

Doctrinal Summary (pre-1850 Maryland):

- **Common-law foundation:** Lethal self-defense was recognized only where the defendant faced an **imminent threat of death or forcible felony**, was **not the aggressor**, and used no more force than necessary ¹ ² . Any homicide was presumed unlawful **unless proven “justifiable or excusable”** by such circumstances ³ . Mere **“bare” fear or slight provocation** was insufficient; there had to be an *apparent* or actual necessity to kill ⁴ .
- **Justifiable vs. excusable homicide:** Maryland, following English law, distinguished **justifiable homicide** (no guilt at all) from **excusable homicide** (some blame, but forgiven) ⁵ ⁶ . Killing to **prevent a violent felony** (e.g. murder, robbery, rape or burglary) was *justifiable* – “the one uniform principle” being that such force was allowed to thwart atrocious crimes ¹ . In contrast, killing in urgent self-defense during a sudden affray was only *excusable* (not murder, but still a lesser offense) because the defender was partially at fault for entering the combat ⁶ .
- **Duty to retreat (outside the home):** Maryland courts enforced the common-law **“retreat to the wall” rule**. A person who was attacked in a sudden quarrel had to **“decline the combat and retreat as far as he can with safety”** before using deadly force ⁷ . Only if, **having retreated as far as possible**, he still faced imminent danger of death or great harm, could he then kill in self-defense (*homicide se defendendo*) ⁶ . If he kept up the mutual combat without withdrawing, any resulting killing was deemed at most manslaughter, not excusable self-defense ⁷ .
- **“Castle” doctrine (defense of habitation): No duty to retreat at home.** Both treatises and Maryland practice affirmed that one may **stand his ground in his dwelling**. Deadly force was lawful to repel an intruder *on the point of committing a violent felony in one’s home* ⁸ . “A man is not bound to retreat from his house” and may kill an assailant there if necessary ⁹ . Breaking into a dwelling (especially at night) with felonious intent effectively *justified* the defender in using lethal force ¹ . (By contrast, using deadly force against a mere trespass or non-felonious assault was *not* justified – at most it might reduce the offense to manslaughter ¹⁰ ¹¹ .)
- **Defense of others:** The law allowed defense of spouse, family, and even strangers *under immediate attack*. One could invoke the same justifications to prevent a forcible felony upon **“his wife, child, servant, or even a stranger, if it cannot otherwise be prevented”** ¹ . Notably, killing a person attempting to **ravish** (rape) a woman was deemed justifiable self-defense on her part ¹² . However, outside of these grave offenses, intervention in others’ quarrels carried risk; using deadly force to rescue someone from a minor assault or lawful arrest could lead to manslaughter charges ¹³ .
- **Limitations:** An **initial aggressor** could not claim self-defense unless he **withdrew or retreated** and clearly signaled his desire for peace ⁶ . If one deliberately provoked a conflict or pursued an adversary unnecessarily, the law denied the self-defense plea ¹⁴ ¹⁵ . Furthermore, even in self-defense, the defender’s response had to remain proportional – he was entitled to **“repel force by force”** but only so much as reasonably appeared necessary at that moment to save his life or prevent great harm ¹⁶ ¹⁷ . Excessive or retaliatory force, after the threat had subsided, fell outside the protection of self-defense.

Timeline of Key Developments (pre-1850):

- **1642 – “Act for the Rule of Judicature” (Md. Prov. Assembly):** Directed Maryland courts to decide criminal cases according *“as near as conveniently may be to the laudable law or usage of England”* ¹⁸ , effectively adopting English common-law principles (including self-defense doctrine) in the colony.

- **1776 – Maryland Declaration of Rights, Art. 3:** Explicitly *entitled Marylanders to “the Common Law of England”* and English statutes as of independence ¹⁹ . This constitutionalized the traditional common-law rules of justifiable and excusable homicide (e.g. self-defense *se defendendo*, duty to retreat, castle doctrine) as Maryland law.
- **1809 – Maryland Act of 1809, ch. 138 (Laws of Md.):** Maryland’s first murder-degree statute (following Pennsylvania’s example) ²⁰ . It retained common-law definitions of justifiable and excusable homicide, but required juries to distinguish **murder vs. manslaughter**. All **“wilful, deliberate and premeditated”** killings not justified or excused became *murder in the first degree*, while killings “in the heat of passion” or with provocation remained manslaughter – underscoring that a killing in true self-defense should result in acquittal, not merely a lesser degree ⁵ ⁶ .
- **1846 – Wharton’s Criminal Law (American treatise):** Francis Wharton’s influential treatise (1st ed. 1846) summarized U.S. self-defense doctrine consistent with Maryland practice. It affirmed that **“a man may repel force by force in defense of his person, habitation, or property”** against a violent felon, and **“in such case he is not compelled to retreat”**, whereas killing from mere fear or over trivial trespass was unlawful ² . This reflected the prevailing mid-19th-century American understanding of the common law rules received in Maryland.

