

Index

- accomplice liability, 47, 53
 accountability, 3, 13, 35, 145; criteria of, 26, 199; systemic criteria of, 150; by systemic standards, 26, 36, 72
 accountable agent(s), 34, 36, 41, 43, 140, 141; condemnation type and, 24, 26, 27, 29; disabilities undermining status of, 148; duress and, 201, 202; and excuses, 143, 200; and justification defenses, 199; vindicating convictions and, 147
 accountable agent by systemic standards, 39, 40, 53, 149, 151
 acquittal, 150, 153, 160, 170, 189; despite legal guilt, 156, 157, 164, 180, 181–2, 183–4; expressive significance of, 183; in extrasystemic nullification, 186; through necessity defense, 185–6
 act-type(s), 27n25, 43, 53, 199; condemnation of, 149; proscribed, 35
 action-plans, 32–4, 35, 36, 37, 39, 40, 41, 43, 53, 141, 200
 action-theory, 37
 aggressor culpability: harms and, 60–2
 arrest, 45
 assault, 25, 27, 28, 29, 43, 110; offense definitions, 74; offense elements for, 1, 2; unprovoked, 52
 assault statutes, 30, 56, 64
 assisting justified acts, 40–2, 46–7
 asymmetrical justification, 49, 53; 54
 athletic contests, 51
 attempt liability, 36, 38, 41, 42, 127
 autonomy, 68; fundamental value for, 67–8, 68n34, 70, 190, 196, 197; protection of, in self-defense law, 56–7, 59, 101–2, *see also* sovereignty, personal
 awareness of justificatory circumstances, 3, 5–6, 10, 21, 31, 36, 38
 battered woman syndrome, 2, 13, 39, 90, 92, 111–14, 129–30, 131, 133–5, 200–1; and conventional self-defense law, 98–114; excuse rather than justification, 120, 134; and mental illness, 116–20; or pattern of battering, 104–6; putative relevance of, to self-defense, 93–4; research on, 94–8; and self-defense, 92–4
 battered women, 136, 137, 140; culpability and, as justified or excused, 126–34; reasonable belief in necessity of deadly force, 106–8; and self-defense, 12–13, 15, 89–135; self-defense as justification and excuse, 114–34
 battered women cases, 200–1
 battering relationship, 90, 92, 94, 95, 96–7, 104, 109, 130, 135; failure to leave previously, 111–14; inability to leave, 94, 95; necessary force, 104–6; and necessity of deadly force, 106–7; patterns of legal intervention in, 127; as support for reasonable belief, 111
 behavior: exempted by justification defenses, 30, 31, 32
 behavioral directives, 73, 74
 beliefs, 22; in self-defense, 91; *see also* reasonable belief
 bias, 160, 161
 Blackman, Justice, 173n65
Black's Law Dictionary, 99
 boxing matches, 21, 51
 burden of persuasion, 87, 171
 burden of production, 170–1, 193
 burden of proof, 132n124
 business practices, 21
 capacity-responsibility, 148
 choice-of-evils defense, 2, 44, 63
 circumstances, 32, 37; and justification, 3, 136–7, 143; *see also* extraordinary circumstances
 civil disobedience, 25, 154–5, 156, 173–4, 188, 190
 civil protective orders, 110

- coercion/coercive force, 138, 139, 141–2
 coercive circumstances, 143–4, 146, 201
 community conscience, 174–7; jury as, 174–6, 177, 180n71
 community consensus, 171
 compensation, 63, 80, 81
 competition, mutually privileged, 21
 comprehensive doctrines: of citizens, 187, 188; of judges, 193, 195, 196
 concrete interests, 200; of aggressor, 76, 77, 78, 87, 133; defined, 63n21; injury to, 72; of innocent aggressors, 80; protection of, in self-defense, 75, 79, 82, 83, 88, 102; threat to, 63, 64
 conduct, 32, 37; justification directed toward, 13
 conflict: between putatively justified actors, 21, 40; mutually justified, 4, 16, 21
 confrontation cases (battered women), 13, 107, 108, 109
 conscience, 189; acts of, 162, 192–2, 195; defined, 191n86; normative significance of, 192; verdicts of, 188, 191, 193, 198, 203; *see also* crimes of conscience
