

Stand Your Ground Laws in the United States

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ABSTRACT

On February 26, 2012 George Zimmerman killed Trayvon Martin and in July 2013 he was found not guilty. Also, on July 19, 2018, Michael Drejke killed Markeis McGlockton and it was not until August 13, 2018 that he was arrested. These cases sparked a nationwide debate around castle doctrine, self-defence and stand your ground laws. Texas, Florida and many other states have these laws, which generally allow an individual to stand his or her ground, and meet force with force, even deadly, at any place he/she has a legal right to be. This study examines what these laws do and do not do. The results of the cost and benefit analysis of this study make it clear that self-defence law is enough protection for individuals in the face of attack. The “Stand Your Ground” law promotes unpredictable and uneven use of violence. The argument by proponents that the law deters crime is unfounded. This study makes several recommendations, among which are: repeal the existing law and remove statutory immunity to allow victims to seek compensation and justice.

Key Words: Self-defence, Castle doctrine, Stand-Your-Ground, Violence, Justice.

INTRODUCTION

‘Stand Your Ground’ (SYG) laws are legal justification for self-defence from perceived threats against an individual, including the use of deadly force without the duty to retreat. In general, under “Stand Your Ground,” also known as “Make My Day” or “No Duty to Retreat” or “Me or Them” or “Right Should Be Right” laws, a person who is in any place he has a lawful right to be at the time may be justified in using deadly force whenever he reasonably believes he faces an imminent and immediate threat of great bodily injury or death, without a duty to retreat.

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Natural/Traditional/Common Law self-defence is available in all countries in the world, including the United States, and covers the use of both deadly and non-deadly forces. The idea behind Stand Your Ground laws comes from the castle doctrine. Castle doctrine was a common law that allowed an individual to defend himself or herself in the home and with the duty to retreat when it is safe to do so. Whereas typical English Common Law doctrine included the duty to retreat when faced with a violent. Stand Your Ground as an expansion of the Castle doctrine extended and redefined the “castle” to mean any place a person has a legal right to be.

Castle doctrine dates back to the 1600s (Alexander 2018) and began to move out of the home around the time of the American Civil War. After the Civil War, there were court cases that extended the boundaries of where a man can defend himself from the home (castle) to any place a man has a legal right to be, *Beyer Vs Birmingham* (1914). During the 2000s, there was a serious push by the National Rifle Association (NRA) to expand Stand Your Ground laws even more to include vehicles. In 2005 the first Stand Your Ground law was passed in the state of Florida. Florida SYG law states that a person must have reasonable fear of death or bodily harm when using defensive force. In the event that one’s home or vehicle is being violated, a person does not have to retreat if a threat is imminent, (Lord 2018).

The Florida Stand Your Ground law put the burden on the prosecution to prove that the suspect was not reasonably threatened enough to use force in defending his property. Additionally, it also offered immunity from civil and criminal liability. In addition to Florida, about 32 states in the United States have Stand Your Ground laws of some kind and seven allow the use of deadly force in self-defence in public without the duty to retreat. Some states require a person to retreat “with perfect safety,” meaning a person must retreat from a situation when he/she can do so without being harmed or lose the right to use the argument of deadly force self-defence in court, (Lord 2018). SYG laws have a lot of controversy surrounding them. Some people believe that these laws promotes more of a “shoot first, ask questions later” attitude rather than being a law that intends to keep people safe. Besides, people who disagree with this

statement say that the law allows self-defence without fear of prosecution. For example, after George Zimmerman shot and killed Trayvon Martin, and Michael Drejke killed Markeis McGlockton, the Stand Your Ground laws were cited in the two killings as the reason for avoiding arrest. Many believe both victims did not deserve to be killed, hence, the controversy goes on, (Jonsson 2013, William 2016). This article analyzes the impact of Stand Your Ground laws on violent crime rate, disparity in the use of them, and the frequency of violence in the states with Stand Your Ground laws, (Longley 2018).

