

2016

Self-defense in the United States: A review of the literature

Jake Shields

Follow this and additional works at: <http://commons.emich.edu/theses>



Part of the [Social and Behavioral Sciences Commons](#)

Recommended Citation

Shields, Jake, "Self-defense in the United States: A review of the literature" (2016). *Master's Theses and Doctoral Dissertations*. 877.
<http://commons.emich.edu/theses/877>

This Open Access Thesis is brought to you for free and open access by the Master's Theses, and Doctoral Dissertations, and Graduate Capstone Projects at DigitalCommons@EMU. It has been accepted for inclusion in Master's Theses and Doctoral Dissertations by an authorized administrator of DigitalCommons@EMU. For more information, please contact lib-ir@emich.edu.

Self-Defense in the United States: A Review of the Literature

By

Jake Shields

Thesis

Submitted to the Department of Sociology, Anthropology and Criminology

Eastern Michigan University

In partial fulfillment of the requirements

for the degree of

MASTER OF ARTS

In

Sociology

Thesis committee:

Peter Wood, Ph.D., Chair

Kristina Ajrouch, Ph.d.

Brian Sellers, Ph.D

November 11, 2016

Ypsilanti, Michigan

Abstract

This literature review examines self-defense as a general concept and in the context of specific legal doctrines. It looks at general issues of self-defense, such as philosophical principles, morality, and social norms; general guidelines of proportionality and force; and how non-lethal technology does not change these principles and guidelines. From there, the paper exams three major legal doctrines—Duty to Retreat, Castle Doctrine, and Stand Your Ground— and discusses their definitions, histories, legal significance, applied usages and specific study results, and the arguments and controversies surrounding them. The paper then analyzes the concept of self-defense through the theoretical perspective of Donald Black and concludes with a summation of what these laws have meant for the United States.

Table of Contents

Abstract.....	i
Chapter 1: Introduction.....	1
i. Problem Statement, Background, Justification, Significance.....	1
ii. Purpose of Study.....	2
iii. Theoretical Framework.....	3
Chapter 2: General Self-Defense.....	4
i. Basic Philosophical Principles, Moral Justifications/Objections, and Social/Cultural Norms.....	4
a. Basic Philosophical Principles.....	4
b. Moral Justifications/Objections.....	10
c. Social/Cultural Norms.....	15
ii. Basic Issues of Fault, Options of Self-Defense, and Weapon Usage.....	19
a. Fault.....	19
b. Options of Force.....	22
c. Weapon Usage.....	25
iii. Non-lethal Limitations.....	28
a. General Information.....	28
b. Non-Lethals: Government vs. the Individual.....	29
Chapter 3: The Duty to Retreat.....	31

i. Definition.....	31
ii. History.....	33
iii. General Legal Points.....	35
iv. Application and Results.....	36
v. Arguments and controversy.....	37
Chapter 4: Castle Doctrine.....	39
i. Definition.....	39
ii. History.....	41
iii. General Legal Points.....	43
iv. Application and Results.....	45
v. Arguments and controversy.....	48
Chapter 5: Stand Your Ground.....	52
i. Definition.....	52
ii. History.....	56
iii. Legality and Politics.....	58
iv. Application and Results.....	62
v. Arguments and controversy.....	64
Chapter 6: Theories and Conclusion.....	72
References.....	83

I. Introduction

i. Problem Statement, Background, Justification, Significance

Every day in the United States someone is attacked and/or killed. While in a country of 300+ million that does not substantially affect statistical models much, but to the individual, that event is significant. These individuals, usually law-abiding citizens, go about their lives hoping not to trouble anyone in the modern societies they are part of. That is, until an event happens that forces them into a situation that could be life or death, human vs. human, and they must go back to the flight-or-fight instincts of their ancestors. The results of the actions committed by these instincts can have more repercussions beyond immediate survival in the U.S. today, as the legal system, media, and social forces all weigh in and react, presenting new challenges and obstacles to the average law-abiding citizen. The topic of this literature review, self-defense in the United States, is a complicated issue with a storied history and potent ramifications for the individual and larger society.

Plenty of research has been done on the topic and issues of self-defense and violence, from statistical effects of gun control to philosophical musings of the morality of any sort of violence, of which there have been noticeable results. These laws can be divided into three interconnected yet separate categorical entities: Duty to Retreat, Castle Doctrine, and Stand Your Ground (SYG), all names for a series of laws that govern proper actions and use of force in scenarios where self-defense comes into play. Understanding the differences between these legal doctrines, their definitions, histories, their legal significances, their applied usage, and the arguments and controversies surrounding them, will help law-abiding citizens in their decisions and plans on what to do in the gravest extreme. Furthermore, it will clarify for educators and advocates/opponents on what these laws actually do and how/if they can be improved.

ii. Purpose of the Study

The purpose of this thesis is to review the literature surrounding general self-defense and United States self-defense legal doctrine, synthesize these separate works into a comprehensive whole, and put them into a context that explains why the laws have developed the way they did. The literature was compiled using convenience sampling of various academic databases, namely the Eastern Michigan University online library, and the scholarly, peer-reviewed articles chosen from word searches related to my research question, “How has self-defense legal doctrine been developed in the United States, and what has resulted?” The article’s priority was chosen first for relevance, followed by most recent information and studies.

The main work of this thesis will begin in Chapter 2, first providing general information on the topic of self-defense, where the justifications for self-defense, both philosophically and morally, are discussed, as well as how they are internalized through social/cultural norms. It will continue with work on more mechanical aspects of self-defense, including issues of fault, categorical methods of self-defense, and weapon usage. Finally, the chapter will conclude with discussion on the positives and negatives on non-lethal weapons.

The next three chapters, 3, 4, and 5, respectively, discuss the three main self-defense legal doctrines of the United States and how they have evolved from one to the next. Each of these chapters follows a pattern of explaining definitions, histories, legal points, applications and results, and the arguments and controversies surrounding them. Finally, Chapter 6 will tie the evolution together into a theoretical framework, explaining how they may have developed as they did, as well as how the future might turn out for them. The chapter will then conclude with a summation of the thesis and what further work might discover.

iii. Theoretical framework

Law, and subsequently self-defense, are forms of social control. When social control is discussed, it is either seen as an independent or dependent variable. While some theories, such as deterrence theory and differential coercion theory, see law as independent, as a stable power that causes actions in others, different theories see social control as dependent on other powers, as a result of larger forces at work. One theorist who subscribes to the idea of social control as a dependent variable is Donald Black (2010) in his work on the behavior of law. Black's work is a macro perspective on society, where law and subsequently self-defense are dependent variables of social development and broad structural forces in society. Law and self-defense are byproducts of social control.

The theoretical framework of Donald Black (2010) on the behavior of law stems from five important social forces. His work includes analysis of stratification, morphology, culture, organization, and social control, as well as indicators for the projected future. Stratification is the vertical aspect of social life, or social class, involving different group's access to resources that define their conditions of life. Morphology is the horizontal relation people have with each other, or how division of labor, intimacy, and integration influences their relationship with each other. Culture is the symbolic aspect, reflecting the influence of religion, folklore, and decoration. Organization stands for society's aptitude for collective action. Finally, social control stands for the normative aspect of society, defining what is deviant or accepted and what responses to give for various actions. Black believes that these aspects affect everything in modern society, which, in this case, should include self-defense. An analysis that runs through each of these segments and how they can relate to self-defense results in a theoretical backing to the concept.

Chapter 2: General Self-Defense

i. Basic Philosophical Principles, Moral Justifications/Objections, and Social/Cultural Norms

a. Basic philosophical principles

When first broaching the topic of self-defense, some basic overview is necessary to provide some context to the more specialized aspects. The first section of this work examines some of the philosophical principles that back self-defense as a concept. From there, it will cover some of the moral issues related to choosing self-defense as an option, both positive and negative. Finally, some of society's norms, both social and cultural, will be linked to self-defense. The groundwork for the philosophical justification for self-defense is first tackled below.

Violence can take many forms, from the classical physical (pain to the body) to the emotional (inflicted anger and sadness on others), psychological (mental torture and abuse), structural (socioeconomic suffering), and cultural (racism). It is most apparent in personal or political fights, resulting in people damaged in one form or another. Even if the results are generally the same, violence can be classified by cause and method, resulting in some violence, such as self-defense, necessary violence, sufficient force, and so on. Violence has escalated in the numerical sense, as the world population has increased and people are concentrated more and more in urban settings, where the chance of becoming a victim of several forms of violence is increased. (Bishop and Phillips 2006)

Most civilized societies place a high degree of worth on human life, not to be spent unwisely and not to be treated as minimal. They make codes and rules to protect and prolong human life and to bring severe consequences on those who take others' lives. To murder is to

make an unlawful killing, motivated by malice, of another human being. Motivation and legality are important required criteria, as without one or the other, it becomes another act. Killing in war, self-defense, or as state-sanctioned punishment are legal and thus not defined as murder. Killing another out of accident, with no ill will or reckless disregard, is still criminal but not to the same degree as outright murder and usually less severely punished. Murder is also often separated by degrees, with first degree being premeditated and planned, while second degree is spur of the moment in an emotional surge (Roberts 2012).

Protecting oneself and others against unjustified attack is also a universal concept. Almost always the use of non-lethal force to ward off attack is justified, while using deadly force is usually only justified in the gravest extreme, where death or serious bodily harm towards self and others is reasonably feared. While in modern times this does not extend to defense of property, in the distant past there was no distinction between methods of defense of self or property.

This brings up two alternating perspectives on the place of violence in the world. First, that violence is a universal human standard, and everyone accepts the need for it. One can argue that all societies, to different degrees, have some sort of cultural violence within them. Cultural violence is defined as “aspects of culture....that can be used to justify or legitimize direct or structural violence.” (Galtung 1990:291). These can take on many different symbols, from religious symbols and nationalism, to the endless flavors of police investigation shows on television. Take note that it is only aspects of a culture that can encourage violence, not the entire culture itself. For example, there may be mass shooters who murder many people, but gun owners, and the gun culture associated with it, are not necessarily as violent. An entire group culture cannot be seen as all supportive of mass violence, only an aspect (Galtung 1990).

