

The Differential Treatment of Anger and Fear in Affirmative Defense Law

- Hypothesis:

In criminal law, a defendant may be excused for her wrongdoing when she is determined to have acted without adequate rationality and self-control. Although both fear and anger may be the cause of such sub-rationality and –control, these emotions have not been treated equally in affirmative defense law.

- Review and Analysis:

A review of the history of affirmative defense law revealed that while there is inconsistency in how different emotional states are weighted when considering criminal culpability and punishment, there was no definite trend specific to anger and fear. As such, it is unclear what role the distinction between anger and fear may play in law making, jury decision making, and sentencing.

Example of the problem:

As some scholars have argued, whereas anger is arguably the most important factor in reducing a murder charge to the lesser crime of manslaughter via the heat of passion (or provocation) defense, fear is often not recognized provocation or other affirmative defenses, despite the obvious functional role it plays in duress and imperfect and mistaken variations of self-defense.

Future Directions:

One possible approach may employ multiple raters to code case findings with respect to how different emotional states are treated. Inter-rater reliability would need to be demonstrated before any correlational analysis may be conducted. This approach may be more conclusive as to the alternative roles of anger and fear in the formation and application of affirmative defenses.

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