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Defenses of Entrapment in common law

Modjtaba Arab[1], Ayesheh Poranjenar[2] and Morteza Jalilzadeh[3]
[1]Department of Law, Islamic Azad University of Tehran, IRAN
[2]Department of Law, Islamic Azad University of Qom, IRAN
[3]Department of Law, Tehran University of Judicial Sciences, Tehran, IRAN

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Abstract

In majority of the American jurisdictions the approaches applied in the field of entrapment defense are either a subjective or an objective one. The differences between these two approaches have been tested by the student jurors who after viewing a recorded video of a cocaine trial were given subjective test instructions or the objective ones. There was also a change in the acceptance of prior conviction. The student jurors weighted up, made a decision, and then filled in a questionnaire which estimated their comprehension about the fact of the instructions and trial. First of all the results of this study demonstrated that the juror students have a very poor understanding about the main characteristics of the objective test. In order to simplify the instructions, it is highly recommended that the objective test be clearly described through an attempt made in this field. Arguably, where the objective test is applied it is the judge and not the jury who should make decision about the entrapment defense. Second, adaption of a prior conviction can influence effectively the decision made in the subjective test circumstances; however in the objective test circumstances, such an effect does not exist. According to this conclusion the jurors are effectively encouraged by the instructions of the subjective test to seek the evidence of guilt in the prior conviction. The words which form the instruction of the objective test could also be considered as a reason of the different effects. In the circumstances of the objective test, the juror students were directed not to consider the appellant's predisposition and just a few numbers of the jurors comprehended this standpoint of the instruction.

Keyword: Entrapment, objective test, subjective test, common law.

Introduction

In criminal cases, most of the federal courts have rejected the inconsistent defenses; however, in civil proceedings the parties are allowed to argue inconsistent positions. On several occasions the concerns about this rule which is reputed as “inconsistency rule” arise from the entrapment defense. At the present time, the federal courts of appeals have different approaches towards the question that whether other defenses could also be asserted by a criminal defendant who decides to plead entrapment. In order to resolve this issue, the Supreme Court has made some efforts. A discussion regarding the entrapment defense development has been briefly conducted and four approaches taken by the federal courts of appeals with respect to the question mentioned below have been outlined. The note of this discussion defends adherence to the inconsistency rule; however it recommends more precise definition of "inconsistency" be adopted by the courts in this context. The suggested rule would forbid a defendant from refusing a crime and claiming entrapment. However, it would not oblige a defendant to admit the crime as a necessary condition to an entrapment plea. If the government's case-in-chief defines entrapment as a matter of law, a defendant could refuse the crime or not testify at all and receive entrapment instructions[1].

It was first in Sorrells v. United States where the United States Supreme Court recognized the entrapment defense. Sorrells had been charged with selling liquor to a prohibition agent. Subsequently at the trial he claimed that he had been entrapped. The defense was rejected by the trial but the court of appeals affirmed the defense. Recognizing the sufficiency of the entrapment evidence to go to the jury, the Supreme Court recalled the judgment of the trial. Notwithstanding the fact that it acknowledged that government agents may clear up the crime by affording opportunities for its perpetration, the Court stated that "where the criminal design originates to perpetrate the alleged crime and encourage its perpetration so that they may prosecute, the question to be considered is different. The Court recognized two elements for the entrapment defense. First, the

appellant must produce evidence that the crime "was committed on the demand issued by the government officials. Secondly, after producing this evidence, the trial court must concentrate on the defendant's susceptibility to perpetrate the offence charged. The court should decide "whether the appellant is a person otherwise innocent whom the government is seeking to punish for an alleged crime which is the result of the creative activity of its own officials." The Supreme Court put emphasis on this issue that entrapment was not a justification for a guilty appellant; the entrapped person is simply not guilty of committing a crime. The decision of the Court was based on statutory construction, declaring that Congress could not have proposed to punish individuals for crimes that have been set in motion by the government.

Defenses of Entrapment

The police special investigator met the appellant's in his work place and pretended being a laborer on a particular boat. He stated that one of his friends had told him that to get blackjacks he may refer to the appellant and so asked him for a dozen. The appellant told him that although he had no blackjack but would seek to provide some. Later on the investigator returned again and bought three blackjacks which the appellant had purchased from a whole-sale house. When the investigator returned to purchase more, a police officer arrested the appellant for breaching the Deadly Weapon Act.' The appellant found guilty, the question of entrapment was left to the jury by the trial court. The conviction was reversed by the district court of appeal, arguing that the evidence proved a clear entrapment case. The decision was based on the ground that the scheme originated with the police and that the record failed to show that the accused was engaged in selling the articles or that the officers had ever suspected the defendant of violating the Deadly Weapon Act[1].