An interesting concept is the negation of cultural violence, which Galtung (1990) has referred to as “cultural peace” or “aspects of a culture that serve to justify and legitimize peace and structural peace” (291). As in cultural violence, there exists no culture that is wholly one that encourage cultural peace. Cultural violence works to change mores into approving or accepting the use of violence, sometimes situational. For example, killing is wrong, but in self-defense, it is acceptable.

On the other hand, a smaller but still relevant camp suggests that accepting violence is not universal. This group believes that the response of self-defense, of meeting violence with violence, is a cultural mores, not a human universal standard. Some human cultures, such as the Paliyans of India, see any violence as abnormal and unacceptable. Instead of acting to defend themselves when violence occurs, they will engage in nonresistance, refusing to escalate, and when the threat continues, they will retreat from it (Bonta 2013). The core beliefs of a society, held within individuals, dictate citizen’s interactions with each other. To have a peaceful, nonviolent society, individuals within that society must hold within themselves the beliefs that acts of violence are inappropriate and unacceptable, and the must chose to follow those beliefs with each other. Without that united purpose, it all falls apart (Bonta 2013).

The common response for fleeing aggression or facing and taking it without any hint of retaliation exists in these societies for good reasons. They found times that they could not match much more powerful neighbor societies, that fighting would be hopeless and end in death or enslavement. By fleeing, they could have a chance of survival. This pattern exists around the world, from Asia to the Americas, such as the Chewong of the Peninsular Malaysia and Hutterite Anabaptists (Bonta 2013). If a Darwinian perspective is used, the ones who fled survived to pass on their genes and teachings, which continued to be used in further attacks, reinforcing this

mindset.

Bonta (2013:118) states that, according to the group Peaceful Societies, “peaceful societies are contemporary groups of people who effectively foster interpersonal harmony and who rarely permit violence or warfare to interfere with their lives.” A common theme of peaceful societies is that they are often homogeneous, close knit, and relatively small in population. Under those conditions it is easier to maintain interpersonal harmony and the ability to limit levels of conflict.

The author compares Norway and the USA in levels of peacefulness and violence and draws up several conclusions on why this is, most effectively being differing core beliefs. Norway holds that solidarity is a highly important aspect of their culture, and to maintain it, inhibiting hostile feelings of their neighbors is necessary since you never know if you will need that neighbor's help. They take pride in their rural, egalitarian roots, rather than celebrating military victories. In recent history, they have managed to avoid becoming entangled in military conflicts, mostly existing as a periphery of the Denmark kingdom and, after the Napoleonic Wars, they were merged with Sweden. When they wanted to separate, they did not have to engage in a civil war, but rather the union was dissolved peacefully in 1905, and Norway has remained pacifistic ever since.

The United States is made up of many differing cultures, immigrants, and regional differences. It is much more difficult to foster interpersonal harmony among people with minimal common ground between them. Furthermore, the United States, in displaying its patterns of violence through all mediums of media, from movies to video games to books to music, results in generations growing up accepting violence as the natural state of being, and one can only accept it and plan responses. Many Americans honor their veterans and celebrate

military victories, and leading themes in stories are people who stand against aggressors and fight back. It can be argued that access to guns and laws that permit owning, using, and carrying those guns are an important factor in violence beliefs, but exactly how that affects violence rates is a little more obscure (Bonta 2013).

The when, where, how, and why of using force in self-defense is a complicated issue, not just in the United States but around the world. Who is using force matters in society, particularly Western ones. For instance, there is a distinction between the military and police on the scrutiny the usage of force brings, with police being held to a higher standard as a rule. Use of force treads a fine line between aggression and self-defense, and it can be difficult to establish which is which. As a rule, use of force by these groups must be only when necessary and proportional in response, in order to be legitimate. Even then, the question of justifiability is not clear, and dependent on numerous factors (Rappert 2004).

Dsouza (2015: 278) states that academics and theorists disagree on three points: “(i) the philosophical source (if any) of a person’s duty to retreat; (ii) the interests that may privately be defended; and (iii) the point of time at which private force becomes available to a defender.” This conflict arises in a modern state due to the state’s role of enforcer of rights and the given monopoly of legitimate force (MLF) it possesses, nominally disallowing the use of force by the citizens. Typical exceptions to this monopoly of force include justified defense of person and property, prevention of crime, and making a citizen’s arrest. Some actions, such as the Duty to Retreat (discussed in Chapter 3), are precursory actions that usually must be taken before justified force in self-defense becomes a legally valid exception to the state’s monopoly on force (Dsouza 2015). When acting in self-defense, the state normally holds that only the minimum amount of force should be employed and that the force should be proportionate to the threat,

never more than what the threat is worth. While all states hold an MLF, the extent to which they hold it varies. Jurisdictions with liberal self-defense laws hold onto the MLF less tightly than places where rules on claiming self-defense are stringent (Dsouza 2015).

Human life is generally held sacred by most civilized societies, where the taking of life is not something held lightly. Preventing others from taking your own life is instinctual, but the method to do so is not. Violence as a concept can be either accepted as a constant part of humanity or not, and how it is perceived and dealt with differs in different cultures. Modern states tend to give the government the monopoly on legitimate force, limiting the rights of the individual to bring order and stability to the whole society. Those that buck the social order, from common criminals to vigilantes (discussed in the next section), are damaging to society. Philosophically and logically, self-defense exists and is not going anywhere. Whether it is right or wrong in many circumstances is another. The next section covers some moral justifications and objections to self-defense.

b. Moral justifications/objections

Self-defense as a concept clearly exists, but mere existence does not imply morality. Is it morally justified to fight against an attacker, rather than submitting? In the section below, some justifications as well as some possible negatives and caveats for self-defense are laid out, in particular the dangers of vigilantism.

One may ask why a person, not acting as an agent of the state or a vigilante, would stand their ground and fight back against an attacker who is not immediately attempting to kill them, such as in the case of an armed robbery or a rape? In a jurisdiction with restrictive self-defense laws, would it be better to give in and give the attacker what they want? After all, if the aggressor's conditions are met, they say they will not kill/grievously injure the victim. Well, there is more at stake than property. It does seem like killing over property is an act that usually is found unjustified. According to Steinhoff (2013), there is more beneath the surface than the under-duress changing of property ownership. A robbery, and in a limited sense a rape, is characterized by a conditional threat: Give me what I want or I will kill you/hurt you. Some would say that a conditional but not imminent threat does not justify proportionate defensive measures. If giving in to the aggressor or killing them are the only options, then giving in should be the justified action since lethal force in defense of property is disproportionate. However, Steinhoff (2013) comes up with three philosophical and practical reasons why this may not necessarily be the case, reasons that apply to the principals SYG and armed self-defense is based on.

First, consider the depravity of the threat and how it affects decisions on proportionality. There is no good compelling reason to take the aggressor at their word that they will not cause further harm after they get their stated demand. Furthermore, there is a great difference between

a burglar who takes an item and runs without directly endangering the victim, versus the aggressor who directly threatens bodily harm to the victim unless they get what they want, directly endangering them and imposing a severe rights-violation. Additionally, the culpability of the aggressor is to be considered. Since they are willing to kill another over their demands, their claims to protection are greatly diminished, as their great disrespect for others renders them unable to justly complain against a victim's diminished respect for the aggressors right to life, and receives the same sort of action the aggressor would have nominally given out if their demands were not met (Steinhoff 2013).

Secondly, there are more things at stake than a person's property. The integrity of the socio-legal order is violated as well, where a person's hard work and sacrifice may earn them the means to thrive in society, and their earnings are theirs until freely given for goods and services. When a robber or other criminal commits crime, they damage social-legal order and the moral order, and to resist an aggressor of this ilk is to preserve order and morality.

Finally, when considering proportionality, there are personal losses at stake beyond property, such as a person's honor and autonomy. To be robbed is humiliating and violating, as the robber's will is imposed over your own desires and bodily actions. While a thief may take your money and run, all that is really lost is the money, but autonomy is still preserved, the victim can still move and act how they wish, having kept their self-ownership. In comparison, a robbery has the attacker using the threat of lethal force to take away the freedom of the victim, temporarily enslaving them to the robber's demands, to not resist, to move your body in certain ways, all of which is a great violation of a person's self. When all these factors are combined, the question of proportionality to conditional violence changes the balance greatly (Steinhoff 2013).

When a wrongful killing or act of aggression is committed, not only is the individual

affected, it also damages the social-legal order, the general sense of security and predictability that governs a society, helping citizens make the decisions that keep things running smoothly. While citizens helping to maintain the social-legal order may overall be beneficial to society, there are many ways to damage it, without warranting force. It is usually the state's job to maintain the social order, all staples of the concept known as the social contract theory. While citizens can help the state in its duties, such as making reports, citizens' arrests, or in certain cases of self-defense, private citizens outside of very narrow circumstances have no authority to enforce order; to do so would have the state label the misguided citizen as a vigilante (Dsouza 2015).

Vigilantism, where people take the law into their own hands and kill or injure others without state sanctioning or due process, in order to enact their definition of justice, is an example of mixed signals of societal approval/disapproval. It is a crime to engage in vigilante actions, yet depending on the circumstances, they receive a significant amount of public support from individual actions to popular media such as movies and television. One can advocate for the position that vigilantism delegitimizes the authority of the criminal justice system, making the public lose faith and increasing the likelihood of others following the example of the vigilante. However, the exact determinates of public support are vague and ill-defined (Haas, Kijser, and Bruinsma 2012). The state is responsible for having a monopoly on force for the good of society, and with it are the presence of laws and justice systems. These societal mechanisms are to enable the citizens to have a non-violent alternative to handling conflicts. The reason this monopoly on force and justice is held fiercely by the state is that it prevents the potential anarchy and overreaching of citizen vs. citizen retaliation. If justice is handled by an impartial third party, it guards against emotional excesses, which can increase retaliation beyond the scope of the

original wrongdoing, exemplified in the blood feuds and family vendettas of ages past (Hass et al. 2012).

