

Public Standards, Ethics and Entrapment

The idea for this project arose from the case, in February 2015, of ‘cash for access’ allegations against two former UK foreign secretaries, Malcolm Rifkind and Jack Straw, following entrapment by the *Daily Telegraph* working in conjunction with the *Channel 4* television programme ‘Dispatches’. As a result of their filmed interactions with journalists posing as representatives of a communications agency, Rifkind and Straw both referred themselves to the Parliamentary Commissioner for Standards. Straw withdrew from the Parliamentary Labour Party, pending the Commissioner’s investigation, and did not stand for re-election in 2015. Rifkind resigned, after some publicly expressed reluctance, from his position as Chair of the Parliamentary Committee on Intelligence and Security, had the Conservative whip withdrawn from him and did not seek re-election. These events had a relatively recent precedent in the *Sunday Times* ‘cash for questions’ affair in 1994. This affair resulted in the establishment, by the then Prime Minister, John Major, of the Committee on Standards in Public Life (initially chaired by Lord Nolan), which drew up ‘seven principles’ for standards in public life to which subsequent reports by that committee have frequently referred.

The video evidence gathered, under false pretences, against Rifkind and Straw, and the ensuing media coverage, suggested that they were people who were readily capable of resorting to dishonesty, including the abuse of positions, privileges and rights vested in them as public servants, and, in Rifkind’s case, lying, for their own financial gain. There can be little doubt that knowing more about the characters of these politicians was in the public interest. This alone, however, is insufficient to render ethically acceptable the manner in which the evidence against them was gathered. In addition, from the fact that the public has an interest in knowing something it does not follow that the public has an interest in knowing it by whatever means the knowledge is obtained: for a given means may itself be contrary to the public interest, and sufficiently so to nullify the gain made by attaining the knowledge.

Entrapment, whether by journalists, law-enforcement agents, or others, faces serious ethical objections to which due weight should be given *even when* the public interest can be served by the knowledge that is gained from the entrapment. The objections to entrapment stem from such considerations as these: in order successfully to entrap, the entrapping party must deceive and is highly likely to be required to lie; in successfully entrapping, the entrapping party adds to the sum of offences that are committed, when it is better that there should be fewer, rather than more, offences (Justice Frankfurter, quoted by Stitt & James 1984, 123); a successful entrapment shows only that the offender can be *induced* to offend, not that they were already an offender, whether habitual or otherwise, prior to having been entrapped (Marx 1982, 173); entrapment is a practice that is widely open to such abuses as victimization of personal or political enemies, the silencing of opponents and blackmail (Stitt & James 1984, 125). Nevertheless, there is also an argument to the effect that entrapment has an ethically unobjectionable role to play and that, for example, unless

entrapment is used as a means of detecting white-collar malpractices that are otherwise difficult to detect, the criminal justice system, and by extension, the journalistic reporting of malpractice, will suffer from an inherent class bias (given that blue-collar malpractice is typically more easily detectable without resort to entrapment) (Levy 2002).

The foregoing considerations lead to the main research question of this project. What *ethically acceptable* measures can be used to monitor, promote and enforce ethical standards in public life: in particular, does any kind of entrapment have an ethically permissible role to play?

Subsidiary questions with which this project is concerned, and which closely relate to this research question in the context of British public life, include the following:

- How should extra-legal (e.g., journalistic) entrapment be defined?
- Is entrapment every ethically permissible?
- If it is, what are the ethical restrictions upon it?
- If entrapment has an ethically acceptable role to play in monitoring, promoting and enforcing ethical standards in public life, what limits ought to be placed upon it?
- If information has been obtained via unethical entrapment, can it ever be permissible to act on that information? (There is analogy here with the case of information obtained by torture, as discussed in Hill 2007.)
- If it has no such role to play, how could this itself be embodied in publicly agreed ethical standards and, given their lack of specificity to one profession, how might such standards be negotiated or drawn-up?
- How, if at all, are the ethics of legal entrapment related to the ethics of journalistic entrapment? For example, do any constraints on legal entrapment extend (e.g., as Levy 2002 contends) to journalistic entrapment?
- Under what conditions, if any, should evidence gained via entrapment be considered legally admissible? How, if at all, do these conditions relate to the ethics of extra-legal entrapment?
- Can measures used to help prevent police bribery be legitimately extended to the case of other public servants?
- Whether or not entrapment is permissible, what ethically acceptable measures *could* ethically be used to monitor, promote and enforce ethical standards in public life?
- How serious and widespread is the problem of ethical malpractice in British public life likely to be (Whyte 2015), especially malpractice that might not easily be detectable without resort to entrapment?
- How do the present constitutional rules in the UK regulate public standards of behaviour? Is the absence of a codified constitution a contributory factor to corruption in British politics? Should the constitution, whether reformed and codified or otherwise, require politicians to sign away any rights not to be 'ethically tested'?
- Ought public servants to be ethically required, as a matter of public standards, and as is perhaps unintentionally suggested by the Committee on Standards in Public Life, to relinquish some aspirations, such as their own

career advancement, that are acceptable in other walks of life? How might such a requirement be structured and institutionalised in practice?

While, from a practical point-of-view, the project is primarily concerned with public standards in British political life, the theoretical aspects of the project are not bounded within any state or nation.

IV. Select Bibliography

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