

# Entrapment, Temptation, and Virtue Testing

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# Summary

- Topic: the ethics of the entrapping, intentionally tempting, or intentionally testing the virtue of one party (the 'target') by another (the 'agent').
- We classify three types of act:
  - Entrapment (e.g. asking for drugs in order to arrest the target in the act)
  - (mere) intentional temptation (e.g. leaving a wallet out to catch a thief)
  - (mere) virtue testing (e.g. leaving a wallet out to prove honesty)
- Our classification is neutral concerning whether the agent acts permissibly.
- We explain why entrapment is worse than (mere) intentional temptation.
- Our argument applies to undercover journalists as well as police officers.

# Necessary & sufficient conditions for entrapment

Here we build on our 2018 paper [‘The Concept of Entrapment’](#).

- (i) an agent plans that a particular act, *A*, be committed;
- (ii) *A* is criminal, immoral, embarrassing, or socially frowned upon;
- (iii) the agent procures *A* (by solicitation, persuasion, or incitement);
- (iv) the agent intends that *A* should, in principle, be traceable to the target by evidence that would link the target to *A*;
- (v) the agent intends to be enabled, or intends that a third party be enabled, to prosecute or expose the target for having performed *A*.

# Procurement

- We employ a very specific understanding of procurement.
- To procure, the agent must have an intentional influence, via directly related communicative acts, on the target's will.
- If all that the agent does is intentionally present the target with the opportunity to perform the act, then there is no procurement, and, hence, no entrapment.
- If the agent engages only in indirectly related communicative acts, then there is no entrapment: e.g. if an undercover officer says 'I've got lots of money on me' to entice a mugger.

# Temptation

- Temptation primarily concerns the emotions, not actions.
- When a target is tempted, the target experiences an urge to perform an act, *A*, while also being to some degree internally conflicted about that urge (cf. [Hughes 2006a](#); [2006b](#)).
- If the target feels tempted to perform *A* and, as a direct result, attempts to perform *A*, then the target has succumbed to temptation (even if the attempt to perform *A* is unsuccessful).

# Entrapment vs temptation

- Being entrapped into performing *A* is not the same as performing *A* as a direct result of temptation.
- Entrapment essentially involves procurement, that is, certain directly related communicative acts.
- For there to be temptation, however, there need not be any procurement, or attempted procurement, of *A*.
- Just leaving a wallet out would not be procurement; saying to the target ‘why not steal it?’ would be procurement.

# Virtue Testing

- *Virtue testing* is distinct from intentional temptation.
- Virtue testing occurs when an agent intentionally presents a target with an opportunity to perform *A*, in order to discover (or demonstrate) whether the target is disposed to perform *A*.
- In virtue testing, the agent presents the target with the opportunity for doing *A*, but need not have the intention that the target perform, or be tempted to perform, *A*, and the agent need not procure *A*.

# Trust vs temptation

- Whenever we trust someone, we intentionally present them with an opportunity to do wrong.
- Trusting someone is not the same as tempting them, though it may be a test for them.
- When an agent intentionally tempts a target, the agent presents the target with the opportunity to do A, intending that the target will experience an urge to do A.
- The agent might leave a wallet out intending that the target prove their honesty and feel no urge at all to steal.



# Hughes's linking of entrapment and temptation

- *Entrapment must involve the intentional temptation of the target by the agent.*
- *Entrapment, like intentional temptation in general, compromises or undermines the autonomy of the entrapped.*
- *Autonomy is required for reasonable ascriptions of moral and legal responsibility.*
- *Hence, the moral problem with entrapment is that it defeats an essential condition of criminal liability. ([Hughes 2004](#))*

# Response to Hughes (2004)

- Not all cases of entrapment involve intentional temptation.
- All the agent need intend to entrap is that the target intentionally perform *A*.
- An agent might procure *A* intending that the target be properly held culpable for *A*, and intending that the target merely perform *A*, i.e. perform *A* with no ambivalence or mental anguish, rather than perform *A* as a direct result of having been tempted.
- Such an agent intends that the target be *motivated* to perform *A*, but does not intend that the target be *tempted* to perform *A*.

# A better argument: from Moral Alliance

- (1) In entrapment the agent procures the target's performance of *A*.
  - (2) An agent that procures *A* thereby becomes more closely *morally allied* with *A* than would have been the case if the agent had (other things being equal) merely intentionally tempted the target into performing *A* (that is, without attempting to procure *A*).
  - (3) The more closely morally allied the agent is with *A* then, other things being equal, the morally worse the agent's action is.
- (C) An agent that procures *A* thereby acts in a morally worse way than if the agent had (other things being equal) merely intentionally tempted the target into performing *A* (i.e., without attempting to procure *A*).

# Entrapment from an agent-centred view

- Entrapment to perform *A* is morally bad, from an agent-centred point of view, because it allies the agent, via their procurement (or attempted procurement) of it, with *A*.
- The attempted procurement of the act involves the agent in commending, requesting, or enjoining the performance of *A*.
- Compare: lying is worse, other things being equal, than mere deception.
- In lying, one allies oneself, via one's verbal act, more deeply with the false content than one does in mere deception.

# Example of entrapment vs mere presentation

- Suppose that the agent is wondering how to get the target to perform impermissible act *A*.
- The agent might decide to entrap the target by enjoining him to do *A*.
- Or the agent might decide merely to present to the target the opportunity to do *A*, hoping the target will see this opportunity as alluring, but without enjoining it or recommending it in any way.
- Other things being equal, the first option is morally worse, we say.
- This is because in performing the communicative acts that are intended to procure *A*, the agent becomes strongly *allied* with *A*.

# Comparison: lying vs deception

- Suppose that the agent is wondering how to get the target to hold a false belief, *B*.
- The agent might lie to the target by asserting *B*'s false content.
- Or the agent might decide merely to deceive the target into holding *B*, by (say) silently giving the target a book asserting *B*'s content.
- Other things being equal, the first option is morally worse.
- This is because in performing the communicative act of asserting *B*'s content, the agent becomes strongly *allied* with *B*'s content.

## Entrapment worse than mere temptation: argument

- Consider the reaction of the target on realizing they have been entrapped.
- The target may say ‘but you asked/advised/told me to!’.
- It seems to us that this protest carries force.
- To see the contrast, suppose that the target has instead been *merely tempted* into performing A, i.e. there has been no procurement.
- Here the protest ‘but you *intentionally tempted* me to do it’ does not seem to us to carry the same force.

# Conclusion

- A big ethical problem with entrapment is moral alliance.
- Entrapment to perform *A* is morally bad, from an agent-centred point of view, because (perhaps among other reasons) it allies the agent, via the agent's procurement, or attempted procurement, of it, with *A*.
- The procurement, or attempted procurement, of *A* involves the agent in commending, requesting, or enjoining *A*.
- Entrapment is harder for an agent morally to justify than is mere temptation (and mere virtue testing).



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