One relevant motive for vigilantism, which can be linked to self-defense in a broad way, is when citizens lose faith in the effectiveness of the criminal justice system, a discrepancy between desired and actual outcome of being attacked. While punishment of a violent offender is usually considered adequate, being attacked at all and suffering injury may be considered a motive for dissatisfaction with the criminal justice system. Private citizens arming themselves to drive off, incapacitate and/or kill an attacker may be, and has been, considered circumventing the justice system by punishing an attacker without trial. However, a popular response to people who criticize those who carry guns for self-defense is “if I could, I would carry a policeman in my pocket.” This is a recognition that physical and numerical limitations prevent lawful authority from immediately acting in defense of the law-abiding citizen while an attack can happen at any time and immediately. To compensate for this basic reality of life, they take steps to ensure their personal well-being; steps that, as previously stated, could be interpreted as motivationally similar to, if not legally, a vigilante. Hass et al. (2012) clearly set vigilantism as different from self-defense by defining what vigilantes do as a criminal act. While self-defense and vigilantism may both consist of killing someone, certain legal standards and motivations must be met to differentiate between the two. In regards to social norms, the vigilante, according to Hass et al. (2012:391), “Confirms the norm that was violated in the precipitating crime, but at the same time he violates the norm of the state monopoly on the legitimate use of force.” They are situationally different, but the basic norms are similar.

The morality of self-defense can clearly be argued for as justifiable, rather than outright dismissed. Not only can you not trust an attacker for mercy if you submit, not only are you

potentially physically harmed, but the dignity and honor of the victim, virtues that cannot easily be dismissed from humanity, are also damaged. Furthermore, the social order is also rent, damaging the social links people have with each other. However, it is morally and socially clear that self-defense has limits, and to break the limits and laws of the society one resides in in order to enact “justice,” can become just as damaging as the original act of the attacker, if not more so. These limits and laws are formed from the social norms that dictate our actions within society, as formulated in the next section.

c. Social/cultural norms

In this section some of the broader social and cultural norms that influence self-defense, particularly in the United States, are looked over. Some basic definitions and explanations of how social mores propagate are given, as well as how history, sport's and media are shown as inflectional in teaching and reinforcing social norms is discussed in this section.

People learn social norms early on in life through observation and imitation of others individual actions, eventually taking on the mindset and perspective of one in a large society, that their social actions are ones that most people do. Young children pick up on the fact that there are different levels of social norms, from those that are well-defined and specific to a particular context and people, to more nebulous and universal moral and rational norms (Rakoczy and Schmidt 2013).

The features that govern standard social norms of daily individual and group life, of which there are three, can also apply to acting or not acting in self-defense. The first one, normative force and generality, sets standards of correctness and appropriateness, standards that serve as reasons for judgement and grounds for critique. To give an example that relates to matters of self-defense, the level of force applied to a hostile situation has certain standards of proportionality to be met, such as retaliating against a physical slap in the face with stabbing the slapper. The second feature is context sensitivity, where certain social norms apply only in certain contexts, and are inappropriate elsewhere. For instance, in a mock fight such as boxing, it is inappropriate to attack an opponent's vital areas such as eyes and groin; while if attacked for real, striking vital areas to stop the attack/flee is considered appropriate. The last feature is conventionality, which is broken into two parts. The first part is that social norms are brought into existence by shared assignment and acceptance, socially constructed by a community, not

necessarily found in the natural world. Secondly, they are somewhat arbitrary, and could have been different than how they exist now. This distinguishes them from constitutive norms of rationality (cannot be different because they define what rationality is) and moral norms (unchanging due to being built on consideration of fairness, wellbeing, etc.). While acting in self-defense typically means to fight back, it could have been a different main action. Fleeing and submission could have been the main responses, as they are taught in certain areas of the world (Rakoczy and Schmidt 2013).

In the United States the philosophical and moral explanation for self-defense is firmly rooted in the American consciousness. After all, the history of America is built of violence, from the American Revolution to the wars to the frontier expansion to modern cities where shootings and death happen regularly. Inside the country, during the last half of the 19th century, the belief in retreating first diminished, most likely due to the expanding frontier associated with the arguably necessary, if overbearing, gun culture. In order to resolve conflicts, both minimal and life-threatening, guns became another tool to use besides only words. The US Supreme Court, represented by Oliver Wendell Holmes, expressed the opinion that the right of a man to stand his ground and kill an opponent was comparable to the civil right of freedom of speech (Bonta 2013).

The United States has one of the highest rates of violence in the world, having permeated social interactions, media, and structural means (Boots, Bihari, and Elliott 2009). Americans are exposed to violence in a daily basis and taught, consciously or unconsciously, that violence is a normal part of life and sometime the best option to solve a situation. For them, “violence under the form of self-defense has been embraced as a necessary part of life and as a means toward individualized justice” (Boots et al. 2009: 521).

The desensitizing of violence can be seen most clearly in entertainment, such as with sporting events. While in other modern venues violence and aggression are discouraged, in sports it is the opposite. Aggressive behavior by athletes is believed to result in better play, and it is encouraged by the fans. They live in a semi-sheltered environment, where their coaches and teammates tell them to go for the win without emphasizing the need to do in a moral fashion. Their peers tend to be similar in that they push for a self-centered worldview, stripping away empathy in and out of sports. Furthermore, the fans themselves will become caught up in the promotion of violence, engaging in it as willing participants. However, there are still limits, as athletes have been prosecuted under criminal law for being too violent in the sporting arena (Marasecu 2012).

Video games, a very popular pastime in the modern era, have also left their mark in controversial arenas. The time and resources committed to videogames, combined with their ability to immerse their consumers, and their increasingly more realistic imagery, can lead to concerns that their content can lead to consumers becoming influenced in antisocial behavior. Violence, a key element in many popular games, can be committed and is often required by the gamer. While many can easily differentiate between fantasy and reality, and clearly understand the morality within, it is worrisome how little we know is being imprinted on the unconscious mind, and how much of that imprinting will affect public behavior (Przybylski, Ryan, and Rigby 2009). Social and cultural norms play a big part in the acceptance of violence as a tool in self-defense. The level at which it is reinforced, the context it is appropriate, the acceptance of the conventionality of the norms, and the society's history is influential in the development of its social norms. Many outlets, like movies, sports, and video games, portray and support social norms regarding violence, keeping it within the social consciousness. The social/cultural norms

that govern self-defense are general guidelines, but specific social guidelines, dictated by laws and governments, also play a major role in self-defense, as covered in the next section.

ii. Basic Issues of Fault, Options of Self-defense, and Weapon Usage

a. Fault

When a physical conflict occurs, it never starts in a vacuum out of nowhere. It has an origin, one where usually one of the parties in the conflict was the one who started it and holds the blame for the damages. For a conflict to become a case of self-defense, the other party must have held no fault, or responsibility, for the conflict's occurrence. The general key points for claiming self-defense are detailed in the coming section.

The right of self-defense is an exception to the states usual monopoly on force, allowing an individual to fend off unlawful attacks by certain means, up to lethal force, in order to preserve the overall legal order (Moore 2013). However, to count as self-defense, certain conditions need to be met, one being that the defendant cannot be the one to provoke or escalate the conflict. While exact definitions of provoking differ among different areas, one key element that is often unaddressed is if a person can enter a situation that has a good chance of escalating into violence, yet still claim self-defense. In other words, per Moore (2013), what distinguishes the vigilant, concerned member of the community from the vigilante, acting as police, judge, and executioner in one? He argues that the courts need to rectify this issue by applying a reasonableness standard to issues of provocation in self-defense cases so that the system and juries can process and distinguish between the vigilant and vigilante (2013).

While many agree that provocation should disqualify claims of self-defense, exactly what counts as provocation is murky. The common definition of provoke means to “‘incite anger or resentment’ to ‘stir to action or feeling’ to ‘give rise; to bring about’ or to ‘bring about deliberately; induce’” (Moore 2013:1662). Black’s Law Dictionary states that provocation can mean “‘1. The act of inciting another to do something, esp. to commit a crime. 2. Something

(such as words or actions) that affects a person's reason and self-control, esp. causing the person to commit a crime impulsively” (Moore 2013:1662). Different legal jurisdictions have their own interpretations on provocation.

Moore (2013) provides a useful means of dividing provocation into three categories: any provocation, straight provocation, and provocation with intent. Any provocation provides no leeway in ability to claim pure self-defense. It requires the defendant to be completely blameless, having no reason to believe a conflict could have resulted from any action they made; otherwise it counts as provocation. Straight provocation is less demanding of the defendant, stating that as long as the defendant is not the aggressor, a claim of self-defense is not immediately invalid. Provocation only counts if it is “Deliberately calculated to lead to further conflict” (Moore 2013:1667). A person who armed themselves in preparation for a possible conflict does not count as provocation by straight provocation, while by the standards of any provocation, it does count a provocation. The final one is provocation with intent, the narrowest category. It differs from straight provocation by precluding self-defense to someone who intends to provoke another to enact death or serious harm on the person. If a defendant did not directly threaten life and limb of another, self-defense is still an option.

To illustrate the differences between the three, take the following situation. A man (A) walking into a room with another man (B) he knows dislikes him enough to fight him is enough in an any provocation jurisdiction to disqualify both from using self-defense as an excuse. In a straight provocation jurisdiction, (A) would be able to claim self-defense if (B) threw the first punch, but not if (A) threw the first punch. In provocation with intent, (A) could throw the first punch and not have self-defense disqualified as an option, as long as he did not intend to escalate into serious harm or death for (B). If, however, (A) had walked into the room and stabbed (B)

with a knife, that would immediately count as an intent to kill or seriously harm, and claiming self-defense would not be an option (Moore 2013).

