiation aimed at balancing discrimination) the act *a* which is impermissible, would be deception, X would be the negotiator who is disadvantaged due to being member of a social group, hence discriminated against, and Y would be his opponent. For a justification of deception, the three conditions 1) - 3) need to be fulfilled. I will now check whether the conditions 1) - 3) would be fulfilled in the case of interest.

The crucial point for condition 1) to be fulfilled is whether „there is an equally strong moral presumption“ against discrimination as against deception (the act *a*). Whether this is the case depends on two things: the underlying ethical theory and the specific type of discrimination in question. Does the ethical theory provide an equally strong moral presumption against the certain type of discrimination as against deception in negotiation? For many ethical theories and many types of discrimination, condition 1) would not be fulfilled, especially when discrimination happens without bad intentions or even unconsciously on behalf of the discriminating party. For example, it is hard to imagine how on a Kantian approach, an unintended action (e.g. discrimination due to implicit bias) could be regarded as equally morally wrong as an action aimed at achieving personal gain through imposing a disadvantage on someone else (consciously deceiving in negotiation). For the sake of the argument, let us assume that we operate under an ethical theory after which the instance of discrimination in question is equally wrong as deception in negotiation.

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<sup>141</sup> The conditions 2) and 3) emphasize that the principle of self-defense does not justify retaliation (c. Carson, 327)



For condition 2) to be fulfilled, the discriminated negotiator must be “likely to be harmed as a result”. As I already mentioned, discrimination, by definition, entails that there is a disadvantage imposed on the discriminated person. In negotiation, this means that the discriminated person will end up with a disadvantageous negotiation outcome. A disadvantageous negotiation outcome here means an outcome which is worse than what the negotiator would have realised without discrimination. Opponents could argue that such a comparative disadvantage does not constitute harm. But I assume that harming someone means to make someone worse off, which is the case for such a disadvantageous negotiation outcome. Discrimination can be regarded as imposing harm on the negotiator and consequently, condition 2) seems to be fulfilled.

However, there is another crucial point about justifying deception against discrimination as an instance of self-defense closely connected with condition 2). Carson does not explicitly mention this point, but I argue that for an act to be justified as an instance of self-defense, it is not only necessary that “X is likely to be harmed as a result” but also that X *knows* that he is likely to be harmed. I would therefore extend Carson’s principle with condition “2.1) X knows that he is likely to be harmed”. By *knowing*, I here refer to justified belief.<sup>142</sup> For the belief to be justified, the defender would have to be able to detect the discrimination by observing the situation, so there would need to be clear signs for discrimination. One might object that it does not matter whether X *knows* that he is likely to be harmed, if from an armchair perspective it is clear that harm is likely.

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<sup>142</sup> I assume that whether these beliefs turn out to be false or true does not matter as long as the defender can reasonably believe that she is under threat from observing the situation. The idea is that self-defense against an innocent threatener can be justified. This is a controversial issue in the literature on self-defense, for further discussion see Jeff McMahan, ‘Self-Defense and Culpability’, *Law and Philosophy* Vol. 24, no. 6 (2005).

But in the case of self-defense, this objection seems absurd: how can something count as a defensive action if the respective actor does not know that she is under attack?

Let me assess whether a classical instance of self-defense, an action to prevent harm through injure, would fulfil condition 2.1) and then, whether an action to prevent harm through discrimination would fulfil condition 2.1). When someone is standing in front of X, swinging a knife over his head and screaming at him, X can be pretty sure that this person wants to injure him. Thus, condition 2.1) would be fulfilled.

Things are a bit different when it comes to discrimination. Ordinarily, X will not be able to detect when he is discriminated against, as the other negotiating party won't tell him. Often enough, the other party will not even discriminate consciously or on purpose. An instance of this type of discrimination are so called implicit biases. An example for an implicit bias could be a recruiter who would openly claim that men and women are equally suited for careers outside the home, but implicitly, associates women with the home. As a result, the recruiter might discriminate against women in job interviews.<sup>143</sup> If not even the discriminator knows what he is doing, how shall the discriminated negotiator know? Thus condition 2.1) would not be fulfilled. Ofcourse, there are also cases where discrimination is so obvious that one knows that one "is likely to be harmed". For example, in a salary negotiation, a male superior might openly say to his female employee that she will not get a salary increase despite her qualifications because he expects her to get pregnant soon. But obvious cases like this, which will mostly be cases of explicit discrimination, are rare. Whether discrimination happens consciously or unconsciously, with or without intention, it will mostly be implicit and

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<sup>143</sup> c. Michael Brownstein, 'Implicit Bias', ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy*, March 2017, <https://plato.stanford.edu/archives/spr2017/entries/implicit-bias/>.

hard to detect. Thus, there are only very few cases for which condition 2.1) is fulfilled.

