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The Game You Are in: Misleading through Social Norms and What's Wrong with It

Abstract This paper discusses the phenomenon of misleading about “the game you are in.” Individuals who mislead others in this way draw on the fact that we rely on social norms for regulating the levels of alertness, openness, and trust we use in different epistemic situations. By pretending to be in a certain game with a certain epistemic situation, they can entice others to reveal information or to exhibit low levels of alertness, thereby acting against their own interests. I delineate this phenomenon from direct lies and acts of misleading by implication, and discuss some variations of it. I then ask why and under what conditions it is morally wrong to mislead others about the game they are in. I distinguish three normative angles for understanding the phenomenon: deontological constraints, free-riding on a shared cultural infrastructure, and implicit discrimination against outsiders and atypical candidates. I conclude by briefly discussing some practical implications.

Keywords: epistemic situations, lying, misleading, social norms

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1 Introduction

This paper discusses the phenomenon of misleading about “the game one is in.” It occurs when one party in a social interaction, A, implies, by drawing on established social norms, that this interaction is a certain epistemic situation for which certain degrees of alertness and trust are appropriate, although this is not the game she actually plays. By doing so, she puts the other party, B, at a disadvantage in the epistemic processes that take place between them. It is because human communication is embedded in social contexts that one can mislead others not only by violating epistemic norms, such as the norm of truthfulness, but also by violating social norms.

Consider the following example, which is atypical in its simplicity, but therefore helpful as an illustration. An engineer, Anne, is in negotiations with another engineer, Bert, from a different company. They discuss a deal about a new product that their companies might develop together. They agree that doing so would be profitable for both sides, but it is still open how the gains will be divided. Anne is keen to find out how large the other company's budget is: this would allow her to suggest a maximum price for her own company's contribution without putting the deal at risk. But during the first half of the negotiations, when they talk money, Bert is on guard not to reveal

this information, because he is aware of its strategic importance. Later in the day, however, they walk over to the test stand where the prototypes are mounted. They get excited about the project, and start a heated discussion about how to solve the remaining technical problems. Both being engineers, and given that there are strong social norms about cooperation among fellow engineers, they are used to having collegial conversation in which they share their expertise. At one point, Anne notes, in a casual tone: "Well, that solution might work, depending on how much money you'd want to spend on it." In the heat of the moment, Bert readily reveals the information about his budget. Anne does not show any outward sign of triumph, but rather continues the technical discussion

Anne got Bert to reveal important information by catching him when he was in a different frame of mind than that of "talking money." Bert was relying on social norms about honesty and collegiality that apply to conversations among fellow engineers, but not to business negotiations. Anne blurred the boundaries between these two games, to her own advantage. Our intuitions about this case are likely to be torn between admiration for her shrewdness, and resentment towards the way in which she tricked Bert. My analysis will make clear why this is a borderline case, and why other instances of this phenomenon are clearly morally wrong.

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This case is one instance of the broader phenomenon of morally questionable forms of behavior that I describe as "misleading about the game." This phenomenon has not yet been discussed in moral or political philosophy or social epistemology, although related themes have received some attention. Tamar Schapiro (2003) discusses a constellation that she calls the "sound and fury" problem, other people's undermining a shared practice make one's own actions change their meaning, so that one can become a "tool for evil;" for example, what one participates in is not the practice of "law enforcement" but of "running a mafia." Schapiro asks whether this can lead to situations in which moral agent are justified in not doing what would otherwise be their duty. One subgroup of cases of being misled about the game one is in are cases in which we think we participate in a shared practice, but the other party does not comply with its spirit. But the phenomenon is broader, and has distinctive moral features of its own. It is also different from the cases of "epistemic injustice" that Miranda Fricker (2007) analyses, i.e. cases in which individuals are not granted full epistemic standing because of racial or sexist prejudices, or cases in which individuals lack the vocabulary to express moral wrongs done to them. While not knowing what game one is in can lead to similar experiences of discrimination and exclusion, it is a different phenomenon.

What misleading about the game has in common with these cases, however, is that it can only be understood if one takes seriously the social embeddedness

of human behavior, including communication. Human behavior is often highly interdependent, and subtle differences in what others do can make a difference for one's own reactions and for the normative evaluation of the situation. These nuances are hard to capture if one assumes a picture of human decision-making and agency that focuses exclusively on our rational capacities. But if one takes a realistic picture of how human beings react to social cues, for which there is good empirical evidence (see §4), we can see that there are forms of misleading that "rational man" would not succumb to, but that are nonetheless widespread and that raise complex moral, social, and political questions.

252 In this paper I focus on one category of such cases, which I call "misleading about the game you are in." In the next section, I clarify the notion of games and of the epistemic situations they create. I then discuss how one can mislead others about the game they are in, and differentiate this phenomenon from lies and from misleading by implications, and explore a number of variations of the phenomenon. I distinguish three normative angles from which one can approach it. The duty to treat others with respect can explain some, but not all instances. A second possibility is to understand such forms of misleading as free-riding on a shared cultural infrastructure that is, on the whole, beneficial for the kinds of fallible creatures human beings are. Finally, such cases can also be problematic because they can lead to implicit discrimination against outsiders and atypical candidates. I conclude by briefly discussing some practical implications, both at the level of individual moral behavior and at a broader political level.

