

Justification Defenses and Just Convictions

This major study advances an interpretation of criminal justification defenses that views them as an integral component of the structure of the criminal law defined as the institutional representation of the underlying principles of political morality in a liberal society.

Criminal offense definitions prohibit certain types of conduct and prescribe criminal punishment for those engaging in that conduct. Yet people sometimes violate those prohibitions in circumstances that render their conduct acceptable. Justification defenses provide legal devices that allow courts to exonerate those who violate criminal offense definitions in such circumstances. Such controversial cases as the use of force by battered women or the violation of trespass laws by those engaged in civil disobedience raise important questions about the proper scope and limits of justification defenses. The purpose of the book is to explain the function and limits of these defenses in a way that will enable the reader to apply them to difficult cases.

The book extends the traditional scope of the legal and philosophical discussion of justification defenses. It integrates philosophical analysis with a consideration of contemporary applications, it shows how these defenses are key components of criminal law, and it explores the relationship between legal and moral justification.

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Preface

The contemporary debate regarding justification defenses in the criminal law tends to emphasize the logical relationships among offense elements, justification defenses, and excuses in the context of the traditional justifications for criminal punishment. These are important concerns, and this book joins that debate. This book seeks a broader foundation, however, in the principles of political morality represented by the criminal law. The theory advanced here demonstrates the importance of the expressive function of criminal conviction and punishment in a system of criminal law that serves as an official representation of liberal principles of political morality. It also contends that appreciation of the abstract foundations and functions of the criminal law can inform the search for the most defensible resolution of difficult contemporary applications, such as those involving claims of justification by defendants who kill their batterers or engage in crimes of conscience.

As with any extended intellectual project, this book builds upon the contributions of many individuals. I am particularly grateful to Barbara Sturgis and Megan Sullivan, who served as my coauthors in writing one of the articles in which we initially presented some of the arguments developed in this book. Many of my colleagues at the University of Nebraska participated in an extended (some of them might say interminable) series of discussions and faculty colloquia regarding many of the issues and arguments presented here. Robert Audi, Marty Gardner, Steve Kalish, Jo Potuto, and John Snowden read and commented upon various manuscripts that contributed to the analysis in this book. I am also grateful to the faculty of the University of Utah College of Law for providing resources, stimulation, and hospitality during a sabbatical semester in which I worked on this project. In light of the dedication, I should also mention Ed, who listened to parts of this in a truck, Ralph, who listened to it in New Jersey, and Josiah S. Carberry. I have searched my memory for some contribution for which I would be able to thank Professor Carberry. Alas, I can think of none.

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Many of the arguments developed in this book were initially presented in prior articles. I am grateful for permission to draw on these in developing the analysis defended here. These include: *Justification Defenses and Just Convictions*, 24 *Pacific Law Journal* 1233 (1993) (copyright held by the University of the Pacific, McGeorge School of Law); *Self-defense*, in *In Harm's Way* 255 (Jules L. Coleman and Allen Buchanan, eds.; Cambridge University Press, 1994); *Battered Woman Syndrome, Expert Testimony, and the Distinction between Justification and Excuse*, 1994 *University of Illinois Law Review* 45 (coauthored with Barbara J. Sturgis and Megan Sullivan; the copyright to the *University of Illinois Law Review* is held by the Board of Trustees of the University of Illinois); and *Verdicts of Conscience: Nullification and Necessity as Jury Responses to Crimes of Conscience*, 69 *Southern California Law Review* 2039 (1996) (copyright held by the University of Southern California).

Frequently Cited Sources

This book employs abbreviated citation forms for the following frequently cited sources. The abbreviated form follows the full citation below in square brackets.

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