 conscientious resistance, 155, 156, 173–4, 188
 consequentialism, 61, 85, 157n16; jury nullification in, 158–9, 161, 167
 Constitution, 172
 conventional public morality: action according to standards of, 143–4; criminal law as official representation of, 2, 23, 25–6, 31, 43, 52, 56, 71–2, 73, 74–5, 80, 84, 87, 143, 145, 147, 163, 167, 175–6, 199, 202, 203; fully articulated, 19, 28, 29, 30, 31, 34, 37, 38, 39, 49, 53, 64, 89, 140, 151; and judicial nullification, 193–4, 195, 196; jurors' responsibilities in, 154; justification defenses and, 16–54; necessity in, 167, 168, 170–7, 185–6; nullification in, 167, 168, 178, 179, 182–3, 184–6; obligations from, 187, 188, 197; properties of, 30; self-defense theory as component of, 56, 64; social matrix as component of, 48; violations of, 149, 199
 conventional social morality, 30–1, 38
 conviction, 2, 23, 24, 26, 72, 73, 74, 149–50, 201; condemnation in, 52, 53, 54, 56, 64, 149, 151, 152, 186, 199, 201; expressive function of, 15, 151, 183, 189–90, 202; without harsh treatment, 145, 147; and status of victim, 73; *see also* purely vindicating convictions
 corrective device: necessity and nullification as, 170, 178, 184, 186, 193, 202
 courts: appellate, 153, 161; battered woman syndrome in, 92, 93–4, 96, 98, 99, 103, 107, 108, 118, 120, 123, 129, 131, 134; and necessity defense, 170–1, 172–4; decisions under conditions of uncertainty, 132, 135; and jury nullification, 156; and punishment, 146; and self-defense, 115
 credibility argument: battered women, 111–14, 134
 crimes of conscience, 13–14, 15, 154–6, 168, 170, 181–2, 185–6, 189–91, 193, 198, 202, 203; grounded in personal obligation, 187–8
 criminal code(s), 74
 criminal justice system, 22, 25–6, 64–5, 145, 154, 189, 198, 202; and blameworthiness, 150; deception and integrity of, 167–8; information provided by, 190n84; in liberal society, 71–3; political morality underlying, 15, 166, 167; reliance on general verdicts, 156; rule-based, 159; *see also* retributive systems
 criminal law, 4–5, 29, 132, 200; attribution of blameworthiness in, 145; character in, 38; as community conscience, 175–6; core rules of, 23, 26; expressive function of, 2, 15, 72, 87, 133–4, 151, 181, 199, 200, 202; as guide to conduct, 17; integrated system of, 52; moral force of, 162, 163–7; offense definitions and justification defenses in, 168–9, 173; and personal sovereignty, 71, 73; prospective/restrospective functions of, 34–7; purposes of, 44–5; regulating degree of discipline and fortitude required, 142, 143, 144; role of justification defenses in, 14; and self-defense, 75; violence-preventing function of, 6, 8
 criminal law doctrine: theoretical analysis of, 90
 criminal punishment, *see* punishment
 criminal prosecution: for battery, 110
 critical morality, 43, 143
 culpable aggressors, 12, 58–9
 culpability, 3, 26, 35, 71, 121, 131, 141, 147; and battered women as justified or excused, 126–34; criterion of, 124–5; in distributive justice, 60–1; in duress, 138; for mistaken beliefs, 125–6, 130; and self-defense, 84, 85, 86
 culpability elements, 2, 3, 32, 33–4
 cycle theory of violence (battering relationship), 92, 95, 96, 97
 deadly force, 62; by battered women, 90, 93, 111, 134; reasonable belief in necessity of: battered women, 106–8; in self-defense, 85, 86, 91, 115
 deception: and integrity of a liberal criminal justice system, 167–8; and moral force of criminal law, 163–7

- defendant: status as accountable agent, 150, 151
- defense-of-others, 1, 11, 27, 28–9, 30, 43, 55