In some crimes lack of consent is an essential element, with the result that entrapment of the defendant by giving consent to the crime is a valid defense. But in cases of illegal sales the appellant has perpetrate all the elements of the offence, and the defense is allowed because public policy forbids an officer to lead the honest well behaved citizen into the perpetration of crime in order to make an arrest. Thus where the defendant has been led by the officer's deception into committing a crime unknowingly, the defense of entrapment is available. The difficulty arises when the defendant knowingly commits a crime by selling to the police decoy. The problem in each case is to determine whether the crime originated in the minds of the officers or whether the defendant had a pre-existing criminal intent. In some of the cases the courts take an objective view, looking merely at the officer's conduct and refusing to allow evidence relating to the defendant's pre-existing criminal intent. If the officer uses no more persuasion than is necessary to an ordinary sale, there is no entrapment as a matter of law. But if the officer uses persuasion appealing to the sympathy, pity or compassion of the defendant, there is sufficient evidence raised to send the question to the jury. Other cases develop the reasonable suspicion theory. In United States v. Eman Mfg. Co. the court recognized the entrapment as a matter of law where ordinary persuasion was used by the officer, since no reason to suspect the defendant was shown by the evidence. The case held that the onus was upon the prosecution to present evidence of the appellant's pre-existing criminal intent as the presumption is that the crime originated in the minds of the officers. In United States v. Certain Quantities of Intoxicating Liquors' the court held that there was entrapment because the officers failed to present evidence of reasonable suspicion, but in that case the defendant had gone ahead with evidence to show that he was an innocent man who would not have committed the crime if the officer had not presented the opportunity.

The test entrapment

Considering the fact that there could be many entrapment doctrines as the same number of the existing jurisdictions which allow the defense, the primary discussion concerning the law of entrapment involves the argument between the two tests applied to recognize whether an entrapment has occurred or not. Very early in the foundation of the doctrine, this disjunction has existed and is manifested in two essential cases of the U.S. Supreme Court on the matter namely Sorrells v. United States and Sherman v. United States. In both, the so-called "subjective test has been adopted by the majority," and a significant concurrent minority approved what is now known as the "objective test-2".

The Subjective Test

The federal courts and the majority of the states have adopted the subjective test. The first question of this test is that if there was a government agent who has obliged the appellant to perpetrate the crime. As soon as the accused proves this by prevailing evidence, the onus is on the prosecution to demonstrate that the appellant was "predisposed" to perpetrate the offense. According to Chief Justice Warren's succinct statement, the defense of entrapment exists to draw "a line ... between the trap for the unwary innocent and the trap for the unwary criminal." It is the prosecutor who must show that the operation of motivation has been the latter and the accused is thus an offender. There is no exact definition for the predisposition (and this ambiguity is the subject matter which makes the subjective approach come under numerous criticisms). The question made by the federal courts is that whether the appellant was "ready and willing to perpetrate the crime" when approached by the police. In order to evaluate the predisposition, a five-factor test has been adapted by a circuit court: i. the defendant's reputation or character; ii. whether it was the government who has initially recommended the criminal activity; iii. whether the defendant was seeking a profit by his engagement in the criminal activity; iv. whether it was the government inducement which has overcome the appellant's evidenced unwillingness to perpetrate the crime; and v. the

persuasion or inducement nature which the government has suggested to defendant.

According to procedural approach, the entrapment doctrine is based on this argument that protecting the criminal justice system reputation necessitates that the judiciary should not tolerate some specified conduct of the government. It states subsequently that it is the trial judge and not the jury who should determine the issue of entrapment. Furthermore, it is said that providing crucial instructions for formal comportment should be performed only by the court which can accomplish this task by changing gradually some of the precise standards of the precedents. At any stage of the proceedings, the proof of entrapment makes the court to put an end to the prosecution, order to reverse the indictment, and the liberty of the defendant. The minority of the judges believes that the question to be considered in determining the entrapment issue is that if the impugned conduct which has been considered objectively would have been likely to set in motion or create a crime. However, according to the judgment of the minority in US v Russell, this test is not actually used by the minority. To be more precise, a careful examination is carried out of all the circumstances of the case to come to a decision about the involvement of the government in the commission of the crime. Therefore, the minority of the judges does not embark merely upon a consideration of whether the crime was likely to have been perpetrated as a result of the involvement of the government.