Fault is a critical component of self-defense, for without its consideration, all parties would hold equal blame and receive equal punishment, despite the morality. What qualifies as fault or provocation may differ in different jurisdictions, so understanding what local definition is followed is very important. Another thing to consider carefully is what options of force are available and proportionate to the contextual conflict you are in. Some basic categories of force are covered in the next section.

b. Options of force

When a self-defense situation occurs, the victim of the attack must consider what to do and decide what options are appropriate to the particular situation at play. General options for what victims can do to protect themselves are covered, along with some basic information on success rates of these actions.

Once a situation had developed, the question of what to do about it comes into play. Individuals who are victimized by crime will react in different ways. Some will remain passive, while others engage in active means of dealing with the situation. This can include, but not limited to, calling for others to intervene, fleeing the situation, attempt to negotiate with the aggressor, or engage in physical resistance with the attacker (Hart and Miethe 2009).

Contemporary wisdom on the use of force in self-defense situations varies. Some politicians and some researchers saying that force may only aggravate an encounter. Others, such as Guerette and Santana (2010), cite research that says that more forceful defense will halt assaults and rapes that non-forceful resistance will not. They say this is an extension of opportunity theory.

Furthermore, victim self-protective behavior (VSPB) is not a subject that has received much attention. Criminology has focused almost entirely on criminal actions, ignoring or downplaying reactions to the criminal acts.

VSPB, in situations such as rape, kidnapping, and assault, where harm to the victim is the goal of the aggressor, can be divided into four categories: forceful physical, forceful nonphysical, forceful verbal, and non-forceful verbal. Forceful physical resistance involves aggressive actions against the attacker, such as using physical blows and weapons to incapacitate or drive off the offender. SYG laws are designed to provide more freedom to engage in this response. Non-forceful physical resistance are passive techniques that aim to end the confrontation without

causing great harm to either person via evading the attack. This can include avoiding the other person, breaking free from a grab, and running away. Without SYG laws, most states would require a victim to attempt to engage in this response in a dire situation. Only if this and other methods failed to halt an attack would forceful physical be considered a legal option.

Forceful verbal resistance means using words or volume to discourage the attacker or to summon help. This includes screaming and yelling to cause the attacker to fear discovery and flee, or to directly signal immediate others to come to the rescue. Finally, there is no forceful verbal resistance. This involves a victim using nonaggressive verbal means to stop the attacker, such as reasoning, begging, and crying, all of which has been found to be ineffective in most cases (Guerette and Santana 2010).

VSPB in robberies or other crimes where harm to the victim is not the main goal of the aggressor has been divided into two categories, forceful and non-forceful resistance. Both types have been found to have been effective in keeping property, but armed resistance, particularly with a gun, has been found to be the most effective in keeping property. In regards to physical injury, it is a little less clear. In cases of rape, forceful resistance has not been found to increase victim physical injury. For robberies, some physical resistance strategies, such as fighting back without a weapon, has an increased chance of physical injury (Guerette and Santana 2010).

There exists different strategies for protection in individual encounters with an attacker, which generally fall into four categories: forceful and nonforceful physical resistance, and forceful and nonforceful verbal resistance. These options are context-sensitive, meaning that some work better than others in different situations, and only the victim can choose what they think is best in that situation. Both categories of physical resistance have some of the greatest consequences for their actions, particularly if it can result in great physical injury or death. In the

next section, these consequences are linked with weapon usage by the victim, consequences both good and bad.

c. Weapon Usage

Weapons, in cases of self-defense, can offer a great amount of leverage to the victim in stopping an attack. In the United States, weapons are synonymous with firearms prevalence. The gun debate is highly contentious, and while not the focus of this work, it is a crucial part in understanding the legal nuances of self-defense.

Methods of physical resistance vary, from minimal effort up to using a firearm to intimidate the attacker into backing down or shooting to injure or kill the attacker. While Hart and Miethe (2009) acknowledge that the exact number incidents where a firearm is used in self-defense is unknown, previous research does indicate that it often results in less chance of injurious harm to the victim.

The legality of gun ownership, a contentious point in American society, has had two main perspectives for some time. First, there are those who believe that gun availability is directly correlated with violence, and increasing or decreasing the numbers of guns would increase or decrease levels of violence (Stolzenberg and D'Alessio 2000). It is believed that have a gun encourages a person to initiate a crime against another who otherwise would appear unassailable. The gun will empower the aggressive individual to coerce the victim into whatever efforts the aggressor desires. A link has been found between victim choice and gun usage, whereby aggressors with guns will target previously difficult targets like young fit males, and non-gun aggressors will go after weak targets like the elderly and small females (Stolzenberg and D'Alessio 2000).

Worries about carrying weapons leading to an increase in violence is not without substantiation if situational factors are considered. In an older study, Killias and Rabasa (1997), studying Swiss juvenile delinquents, found that carrying a weapon did consistently lead to

violent acts, and therefore, to prevent violence, the juveniles should be prevented from carrying weapons for their protection. It is an obvious point, but arguments made against this finding can be made that weapons are merely a symptom, not a cause.

The second group falls into the camp of people that believe that the ready availability of guns has a negative relationship with criminal violence on the basis that average, law abiding gun owners will not use their guns in criminal pursuits against others, but instead only in acts self-defense against criminals, who in turn will act more cautiously around potentially deadly targets (Stolzenberg and D'Alessio 2000). While the number of guns used in crimes is a tragedy, it is greatly believed that gun usage in self-defense greatly outnumbers it. The Kleck and Gertz study (1995) estimates that 1.1 million guns were used in crime, but 2.5 million citizens use guns in self-defense, a finding that has been substantiated in other empirical studies. Criminals have been found to fear armed citizens more than police, and have based their criminal activities off that fear. In a somewhat ironic point of the objective dangerousness of guns, the group that sees guns as a deterrent to crime believe that violence is not the consequence of gun ownership, but instead the cause of it, the opposite of the group that believes guns themselves cause violence and crime (Stolzenberg and D'Alissio 2000). Multiple surveys have found that the number one reason people own guns is for self-protection, based on a fear of victimization. While not a direct response to Killias and Rabasa (1997), surveys of juveniles who carry weapons found that the main reason they carry weapons is for self-protection, not solely for criminal purposes. Results from the Hart and Miethe study (2009) found that firearm use in self-defense is rare, 1% out of 20,000 incidents in their sample. They acknowledge that data from their use of the National Crime Victimization Survey (NCVS) may be limited and that situations where guns deterred violence from happening at all were not included in NCVS.

Weapon usage in cases of self-defense is highly controversial, and has spawned two factions, one that believes guns are responsible for violence rates and indiscriminately increase them, while the other believe guns can reduce violence by making potential victims stronger and making criminals more cautious. Studies for both factions have been done, and both have found evidence to support their causes, with the secondary pro-gun faction having more difficulties proving their points. It is no surprise then that some people are turning to other tools of self-defense, ones that promise to repel attackers without serious injuries to either party. These non-lethal weapons are covered in the next section.

iii. Non-Lethal Limitations

a. General information

The mere usage of force is a major quandary for a just society, physically, mentally, morally, and socially. Almost any usage of it will raise questions from the public on if it was necessary, proportional, and effective. Modern knowledge and technology has allowed for the creation of non-lethal weapons, or force options (Rappert 2004). These are mostly created and used by police forces, although some are available for the civilian market. There are many types, ranging from chemical sprays to electroshock implements, designed for incapacitation without killing. However, these weapons can still fall under the moral debates of use of force as any other weapon. These are not perfect weapons and can be used to seriously hurt or even kill people, if used incorrectly (Rappert 2004). Who is using force matters in society, particularly Western ones. For instance, there is a distinction between the military and police on the scrutiny usage of force brings, with police being held to a higher standard as a rule. Use of force treads a fine line between aggression and self-defense, and it can be difficult to establish which is which. As a rule, use of force by these groups must be only when necessary and proportional in response in order to be legitimate. Even then, the question of justifiability is not clear and dependent on numerous factors (Rappert 2004). Since governments hold the MLF, they face a greater spectrum of situations than the individual, as well as responsibilities in the use of force, as detailed in the next section.

b. Non-lethals: government vs. the individual

Western governments, especially after the Cold War, face many new, destabilizing problems than has been seen before in history, thanks to cultural and technological progress. When this was realized in the 1990s, governments increased spending on technological research and development for their police and military, including new and better non-lethal weapons. These tools have been defined by the Department of Defense as “discriminate weapons that are explicitly designed and employed to incapacitate personnel or material, while minimizing fatalities and undesired damage to property and environment” (Rappert and Wright 2000: 477). While the range of non-lethal tools include tear gas, water cannons, electroshock weapons, and batons, personal use in the context of SYG mainly consist of pepper spray and electroshock weapons regulated to a civilian market.

Modern times has seen the rise of “non-lethal” weapons. The operational criteria of these weapons are evaluated not by their potential to cause death but by the ability to temporally cause incapacitation of individuals or crowds, without causing excess harm or damaging property (Anais 2011). But, one should ask, why has the rapid expansion of development and use of non-lethal weapons become a priority? What sort of ethical crisis has been shared among bureaucrats and developers that has pushed this technological movement? While in the case of state control that answer is complicated, at the individual level, it can be answered by the often-held value of the sanctity of human life, that the ability to end another’s existence is a major moral and legal quandary, and non-lethals can offer a chance to avoid that quandary.

In the end, however, the manner of defense is subsidiary to the main issue, which is the usage of force at all. Indeed, arguments against non-lethals in self-defense are like those against using lethal force, or go hand-in-hand with lethal force. Critics from all political spectrums argue

that increased use of non-lethal will result in more overall conflict, that since it is non-lethal, it will lower inhibitions to deploy them for minor conflicts, aggravating a situation that could have been resolved peacefully. Linked to that argument is that non-lethals are not 100% guaranteed to be non-lethal or not injurious and that people may suffer more than is intended. Thus, non-lethals may be seen as a complement to lethal force, pre-lethal, if you will (Rappert and Wright 2000).