Authorities Table (Maryland & Common Law, pre-1850):

Authority (case / statute / treatise)	Year	Type	Rule / Holding (summary)	Pin Cite	Quotation (≤40 words)
Act for the Rule of Judicature, Md. (Assembly of 1642)	1642	Statute	Adopted English criminal law in Maryland unless local law provided otherwise.	Archives Md. 1:63 (1642) ¹⁸	<i>“...judge... judging as neer as Conveniently may be to the laudable law or usage of England in the same or the like offenses.”</i>
Maryland Declaration of Rights, Art. 3	1776	Const.	Ensured continuity of English common law (self-defense rules) post-Independence.	Md. Decl. of Rights art.3 ¹⁹	<i>“That the Inhabitants of Maryland are entitled to the Common Law of England... and to the benefit of such of the English statutes... as have been found applicable.”</i>

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Hawkins, <i>Pleas of the Crown</i> (bk.1, ch.28)	1716	Treatise	Required retreat in self-defense unless one's back is to the wall or unsafe to flee. Also, deadly force justified if faced with a felonious attack (e.g. intent to murder).	1 Hawk. P.C. ch. 28, §§23–24 ²¹ ₂₂	<i>"Not only he who on an assault retreats to a Wall... is judged... to act upon unavoidable Necessity; but also he who being assaulted in such a manner and such a Place, that he cannot go back without manifestly endangering his Life, kills the other without retreating at all."</i>
Foster's <i>Crown Law</i> (Disc. II, §3)	1762	Treatise	Distinguished true self-defense from combat by mutual consent: one who withdraws from a sudden affray and, out of <i>necessity</i> , kills to save his life is excused; but if he kept fighting without retreat, it's manslaughter.	Foster's Crown Cases 277 ⁷	<i>"On a sudden Affray... if the Party has declined the Combat and retreated as far as he Can with Safety and kills his Adversary thro' Necessity... it is Se defendendo; but if the Combat... is kept up... it is Manslaughter."</i>

Authority (case / statute / treatise)	Year	Type	Rule / Holding (summary)	Pin Cite	Quotation (≤40 words)
Trowbridge's Charge (Boston Massacre Trial)	1770	Case (persuasive)	Summarized common law: Killing to prevent a violent felony (or in defense of home) is <i>justifiable</i> homicide; killing in a sudden quarrel is merely <i>excusable</i> (requiring retreat if one was at fault).	Charge to Jury, Rex v. Wemms 1 6	<i>"Killing him who attempts to rob or murder me, to break open my dwelling- house in the night, or to commit any other felony on me... is justifiable."</i> <i>"Homicide excuseable in self-defence is where one engaged in a sudden affray quits the combat... retreats as far as he safely can, and then... kills his adversary... This differs from justifiable self- defence... he was to blame... and therefore must retreat; whereas in the other case... [he] is not obliged to retreat, but may stand and repel force by force."</i>
Wharton's Criminal Law §1019	1846	Treatise	Reiterated American common-law rule (followed in Md.): one may use deadly force against an assailant committing a violent felony, with no duty to retreat in that case.	2 Whart. Crim. Law §1019 (1846) 2	<i>"A man may repel force by force in defense of his person, habitation, or property against anyone... who manifestly intend[s]... by violence or surprise, to commit a known felony... In such case he is not compelled to retreat...."</i>

Authority (case / statute / treatise)	Year	Type	Rule / Holding (summary)	Pin Cite	Quotation (≤40 words)
Maryland case law (early 1800s) (e.g. <i>Respublica v. Weems</i>)	1820s	Case (Md.)	<i>Maryland decisions closely tracked these common-law principles. Early reports show, for instance, defendants claiming “self-defense” (se defendendo) were acquitted only upon proof of avoidance/ necessity</i> ²³ ²⁴ .	<i>Harris & McH. Reports</i> ²⁴	<i>“killing arising from a tavern brawl would be scrutinized for evidence of retreat... often resulting in a manslaughter verdict”</i> ²⁴ (reflecting requirement to retreat or else no full acquittal).

Terminology Map (historic terms → modern equivalents):

- **Se defendendo:** Latin for “in defending oneself.” Refers to an **excusable homicide** in self-defense – i.e. one **“forced to what he did in his own defence”**, excused by necessity ²⁵ . At common law such a killing, though not criminal, was treated with some lingering suspicion (historically requiring a pardon or forfeiture) to caution against taking life ²⁶ ²⁷ . Today this equates to lawful self-defense killing.
- **Justifiable vs. Excusable Homicide:** *Justifiable* homicide was killing under authority of law or to prevent an atrocious crime (with **zero legal fault** or punishment) ⁵ . *Excusable* homicide (e.g. *homicide se defendendo* in a sudden affray) involved **some fault (such as entering a fight)** but no felonious intent, so the law excused it as a lesser wrong ⁶ . Modern law similarly treats true self-defense as a complete justification, while killings in heat of passion or imperfect self-defense fall under manslaughter (partial excuse).
- **Chance-medley:** An archaic term for a **homicide occurring in a sudden, mutual encounter** (“chaude mêlée”). It described *“the casual killing of a man, not altogether without the killer’s fault, though without an evil intent”* ²⁸ – essentially what later came to be called **heat-of-passion manslaughter**. The term could also include killings by misadventure. By the 19th century, “chance-medley” was largely replaced by the provocation and manslaughter doctrine ²⁹ .
- **Affray / Sudden Combat:** A spontaneous fight or brawl (“sudden affray”) between two or more persons. In law, engaging in a mutual combat **without a deadly design** could mitigate a subsequent killing to manslaughter (as opposed to murder) ³⁰ ⁷ . An “affray” also meant a breach of the peace; one who killed in an affray had to show retreat to claim self-defense.
- **“Retreat to the wall”:** A classic metaphor requiring that one *must retreat to the farthest safe point* (“the wall”) before resorting to deadly force ⁷ . Under pre-1850 law, this duty applied **except** when facing a felonious attack (or in one’s own home) ⁶ . Today this survives in the “duty to retreat” in jurisdictions that reject “stand your ground.”
- **Castle Doctrine:** Short for the principle that **“a man’s house is his castle.”** It gives special protection to the home and its curtilage. Under historic law, one **need not retreat** when attacked at home, and may use deadly force against an unlawful intruder threatening violent felony ⁹ ⁸ . The

