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RETHINKING IMMINENCE: SELF-DEFENSE AND COERCIVE CONTROL IN DOMESTIC VIOLENCE

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Abstract

Domestic-violence self-defense cases reveal a persistent structural mismatch in American criminal law. Doctrinal elements designed for sudden, episodic confrontations – particularly imminence, necessity, and objective reasonableness – often fail to capture the lived reality of ongoing coercion, entrapment, and patterned violence within intimate relationships. Contemporary research on intimate partner violence increasingly distinguishes between isolated acts of aggression and sustained regimes of "coercive control," defined as behaviors intended to monitor, dominate, and entrap victims over time (Leemis et al., 2022). When legal doctrine ignores this patterned context, factfinders risk misinterpreting survivor behavior through enduring myths – such as the expectation that a "reasonable" victim would simply leave – and misapplying the reasonable person standard in ways that systematically disadvantage abuse survivors. This Article argues that American self-defense doctrine need not create a separate "battered person" defense to address these cases. Instead, existing doctrine can accommodate domestic-violence self-defense claims if two conditions are met: (1) courts consistently admit expert testimony on battering and its psychological and situational effects, and (2) jury instructions operationalize a genuinely contextual standard of reasonableness, evaluating what a reasonable person in the defendant's situation, with similar knowledge and experience, would have perceived and done. Properly understood, coercive control can also support a more flexible interpretation of imminence, treating it as a contextual inquiry rather than a rigid temporal threshold. The Article synthesizes leading U.S. decisions – including State v. Kelly, People v. Humphrey, and State v. Norman – alongside statutory developments such as California Evidence Code § 1107 and post-conviction relief mechanisms for survivors. It further offers a comparative analysis of Canadian law following R. v. Lavallee and the 2013 reforms to Criminal Code § 34, which explicitly incorporate relationship history into the reasonableness inquiry and treat imminence as one factor among many. The Article concludes by proposing doctrinal and institutional reforms focused on evidentiary consistency, jury-instruction redesign, and

post-conviction review pathways. These reforms aim to reduce arbitrariness in adjudication while preserving principled limits on defensive violence and recognizing the legal significance of coercive control in assessing self-defense. This Article ultimately argues that the perceived inadequacy of self-defense doctrine in domestic violence cases stems less from doctrinal failure than from evidentiary and interpretive deficiencies.
Keywords: self-defense; domestic violence; coercive control; imminence; reasonableness

Rethinking Imminence: Self-Defense and Coercive Control in Domestic Violence

American self-defense doctrine is historically calibrated to a recognizably "present occasion" threat: a situation in which force appears immediate, the defender's options are limited, and the factfinder can evaluate necessity and proportionality in a relatively compressed time horizon (ALI, Model Penal Code; Ferzan, 2004). Domestic violence – especially when characterized by repeated coercion, isolation, threats, and episodic assaults – can produce a radically different temporal structure. For many victims, danger may be "predictably recurring" rather than continuously visible, and coercive control can narrow perceived alternatives long before the final incident (Stark & Hester, 2019; Leemis et al., 2022).

The stakes are not abstract. In 2010, the U.S. national survey found that 30.3% of women had been slapped, pushed, or shoved by an intimate partner in their lifetime, and 24.3% had experienced severe physical violence (Black et al., 2011). The 2016/2017 report similarly shows substantial lifetime prevalence and, crucially, defines psychological aggression to include "coercive control and entrapment" (Leemis et al., 2022). In lethal outcomes, national justice statistics indicate that of female murder victims in 2021, about one-third (34%) were killed by an intimate partner (Smith, 2022). These data underscore why criminal courts repeatedly face fact patterns in which intimate-partner violence is not an incidental backdrop but an explanatory context for defensive claims.

This Article advances three claims. First, "battered woman syndrome" should be treated primarily as an evidentiary and interpretive framework – not as an autonomous defense – and courts should prefer broader, less pathologizing terminology (U. S. Department of Justice [DOJ] & U. S. Department of Health and Human Services [HHS], 1996; Dutton, 1993). Second, doctrinal elements like imminence are best understood as proxies for necessity and aggression, and should operate as context-sensitive factors rather than categorical bars in domestic-violence cases (Ferzan, 2004; Department of Justice Canada [DOJ], 2013). Third, reform should focus on institutional reliability: uniform admission of expert testimony, jury instructions that explicitly require contextual evaluation, and post-conviction mechanisms for cases in which battering evidence was absent or misunderstood (Cal. Evid. Code, 2023; Cal. Penal Code, 2025; N.Y. CPL, 2019).