Finally, let me consider condition 3). For this condition to be fulfilled, it is required that deception is necessary to prevent or mitigate the harm imposed on the discriminated negotiator through discrimination, thus that it is his “last resort”. But is it ever necessary to deceive in negotiation?<sup>144</sup> One could think of a few alternative options for a negotiator to prevent harm caused by discrimination: she could

- a) withdraw from the negotiation,
- b) withdraw from the negotiation and look for another negotiation partner<sup>145</sup>, or
- c) try to balance discrimination using another tactic than deception.

In the following, I will assess whether these options constitute valid alternatives to deception in negotiation and thus pose a counterargument against justifying deception as self-defense.

The idea behind a) is that a negotiator could always stop the negotiation and thus evade the harm imposed through discrimination. Carson anticipates this objection and argues that in practice it is often not possible to stop negotiation, for instance if Union members negotiate over a labor contract.<sup>146</sup> And even if breaking off negotiations is possible, it does not prevent harm. This is because the benchmark for deciding whether one is harmed is the outcome that would have been realised if the negotiation *had* taken place without discrimination.<sup>147</sup> A dropout

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<sup>144</sup> Alan Strudler, ‘On the Ethics of Deception in Negotiation’, *Business Ethics Quarterly* Vol. 5, no. 4 (October 1995): 810.

<sup>145</sup> c. Strudler, 810.

<sup>146</sup> c. Carson, ‘Second Thoughts about Bluffing’, 328.

<sup>147</sup> c. Carson, 328.

always results in harm and thus option a) is no valid alternative to using deception.

Also option b), which is to stop negotiation and look for another negotiator, is easier in theory than in practice. Carson argues that looking for a new negotiation partner might come with such high costs that it is implausible to demand this from the negotiator. An example for this would be an employee who is engaged in a salary negotiation with his boss and is discriminated against.<sup>148</sup> Instead of deceiving, the employee might quit his job and look for a new employer to realize the salary he wishes for, but this comes with high costs and risk. Besides that, it is likely that a potential new negotiator tries to impose the same harm as the former negotiating partner, especially in contexts where discrimination is a widespread phenomenon such as car sale negotiations<sup>149</sup> or salary negotiations<sup>150</sup>. So, option b) in many cases is no valid alternative to using deception either.

Consequently, the discriminated negotiator often has no valid alternative to remaining in the negotiation. Yet, there is still option c) to use another tactic than deception to prevent harm through discrimination. When it comes to gender discrimination, researchers have suggested several tactics to counter discrimination in negotiation. Riley Bowles recommends to women to educate themselves about gender stereotypes and their effects in negotiation, as this reduces the pernicious effects of these stereotypes. Another measure could be to establish clear standards

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<sup>148</sup> c. Carson, 328.

<sup>149</sup> c. Ian Ayres, 'Fair Driving: Gender and Race Discrimination in Retail Car Negotiations', *Harvard Law Review* Vol. 104, no. 4 (February 1991): p.817-872; c. Laura J. Kray and Alex B. Van Zant, 'Not Competent Enough to Know the Difference? Gender Stereotypes about Women's Ease of Being Misled Predict Negotiator Deception', *Organizational Behavior and Human Decision Processes* Vol. 125, no. 2 (November 2014): pp.61-72.

<sup>150</sup> c. Barry Gerhart and Sara L. Rynes, 'Determinants and Consequences of Salary Negotiations by Male and Female MBA Graduates', *Journal of Applied Psychology*, April 1991.

for agreement and norms of acceptable behaviour in negotiation to reduce ambiguity as this lowers the risk of gender discrimination.<sup>151</sup> These alternative tactics are morally permissible and thus seem preferable to deception. An opponent could argue that as these measures require preparation in advance and collaboration with others, they don't help much when a person finds herself in a negotiation facing discrimination. This is correct, however one could expect negotiators to make these efforts to evade situations when deception is the last resort. Consequently, I argue that the *necessity* requirement for justifying deception in negotiation as self-defense is fulfilled only in very few cases.<sup>152</sup> So, objection c) that the negotiator could use other tactics, is often a successful objection and thus, condition 3) (that X's doing *a* to Y is necessary to prevent or mitigate the harm) is fulfilled only for very few cases.