2 Social games and epistemic situations

Our interactions with others are socially embedded. In differentiated societies, they can fall into different social spheres in which different kinds of social interactions or "games," governed by different sets of norms, take place. For example, among family members in good standing we expect trust, honesty, and mutual support – we can "open up" before them. Among colleagues, we expect a certain degree of loyalty, but not necessarily complete openness about our private lives. Being a trusted, year-long business partner evokes different norms than entering into a one-off exchange. When one meets in court, it would be naive not to expect some degree of strategic communication. This is a fact of life, and while we may disagree about the moral qualities of specific games, for example about the degree of adversarialness in legal interaction, the plurality of games as such is not morally problematic – or so I assume in what follows.

The notion of "game" that I use to describe different kinds of interactions in different social spheres is, of course, a metaphorical notion. It nicely captures a number of aspects that are important for understanding the phenomenon

I am interested in. Games are something one plays together, and games have rules that everyone needs to know in order to participate. Nonetheless, many games also leave scope for individuals to make moves of their own within the framework of these rules. Playing a game skillfully means being able to move in ways that further one's own interest or the interests of one's team. Many games contain some degree of competitiveness, but it is considered unfair to break or bend the rules in order to outcompete others. These features of games cohere nicely with the social interactions within which the phenomenon of "misleading about the game" can take place. A feature that coheres less well with this phenomenon is the fact that games are played for fun, and nothing serious is at stake. This *can* be case in the phenomenon of "misleading about the game," and if so, the weight of moral wrongdoing can be diminished accordingly. But it is not true for all instances of this phenomenon. It can have a serious impact on the rights and the welfare of individuals, for example when it takes place within job negotiations.

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Many theories of social differentiation conceive of the social realm as being cut up into different games, with "large chunks" of social life belonging to one game or another. But in real life these relations can be rather complex and hence difficult to navigate. Different games can overlap, or be part of more complex meta-games. The boundaries of games can be fuzzy. Some games include meta-rules about how to change the rules, others don't. Sometimes, individuals are caught in roles that simultaneous belong to different games, and have to negotiate the relations between them. For example, in an ethnographic study of a tech company Kunda discusses the case of a married couple who both work for the same company. They have to go to considerable lengths to clarify their different roles as spouses and colleagues (1996, 196f.). Economic relations, which are often more interest-driven than other social relations, are embedded in social relations (see e.g. Granovetter 1985), which can create tensions and conflicts between the roles individuals have within different games.

Depending on the game we are in, different epistemic situations can arise. Epistemic situations are characterized by the norms that govern the epistemic processes in a social interaction. These norms usually flow from the broader norms governing the game within which the epistemic situation takes place. In a trustful relationship with a friend or lover, I expect openness and fully rely on her testimony. It would be foolish to rely on the same standards in legal negotiations. When I ask a distant acquaintance how she likes my new neck tie, I should expect a polite phrase, not a truthful statement of his opinion. The norms about what can be left *unsaid* without violating epistemic standards also vary depending on the game within which an epistemic situation takes place. We not only evaluate the epistemic acts of others, but also adapt our own levels of alertness, openness, and trust

depending on what we understand the epistemic situation to be. This is why it is usually¹ advantageous to know what kind of game one is in: this allows us to understand how to approach the epistemic situation, and to participate in the relevant games on an equal footing.

3 Misleading about the game

In standard cases, the social norms of a game clearly signal which epistemic situation we find ourselves in. But individuals can benefit from misleading others about the game they are in, because this can give them an epistemic advantage. For example, the other party might behave more trustingly if she thinks that the game is a friendly collegial chat in which no strategic interests are at stake. By pretending to be in a different game, e.g. by blurring the boundaries of different game or by abruptly switching games, individuals can opportunistically exploit the tendency to adapt one's epistemic stance to the game one takes oneself to be in. This can happen in face-to-face interactions, as in the example of Anne and Bert, but also in more anonymous contexts, including online interactions.

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In a job interview, the conversation can switch from the game of "will we hire you?" to the game of "we want to hire you – how much do we have to offer to make sure you'll accept?" The epistemic situation changes accordingly: in the first game, it is unproblematic for applicants to signal their eagerness to receive an offer, whereas in the second game, it may be appropriate, and indeed necessary for defending one's own interest, to communicate in a more strategic way, e.g. by not revealing that one does not have any alternative offers. Hence, if the potential employer is not open about which game is being played, he is in an epistemically privileged position. Or take a conversation between a doctor and a patient about treatment options, which the patient takes to be one in which the doctor speaks as a medical expert with a professional responsibility, and hence fully trusts her judgment, while the doctor has her financial interests in mind. If the patient knew this, he could adapt his epistemic stance to a more skeptical attitude, questioning the usefulness of different therapies instead of blindly trusting the doctor. Some websites seem to practice a similar kind of misleading by pretending to be a different kind of website than they actually are, e.g. services free of charge rather than subscription-based sites.

