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Stand Your Ground Laws

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Stand Your Ground (SYG) laws do away with the requirement that a person under attack must retreat as far or as safely as they can before using lethal force to repel their attacker. Rather than retreat, SYG laws allow the assailed person to meet force-with-force when certain conditions are met. The United States inherited the retreat rule from England, but over time, many states abandoned it in favor of the SYG approach. Southern and Midwestern courts were the catalysts of this change in the late 1800s and early 1900s. The SYG case law that emerged generally stipulated that an assailed person is only entitled to use lethal force in self-defense when they do so reasonably, when they are without fault, when they are in a place where they have a right to be, and when they are in reasonably apparent danger of great bodily harm (Dietz *et al.* 2015). However, in recent years, there has been a movement in state legislatures to not only to remove the remaining vestiges of the retreat rule, but also to replace old SYG case law with new SYG statutes that give even greater legal protection to the person claiming the mantle of self-defense. These statutes vary from state-to-state just like the court-created rules of defense, but the more sweeping statutes, like the one enacted by the Florida Legislature in 2005, confer a certain degree of civil and criminal immunity upon the person claiming self-defense and allow them to recoup court costs and attorney fees from the party bringing unsuccessful legal action against them. Advocates of these Florida-like statutes say they deter crime, place much more reasonable expectations upon would-be victims, and protect those who fight back from unfounded lawsuits and overzealous prosecutors. Conversely, critics say these statutes encourage violence and disadvantage women and minorities. This entry considers (1) the reasoning behind self-defense laws, (2) how these laws have evolved and vary, and (3) the policy debate concerning the Florida-like statutes that have been proposed or enacted since 2005.

Laws governing self-defense have changed over time. Under the early English common law, there were only two justifications for taking a life: One, the king expressly authorized it; and, two, the killing was a means of apprehending an outlaw in the absence of a warrant (Epps 1992; Levin 2010). English law did not justify self-defense killings, but it excused them if the king granted a post-conviction pardon. Pardons, however, were only issued in cases of reasonable necessity and in situations where the person fully retreated before applying lethal force (Ross 2007). The duty to retreat was based on the theory that the king maintained a monopoly over violence such that subjects were obligated to peacefully resolve their disputes (Suk 2008). Relying on Blackstone's *Commentaries on the Laws of England*, legal scholars also assert that the retreat rule was meant to preserve human life and to discourage violence (Bobo 2007-2008; Levin 2010; Ross 2007). Courts of equity initially had jurisdiction over pardons and the

chancellor, as a formality, signed them on behalf of the king. With Statute 24 Henry VIII. c. 5, the Crown allowed persons to be acquitted without a pardon thereby converting the equitable defense into a legal defense (Jaffe 2005, 159-160).

The common law treated acts of self-defense differently based on where they occurred. The retreat rule governed incidents that took place in public places, while the "castle doctrine" applied to homeowners who forcefully confronted intruders. The castle doctrine was the most notable exception to the retreat rule, resting on both principles of self-defense and habitation. Under self-defense, it was assumed a homeowner who forcibly resisted an intruder had already retreated to the fullest extent (Ross 2007). Equally, under habitation, a person was authorized to protect the propriety and dignity of their home because of the value society attaches to the sanctity of one's dwelling place—"A person's home is their castle" (Catalfamo 2007). Additionally, under habitation, a homeowner was authorized to use force against an intruder because the intruder entered a place where the state no longer maintains a monopoly over violence (Levin 2010; Suk 2009).

The English retreat rule was not popular in post-colonial America because the obligation to withdraw clashed with the prevailing sentiment that people possessed natural rights that they could protect (Epps 1992). The initial movement away from the retreat rule was directed by American courts rather than state legislatures. Courts began undermining the retreat rule shortly after Independence, but significant and widespread changes did not follow until the late-1800s. These changes, instituted through state supreme courts, were especially profound in the South and Midwest where SYG laws operated like codes of honor. These regions were receptive to SYG, according to Catalfamo (2007), because they either maintained a plantation based-economic system, a frontier orientation, or a culture that attached considerable value to honor and bravery. *Erwin v. State* (Ohio 1876) and *Runyan v. State* (Indiana 1877) were instrumental in the movement away from the English retreat rule. In both cases, the respective state supreme courts overturned convictions recognizing that the rule had been greatly modified in America. In *Erwin*, the Ohio Supreme Court held that "a true man, who is without fault, is not obliged to fly from an assailant, who, by violence or surprise, maliciously seeks to take his life or do him enormous bodily harm" (pp. 199-200). In *Runyan*, the Indiana Supreme Court found that the duty of retreat is inconsistent with "the tendency of the American mind," (p. 80) further noting that "when a person, being without fault and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in the reasonable exercise of his right of self-defense, his assailant is killed, he is justifiable" (p. 84). Supreme courts in states like Missouri, Washington, and Wisconsin followed suit such that SYG eventually became more prevalent than the retreat rule in the United States (Bobo 2007-2008).