Let me summarize whether the conditions, under which deception in negotiation aimed at balancing discrimination would be permissible as an instance of self-defense, are fulfilled. As I have argued, condition 1) is fulfilled if the moral presumption against the discrimination in question provided by the ethical theory is equally strong as against deception in negotiation and if Y discriminates against X. For the sake of the argument, let us assume that condition 1) would be fulfilled. Condition 2), that harm is likely, is fulfilled, as discrimination by definition entails harm. I extended Carson's principle by making explicit condition 2.1) (the negotiator knows that she is likely to be harmed). As most types of discrimination are hard to detect, this condition is fulfilled only in very

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<sup>151</sup> c. Riley Bowles, 'Psychological Perspectives on Gender in Negotiation', 24–26.

<sup>152</sup> Such a case could be if a woman had employed a range of other tactics (e.g. educated herself about gender stereotypes and set up clear standards of agreement), and still is discriminated against in negotiation.

few cases. Also condition 3), the necessity requirement of self-defense, is only fulfilled in very few cases as there are often alternative permissible tactics which a negotiator can use to prevent harm imposed by discrimination. As the cases in which the discriminated negotiator knows that she is under threat (condition 2.1) and in which deception is her last resort (condition 3), are so rare, it seems hazardous to argue for self-defense as a basis for justifying deception against discrimination.

#### *4.2 Justifying deception due to a lack of mutual trust*

I have just argued that the attempt to justify deception in negotiation aimed at balancing discrimination as in instance of self-defense often fails, partly because discrimination is often not detectable. One could argue that although discrimination is often not detectable, under certain circumstances, a negotiator has no reason to trust the other party not to discriminate against her. Shouldn't this be enough to justify deception on behalf of the negotiator? A principle which is built on this idea is the "Revised Mutual Trust Principle"<sup>153</sup> (RMTP) by Dees and Cramton<sup>154</sup>. In the following, I will evaluate whether this principle can serve as a justification for deception aimed at balancing discrimination in negotiation:<sup>155</sup>

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<sup>153</sup> c. J. Gregory Dees and Peter C. Cramton, 'Deception and Mutual Trust: A Reply to Strudler', *Business Ethics Quarterly* Vol. 5, no. 4 (1995): pp.0813-0822.

<sup>154</sup> Dees and Cramton first introduced the Mutual Trust Principle and, addressing a critique of the principle by Alan Strudler, later argued for the Revised Mutual Trust Principle.

<sup>155</sup> Dees and Cramton are not interested in offering a principle to make rigorous philosophical judgements but a principle to rationalize morality as it appears in practice. In the following, I assume that it can extended to a principle for philosophical judgements about right and wrong. What is important, is that the RMTP is based on the assumption that moral obligations are (partly) based on mutual trust and thus will only be compatible with ethical theories which share this assumption (a Hobbesian theory could be such a theory).

*“Revised Mutual Trust Principle:* Obligations to refrain from specific kinds of morally regrettable conduct are diminished (perhaps eliminated) for an individual when the following two conditions are present: 1) the individual is operating in a trust-deficient social context, and 2) refraining from the regrettable conduct would cause the individual to bear significant incremental risks or incur significant incremental costs.

*A Trust-Deficient Social Context* is a domain of human interaction in which participants lack reasonable grounds for trusting relevant others not to engage in morally regrettable conduct.

*Incremental Costs and Risks* are those that would not be present if the individual were in a context with grounds for trust and could reasonably rely on others to refrain from the regrettable conduct.”<sup>156</sup>

So how could would the RMTP be applied to deception in negotiation aimed at balancing discrimination? The obligations to refrain from deception in negotiation would be diminished (perhaps eliminated) for a negotiator when 1) the negotiator acts in a trust-deficient social context and 2) not deceiving would cause the negotiator to incur significant incremental costs and risks.

For condition 1) to be fulfilled, the idea is that certain negotiation conditions, for which empirical research suggests that discrimination based on gender or race is likely, count as a *Trust-Deficient Social Context*. What is decisive for this claim to hold is whether discrimination on behalf of the other negotiating party counts as “engaging in morally regrettable conduct”. Dees and Cramton define morally regrettable conduct as a

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<sup>156</sup> Dees and Cramton, ‘Deception and Mutual Trust: A Reply to Strudler’, 4–5.

practice for which “the world would be a better place with less of it”.<sup>157</sup>

As discrimination is by definition morally wrong, I argue that this is the case for discrimination and thus condition 1) is fulfilled.