Such acts of misleading are different from direct lies, in which someone makes a statement that is contrary to what she knows to be the case. In most situations, lies are morally wrong, and there is a venerable philosophical

1 There may be occasional exceptions, e.g. in the artistic realm, where the attraction of a game may stem from individuals not knowing what game it is.

tradition of discussing the question of whether or not they can be morally justified under certain conditions, e.g. in order to protect some other moral good. Often, lies are also forbidden by law and one can take legal action against them if one has sufficient evidence. This is probably why many agents try to avoid direct lies – either because they genuinely care about not violating the norm not to lie, or because they fear the consequences of being caught – and resort to other forms of misleading instead. Misleading about the game, however, is also different from standard forms of misleading, which exploit the implications of what is being said.² To cite an example used by Bernard Williams: if someone says “Someone has been opening your mail,” we usually do not expect the person to refer to herself as the one who opened the mail, although this possibility is, technically speaking, included in the set of individuals described by the term “someone” (2002, 96f.). Such forms of misleading do not come to us naturally: we have to think carefully about how to craft statements that are technically correct, but from which the other person will draw a wrong conclusion.³

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What differentiates acts of misleading about the game one is in from lies and misleading by implication? Lies violate a core epistemic norm: the norm of truthfulness. Misleading by implication does not directly violate the norm of truthfulness, but rather violates linguistic norms about how we use certain terms. In both cases, the relevant norms are *epistemic* norms. If one misleads someone about the game that she is in, in contrast, one violates non-linguistic norms: social norms that signal to others which game is being played, and hence which epistemic situation they are in. This form of misleading would not be possible if epistemic processes were independent

2 It is an old discussion in moral philosophy whether there are morally relevant differences between lying and other forms of misleading (for a historical account see e.g. Williams 2002, 100ff.). In a recent account, Jennifer Saul has scrutinized various arguments that have been suggested for establishing such a difference (2012, chap. IV). Candidates that have been suggested include the more active role of listeners who draw a wrong inference, or the additional efforts it can take to mislead someone in this way. Saul rejects these arguments as insufficient: there are either counterexamples that prove them wrong, or they are not consistent with what we think makes a moral difference in other contexts. Often, she concludes, we mix up judgments about an agent’s characters with judgements about the act, and this leads to the impression that lying and misleading are morally different (*ibid.*, 86ff.). Another approach, suggested by Webber (2014), is to ask what damage a lie and an act of misleading can do. If someone misleads another person, her trustworthiness with regard to the implications of her statements is damaged, but her trustworthiness with regard to the truth-value of statements – what Webber calls “credibility in assertion” – is kept intact; a lie, in contrast, damages both.

3 Another variety of deceptions, which is already very close to misleading about the game one is in, is the use of non-verbal clues, such as packing a suitcase in order to suggest that one has the intention to go on a journey (see e.g. Saul 2012, 75ff.; the example goes back to Kant).

of the social situations in which they take place (whereas we can understand lies and other forms of misleading independent of social context, at least up to a point). But given that different epistemic situations *are* part of different social games, and given that human beings tend to adapt their epistemic stance to these games, this form of misleading is possible. When one lies or misleads by implication, the deception takes place *within* the epistemic situation. When one misleads about the game, one ushers the other person into the wrong room, as it were, and once she has adopted the wrong epistemic stance, one can proceed without other forms of lying or misleading.

To be sure, in many cases these different phenomena go together: once one has misled a person about the game she is in, it may be temptingly easy to also use misleading statements or even lies. But the example of Anne described earlier shows that misleading about the game can also work on its own. Anne did nothing but ask an implicit question (“How high is your budget?”) – which, not being a statement, cannot be a lie, and which can hardly be reconstructed as a form misleading by implication, along the lines of “Someone has been opening your mail.” The act of misleading, if one wants to describe it as such, was not to ask the question, but rather to casually weave it into what Bert took to be a different epistemic situation.

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One can distinguish a number of different variations of this phenomenon, which are relevant for a normative evaluation. A first distinction can be drawn between *catching others unaware* drawing on *genuine ignorance* of relevant social norms on the part of those who are misled. Living in a complex world, and navigating different social spheres, human beings are used to relying on social norms in order to adapt their behavior to these spheres. When they are familiar with the rules of the games, this can happen more or less unthinkingly. We see certain cues or symbols that stand for a certain social sphere and automatically switch into a certain frame of mind. Psychologists distinguish, as a metaphorical short-hand, between two modes of human cognition: “system 1 thinking” and “system 2 thinking.” System 1 “operates automatically and quickly, with little or no effort and no sense of voluntary control” whereas system 2 is “slower, conscious, effortful, explicit, and more logical” (Kahneman 2011, 20-23). When operating in a “system 1” mode, switching into the right mode for different games happens just as “automatically and quickly,” triggered by linguistic or other signals, almost below the level of conscious perception.

As psychologists have shown, certain words can have a “priming” effect on human beings: being exposed to them influences our reaction to other stimuli. For example, some words signal cooperativeness, whereas others signal antagonism. In one experiment, researchers used an identically structured repeated prisoner’s dilemma game under different names: “Community

Game” and “Wall Street Game.” Participants reacted very differently, showing higher levels of cooperativeness in the “Community Game” (Lieberman et al. 2004). Humans also adapt their behavior to that of others, using a “do what the majority of peers do”-heuristic (Gigerenzer 2010, 539ff.). If others behave differently from what we think would be the right way to behave, this can create considerable discomfort – as was the case for the participants in Solomon E. Asch’s famous experiments, in which a group of people confidently gave wrong answers to simple questions (1951). The tendency to adapt to the behavior of others almost instinctively can also be used for misleading others about the game they are in.