- defensive force, 56, 57, 75–7, 78–9, 83, 85–7, 88, 90–1, 102, 136–7; battered women, 89, 93, 94, 99–100, 101, 103, 109, 110–11, 120, 126, 127, 128–34, 135; in criminal law, 74; justificatory foundations for, 75, 81–2; necessary, 2; retreat as legal alternative to: battered women, 108–9; *see also* deadly force
- deliberation, requirement of, 192
- democratic process: undermined by nullification, 188, 189
- democratic self-government: and nullification instructions, 162–3
- deontic theories, 157n16
- depression, 92, 95, 96–7, 104, 113, 116, 118, 119
- desert, 26, 43, 146, 158
- desert-based approach, 61
- deterrence, 71, 163
- difficult cases, 10–11, 14, 16, 21, 136–8, 143–4; battered woman syndrome, 135; duty not to resist, 42; justification defenses, 34; and knowledge requirement, 37–40; moral condemnation, 25–6; and revised matrix of social responsibility, 47–52; self-defense, 55, 58, 88; social matrix/incompatibility thesis, 9–10
- diplomatic immunity, 18
- disability(ies), 142; exculpation due to, 3; giving rise to excusing condition, 140, 141; grounding excuse, 8, 148; in innocent aggressors, 79; undermining status as accountable agents, 148
- disability that differentiates, 137, 141, 142, 148
- discipline and fortitude, 143–4, 145–6, 147, 148, 150
- distributive justice: self-defense and, 60–2
- double jeopardy prohibition, 156
- Dressler, Joshua, 4, 9, 10, 47, 50, 139–40
- duress, 11, 15, 44n59, 54, 83, 88, 181, 201–2; as claim of mitigation, 142; classification of, 152; as excuse, 10, 138, 139–40, 141–2, 148–9, 151, 152, 202; as problematic classification, 10; and systemically complete mitigation, 136–52; theoretical interpretation, 138–42
- duties; in social matrix, 47; *see also* obligations
- duty not to interfere: and incompatibility thesis, 42–7
- duty not to resist, 42
- duty to retreat, 55, 58, 59, 60, 77, 83, 85–6; with innocent aggressors, 80
- equal standing of citizens, 63, 66, 67–8, 70, 71, 75, 78, 79, 80, 81–2, 83, 162, 177, 185; impairment and, 82–3; legal system and, 72, 73; in self-defense, 102; violated by deception, 167; violated by necessity defense, 177; violated by nullification, 185
- equal standing of victims, 182; nullification and, 189–90, 192
- error preference, 74, 76, 84–5, 87, 88, 91, 132n124, 200
- euthanasia, 194
- evidence: and jury deviation, 161; self-defense: battered women, 105–6, 107, 108, 111, 112, 113–14, 129, 133
- excuse(s), 1, 3, 7–8, 16, 18, 24, 32, 34, 39, 40, 41, 50, 53, 91, 141, 143–4, 145, 199; action-plan and, 35; battered women, 126–34; and condemnation, 37; duress as, 10, 138, 139–40, 141–2, 148–9, 151, 152, 202; exculpation by, 150, 151–2, 200; exempting from condemnation and punishment, 29; innocent aggressors, 79–80; justifications and, 22; mistaken beliefs and, 7, 58; in prison escape cases, 44; and purely vindicating conviction, 147, 148; reasonable belief in, 120–6; self-defense, 59, 61; self-defense by battered women as, 114–34; structure of, 201; *see also* justification/excuse distinction
- excusing condition(s), 137, 140, 141, 142
- execution, 23, 26
- expert testimony, 126; battered woman syndrome, 89, 90, 92, 93–4, 96, 97, 103, 104, 105, 106, 107, 111, 112, 114, 116, 134, 200, 201
- extraordinary circumstances, 140, 144–5, 146, 147, 148, 149, 152
- failure-of-proof defenses, 3, 19, 20, 34, 150; action-plan and, 35; and condemnation, 37
- Feinberg, Joel, 22, 67, 69
- Fingarette, Herbert, 138–9
- Fletcher, George, 4, 5, 8, 10; justified conduct as right, 16–18, 18, 20; prohibitory norms, 31, 32, 40; putative justification, 6–7, 21; self-defense law, 56–9, 60, 83n58, 85; unknowingly justified defendants, 29–30
- force: justified/excusable, 43, 44; justified use of, 46, 48; in law enforcement, 45, 46; in self-defense, 51; *see also* deadly force; defensive force; necessary force
