

**EMOTION, CHOICE AND CRIMINAL RESPONSIBILITY:  
REFLECTIONS ON THE RATIONALE OF  
PROVOCATION DEFENCE**

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***Introduction :***

In England and other common law jurisdictions provocation operates as an independent partial defence to murder aimed at the reduction of that offence to voluntary manslaughter.<sup>1</sup> Moreover, provocation is usually taken into account as a factor in mitigation of sentence with respect to offences other than murder. For the partial defence to succeed the jury must be satisfied that the accused was deprived of his or her self-control at the time of the killing (the subjective test) and that this was the result of wrongful conduct serious enough to provoke an ordinary person (the objective test). Determining the threshold of legal provocation presupposes a moral judgement about what sort of offensive conduct is capable of arousing in a person such a degree of justified anger or indignation that might defeat his or her capacity for self-control. Although legal wrongdoings of a significant nature should for the most part provide a sufficient basis for the defence, non-legal, moral wrongdoings may also be considered serious enough to pass the threshold of provocation in law. Over this threshold, provocations may vary from the less serious ones (e.g. verbal provocations) to those involving very serious wrongdoings (e.g. provocation involving physical violence). Provocations involving different forms and degrees of wrongdoing may equally support a partial defence to murder, provided that the requirement of loss of self-control is also satisfied.

The defence is understood to hinge upon two interrelated elements,

namely, the wrongful act of provocation and impaired volition or loss of self-control. The first element is taken to be justificatory in character, for it focuses upon a condition that, on the face of it, is capable of affecting the wrongfulness of the actor's conduct quite independently of his or her state of mind. The second element, by placing the emphasis on the actor's state of mind and his inability to exercise control over his actions, is clearly excusative in nature. Because the provocation rests upon both excusative and justificatory considerations, the rationale of the legal defence has been difficult to locate.<sup>2</sup> As Alldridge has remarked.

The defence [of provocation] must be either a partial excuse (in which case the centre of the inquiry will be whether or not the defendant lost his/her self-control) or a partial justification (in which case the centre of the inquiry will be what was actually done by the deceased to the defendant--to what extent the deceased 'asked for it')...It is interesting to note that both these conditions obtained at common law.<sup>3</sup>

Although the justificatory element in provocation may have played a part in the shaping of the legal doctrine of provocation, its role in modern law is greatly diminished. The idea that an act of revenge may be partially justified conflicts with fundamental presuppositions of the criminal law system as a system whose very point is shifting the authority and moral basis of actions from the domain of subjective attitudes to general and impersonal norms of conduct.<sup>4</sup> Although for the defence of provocation to succeed it must be established that the accused was sufficiently wronged by his or her victim, the rationale of the defence in law is more satisfactorily explained in terms of the excuse theory. The real basis of the provocation defence, traditionally regarded as a concession to human frailty, lies in the actor's loss of self-control in circumstances in which any ordinary person might also have lost control.<sup>5</sup> In this respect, the wrongful act of provocation is seen as providing a morally acceptable explanation for the accused's loss of self-control and killing rather than a reason for directly reducing the wrongfulness of his or her actions. This paper examines how provocation can be conceptualised as a partial excuse and

discusses problems relating to the traditional understanding of the provocation defence as a concession to human frailty.

***Provocation as a Partial Excuse: Some Introductory Remarks***

The description of provocation as a concession to human frailty reflects the conception of the defence as an excuse.<sup>6</sup> This approach to the defence hinges on the notion of impaired volition or loss of self-control. Its governing assumption is that provocative conduct, when it is sufficiently serious, is capable of inflaming anger to such a degree as to be likely to lead the provoked person to lose his or her self-control and retaliate in violence. When the provoked person loses self-control he is unable to weigh up the consequences of his action according to reason. It is not that the provoked person lacks the *capacity* to reason. His judgment that there has been a wrongdoing is a reasoned judgement, but the reasoning then breaks down so that his actions that stem from that judgment are no longer the product of reason. As Horder explains :

Actions stemming from a loss of self-control...are the product of a judgment (of a certain degree of wrongdoing...) and a desire following in the wake of the judgment that controls the will without, for the moment, the restraining or guiding influence of reason.<sup>7</sup>

Although losing self-control and killing as a response to provocation is not totally excusable, the actor's degree of culpability falls short of that required to convict him of murder. From the point of view of the excuse theory, the gravity of the provocation is relevant to assessing the accused's claim that he was provoked to lose his self-control. There is no question here of whether the wrongful and culpable character of the provocative conduct should render the killing objectively less wrongful or partially justified. It is, rather, the accused's loss of self-control, *as a result of provocation*, that accounts for and justifies the reduction of culpability and, consequently, the reduction of the offence from murder to manslaughter. To gain some insight into the excusative element in provocation it is necessary to consider what human frailty means and how it relates to the loss of control requirement which, from the viewpoint of

the excuse theory, constitutes the true basis of the provocation defence.

