Encyclopedia of Crime and Punishment

Criminal Defenses

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In the Anglo American system of criminal justice, most crimes have at least two minimum elements: *actus reus*, the criminal act or omission, and *mens rea*, the required mental state (the so-called guilty mind). In the crime of murder, for example, taking the life of another human being is the criminal act (*actus reus*). But generally, *actus reus* alone is insufficient to constitute a crime. There must also be evidence of a culpable mental state (*mens rea*). That is, taking the life of another human being may or may not be murder, depending upon the killer's mental state. For instance, in most jurisdictions, murder is defined, at least in part, as the intentional taking of human life. The intent to kill is one example of *mens rea*. If a defendant is found to have acted with a different mental state, such as recklessness or negligence, he or she may be convicted of a lesser homicide offense. The primary defenses to a criminal charges relate to *mens rea* and *actus reus*.

Actus Reus Defenses

It is a defense to any criminal charge that the defendant did not commit the criminal act, and in every case the prosecution has the burden of proving the *actus reus*. The prosecution also has the burden of proving that the defendant's criminal act was voluntary. However, since criminal law assumes free will, few acts will ever be considered involuntary. Among the rare acts the criminal law considers involuntary are those committed as a result of a reflex or seizure, or while the defendant was in an unconscious state. For example, a defendant who commits a criminal act while sleepwalking or in a state of shock secondary to serious bodily injury might have a defense of “automatism,” since the act might be considered involuntary. As a practical matter, however, this defense is rarely raised or successful.

Mens Rea Defenses

A much broader category of criminal defenses relates to *mens rea*. Many criminal statutes require proof of a specific mental state, such as intent, depraved indifference, recklessness, or negligence. Here too the prosecution bears the burden of proof. Thus,

where a crime is defined to include a particular state of mind, and the prosecution fails to prove that the defendant acted with that particular mental state, the defendant must be acquitted, or convicted of charge conforming to the form of *mens rea* that is proven. To put it another way, lack of the requisite *mens rea* is always a defense to a criminal charge. For example, if a defendant is charged with intentional murder, and the prosecution is able to prove only recklessness (i.e., that the defendant did not intend to kill, but knew that he or she was placing the victim's life at risk), the defendant is guilty of manslaughter, not murder. Lack of *mens rea*, however, should not be confused with mistake of law or fact. Generally, the maxim “ignorance of the law is no excuse” is valid. It is not a defense to a crime that the perpetrator was not aware of the fact that his or her conduct was unlawful.

An honest mistake of fact will generally be a defense where that mistake negates the state of mind required for the offense. For example, if a person takes the property of another, honestly believing it to be his or her own, that individual is not guilty of theft because there was no intent to steal. With regard to a few offenses, however, even this sort of honest mistake is not a defense. For instance, bigamy and statutory rape are both strict liability offenses: crimes that have no *mens rea* requirement. A person who marries, under the honest yet mistaken belief of being legally divorced, is still guilty of bigamy. Similarly, one who has sexual intercourse with a minor, honestly but mistakenly believing the minor to be an adult, is guilty of statutory rape.

[p. 398 ↓]

Self-Defense Upheld as a Criminal Defense in India

The Indian Law Reports APPELLATE CRIMINAL

Before Mr. Justice Agarwala

Paras Ram and Another

v.

REX

In the present case, according to the prosecution evidence itself, it was the deceased himself who attempted to strike the first blow. The accused, therefore at one were in danger of an injury being caused to their persons. They clearly, therefore, obtained a right to strike in self-defense. The attempt to strike by the deceased was no doubt proceeded by an exchange of abuses. An exchange of abuses on both sides does not give any of them a right to strike the other by a lathi [stick]. No danger to person arises when one is merely abused, and as such no right accrues to the person abused to strike another with a lathi. If however, abuse is accompanied by a threat to assault, it would be another matter. This is no evidence of that having happened in the present case. It was, therefore, not a case of two people having come predetermined to fight and measure strength, but was a case in which, as usual, there were bickerings over a cattle trough and exchange of abuses. This conferred no right on the deceased to attempt to strike the accused in the first instance as such the counter attack by the accused would be deemed to be in self-defense.