- forfeiture theory, 77–8
- fundamental value, 67; for autonomy, 68n34, 70; sovereignty as, 68–9
- Furman v. Georgia*, 174n65

- general defenses, 3
 general self-defense, 11–12
 good (the), 66, 68; and the right, 157n16
 government: individuals and, 70, 71, 73
 Greenawalt, Kent, 4, 6, 7, 9–10, 21–2, 39, 42
- harm(s), 84n60, 133; and aggressor culpability, 60–2; balancing of, 82, 87; consequentialist weighing of, 59; minimizing, 63; in necessity requirement, 101, 102; in self-defense, 76; undeserved, 138
 harm distribution (HD) principle, 60
 Hart, H. L. A., 148
 home: self-defense in, 86–7, 91, 126
 homicide, 31; negligent/reckless, 132; offense definitions, 74; self-defense exception, 36
 homicide statutes, 28, 30, 56, 64, 129
- immediacy; battered woman syndrome, 98–9
 immediate (defined), 99
 immediately necessary: imminent or, 99–102, 103
 imminence, 74, 75, 87n68; battered woman syndrome, 98–9; in self-defense doctrine, 102
 imminence requirement, 55, 91
 imminent: defined, 99; or immediately necessary, 99–102, 103
 impaired capacity: and culpability, 131; and unreasonable beliefs, 122–3, 125
 imprisonment, 23
 imputation of lesser standing, 64, 70, 73, 75, 76, 80, 81, 88, 182, 189, 190
 incompatibility thesis, 4, 8, 50, 51, 52; duty not to interfere and, 42–7; social matrix and, 3, 7–10, 11, 40–52
 individual interests: legal defenses and, 62–4; *see also* concrete interests
 information, lack of: and unreasonable beliefs, 121–2, 131–2
 injury: in battering relationship, 107; in culpable aggression, 61; directed toward culpable party, 128; in self-defense, 75, 76, 77, 80, 83, 87; undeserved, 49, 54
 innocent aggressors (IAs), 5, 12, 200; not culpable, 79–80; and self-defense, 55, 57, 58–9, 61, 79–80, 83, 84, 88
 innocent bystanders (IBs), 55, 83
 innocent parties, 49
 innocent shields (ISs), 200; and self-defense, 55, 58–9, 80–1, 82, 83, 88
 innocent victims, 48, 49, 58; standing of, 145
 insanity defense, 24, 34, 45n60, 119–20, 124, 137
 institutional legal alternatives to defensive force, 109–11
- interests: in claims of self-defense, 56; of victims, 57, 59; *see also* concrete interests
 interference, 20–1, 46n63, 53; with justified conduct, 40, 41, 51; *see also* duty not to interfere
- judges, 161, 198; instructions to juries regarding power to nullify, 157, 158, 164–6; role of, 186
 judicial nullification, 193–7, 202–3
 juries/jurors, 24, 25, 171; authority to nullify, 157–63; battered woman syndrome, 93–4, 130, 132, 134; as community conscience, 174–6, 177, 180n71; and nullification, 178, 179–85, 202–3; as persons, 187–93; power to decide facts and law, 156–7, 158, 162, 179, 164; and punishment, 146; responsibilities of, 154; role of, 186, 198; standard instructions to, 164–5, 166–8, 202–3
 jury derivation, 160, 162, 169; accidental/malicious, 178; malignant, 160–1
 jury nullification, 14, 15, 153–4, 156–7, 201, 202–3; consequentialist argument, 157, 158–9, 161, 167; deontic argument, 157, 162–3, 167; historical argument, 157–8
 just outcomes: nullification instructions and, 161, 162
 justice, 158; in acquittal, 157; criteria of, 167; different from mercy, 180–1; formal principle of, 60; intrasystemic appeals to, 170, 177–80
 justification, 147; battered women, 126–34; duress as, 10, 11, 138, 141; internal/external, 35–6, 37, 38, 39, 40, 41–2, 43, 45, 48, 53, 131, 139, 200; knowledge and, 21–2, 29–40; limits of, 153–98; reasonable belief in, 120–6; self-defense by battered women as, 114–34; wide/narrow senses of, 51–2, 53