***Loss of Self-Control as a Basis for Excusing : A Closer Look***

In provocation it is not required that the actor loses his self-control to the extent that he does not know what he is doing, or what his action is aimed at; but self-control must be lost to such an extent that for the moment his action is being guided by passion rather than by reason. Indeed, it is an important prerequisite for pleading provocation as a partial defence to murder that the accused has acted with the requisite *mens rea* for murder, i.e. an intention to kill or to cause grievous bodily harm. If the provoked agent loses his self-control to such an extent as to be unaware of the nature or quality of his act, or unable to exercise control over his bodily movements, then he may be entitled to full acquittal on the basis of a lack of *actus reus* or *mens rea* defence. Other things being equal, if the provoked agent suffers a total loss of self-control, automatism may provide the appropriate basis for a complete defence to the charge of murder.<sup>8</sup> Nevertheless, in those cases of provocation where the actor is totally deprived of his ability to control his conduct, the victim's provocation might perhaps be regarded as a triggering factor of the excusing condition - i.e. automatism providing the basis of his defence to murder. Thus, although another excuse takes the priority over provocation here, the latter might be granted a role peripheral to or supportive of the defence relied upon.<sup>9</sup>

The role of loss of control in the theory of excuses is understood in the light of the important distinction between involuntariness and moral or normative involuntariness. The term involuntariness is used to denote one's total inability to direct one's conduct or to exercise control over one's bodily movements. One might say that, in such cases, the agent acts only in appearance because the conduct is no longer subject to conscious determination by the agent.<sup>10</sup> Normative or moral involuntariness, on the other hand, pertains to those cases where the agent, although he is able to direct his external conduct (to "act", in a strict sense), is unable to act as he chooses or would have chosen due to external or internal constraints

on his freedom to choose (cases of "overpowered will"). According to Fletcher :

Excuses arise in cases in which the actor's freedom of choice is constricted. His conduct is not strictly involuntary as if he suffered a seizure or if someone pushed his Knife-holding hand down on the victim's throat. In these cases there is no act at all, no wrongdoing and therefore no need for an excuse. The notion of involuntariness at play is what we should call moral or normative involuntariness. Were it not for the external pressure, the actor would not have performed the deed. In Aristotle's words, he 'would not choose any such act in itself'.<sup>11</sup>

The distinction between involuntariness and moral or normative involuntariness is allied to that between compulsion and coercion. A person acting under compulsion is unable to exercise physical control over his or her bodily movements, in other words, is not free to act. A coerced person, by contrast although he is free to act in a strict sense, is not free to choose the direction of his action.<sup>12</sup> Compulsion provides the basis for claims of exculpation contesting authorship-responsibility and hence, indirectly, moral responsibility. Claims of exculpation (or mitigation) stemming from coercion challenge directly the actor's being morally responsible for a wrongful act. From the point of view of the excuse theory, the classification of the various exculpatory claims in law turns on the source and nature of the relevant external or internal impediments precluding the agent's acting in compliance with the law.<sup>13</sup>

Freedom of choice in action, as a requirement of moral and legal responsibility, presupposes, among other things, that the actor is "master of his mind", or that he is acting in a "normal" frame of mind. Heat of passion and loss of self-control imply that the contribution of reason in the psychological process towards the formation of the will is precluded or substantially diminished.<sup>14</sup> There are two ways in which passion may affect a person's ability to choose freely. In some impetuous acts the urge does not circumvent the conscious self but, in a sense, passes through it.