BACKGROUND OF STAND YOUR GROUND LAW

The U.S. Constitution provides that “ - - no (person) can be deprived of life, liberty, or property without due process of law.” Florida statutes, sections 776.012 and 776.013, states that: “a person is justified in using or threatening to use deadly force if s/he reasonably believes that using or threatening use force is necessary to prevent imminent death or great bodily harm...[or a] forcible felony. A person....does not have a duty to retreat and has the right to stand his or her ground if.....not engaged in a criminal activity and is in a place where he has a right to be...A person is presumed to have a reasonable fear ...if: the person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering...a dwelling, residence, or occupied vehicle...[This] person who unlawfully and by force enters or attempts to...is presumed to be doing so with the intent to commit an unlawful act or involving force or violence”.

The Stand Your Ground law basically says that if someone is in a place they are legally allowed to be, they do not have a duty to retreat before using deadly force on a person they feel threatened by (Lords 2018). According to Williams (2016) Castle Doctrine and Stand Your Ground laws in the U.S. were created to protect the rich property owners and these laws are the expansion of castle doctrine. Castle doctrine refers to a legal rule that originated in ancient Roman society and that, in written form, dates back to English common law (Rock 2012). Stand Your Ground laws and castle doctrine have a common origin in medieval English laws. They originated as a theory in the early common law meaning it was a

universally accepted natural right of self-defence and not a formally written law. (Longley 2018) Stand Your Ground laws basically extend the protection of the Castle doctrine from the castle (home) to any place a person has a legal right to be. Stand your ground laws with English common law origin held a duty to retreat, meaning that you have a duty to retreat in the face of an attack. Castle doctrine was defined in a 1604 court case concerning intrusion of the king's servant into a man's private home (Semayne 1604). Castle Doctrine and Stand Your Ground laws originated as an exemption to the duty to retreat. The due-process requirement is lost with Castle Doctrine. Stand Your Ground laws diminished the government's responsibility to punish criminals and shifted the right to individuals to punish others without due process.

According to Light (2018) the idea of Stand Your Ground is very selective in the United States. Even though we claim every person is equal regardless of race and gender, it is common knowledge that when the United States says "A man's home is his castle" what they actually mean is "A white, property-owning man's home is his castle" and he is allowed to use deadly force to protect it (Light 2018). This goes back to the "reconstruction era in the United States when post-war political and economic problems and the enfranchisement of African American men existed. Coupled with late 19th century gender panic, and the legal terrain shifted to characterize a man's castle and dependents residing therein as an extension of the white masculine self" (Light 2018, William 2016 :3)

According to Sunburn (2016), there are other opinions about the origin of the Stand Your Ground laws in the United States. If the State of Florida is considered the birthplace of Stand Your Ground law, the father is Dennis Boxley. He was a Florida State Representative in 2005 and heard of an incident involving a man living in a Federal Emergency Management Agency (FEMA) trailer who killed an intruder but had to wait many months to know if he would be charged or not. Boxley said the delay persuaded him to push for clarifying the law of self-defence in Florida (Sunburn 2016). There are other opinions that the "Stand Your Ground" law originated from the Bible. According to Ephesians 6: 13-14 which states "therefore put on the full armor of God so that when the day of evil

comes, you may be able to Stand Your Ground, and after you have done everything to stand”. There is yet no consensus on the origin of “Stand Your Ground” laws. It is interesting to note that the Bible verse uses “Stand Your Ground” as the last resort by saying “after you have done everything.” For the purpose of this study, Castle Doctrine originated as a theory of early common law, declared as a universally accepted natural/traditional right of self-defence, (Longley 2018). Accordingly, “Stand Your Ground” laws are controversial and problematic but effectively extend the protection of the Castle Doctrine from the home to any place a person has a legal right to be.