Non-lethal weapons, as it turns out, are not the miracle cure to cases of self-defense. Like guns and the body, they are tools to utilize in situations of violence. While certainly useful in stopping some attacks, their reliability and usefulness are not guaranteed. When it comes down it, their use by both the individual and the government all comes back to the basic concepts outlined in this chapter. Self-defense, the protection one does against the onslaught of another party, is a concept that must be accepted philosophically and morally by the individual and society they belong to before it may be used. It must follow certain legal and social guidelines, such as fault and proportionality, to be accepted as such. How that self-defense is enacted is dependent on what is legal and can range from verbal to physical resistance. Weapons usage in self-defense, both lethal and non-lethal, can bring both great benefits and consequences to the parties involved in the conflict. Overall, self-defense can be simplistic in the act but intensely complicated before and after the situation. In the United States, the groundwork for self-defense is very localized, due to the state-federal political relationship, and as such they have different laws and expectations regarding self-defense. These can be broken up into three main types of law, the first of which, the Duty to Retreat, is covered in the next chapter.

Chapter 3: The Duty to Retreat

This section covers the collective series of laws known as Duty to Retreat laws. It will go over the basic definition of these laws, the history of their origins, some specific legal points of the laws, how they have been applied and the results of their application, and finally, some of the arguments and controversy surrounding the Duty to Retreat.

i. Definition

To understand Duty to Retreat, a basic definition is necessary to know. Basically, it requires a person to first seek to avoid a confrontation before fighting back, rather than fighting immediately. It is not as simplistic as it sounds though, and it is not universally accepted, as seen below.

Most jurisdictions in the U.S. hold the belief that someone who is unlawfully attacked, faces death or great bodily harm, and is not at fault for the attack, should be able to stand their ground and fight back with deadly force. Other jurisdictions believe that the reasonable course of action for one who is attacked in the same way above should “retreat if safe to do so” instead of using deadly force. The Duty to Retreat acknowledges some circumstances that waive the requirement to do so. For instance, if it would be difficult to escape the confrontation without injury, then Duty to Retreat is put aside. After all, the Duty to Retreat was created to make sure that lethal force was always done as a last necessity in the gravest extreme, making it easier to justify. The other exception to Duty to Retreat is Castle Doctrine, or being attacked in the home or in some cases the yard around it (Carpenter 2003).

In many states, a law-abiding citizen has a duty to retreat before resorting to deadly force; only if safely retreating from the confrontation is no longer an option is deadly force justified

(Roberts 2012). To claim self-defense justification for killing an aggressor, it has been held that lethal force must be done as a last resort out of necessity. Necessity implies that other options are curtailed or bring greater risk to the defender. The Duty to Retreat is a logical step to ensure that killing is out of necessity. English common law, the basis of much of the U.S. legal doctrine, has always held that a person under attack has a duty to retreat, to try to escape the aggressor, before resorting to lethal force (Cheng and Hoekstra 2013). If one knows that escape is possible with complete personal safety for themselves or others, and will result in avoiding the violent encounter, then deadly force is not a legal option, and the victim will be held liable for killing the aggressor. In contrast, in a jurisdiction that eliminates the need to retreat, someone who reasonably believes they are in mortal danger is entitled to use deadly force wherever they lawfully have a right to be, as soon as they are aware of it. The duty to retreat in some jurisdictions has some minor exceptions, such as giving priority to the defendant's knowledge at the time of possible options for dealing with an attack versus later detached perspectives of people who were not there, or not being required to retreat from someone aiming a gun on them (Pozo 2008).

As stated in the beginning, Duty to Retreat is not a simple matter. It has its own complications, stemming from its origins, as shown in the following History section.

ii. History

Like most things, to truly understand Duty to Retreat, knowing the historical roots is vital. Duty to Retreat is rooted in English common law. Over the past eight centuries, it has evolved. In medieval England, killing in self-defense was considered the only type of homicide that was not done out of criminal intent and therefore not punishable by death. They could be excused, but only after conviction and royal pardon. In order to be declared non-felonious, the defendant must have done all that he could do to avoid killing and only doing so out of pure necessity to survive, or “slaying out of literally vital necessity,” the precursor to “Duty to Retreat” in traditional American self-defense laws (Ochs 2013).

Blackstone’s *Commentaries on the Laws of England* acknowledged that self-defense killing could be excusable but provided some exceptions to that, such as having to have been in a physical altercation with the attacker or having already attempted to or unable to retreat as far as possible to avoid the violence before turning and fighting. At the same time, the English courts began classifying some cases of killing in self-defense as justifiable, rather than excusable, eliminating the need for a royal pardon to acquit a defendant. These were considered “Justifiable by the law of nature” to prevent the most heinous of crimes. Blackstone noted the difference between justifiable and excusable killing in self-defense, stating that justifiable killing had “the slayer is in no kind of fault whatsoever, not in the minutest degree; and is therefore to be totally acquitted and discharged, with commendation rather than blame” (Ochs 2013:681). In turn, excusable killing in self-defense have “the very name whereof imports some fault...so trivial however, that the law excuses it from the guilt of felony” (Ochs 2013:681).

As shown, English Common Law is rooted in United States legal doctrine, including that which governs self-defense. However, the United States has had to develop its own interpretations on the scope of Duty to Retreat, such as on some of the legal points in the next section.

iii. General Legal Points

The law in regards to Duty to Retreat hold some issues to consider. Specifically, what counts as a home, a place to retreat to or not to retreat to? Some work by Pozo (2008) provides a shining example of this.

Someone forcefully attacked inside their home by an intruder had the right to immediately use deadly force in defense. This is an American historical right, traced back to English common law. However, just what qualifies as a home is more complex than it appears. A home, or dwelling, as it is called in legal terms, consists of a structure where a person lives and lodges regularly while other people are normally excluded. Typically, dwellings do not consist of porches, yards, hotel corridors, apartment stairwells, and other places near or inside structures that the public has legal access into or to approach (Pozo 2008). This distinction is important for two reasons, rights and practicality. A home is private and separated from the public world, where the property owner, to a certain degree, is the sovereign authority of their final respite. By rights, the owner has legal control over who enters their final domain, and ignoring that control is crossing the final line of civility. In practical terms, homes are secure and prevent most outside influences from entering, but when outside the home, you have made the choice to separate yourself from that protection and must allow for some public interaction in neutral areas, such as the places listed above, where the public and private intermingle (Pozo 2008).

The legal language of laws is always important to consider, especially in cases of interpersonal conflicts, as not fully understanding the nuances, such as what qualifies as a home, can result in criminal sanctions or worse. Overall application of Duty to Retreat Laws is shown in the next section.

iv. Application and Results

Duty to Retreat laws, like all laws, are subject to interpretation by the courts, who define the practical parameters of laws in individual cases and then use those cases to set precedents for similar cases in the future. For instance, in the series of cases below, exactly how Duty to Retreat is interpreted is dependent on many factors.

As a rule, in Duty to Retreat jurisdictions one must retreat from a confrontation before resorting to deadly force, the exception being within the home, with some variation on details. One example is a case in New York, *People v. Aiken*, where a person standing in their apartment doorway had to retreat inside before utilizing deadly force in a justified manner. Since the defendant was not technically inside his home, and could easily step back and close the door, the courts decided he had the duty to retreat (Pozo 2008). Another New York case, *People v. Wimberly*, which cited *People v. Aiken*, involved a woman who entered an apartment hallway to stab her opponent, and she was unable to claim self-defense as well. The court reasoned that she did not follow her duty to retreat because she did not have to follow the person out into the hallway. She could have instead stayed inside the apartment and been completely safe (Pozo 2008). It should be noted that in the past similar cases of apartments and hallways intermingling had different rules. Two decades before *People v. Aiken*, in the case *People v. White*, a man who got into an altercation in the doorway of his girlfriend's apartment, but he was found to have no duty to retreat into the apartment when attacked. This case was invalidated in *People v. Aiken* because the defendant was not the tenant, had no legal hold on the property, and thus had no legal area he had a duty to retreat to (Pozo 2008).

These were just laws in New York alone, yet highlight some important issues with Duty to Retreat. In the next section, these are given more time in the spotlight.

v. Arguments and Controversy

A major perspective division exists in American law: Either the victim of an aggressor must retreat before using deadly force (or be guilty of murder) or the victim is not obliged to retreat, and can utilize deadly force against the attacker when attacked themselves. This second perspective was fostered early in the 1870s by court decisions and commentaries and has been reinforced since then (Carpenter 2003). The Duty to Retreat perspective has remained strong, however, arguing that the fundamental right to life all humanity shares should make retreat the first option, to preserve that right as much as possible.

The Duty to Retreat has been interpreted to not apply when attacked in the home, as the home is the safest place to retreat to. Evacuating the home, while in some circumstances may bring further physical safety, requires the most opportune conditions at best and to require so could leave others at risk. The home and family have long been associated with each other, and critics of strong Duty to Retreat laws have put forward that requiring people to retreat from the home would put children and dependents in other parts of the home at risk. Pozo (2008) points out a flaw in this argument, which is current Duty to Retreat laws only compel retreat when it can be done safely for individuals and others, including dependents. Being attacked in the home versus being attacked in a doorway, although technically part of the same property, can have different results when arguing when there is a duty to retreat. The home is the place a person flees to, not flees from, but in some states, such as New York, standing in a doorway is not being fully inside the home, but still requires a duty to retreat (Pozo 2008). Once inside, there is no need to surrender the home to intruders, and taking measures to repel the intruders is appropriate.

When mandating a duty to retreat, it re-affirms a core principle, valuing the sanctity of human life. Some may consider retreating a devaluing action on behalf of the defendant's dignity

in order to uphold these principle, but Pozo (2008) argues that this is not the case. He asserts that weighing options when entering a conflict and choosing not to escalate is a sign of real courage and self-control. Puffed-up machoism has been known to result in unnecessary death, both in conflicts and accidents. Furthermore, when attacked suddenly and with great force, without previous warning signs, using counterforce to defend oneself is considered reasonable and necessary, and not retreating immediately is understood and usually not a faulty action. Finally, when understood and used correctly, Duty to Retreat does not require imperiling the self in order the preserve the life of the attacker. While being rapidly approached by an attacker, trying to fiddle with a locked door to retreat, putting oneself in a vulnerable position, is not necessary. In short, using lethal force, when faced with no other option or chance of retreat, can be found to be a legitimate defensive option. However, “in cases where pulling up the drawbridge is just as easy as pulling the trigger, the ground that one stands is neither the legal nor the ethical high ground” (Pozo 2008: 381).