After this transformative period was well underway, the United States Supreme Court, in *Brown v. United States* (1921), considered whether a person accosted at knifepoint away from home was obligated to retreat before exercising lethal force. Abandoning the English rule and an adverse precedent in *Allen v. United States* (1896), the Court ruled in favor of the litigant claiming self-defense. Writing for the Court, Justice Oliver Wendell Holmes, Jr., concluded that the failure to retreat did not establish guilt, but should be considered when determining whether defendants exceeded their authority to use force. For Holmes, this new rule was preferable because it did not require people in dire situations to perform complicated assessments. As he succinctly put it, "Detached reflection cannot be demanded in the presence of an uplifted knife" (p. 343). With this ruling, the Court began using the SYG approach in federal self-defense cases. States, however, remained free to develop their own self-defense laws.

Starting with Florida in 2005, many states began reevaluating their self-defense laws, but unlike the changes that commenced in the late-1800s, these modifications were instituted by state legislatures rather than by state supreme courts. This distinction is meaningful because courts, observing the norm of

judicial restraint, tend to myopically focus on one legal principle while legislatures are free to pursue expansive policy changes. During this flurry of legislative activity, the proposed bills were often inspired by the National Rifle Association (NRA) and were designed to dramatically strengthen the legal position of persons claiming to have acted in self-defense. The most sweeping proposals typically (1) abrogated the duty to retreat, (2) created a presumption that the assailant intended to carry out a violent act, (3) created a presumption that use of deadly force was necessary and reasonable, (4) granted immunity from civil actions and criminal prosecution, (5) created a prohibition against arrest, and (6) directed courts to award court costs, attorney fees, loss of income, and other expenses to defendants who were unsuccessfully sued or prosecuted (Ross 2007, 18). By 2007, thirteen states—Alabama, Arizona, Florida, Georgia, Idaho, Kentucky, Michigan, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, and Texas—had adopted a new SYG statute that was a significant departure from the common law rule (Ross 2007) and the SYG rules that had developed in American case law. Kansas seems to have followed this trend by enacting a law that is "strikingly similar" to the NRA-supported statute passed by Florida (Wells 2008, 997). Indiana, Louisiana, and South Dakota made moderate changes to their self-defense laws by no longer requiring retreat in occupied vehicles, but these states did not embrace the full complement of SYG provisions (Ross 2007). And, even during this period of change, some states like Alaska, Arkansas, and Maine more-or-less retained the duty to retreat or made relatively minor changes to their self-defense laws (Levin 2010; Ross 2007).

A policy debate has been unfolding between advocates and opponents of SYG laws. This debate can be confusing because, although SYG laws vary considerably from state-to-state, many debaters ignore important differences and make inappropriate generalizations either for the sake of convenience or because they are trying to craft a clear narrative (Levin 2010). Based on this reasoning, it would be improper to treat the far-reaching statutes as being equivalent to the less sweeping ones. And, it would be equally improper to treat court-created SYG rules like the ones adopted in *Erwin*, *Runyan*, and *Brown* as being the equivalent of the new Florida-like statutes that give much greater protection to the person claiming to have acted in self-defense. In short, one must be particularly sensitive to the precise nature of each state's laws when evaluating their merits and making comparisons. Therefore, the discussion that follows narrowly focuses on the Florida-like statutes that were enacted since 2005.

Beyond raising the deterrence of criminal activity argument (*See* Bobo 2007-2008, 365), SYG supporters contend that the Florida-like statutes are more realistic and more equitable in their treatment of victims of violent attacks. First, borrowing the reasoning that Justice Holmes used in *Brown*, supporters argue that Florida-like statutes assist would-be victims by no longer requiring them to carefully assess the availability of escape, the reasonableness of their actions, or the imminence of physical damage (*See* Levin 2010; Neyland 2008). Once these burdens are eliminated, the person being attacked can better concentrate on securing their safety and the safety of their family. Second, supporters contend that Florida-like statutes give legitimate victims of violent crimes the ability to defend themselves without fearing the expense and reputational damage that would likely follow if legal action were taken against them because they used force against an intruder or an assailant (Ochs 2013; *see also* Weaver 2008). Jackson (2015), writing in the *Berkeley Journal of Gender, Law & Justice*, similarly argues that properly written SYG statutes can spare women who fight back against domestic abusers the trauma of being processed through the criminal justice system, while sparing their children the ordeal of being separated from their mothers. Finally, SYG advocates say that these statutes will prevent prosecutors from rejecting legitimate claims of self-defense because they unreasonably believe that the assailed person should have withdrawn even further before resorting to force (Lott 2013).