Because of its intensity, however, the urge overrides the actor's ability to exercise rational judgment, it defeats his moral resistance.<sup>15</sup> One might also consider as relevant here the so called *short-circuited reactions*. These pertain to cases where an intense psychological urge is activated so abruptly that, in a way, circumvents the conscious self and affects directly the agent's motivational system. In such cases the agent's moral inhibitions are bypassed rather than overcome. Depending upon the degree to which self-control is lost, the provoked agent's response may be described as an impetuous act of the first type or as a "short-circuited reaction". In the latter case loss of self-control tends to involve a spontaneous, immediate reaction to the provocation received. The desire to inflict punishment on the provoker which is triggered by the judgment of wrongdoing is translated into action immediately, i.e. without going through any process of deliberation. In this case the agent reacts almost without thinking, like the person who, when another raises his hand to hit him, instinctively ducks his head or raises his hands to protect himself. In the former case, by contrast, the provoked agent appears to be making a choice in anger to inflict a certain kind of punishment on the provoker. The exercise of choice here, however, does not necessarily require us to draw the inference that the provoked agent is in control of his actions, for the choice he makes, distorted by emotion, involves a misjudgment as to what form and degree of retaliation is appropriate. Depending upon the perceived gravity of the provocation, this misjudgment is to some extent excusable because people are fallible and often leap before they look, especially when they are conquered by passion. Both impetuous acts involving deliberation and short-circuited reactions should be distinguished from what is referred to as "reflex actions". The latter lack a concrete psychological basis and therefore relate to the conditions of involuntariness rather than to those of moral or normative involuntariness. The "impetuous acts" and, arguably, the "short-circuited reactions" are not irrelevant to the attribution of moral and, possibly, legal responsibility for both may be taken to manifest undesirable character traits or dispositions.

What do we mean, then, when we say that the provoked agent who

acts "in the heat of the moment" is not entirely free to choose? To answer this question one would need to look more closely at the interrelation between free agency and self-control. It has been asserted that freedom of choice presupposes that what motivates the agent to act in a certain way accords with his or her all-things-considered evaluations. G. Watson draws a distinction between the agent's "valuational" and "motivational" systems. He defines an agent's valualtional system as :

that set of considerations which, when combined with his factual beliefs, yields judgements of the form: the thing for me to do in these circumstances, all things considered, is a. To ascribe free agency to a being presupposes it to be a being that makes judgements of this sort. To be this sort of being, one must assign values to alternative states of affairs, that is, rank them in terms of worth.<sup>16</sup>

Moreover, Watson defines the motivational system of an agent as that set of considerations which moves the agent to action. From this point of view, an action is held not to be free if the agent's motivational system is not aligned with, or correspond to, his evaluational system. In Watson's words :

The possibility of unfree action consists in the fact that the agent's valualtional and motivational system may not completely coincide. Those systems harmonize to the extent that what determines the agent's all-things-considered judgements also determines his actions....The free agent has the capacity to translate his values into action; his actions flow from his evaluational system.<sup>17</sup>

Freedom of action as a requirement of responsibility presupposes not only that what motivates a person to act concurs with his or her evaluations; it presupposes, in addition, that the person's evaluations that move him to action take place in a "normal" frame of mind. As A. Mele has noted :

A self-controlled person is disposed to bring his motivations into line with his evaluations and to maintain that alignment. But there

is more to being self-controlled than this, for one's evaluations themselves can be warped in various ways by one's wants and motivations. Hence, a self-controlled person must also be disposed to promote and maintain a structure of evaluations or values which is not unduly influenced by his motivations.<sup>18</sup>

As has been pointed out before, provocation may provide the grounds for a partial excuse only if the victim's conduct is considered to be sufficiently wrongful, i.e., capable of raising legitimate anger or indignation.<sup>19</sup> It is precisely his or her disapproval of the victim's conduct that motivates the agent to respond. In provocation the provoked agent does not merely judge that there has been a wrongdoing, but also, to some extent, deliberates on what retaliatory action is required. But, where there is an overreaction, the agent judges that more retaliation is appropriate than it is in fact justified by the seriousness of the provocation. Although the agent's judgment of wrongdoing motivates his choice to take punitive action, the ensuing urge to retaliate in a sense overrides the agent's own evaluational system, or his ability to assess correctly both the provoker's misdeed as well as his own response to the provocation. Thus, we might say that the provoked agent is not fully free to choose because his capacity for evaluation is undermined by the overwhelming emotional pressure which he is experiencing.<sup>20</sup> In this respect, the provoked agent who overreacts in an outbreak of anger is similar to the victim of coercion who acts morally involuntarily.