The learned Sessions Judge has also expressed the option that even if the accused had a right of private defense they exceeded that right. The medical report shows that Basani accused received two lathi blows, one of them being on the head. The deceased, therefore, had aimed and actually struck a lathi blow on the head and he was successful in inflicting two lathi blows. He received five lathi blows in return, one on the head, which proved fatal. I cannot in the circumstances hold that the accused succeeded any right of self-defense. There is no evidence to show that the accused went on beating the deceased even after he had fallen down. When once a right of self-defense has commenced one is entitled to protect oneself by disabling the aggressor to such an extent that he may be rendered unable to resume his attack. In the present case, since the deceased had aimed an injury on the head, there was danger of death or grievous hurt being caused to the accused and they had the right to cause such injuries as might cause the death of the deceased. It is difficult to measure the strength or the force of the blows or to modulate one's attack so long that the other party continues fighting. I, therefore, hold that he accused did not exceed the right of private defense.

The result, therefore, is that I allow the appeal and set aside the conviction and sentence passed by the learned Sessions Judge and order that the accused shall be set of liberty unless required in connection with some other case.

Appeal Allowed.

General Index of the Indian Law Reports. Allahabad Series. (1949) United Provinces Allahabad: Government of the United Provinces by the Superintendent, vol. 1949: 277–278.

Other Defenses

The criminal law provides a number of other defenses that, if raised successfully, will result in either an acquittal or a reduction in the severity of the charge for which the defendant may be convicted. Among the more significant exculpatory and mitigating defenses are duress, necessity, self-defense, defense of others, defense of property, defense of habitation, prevention of crime, entrapment, provocation, extreme emotional disturbance, intoxication, and insanity.

Duress

Traditionally the law has declined to punish criminal acts committed under duress, compulsion, or coercion. A defendant who commits what would otherwise be a crime under threat of harm to self or others may have a complete defense. The classic case of duress is one in which the defendant has been directed by another to commit a crime, under threat of injury or death. Generally a defense of duress requires that the threat that produces the criminal act must create a reasonable fear of immediate death or serious bodily injury. While this defense is generally available for all crimes, in some jurisdictions duress is not a defense to the crime of murder.

Necessity

Necessity is also known as the choice of evils defense. When people are faced, through no fault of their own, with a choice between two evils, the law generally will not punish them if **[p. 399 ↓]** they choose the lesser of the two. For example, a starving hiker who breaks into an unoccupied but locked cabin in search of food and shelter will likely have a defense of necessity: The harm avoided (death) is greater than the harm imposed (breaking and entering). In recent times, the necessity defense has occasionally been raised by demonstrators, who claim that the harm caused by their criminal conduct is outweighed by the harm they believe they are preventing. Among a number of recent examples are protesters charged with criminal trespass for interfering with the operation of nuclear power plants and abortion clinics. While these defendants have claimed that their acts were necessary to prevent greater evils (i.e., harm to the environment and the potential destruction of human life), courts have generally rejected these necessity defenses on the grounds either that the harm was not imminent, or that the criminal conduct in question could not have prevented the alleged harm.

Self-Defense

The rules governing self-defense vary depending upon the nature of the force employed by the individual claiming the defense. Generally, while one may lawfully use whatever force is reasonably necessary to protect oneself from an assault, it is legally justifiable to use deadly force only to prevent what reasonably appears to be an imminent threat of death or serious bodily injury.

Self-defense is subject to a number of limitations. For example, in some U.S. states, people may not justifiably use deadly force in self-defense if they could have retreated with complete safety. In other states, however, retreat is not required: The victim may stand firm and justifiably use deadly force. Even where the retreat rule is in effect, however, under the “castle” doctrine one need never retreat before using deadly force if threatened or attacked in one's own home. Finally, many jurisdictions employ the “initial aggressor” rule: The initiator of an aggressive encounter may not claim self-defense.

In order to claim self-defense as a legal justification for the use of deadly force, an individual must have used such force to repel a reasonable threat of imminent death or serious bodily injury. A person mistaken about the intentions of the person killed may still have a justification of self-defense, as long as the fear of imminent death or serious bodily injury was reasonable. If the defendant's belief was honest but unreasonable, in most jurisdictions a justification of self-defense would not be available. However, some states recognize an “imperfect self-defense” doctrine and would find this person guilty not of murder but of the lesser offense of manslaughter.