 justification defenses, 3, 73–5, 126, 151, 168, 199; and conventional public morality, 16–54; exculpation in, 127–8; exemptions by, 199–200; general category of, 14, 15, 56, 89, 136, 199, 200; boundaries of, 154, 156, 170; self-defense by battered women and, 114–34; nullification not in, 186; theoretical debate about, 2–11, 90; theoretical framework for analysis of, 16, 52–4; grounded in justificatory circumstances, 128–9, 130; and condemnation, 37; distinct from excuse and mitigation 16; exculpation by, 150; objective and subjective elements of, 31; preclude conviction and punishment, 149; prospective/retrospective functions of, 52; integrated theory of, 2, 14–15; issues, 1–15;

- moral condemnation and, 26–9; preclude condemnation inherent in conviction and punishment, 185–6, 199; self-defense as, 89; structure of, 201; with subjective elements, 31–7
- justification/excuse distinction, 6, 14, 88, 90, 130–1, 133, 134, 139; mental states in, 13, 89, 120–6
- justificatory circumstances, 3; awareness of, 3, 5–6, 10, 21, 31, 36, 38; justification defenses grounded in, 128–9, 130
- justified acts, 51; conflict of, 43, 48
- justified conduct, 21; as right/as permissible, 3, 4–5, 7–8, 10, 16–21
- justified liability, 121
- Kadish, Mortimer, 169, 170
- Kadish, Sanford, 169, 170
- knowledge: and justification, 21–2, 29–40
- knowledge requirement, 5–6, 8–9, 10, 21–2, 31, 34, 35, 36–7; difficult cases and, 37–40; and social matrix, 41
- law: in liberal society, 71; role of, 84–5; see also criminal law; rule of law
- law of self-defense, 55–6
- learned helplessness, 92, 93–4, 95–6, 97, 106, 111–12, 114, 116, 118, 123–4, 129, 130; as disordered thought and special capacity, 102–4
- legal alternatives to defensive force, 129, 130–3, 134; availability/lack of, 126–7, 143; institutional, 109–11; retreat, 108–9
- legal defenses: and individual interests, 62–4
- legal institutions, need for, 198, 203
- legal liability: and common moral intuitions, 38
- legal powers: and legal rights, 166, 167
- legislative preemption, 171–2, 178, 174
- lesser-evils defense, 2, 47–8, 49, 62, 139
- lesser-evils model: self-defense law, 56
- lesser-evils rationale, 12
- lesser-harms theory, 61, 77, 81, 85
- liability, 36
- liberal democracy: deception in, 163–4; justification defenses in, 2
- liberal political morality, 2, 185; principles of, 108–9; self-defense, 64–5
- liberal political philosophy, 65–71; self-defense theory in, 55, 56, 62, 75, 83
- liberal political structure, 188
- liberal society: analysis of justification defenses in, 65; criminal justice system in, 71–3; general principles in, 73; law in, 71; law of self-defense in, 56; necessity and nullification in, 167–86; responsibilities of persons in, 187–97; self-defense as justified conduct in, 74, 75–83
- liberties, basic set of, 69
- locus of control: battered women, 95–6, 97
- McDonald v. United States*, 117–18
- malicious motives, 38, 41, 127–8, 161
- mental illness: battered woman syndrome and, 116–20
- mental states, 89, 120–6; and distinction between justification and excuse, 13; and justification, 7
- mercy: in acquittal, 157; intrasystemic appeals to, 180–3, 198, 202
- mistake: nonculpable, 43, 45, 124, 126, 127, 130, 131, 132, 133, 134, 141, 201; reckless or negligent, 39n49
- mistaken beliefs: and excuses, 58
- mitigating factors, 199
- mitigation, 16, 50, 145, 147, 181; in sentencing, 142, 183; see also systemically complete mitigation
- Model Penal Code (MPC), 1, 2, 3, 5, 10, 32, 83n58, 100; assault provision, 18; defensive force, 85, 86, 87; duress provision, 141; self-defense in, 62, 91, 121, 122
- moral agent(s), 191–2, 193, 197; citizens as, 154; juror as, 188; persons as, 203; responsibility of, 202
- moral blameworthiness, 24, 26, 35, 36, 38, 39, 40, 72, 202; assisting justified acts, 41, 42; criteria of, 149, 150, 152, 199; mitigation of, 143, 144; punishment in proportion to, 201; standard of, 145–6, 147