Unlike other defences based upon the idea of moral or normative involuntariness, loss of self-control as a result of provocation falls short of totally excluding moral and legal culpability. Giving way to anger-justified though such anger may be or allowing one's reasoning ability (and hence his freedom to choose) to be overcome by passion furnishes sufficient grounds for holding the provoked agent partially responsible for his wrongdoing. The provoked agent who kills is still to blame for violating the general norm requiring that people should always hold their anger in check, even when faced with the most severe provocation. The



agent remains morally and legally responsible for the lesser crime of manslaughter because, as a "normal" person, he is assumed capable of resisting his impulse to kill the provoker. The provoked agent's inability to defeat his urge to kill shows that he lacks the power of reason to view his response to provocation in the context of a system of values and an assessed set of circumstances. Because that power of reason is lacking the provoked agent finds it impossible to control his impulse, since the stifling of the impulse cannot be made the objective of a voluntary choice. As long as the provoked person is regarded as a "normal" person, giving way to anger can only be due to a defect of character, manifested by his inability to view the impulsive action in the light of a given system of norms that proscribes the taking of human life. This is precisely what justifies the provoked killer's being held, to some extent, morally and legally responsible for his actions.

In provocation the attribution of responsibility for the lesser offence can be explained on the basis of the theory of responsibility which focusses on the relationship between external conduct and human character. This theory postulates that moral praise or blame pertains not directly to acts but, rather to the character traits. By character trait is understood any socially desirable or undesirable disposition or attitude that an act may be taken to reflect.<sup>21</sup> Although not all acts manifest character traits in a way that is morally or legally relevant, an actor cannot be held blameworthy or legally culpable unless his harmful conduct reflects a socially undesirable attitude. If it does, the degree of blame and punishment which the actor deserves is to be determined by reference to the extent to which his or her attitude is deemed undesirable; if it does not, blame and punishment would be inappropriate, although certain non-punitive measures preventive of similar conduct in the future might be taken. Notwithstanding that attitudes may be volatile or unstable, the general assumption of this theory is that, other things being equal, wrongful and unlawful act does manifest an undesirable character trait or attitude. From the point of view of the character theory of responsibility, the role of excuses is to block the normal inference from a wrongful act to an undesirable trait of

character. Determining whether a wrongful act reflects a defect in the actor's character requires consideration of the actor's state of mind at the time of his act and of his ability to exercise control over his conduct. In this respect, the admission of loss of self-control in provocation is taken to block the normal inference from the act of killing to the character fault associated with the crime of murder. Nevertheless, the excusing condition here cannot preclude the actor's conviction for the lesser crime of manslaughter, for losing control and killing is still taken to reflect a defect in the actor's character.

Under the character theory of responsibility one could also explain why losing control and killing in the face of a trivial provocation, or when no provocation has been offered, should not entitle the actor to a partial excuse. One might say that, if the provocation is not regarded as serious enough to raise justified anger to such a degree as to cause an ordinary person to lose his self-control and kill, the actor's response, on the spur of the moment though it may have been, manifests the same degree of character fault as that normally ascribed to a premeditated killing. The same may be said about those cases in which the actor is deemed responsible for creating a situation wherein a provocative event is highly likely to occur.<sup>22</sup> As Dressler has pointed out :

under excuse theory, we do not (fully) blame a person who (partially) loses self-control if, *but only if*, he is not to blame for his anger and for his homicidal actions which result from it....A person who becomes sufficiently enraged to kill because the decedent acted in a nonwrongful manner arguably does not deserve to be excused. At the least the nonwrongfulness of the decedent's actions is highly pertinent in determining whether the actor's loss of self-control was excusable. Thus the individual who becomes angry and responds violently when another *justifiably* strikes him in self-defence and the person who unjustifiably creates the situation in which the provocation gives birth are blameworthy and should not be excused.<sup>23</sup>

If sufficient provocation cannot be shown or where the actor is

deemed responsible for creating the conditions of provocation, the fact that the actor killed after he lost his self-control cannot on its own entitle him to an excuse on the grounds of the provocation defence. One might argue, however, that if a general loss of control defence was recognised, establishing provocation would not be necessary in order to reduce the actor's culpability for homicide. Nevertheless, where the actor's loss of self-control cannot be attributed to provocation, such a general loss of control defence may hold good only in so far as another acceptable reason for losing control can be brought forward.

