

What Should We Say We Say about Contrived ‘Self-Defense’ Defenses?

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Abstract Imagine someone who deliberately provokes someone else into attacking him so that he can harm that person in defending himself against her attack and then claim “self-defense” when brought to court to defend himself for what he has done to her. Should he be allowed to use this defense, even though it’s clear that he has deliberately manipulated his attacker into attacking him precisely in order to be able to harm her with impunity (assuming he were allowed to use the defense and thus escape legal penalties)? This question is the focal point in the paper that follows. I argue first that the case described above is indeed an instance of an “*actio libera in causa*,” albeit arguably one at the margins of this controversial class of cases. Then, using a view about the justification of self-defense that I have defended elsewhere, I show why I believe that, while the manipulator should not be deprived of the legal right to defend his self-defensive actions in such cases by claiming they were a legitimate matter of self-defense, there is good reason to enact laws that will allow him to be prosecuted, independently of his “self-defense” defense, for manipulating his attacker as he did, thus allowing him to harm her in self-defense and then defend his actions as purely a matter of “self-defense.”

Keywords *Actio libera in causa* · Self-defense · Punishment reform

As a paradigm of the kinds of cases that raise the problem of the so-called “*actio libera in causa*,” we might well begin with the case described by Finkelstein and Katz, of the defendant who “deliberately drinks himself into a state of irresponsibility in order to commit a crime while in that state.”¹ One central question such a case raises, Finkelstein and Katz note, is “whether we should deny the defendant a defense we would otherwise grant because the defense is claimed in the context of a plan to produce [that defense].”²

¹ Claire Finkelstein and Leo Katz, “Contrived Defenses and Deterrent Threats: Two Facets of One Problem” (5 Ohio State Journal of Criminal 2008, p. 480.

² *Ibid.*, p. 480.

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