Defense of Others

Just as people may use reasonable force to prevent an assault on themselves, it may also be justifiable to use reasonable force to protect others. Indeed, a person is generally justified in using even deadly force to prevent what is reasonably perceived to be a threat of imminent death or serious bodily injury to another. While the rules governing self-defense and defense of others are similar, a few states have adopted the so-called alter ego rule, which provides that one person's right to defend another is no greater than the other's right to self-defense. Under this limitation, where one uses deadly force to defend another who had no reasonable fear of death or serious bodily injury, no justification of defense of the other is allowed.

Defense of Property

The law generally justifies the use of reasonable physical force to protect property from theft or unlawful entry. In no jurisdiction, however, is the use of deadly force justifiable merely to protect property.

Defense of Habitat

Generally, defense of one's own home is on the same legal footing as defense of other property: In most instances, one is justified in using only reasonable, nondeadly force. Yet the law recognizes the special importance of the home and the need for security

there. Thus, in most jurisdictions, the use of deadly force to prevent unlawful forcible entry into the home is legally justifiable. Some states, however, require that the person using deadly force under these circumstances reasonably believe such force necessary to prevent or end a serious crime in the dwelling.

Prevention of Crime

In addition to defense of oneself, others, property, and habitation, the law generally justifies the use of reasonable nondeadly force to prevent or terminate a crime. The law justifies the use of deadly force to prevent **[p. 400 ↓]** certain violent felonies (e.g., rape, kidnapping, and robbery) that present a significant risk of death or serious injury. On a related note, many states formerly allowed police officers to justifiably use deadly force to prevent a felon from escaping arrest. This “fleeing felon” defense was seriously limited by the U.S. Supreme Court decision in *Tennessee v. Garner* (1985), which held that deadly force was only justifiable to prevent the escape of those who posed a danger to the community: “Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.”

Entrapment

Law enforcement personnel sometimes engage in undercover operations in which they offer a suspect the opportunity to commit a crime. For example, police officers may pose as prostitutes, drug buyers, or even contract killers in order to obtain incriminating evidence. Those caught in these “sting” operations often claim to have been entrapped. Precisely where police encouragement crosses the line into entrapment is not always clear. The U.S. Supreme Court first recognized the entrapment defense in the 1932 case of *Sorrells v. United States*. In defining entrapment the Court sought to distinguish between providing an opportunity to commit a crime and creating a disposition to commit the crime:

It is well settled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat

the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises. The appropriate object of this permitted activity, frequently essential to the enforcement of the law, is to reveal the criminal design, to expose the illicit traffic, the prohibited publication, the fraudulent use of the mails, the illegal conspiracy, or other offenses, and thus to disclose the would-be violators of the law. A different question is presented when the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.

In most jurisdictions today, even if the police do induce the commission of crime, defendants will not have a valid defense of entrapment if they are found to have been predisposed to commit the crime (i.e., were ready and willing to do so when given the opportunity). Not surprisingly, the entrapment defense rarely succeeds.

Provocation

In a number of states, the provocation doctrine provides a mitigating defense to a charge of murder. A defendant found to have killed intentionally but in the heat of passion engendered by a reasonable provocation may be found guilty of manslaughter rather than murder. The concept “heat of passion” is not well defined, but generally encompasses a highly emotional mental state in which an individual temporarily loses ordinary self-control. What is “reasonable provocation” is also often ill defined, but courts have concluded that the concept encompasses, among other things, being physically assaulted and the sight of one's spouse committing adultery. Many jurisdictions adhere to the “mere words” rule, which holds that words alone are never legally sufficient provocation for purposes of this defense. The provocation defense is also limited in two other key ways. In some jurisdictions, the person killed must be the provocateur and not an innocent bystander. Moreover, some jurisdictions maintain a “cooling time” doctrine, which holds that if enough time passes between the provocation and the killing, the defendant is no longer able to benefit from this defense.

Extreme Emotional Disturbance

Extreme emotional disturbance, the statutory version of the provocation doctrine, provides that a killing that would otherwise be murder will be considered manslaughter if, at the time it occurred, the defendant was suffering from an extreme emotional disturbance for which there was a reasonable cause or explanation. Unlike the provocation defense, extreme emotional disturbance does not require any specific type of provocation (i.e., physical as opposed to verbal). This defense is not limited to the killing of any particular individual, and does not include any cooling time provision.