The Duty to Retreat, an important component of self-defense, has its positives, such as avoiding conflict and injury as much as possible, and its negatives, such as creating legal arguments afterwards if violence was necessary or not. In the next chapter, another legal doctrine is examined, one that partners with Duty to Retreat but provides some further leeway that attempts to solve some flaws.

Chapter 4: Castle Doctrine

Chapter 4 will be covering the bundle of laws that comprise Castle Doctrine. Like the previous chapter, the definition of Castle Doctrine will be examined, followed by its history. From there some of the general legal points will be covered, which will tie into the next section on application and results of some Castle Doctrine cases. Finally, we will consider the arguments and controversy surrounding Castle Doctrine.

i. Definition

Castle doctrine laws allow citizens the discretion to use deadly force inside their homes against an intruder, in the face of a reasonable perception of unlawful threat, without being obligated to retreat first (Yu 2014), a right which has been described as more potent than that of a police officer. It comes from the historic belief that one should not be forced to flee from their own home, where a “man’s home is his castle,” hence Castle Doctrine. These sets of laws have notable exceptions, such as these laws not applicable against law enforcement officers doing their office duty, illegal acts by the homeowner, and the homeowner provoking a confrontation (Roberts 2012). Furthermore, they do not extend to all property owned, such as a yard or car, only limited to a secure residence. -These laws are to serve as a deterrent to burglars, among other criminals, since they do not know if the next house they break into will have a resident with a gun and no legal compunction not to use it (Ren, Zhang, and Zhao 2015).

Castle Doctrine is limited to two main points. First, people’s homes are their castles and thus have greater freedom to act there, but outside the home, they have less freedom to act, particularly with deadly force for any reason. Secondly, the Castle Doctrine’s allowance of the use of deadly force was usually coupled with the “Duty to Retreat” outside the home to avoid

conflict and use deadly force when no other option existed (Butz, Fix, and Mitchell 2015). The coupling of Castle Doctrine with Duty to Retreat is no accident, as they share historical similarities and roots, as detailed in the next section.

ii. History

The historical significance of Castle Doctrine provides insight into why it has developed as it has today. English common law, the basis of much of the U.S. legal doctrine, has always held that a person under attack has a duty to retreat, to try to escape the aggressor, before resorting to lethal force. The exception to this rule is if a person is attacked inside their home, since it is reasoned that the safest place to be is in one's own home, their castle (Cheng and Hoekstra 2013). With this realization, the English courts in the 19th century created another exception to the Duty to Retreat, known as the Castle Doctrine. Influenced from the general principle of "a man's home is his castle," it allowed the homeowner and those living there with the homeowner's permission to kill in self-defense without having to retreat or face a felony charge (Ochs 2013). Modern Castle Doctrine is descended from English common law "a man's home is his castle," removing the other English common law "Duty to Retreat" when attacked within the home. Back then, Duty to Retreat was bound to necessity, where using deadly force in self-defense could easily result in charges of murder, unless all other options of conflict avoidance were exhausted. The basic idea of Castle Doctrine, not having to retreat from a threat in a place you have the greatest right to be, is the foundation of American self-defense laws (Boots et al. 2009).

When the United States was founded, English common law was the basis that many states choose to use when they first made their own legal systems, tailoring them to their own circumstances. English style Castle Doctrine has long been held in many states, notably recognized by the lawyer and second president of the United States, John Adams. He stated "a man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle" (Ochs 2013:682). Over time the states began rejecting the English Duty to Retreat standard,

replacing it with increased tolerance for killing in self-defense when retreat could have been utilized, mostly in cases of being attacked on the defendant's property (Boots et al. 2009).

The historical background of Castle Doctrine, while useful in a basic understanding, does not cover the more modern legal points that have developed. The next section works to explain some of these changes and holdovers.

iii. General Legal Points

While the basic idea of Castle Doctrine, increases legal protection and rights inside personal property for repelling an intruder, is easy to understand, there are some additional legal points that need to be covered.

Castle Doctrine allows people in their homes to use deadly force to protect themselves from an intruder who projects the reasonable ability to kill or do great bodily harm, without having to retreat (Ochs 2013). Because of how power was divided among the states and the federal government, there is no federal laws on the duty to retreat or using deadly force in self-defense, so the states have their own laws and state supreme court precedents to consider, such as the amount of force that can be used, duty to retreat, aggressor rights, castle doctrine, and other factors (Ochs 2013).

Castle Doctrine covers two areas of general defense: defense of habitation and self-defense. Defense of habitation has long been part of the common law, allowing action against an intruder committing a felony and/or intending to commit a felony inside the home. Some courts rule that Castle Doctrine only applies to external threats, so those committed by cohabitants cannot use Castle Doctrine as a defense. Self-defense allows deadly force when necessary against exposure to death or serious bodily harm. This aspect of defense can be used against external and internal threats but is narrower in that the attacker must clearly intend death or bodily harm. These are separate yet blurred entities, with separate rationales for non-retreat. With defense of habitation, standing your ground and using deadly force protects the sanctity of the home from the felony, while retreating would allow the commission of the felony. For self-defense in the home, it is rationalized by the same reason as defense of habitation and has the extra rationale that retreat into the home is considered the farthest point of retreat, and one

should not be expected to flee the sanctuary of the home (Carpenter 2003).

Defense of habitation presupposes intrusion by a non-resident, so in turn, the resident of the home can stay instead of being obligated to retreat so that they can protect the home. All blame shifts to the intruder, and the resident holding possessory interest is seen justified in not retreating. Defense of habitation hinges on an intruder attacked and therefore does not apply to cohabitants. Self-defense in the home differs from defense of habitation in two key ways. First, it does not require intrusion by the aggressor, and secondly, the means of defense does not need to be in protecting the home against a felony. It can be used as a defense against assault from a cohabitant, depending on judicial interpretation (Carpenter 2003).

Essentially, in the home the law turns to favor the victim of an intruders, but to what degree depends on the state one resides in. There are differences between defending the home and self-defense in the home, such as able to fend off any felony in defense of the home, or being able to use lethal force against someone who clearly intends death or great bodily harm, including co-habitants. The finer points of Castle Doctrine, however, are not as well-known as they should be. The use and ramifications of Castle Doctrine are easily misunderstood, cited when not applicable, and so on, as some of applications in the next section show us.

iv. Application and Results

Castle Doctrine, when passed into law, is meant to provide private citizens with some legal leeway and protection when defending themselves in their homes. However, media reports and uninformed communication can misunderstand what Castle Doctrine is about, as detailed the Ren et al. (2015) study below.

These laws, in the 23 states have adopted them, are popular among voters and have won bipartisan support among Republicans and Democrats. They serve as a deterrent to burglars, among other criminals, since they do not know if the next house they break into will have a resident with a gun and no legal compunction not to use it (Ren et al. 2015). While much media frenzy has been made about SYG and castle doctrine laws, and state laws that affect crime, such as “three strikes laws” have been heavily researched, there has not been that much research on the deterrent effect of castle doctrine laws.

Ren et al. (2015) ran a study on the deterrent effect of Texas castle doctrine law in Houston and Dallas, as well as crime rates after what is known as the Horn shooting incident, a highly publicized story where a man shot two burglars stealing from his neighbor in their backs.¹ Although the case was never brought to trial, it brought much publicity to the Castle Doctrine law, which was part of the researcher’s work. They examined daily residential burglary data from January 1, 2007, to August 31, 2008, at the city level. November 2007 is when the Horn Shooting incident happened. The authors justified their form of evidence by claiming it was very

¹ Some notable details on the Horn case was that Castle doctrine and SYG never legally tested in it because the grand jury never allowed it to go to trial. Since he went out of his home and pursued the burglars (of his neighbors’ house) against the orders of the 911 dispatcher to stand down and not confront them, he likely would have been charged with premeditated murder in the first degree since there was no imminent threat to him (they were unarmed and running away from him). The grand jury decision nullified the potential case prosecutors had against Horn. Moreover, that was Texas and the burglars were Black, Hispanic undocumented males. There may have been racial threat explanations at play for why the grand jury had no problem with an affluent White male shooting two unarmed Black, Hispanic burglars in the back as they fled from the neighbor’s house.

sensitive to two events of interest: Castle doctrine enactment and the Horn shooting incident. Furthermore, they examined nighttime business burglary as a control series for possible displacement effects. They discovered that after the Horn shooting incident, burglary rates dropped, but only in Houston, where the event took place. Further observation found that burglary rates themselves did not change after castle doctrine laws were implemented, keeping in line with results from studies on other crime control laws that found that laws provide minimal to no effect on crime deterrence. Only after a highly publicized incident that drew attention to the possible influence of the law did any deterrent effect develop and continued to persist. However, despite the law having state wide coverage, the attention focused on Houston did not penetrate to other areas such as Dallas, which was further away from the incident and had less access to local media coverage. Such events indicate that well-informed criminals are more rational in their choices of when and where to commit their crimes, and of the two crucial components of deterrence theory, certainty and, to a much lesser extent severity, the severity of being shot is enough to engage temporary deterrence, although it is clear the certainty of being caught and shot is low and results in no long-term change. The overall conclusion of Ren et al. (2015) in evaluating the deterrent effect of Castle Doctrine is that it does exist, but only with major awareness of the law and its effects, such as with a highly publicized incident, and as awareness drops, the deterrent effect drops rapidly

In most places where Duty to Retreat lies supreme, the Castle Doctrine provides an exception to that rule, creating the privilege of non-retreat. The underlying idea behind Duty to Retreat is that it makes the victim retreat to somewhere safe. The home is often considered the safest place an individual can be. To be forced from the home is to theoretically retreat from the greatest refuge to somewhere less safe, which countermands the basic idea of Duty to Retreat.