Literature Review

1. **From "Cycle of Violence" and Learned Helplessness to Broader Trauma and Control Frameworks.** Early clinical literature, associated with Lenore E. Walker, introduced concepts such as a "cycle of violence" and linked battered women's behavior to learned helplessness. Learned helplessness traces to Martin E. P. Seligman's (1975) foundational work on how perceived uncontrollability can shape cognition and action (Dutton, 1993). Yet, subsequent scholarship argued that the syndrome label often misdescribes what expert testimony actually does in court: it explains relationship dynamics, safety planning constraints, and trauma-related perception, not merely a single psychiatric profile (Dutton, 1993; U.S. DOJ & HHS, 1996).
2. **Legal Critiques: Stereotypes, "Separation Assault," and Agency.** Feminist legal scholarship cautions that a narrow "syndrome" narrative can reinforce stereotypes of women as passive, dependent, or psychologically impaired, thereby obscuring their agency and framing their actions in terms of excuse rather than justification (Coughlin, 1994; Mahoney, 1991). Mahoney's concept of "separation assault" further highlights that

leaving can be the most dangerous phase, which directly bears on why "retreat" and "exit" cannot be treated as simple alternatives (Dutton, 1993). Holly Maguigan (1991) critiques recurrent myths in reform debates – particularly the tendency to assume battered women's cases cannot fit within "normal" self-defense and therefore require radical doctrinal overhaul.

3. **Coercive Control as an Organizing Concept.** Modern empirical and theoretical work increasingly centers coercive control – patterns of domination that may or may not involve constant physical violence. Evan Stark and Marianne Hester (2019) synthesize evidence and policy responses, including the move toward criminalizing coercive control in parts of the United Kingdom, while warning about measurement and implementation challenges. Notably, U.S. national survey methodology now explicitly recognizes "coercive control and entrapment" within psychological aggression (Leemis et al., 2022), bridging public-health measurement and legal relevance.
4. **Expert Testimony as Translation, Not Substitution.** A central theme in both scholarship and government synthesis is that expert testimony should translate context to the factfinder and dispel myths, not replace legal elements. The 1996 interagency report responding to Congress emphasizes that there is no "battered woman defense" per se; evidence of battering and its effects is used to support defenses such as self-defense and duress (U.S. DOJ & HHS, 1996). This aligns with the evidentiary posture in landmark state cases, including State v. Kelly (1984), which admitted expert testimony for its relevance to perception and reasonableness.

Doctrinal Analysis: Self-defense Elements and the Domestic-violence "Temporality" Problem

Domestic violence does not negate the elements of self-defense, but rather destabilizes the assumptions underlying their application. American jurisdictions vary, but self-defense analysis typically turns on (1) subjective belief of threat, (2) objective reasonableness of that belief, (3) necessity (often operationalized through imminence and the availability of alternatives), and (4) proportionality. Domestic violence cases disrupt each component, not because they are "non-self-defense" by definition, but because facts unfold across time and under constrained agency.

A concrete illustration of contextual reasonableness appears in contemporary jury instruction language. California's self-defense instruction states that the defender may use only the amount of force a reasonable person would believe necessary "in the same situation," and advises jurors to consider "all the circumstances" as known to and appearing to the defendant, including what a reasonable person in a similar situation with similar knowledge would have believed (CALCRIM 505). The same instruction defines imminent danger as immediate and present – not merely fear of future harm – yet it embeds imminence within a broader "circumstances" evaluation. This calibration provides a doctrinal bridge: it preserves limits while allowing the battered relationship history to inform what counts as "immediate" and "necessary" in context (People v. Humphrey, 1996).

The question, then, is not whether imminence should exist, but how it should function. Kimberly Kessler Ferzan (2004) argues that imminence serves as a way to identify when aggression has progressed enough to justify defensive force, rather than a mere measurement of the defender's psychological urgency. In domestic violence, aggression may manifest as a pattern that makes a threat "present" even when there is no immediate blow being struck. Courts that treat imminence as a bright-line requirement risk converting a proxy for necessity into a categorical exclusion, thereby reintroducing myths at the doctrinal level.

U. S. Cases and Statutes: Evidence, Reasonableness, and the Role of Experts

1. **State v. Kelly (New Jersey): Admitting Expert Testimony to Explain Perception.** In State v. Kelly, the New Jersey Supreme Court recognized that expert testimony about battered wom-

en could assist jurors by explaining how prolonged abuse shapes perception and behavior; the decision is widely treated as a foundational admissibility case (*State v. Kelly*, 1984). The broader federal synthesis later notes that expert testimony on battering and its effects has been admitted nationwide, but with variation in scope and legal context (U.S. DOJ & HHS, 1996).