Being misled by being caught unaware is different from being misled because one does not know the rules of the game. Take the example of job negotiations and the shift from “will we hire you?” to “how much do we have to offer?” Often, there will be subtle cues, for example a shift in tone or the involvement of additional individuals, that allow experienced candidates to understand what is going on. He may not even actively register these cues as cues, but simply understand that he is now in a different game. An unexperienced candidate, in contrast, may not know the relevant norms of hiring processes, and therefore not capture these signals.

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The French sociologist Pierre Bourdieu (e.g. 1986) has famously distinguished various forms of capital: economic capital in the conventional sense; social capital, i.e. membership in certain groups and access to networks; cultural capital, i.e. education and knowledge that allow individuals to act as cultural authorities; and symbolic capital, i.e. recognition, prestige, and trust from others. The possession of social and cultural capital can help individuals to get a better understanding of the games they are in, and makes it less likely that they can be misled about them. For example, they might be better able to notice subtle social cues that signal persistent conflicts of interests or a willingness to compromise. Candidates who lack social and cultural capital, in contrast, may not be able to anticipate such mechanisms and to catch the signals for a switch of games. They may therefore remain in a defensive mode in a succession of different games, and that may make it harder for them to defend their own interests.

While the examples I had discussed earlier mostly consisted of cases in which the act of misleading about the game was an intentional act, this last example illustrates that such acts can also happen unintentionally.⁴ Unintentional acts of misleading about the game can happen, for example, if someone simply cannot imagine that the other party would *not* understand certain signals.

4 In this respect, misleading about the game is different from manipulation, which, as Baron (2014) convincingly argues, requires intent.

But the different games we participate in, and the different epistemic situations that arise within them, take place in societies that are vastly unequal and highly differentiated. Therefore, a signal that is completely obvious for individuals from one background may be unreadable for individuals from another background. Semi- or unconscious processes on the part of the person who misleads may also play a role; for example, in the case of job negotiations she may hold a semi-conscious view that if a candidate does not get the signals she sends, then this candidate does not “fit” into the company.

258 A third dimension that helps to understand the variety of cases of misleading about the game concerns the question of who can define what the game is. In some situations, e.g. in the case of Anne and Bert, the opportunity to do so is symmetrical. Both parties are on a par in the sense that they jointly define the game, and both can switch to a different game – Bert could have tried to mislead Anne in the same way as Anne misled him. In other cases, one party asymmetrically defines the game, and the other party can either accept or reject this game, but cannot suggest a different game. In the job market, candidates usually cannot switch to the game of “how much do we have to offer?,” although if they have other offers they can switch to a game of “can you make me a better offer than others?”

Finally, one can also distinguish between malevolent and benevolent acts of misleading about the game. In “malevolent” cases the person who misleads others does so in order to further her own interests, at the costs of others’ interests. One can imagine, at least as a theoretical possibility and as a point of comparison, that someone does so in order to further the interests of the person she misleads. For example, a benevolent HR officer might want a certain candidate to be hired, but realizes that he might, out of naiveté and inexperience, demand far too high a salary. It would be better for the candidate if he did not push his luck too far. In such a situation, the HR officer could attempt to mislead the candidate about the game he is in, in order to prevent him from harming himself by making demands that are perceived as impertinent, which would lead to him not getting an offer at all.

4 The wrongness of misleading about the game

How can we evaluate the phenomenon of misleading about the game from a normative perspective? Act consequentialism, which takes into account the interests of the individuals involved in concrete cases, does not get us very far, because all depends on the circumstances and the concrete constellation of interests. For example, if Anne’s company is under pressure and she might have to lay off employees if she does not get a good deal, it may seem justified to trick Bert into revealing the upper limit of his budget – unless there is some even weightier interest on *his* side. In a case of benevolent misleading,

there would not be any “moral remainder” from this perspective; a result many commentators would reject as implausible. Instead of act consequentialism, I suggest three other normative angles that allow us to grasp what might be wrong about such cases, but also to distinguish between the different varieties of the phenomenon distinguished above.

4.1 Deontological constraints

A promising candidate for understanding what is wrong with acts of misleading about the game, at least intentional ones, is the imperative to treat others with respect and not to use them as instruments of one’s own will, which creates deontological constraints on how we may treat them. The way in which Anne treated Bert implies that she put her own will and interests above his, not treating him as an independent agent worthy of respect. With regard to a similar constellation, the unilateral subversion of practices, Schapiro notes that what is problematic about it is that “it makes you end up serving a unilateral will” (2003, 345). This one-sidedness also characterizes cases of being intentionally misled about the game one is in. They can be described as a form of manipulation in which the other person is not treated with the respect owed her as moral equal.⁵ This is morally problematic, no matter whether it is a case of catching others unawares or of playing on their ignorance; it seems wrong in symmetrical as well as asymmetrical cases. It also explains why even in benevolent cases, there is a “moral remainder”: it remains the case that treating someone in this way expresses a lack of respect, even if this failure may be outweighed by good consequences.