Voluntary Intoxication

Voluntary intoxication, whether induced by alcohol or other substances, is ordinarily not a defense. However, the criminal law in most jurisdictions does recognize that a person may become so intoxicated as to be incapable **[p. 401 ↓]** of forming the required *mens rea*, usually intent or knowledge. For example, a defendant charged with intentional murder might, as a result of proof of intoxication at the time of the killing, be found guilty only of unintentional homicide. Such a defendant would not, however, be acquitted altogether on the basis of intoxication. Furthermore, where the crime in question requires recklessness or negligence, proof of voluntary intoxication generally provides no basis for a reduction in charge. And obviously, intoxication may not serve as a defense to a charge such as drunk driving, where it is an element of the crime.

Involuntary Intoxication

One may become involuntarily intoxicated either by accident or trickery, or as a result of some underlying pathology. For example, a person might mistakenly ingest a drug or other intoxicating substance, accidentally overdose on prescribed medication, be slipped a drug or otherwise tricked into ingesting it, or have an idiosyncratic or unanticipated reaction to a substance that does not ordinarily lead to intoxication.

Involuntary intoxication is rare, but may provide a complete defense to a criminal charge. If involuntary intoxication renders the defendant incapable of forming criminal intent, it may serve as a mitigating defense, just as voluntary intoxication does. Unlike voluntary intoxication, however, involuntary intoxication may also provide the basis for a claim of insanity, which, if established, can lead to an acquittal.

Insanity

Although insanity is virtually always based upon mental illness or mental retardation, it is a legal rather than a medical concept. The legal definitions of insanity vary from state to state, but in nearly all states the definition was derived from one or both of two sources: the nineteenth-century M'Naghten Rule or the twentieth-century Model Penal Code. The M'Naghten Rule, established in England in 1843, held that a defendant should be acquitted on grounds of insanity if “at the time of committing the act [he] was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, [he] did not know he was doing what was wrong.”

The Model Penal Code, a proposed criminal code developed by the American Law Institute and approved by that body in 1962, defined the insanity defense as follows: “A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.” The Model Penal Code definition adds the caveat that “the terms ‘mental disease or defect’ do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.”

While defendants found not guilty by reason of insanity are technically acquitted and not legally responsible for the crime charged, almost invariably such defendants are thereafter committed to a secure state psychiatric facility, from which they will be released only upon proof that they are no longer dangerous or mentally ill. As a result, many defendants acquitted by reason of insanity spend more time incarcerated than they would have if they been found guilty.

Following the highly publicized trial of John W. Hinckley, Jr., who attempted to assassinate President Ronald Reagan in 1981, the U.S. Congress and numerous state legislatures considered abolishing the insanity defense. While only a handful of states actually did so, several modified existing insanity laws. In the Insanity Defense Reform Act of 1984, Congress changed the federal insanity standard by requiring a "severe" mental disease or defect, shifting the burden of proof from the prosecution to the defendant, and dropping that portion of the federal insanity law that acquitted those lacking "substantial capacity … to conform [their] conduct to the requirements of law." Under current federal law, a criminal defendant is legally insane only if "at the time of the commission of the acts constituting the offense … as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or wrongfulness of his acts."

Summary

Criminal law provides for a number of defenses. Among the more significant are duress, necessity, self-defense, defense of others, defense of property and habitation, prevention of crime, entrapment, provocation, extreme emotional disturbance, intoxication, and insanity. Some are exculpatory and may lead to an outright acquittal; others are mitigating and serve only to reduce the degree of punishment the defendant receives.

While criminal law continues to evolve slowly, with the exception of some tinkering with the insanity **[p. 402 ↓]** defense, the twentieth century addition of a defense of extreme emotional disturbance, and the more recent limitations placed on the fleeing felon rule, the essential structure of the basic criminal defenses has changed little in the past century or more. At the same time however, lawyers have become increasingly creative in their applications of old law to new situations. For example, in the realm of self-defense, attorneys have begun to argue that traditional self-defense law may be construed to protect abuse victims who kill their abusers outside of an abusive or immediately threatening situation. Similarly, with regard to defense of property and habitation, lawyers have sometimes argued that these defenses cover situations in which property crime victims have taken the law into their own hands. And not surprisingly, given the lack of precise definitions, the defenses of provocation and

extreme emotional disturbance have in many cases been stretched to their outer limits. Despite these and other efforts, some of which have been successful, the law of criminal defenses has changed little and seems unlikely to change in the years to come.

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See also

- Criminal Insanity
- Criminal Law
- Criminal Trial
- Defense Counsel System
- Jury System

Further Reading

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