- moral condemnation, 2, 29–31, 74; and criminal punishment, 22–9, 37; hard cases for, 25–6; and justification defenses, 26–9; and punishment, 16, 33; first type, 149–50, 152, 201; five types of, in criminal punishment, 22–4, 25–7, 29, 30, 53, 72, 151, 199; fourth type, 32, 34, 38, 39, 40, 42, 43, 49, 140, 141, 147, 149–50, 152, 201; fifth type, 36, 38, 39, 40, 147, 149, 152, 201; institutional, 26; institutional level/level of application, 72, 199; in punishment, 38, 52, 53, 54, 56, 64, 140, 144, 145, 149, 152, 163, 186, 199, 201
- moral doctrines, 66–7
- moral evaluation, 6, 22, 36
- moral force of criminal law: deception and, 163–7
- moral principles, 28, 70, 73
- moral standards, 23, 30
- moral theory, 9, 10, 56, 65
- morally justifiable law: self-defense as, 83–7
- MPC, see Model Penal Code (MPC)

- natural events, 63, 78, 80
- necessary force: battered woman syndrome/battering relationship, 104–6
- necessity, 22, 45, 201; and conventional public morality, 167, 168, 170–7, 185–6; defense, 2, 13–14, 15, 63, 64, 74, 153–98; judgments of, 85, 86; justification, 62; justifying self-defense, 77, 91, 120–1, 126, 127, 133, 134, 137; and nullification, 168–70, 202; and nullification, in liberal society, 167–86; nullification as, 177–80; nullification beyond: extrasystemic nullification, 183–5; nullification beyond: intrasystemic appeals to mercy, 180–3; as residual justification defense, 13, 154, 168–9, 170, 171–2, 177, 186, 193–5, 198, 202
- necessity requirement, 102; in self-defense, 91, 94, 101
- negligence, 39n49
- nonconfrontation cases (battered women), 13, 98, 103, 106–8, 114, 126, 130, 134
- nonexculpatory policy defenses, 18
- nonpublic domain, 66, 67, 28, 71, 73; sovereignty in, 69–70; *see also* public/nonpublic domains/jurisdictions
- nullification, 13–14, 153–98; beyond necessity: extrasystemic nullification, 183–5, 186, 198, 203; beyond necessity: intrasystemic appeals to mercy, 180–3, 186, 198, 202; expressive significance of, 190, 192; indirect or subconscious, 160, 161; and jurors as persons, 187–97; as necessity, 177–80; necessity and, 168–70; necessity and, in liberal society, 167–86
- nullification instructions, 157, 158–60, 161, 162–3, 164–6, 169, 178, 185, 186, 188, 189, 192–3, 198, 202
- obligation of conscience, 187n83
- obligations, 187–8, 189, 193; conflict among, 196–7, 198; of judges, 195–6, 197; positive, 28; and reasons to act, 196; in social morality, 30–1; *see also* personal moral obligation
- offense definitions, 19, 53, 64, 72, 89, 168, 199; articulation of, 149; criminal assault, 43; defined, 19; in Fletcher, 4; justified violations of, 49; legal, 74–5; objective elements of, 27, 28, 29; permission to violate, 20; prospective/retrospective functions of, 32–3, 34, 36; as representation of conventional public morality, 73; violation of, 150
- offense elements, 1, 2–3, 141, 145, 147, 199; crimes of conscience, 156
- Otey v. Stenberg, 174n65
- pathognomonic syndrome, 112–13
- penal code(s), 22, 23, 28, 35, 127, 145; and conventional morality, 25, 26; justification/excuse distinction in, 131, 133
- penal statutes, 84
- People v. Young*, 9
- perception of imminent violence: battered women, 93, 103–4
- perjury, 71n43
- permissible, justified conduct as, 3, 4–5, 10, 16–21
- “person of reasonable firmness,” 141, 142
- personal moral obligation: crimes of, 155–6, 187–8, 189
- persons: as citizens/as moral agents, 188–9, 203; jurors as, 187–93; responsibilities of, in liberal society, 187–97
- police intervention: for battered women, 109, 137
- political institutions, liberal, 65–6, 67, 68, 70–1
