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## Is fighting in public legal? Or should you call the cops?

CRIME

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Boys at fisticuffs on the playground after school. Hollywood heroes protecting their lady fair with a well-placed punch to the jaw. In American pop culture, violence often serves as a visual symbol for a character's values. In real life, however, the sight of two people brawling has many of us rushing to dial 911. But is that right? Don't two people have the right to duke it out? When should we call the cops?

### Disturbing the peace

Despite the legal and physical risks of brawling, American culture is slow to abandon this primitive form of dispute settlement—fistfights, in fact, have even broken out among elected officials. Depending on the localities involved, participants in a fight (and politicians are no exception) may be violating laws related to “disturbing the peace,” breach of the peace,” or “disorderly conduct”—which can result in criminal (usually misdemeanor) charges. These statutes are often quite vague, leaving it up to responding officers to decide if any laws were broken. Depending on circumstances, even shouting profanities can be a violation (some municipalities do not separate breach of peace and noise ordinances).

Many cities are beginning to call out fighting as a separate offense. For example, the City of Seattle has a specific ordinance establishing a \$125 fine for late-night disturbances in public places. Established in 2010 to respond to an increase in nightlife-related incidents in densely populated neighborhoods, the so-called “Meathead Ordinance” specifically bans fighting in public places.

If a fight breaks out on private property (such as in a bar) the property owner has the right to eject the perpetrators—and to call police if they resist; remaining on private property after being told to leave is a form of trespassing. Property owners who do not remove brawling guests could be subject to premises liability for not taking reasonable care towards the security of their patrons, as in the case of Haber v Precision Security Agency, when the bouncers at a New York nightclub failed to intervene as an argument escalated.

## Mutual combat

Even so, as recently as 2012, Seattle police officers accepted the concept of “mutual combat,” to allow a formalized street fight. Washington state case law includes precedents for allowing such street fisticuffs, provided both combatants consent to duking it out and agree to some ground rules.

In other cases, mutual combat has been offered as a mitigating factor. For example, in a 1982 case, United States ex rel Bacon v. Robertis, a prisoner in Illinois contested his murder conviction, arguing that he and the deceased had engaged in mutual combat and therefore the trial jury should have been instructed to consider a charge of voluntary manslaughter. The United States District Court (Illinois) court, which heard the prisoner’s petition, was not persuaded, and in his opinion, Judge Milton Shadur made this statement regarding mutual combat: “Our Court of Appeals has quoted the definition of ‘mutual combat’ . . . as ‘one into which both parties enter willingly, or in which two persons, upon a sudden quarrel, and in hot blood, mutually fight upon equal terms.’ Two other conditions must be satisfied as well: 1. the accused cannot have instigated the fight; and 2. retaliation by the accused must not be disproportionate to the provocation.”

## Additional liabilities

Fighting can result in serious legal repercussions—even when the circumstances of mutual combat apply and no witnesses are present or no one reports a disturbance to the police. Combatants may be charged with destruction of property for any incidental damages, such as broken windows, resulting from the fight.

Whether or not both parties consented to engage in a fight, if the fight results in injuries, the injured party is legally the victim of assault and battery. And even if the most liberal definition of mutual combat is applied, if someone dies, a reduced charge of manslaughter will do nothing to bring back the dead.

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