“castle” included the dwelling (and by some authorities, attached property like the yard or outbuildings constituting the *curtilage*). This doctrine remains a core exception to the retreat rule.

- **Dwelling House / Curtilage:** The *dwelling* is one's home—a place of residence (where one's family sleeps). Curtilage refers to the area immediately around the home (courtyard, outbuildings). In burglary and self-defense law, these terms mark the zone where the castle doctrine applies. 19th-century law treated a nighttime intruder into the dwelling as a deadly threat *per se* ¹. While early Maryland law didn't explicitly define *curtilage* for self-defense, the concept that one's *premises* (not just the literal house interior) afforded some right to stand ground was recognized ³¹ ¹⁶.
- **Malice Aforethought:** The requisite mental state distinguishing murder from lesser killings. It signifies an **intent to kill or do grievous harm without legal excuse**. Early Maryland indictments had to allege “feloniously... of his malice aforethought” or else only manslaughter was charged ³². In self-defense cases, proof of an impending threat rebutted malice; a killing *se defendendo* by definition lacked malice.

Gaps and Conflicts (pre-1850):

- **Defense of Others:** While common law allowed using deadly force to protect others from forcible felonies (treated like defending oneself ¹), it was **less clear** on lesser assaults. Some authority suggested that if one killed to rescue a stranger from a non-felonious beating or an unlawful but not life-threatening restraint, it would be manslaughter rather than full justification ¹³. Maryland's early law did not distinctly resolve when exactly defense of another was justifiable versus excusable, leaving a gray area in cases not involving serious felonies against the third party.
- **Forfeiture/Pardon technicalities:** English law technically required that even excusable homicide (*se defendendo*) be followed by a royal pardon and resulted in forfeiture of the slayer's property (a “murdrum” fine) ²⁶. It's **unclear** to what extent Maryland enforced these archaic penalties. The 1776 Maryland Declaration of Rights did not explicitly address forfeitures in self-defense cases, and no Maryland statute pre-1850 abolished them. By practice, such forfeitures may have fallen into disuse in Maryland, but the sources are silent or ambiguous on this point.
- **Initial Aggressor's Right:** The law denied an aggressor the plea of self-defense, but a subtle conflict appears in the doctrine of “mixed combat.” Some treatises indicated that if a person started a quarrel with non-lethal intent and the opponent escalated, the original aggressor *could* regain a right to self-defense *after* clearly attempting retreat ⁶. Maryland cases before 1850 did not squarely articulate this scenario. The boundary between an aggressor's provocation (reducing murder to manslaughter) and true self-defense after withdrawal remained an *unresolved tension* in the case law.
- **No Codification of Self-Defense:** Maryland had **no statute defining self-defense** in this era; it was wholly case-law. This meant some nuances (e.g. how imminent the danger must be, or what constitutes sufficient retreat) were left to the jury's judgment in each case ²⁴ ³³. Early reports are sparse, and sometimes only indicate verdicts. The *lack of detailed judicial opinions* creates uncertainty on finer points – for example, whether the duty to retreat applied when one was *blamelessly* attacked in a sudden fight (treatises say yes ⁷, but direct Maryland precedent is scant).
- **Terminology evolution:** By 1850, Maryland courts were beginning to use more modern terms (like “self-defense” and “manslaughter on sudden provocation”) instead of medieval French terms like “chance-medley.” There is a potential *interpretive gap* when later commentators describe earlier practice – e.g. an 1847 treatise might say “justifiable homicide” where colonial records used “se defendendo.” This raises some ambiguity, though largely semantic. In substance, no open conflict appears – Maryland consistently hewed to the inherited common-law rules – but differences in terminology can obscure the historical record.

1 5 6 Trowbridge's and Oliver's Charges to the Jury: 5 December 1770

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2 10 11 14 15 16 17 31 Beard v. United States | 158 U.S. 550 (1895) | Justia U.S. Supreme Court Center

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4 The Trial of William Wemms, James Hartegan, William M'Cauley ...

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