As a convenient example to illustrate the difference which exists between the approaches adopted by the majority and minority, we refer here to the case of US v Russell. The appellant was accused of unlawful methamphetamine manufacturing and selling. A governmental covert agent had suggested supplying the appellants with phenyl-prop none - an important ingredient in producing methamphetamine - in return for one-half of the drug manufactured. Once the operation of manufacturing has completed, the one-half of the drugs was given to the agent. The agent and the accused made an agreement respectively to purchase and sell part of the remainder. According to the defendant's predisposition, the majority of the Supreme Court decided the unavailability of the entrapment defense to him. However, the minority held that entrapment was established. Regarding the fact as immaterial, Douglas Jhad a dissenting opinion that “the chemical supplied by the agent might have been provided from other sources”. According to his consideration the role of the federal agents was a debased one when they become the instigators of the offence, or partners in its perpetration, or the creative brain behind the illegal scheme. That is what the federal agent did here when he furnished the defendant with one of the essential chemical ingredients in manufacturing the unlawful drug.

The judge had told to the jurors that the accused claims of being entrapped. Here is the definition presented for Entrapment:

Where there is no recognized previous purpose or intention for a person to break the law, we can say that individual has been a victim of an entrapment and that he or she has been persuaded or induced by government agents to commit an offense; in such a case the law which is considered as a matter of policy will prohibit that individual’s conviction. As opposed to such circumstances where an individual has already the willingness and susceptibility to violate the law, just a good and considerable opportunity provided by the government agent cannot be considered as entrapment. For instance, assume a person who is suspected by the government of being involved in the unlawful sale of narcotics; in such a case the government agent will be allowed to pretend being someone else and he can offer to dealer the purchasing of narcotics by any means possible and this will not be held as entrapment. In such a case, it is the jury who should verify exactly the evidences of the case and find this fact that whenever the defendant was provided with this opportunity he was already susceptible and inclined to commit offenses which are alleged in the indictment and that the officers or the agents of government had just offered him the opportunity, thereby the jury should find the defendant guilty and not victim of any entrapment. However, if there is no ambiguity in the facts and evidences of the case and you can be ascertained that the defendant had no predisposition to perpetrate the alleged crime, regardless of any persuasion or obligation imposed by governmental officers or agent, then that will be your duty to find him not guilty of cocaine distribution[2].

In Sorrells v. US, the first Supreme Court decision recognizing the defense, Justice Hughes wrote that the crime was established when "the criminal design originates with the officials of the Government," who implant it "in the mind of an innocent person." At first blush, this test might be taken to mean that a defendant must be acquitted when the intent to commit the particular criminal acts in question originates with a government agent. This reading is untenable, however, because the fact that the government solicited the specific criminal act demonstrates that the defendant did not originate the intent to commit it. Making government origination the sole element of the defense thus reads out the further requirement that the defendant be "otherwise innocent" or no disposed[3].

The Objective Test

That’s just what an objective test does. As opposed to the subjective experiment which after demonstrating encouragement concentrates somehow completely on the accused and whether he is "otherwise innocent," the objective experiment concentrates entirely on the governmental actions and the nature of encouragement or inducement. This attitude is supported vastly by the majority of commentators, and the Model Penal Code and a significant minority of states have adopted it, both by judicial decision and statute. According to the Model Penal Code: “An official in public law enforcement or an individual who acts in assistance with such an official commits an entrapment if by the intention of providing evidence

of the commission of a crime, he obliges or provokes the other person to take part in comportment constituting such crime by... (b) taking advantage of persuasion or inducement methods that create a substantial risk that such a crime will be perpetrated by persons other than those who are ready to commit it."

