**EXCUSE NC**

**[FRAMEWORK REMOVED]**

It is generally recognized that the prohibition on killing can be overridden in certain instances such as situations, which involve the use of deadly force in a legitimate act of self-defense. Our notions of self-defense must be narrowly tailored in order to reconcile the value of life with the right of self-defense.

LAUREN E. GOLDMAN “[Nonconfrontational Killings and the Appropriate Use of Battered Child Syndrome Testimony: The Hazards of Subjective Self-Defense and the Merits of Partial Excuse”, Case Western Reserve Law Review, Volume 45, 1994.]

The results contradict the basic premise underlying the doctrine of self-defense: in order to "harmonize the principle that killings in self-defense are justified with the principle that human life is the highest value protected by the law, the range of defensive conduct that will be justified must be narrowly circumscribed." [n66](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1323507892239&returnToKey=20_T13487612307&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.609394.4915105812" \l "n66" \t "_blank) This goal is accomplished primarily through the imposition of an objective imminence requirement[s], which [place] places an external restraint on the use of protective force, reflecting the high value that society places on human [of] life.

CATHRYN ROSEN 1 explains these requirements:

[Cathryn Rosen, Associate Professor Temple University School of Law. “THE EXCUSE OF SELF-DEFENSE: CORRECTING A HISTORICAL ACCIDENT ON BEHALF OF BATTERED WOMEN WHO KILL.” The American University Law Review. 36 Am. U.L. Rev. 11, 1986.]

Although exceptions persist, most American jurisdictions define self-defense in a similar manner, with a few common variations.98 The definition of self-defense is designed to permit[s] a person to use self-help against an unlawful aggressor when there is no opportunity to resort to the criminal justice system for protection. 9 9 Not surprisingly, the elements of self-defense correspond to the components of all justification defenses that Robinson has identified. 00 An intentional killing will be justified' 0 ' when the following requirements are met: 1. An actor can only defend herself against what she reasonably believes is unlawfulforce.102 2. The amount of force [is] must be proportionate to the threatened force. 10 3 Deadly force 10 4 may not be used unless the actor reasonably believes that she is protecting herself against infliction of death or serious bodily harm. 10 5 3. The actor must reasonably believe that it is [and] necessary to use force to prevent the threatened harm. 10 6 4. [and] the actor must reasonably believe that the adversary's threatened use of force is imminent. 10 7 A determination that an intentional killing is justified because it was committed in self-defense carries certain doctrinal implications. Anyone who intentionally kills another person under the same circumstances will be justified as well. The aggressor/victim has no right to defend against the justified actor's defensive act or against the equally justified acts of third parties who may come to the de- fender's aid. Any person who confronts the same circumstances as a person acquitted on grounds of self-defense has a legal right to kill; indeed, the law encourages her to do so.10 8 Because the ramifications of an acquittal on grounds of self-defense extend far beyond the particular case under adjudication, the law of self-defense is designed to ensure as closely as possible that the justificatory grounds exist.109 To be justified, the defensive act must cause less societal harm than the harm that the victim/aggressor threatened."10 The requirement that the victim's threatened aggression be unlawful permits the devaluation of the aggressor's life and interest in bodily integrity relative to the de- fender's.11' If the victim's aggression was not unlawful, the victim's interest in life cannot be devalued. The comparative harms will be equal and the defensive act will not bejustified." 2 Thus, a killing in self-defense by an actor who mistakenly believes that the threatened aggression is unlawful should not be a justified act. ' 1 Expanding the prerequisites of self-defense to allow reasonable mistakes re- garding the unlawfulness of aggressive force increases the risk that [of] taking of innocent lives will be encouraged.

The affirmative requires the expansion of these requirements because: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

My advocacy is that the deliberate use of deadly force by victims in response to domestic violence should be considered excusable.

**Competition.** There is a distinction between permissible, or justified conduct and excused actions. Permissible actions are laudable whereas an excused action is one for which the actor should not be blamed.

REID FONTAINE [AssistantProfessorofPsychology,AssociateProfessorofLaw,andCo-DirectorofthePrograminCriminal Law and Policy, James E. Rogers College of Law, University of Arizona. “AN ATTACK ON SELF-DEFENSE,” AMERICAN CRIMINAL LAW REVIEW. Vol. 47. 2010.]