Condition 2) is fulfilled if *not* deceiving would result in incremental costs and risks. I think it is reasonable to regard the disadvantage a negotiator would experience through discrimination as such costs and risks. But what is expressed here as well, is, that analogous to the self-defense principle, deception is only permitted if it is *necessary*. The necessity requirement and all the problems that come with it (see 4.1) persist for the RMTP.

In what way is the RMTP then superior to the self-defense principle? The strength of the RMTP is that it applies to cases when discrimination is not detectable, due to a lack of clear signs, but the negotiator has no reason to trust the other party not to discriminate against her, thus when the situation is a *Trust-Deficient Social Context*<sup>158</sup>. An example for such a *Trust-Deficient Social Context* for gender discrimination in negotiation could be a situation fulfilling the criteria of Riley Bowles’ framework. When a woman finds herself in an ambiguous situation and gender triggers are active, she would then be justified to deceive. As the RMTP is applicable in many cases in which the self-defense principle fails, it is a more successful justification for deception in negotiation aimed at balancing discrimination.

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<sup>157</sup> Dees and Cramton, 1.

<sup>158</sup> One might object that there is only a gradual difference between „having no reason to trust the other party not to discriminate against oneself“ and „having justified belief that the other party discriminates, due to clear signs of discrimination“. I would not deny that, nevertheless I argue that this gradual difference is an important one when it comes to discrimination. Due to the nature of the phenomenon, there will only be very few cases with clear signs of discrimination but many cases when discrimination is likely and reasons to trust the other party are scarce.



## **5. Conclusion**

In this paper, I have examined whether deception in negotiation can be justified to balance discrimination. At the beginning, I have offered support for the three underlying assumptions of my research question. Firstly, empirical evidence suggests that under certain circumstances there exists discrimination due to gender in negotiation. Secondly, deception in negotiation gives the deceiving negotiator an advantage, which would be lost if the counterpart knew her private information. Thirdly, moral intuition as well as different moral theories suggest that deception in negotiation is morally wrong.

I then turned to my research question whether deception in negotiation aimed at balancing discrimination might be justified. I first evaluated the self-defense principle by Carson and argued that it might serve as a justification for deception in negotiation aimed at balancing negotiation under four conditions. If the discrimination in question is regarded as equally immoral as deception, if the negotiator is likely to be harmed through discrimination and knows of it and if deception is necessary to prevent this harm, deception in negotiation is justified as an instance of self-defense. The problem with this justification is that the cases it is applicable to are extremely rare for two reasons: Firstly, in many cases, the discriminated negotiator will not know whether she is discriminated against as many forms of discrimination, such as hidden intentional discrimination or unconscious discrimination (implicit bias) are hard to detect and secondly, there will be a lot of situations when deception is not *necessary* as there are alternative tactics to prevent harm through discrimination. Since these shortcomings of the self-defense principle exist independent of whether deception is regarded as equally morally wrong as the discrimination in question, the self-defense principle does not seem to be a suitable justification for deception in negotiation.

In a second step, I evaluated whether the RMTP by Dees and Cramton can serve as a basis to justify deception in negotiation aimed at balancing discrimination. I argue that when a negotiator negotiates under circumstances for which she lacks reasonable grounds for trusting the other party not to discriminate against her and deceiving is necessary to prevent harm through discrimination, it would be permissible for the negotiator to deceive. The RMTP is superior to the self-defense principle as it can justify deception in more cases: namely in those cases where discrimination is not detectable, but negotiators of some social groups have no reason to trust the other negotiating party not to discriminate against them. However, it only justifies deception in negotiation if the underlying ethical theory is compatible with the assumption that moral obligations in part are based on mutual trust. What remains a problem is that also the RMTP demands to rather use alternative tactics if they exist - and they often do exist.

To conclude, I argue that as for both analysed justifications, deception in negotiation aimed at balancing discrimination can be justified only in few cases (though there are considerably more for the RMTP than for the self-defense principle), caution is advised when promoting deception in negotiation as a suitable strategy to balance discrimination. The strongest counterargument against deception aimed at balancing discrimination in negotiation is the fact that in most cases, valid and morally permissible alternative negotiation tactics are available to balance discrimination. To offer potentially discriminated negotiators useful advice, further research should focus on such tactics.

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