PROBLEM STATEMENT

When Michael Drejka shot unarmed Markeis McClockton outside a Clearwater, Florida convenience store on July 19, 2018, law enforcement initially refused to arrest and charge him for the killing. Pinellas County Sheriff Bob Gualtieri had initially declined to arrest Drejka after invoking the “Stand Your Ground” defence which prohibits police from making an arrest in self-defence circumstances. According to self-defence principles, all Americans have a legal right to defend themselves from an attacker as long as the force used was necessary, (Beyer vs Birmingham 1914). Stand Your Ground laws have expanded the natural/traditional definition of self-defence and allow people to use deadly force outside their homes even if they can de-escalate the conflict situation and walk off. Stand Your Ground laws do deal with the right of self-defence at home, but it is the expansion of home to include everywhere else, creating a rule instead of an exception. According to these laws, every confrontation can become deadly. This study will show the impact of Stand Your Ground laws on crime and on African Americans.

PRIOR RESEARCH

Despite the need for research on the effects of SYG Laws and their relationship to the Castle Doctrine and the increase in violent crime rate, a review of the literature did not find many studies that focused on these questions. Xenakis (2018) explains that Cheng and Hoekstra (2013) used state and time variation in the passage of SYG laws’ effects on homicide

rates. They defined SYG laws using a binary variable equal to one for policies that removes the duty to retreat in places outside the “castle”. They found that these laws significantly increase homicide rates, but their study had uncertain results for burglary, robbery, and aggravated assault. Also, Webster, Crifast and Vernick (2014) did the analysis of the effect of SYG laws on age-adjusted homicide rates. They used generalized least-squares regression models. Crifast, et al, results show minor to uncertain relationship between SYG laws and homicide rates, non-firearms homicide, and firearm homicide rates. They used a large number of estimated parameters which are related to observational studies. Their estimated result would be difficult to generalize to other forms of SYG laws. According to Humphreys, Gasparrini and Wiebe (2017), Florida experienced a significant 24 percent increase in total homicide rate and 32 percent increase in firearm homicides after the creation of the SYG law that eliminated the duty to retreat. Their study used segmented quasi-poson regression analysis to look at the changes between 1999 and 2014 in Florida’s monthly homicide rate before and after the enactment of Florida’s SYG law in 2005. Humphrey’s et al. compared the changes in four out of 27 states that did not have SYG laws at the beginning of the period---Virginia, New York, Ohio, and New Jersey. The control states did experience a statistically insignificant 6 percent increase in total homicide and 8 percent increase in firearm related homicide after 2005. Humphreys, et al model did not include covariates for possible adjustment for other sources that could cause the difference between Florida and comparison states. Also, according to Xenakis (2018) evidence that SYG laws may increase homicide rates is moderate, and evidence that such laws may increase firearm homicide is limited. Evidence for the effect of SYG laws on other types of violent crime is inconclusive.

Finally, most of the studies reviewed for this paper examined FBI homicide data and controlled for factors that might affect state homicide rates; for example, poverty rate, the region and the number of police officers per population while holding other factors constant. The result shows that SYG laws were associated with either a 7 percent or 9 percent increase in total homicides depending on the statistical methods used. This study differs significantly from other studies because we used

triangulation, which is a combination of different methods to explore our research hypotheses, tailored to gain as much detailed and multi-layered information as possible about Castle Doctrine, Stand Your Ground laws and their effect on crime rate.

METHODOLOGY

In the months following the shooting death of Markeis McClockton, the author gathered part of this research information from hundreds of newspaper reports, journal and magazine articles, U.S. Court web sites, and legal exhibits related to the SYG laws and Castle doctrine cases. The author understands that the results of this study are qualitative and rely considerably on “documentary evidence,” but a serious effort was made to distinguish meaningful facts from emotional ideas expressed in the sources reviewed.

Major findings and the recommendations of this article are based on reviews of numerous articles and on discussions with key individuals involved in both the McClockton case and the enactment of the Florida SYG law.