Let us now consider a little further the idea that an accused might perhaps be able to rely on a general loss of control defence in some cases where the test of provocation cannot be met. As was noted before, in such cases the accused's plea for extenuation should not be accepted unless the accused offers a good reason for his losing his self-control in the circumstances. We might say that for an excuse to be allowed the accused's claim of impaired volition must be supported by evidence of a particular condition which is put forward as its triggering factor or "cause". Although a number of such conditions have been singled out as providing the grounds for formulating general defence categories, a claim of impaired volition might perhaps be brought forward which may be difficult to subsume or treat under one of the existing categories. In this respect, a general loss of control or impaired volition defence would serve to accommodate claims of excuse based on conditions lying outside the scope of the existing excuse-based legal defences. An excuse-based defence of this kind would be open-ended, in the sense that, although it would rest upon the requirement of impaired volition, no specific condition or triggering factor would be laid down as the cause of the actor's impairment. It would rest upon the accused to bring forward evidence of an acceptable condition, or set of conditions, accounting for his (partial or total) lack of control over his conduct. Such a general impaired volition defence may be introduced either to complement or even to replace (i.e. as encompassing) an existing defence category. For example, the American Model Penal Code provides the reduction of homicide from murder to

manslaughter in those cases where the accused acted "under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse". It is added that "The reasonableness of such explanation or excuse shall be determined from the viewpoint of a person in the actor's situation under the circumstances as he believes them to be".<sup>24</sup> Under this provision there are no special limitations as to what sort of circumstances that may give rise to such an excuse-based defence. It is upon the jury to decide whether the accused in fact acted under the influence of extreme mental or emotional disturbance, and it is upon them to determine whether the disturbance was one for which there is reasonable explanation or excuse. An excuse-based defence similar to the MPC's extreme emotional disturbance' defence may be relied upon to deal, for example, with some cases of cumulative provocation lying on the borderline between provocation and diminished responsibility where neither provocation nor diminished responsibility seem capable of providing the basis of the accused's plea for a partial excuse. In these cases, the lapse of time between the last provocative incident and the accused's response, or the admission of forethought and deliberation, would appear to militate against the "hot anger" requirement of provocation. On the other hand, the assumption that the accused is a "normal" person, or the relatively uncertain or temporary nature of his psychological impediment, may render the defence of diminished responsibility difficult to accept. Here, the accused might nevertheless be able to rely on a defence of impaired volition, on the grounds of extreme mental or emotional disturbance, by drawing attention to the psychological effect that continued abuse or violence has had on him or her and the ensuing difficulties in checking, through rational judgment, the disruptive force of the ensuing emotions.

### ***Concluding Note***

The excusative element in the provocation defence pertains to the assumption that the provoked agent who loses his self-control acts morally or normatively involuntarily. In so far as the actor's anger at the author of the provocation is morally justified, an intentional killing committed in the "heat of passion" does not reflect the moral disposition or trait of

character which is normally associated with murder. Impaired volition does not mean that the provoked agent must have lost his self-control in an absolute sense, for loss of self-control is a matter of degree and, as such, it does not always preclude deliberation. What must be precluded or, at any rate, seriously affected, however, if provocation is to provide a partial excuse, is the actor's capacity of assessing the moral significance of his actions or of bringing his actions into line with his all-things-considered moral choices.

### NOTES

1. Sec, e.g., s.3 of the English Homicide Act 1957; s. 169 of the New Zealand Crimes Act 1961; s. 232 of the Canadian Criminal Code; s.23 of the New South Wales Crimes Act 1900; s.304 of the Queensland Criminal Code; ss. 281 and 245 of the Criminal Code of Western Australia.
  2. As. J.L. Austin has noted, "It is arguable that we do not use the terms justification and excuse as we might; a miscellany of even less clear terms, such as 'extenuation', 'palliation', 'mitigation', hovers uneasily between partial justification and partial excuse; and when we plead, say, provocation, there is genuine uncertainty or ambiguity as to what we mean - is he partly responsible, because he roused a violent passion in me, so that it wasn't truly me acting 'of my own accord' (excuse)? Or is it rather that, he having done me such injury, I was entitled to retaliate (justification)?" "A Plea for Excuses", in *The Philosophy of Action*, A. White (ed.), (1968) 19,p.20.
  3. "The Coherence of Defences", *Criminal Law Review* (1983) 665,p.669. And according to Dressler, "careful analysis of the language and of the results of common law heat of passion cases demonstrates that there is an uncertainty whether the defence is a sub-species of justification or of excuse", "Rethinking Heat of Passion: A Defence in Search of a Rationale", *73 Journal of Criminal Law and Criminology* (1982) 421, p. 428. See also Dressler, "Provocation: Partial Justification or Partial Excuse?", *Modern Law Review* 51 (1988) 467.
- As. A.Von Hirsch and N. Jareborg have pointed out, "Although the [provoker] might deserve punishment, the actor lacks authority to inflict it. Penalizing,