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It is interesting to note that in many cases, the strategy of misleading others about the game cannot be revealed to them without destroying its effectiveness. It could hardly be translated into a general law, in the sense of Kant’s categorical imperative, without undermining the conditions under which it

5 In the philosophical debate, various suggestions have been put forward for how exactly to understand the wrongness of manipulation. For example, is deception a necessary element, or is it necessary to address non-rational aspects of the object of manipulation? (for an overview of the debate see Coons/Weber 2014, 9ff.). What unites different cases of manipulation, as Coon and Weber argue, is that the manipulator (A) shows a lack of consideration for the object of manipulation (B) that cannot be generalized: when A influences B, she has “no regard for whether the influence *makes sense* to the manipulator were he or she the person being influenced” (ibid., 13, cf. similarly Gorin 2014). This criterion is sufficiently general to also capture (at least some versions of) the phenomenon of misleading about the game. An important difference between manipulation and misleading about the game, however, is that manipulation – at least as usually understood in the debate – concerns processes of reflection and the formation of preferences. Acts of misleading about the game do not “intrude” into an agent’s inner life, but rather set up a trap in her environment, which concerns the agent’s immediate behavior, not so much her processes of reflection and the formation of her preferences.

is possible to use it. If everyone tried to mislead others about the game they are in, the social norms on which such maneuvers rely would break down, just as the institution of a promise would break down if everyone broke their promises.

The deontological constraint is especially plausible for ruling out cases of misleading about the game in which the other party was genuinely ignorant about the norms in question. For cases that play on lack of awareness, however, an objection might be raised: an argument from consent. It might be said that there are situations in which both parties agree, implicitly or explicitly, to treat one another not according to standards of complete openness and honesty, but to allow strategic behavior. This is more plausible when the situation is symmetrical, i.e. when both parties jointly define what the game is, but we can also imagine cases in which an individual consents to a situation that is unilaterally defined by another person, but in which strategic behavior is permitted. Here, as in “the sound and the fury” phenomena discussed by Shapiro, one question is how to establish that genuine consent has been given. It might be said that by initiating certain forms of social interaction, individuals agree to by their rules, and also agree to let others play by them. One might say that they have consciously and voluntarily entered a game (or meta-game), e.g. “business negotiations,” that allows participants to use various tricks, including misleading about the game, once they are on the playing field.

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To be sure, there is something disingenuous about misleading others about the game they are in. It exploits our less-than-fully-rational nature: our tendency to follow cues, to jump to conclusions, or to be swayed by the heat of the moment, e.g. by an intense discussion in which we jointly tackle technical problems. This happens to the overwhelming majority of people from time to time, and it seems not especially virtuous to abuse this tendency. Nonetheless, it might be said that in certain situations, we simply have to be on guard, and if we behave less-than-fully-rationally, others cannot be blamed for taking advantage of this fact. Such arguments seem somewhat plausible for business contexts or legal contexts in which parties have conflicting interests. There has been some debate about the permissibility of deviating from everyday moral standards in such situations.⁶ For the sake of argument, we can assume that it is sometimes the case that by entering certain games, we implicitly agree to being treated in ways that would violate deontological constraints if they took place elsewhere.

6 See e.g. Dees / Cramton (1991) on a “trust based” perspective on business ethics that argues that situations *with* trust, or in which trust can be *built*, need to be distinguished from other kinds of situations. For the context of law, Applebaum (1996, chap. 6), provides a discussion of the conditions under which “adversarial” behavior that deviates from everyday morality can be justified. As he argues, such deviations are possible, but the conditions for them to be legitimate are far more stringent than is often assumed.

Some of the ambiguity about the case of Anne and Bert can be explained by the fact that we do not know whether or not implicit consent can be assumed. Some might say that it was Bert who made a mistake by not being on guard. He should have kept in mind that the broader context was one of business negotiations, and should have been more careful not to reveal strategically important information. One can imagine different versions of the story in which this is more or less plausible. For example, Anne might have a reputation as a shrewd businesswoman, or it might be known that she fights tooth and nail to keep her company in business. In a different version, Anne and Bert might have cooperated before and some level of mutual trust might have developed between them, or they might work in an industry in which there are high standards of honesty and fair dealing. Depending on such details, it can be more or less plausible to blame Bert rather than Anne. What makes this more likely in the example of Anne and Bert is the fact that their relation is symmetrical: both jointly defined their situation, and both could try to play tricks on each other.

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Thus, while consent can *sometimes* remove deontological constraints, the argument remains limited in scope. While there can be cases in which normatively meaningful consent – i.e. fully informed, voluntary, and rational consent – can be presupposed, especially in symmetrical cases, this does not cover all cases. It rules out cases in which individuals genuinely could not expect that someone would mislead them about the game.⁷ It is important to note, however, that this argument is difficult to apply to cases of *unintentional* misleading about the game. If there is no intention to treat others instrumentally, it seems difficult to hold that a duty of respect has been violated – unless one postulates a duty to make sure that even unintentional acts of misleading about the game do not happen, so that a failure to do so is a case of culpable negligence. As we shall see, there are good reasons for doing so.

