

'Public Standards, Ethics and Entrapment', University of Liverpool

Entrapment and its Ethics

Daniel Hill, Stephen McLeod & Attila Tanyi

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Terminological Preliminaries

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- ▶ ... which is not to say that it is *illegal* (though it may be).

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- ▶ Whether the *target* ought to be held (morally or legally) *responsible* is a third.

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- ▶ the agents (intend to) *arrest* the target for having committed it;
- ▶ *counterfactual condition*: if it were not for the agents' actions then the token (as opposed to type of) crime would not have been committed by the target.

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- ▶ So merely asking a suspected drug dealer whether they have any drugs (rather than actively asking the suspect to sell drugs), does not, on this definition, count as entrapment.

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 - ▶ *counterfactual condition*: the target would not have committed the particular crime but for the agents' having procured it.

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- ▶ However, the *observation* condition is also too strong and might (at least as a first step) be replaced by an *intended detectability* condition:
 - ▶ the agent intends the target's criminal act to be *detectable*.

The Intended Detectability Condition: Better than the Observation Condition

- ▶ Suppose that an agent has deceived a target, planned for the target to commit a crime, induced the target to commit it and that the agent intends to observe it.

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- ▶ While travelling to the scene, the agent is involved in a car accident. The agent arrives at the crime scene an hour after the crime happened. There were no witnesses.
- ▶ While the target was running away from the scene, fibres from the target's clothing, containing his DNA, were left behind on a screw that was jutting out of a doorway.

The Intended Detectability Condition: Better than the Observation Condition [contd]

- ▶ The agent had planned that the crime would be detectable, because the agent intended to witness it.

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- ▶ While the agent did not intend the *manner* in which the actual crime was detectable, for the snagging of the fibres on the screw was purely an accident, the agent did intend *that* the crime should be detectable.
- ▶ This counts as a successful case of entrapment (even if the agent himself or herself does not manage to secure either an arrest or observation of the criminal act).

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 - ▶ we do *not* have a case of entrapment.

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- ▶ Adopting the intended detectability criterion, instead of the (intended) observation condition, desirably avoids the result that such a case of criminal collusion counts as a case of entrapment.

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- ▶ Entrapment may be defined more generally by dropping the reference to law-enforcement agents and widening the class of induced acts.

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- ▶ prior to the target's committing of the act, the agent intends to exercise, or intends that a third party might exercise, *the power to expose the target*.

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- ▶ Nevertheless, we think it an improvement on the other definitions so far discussed.

Argument from Immorality of Deception

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- ▶ The sorts of deception involved in entrapment, such as pretending to occupy a social role that one actually does not occupy (e.g., criminal, company director), are unlikely to be morally innocuous.
- ▶ Rather, they constitute *prima facie* evils.

Argument from Induction of Offence

The power of government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and bring about the downfall of those who, left to themselves might well have obeyed the law. Human nature is weak enough and sufficiently beset by temptations without government adding to them and generating crime.

(Justice Frankfurter, quoted by Stitt and James (1984, 123)).

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- ▶ In the words of Dworkin (1985, 24), entrapment *creates* rather than *discovers* crime.
- ▶ Dworkin (*ibid.*) considers this the 'central moral concern'.

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- ▶ There is an epistemological gap between the entrapment scenario and unobserved scenarios.

Strengthening of the Limitation Argument [contd]

[...] no one should ever be tested to see if he or she will break a law unless there is sufficient evidence to show that the person is engaged in on-going criminal activity. And, even then, only an opportunity for the individual to commit a crime should be provided. Suggesting the crime or aiding the person to commit it should be prohibited.

(Stitt and James 1984, 125–126); compare (Dworkin 1985, 31)

Argument from Incoherence

[. . .] for a law enforcement official to encourage, suggest, or invite crime is to, in effect, be saying 'Do this'. It is certainly unfair to the citizen to be invited to do that which the law forbids him to do. But it is more than unfair; it is conceptually incoherent.

(Dworkin 1985, 32)

Suggesting the commission of a crime, even to wicked people, is not a legitimate function of a system of law enforcement.

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Arguments from Moral Danger

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- ▶ If the impression is given that 'trickery and fraud are acceptable' in certain entrapment scenarios, then 'it is highly likely that these methods will be thought acceptable elsewhere' (Stitt and James 1984, 128).

Arguments from Moral Danger

- ▶ Entrapment is widely open to such abuses as victimization of personal or political enemies, the silencing of opponents and blackmail (Stitt and James 1984, 125).
- ▶ If the impression is given that 'trickery and fraud are acceptable' in certain entrapment scenarios, then 'it is highly likely that these methods will be thought acceptable elsewhere' (Stitt and James 1984, 128).
- ▶ The implicit suggestion in the second argument from moral danger would seem to be that trickery and fraud are intrinsically wrong means, no matter what the end might be.

The Public Interest Defence

Journalists can ethically engage in deceptive behaviour in the service of the important goal of informing the public of the actions of the officials who claim to represent them, or whose decisions impact significantly upon their lives. [...] [This] does not give them the right to induce criminal or immoral behaviour on the part of ordinary citizens. There is no public interest in knowing whether such people are corrupt or bad.

(Levy 2002, 128)

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- ▶ Without resort to entrapment in the criminal justice system, it will suffer from an inherent class bias.
- ▶ Similarly, without resort to entrapment, media exposés will suffer from an inherent class bias.

- Dworkin, G., 1985. The serpent beguiled me and I did eat: Entrapment and the creation of crime, *Law and Philosophy*, 4, 17–39.
- Levy, N., 2002. In defence of entrapment in journalism (and beyond), *Journal of Applied Philosophy*, 19, 121–130.
- Marx, G., 1982. Who really gets stung? Some issues raised by the new police undercover work, *Crime and Delinquency*, 28, 165–193.
- Stitt, B.G. and James, G.G., 1984. Entrapment and the entrapment defense: Dilemmas for a democratic society, *Law and Philosophy*, 3, 111–132.