10. As Jerome Hall has noted, with regard to conduct whose cause is "entirely outside the person, where his 'self' does not participate in the slightest degree, the legal rules represent the traditional judgement that the defendant has not acted at all, i.e. 'act' implies volition", *General Principles of Criminal Law*, 2nd ed. (1960), p. 422. See also, S.C.Coal & J.S.Smith, *Law and its presuppositions: Actions, Agents and Rules*, (1986), esp. chapters 1 and 2.
11. *Rethinking Criminal Law* (1978),p. 803. And see Holland, *Jurisprudence* 13th ed. (Oxford 1924), p. 103.
12. See D. Hoekema, *Rights and Wrongs*, (1986), p. 75. For an analysis of the distinction between compulsion and coercion see J. Edwards, "Compulsion, Corecion, and Criminal Responsibility", *Modern Law Review* 14 (1951) 297; H.G.Frankfurt, "Coercion and Moral Responsibility", in *Essays on Freedom of Action*, T. Honderich (ed), (1973) 63.
13. See H. Gross, *A Theory of Criminal Justice* (1979), p. 69.
14. According to Kant, in those cases where reason succumbs to passion, the will is determined by something external to it - a relation which Kant terms the '*heteronomy of the will*'. In such cases the person's reasons for acting in a certain way pertain only to what he or she desires, independently of his moral beliefs. On the other hand, when the person's will is determined by reason, the will is said to be 'self-ruled', for reason is viewed as something 'internal' to the will. A will which is determined by reason is at one with itself. According to Kant, such a will can override passion and desire.
15. See N.R.F. Maier, "Frustration Theory: Restatement and Extension", *Psychological Review* 63 (1956) 370, p. 382. The author suggests that there are intermediate states between being totally emotional and totally rational, whercin emotion and reason may conflict with each other.
16. "Free Agency", in *Free Will* (1982),p. 105.
17. *Ibid* at p. 106.
18. " Self-control, Action, and Belief", *American Philosophical Quarterly* 22, 2, (April 1985) 171.

19. In provocation the assumption that only justified anger may render the provoked agent partially excusable on the basis of his loss of self-control implies that not only the provoked agent's response to the provocation but also his assessment of the victim's conduct is subject to judgment. As C. Taylor has remarked, "Naturally we think of the agent as responsible, in part, for what he does; and since he is an evaluator, we think of him as responsible in part for the degree to which he acts in line with his evaluations. But we are also inclined to think of him as responsible in some sense for these evaluations themselves", 'Responsibility for Self', in *Free Will* (1982), p. 118.
20. As R. Brandt has remarked, "Strong emotional disturbance is known to primitivize thinking (much as does alcohol). A state of anger notoriously enhances one's aggressive tendencies, and reduces one's empathetic or sympathetic concern about injuring its target", "A Motivational Theory of Excuses in the Criminal Law", *Criminal Justice Nomos* XXVII (1985) 165 at pp. 183-184; reprinted in *Justification and Excuse in the Criminal Law*, M.L. Corrado (ed.), (1994) 95, p. 114.
21. As W. Lyons has remarked, "we are blamed for character traits and their expression only in so far as it is considered that a character trait has given rise to actions which have had an undesirable upshot. If character traits did not ever do anything, they could never do harm", *Emotion* (1980), p. 194.
22. One should note that this does not represent the current position in English law. Provocation may be accepted as a defence even though it was self-induced, provided that the objective and subjective requirements of the defence are met. That the provocation was self-induced, however, may be relevant as an aggravating factor in determining the appropriate sentences imposed for the lesser offence.
23. "Provocation: Partial Justification or Partial Excuse?", 51 *Modern Law Review* (1988), p. 475.
24. Model Penal Code, para 210.3 (1) (b) (1980).