4.2 Free-riding on the cultural infrastructure

Acts of misleading about the game blur the boundaries between games, or abruptly switch between different games, in ways that the other party does not expect. This is only possible against the background of social

⁷ To take an extreme case: there have been reports about an undercover agent who started a romantic relationship with a woman in order to spy on her and her group of friends, who were environmental activists (<http://www.theguardian.com/commentis-free/2015/jul/28/relationships-undercover-officers-lies-mark-kennedy-police>). When the woman discovered his true identity, the agent left in a hurry, leaving her devastated and deeply unsettled. In this case, there were probably many lies and deceptions involved – but we can imagine a scenario in which it happened without any direct lies, because most individuals do not explicitly ask their romantic interests whether they might be undercover agents, which means that direct lies might not be necessary.

differentiation: in different social spheres, different social norms prevail. These social norms protect something valuable, namely the opportunity to live a life that contains different social games, with different epistemic situations. More specifically, what is protected is the ability to maintain *some* games in which we can trust others, rely on their words, and do not have to fully concentrate on opportunities that they might seize in order to mislead us. Without social norms that single out certain situations as “trust games,” as it were, the default epistemic attitude would have to be the expectation that other individuals (maybe with the exception of close family members and friends) are epistemically non-cooperative, so that in order to protect our interests, we would, at any point in time, have to be maximally on guard.

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When someone misleads another person about the game she is in, she free-rides on these valuable social norms: she draws on them, but does not help maintain them. In order to be stable, social norms need reinforcement: most individuals, most of the time, need to obey them and sanction deviations, otherwise the norms can easily unravel. Nonetheless, it can be tempting for individuals to deviate from them for their own benefit. The situation has the structure of a prisoner’s dilemma: it is collectively rational to maintain these norms, but individually rational to deviate from them in order to pursue one’s own interests. One can condemn such free-riding from different moral perspectives: from a contractualist perspective, it violates the conditions of the possibility of certain forms of cooperation; from a (rule-) consequentialist perspective it destroys opportunities for increasing total welfare. By postulating a duty not to mislead others about the game, we preserve a cultural infrastructure that protects our interests even in situations in which we do not pay full attention, or do not know the subtleties of the social norms invoked.

“So what?” someone might say, “it’s a cold world out there. Why should I stick to these norms rather than pursue my own interests?” But the picture suggested by this remark is deeply at odds with what we know about human cognition and about the ways in which it depends on supporting structures in the external world. Human beings are not Cartesian egos, completely autonomous and independent of external support. Rather, they constantly use what philosophers of mind have called “scaffolding” in order to improve their cognitive and volitional capacities – from pen and paper for memorizing things, to maps or computer programs that help us find our way.⁸ As one scholar put it: “it is the human brain *plus* these chunks of external scaffolding that finally constitutes the smart, rational inference engine we call mind”

8 E.g. Clark 1996, 45. As he notes, the term has its roots in the work of Soviet psychologist Lev Vygotsky.

(Clark 1996, 180). We are embodied creatures, not Leibnizian monads, and we have adapted to a material and social world.

The cultural infrastructure that helps us to navigate the complex social world we live in can also be understood as a form of “scaffolding.” In some games, we trust others almost unconditionally; in others, we want to make sure that we possess the right level of alertness, and so on. If we know that there are some games in which we better not trust others too easily and which ones these are, we can prepare ourselves. For example, we might avoid such spheres when we have a headache and have trouble concentrating.

If we do not know which game we are in, however, we feel at a loss. We do not know how to behave and what level of alertness to exhibit. Sometimes, we may be able to creatively make up the rules of the game as we go along, especially if we are in symmetrical situations in which we can do so together. But in many situations, there are preexisting asymmetries of power that make it hard or impossible to play a part in defining the rules of the game. Even if it turns out that we did not make any “mistakes” in the sense we have fallen into a trap set up by others, we are often stressed out by such situations. If we had to live with the constant fear that some individuals might trick us by blurring the boundaries of different games, this would make our lives very strenuous: we would always have to look out for signs that reassure us about the game we are in, in order to make sure that we are not being misled. Social norms help us to decide when we are justified in letting our guard down and speak and act spontaneously, on the assumption that others will not exploit this fact. This is a collective achievement that is worth protecting.

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The maintenance of the cultural infrastructure that helps us differentiate between different spheres can be understood in analogy to the maintenance of an epistemic regime in which truthfulness is the norm. Williams provides a compelling genealogical account of why we should endorse such a norm, starting from the fact that human beings practice an “epistemic division of labor”: they pool information, relying on others for observations or other forms of knowledge that they have not acquired themselves (2002, 43f.). To do this successfully, Williams argues, the virtues of “accuracy” and “sincerity” are needed, to resist the temptations of “fantasy” and “wish” and the temptation to avoid costly “investigative investments” in acquiring correct information.⁹ In other words, the members of the group that Williams imagines need to overcome a prisoner’s dilemma: for each of them, it is easier not to make such investments and to free-ride on others contributing knowledge, but this is collectively irrational, as it leads, by assumption, to an underinvestment in the acquisition of knowledge. This is why we should endorse

9 Ibid., chap. 5 and 6.

the virtues of “accuracy” and “sincerity,” and why strong social norms against lying and misleading are appropriate.

A parallel argument can be made for maintaining the cultural infrastructure of social norms that signal which game we are in: whether it is appropriate to trust one another or whether we need to be on guard, whether we can be spontaneous and share personal information or whether we need to factor in that it might be used against us. The fallback option, outside the circle of one’s close allies, is to be on guard as much as possible, so what these norms make possible is the creation of protected spaces in which we play different games, with higher degrees of trust and openness. Maintaining them, however, requires more than “accuracy” and “sincerity;” it also requires that we are open about the game we are in.¹⁰ This is why there is a moral remainder if we mislead others about the game they are in – even if, and especially when, we accept that there are some games, e.g. business negotiations, in which we do not have to be fully open.