2. **People v. Humphrey (California): Contextual Reasonableness and "Intimate Partner Battering and Its Effects."** California doctrine explicitly links self-defense reasonableness to battered relationship context. CALCRIM materials note that evidence of intimate partner battering and its effects may be considered when deciding whether the defendant actually feared the batterer and whether that fear was reasonable (*People v. Humphrey*, 1996; CALCRIM 505). California Evidence Code § 1107 codifies the admissibility of expert testimony regarding intimate partner battering and its effects, clarifies that such testimony is not "new scientific technique" with unproven reliability, and positions the statute as a rule of evidence rather than a substantive Penal Code change (Cal. Evid. Code, 2023).
3. **State v. Norman (North Carolina): The Restrictive Imminence Model.** State v. Norman is often cited for insisting on a relatively strict imminence posture when the killing occurs outside a direct confrontation (*State v. Norman*, 1989). The persistence of such cases helps explain why reform proposals target jury instructions and the evidentiary translation of "ongoing danger" into legally cognizable immediacy.
4. **Legislative and Post-Conviction Mechanisms: Beyond the Trial Record.** First, California Penal Code § 1473.5 provides a specialized habeas pathway where competent and substantial expert testimony about intimate partner battering and its effects was not presented at trial and could have materially affected the outcome (Cal. Penal Code, 2025). Second, New York provides a resentencing motion procedure for domestic-violence cases that requires corroborating evidence and permits reliable hearsay at hearings, reflecting a legislative judgment that traditional sentencing may have failed to account for abuse context (N.Y. CPL, 2019). These statutes show a policy consensus: even if doctrine can theoretically accommodate such claims, procedural history and evidentiary absence can justify corrective mechanisms.
5. **State-by-State Admissibility: What Can Be Said Reliably.** An authoritative federal report (May 1996) reports that expert testimony on battering and its effects has been admitted in every state, though variation remains; it also identifies 12 states where admissibility is supported by statute (California, Georgia, Louisiana, Maryland, Massachusetts, Missouri, Nevada, Ohio, Oklahoma, South Carolina, Texas, and Wyoming) (U.S. DOJ & HHS, 1996). Because this survey is historical and states may have amended code provisions since 1996, the paper treats it as a baseline rather than an up-to-the-minute fifty-state chart.

Comparative Law

1. **Canada: From Lavallee to Codified Factors (Criminal Code, 2026).** R. v. Lavallee is a canonical Supreme Court of Canada case recognizing that battered-woman evidence can be relevant to self-defense assessment (*R. v. Lavallee*, 1990). Later, Parliament enacted Bill C-26 to simplify and unify self-defense law; the Department of Justice's technical guide states that prior threshold requirements were converted into non-determinative factors, and explicitly notes that imminence was historically treated as required until Lavallee, after which it is treated as a factor – an approach codified in the new scheme (DOJ, 2013). The current Criminal Code provision (2026) lists factors for "reasonableness," including "the nature, duration and history of any relationship" between the parties, including prior force and threats (Criminal Code, 2026).
2. **United Kingdom: Criminalizing Coercive Control and Partial De-**

fences. England and Wales criminalize controlling or coercive behavior in an intimate or family relationship under section 76 of the Serious Crime Act 2015 (2023). Separately, murder law recognizes a partial defence of loss of control under section 54 of the Coroners and Justice Act 2009 (Coroners and Justice Act 2009, s.54). While these mechanisms are not direct self-defense analogues, they operationalize two policy insights relevant to U.S. debates: (a) patterns of domination can be legally cognizable harms, and (b) the criminal law can incorporate contextual psychological realities without collapsing into a free-floating "abuse excuse."

These comparative developments demonstrate that incorporating relational context into reasonableness does not collapse doctrinal constraints, but rather enhances their accuracy – an insight directly applicable to U.S. law.

Policy Recommendations

(1) Standardize admissibility and terminology: Courts and legislatures should prefer "battering and its effects" or "intimate partner battering and its effects," reflecting the consensus that "battered woman syndrome" is imprecise and risks stereotyping (U.S. DOJ & HHS, 1996; Cal. Evid. Code, 2023).

(2) Instruction reform that operationalizes contextual reasonableness: Jury instructions should explicitly require evaluating belief and necessity through the circumstances known to the defendant and a reasonable person in a similar situation with similar knowledge, and should clarify how relationship history informs perceptions of imminent danger (CALCRIM 505; *People v. Humphrey*, 1996).

(3) Avoid creating a "second-class" defense: Rather than inventing a special battered-person defense, legislatures can reform general self-defense frameworks to enable factfinders to account for patterns of coercion and entrapment – mirroring Canada's approach of converting rigid thresholds into non-determinative factors (DOJ, 2013; Criminal Code, 2026).

(4) Post-conviction correction mechanisms: Where trials occurred without competent expert testimony or where sentencing failed to incorporate domestic violence context, targeted relief mechanisms (e.g., Cal. Penal Code, 2025; N.Y. CPL, 2019) should be preserved and studied as institutional safeguards.

(5) Evidence-based judicial education: Because misconceptions are a central driver of error, court systems should invest in training on coercive control, trauma-informed reasoning, and the proper scope of expert testimony, consistent with the federal report's emphasis that expert evidence can assist factfinders and dispel myths (U.S. DOJ & HHS, 1996; Leemis et al., 2022).

Conclusion

Domestic-violence self-defense cases do not prove that self-defense doctrine is obsolete; they show that doctrine needs reliable translation of context. The most defensible path is neither to deny survivors the full benefit of self-defense nor to create an exceptionalized "abuse excuse," but to build evidentiary and instructional infrastructure that allows jurors to evaluate reasonableness, necessity, and imminence in light of coercion, entrapment, and relationship history. U.S. statutes like California Evidence Code § 1107 and post-conviction procedures, and comparative developments in Canada and the U.K., collectively support a reform agenda centered on contextual reasonableness and institutional consistency. Ultimately, recognizing coercive control within self-defense is not an expansion of justification, but a correction of perspective.

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