Therefore, when the home is breeched and one is attacked inside it, using deadly force is theoretically the safest means of self-defense now (Carpenter 2003).

However, as time has gone on, Castle Doctrine has become more complex, as issues of when and against who Castle Doctrine applies have appeared. As attacks from outside forces have diminished, issues of internal threats have arisen, such as in cases of domestic violence. The application of Duty to Retreat inside the home may determine outcomes, depending on the status of the people inside the home, as homeowners, inhabitants and invited guests muddy the clarity of the issue. Carpenter (2003) identifies three main issues that provide fuel for the debate. First is the previously mentioned fundamental desire to preserve the right to life of everyone whenever possible. Secondly is preserving the inviolability of one's home, regardless of the cost of life. Finally, the determination of importance should be the attachment of shared property rights for cohabitants of a home when deadly force occurs between them. As can be seen in the following "Arguments and Controversy" section, these issues are contradictory and problematic.

v. Arguments and controversy

Like most things, there are problems that are attached to Castle Doctrine. If the goal is protection for property owners within the home, how does it handle cases of domestic abuse? Does preparation for a potential attack in the home, namely owning and storing a firearm in the home, bring more danger than safety? These and other issues are covered in this final section on Castle Doctrine.

All Castle Doctrine case can be divided into three categories based on the status of the aggressor: a trespasser, an invitee, or cohabitant. Depending on which one the aggressor is, the privilege of non-retreat may or may not be granted. Trespassers almost always allow for non-retreat to expel the threat. An attack by an invitee also allows for standing your ground and using deadly force, although with more dissent in courts. This is due to not having any lawful claim to the property, like a trespasser. When cohabitants are involved it gets a lot trickier. They also share possession of the property and cannot be excluded from it like a trespasser or invitee. Defense of habitation is excluded by definition and self-defense is harder to prove. The debate rests on whether the courts respect “the defender’s right of protection in the sanctuary, or whether they choose to emphasize the shared property interest of the deadly aggressor” (Carpenter 2003: 671).

When facing deadly attack from a cohabitant, four views on the Duty to Retreat from the home occur: mandatory Duty to Retreat, limited Duty to Retreat, jury consideration on failure to retreat when not specifically instructed on Duty to Retreat, and privilege of non-retreat. The issue to retreat from the home or not is a crucial issue; advocates of Duty to Retreat say that fleeing from the home is not as dangerous as it used to be in the 19th century, when Castle Doctrine non-retreat was established. Coupled with the fact that cohabitants should know each other and be

obligated to tolerate and respect each other, some courts hold that overall sanctity of life take precedence over any danger fleeing from the home will contain, re-establishing a duty to retreat when facing a cohabitant of the home, otherwise known as the “cohabitant exception” to Castle Doctrine. (Carpenter 2003).

The motivation for the cohabitant exception is said to be from the desire to protect the lives of people living in the same home as equals, but Carpenter (2003:660) argues that it is based on “reliance on formal and abstract principles of property rights to the exclusion of competing property interests that value the individual’s person safety and security in the sanctuary.” The effect of such decisions is to take away intimate’s rights to self-defense when living with a violent significant other.

There is another controversial point that is tied up with an incredibly divisive issue of the United States today. The evolution of American Castle Doctrine is tied into firearm legislation, as guns are the number one tool for defense and the United States has a long history of firearm ownership. Many people and organizations, including gun control advocates, looked on with trepidation at this expansion of self-defense laws, citing fears of increased violence from people carrying guns in public more often, acts of vigilantism, and using these laws as cover for criminal acts. Not only would the necessity created by Duty to Retreat be diminished, but sweeping civil immunity clauses would further deny justice in cases of wrongful death (Boots et al. 2009).

According to Hemenway (2011), people are more likely to own guns today if they were raised in a gun-friendly environment, such as having parents or friends who own and look favorably on firearms ownership. If coming at it from a non-gun environment, biased against or neutral, there is evidence that having a gun in the home may have more negatives than positives.

There are various statistical methods that show that the chance of injury, suicide, and murder are increased in homes with guns; while in the few cases the opportunity for self-defense comes up, there appears to be no deterrent effect or decreased risk of personal injury for the resident (Hemenway 2011). On paper, to a new family living in an opportune environment, having a gun in the home would be treated similarly to having an open bottle of bleach around a newborn, in that it is a recipe for disaster. The American Academy of Pediatrics, among their many other recommendations, say not to have a gun in the home, and with the ease of sharing information via internet and other technological means, many credible-sounding individuals and organizations are able to pass on research similar to Hemenway (2011).

Strong opposition to SYG, Castle Doctrine, and other self-defense laws can draw inspiration not only from the injury or death of the aggressor/intruder, but from the preparation for the potential encounter, namely owning a firearm. Having a gun in the home has been shown to be a risk factor for residents of the home, outweighing the benefits. This line of reasoning draws from the influential study by Kellerman et al. (1993). They conducted a population-based case-control study on a variety of risk factors for homicide in the home, such as alcoholism, illegal drug use, domestic violence, gun ownership, and so on. They concluded that firearms kept for protection is linked to homicide in the home, along with drugs and physical fights. In other words, worrying about people coming into the home to do harm is less effective than worrying about the threats from those already in the home. Guns in the home for protection can instead become a threat, as the risk of homicide by a family member or intimate acquaintance is increased, more so than with other weapons like knives or blunt instruments, an event more likely than an attack by an unknown intruder (Kellerman et al. 1993).

The old saying “where there is smoke, there is fire” could loosely be tied to gun

ownership and homicide. Multiple studies have linked gun ownership and homicide rates having a positive relationship, although the exact causation is difficult to determine. The recent study done by Siegel, Ross, and King (2013), examining the relationship between these two in the United States from 1981 to 2010, one of the longest and most comprehensive panels of data at the time, found a robust relationship between gun ownership and firearm homicide rates. Using multiple measures, including proxy and surveys, accounting for state clustering by GEEs (generalized estimating equation) or fixed effects, or gun ownership lagged by up to two years, the positive relationship held firm for firearm related homicide.

Castle Doctrine, perhaps considered one step forward on the evolution of self-defense in the United States, is a world unto itself. The basic definition of it is simplistic, but the history of its development and the finer legal points showcase it as being complicated. It provides some notable benefits for individual personal safety but also has several pitfalls to those who do not fully understand it. Some of those pitfalls, as shown in its application, reveal it to have the potential to be greatly misunderstood or abused, and some of the weaknesses of it when it comes to endangering other in the home, from domestic partners to bringing in greater danger in the form of a firearm. Clearly, it is not a purely black or white issue, but instead has its good and bad points. The next section, perhaps the most controversial and far-reaching of self-defense laws, is another step up the evolutionary ladder. Whether that step is towards progress or a fall is detailed therein.

Chapter 5: Stand Your Ground

Chapter 5 covers the last of the main self-defense doctrines of the United States, Stand Your Ground (SYG). This chapter follows the previous format, first defining what SYG is, followed by its historical roots and development. From there some of the legal points are discussed, along with the political pressure that drove these laws into being. Those points are then displayed in the application and results section, which leads into the last section on the many arguments and controversies surrounding SYG.

i. Definition

The relatively recent self-defense laws that, when outside the home and facing aggression, eliminate the need to retreat first before resorting to lethal force are highly controversial, earning themselves several nicknames: “Stand your Ground Laws” (Most common name), “Make my Day Laws,” and “Shoot First [Ask Questions Later] Laws” (Ochs 2013). SYG laws allow the use of deadly force without first retreating when they believe they face the risk of death or bodily harm (Roberts 2012). They also provide procedural protection for people claiming self-defense, depending on the state. The laws tend to presume that the defender had a reasonable belief that lethal force was necessary to stop the threat, placing the burden of proof on the prosecution to prove otherwise. Secondly, if the individual did reasonably use deadly force in a place they had the legal right to be, they will receive legal protection in various forms, from the police not arresting the person or the prosecutor’s office not pressing criminal charges and/or protects people from civil liability if they were acting in a legal manner (Cheng and Hoekstra 2013; Ochs, 2013). In Figure 1 below, states that have SYG laws by statute, by case law, or no form of SYG at all is displayed.

Stand Your Ground Laws By State

● SYG by Statute ● SYG by Case Law ● Duty to Retreat

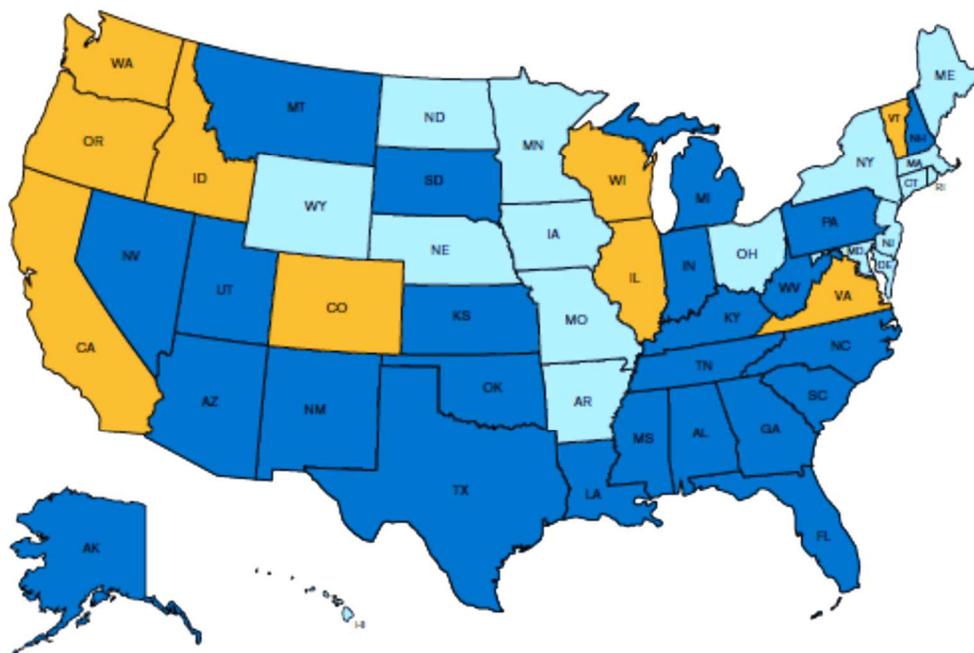


Figure 1 Source: American Bar Association (2015)

This map, compiled in the American Bar Association's (2015) final report and recommendations on SYG laws, was done in a 2014 fifty state law survey. It was discovered that 33 states had SYG laws. The dark blue states are ones that implemented SYG laws through legal statutes, passed through state legislatures, and signed into law by their respective governors or overridden by the legislatures. The orange states are ones that received SYG laws or equivalent laws through court cases, where previous cases were interpreted to mean that citizens had legal rights equivalent to SYG, if not more expansive. Finally, the light blue states had no SYG laws, by statutory or case law, and instead were held to the legal doctrine of Duty to Retreat (American Bar Association, 2015).