IMPACT ON CRIME RATE

Laws in the United States have always protected the individual’s right of self-defence, allowing people to use force to repel attackers when necessary. Stand Your Ground laws, from a public policy perspective, cloud the administration of justice by removing the instances of investigation when someone is killed. This creates an environment of flawed subjective analysis (Goodville Pierre, Vice President, National Bar Association). Since Stand Your Ground law was implemented in Florida in 2005, the overall monthly homicide rate has increased 24.4% and the homicide by firearm rate is up 31.6% (Humphreys et al 2017). The Florida statistics back up a similar national study from 2013 finding an 8% average increase in homicides in states that have passed Stand Your Ground laws (Sunburn 2016). According to Florida Department of Law Enforcement statistics, the murder rate per 100,000 residents in 2005 was 4.9, but in 2006 after the enactment of Stand Your Ground law, it jumped to 6.2 and has been going up yearly since 2005 (Sunburn 2016). In addition, there are

interesting studies that also conclude that there is a link between Stand Your Ground laws and an increase in homicide rates. Webster, Crifasi and Vernick (2014) found that Stand Your Ground laws have an uncertain effect on the total homicide rate. Chong and Hoekstra (2013) concluded that Stand Your Ground laws significantly increase the homicide rate. Above all, Humphreys, Gasparrini and Wiebe (2017) result shows significant effects consistent with the Stand Your Ground laws increasing the homicide rate. In 2017 a study by Oxford University, published by the American Medical Association revealed that homicide rates in states with Stand Your Ground laws have increased by 20 to 25 percent since the enactment of the laws, (Alexander 2018). Based on the findings of this study and analysis of numerous literature and newspaper articles on this topic, this study concludes that there is a positive link between Stand Your Ground laws and an increased homicide rate. Inclusive link to other types of violent crime.

STAND YOUR GROUND LAWS JUSTIFIED?

Stand Your Ground Laws, sometime, referred to as “me or them”; (ratt ska vara ratt) “right should be right” are closely related to, and in some cases derived from, an old English common law concept, the Castle Doctrine, which states that an individual’s home is his/her castle and that he/she has no duty to retreat from a potentially dangerous situation and can use deadly force to defend himself in his home. Stand Your Ground laws expand the castle doctrine defence out of the home and into any place a person lawfully has a right to be. (Peschong 2013) Like many controversial laws, Stand Your Ground laws have their proponents and critics, and both sides always make good points in defending their positions. The aim of this study at this point is to show the pros and cons of Stand Your Ground laws and give some recommendations. “Stand Your Ground” laws have been self-defence law or standard for centuries and in all parts of the world; however, most countries self-defence laws failed to say anything for or against the duty to retreat. In *Beard vs. United States*, (1895) the U.S. Supreme Court ruled that “a man assailed on his own grounds, without provocation, by a person armed with a deadly weapon and apparently seeking his life is not obliged to retreat but may stand his ground and

defend himself with such means as are within his control; and so long as there is no intent on his part to kill his antagonist, and no purpose of doing anything beyond what is necessary to save his own life, is not guilty of murder or manslaughter if death results to his antagonist from a blow given him under such circumstances” (wwwjustia.com).

There are some misconceptions about stand your ground laws (1) The duty to retreat in the common law, which is the foundation/precedent in the U.S. law, applies to a situation where the person claiming self-defence was a party to the fight and was the aggressor. Equally, in some states in the U.S., Stand Your Ground Laws require the aggressor to retreat or surrender. (Handing 2017) (2) It is assumed that Stand Your Ground law plays a role in many cases of murder and that it is always in the jury instructions in all cases of self-defence. In almost all cases of self-defence there was no opportunity to retreat. It is common knowledge that we cannot outrun a bullet; hence, whenever an attack involves a gun, it is automatically considered ‘No opportunity to retreat. (Harding 2017). “Stand Your Ground” laws have been part of the self-defence laws of the United States Federal Government for as long as we can remember. In the District of Columbia v Heller (2008) the Supreme Court held that the Second Amendment protects the right to keep and bear arms in the home for self-defence, which is very close to declaring it a constitutional right. Also, for most American judges and the public pared self-defence from criminal sanctions and relates it to the common law or a part of the due process or the Ninth Amendment. Either way, self-defence is fixed in the common law tradition and not tied to any one culture, nation, or time, but trans-cultural and trans-temporal, (McDonald v City of Chicago, 2010).