The above statements would recommend that in order to succeed the defense, it must be proved that the accused has not been predisposed to commit the alleged crime and that he or she has done so just at the instigation of a government official. Also it can be proved that the present experiment used by those having the majority opinion is completely different. The appellant in Sherman v US had been accused of three sales of narcotics. The case evidence was based on the information obtained by a government informant, who pretending being an addicted and not respondent to treatment had asked the accused to provide him with a source of narcotics. The accused did not care his statements at first but when the informant insisted and asking him to sympathy, the accused accepted his request. The entrapment defense was recognized available. There was no evidence of the accused involvement in the trade, and when the police arrested him and then searched his house no narcotics were found. Furthermore, there was no significant evidence proving that the accused had even received an interest in this bargain with the informant. In 1942, the defendant was already accused of selling illicit narcotic and in 1946 he was accused of illegal possession of narcotics ; however these convictions were decided to be of no consequence: a nine-year old conviction of sale and a possession conviction of five-year-old are nonsufficient to demonstrate the defendant had a susceptibility to narcotics selling when approached by Kalchinian [the informant] and this opinion is supported by the evidenced recorded in the case which showed that at the time of arrest the defendant was attempting to prevail over his narcotic habits. Therefore what is realized from this case is that that the enquiry was concentrated in fact on the appellant's general susceptibility to sell narcotics. The entrapment defense was decided to be available on the facts as the evidence was found to reveal no such general susceptibility. This concentration on 'general susceptibility' shows that the Court had refused unconsciously to accept the consequences of a test which concentrates on the question of whether the accused had had the requisite criminal design prior to the involvement of the government. According to the minority in Sherman: "it is wholly irrelevant to ask if the "intention" to commit the crime originated with the defendant or government officers ... Certainly in every case of this kind the intention that the particular offense be perpetrated originates with the police ... The intention which is referred by the majority must be a general intention or predisposition to commit, whenever the opportunity should arise, crimes of the kind solicited[3].

Most courts adopting an objective approach have supplemented it with a causation requirement. This requirement means that the defendant must demonstrate not only the impropriety of the inducement, but also that the inducement made him to commit the offense. If the requirement is taken literally, the distinction between the objective and subjective approaches collapses completely. A defendant who is predisposed and who would have responded to a proper inducement cannot claim that his conduct was caused by an improper inducement, because he would have committed the same crime even if the inducement had been proper. He therefore fares no differently under the objective and subjective tests. Conversely, if the defendant responds favorably to a proper inducement, he cannot claim that he was not predisposed, because his favorable response ipso facto demonstrates pre- disposition. The result is, therefore, again the same whether an objective or subjective standard is utilized[3].

In this circumstance, the judge had told the jurors that the appellant claims of being entrapped. However, here is the definition presented in this example:

Entrapment takes place where an official agent persuades or encourages the defendant or uses other decoys to make him commit a crime; most of the time such an approachis applied by the agent to make the well behaved normal individual to commit the crime. The conviction of cocaine distribution is prohibited by law where the government officials use inappropriate encouragement that would make even a normal well behaved individual committing the crime. However, if there has been only a favorable opportunity created and offered by the official, the entrapment does not apply in such circumstances. For instance, where an official pretends being someone else and offers to purchase narcotics is not considered an entrapment provided that the government official does not conduct in a way that would endanger a normally well behaved person to sell narcotics. The defense of entrapment is not involved in answering the question whether the accused in the case was susceptible and predisposed to perpetrate the offense. In order to hold whether the defense of entrapment should be upheld, you should not decide concerning the fact that whether or not this accused has been predisposed to engage in cocaine selling. It should only be considered that if the official or the agents applied an inappropriate encouragement that would probably make the normal well behaved persons commit the crime. If so, you will be left with a reasonable doubt by evidence in this case and that is about whether official or agents has used inducement that would probably cause normally well behaved individuals to distribute cocaine, then finding the defendant not guilty will be your duty. On the contrarily, if there is no ambiguity in the case and beyond a reasonable doubt you find that no such inducement was applied, then you should decide that no entrapment has been committed by the law enforcement agents[3].

Entrapment Defense Evolution

The concept of entrapment defense was first founded by the Supreme Court with its sequence of late 1800's cases which are called as the "Decoy Letter Cases." Several defendants were accused of obscene materials distribution across state lines in

cases such as Price v. United States (1897), Rosen v. United States (1896), Goode v. United States (1895), and Grimm v. United States (1895) who subsequently appealed their convictions. In all the cases, the defendant's arguments were focused on a claim that the government had encouraged them commit the offense, and that they would never commit the crime without the government' interference. The individuals' convictions were affirmed by the court, and although there was no direct mention of aan entrapment defense the court provided a foundation for the sequent development of a defense of entrapment. In 1932, with the decision made in Sorrells v. United States (1932), the Supreme Court commenced recognizing what is today known as the entrapment defense. In this case a covert prohibition agent went to Sorrells' home and asked him to be sold some whiskey. Sorrells and the covert agent had served with each other during World War I, and after Sorrells answered the agent's request by informing him that there was no whiskey, Sorells and the agent started talking about the war. After a while, the covert agent requested again some whiskey. In this time, Sorrells left the room and brought the agent a sample of whiskey. Sorrells was then arrested and accused of illegal possession of whiskey in breaking of the National Prohibition Act[4].