Justified conduct refers to action that is permissible or acceptable. In the case of the justified act, [and] the actor has done nothing wrong. Justified action is not prohibited and, in many cases, is favorably evaluated and encouraged as a good or right way to act. In contrast, excused conduct refers to action that is impermissible and unacceptable, but, because of circumstances that are relevant to why the action in question was enacted, the actor’s culpability and punishment are mitigated (or partially [is] excused), as in the case of heat of passion, or fully exonerated, as in the case of insanity. Excused conduct is, by its nature, bad and wrong. The conduct is not excused because it is allowable, but, despite its objectionable nature, because of the specific characteristics of the actor (e.g., cognitive functioning) or the context in which the act was committed (e.g., material features of the social situation appear as they are not) suggest that the actor was not responsible for the undisputed wrongdoing. In criminal law, justification defenses admit that the defendant is responsible for the alleged conduct, but necessarily assert that the defendant has done nothing wrong by engaging in the act—that is, the defendant is responsible for his rightful act. In effect, the successful justification defense satisfactorily rebuts the prosecution’s prima facie case that the defendant committed any criminal act at all. In contrast, excuse defenses admit not only to having engaged in the alleged act, but that doing so was wrongful. The successful excuse defense accepts the prosecution’s prima facie case that the defendant has committed a crime, but adequately demonstrates that the defendant acted in a nonculpable, and therefore nonpunishable, manner by providing evidence of extenuating circumstances that show that he committed the act without the requisite degree of guilty mind. That is, excuse defenses assert that although the defendant indeed acted wrongfully, he should not be held responsible for having done so. As Professor Joshua Dressler has correctly stated, “[w]hereas a justification negates the social harm of an offense, an excuse negates the moral blameworthiness of the actor for causing the harm.”25 In either case, the defendant is exonerated of culpability and punishment—just as one who has committed an act that is determinedly acceptable is not punished, neither is a person who, although admittedly committed a wrongful act, acted in a manner for which he cannot justly be blamed.

And, this distinction is extremely morally and legally relevant.

BOAZ SANGERO [Ph.D., 1994 (The Hebrew University of Jerusalem). Senior Law Lecturer and Head of the Department of Criminal Law and Criminology, The Academic College of Law, Ramat-Gan, Israel. “A New Defense for Self-Defense” Buffalo Criminal Law Review, Vol. 9, No. 2 (January 2006), pp. 475-559] “It is my…defense of excuse.”

It is my opinion that, first, there is indeed room to distinguish between justification and excuse and, second, private defense should unequivocally be classified under justification. Moreover, in the context of our discussion of private defense, there is no need to contend with all the valuable arguments raised against the validity of the distinction and its implications. Instead, the following premises are sufficient for the purposes of our examination: First, even the greatest critics of the distinction and its implications fully concur that it is of enormous moral-value importance. Furthermore, the majority criticize not the distinction, but its definition and the implications attributed to it by its proponents. Thus, for example, Dressler wraps up his sharp criticism of Fletcher’s words concerning the distinction: “The lines between justified . . . and . . . [excused] behavior are morally significant. If morally significant distinctions exist, it should matter to those concerned with the criminal law to find and draw those lines.”32 Second, it is necessary to distinguish between the question of whether a distinction should be drawn between justification and excuse and (assuming the answer to the first question is yes) the question of whether the various implications attributed to this distinction should be accepted. With regard to the former, there appears to be near-consensus that it is both desirable and fitting to make such a distinction. Even though the accused is exonerated in both justification and excuse, a distinction should nevertheless be made between the two types of acquittals and a more complex message than just guilty or innocent should be transmitted to the public: someone who is innocent because her act was desirable and morally justified (justification) should be distinguished from someone who is innocent because she was “forgiven” for her act due to the absence of culpability (excuse). This distinction gives a clear signal to the public as to how they should relate to an acquittal and offers clarity and guidance regarding desirable behavior.33 The absence of such a distinction leads to an undesirable result, such as the disgrace of a person unjustifiably maligned from the perspective of social values or the more far-reaching consequence that the court, unwilling to convey the wrong message (that the action of the accused is acceptable), may convict the accused when she should rightfully be acquitted under a defense of excuse.34

Also, because what we consider justified self-defense sends a moral message, we should err on the side of being under-inclusive. Relaxing requirements and potentially justifying an unnecessary killing would be a moral tragedy. On the other hand if in some cases an understandable killing is not justified the actor can avoid punishment by making an excuse claim.

**Net benefits.**

First, expanding our notions of justified, or permissible deadly to include victims of domestic violence in the way the AC advocates would expand the amount of harmful self-help in society and increase unnecessary violence.

ROSEN 2:

It is difficult to identify a positive benefit that accrues to anyone other than the killer from the taking of an aggressor's life in self- defense.215 Thus, there is no reason for the law affirmatively to encourage such conduct. To the contrary, classification of self-defense as a justification may be detrimental to society. The early common law failed to recognize self-defense as either a justification or an excuse because self-help was inimical to the goal of creating respect for the rule of law and, in turn, for governmental authority.21 6 Although lack of respect for properly constituted legal authority is not generally a problem today, the law still serves a vital function of discouraging self-help.217 There are a number of reasons why self-help is contrary to the interests of modern society. Reliance on self-help tends to diminish respect for the rule of law.2 18 Self-help in the form of self-defense carries the additional problem of increasing the quantum of violence in an already violent society. More troublesome is the possibility that the more widespread resort to self-help becomes, the more often innocent people may be killed erroneously.2 1 9 It is troublesome even when a person who is guilty of a crime becomes the victim of proper self-help. The constant decline in the number of capital crimes throughout American history attests to the general view that only the most vicious of intentional killers deserve to die for their deeds.220 We cling to the hope that criminals can be reformed, or at least deterred, if only they are subjected to incarceration, institutionalization, or community corrections. Most persons killed in self-defense would not have been eligible for capital punishment if duly convicted of their threatened crimes.221 This is particularly true of many of the abusive husbands in battered woman's defense cases.222 The proportionate force, necessity, and imminence prerequisites for self-defense are designed to quiet the law's uneasiness about encouraging self-help. 223 The requirement that deadly force only be used to counter deadly force is geared to ensure that the aggressor, in fact, will commit an intentional homicide if not met with defensive force. 2 24 One must suffer nondeadly harm if use of deadly force would be the only way to avoid it. The necessity rule seeks to limit the use of self-help to circumstances in which there is absolutely no other alternative to striking back against the aggressor. It is in- tended to encourage the defendant to seek, in the first instance, nonviolent or non-deadly defensive means. By requiring strict necessity, it is hoped that use of deadly force in self-defense will be considered only as a last resort. Finally, the imminence requirement is meant to restrict self-defense to those situations where there is no time to turn to actors in the criminal justice system to do their designated job and save the defendant from the need to resort to self- defense. Relaxation of any of these strict, narrow requirements raises the spectre of justifying, and thus encouraging, self-help- conduct that the law and society prefer to discourage.225 The battered woman's defense requires relaxation of all of these requirements. 22 6 Rather than limiting the determination of whether these elements of the defense have been met to very limited, objectively ascertainable circumstances, defenders of battered women ask the courts to consider circumstances that would be unknown to the casual observer. Factors such as relative strength, the defendant's physical training, and the defendant's prior experiences with and knowledge about her victim are neither external nor objectively identifiable. Consideration of such circumstances is not compatible with the notion of self-defense as behavior that is justified and should be encouraged. 227 Even more worrisome, however, is the assumption underlying [of] the battered woman's defense [is] that self-defense is necessary in some situations-even when the threatened attack is not imminent-because the criminal justice system has not adequately protected women. 228 This assertion supports the feminist demand that the concepts of imminence and necessity be broadened. Yet, it is exactly this notion that the law must suppress. For the logical corollary is that any person who believes, reasonably or unreasonably, that the criminal justice system does not offer adequate protection can resort to self- help even though there may have been sufficient time to summon the aid of lawful authority. Even when we understand the actor's unusual need to resort to self-help, the actor's behavior may still be dangerous to society. 22 9 If self-defense is a justification and if justified conduct is conduct we consistently encourage because it benefits society whenever similar circumstances arise,2 3 0 the defense cannot rationally be expanded to encompass the battered woman's defense. 23 ' Indeed, it may be that if those who suffer from battered woman syndrome or other psychological trauma induced by their social reality are more likely to kill in self-help, the criminal law should be doing even more than it currently does to prevent them from doing so.232 Domestic abuse is a serious societal problem but promotion of vigilantism is certainly not the solution.2 33 Treatment of self-defense as an excuse allows the judge to make a determination that it would be unjust to convict the defendant while at the same time avoiding a determination that defendant did the right and just thing and the consequent risk of increasing the quantum of violence in an all too violent society.234

Second, the expansion of permissible self-help necessitated by the affirmative position would be available to other besides victims of domestic violence, for example, prisoners. The effect would be to greatly increase the violence in our already too violent prisons.

MARTIN E. VEINSREIDERIS [B.A. 1998, Duke University; J.D. Candidate 2001, University of Pennsylvania Law School.“The Prospective Effects of Modifying Existing Law to Accommodate Preemptive Self-Defense by Battered Women” University of Pennsylvania Law Review, Vol. 149, No. 2 (Dec., 2000)] “Although a certain…of the law.”

Although a certain level of violence within prisons is inevitable barring radical reforms,7 society faces a line-drawing problem when considering the role of self-defense in prison. For example, society might be prepared to allow a prisoner to use force to defend himself in the face of clear and present danger, but unwilling to accept the situation described above as a legitimate, socially justified use of self- defense.73 This issue complicates any proposals to reform substantive self-defense law stemming from battered woman syndrome cases. Any change in the imminence requirement to address battered woman syndrome cases simply could be misappropriated by a prisoner as a legal justification for a morally questionable action. Additionally, any statute stating that the provisions of the new law would not apply to prisoners would be vulnerable to colorable constitutional due process challenges.74 While true self-defense is often necessary in prison, allowing preemptive strikes through a lessened imminence requirement is simply not a desirable result. The inevitable effect is that certain prisoners will use violence to increase their stature among their peers in an environment where violence equals respect.75 To be accorded status in prison, and "to be a 'standup guy'-requires one to embrace intimidation and violence as operative principles of everyday life."76 If an inmate is able to have a status-enhancing use of violence excused by the courts, the atmosphere of the "walled battlefield"77 will only become more violent and lawless than it already is. Allowing preemptive self-defense as a legitimate use of force within prisons will serve to expand the culture of violence that currently exists among inmates. The current formulation of the imminence requirement should remain in place, preventing actions that would ultimately damage the spirit and intent of the law.78

**Solvency.** An excuse defense solves specifically in situations of a victim using deadly force in response to domestic violence.