PROS OF “STAND YOUR GROUND” LAWS

Reasonable Person Standard – “Stand Your Ground”/natural self-defence have the same general principle, which is you may use force, up to deadly force if and when it is a necessary, reasonable and proportional response to an imminent threat. To use deadly force, an individual must be able to say that he/she reasonably believed that his/her life was in danger at the time he used the weapon. (Kehoe 2016) Hence, Stand Your Ground has been implied in all self-defence situations.

Waiver/Forfeiture of right to life - By breaking into the home of an innocent homeowner, the individual has waived his/her right to live, because the homeowner never entered into an agreement with the intruder to engage in a fight. The homeowner has made no agreement to accept risk in his protected space and has done nothing to commit a justifiable grievance against any intruder. Breaking into someone's home is a voluntary choice waiver of right to life made by the individual. The homeowner is the victim and has a right to protect his/her life and property. Hence, intruders have forfeited their right to be safe, (Davis 2018). Forfeiture of right to live applies also to rape situations; all humans have the right to defend their body by any force. Any potential rapist has waived his/her right to be alive, because the victim never agreed or contracted to be raped.

Basic Human Right - If one person is obliged to retreat in order to safeguard the well-being of another person who is illegally threatening another it means one person's right is more important than another's. What gives one person the right to chase another person out of some place he/she is legally entitled to be? The laws have changed the calculus of self-defence in the United States. The laws have expanded the legal justification for the use of lethal force, increasing the expected cost of committing violent crime.

CONS OF "STAND YOUR GROUND" LAWS

The negative aspects of Stand Your Ground laws centre on the application and the abuse of such laws. A Stand Your Ground law means that, if you reasonably believe that you face imminent death, serious bodily injury, rape, kidnapping, or (in most states) robbery, you can use deadly force against the assailant, even if you have a perfectly safe avenue of retreat (Volokh 2014).

Maximize and Encourage Violence - Since Florida adopted Stand Your Ground law, "lawful" homicides increased by 75 percent and overall homicides in Florida increased by 22 percent, (Queen 2018). In many instances, law enforcement is limited by the version of events alleged by the person who survives. Dead men tell no tales. The dead

individual cannot provide a second version of what happened. It makes criminals more violent since they don't want to be killed, hence, they kill a law-abiding person first. The high homicide rate uncovered by this study, however, shows that criminals were killing more often than law abiding citizens, because who shoots first is standing his/her ground and dead men cannot defend themselves.

Retributive - Stand Your Ground laws allow someone to hunt down a burglar, or even a murderer, after the fact. Someone may want to be insulted, challenged or burglarized for the chance of doling out street justice, which is playing fast and loose with morality, (Davis 2018). It is common knowledge that most people who are put in a situation to "Stand Their Ground" did so willingly, happily, and they wanted the opportunity.

Legal Cover - Stand Your Ground laws provide legal cover for use of deadly force in situations where it might not be appropriate or justified; all they have to say is that they feared for their lives. Someone might seek out suspicious looking people, and/or initiate confrontations knowing they'll have SYG law to resort to in their defence afterwards. It may encourage someone to believe or claim that they have a right to dominate others and escalate a situation to violence. Stand Your Ground laws turn all conflicts into violence situations and encourage criminals to be more violent.

DISPARATE RACIAL IMPACT

According to Professor Paul Butler, SYG laws do have a racially disparate effect that devalues black life. The law is predicated on the belief that if an imminent threat exists, shootings are more likely to be considered justified by a judge or jury when white people shoot black, (Whack 2018). Also, Wagner, Kim and Hagler (2016) states that in cases with minority victims, the probability of getting a guilty verdict is lower, and the success rate of using the SYG defence is measurably and significantly higher. In 2006 Laurie Lynn Bartlett said her boyfriend was drunk and tried to sexually assault her. She stabbed him, killing him, and got 10 years imprisonment. The following year, Ernestine Broxsie's ex-boyfriend "snapped" and began choking her, so she shot him, killing him, and she went free. Here

