

The Law and Ethics of Entrapment

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ABSTRACT

If undercover police incite someone to break the law, to make an arrest, this is state entrapment. If a private citizen incites someone to break the law, to report them, we have private entrapment. State entrapment usually compromises prosecution. Private entrapment usually does not. The police and the courts respond to it in disparate, unpredictable ways. The research project is primarily interested in state entrapment; private entrapment is of secondary interest. The focus is on three questions: definition; permissibility; implications. Rather than stemming from innocuous conventional differences, disagreements about entrapment are at heart philosophical conflicts. Philosophy has a key role to play in deepening our understanding of the assumptions that underlie debates about entrapment, the concept of entrapment, and the ethics of entrapment. This project is the first sustained, comprehensive, and specifically philosophical study of the topic. During the research stay at Tours, one chapter of a forthcoming book (Oxford) was written.

1- Introduction

System-centred objections to state entrapment, identify what is amiss about it by reference to its effects on, or evaluative implications for, social entities like the system of criminal justice. These kinds of objections are based on such claims as that entrapment brings inconsistency into the system, undermines the state's standing to condemn the target for the entrapped conduct, is apt to erode public confidence, is incompatible with equality under the law, or involves abuse of the criminal process. The integrity objection contends that entrapment conflicts with values central to a liberal legal order, threatening the system's integrity. This chapter argues that, in their best forms, other system-centred objections reduce to the integrity objection. The chapter argues that at present there is no good defence of the integrity objection. Moreover, even if the integrity objection is defensible, its defensible form cannot stand alone. Rather, it gains

traction through wrongdoing intrinsic to the entrapment scenario itself.

2- Results and discussion

This chapter began from the thought that entrapment undermines the communicative function of the criminal trial because it deprives the prosecution and the court of standing to call the target to account for the entrapped offence. The ensuing question was: why is standing lost? What, precisely, disables the prosecution and the court from addressing the target as an accountable agent? We examined two answers. The first, which we have rejected, invoked the entrapping agent's complicity in the target's wrongdoing. The second appealed to integrity: entrapment, on this view, violates the integrity of the system of criminal justice and is thereby wrongful in a way that is detrimental to the state's moral standing. How does this happen? How does integrity-violation serve as a wrongdoing-making feature of entrapment? Any answer to

this question is complicated by the fact that there are multiple conceptions of the notion of integrity. We distinguished three: integrity as integration, integrity as formal coherence (formal integrity), and integrity as moral coherence (substantive integrity). The first does not, in itself, generate an objection to entrapment. As Duff and others rightly observe, integrity-as-integration is, at bottom, a thesis about what belongs together; it neither implies, nor presupposes, that any participant in the criminal process has ‘dirtied their hands’ (to use Ho’s metaphor). In other words, a breach to integrity as integration does not assume or imply morally wrongful (or otherwise inappropriate) conduct. Even so, integrity-as-integration can operate as a transmission principle. If one part of the state—in entrapment cases, the police—engages in wrongdoing (for whatever reason), that wrongdoing may ‘ripple’ through the state. The standing of the prosecution that proceeds against the target is undermined, as is the standing of the court that is asked to pass judgment on the resulting defendant. It is then formal integrity and substantive integrity that purport to explain why this loss of standing occurs: the former by reference to a lack of formal coherence between different parts of the state apparatus; the latter by reference to the violation of values, principles, or rules said to underpin the criminal justice system. We have shown, however, that neither form of integrity does the work with which it is tasked. A formal-integrity objection to entrapment may be cast either as a charge of utterance-contradiction (a contradiction in commands or deontic assertions) or as a charge of practical incoherence (a contrariety of ends). Neither is defensible in the case of entrapment. Substantive integrity is, at least initially, more promising. Yet it ultimately founders on the question of which values, principles or rules entrapment violates. We considered a range of proposals, and the most promising candidate appeared to be the violation of fundamental rights. Besides the fact that this would no longer be a system-centred objection proper (but much more like a target-centred one to be advanced in Chapter 12), we have also found that neither the

case law nor the scholarship on entrapment has so far advanced a defensible candidate for the particular fundamental right that entrapment supposedly violates. The upshot is that entrapment cannot be rejected as wrong or impermissible on system-centred grounds that stand alone. The best case scenario appears to be one in which an integrity-based charge points to a specific fundamental right that entrapment violates. In that case, however, the objection to entrapment derives from an objection about (the violation of) the target’s rights, rather than being fundamentally system-centred. In every other case, we hope to have shown, no well-founded system-centred objection to entrapment emerges. In short, either there is no workable objection that emerges from considerations of standing and integrity, or if there such an objection then it is not, at root, a system-centred one. Our foremost task in the next chapter, therefore, is to identify a specific fundamental right that entrapment violates and that viably underpins the idea that entrapment is objectionable for system-centred reasons that are derivative of that rights violation.

3- Conclusion

Having investigated all prevalent forms of system-centred objections to entrapment, we conclude that none of them can effectively attach the morality of entrapment without at least relying on other objections to entrapment that are not system-centred.

4- Articles published in the framework of the fellowship

The fellowship’s primary aim was to work on a forthcoming book, under contract at Oxford University Press (Oxford Legal Philosophy series). One chapter was completed - Chapter 11 presently in the book manuscript. Publication of the book is expected in early 2027. In addition, not related to this project, other article drafts have also been completed or revised. One of these, ‘Naturalism, Normativity, and Reasons’ is forthcoming at *Prolegomena*. Publication is expected in June 2026. An edited volume, *Problems of Choice: Normativity, Rationality, Axiology, and Morality*, under contract at

Routledge (Routledge Studies in Ethics and Moral Theory) was also worked on. Publication is expected in late 2026. All these publications will be open access (in the case of the Routledge book after a one year embargo).

5- Acknowledgements

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6- References

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