JOSHUA DRESSLER [Frank R. Strong Chair in Law, Michael E. Moritz College of Law, The Ohio State University “COMMENTARY: BATTERED WOMEN AND SLEEPING ABUSERS: SOME REFLECTIONS” 3 Ohio St. J. Crim. L. 457. 2006]

If battered women are not generally justified in killing their abusers in entirely passive circumstances, must they be convicted of some form of criminal homicide? No. We may be able to excuse them, but without falling back on the old claim of temporary insanity (or diminished capacity). To explain, let me say a few initial words about excuse defenses. As already noted, an excuse defense is recognized in the law when the actor has performed a  [\*469]  wrongful act -- an unjustified act -- but we believe that she should not be blamed for her actions. When do we not blame persons for their wrongful conduct? Although various explanations, founded on utilitarian considerations, or non-consequentialist considerations of character or cause, are sometimes suggested, [n28](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334898312740&returnToKey=20_T14517884763&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.565039.3689179575" \l "n28) I submit the best answer (although one I do not have space to defend here) is this: A person may properly be blamed for her conduct if she had the capacity and fair opportunity to chose freely whether to violate the moral/legal norms of society. [n29](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334898312740&returnToKey=20_T14517884763&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.565039.3689179575" \l "n29) According to this account, a person lacks free choice -- and, thus, cannot be blamed -- if, at the time of her wrongful conduct, she lacked "the substantial capacity or [fair] opportunity to: (1) understand the facts relating to her conduct; (2) appreciate that her conduct violates society's mores; [or](3) conform her conduct to the dictates of the law." [n30](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334898312740&returnToKey=20_T14517884763&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.565039.3689179575" \l "n30) In my view, this is the underlying basis of all excuse defenses, regardless of the label we attach to any particular claim. To understand where I am going here, it is important to distinguish between incapacity claims (more accurately, "lack of substantial capacity" claims) and no-fair-opportunity claims. Incapacity claims focus on internal malfunctionings, on internal disabilities -- that is, on mental illnesses or syndromes. In essence, we are claiming here a defect in the human "machine." For example, we may assert that the actor suffered from irrationality -- due to some disorder; she was so far out of touch with reality that (let's say) she did not understand the relevant facts surrounding her conduct (the first of the three criteria set out above), namely, that the man asleep in her bed did not constitute an imminent threat to her safety. As is readily apparent, early lawyers tried to bring battered woman within the scope of just such an incapacity claim by asserting, in a manner viewed by some as demeaning, that the battered woman was deranged -- insane -- albeit temporarily, at the time of the crime. We do not need to focus on syndromes, however, to provide a potential excuse for a severely battered women. We can provide a theory for acquittal that is, I think, more consistent with our moral intuitions, and which is not potentially demeaning to the woman. The solution is found in applying the no-fair- opportunity prong of excuse theory. A no-fair-opportunity excuse claim is based on some external factor that acts on the individual in a way that convinces us that she did not have a fair opportunity to conform her conduct to the law (the third criterion above). The key word here, of course, is fair. This is a normative judgment. We do not need expert psychiatric testimony to handle this question, because this form of excuse recognizes that there is nothing wrong with the woman—what was “wrong” were external circumstances that we believe, but for the grace of God, would probably have caused us, as well, to act unlawfully. Can we make a plausible no-fair-opportunity claim in Judy Norman's case? Yes. Think about what a jury might have asked itself if it had been given the opportunity. Could Judy have avoided the situation by walking out the door? Remember, we are not using syndrome evidence, so the battered woman's learned helplessness, if it exists, is not relevant.) To answer that question, the jury would likely ask itself other questions: Did Judy Norman have children, thus making it more difficult for her to leave? Yes. She had four living at the time of J.T.'s death. What then were her options? Leave them with J.T.? That would be unthinkable for any loving parent. Leave with them? Where would she have gone? How would she have supported the children? What safety nets had been set up in her community to make such an option realistic? Moreover, what would have prevented J.T. from finding her and "punishing" her for her departure? Rather than leave, could she have called the police for help? She did, and they did nothing to protect her. And, so on. This is the way to try to make the case for excuse, one that a jury might -- or might not -- accept given the facts of a particular case. And, lo and behold, in about a dozen states, there already is a recognized statutory basis -- one apparently not appreciated by enough defense lawyers -- for making this claim. It is the defense of duress, as defined by the Model Penal Code. [n31](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334898312740&returnToKey=20_T14517884763&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.565039.3689179575" \l "n31) The Code provides a defense if a person is coerced to commit a crime -- including murder -- as the result of prior use of unlawful force upon the person (there is a lot of that in domestic violence cases) and/or imminent or non-imminent threats by the aggressor to use unlawful force upon the person in the future, if a person of reasonable firmness in the actor's situation would have been unable to resist committing the crime. [n32](http://www.lexisnexis.com.ezp1.lib.umn.edu/lnacui2api/frame.do?reloadEntirePage=true&rand=1334898312740&returnToKey=20_T14517884763&parent=docview&target=results_DocumentContent&tokenKey=rsh-20.565039.3689179575" \l "n32) Thus, we would test the abused woman, Judy Norman, against the standard of a person of reasonable firmness, not one who has learned to be helpless. This is a normative standard, not a medical one requiring expert psychiatric testimony. This is an issue that quite properly resides with the jury. In my view, given extreme facts, a full defense could, would, and should be recognized, but it would be recognized while sending the right moral message: We do not want women to kill their sleeping husbands, but we will excuse them under extreme circumstances.