On the other hand, a substantial body of skeptical literature questions the merits of the Florida-like SYG statutes. First, critics are concerned that removing the duty to retreat invites people to take the law into their own hands (Abuznaid *et al.* 2014; Weaver 2008). This argument predicts that, without the obligation to retreat, violence will escalate because people will be more likely to use force in defense of property and less likely to extricate themselves from avoidable conflicts. Second, according to Lave (2013), the retreat rule was meant to strike a delicate balance between one's right of self-preservation and an assailant's right not to be unjustly killed. This balance respects human life by attaching value to both the lives of the assailed and the assailant. Florida-like SYG laws are thought to upset this balance by embracing the presumption that force is necessary and by broadly conferring immunity upon persons invoking self-defense (Megale 2014; Randolph 2014; Weaver 2008). Third, the immunity provisions in Florida-like statutes have been criticized for giving police too much discretion in deciding whether criminal charges will be filed—the concern being that this type of statute is especially susceptible to the flaw of inconsistent application. As Randolph (2014) explains, statutes with Florida-like immunity provisions (*e.g.*, Alabama, Kansas, Kentucky, North Carolina, Oklahoma, and South Carolina) do not specify what investigatory procedures police must perform when assessing whether there is probable cause to believe the "self-defender" acted unlawfully. The extent to which officers are willing to investigate operates as a *de facto* decision as to whether charges will be filed and whether immunity will be granted. The person claiming self-defense often has an evidentiary advantage during this initial period of inquiry because their adversary—presumably dead or seriously wounded—cannot tell their side of the story (Lave 2013).

Although the Florida-like statutes are neutral on their face, some scholars writing in the feminist tradition and critical race theorists say these laws are detrimental to women and minorities. Franks (2014) argues that SYG laws create a two-track system where men, by virtue of male-privilege, are encouraged to behave violently under the guise of self-defense while women have difficulty invoking SYG protection because this model of self-defense is "rooted in the [male] imperative to protect the home and family from attack" (p. 1102). Finding that SYG protections are inaccessible, women who fight back are left with Battered Women's Syndrome as their primary legal defense. This defense is inadequate, according to Franks (2014, 1103), because it subjects women to considerable legal scrutiny, portrays them as being vulnerable, and "frequently sends the legal and social message that women should retreat even from their own homes in the face of objective, repeated harm to their bodies . . . ." Similarly, critical race theorists argue that SYG statutes disadvantage minorities when these laws are applied in a racialized environment fraught with stereotypes and prejudice (Gruber 2014; Jones 2014; Lawson 2012; Lee 2013; 2014). Under these conditions, whites who play key roles in the legal process—police officers, prosecutors, judges, and jurors—are thought to approach self-defense cases from a culturally distorted perspective that associates black men with criminal activity. This is troubling in cases with a racial dimension because judges and jurors, tasked with assessing whether a white defendant behaved reasonably, might accept the killing of a black man as being justified because their cultural perspective causes them to overestimate the danger of an ambiguous act.

Critical race theorists use the Trayvon Martin case to illustrate how SYG laws negatively impact minorities. The incident that provoked the case occurred in Sanford, Florida on February 26, 2012. Martin was an unarmed, seventeen-year-old, black, youth who was fatally shot by George Zimmerman, a neighborhood watch volunteer, who reported to authorities that Martin looked "suspicious." At the time, Martin was wearing a hooded sweatshirt as he returned home from the store where he had purchased candy and iced tea. Rather than retreat, Zimmerman confronted Martin. When the conflict escalated, he shot and killed Martin. Although it was treated as a traditional self-defense case, Zimmerman's defense team, according to Jones (2014), relied heavily on SYG reasoning in its narrative of the case. The

defense argued that although it was Zimmerman who approached and confronted Martin, he was in a public place and had a right to defend himself without having to leave the area. This narrative, coupled with the theme that Martin looked suspicious, "drove the defense and led to Zimmerman's ultimate acquittal" (Jones 2014, 1025). The Sanford Police Department further indicated that Florida's SYG law was the reason it did not arrest Zimmerman on the night of the shooting (Lee 2014). Critics see the Martin case as evidence that SYG laws and racial profiling are inextricably linked (Gruber 2014; Lawson 2012; Lee 2013; 2014). They argue that Zimmerman, who is of mixed ancestry, profiled Martin and unreasonably assumed he was engaged in criminal activities simply because he was black and wore a certain style of clothing. In their view, the combination of "no retreat" coupled with Zimmerman's prejudice facilitated this needless confrontation. Additionally, Lawson (2014) argues that racial considerations broadly affect the likelihood that prosecutors will bring charges, and, more narrowly, affected the initial decision not to prosecute Zimmerman. Zimmerman, she contends, was only charged after an intense public outcry forced the appointment of a special prosecutor.