- political liberalism, 65–71
- political morality, 38, 66–7, 163; underlying criminal justice system, 15, 166, 167; and legal system, 64–5; liberal principles of, 62 74–5, 83, 102, 202; principles of, 55–6, 65–6, 70, 89, 154, 184–5, 199, 200; self-defense in, 64; theory of, 54
- political process, participation in, 66, 69, 164
- political protest, 171, 172
- “preemptive strike,” 12, 101
- prison escape cases, 9–10, 43–4, 45, 51, 136, 140
- privileges, 19; conflicting, 20; justification defenses as, 20–1; in social matrix, 47
- probation, 146
- prohibitory norms, 4, 29–31, 35, 73, 74, 168; defined, 19; exceptions to, 5, 18–29, 20, 21, 28, 29, 31, 32, 38, 41, 45, 64, 89, 149; modified by justifications, 40; violation of, 53
- propensity to err, 87, 88, 200
- proportionality, 12, 74; rough rule of, 85, 87, 88, 200
- proportionality principle: in harm distribution principle (HD), 60
- proportion(al)ity requirement, 55, 57, 59, 61, 75, 76, 83, 85–6, 87, 88, 91, 200
- psychological disorders, 137; battered woman syndrome, 116–20, 123–4, 129
- psychological responses to battering, 92, 95–6, 104, 106, 111, 116
- psychological syndrome(s), 2
- psychopathology, 119, 120, 140

- public morality, 54; minimal standards of, 26; principles underlying 87–8; shared principles of, 187, 188; *see also* conventional public morality
- public/nonpublic domains/jurisdictions, 66, 67, 68, 70, 71, 198, 199, 203; boundaries of, 145, 185; conflict among obligations grounded in, 196–7; conflicts among reasons to act in, 187, 189; distinction between, 188, 189, 193; nullification instructions undermine boundary between, 186
- punishment, 2, 71, 75, 146, 201; and blameworthiness, 150; complexity of institution of, 147; condemnation in, 38, 52, 53, 54, 56, 64, 140, 144, 145, 149, 152, 163, 186, 199, 201; for crimes of conscience, 14, 156; expressive function of, 15, 151, 189–90, 202; five types of condemnation in, 22–4, 25–7, 29, 30, 53, 72; harsh treatment in, 144, 145; institution of/application of, 22–3, 24, 26; justification of, 148; mitigation of, 142, 143; moral condemnation and, 16, 22–9, 37; paradigmatic methods of, 26; and status of victim, 73
- purely vindicating convictions, 145, 146, 150–1, 152, 201–2; objections to, 146–51
- putative justification, 6–7, 8, 11, 21–2, 37, 39, 43, 44, 45, 53, 141
- putative self-defense, 58, 91
- rational agency, 140, 141, 143
- “reasonable battered woman” standard, 123, 130
- reasonable belief, 13, 22, 89; arrest on basis of, 45; battered woman syndrome, 129–30, 133–4; justification and excuse, 120–6; that legal alternatives not available, 109–10; in necessity of deadly force: battered women, 106–8; pattern of battering as basis for, 111; in self-defense, 112; in self-defense of battered women, 98, 104–6, 114–16
- reasonable but mistaken belief, 3, 6–7, 39
- “reasonable person with impaired reasoning,” 123
- reasonableness, 125–6, 127; and psychological disorder, 123–4
- reasonableness requirement: in self-defense, 91
- reasonableness standard, 116, 130–1; subjective/objective, 115
- recklessness, 39n49
- religion, 67
- residual justification defense, 2; duress as, 15; necessity as, 13, 154, 168–9, 170, 171–2, 177, 186, 193–5, 198, 202
- resistance, 46, 53
- respect, 66, 69; denied in nullification, 182, 202
- responsibility(ies), 26, 148; of persons as citizens, 202; of persons in liberal society, 187–97
- responsibility, principle of, 61
- restraining orders, 109
- retreat, 5, 12, 74, 75; as legal alternative to defensive force: battered women, 108–9
- retreat requirement: dwelling-place exception, 86–7, 91, 109; in self-defense, 88, 91, 109, 126, 200; *see also* duty to retreat