The court believed that the trial court made a mistake since it had not provided the jury with instructions on the consideration of entrapment. The decision made in Sorrells' case concerning his sentence was unanimous. The court was however divided on the issue of why Sorrells had been likely to be entrapped. Two approaches to considering the application of the entrapment defense were born from this split in rationale. The government was required by both of the methods to show to have either convinced, or somehow tricked, the defendant into committing the offense. However, the difference between the two concerned the government actions and whether or not the government had surpassed its boundaries during the investigation.

According to the approach followed by the majority which is known as the subjective approach, the government's actions should be considered; however defendant intention and predisposition should be the more essential element of the equation. After defining the susceptibility or the predisposition as the attitude of a person that would lead him to commit the offense they were arrested for without guidance, suggestion or assistance from the government. In trying to determine the individual's susceptibility to commit an offense it is crucial to ask whether the offense would have been committed with the next person the individual got in contact with had the law enforcement officer not made contact. If the question is answered by yes, thus there is an argument for predisposition. Certainly, while an officer may not motivatea person to perpetrate a criminal act, there is no indication that the court meant that an officer could not make mention of the crime for which the suspect is allegedly predisposed to commit.

In United States v. Dion (1985), the Eight Circuit Court of Appeals relied on a great many past entrapment cases when the court founded a sequence of factors to examine an individual's predisposition to commit a crime. The issues considered by these factors are as follows: whether the appellant readily responded to the inducement, the defendant's state of mind prior to the introduction of any recommendations to commit an offense, the previous behavior of the defendant prior to the crime for which he or she is convicted (whether the individual was engaged in behavior similar to the crime), and coercion degree presented by the law enforcement officer compared with the defendant's criminal background. The court made note of the fact that the list was not inclusive at all, but instead it should be served as a guide when trying to determine the presence of an entrapment in a particular case.

Partial defenses of entrapment

Both sentencing entrapment and sentencing manipulation describe a type of "partial" or "incomplete" defense based on government over-involvement in determining the extent of criminality in an offense insufficient to constitute a legally recognizable defense at trial, but sufficient to warrant consideration at sentencing. Whereas a complete entrapment defense requires proof that the appellant had no predisposition towards committing the offense, the concept of sentencing entrapment merely requires proof that the appellant was not susceptible to engage in the crime to the extent he was involved. In other words, under a defense of entrapment a defendant argues that he would not have been a criminal but for the encouragement of law enforcement; under sentence entrapment, the defendant acknowledges that he is a criminal, but argues that law enforcement encouraged him to be a worse criminal. However it is too early on an argument could have been made that a sentencing court should be forbidden from departing on the basis of an "incomplete defense," it is too late in the game to have a convincing argument on this point. Even guidelines original versions allowed for downward departures where there was proof of other "incomplete defenses": provides for a departure based on the "victim's conduct" in a situation amounting to something less than "self-defense" allows for a departure based on "coercion and duress" under circumstances not amounting to a complete defense of coercion or duress; and permits a departure based on "diminished capacity" in a situation where an insanity defense would not be available. Therefore, the Sentencing Commission has clarified that an "incomplete defense" can[5].

Sentencing Entrapment

We set about a more precise question, which could be answered using the punishment-centered view of entrapment. Here is the definition of "cliffs" presented by Professor Stephen Schulhofer: "One artifact of circumstance-based mandatory minimums and nondiscretionary sentencing guidelines' codified gradations of felonies and sentencing enhancements". While

creating sting operations, covert officers can take advantage of these cliffs to make the judge impose the maximized sentence to defendant; this procedure is called occasionally as "sentencing manipulation" or "sentencing entrapment." For instance, so as to surpass a limit of weight, police can arrange several drug dealing with the same person; recommend that a suspect come to a transaction armed or trade smuggling for a gun instead of paying in cash in order to draw a "use of a firearm" enhancement; or "ascribe an age to themselves" on anti-pedophile stings "that is just young enough to implicate the most serious category of attempted sexual predation, while not so young as to limit the appeal to the most radical perpetrators. "The risk of sentencing entrapment was even enough to encourage the U.S. Sentencing Commission to revise the Sentencing Guidelines to admit a downward departure if, in a reverse sting... , the court finds that the government agent set a price for the controlled substance that was substantially below the market value" thus encouraging the accused to "purchase ... a significantly greater quantity" of drugs than he otherwise would[5].