**\*\*Frontlines\*\***

**EXT: constant fear st🡪 prison DA**

Even the constant state of fear standard will still encourage prison violence.

MARTIN E. VEINSREIDERIS [B.A. 1998, Duke University; J.D. Candidate 2001, University of Pennsylvania Law School.“The Prospective Effects of Modifying Existing Law to Accommodate Preemptive Self-Defense by Battered Women” University of Pennsylvania Law Review, Vol. 149, No. 2 (Dec., 2000)]

The proposal to expand the definition of imminence to include situations involving a constant fear of harm is equally troublesome.88 Given the high levels of violence within prisons, an inmate who chooses to attack another inmate can simply argue that he was living in a constant state of fear. Thus, a threat of harm is always imminent under the proposed definition. If the threat of harm is always imminent, this proposal suggests that a preemptive strike could be excused regardless of how far removed the defensive act is from the actual threat. Because of the ubiquity of violence behind prison walls, an inmate defendant's argument that he was under a state of constant fear would certainly be plausible, notwithstanding the fact that an attacker may have used violence[been] not out of fear, but to improve his status.90

**EXT: no imminence 🡪 Prison DA (even if necessity exists)**

Eliminating the imminence requirement would exculpate aggressors and increase prison violence.

MARTIN E. VEINSREIDERIS [B.A. 1998, Duke University; J.D. Candidate 2001, University of Pennsylvania Law School.“The Prospective Effects of Modifying Existing Law to Accommodate Preemptive Self-Defense by Battered Women” University of Pennsylvania Law Review, Vol. 149, No. 2 (Dec., 2000)]

The impact on prisons of eliminating the imminence requirement in self-defense cases is clear. Were the [imminence] requirement eliminated, the unintentional effect would verge on official sanction of the predatory culture of prisoners attacking first. If a necessity standard replaced the imminence requirement, prisoners who attack preemptively would be able to take advantage of the very nature of the necessity justification to exculpate themselves. The definition of necessity presupposes and labors to excuse a preemptive act: "[t]he act charged must have been done to prevent a significant evil."79 Clearly, the first requirement of the necessity defense is advantageous to a defendant who commits a preemptive attack. Likewise, the second requirement of necessity, that there must have been "no adequate alternative,"80will be easy for an inmate aggressor to meet, thus excusing his actions. Such an attacker will argue that, in prison, backing down from even a verbal threat will brand him as weak, placing him in future danger.81 Additionally, prisoners will argue that protective custody in response to a threat is not feasible, as "[m]ost targets will refuse offers of protective custody because it... accords them 'non-men' status."82If a prisoner is able to argue effectively that neither protective custody nor backing down to a threat is a legitimate alternative to self-help, a sympathetic jury may excuse a preemptive attack. This would set a dangerous precedent in an environment that already thrives on violence, as it would give prisoners yet another incentive to settle disputes through force.

**a2: law =/= Moral [1/2] – General**

In the case of self-defense claiming that certain standards should exist in the law is the same as saying there is a moral reason to have those standards.

RE’EM SEGEV [PHD, Lecturer The Hebrew University of Jerusalem, Research Fellow UC Berkeley. “Fairness, Responsibility and Self-Defense,” The Berkeley Electronic Press. Working Paper 154. 2004.]