we have two similar cases, with one major difference - race; Bartlett's victim was white while Broxsie's was black. These laws upset a basic social order by, in essence, giving police authority to citizens and raising the risk of minor disputes, misunderstandings and disagreements becoming deadly encounters. They also provide legal cover for people to take deadly action based on an individual's subjective and racially motivated views, (Jonsson 2013: 6). The Tampa Bay Times published a study which they analyzed 200 Stand Your Ground cases in Florida and found that defendants who killed a black person were not guilty 73 percent of the time, while those who killed a white person were found not guilty 59 percent of the time (Jonsson 2013). Also, Ackemann, Goodman, Gilbert, Arroyo-Johnson and Pagano (2015) state "Our resultant analysis reveals the disturbing message in these data that there indeed is a quantifiable racial component in the impact of the SYG law in Florida; namely, a suspect is twice as likely to be convicted of a crime if the victim is White compared to when the victim is not White" (p. 14).

The FBI data analysis of demography shows that the increase in justifiable homicides has disproportionately increased among the African-American population. The number of homicides against African American people that were considered justifiable in stand your ground states more than doubled between 2005 and 2011 increasing from 0.5 to 1.2 per 100,000 people. The number remained unchanged in the rest of the country (Roman, 2013, FBI data). Legal scholars agree that Stand Your Ground laws further aggravate the racial bias in the criminal justice system against minority victims; this is especially true for Black victims, (Hall 2013, American Bar Association, 2014, Rice, 2013; Lee, 2013) This issue reflects the disparate racial impact of Stand Your Ground laws.

DISCUSSION

There is no doubt that SYG laws do save the lives of some innocent people who, without it, would have been killed by violent criminals; but the number of lives saved by the law does not correspond to/outweigh the innocent lives lost due to stand your ground laws. The controversies surrounding the recent shooting of unarmed Markeis McClockton by Michael Drejka outside a Clearwater, Florida convenience store on July

19, 2018 have captured the attention of the United States and the world and renewed the conversation about SYG laws since the expansion of the “ground” in SYG laws in many states to include any and all places where someone is legally authorized to be. The concept of Stand Your Ground law is based on whether a person feared for his/her life in a situation, not whether a person was actually in serious danger, so it makes excuses for an extremely paranoid person reacting to a normal situation in a maniacally violent way (Dorai 2018). The “Stand Your Ground” laws concept lends itself to the hyperbolic non-sequitur that all a person has to do to murder others is to say that they felt “threatened” and feared for their life. It shifts the responsibility to prove otherwise onto the dead person who has been deprived of life. “Stand Your Ground” laws in some states allow drivers to shoot someone when threatened in their car instead of driving away. According to O. H. Eaton a retired Judge of 24 years, the SYG statute should be repealed because it promotes violence, unwise and potential for abuse, (Eaton 2013) The study supports the following recommendations:

- SYG laws tend to silence the victim because dead men cannot talk in order to defend themselves.
- Traditional/Natural self-defence was and should be good enough to protect lives and property.
- Law enforcement officers should be trained in new techniques for investigating Stand Your Ground cases.
- Jurors should be given standard written instructions in simple English to allow for clear understanding of the laws.
- The laws should be repealed to reduce the rate of killings, given the impact these laws have had on inequities in public health, (Ackermann et al 2015 p.16).

CONCLUSION

The result of this study shows that self-defence and castle doctrine did not cause the increase in the homicide rate but Stand Your Ground laws and the expansion of no duty to retreat even outside the ‘castle’ are the major causes of the increase in homicides. One explanation for this conclusion is that natural self-defence provisions have been in existence longer than “no

duty to retreat” and/or “every place being a castle”, but the crime rate did not increase substantially. It is common knowledge that some of the increased homicides are caused by individuals using deadly force against another person in situations where the threat of death and/or serious bodily injury is not imminent to either person. Another fact is that some of the places used as a castle that resulted in the killing of individuals would not have been considered a castle without the expansion of the Castle and Stand Your Ground laws. No law should be able to enable somebody to declare a street to be his/her home and kill somebody and walk away as the aggressor and the killer.

ABOUT THE AUTHOR

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