The two cases United States v. Walls and United States v. Shepherd which were heard in D.C. Circuit are the cases that we will take advantage of their facts here as a typical example concerning this issue; however in both cases the courts of appeal refused to find the police misconduct. There is a similarity between the underlying fact patterns: in both cases there are covert agents who manipulate the curious difference in weights required to bring about the mandatory minimum between powder cocaine and crack cocaine. A covert agent in Walls case had contracted to purchase crack cocaine and when the target provide him instead with powder cocaine, the agent did not accept and demanded the dealer to return instead with crack. In Shepherd, the agent while purchasing on the street did not accept the powder cocaine proffered by the dealer and to continue the exchange, asked him to return to the building where the contraband was stored to transform the proffered powder cocaine into crack. The intention of the officers was clear in both of the cases: the crack cocaine dealing draws much suffering punishments than powder cocaine transaction, and the officers were aimed to impose a much heavy punishment to the targets.

At the present time, there exists a difference among the circuits concerning whether and how to find sentencing entrapment. Even without receiving an exact answer to the question of doctrinal formulation, considering the entrapment from the point of punishment-centered view can still provide us with some guidance on the issue. The court in Walls case quoted the trial testimony of one of the covert agents who responded to a question concerning why he had importuned the accused to transform the powder cocaine into crack: "Well, crack cocaine is less expensive than [powder] cocaine, and we felt like through our investigation, that it takes fifty grams of crack cocaine to get any target over the mandatory ten years".

Conclusion

Obviously, entrapment doctrine is only one of a wide variety of rules, institutions, and practices that limit the extent to which we punish socially harmful conduct. It seems at least possible that these other limitations are also related to the substitution of status for culpability as a limiting principle for the criminal law. For example, our relatively lenient treatment of whole classes of demonstrably dangerous conduct, like drunken driving or air and water pollution, may be related to our inability to use the criminal law when people think that the cost to them as potential victims of the crime is outweighed by the advantages as potential perpetrators or beneficiaries of the conduct. Other defenses, which cut across the definitions of crime, like infancy and insanity, as well as mitigating factors like provocation, may also be a product of our reluctance to punish when we can imagine ourselves, or people like us, commit- ting crimes while suffering from similar disabilities. And on a less formal level, practices like unstructured sentencing and prosecutorial discretion, parole, and jury nullification all allow at least the possibility of mitigating or avoiding the punishment of those who remind us too much of ourselves.

This uncertainty is the reason of the existence of entrapment defense; a state's concern is that since punishment is its special function, regardless of other considerations it must punish as hard as possible. However, without regard to any crime, punishment drives into sadism. Adopting a sadism policy by a state is one of the most essential concerns of our time- this concern is much apprehended in authoritarian states. Sometimes the state creates offenses just to punish them and that's where the totalitarianism's shadow can be recognized. We can make only one inference in such circumstances and that is punishment has become itself an end. Entrapment may be considered primarily as a scholastic doctrine which is more appropriate to be used in students' notes rather than the courtroom.

Whilst according to an academic, presenting a defense takes place most of the time and it has been almost always successful, the prevailing sagacity is that it is more of rareness, an academic ornament increasingly immaterial to how criminal law is actually applied and implemented in this country. Even by assuming the practical infrequency of the defense, it can essentially limit the application of the penalties for the crimes. As same as the defenses at trial, the interdictions which are imposed to ex post facto laws and bills of attainder are also rarely advanced, and except the contexts of confinement conditions or death sentence the prohibition on unusual and cruel punishment is infrequently recognized to interdict a specified punishment. Certainly, answering to this question that why the entrapment defense succeeds so rarely may be referred to this fact that the police have been under the pressure to change their investigatory methods that is, the defense has been successful in preventing most of the police unlawfulness. However, to prove its worth even this justification is not necessary.

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