The analysis of the justification for self-defense and its boundaries is essentially applicable both morally and legally. While the law should not necessarily reflect every moral conclusion, this is mainly since some moral conclusions could not be significantly furthered by their incorporation into the law, or are not important enough to justify their incorporation into the law, in light of the price of legal enforcement. These considerations do not apply, or are not decisive, in the context of interpersonal conflicts involving basic interests. (There might be special importance to clarity, even at the expense of precision, in formulating norms addressed to many persons, such as legal norms, but this - moral - consideration is relevant also to moral norms when they could influence many people.) Indeed, although there is a disagreement as to the proper limits of law, it is widely agreed that it should at least reflect moral judgments with respect to the protection of important interests of people from harm.15 This idea presents various difficult questions regarding its proper content and boundaries,16 but its hard core seems obviously justified and widely accepted, while the main dispute is whether the law should go beyond it.17 Thus, the analysis of the proper resolution of interpersonal conflicts in general, and the moral justification of self-defense in particular, is directly applicable in the legal sphere.18

**a2: law =/= Moral [1/2] – excuse/justified**

While law and morality are not the same thing, in the area of the justification or excusing of acts of self-defense law and morality ought to mirror each other. Any difference between the two creates injustice.

ROBERT LEIDER [PHD. Philosophy Georgetown. “JUSTIFYING SELF-DEFENSE, DEFENSE OF OTHERS, AND THE USE OF FORCE IN LAW ENFORCEMENT” A Dissertation submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University. July 27, 2009]

In response, I first would disagree with creating a large gulf between the law of self-defense and the morality of individual actions. I concede that law and morality are not perfectly coextensive, and that criminal law, as general commands, cannot adequately resolve every case. Nevertheless, the distinction between legal and moral self-defense must be kept to a minimum for a few reasons. The permissibility of self-defense involves very fundamental interests of autonomy and other rights. Individuals who successfully act in self-defense can impose very serious and fundamental harms on aggressors. Classifying an individual defensive action as legally justifiable (or even excusable) but morally wrong means that aggressors could suffer these harms without any legal protection or redress. While many moral harms are not subject to legal redress, moral harms that result in physical injury and create significant public externalities generally are. A gap in the other direction—maintaining an act of self-defense is morally justifiable but legally wrong—also causes significant injustice. One must keep in mind the structure of criminal law: if one denies a justification to a person acting in self- defense, then that person has committed a serious criminal wrong and, unless excused, is exposed to significant criminal and civil liability. This result should not occur in morally acceptable cases.

**a2: won’t actually increase violence [1/2]**

Contexts other than domestic violence like prison have conditions that would foster violence were self-defense requirements expanded.

MARTIN E. VEINSREIDERIS [B.A. 1998, Duke University; J.D. Candidate 2001, University of Pennsylvania Law School.“The Prospective Effects of Modifying Existing Law to Accommodate Preemptive Self-Defense by Battered Women” University of Pennsylvania Law Review, Vol. 149, No. 2 (Dec., 2000)]

The problem with such an expansion is that it allows too much subjectivity, and permits almost any defendant to claim that she was in constant fear of harm, especially in situations like prison, where violence is commonplace.53 Therefore, a defendant in a violent environment would be able to take advantage of the violent nature of that environment by arguing that his violent act was a response to constant fear. That constant fear in turn creates an immediate threat and justifies preemptive self-defense. This is an unintentional inevitable result of allowing this type of expansion. One proponent of such an expansion of imminence recognizes the possible problems with this proposal when she notes that "[s]ome commentators have predicted that [such an analysis] will lead to 'open season on men."'"4 This assumption is rightfully rebutted, though, by stating that "[t]hese women are only killing their husbands because they realize that there is no other way to end the abuse. Battered women are not likely to kill motivated by the assumption that they will be able to get away with it."55 In other contexts-such as prison-however, there are very possibly those who are likely to kill motivated by the assumption that they will get away with it. This is the danger of stating that one who is under constant fear of harm is under an imminent threat-there are those who are not killing to escape a dangerous situation, but will misappropriate this expanded definition for less socially justified means.

**a2: won’t actually increase violence [1/2]**

Justification vs. excuse is an important philosophical distinction that sets social norms.

EUGENE MILHIZER [“JUSTIFICATION AND EXCUSE: WHAT THEY WERE, WHAT THEY ARE, AND WHAT THEY OUGHT TO BE” 78 St. John’s Law Review 725, Summer, 2004]

When the law says that certain conduct is justified, it grants its imprimatur and encourages like conduct. It tells all who are similarly situated that they ought to engage in the same behavior, as doing so is objectively beneficial. Justified conduct is not only the legally permitted thing to do; it is the moral and socially responsible thing to do. On the other hand, when the law says that certain conduct is excused, it announces that the conduct harms society and others ought to not freely choose to do the same. The law communicates that the conduct is wrong, legally and morally. It also expresses a concomitant judgment that it would be unjust to hold this particular actor criminally liable for engaging in the harmful conduct, for reasons that are unique to the actor and his circumstances. This assertion is a basic philosophical distinction between justification and excuse that the law should be compelled to draw, and the moral implications that flow from this are profound.