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To be sure, not every single instance of free-riding contributes to the undermining of a social norm. Many social norms are fuzzy around the edges and tolerate some violations. But violations, if left unsanctioned, can nonetheless have wider implications: norms can unravel because violations are perceived by others as signals that the norms are not valid. From a consequentialist perspective, these can be described as “spirals,” in the sense of the term introduced by Jonathan Glover: actions can have “an influence on people,” which is then “repeated” and thus snowballs into a larger effect (1975, 179f.). While a contractualist would condemn acts of free-riding as wrong in themselves, a consequentialist would probably distinguish between cases in which such further effects are more or less likely. For example, if Anne’s behavior towards Bert is widely visible within their industry, and contributes to the destruction of beneficial norms of honesty and collegial collaboration, a consequentialist would evaluate this case differently from a one-off scenario in which no one but Bert is affected. What is interesting to note, however, is that this perspective captures the wrongness not only of intentional, but also of unintentional acts of misleading about the game: an act of unintentional misleading expresses a lack of attention to social norms that we all have a co-responsibility to protect, and can therefore also be morally wrong.

10 This can be understood as an “other-directed epistemic virtue,” in the way in which de Bruin, for example, describes “epistemic generosity”: it helps *others* to acquire knowledge (De Bruin 2015, 53ff.; see also Kawall 2002); sometimes it can also include genuine moral generosity if it allows others to better pursue their interests. But while such generosity is usually understood as addressing the person we are directly interacting with, honesty about the game one is in also protects a *general* good: the ability to maintain certain norms that we all benefit from.

4.3 Implicit discrimination

A third perspective from which to judge acts of misleading about the game asks who is most likely to be their victim. Many such manoeuvres will hit individuals randomly, especially those that try to catch us unaware.¹¹ But we can nonetheless expect that the phenomenon reinforces existing inequalities in our societies. This is true in particular for versions that play on individuals' genuine ignorance of social norms. Individuals from different backgrounds, e.g. along lines of gender, race, or class,¹² have differential access to, and opportunities to internalize, knowledge about context-specific norms, for example the norms that govern job negotiations. This can lead to serious disadvantages, no matter whether a potential employer intentionally misleads them or whether she is simply inattentive to the applicant's lack of understanding. This is particularly problematic when situations are asymmetrical, with one party defining the game and the epistemic situation: if the other party lacks relevant social and cultural capital, it is very likely that she ends up in a position in which it is hard or impossible for her to defend her legitimate interests.

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Most individuals are more likely to share knowledge with individuals with similar socio-economic characteristics, i.e. family members or friends. This creates a structural asymmetry that can coexist with formally equal conditions. Acts of intentional or unintentional misleading about the game can take place without any direct discrimination against atypical candidates. The kind of social knowledge they need to move smoothly through, say, job negotiations, can be difficult to acquire if one has not acquired it during one's early socialization, because so much of it is implicit. Even if it can be acquired later in life – for example by reading guidebooks on how job negotiations work – there is still an asymmetry between those who acquire it automatically and without effort, and those who have to carry costs, both literally and metaphorically, to acquire it. These additional costs make it harder for “outsiders” to pursue their interests. To be sure, acts of misleading about the game are not the only phenomenon that plays a role in explaining their

11 However, in a discussion of manipulation, Cholbi (2014) argues that “ego depletion,” i.e. the phenomenon that self-control can be depleted, is an important factor for understanding poverty, because poor individuals often have to exercise a high degree of self-control and are therefore more vulnerable to manipulators. Similarly, exercising self-control needed for remaining attentive to the cues that define the epistemic situation is probably more difficult for individuals who have to exercise self-control in many other areas as well, which is more likely for poor and disadvantaged individuals.

12 These run along similar, but not necessarily identical, lines as those analyzed in Fricker's (2007) account of epistemic injustice. It seems likely that these phenomena often go together.

disadvantaged position. But it is one worth noting, if only it is usually too subtle to be grasped by the tools of legal regulation.

Our complex social world with its various social games and epistemic situations, which may look like a wonderful playing field full of opportunities for various kinds of interactions to those familiar with the social norms, can look very unfriendly to those who have trouble understanding these norms. What is helpful social scaffolding for those who can read the signals, can be a dangerous trap for those who cannot. Moving in spheres in which one fears being misled about the game can require a lot of energy. It might be one of the reasons for why individuals from atypical backgrounds are reluctant to enter certain social spheres at all. It is safer to stick to the games one is familiar with, which one can play on an equal footing, than to enter games in which the rules are set by others, and in which one fears getting caught in a trap. If this is the case, the phenomenon compromises basic norms of equality of opportunity.

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We can think about a version of the story of Anne and Bert in which these additional factors have to be considered for arriving at a correct moral evaluation. Assume, for example, that Bert is a newcomer in the industry, maybe the first member of his family to have gone to college and to have gotten a professional job. He may have had few opportunities for mentoring or networking in order to “learn the ropes.” In this case, it seems far more problematic that Anne plays her trick of asking strategic questions in unexpected moments, and Bert could rightly complain about it.