Others have offered journalistic arguments to rebut the claim that SYG statutes are detrimental to minorities. These advocates say that the Martin case has little, if any, bearing on the SYG debate because Florida's statute is facially neutral and because Zimmerman never formally raised Florida's SYG law in his defense. Several scholars have relied on the Tampa Bay Times Dataset to show that Florida's statute does not place minorities at a disadvantage. Lott (2013), for example, identifies fifteen Florida cases where threatened black men repelled assailants, mounted a SYG legal defense, and were exonerated. Furthermore, he points out that the overwhelming majority of SYG cases do not have a racial dimension because the underling confrontations involve people of the same race. Cases with a racial dimension are, therefore, atypical. Likewise, Lott (2013) and Ochs (2013) point to descriptive data showing that, of those who raise the SYG defense in Florida, whites are charged and convicted at a rate that is the same or higher than blacks.

Moving beyond anecdotes and descriptive statistics, scholars are just beginning to systematically examine the effect of SYG laws. Analyses that explore whether SYG laws disproportionately affect minorities have yielded mixed results and have provoked harsh scholarly critiques. The most frequently cited piece of scholarship is an unpublished study that Roman (2013) conducted on behalf of the Urban Institute. This study found disparities between how the criminal justice system treats defendants based on their race and the victim's race, but other scholars have identified methodological shortcomings with this study that undermine the certainty of its conclusions (Gruber 2014; Lott 2013; Murphy 2015; Ochs 2013). In contrast, Lott (2013) presented several analyses before the Senate Judiciary Committee that showed no evidence of racial bias, but his findings have also been questioned for methodological reasons (Murphy 2015). On the other hand, the literature has yielded more consistent findings as to whether SYG laws facilitate violence or deter criminal activity. The preeminent study was conducted by Cheng and Hoekstra (2013), who are affiliated with the Economics Department at Texas A&M University. Relying on annual data from the FBI Uniform Crime Reports, they estimated that removing the duty to retreat does not deter burglary, robbery, or aggravated assault, but leads to an eight percent increase in murder and non-negligent manslaughter. Despite methodological concerns expressed by Lott (2013), the results of this study have been published and have been corroborated by three studies that rely on different datasets (Lee *et al.* 2013; McClellan and Tekin 2012; Munasib and Guettabi 2013).

What is one to make of this empirical literature? The literature is in an early stage of development, but progress is occurring rapidly because of the topic's salience. Treatments of the Martin case have provided rich and contextually sensitive accounts of how Florida's SYG law operated in that case. And, in an effort to generalize, scholars have turned to systematic analyses involving many cases. To date,

these analyses generally suggest that SYG laws are associated with increases in violence and seem unlikely to deter criminal activity (Cheng and Hoekstra 2013; Lee *et al.* 2013; McClellan and Tekin 2012; Munasib and Guettabi 2013). Although treatments of the Martin case associate Florida's SYG statute with racial bias, establishing this proposition through large-*N* analyses have proven to be elusive. Therefore, this research question should be considered "open," and it would benefit from future inquiries. Weaver (2008) indicates that states can facilitate meaningful research by requiring police and prosecutors to keep records in self-defense cases. Specifically, he recommends that, on a state-wide or national basis, police should identify the investigatory procedures they used in each self-defense case and prosecutors should track a range of variables in cases where no charges were filed, in cases resolved by plea agreement, and in cases held over for trial.

In sum, a majority of the states have replaced the duty to retreat in self-defense cases with a SYG rule that allows people under attack to meet force-with-force when certain conditions are satisfied. These changes have been instituted through court decisions and legislative enactments, producing SYG laws that vary considerably from state-to-state. The Florida-like statues have generated intense public debate because of their capacious sweep. Advocates of these comprehensive statutes say they deter crime and protect victims from tenuous lawsuits, while critics say they encourage violence and disadvantage women and minorities. The extant literature generally associates these SYG laws with increases in violence, but notwithstanding anecdotal evidence like the Martin case, it is uncertain whether they exhibit a pattern of racial bias across many cases.

See also: Trayvon Martin

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