**a2: excuse 🡪 violence too**

Excuse prevents unnecessary violence because it ensures the fair application of standards that prevent violence.

STEVEN MORSE [Ferdinand Wakeman Hubbell Professor of Law, University of Pennsylvania Law School and Professor of Psychology and Law in Psychiatry, University of Pennsylvania School of Medicine. “The "New Syndrome Excuse Syndrome"” 4 Crim. Just. Ethics 3 1995

Recall that the justified defendant engages in otherwise unlawful conduct, but under the specific circumstances her conduct is right (or at least permissible) because she meets society's objective standards of good ethical behavior. She is doing the right deed for the right reason. Objective reasonableness requirements express a wide-ranging normative social consensus about the morality of conduct. When objective standards are set, they will not be at a level easily achievable by the least well-endowed members of society; rather, they will be set at some average level. Consequently, some entirely normal but poorly endowed people will have greater difficulty meeting the[m] standard. This is a regrettable but inevitable outcome of objective ethical standards. Nonetheless, if people are capable of meeting the standard, albeit with difficulty, it is not unfair to require them to conform rather than to injure their fellow citizens. On the other hand, very poorly endowed or otherwise abnormal people may find it impossible within reasonable limits to meet objective standards. If so, as H.L.A. Hart argued long ago?33 they should be excused from liability. Justice requires that the law must not require citizens to meet impossible standards and then blame and punish them when they cannot meet them. Now the criminal law does not require exalted standards of conduct from citizens. Quite the contrary: it is not hard not to kill, rape, steal, and burn, and the duty of care to avoid criminal liability for risky conduct is met easily. Nevertheless, some people cannot meet those standards, and providing an excuse in such exceptional cases-and I must stress that they are exceptional-does not under- mine the general desirability or application of objective standards for justification precisely because excusing the defendant presupposes that he or she has done the wrong thing under the circumstances.

**a2: no distinction -- General**

The lit disagrees.

Mitchell Berman [Bernard J. Ward Centennial Professor in Law, The University of Texas at Austin; Visiting Professor of Law, The University of Chicago. “Justification and Excuse, Law and Morality” Duke Law Journal, Vol. 53, No. 1 (Oct., 2003), pp. 1-77]

Scholarship, like all human artifacts, has its fashions. In the field of Anglo-American criminal law theory perhaps no subject has been more in vogue the past twenty-odd years than the distinction between justification and excuse. Most responsible for this upsurge in scholarly interest are Professors George Fletcher and Paul Robinson, who debated the subject in 1975,'and who have written repeatedly on the topic ever since. But Fletcher and Robinson are now in crowded company. Indeed, the full list of contributors to the topic reads like a Who's Who of contemporary criminal law theorists on both sides of the Atlantic.2 This outpouring of scholarly attention has appeared to pay dividends, as the distinction between justification and excuse has become one of the rare subjects on which scholars have reached wide agreement, essentially echoing Fletcher's view that "[a] justification negates an assertion of wrongful conduct. An excuse negates a charge that the particular defendant is personally to blame for the wrongful conduct."3In fact, at a recent meeting of the Criminal Law Section of the American Association of Law Schools, Joshua Dressler cited theorists' resolution of the justification/excuse problem as the leading illustration of the successes that criminal law theory has achieved over the past couple of decades.4 The solidity of this consensus has freed theorists to focus on subordinate questions, joining issue most notably on the question of whether justifications are "subjective"-turning upon the actor's reasons for acting-or "objective"-involving only facts independent of the actor's beliefs and motives.5

**A2: no distinction – Moral**

From a personal standpoint, there is clearly a distinction.

Marcia Baron [Rudy Professor of Philosophy, Indiana University, “Justifications and Excuses” OHIO STATE JOURNAL OF CRIMINAL LA. Vol 2. 2005]

That justifications and excuses are not on a par, morally, is uncontroversial. One does not want to be excused unless an excuse is called for (or unless the only alternative is to be punished); and it is called for only if one has done something wrong. For example, if a colleague says to me, “Of course, we could hardly have expected you to do X, when you had just given birth a few weeks earlier, so no one blames you,” and I believe that in fact it was not my job to do X, period, I will not be entirely happy to be told that I am excused. I will be tempted to set the record straight: X was someone else’s responsibility, not mine. I did nothing wrong at all.

**a2 omggg it’s a word pic!!!!!!!!!**

1. IT’S NOT A WORD PIC. IF THIS IS A WORD PIC EVERY NEG IS A WORD PIC…

2. EVEN IF IT IS:

A. Counter-Interpretation: The negative may run a word pic if it is functionally competitive and backed by a qualified solvency advocate in the relevant scholarly field and tracks a normative distinction.

B. I meet: Excuse tracks the normative difference between words such as “permissibility”, “impermissibility” and “excuse”; it’s also functionally competitive within the law because there are different consequences; the net benefit and solvency prove functional competition.