- retributive justice, 180
- retributive systems, 26, 53, 149, 201, 202; conviction in, 149–50, 151, 199; punishing in proportion to blameworthiness, 144, 152
- revenge, 127
- right: justified conduct as, 3, 4–5, 7–8, 10, 16–21, 58; yielding to wrong, 102
- Right (Recht)*, 57, 29; should never yield to wrong, 57, 85,
- right action, 16–18, 157n16
- rights: and harms, 173–4
- rights of victims, 59
- risk, 133; in self-defense, 76–7, 84n60
- Robinson, Paul, 5, 10, 101n42, 140, 141–2
- rule of law, 71, 203; and conventional political morality, 185
- sacrificing one’s life, 50, 144; requirement of, 48, 54
- se defendendo*, 58, 61, 88, 137
- self-defense, 1, 36, 48, 54, 55–88; battered woman syndrome and, 92–4; and battered women, 12–13, 88, 89–135; by battered women: as justification and excuse, 114–34; and distributive justice, 60–2; integrated theory of, 61–2; justification rather than excuse, 120–1, 134; as justified conduct in liberal society, 74, 75–83, 136; law of, 200; moral foundations of, 201; moral justification of, 87–8; as morally justifiable law, 83–7; mutually justified, 52; normative structure, 56, 64–75; as problematic specific justification defense, 11–13; and social order, 56–9; theory of, 11–12, 15, 55, 56–62; use of force in, 2, 5, 12, 51
- self-defense doctrine, 91–1, 101–2, 108, 109, 112, 135, 136–7; deadly force in, 106; self-defense by battered women in, 114–34, 201
- self-defense law: battered woman syndrome and, 98–114
- self-defense provision (MPC), 18

- self-determination, 66, 164; right to, 67–8, 69, 70, 71, 75n6, 77, 80, 83, 86, 87–8, 200
- self-esteem, decreased, 92, 94, 95–6, 104, 116
- self-respect, 66, 69, 70, 79, 80
- sentencing, 23, 149, 150
- social cooperation, 65, 70, 163–4, 197, 199, 203; mitigation in, 143, 144, 145
- social institutions: demands on individuals, 54
- social matrix, 50; and incompatibility thesis, 3, 7–10, 11, 40–52; negative aspect of, 41, 51; privileges and duties in, 47; revised, 47–52, 53
- social morality, standards of, 4–5
- social order, self-defense and, 56–9
- sovereignty, personal, 66, 68–71, 190, 197; categorical, underivative, noncompensable, 68–9, 70, 76; impairment and, 82–3; self-defense as protection of, 75–9, 80, 81–2, 85–6, 87–8, 102; threat to, 63, 64; violation of, 72–3, 133, 182, 200
- specific justification defenses: self-defense, 11–13
- state: intrusion to protect interests, 82–3; *see also* government
- structural liberalism, 65–7, 69–70; and nullification, 190, 196; and obligations, 187n83
- subjective elements: justification defenses with, 31–7
- substantive liberalism, 65, 67–9, 70–1, 203; and nullification, 190, 194–5, 196–7; and obligations, 187n83
- suspended sentences, 146
- symmetrical justification, 48, 49, 53
- symptom, defined, 116–17
- syndrome, defined, 116–17
- systemic condemnation, 26, 27, 29
- systemically complete mitigation, 142–6, 195n91, 201–2; duress and, 136–52
- testimony: self-defense: battered women, 105, 106, 113–14
- third parties, 57, 133; assisting justified acts, 40, 41, 42; legal rights and duties, 8, 11
- Thoreau, Henry David, 155n6
- trial by jury, right to, 158
- understandability, 125–6, 127, 129
- unknowingly justified defendants, 5–6, 21, 22, 29–31, 34–5, 36, 37–8, 121, 127
- unreasonable beliefs, 121–2, 125
- Urbom, Judge, 174n65
- utilitarians, 67, 191, 196
- utility (principle), 70
- vicious motives, 6, 21–2, 30
- victimization, duress as, 138–9
- violence, mutually justified, 44, 45, 46, 50, 51–2, 53, 136
- voluntary act(s), 3
- voluntary act requirement: in duress, 138
- Walker, Lenore, 92, 94–7, 113
- Wisconsin: civil commitment statute, 117, 118
- Zenger, Peter, 187
- Zenger trial, 187–93