

## **Justification: Self-Defense - History, Theories, Modern Law, Reasonableness, Necessary Force, Deadly Force And The Duty To Retreat**

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Self-defense and defense of others are defenses to a charge of criminal conduct in which the defendant concedes the transgression of a norm or statute against violence, for example, assault or homicide, but maintains that under the circumstances the use of force was either not wrongful (justification) or is wrongful, but it would be unfair to impose punishment (excuse). Either as a justification or as an excuse, the defendant is completely exonerated. In contrast, "imperfect" or "incomplete" self-defense, where a significant element of the defense is absent, mitigates or reduces the charge, for example, from murder to manslaughter.

That one's force is not aggressive but defensive in nature is a defense to criminal conduct in all fifty states and is recognized in nearly every jurisdiction in the world. The pervasiveness of this legal right has its root in a number of extralegal ideas. First, the use of protective force is considered a fundamental, inalienable right of natural law or morality. Second, the Old Testament demands, in the face of violence, that we take an "eye for an eye, a tooth for a tooth." Third, human psychology suggests that using force in self-defense embodies the instinctual and overwhelming impulse toward self-preservation. As the great English legal scholar William Blackstone put it, killing in self-defense embodies "the primary law of nature" (vol. iii, p. 3). Based on this principle of self-preservation, the philosopher Thomas Hobbes, in his rationale for the defense of duress, provides a persuasive account for the illogic of refusing valid claims of self-defense:

If a man by the terrour of present death, be compelled to doe a fact against the Law, he is totally Excused; because no Law can oblige a man to abandon his own preservation. And supposing such a Law were obligatory; yet a man would reason thus, If I doe it not, I die presently; if I doe it, I die afterwards; therefore by doing it, there is time of life gained. (*Leviathan*, chap. 27 (1651))

In other words, faced with certain present death at the hands of a villainous assailant or possible subsequent death from the state's executioner, the will to live inculcated in our human nature is so strong that it would be futile to criminalize self-defense. Though the inevitability and inalienability of self-defense is perhaps self-evident, and serves as a necessary adjunct to the other self-evident truths of the right to life and liberty, the right to self-defense is curiously not a constitutional right (*Rowe v. DeBruyn*, 17 F.3d 1047 (7th Cir. 1994)).

RUSSELL CHRISTOPHER

*See also* [DOMESTIC VIOLENCE](#); [JUSTIFICATION: THEORY](#); [JUSTIFICATION: LAW ENFORCEMENT](#); [JUSTIFICATION: NECESSITY](#); [SCIENTIFIC EVIDENCE](#).

## CASES

*Coker v. Georgia*, 433 U.S. 584 (1977).

*People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986).

*People v. Young*, 183 N.E.2d 319 (N.Y. 1962).

*Rowe v. DeBruyn*, 17 F.3d 1047 (7th Cir. 1994).

*Smith v. State*, 419 S.E.2d 74 (Ga. Ct. App. 1992).

*State v. Norman*, 378 S.E.2d 8 (N.C. 1989).

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