C. Standards:

Neg ground: I need to be able to access arguments about excuse and permissibility because few would ever say that it’s morally wrong to kill an aggressor in self-defense.

Kaufman writes:

Whitley R. P. Kaufman [Department of Philosophy University of Massachusetts], "Justified Killing: The Paradox of Self-Defense" Lexington Books (2009). “Self Defense is…indeed even celebrated.”

Self Defense is universally accepted as a paradigm of the permissible use of deadly force, yet moral philosophy has yet to articulate a convincing rationale for its legitimacy. The unanimous consensus as to the permissibility of killing in self-defense is itself remarkable given that every other category of killing arouses intense moral and political controversy. Our society passionately debates the morality of the death penalty, abortion, enthusiasm, suicide and war; even the killing of animals has become an area of intense moral controversy in recent decades. Yet self-defense is the one striking exception to the controversy over killing, for there have been no serious challenges to its legitimacy. Whatever debates there are about self-defense tend to be about how to apply it (whether retreat is required) and thus presuppose rather than question its basic justification. Even pacifists, staunchly opposed to war, have typically not questioned the legitimacy of personal self-defense, notwithstanding the fact that most wars tend to be rationalized in terms of national self-defense. But we still lack an account of why self defense is so different, the one case where killing is taken as not only uncontroversial but positively morally justified- indeed even celebrated.

The distinction between excuse and permissibility is that excuse tracks the blameworthiness of and act and permissibility tracks whether an act should be encouraged. If I cannot take advantage of this distinction that means I have to defend punishment for victims who defend themselves. This puts me comparatively behind given the “unanimous consensus” in favor of self defense and the philosophical arguments stacked against me. Prefer topic literature to abstract predictability or ground skew arguments because it provides a baseline for evaluating the relative ability to research and run arguments since theory is a question of division of ground.

Legal Precision: The distinction between a justifiable homicide and being excused is necessary in the law – it’s what we’re trying to track with the excuse distinction.

Horowitz writes:

Donald L. Horowitz – 1986 [Professor of Law, Duke University]. “Justification and Excuse in the Program of the Criminal Law”. Law and Contemporary Problems. Recognition of excuse ... intended no wrong.

The recognition of excuse serves to heighten the condemnation of all those who are not excused, for exculpation by excuse shows that the law will discriminate sharply between those who have and those who have not displayed criminal intentions. Without excuses, as H.L.A. Hart has explained,8 random behavior might fall within the reach of the criminal law. A criminal law without excuses would be a profoundly different criminal law from the one we have. It would put the accent on judging harmful consequences; it would be far more arbitrary in its treatment of defendants; and it might run afoul of a basic requirement of criminal law-namely, that it constitute a guide to conduct. Law of this kind would have some features in common with secret or unpublished law.9 Provisions for strict liability in the criminal law raise problems very much like those that would be encountered if the law were to abolish excuses. Criminal liability without fault constitutes an "open and official admission that crime can be respectable and criminality a matter of ill chance, rather than blameworthy choice."'0 The abolition of excuses would constitute a similar admission. Exculpation by excuse belongs to that part of the criminal law that removes from punishment defendants who have intended no wrong.

We write the exception for excuses into the criminal law, in other words, not only to make the law fairer, but to make it a more powerful instrument, one that holds unexcused defendants accountable. Without free will, without strong conceptions of individual responsibility and equally strong exemptions for those who are incapable of responsibility, the criminal law can hardly serve as a guide to conduct. The defenses of insanity and duress-whatever their proper limits-are essential to the goals of the criminal law. How, after all, could we maintain a requirement of mens rea and not recognize such defenses? The structure of exculpation, then, has deep roots in a common substratum: the desire to make criminal prohibitions comprehensible and effective. Justification defenses tell wrongdoers that others may freely resort to some of their very methods to prevent the consummation of their wrongs. Excuse defenses assure all those subject to the law that they can gauge their conduct to conform to it. Since punishment will not be indiscriminate, it pays to observe the law. From that point forward, the two forms of exculpation have little in common. Excuse and justification have rather different histories that reflect their different functions.

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The category of excuse is necessary for the law to pull off the delicate balance of discouraging vigilantism while avoiding unjustly punishing individuals who commit crimes but lack criminal intent. If the distinction did not exist the law would either be useless because it could not maintain respect for the law or cruel because it punish unjustly. Thus, in order to be consistent with the nature of legal defenses for deliberate killings I must be allowed to access the excuse/permissible distinction. The law provides the most objective and stable definitions. Legal definitions are codified understandings of terms that society agrees upon, making them the most real world because they are the definitions that are relevant to our lives in that those are the definitions that are collectively enforced on everyone by society and the state. Also, legal definitions shape the arguments that are made in the relevant topic literature because the arguments about how society should address any problem inevitably focus on the law, as government is the only cooperative venture that has the power to enforce the solutions to those problems.