But what if Bert is a really street-smart guy and manages to play such a trick on Anne, who – by assumption – is in a well-established, privileged position? We may have some sympathy with the clever underdog who manages to outwit privileged individuals in order to pursue his interests, and we may also have some sympathies with such a person misleading others about the game they are in. But we could still hold that this behavior is wrong in a *pro tanto* sense, and that our sympathy can be explained by other factors that outweigh this wrongness. In fact, I venture the guess that our sympathy stems from the fact that we instinctively assume that normally, the situation is reversed – normally, it is the underdog who is misled about the game he is in. Maybe it is the very fact that an underdog can sometimes beat his opponents at their own game that makes us feel a vicarious triumph in such cases.

5 Conclusion

In this paper I have discussed the phenomenon of misleading about the game you are in, which is different from lies or acts of misleading by implication. I have analyzed its wrongness in terms of a violation of a duty of respect,

at least when the other party has not consented to such treatment, in terms of undermining the cultural infrastructure of social norms that demarcate different spheres in which different games are played, and in terms of discrimination against atypical candidates. In this concluding section, let me briefly comment on some practical implications that can be drawn from these reflections.

Like many other phenomena of deception and discrimination, the phenomenon of misleading about the game draws on subtleties that lie below the radar of formal regulation. This should not surprise us: this phenomenon has to do both with informal social norms and, at least in some versions, with less-than-fully-rational behavioral tendencies, the effects of which are highly context-dependent. This is why approaches beyond the law are required to address the problem: we have to find other ways of changing the norms that make it possible, and of holding others morally accountable where we cannot hold them legally accountable. This seems particularly relevant in the labor market, which plays a crucial role for the distribution of opportunities, resources, power, and influence in our societies. Take the example of an HR officer who interviews job candidates, some of whom come from disadvantaged backgrounds. Misleading them about the game they are in can be a way of letting them appear unqualified in comparison to other candidates. This can probably be done in ways that would not violate any formal norms of non-discrimination, and would hence be difficult to capture in legal terms. This means that they have to be countered in different ways.

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We can here draw on a proposal recently brought forward by de Bruin in the context of applied epistemology (2015, chap. 7). He develops the ideal of “interlucency” for describing epistemic situations in which the sender and the recipient of information mutually support one another in making sure that they successfully share knowledge, for example by providing feedback on how they understand certain points or by granting requests to repeat or clarify issues. As de Bruin describes it, “[t]he recipient has to acknowledge receipt of the message and must try to make clear how she understands the message. Both sender and recipient have to contribute to sufficient openness concerning the communication and interpretation strategies they use in order that epistemic generosity gets off the ground” (2015, 163). Similarly, partners in conversation can make clear to one another which game and which epistemic situation they are in. If one party thinks that the other party violates the rules applying to this epistemic situation, it should be possible to pause the conversation and to move to a meta-level, in order to discuss what is going on. This seems all the more important the more “strategic” these games are. If such games are justifiable at all, it is essential to make sure that all parties know what they are up to.

Another lesson to draw from the analysis of the phenomenon of misleading about the game is the need for mentoring and acculturation in order to enable atypical candidates to enter games that had hitherto been inaccessible for them. Mentoring and acculturation through personal networks can help candidates to understand the games that are being played in different social spheres. This enables them to participate in them on a more equal footing, rather than being vulnerable to all kinds of intentional or unintentional acts of misleading. Misleading others about the game they are in can be a tool for maintaining unjust privileges, while mentorship and networks can be instruments for strengthening individuals to storm these bastions. But in many instances of the phenomenon we can probably also defend a duty of those who are in a position of power or act as gatekeepers not to mislead others about the game they are in, whether intentionally or unintentionally. Thus, with regard to the social discrimination that can happen by misleading others about the game they are in, an *ethos* of justice is needed. But this should not surprise us: if social norms are powerful tools for protecting privilege, changing them is of paramount importance for creating a more just society as well.

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Liza Hercog

Igra u kojoj si: obmanjivanje kroz socijalne norme
i šta je pogrešno u vezi sa tim

Apstrakt

U članku se razmatra fenomen obmanjivanja u vezi sa „igrom u kojoj jesi“. Individue koje na ovaj način obmanjuju druge iskorišćavaju činjenicu da se oslanjamo na socijalne norme pri regulisanju stepena opreznosti, otvorenosti i poverenja, koje upotrebljavamo u različitim epistemičkim situacijama. Pretvarajući se da učestvuju u izvesnoj igri sa izvesnom epistemičkom situacijom, oni mogu primamiti druge da otkriju informaciju ili da pokažu manje stepene obazrivosti, time idući protiv sopstvenih interesa. Razgraničavam ovaj fenomen od neposredne laži i implicitnih činova obmane, i razmatram neke njegove varijacije. Potom pitam zašto i pod kojim uslovima je moralno pogrešno obmanjivati druge o igri u kojoj jesu. Razlikujem tri normativna ugla za razumevanje tog fenomena: deontološka ograničenja, iskorišćavanje zajedničke kulturne infrastrukture i implicitnu diskriminaciju stranaca i atipičnih aspiranata. Zaključujem kratkim raspravljanjem nekih praktičnih implikacija.

Cljučne reči: epistemičke situacije, laganje, obmana, socijalne norme