

Entrapment

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Entrapment

Primary Disciplinary Field(s): Criminal Law, Ethics, Law Enforcement, Constitutional Law

1. Core Definition

Entrapment refers to a legal defense where a defendant argues that they were induced by law enforcement officers to commit a criminal act that they would not have otherwise committed. The essence of this defense lies in the idea that the criminal intent or design originated not with the defendant, but with the government. This distinguishes it from legitimate law enforcement practices where officers merely provide an opportunity for a predisposed individual to commit a crime. The defense challenges the ethical boundaries of police conduct, asserting that the state should not instigate criminal activity merely to secure a conviction.

The concept hinges upon two primary elements that a defendant typically must prove: first, **governmental inducement** of the crime, and second, the defendant's **lack of predisposition** to commit the crime prior to such inducement. If successful, an entrapment defense can lead to an acquittal, as it suggests that the state's actions were so egregious as to violate fundamental principles of justice and fair play. It serves as a critical check on the power of law enforcement, ensuring that investigative techniques do not cross into manufacturing crime.

Fundamentally, entrapment addresses the ethical quandary of whether an individual's criminal behavior was a result of their own free will and criminal inclination, or a direct consequence of persistent and aggressive solicitation by state agents. It questions the legitimacy of securing convictions against individuals who were unwilling or unlikely to engage in criminal conduct without the coercive or persuasive tactics of the police. This makes it a complex and often contentious area of criminal jurisprudence, balancing the need for effective law enforcement with the protection of individual liberties.

2. Etymology and Historical Development

The term "entrapment" itself, referring to the act of catching someone in a trap, predates its specific legal application. However, the legal defense of entrapment as it is understood today is a relatively modern development, primarily emerging in Anglo-American common law jurisdictions during the early 20th century. Prior to this, courts generally adhered to the principle that if a crime was committed, the circumstances of its inducement were irrelevant to the defendant's guilt. The shift in legal thinking reflected a growing concern about the ethical implications of government conduct in the apprehension of criminals.

In the United States, landmark Supreme Court cases solidified the entrapment defense. The case of *Sorrells v. United States* (1932) is often cited as the foundational decision, where the Court

established the "subjective test" for entrapment. This test focuses on the defendant's predisposition to commit the crime, asking whether the criminal intent originated in the mind of the defendant or was implanted by the government. Justice Hughes, writing for the majority, expressed concern that the government should not "implant in the mind of an innocent person the disposition to commit a criminal offense and then induce the commission of the crime so that the prosecutor may prosecute."

Further developing this jurisprudence, *Sherman v. United States* (1958) reaffirmed the subjective test, emphasizing the importance of examining the defendant's past record and character to determine predisposition, as well as the nature and extent of the government's inducement. While some justices in *Sherman* advocated for an "objective test" that would focus solely on the police conduct--whether it was likely to induce an ordinarily law-abiding person to commit the crime--the subjective test remains the predominant standard in federal courts and many state jurisdictions. The objective test, favored by a minority of jurisdictions, places emphasis on deterring improper police behavior rather than assessing the defendant's character.

3. Key Characteristics and Elements

Governmental Inducement: For an entrapment defense to succeed, there must be evidence that a law enforcement officer or an agent acting on their behalf actively induced or persuaded the defendant to commit the crime. Mere solicitation or providing an opportunity is generally not enough. Inducement implies some level of persuasion, trickery, flattery, appeals to sympathy, or even false representations that lead an individual to commit an act they otherwise would not. The intensity, persistence, and nature of the officer's actions are crucial in determining if inducement occurred. This element seeks to prevent police from manufacturing crime where it would not naturally exist.

Lack of Predisposition: This is arguably the most critical and often debated element, particularly under the subjective test. It requires the defendant to demonstrate that they were not predisposed or ready and willing to commit the crime before the government's inducement. Courts look at various factors to assess predisposition, including the defendant's prior criminal record (especially for similar offenses), their eagerness or reluctance to commit the crime, their response to the government's overtures, and whether they readily accepted the criminal opportunity once presented. The absence of predisposition suggests that the criminal intent was implanted by the state, rather than being an existing inclination of the defendant.

Origin of Criminal Intent: The core inquiry in an entrapment claim is whether the criminal design originated with the government agents rather than with the accused. If the defendant was already contemplating or planning the crime, and the government merely facilitated its commission, entrapment typically does not apply. Conversely, if the government actively put the idea into the

mind of an otherwise innocent person and then encouraged them to execute it, the defense becomes viable. This focus on the origin of intent is central to distinguishing legitimate law enforcement tactics from impermissible entrapment.

4. Significance as a Legal Defense

The defense of entrapment holds significant importance in criminal jurisprudence as it serves as a crucial safeguard against governmental overreach and unethical law enforcement practices. Its primary function is to protect individuals from being prosecuted for crimes that were essentially manufactured by the state, thereby upholding the principles of due process and fairness. By allowing defendants to challenge the circumstances under which a crime was committed, entrapment ensures that law enforcement focuses on deterring and prosecuting genuine criminal activity rather than creating it.

Moreover, entrapment acts as a deterrent against police misconduct. Without such a defense, there would be fewer checks on the methods employed by undercover officers or informants, potentially leading to widespread abuses where vulnerable individuals are coerced or manipulated into committing crimes. It compels law enforcement agencies to adhere to ethical standards, ensuring that their investigations target those who are already engaged in or predisposed to criminal behavior, rather than cultivating new criminals. This maintains public trust in the justice system and reinforces the idea that the government's role is to prevent crime, not to induce it.

In practice, invoking an entrapment defense shifts a considerable burden onto the prosecution to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime, or that there was no undue governmental inducement. This often involves a detailed examination of the interactions between the defendant and the law enforcement agent, scrutinizing communications, surveillance, and witness testimonies. While challenging to prove, a successful entrapment defense underscores the judiciary's commitment to protecting individual liberties against potentially oppressive state action, reinforcing the foundational principle that justice must not only be done but also be seen to be done fairly.

5. Debates and Criticisms

Despite its crucial role, the entrapment defense is frequently a subject of intense debate and criticism. One of the primary ethical quandaries lies in the fundamental question: "Would the person have committed the crime if it were not for the person who was 'entrapping' them?" This question highlights the inherent difficulty in assessing criminal intent and the potential for a defendant's character to be unfairly scrutinized, especially under the subjective test which delves into their past. Critics argue that focusing on predisposition can lead to a "blame the victim" mentality, where the defendant's prior actions or perceived character flaws overshadow potentially

egregious police conduct.

Another point of contention revolves around the subjective nature of determining "inducement" and "predisposition." These concepts are often open to interpretation, making entrapment cases highly fact-dependent and unpredictable. What one jury might consider undue persuasion, another might view as merely providing an opportunity. This lack of clear, objective standards can lead to inconsistent application of the defense, creating uncertainty in both law enforcement practices and legal outcomes. Furthermore, the defense can be perceived as allowing guilty individuals to escape punishment based on technicalities, especially when the defendant undeniably committed the criminal act.

Critics also point out the challenge of distinguishing genuine reluctance from a feigned resistance designed to set up an entrapment defense. Defendants, aware of the defense, might intentionally appear hesitant or unwilling during interactions with undercover officers, making it difficult for prosecutors to prove predisposition. This can complicate investigations and trials, consuming significant judicial resources. Moreover, some argue that the entrapment defense can impede legitimate undercover operations crucial for combating difficult-to-detect crimes, such as drug trafficking or organized crime, by making officers overly cautious in their engagement with potential criminals.

6. Distinction from Legitimate Undercover Operations

It is crucial to differentiate entrapment from legitimate and necessary undercover law enforcement operations, which are vital tools for combating certain types of crime, especially those that are consensual or occur in secret. The key distinction lies in the nature of the officer's involvement: legitimate operations aim to detect and apprehend individuals who are already predisposed to commit crimes, by merely providing them with an opportunity, whereas entrapment involves implanting the criminal idea and inducing an unwilling individual to act.

In a legitimate undercover operation, an officer might pose as a drug buyer, a fence for stolen goods, or a corrupt official. If a person, upon being presented with the opportunity to sell drugs, buy stolen goods, or offer a bribe, readily agrees and proceeds to commit the crime, this typically would not constitute entrapment. The officer has merely created a scenario for an already willing participant to reveal their criminal intent. The criminal design originated with the defendant, and the officer's role was confined to facilitating an existing predisposition.

Conversely, if an officer persistently persuades, pressures, or otherwise manipulates an individual who initially shows no interest or even reluctance in committing a crime, eventually wearing down their resistance, this moves into the realm of entrapment. For instance, repeatedly badgering a person with no history of drug involvement to sell drugs, offering increasingly tempting incentives, or preying on their vulnerabilities, would likely be considered inducement. The line between

providing an opportunity and creating a crime is often thin and context-dependent, necessitating careful consideration of the interaction dynamics.

7. Examples and Case Studies

A classic example illustrating the concept of entrapment, as suggested in the provided source material, involves an undercover officer posing as a sex worker. If this officer aggressively and persistently approaches an individual who initially shows no interest or declines their advances, only for the individual to eventually relent and engage in the criminal offense of prostitution due to the officer's relentless persuasion, an entrapment defense could be raised. In such a scenario, the "aggressiveness and persistence" would serve as evidence of governmental inducement, suggesting that the individual's criminal intent was not pre-existing but rather created by the officer's actions.

Consider another hypothetical scenario: an undercover agent repeatedly solicits a person with no prior criminal record to join a drug trafficking operation. Initially, the person refuses, expressing disinterest or fear of legal repercussions. However, the agent continues to pressure them, perhaps by appealing to their financial difficulties, promising a substantial payout, or even threatening them subtly. If the person eventually succumbs to this persistent pressure and participates in a drug deal, they could argue entrapment, citing the continuous inducement and their initial lack of predisposition. The defense would hinge on demonstrating that the individual was an "unwary innocent" rather than an "unwary criminal" simply awaiting an opportunity.

Contrast these examples with a situation where an undercover officer merely sets up a sting operation, such as establishing a fake storefront to buy stolen goods. If a known burglar, without any specific prompting or persuasion from the officer beyond the mere existence of the storefront, approaches the business and offers to sell stolen items, this would typically not be entrapment. Here, the criminal intent clearly originated with the burglar, and the officer simply provided a receptive environment for the crime to occur. These distinctions highlight the nuanced and fact-specific nature of entrapment claims in real-world legal contexts.

Further Reading

[Entrapment - Wikipedia](#)

[Entrapment - Legal Information Institute \(LII\) at Cornell Law School](#)

[Entrapment Generally - U.S. Department of Justice](#)