As previously outlined, English common law, the basis of much of the U.S. legal doctrine, has always held that a person under attack has a duty to retreat, to try to escape the aggressor, before resorting to lethal force. The exception to this rule is if a person is attacked inside their home since it is reasoned that the safest place to be is in one's own home, their castle. This basic principle has been extended in SYG laws, expanding on places a person does not have the duty to retreat from, such as a person's car. Another commonality is that it protects people from civil liability, if they were acting in a legal manner (Cheng and Hoekstra 2013).

The reason for SYG laws is to allow violent crime victims to have legal protection to defend themselves, without fearing being arrested. It can be considered unfair and a matter of injustice to be criminally prosecuted for defending themselves and others with no other option than deadly force. Not only do they face the possibility of prison time, they also faced stigma from others personally and professionally, ruining their reputations, and destroying their lives (Ochs 2013). Other further protections in some states include the chance of an immunity hearing, which can be done prior to a trial to decide if a preponderance of evidence supports the defendant acting under SYG laws, and if so, the defendant is granted immunity and the formal trial dropped. Another protection requires the police, in clear cases of self-defense, and without probable cause, to not arrest the individual, and if they do, the individual can bring civil suit against them. Prosecutors are granted extra discretion in cases of self-defense allowing them to not bring charges against an individual if they believe it will fall under SYG. All these protections do not occur in all SYG states, but they do typify the departure from previous common law roots (Ochs 2013).

Like Castle Doctrine laws, but on a greater extent, SYG laws provide greater legal protection and freedom to law-abiding citizens in fending off violent attackers. Again, similarly, they need to be defined clearly, or face misuse. What they offer originates from recent times, very recently as it turns out in the next section.

ii. History

Understanding SYG development is easier than the previous doctrines, as it is quite recent history. The undercurrent leading up to their development, while not quite as recent, is still comparatively close. SYG laws started in Florida in 2005. Before this it had followed typical common law doctrine on self-defense and the use of force, including Duty to Retreat. SYG laws not only expanded the extent of the castle to places like porches, cars, and temporary lodging like tents, it also allowed invited guests of the property owner to share the same self-defense rights of the property owner, including castle doctrine protection. Proponents say SYG and expanded castle doctrine legislation allow citizens to concentrate on defending themselves, without worrying about liability for not acting like a “reasonable” person and calculating all avenues of retreat (Boots et al. 2009).

Modern SYG laws are an extension on Castle Doctrine, extending and redefining the locations and situations where one may use force to defend themselves without having to retreat first. After the 2008 landmark case *District of Columbia v. Heller*, which struck down D.C.’s longstanding ban on firearms in the home, finding such measures unconstitutional, and reinforced the right of individual citizens to possess firearms, provided they had not disqualified themselves through felony conviction or diagnosis of mental illness, SYG and expanded Castle Doctrine legislation took off across the country (Boots et al. 2009).

A dominant issue of the 1990s was crime and gun control. A major revelation of the debate was discussing it in terms of lives saved by guns, and shown by right-to-carry legislation. Such legislation is often a product of the state level political and cultural atmosphere. Understanding the local citizen’s views of property rights, the makeup of the state legislature, and the length of legislative session, are all determining factors in handgun legislation that is

retained in that state (Mixon and Gibson 2001). SYG and other self-defense laws could be considered being products of the government, “sold” to specific interest groups (Citizens who directly benefit, lobbying organizations who financial profit from SYG legislation, and so on), and the property rights movement has been a big contributor to “Shall issue” and other gun/self-defense laws.

The history of SYG development, made all the easier by modern media and technological record-keeping, shows how Castle Doctrine was a major influence on its development. Additional pressure from lobbying groups like firearm advocates fired up from recent legal victories helped push these laws into being in other states as well. The next section, Legality and Politics, helps to display their fine points and their rise to power.

iii. Legality and Politics

Unlike the previous sections, which only covered general legal points pertaining to their chapter, the recent development of SYG allows for greater understanding of the legal points as they have been pushed into law, as well as the political climate and pressure that powered them.

While the details of Castle Doctrine differ from state to state, SYG laws tend to be similar, extending the protections of Castle Doctrine beyond the home. Before SYG, any attack on an individual that created the impression of imminent death or bodily harm required the individual to try to retreat first before using deadly force, in accordance to traditional self-defense law, except under traditional Castle Doctrine circumstances (Ochs 2013). SYG laws generally allow a person who is being attacked outside the home, who is in a place they have a lawful right to be, and who faces a reasonable chance of death or bodily harm to defend themselves with deadly force without having a duty to retreat first. They do not have to avoid the force or the confrontation if they believe they are in danger from the attacker (Ochs 2013; Butz et al. 2015).

SYG laws also tend to add a presumption that anyone attacked within their home held a reasonable belief that deadly force was the best option, placing the burden of proof on the prosecutor to prove otherwise (Ochs 2013). It should be noted that this can still result in defendants being found guilty of homicide, such as when in Louisiana, a defendant was found guilty after the prosecution provided proof that the defendant had shot his two victims in the back, overcoming the presumption that the defendant was in fear of his life and that deadly force was not necessary (Ochs 2013).

While SYG and expanded castle doctrine laws have been seen as being pushed by right wing groups like the National Rifle Association and generally conservative, southern, white

males, analysis from Boots et al. (2009) discovered that bipartisan support played an important part in getting these laws passed. It is true that Republicans pushed getting these bills passed, but Democrat supporters provided the necessary force to accomplish that. Many of these laws are in the South and Midwest Regions of the United States, but surprisingly, some states that share the “wild west” heritage of being pro-gun have not considered or reject these laws, such as Colorado and New Mexico.

One explanation on how these laws passed relatively rapidly to other states is examined by Butz et al. (2015), who examine the effects of policy diffusion on different jurisdictional policy choices. Both internal and external determinants are influential in the process. First we will look at internal determinants. Internal determinants are defined as socioeconomic and political factors within state-level contexts, factors such as wealth levels, urbanization, political ideology, Industrial activity and demographic information such as race (Butz et al. 2015).

In regards to SYG legislation, competitive economic pressures take a backseat to internal predictors. Interest groups have a large influence on what policies are implemented, and guns, being highly central to self-defense policy, are tied to strong interest group and states with pro-gun cultures are more welcoming to SYG policies.

Crime rates are also an influential factor. Places with fear of crime are more likely to support expansive self-defense policies, believing it will deter crime and reduce crime rates. Politicians from places with high crime rates feel more pressure from the citizenry to do something about gun violence and believe increasing self-defense laws will increase individual chances of surviving criminal attacks (Butz et al. 2015).

The reigning political ideology is also an influential factor. Citizens elect politicians of a particular ideological stripe who will adopt certain polices while opposing others, which

influences responses to crime. American Conservatives are more likely to support policies that protect property rights and expand rights to self-defense, while American Liberals are associated with supporting civil rights for all, including the rights of potential victims of deadly force (Butz et al. 2015).

Racial politics may play a role in SYG adoption, especially in recent years. Racial minorities, such as Hispanics and blacks, are often socially constructed as dangerous to white majorities, being perceived as more likely to be violent and criminal and a potential threat to defend against. Places with greater minority presence, enough to be highly visible but not enough to be politically influential, are more likely to adopt SYG policies. Related to this is indeed expanding minority political presence. If SYG and expanded-self-defense policies are perceived as biased against minority interests, then that will decrease likelihood of those policies being adopted (Butz et al. 2015)

Population density may be linked to adoption of SYG laws, as highly dense population areas may reflect more negative externalities of society such as crime, pollution, and overcrowding. Additionally, higher rates of poverty have been linked to increase adoption of SYG, potentially due to more gun violence, political ideologies, or other economic factors (Butz et al. 2015).

External diffusion also plays a part in influencing the adoption of SYG laws. External diffusion is defined as factors outside the jurisdiction that influence policy innovations (Butz et al. 2015). This comes from policy learning, or governments learning from each other when they decide policy, in effect acting per social learning theory on a governmental scale. Social learning theory does not require dialogue, merely observation, which is fitting for governments that cannot always spend the time discussing everything with each other. They usually watch the

states closest to them, since the culture is the most familiar and policymaking usually faces time constraints, encouraging politicians to make the faster, easiest, and most politically salient decisions (Butz et al. 2015).

SYG is considered a morality policy and therefore faces unique external dynamics. Morality policies are technically simplistic, usually have well-informed constituencies, are salient to the public and draw in higher levels of participation (Butz et al. 2015). Because it is a controversial issue, neighboring states are more likely to take the time to fine-tune their own versions, being less comprehensive and more nuanced, until they can see how it will affect their jurisdiction, particularly with reports of controversies and negative press coverage, such as with Trayvon Martian (Butz et al. 2015).

The Butz et al. (2015) study found in its conclusion that, while interest group presence was a notable influence, gun purchase rates and ideology had minimal effect on a state adopting SYG policies, and poverty, gun violence, and race did have an effect, minority presence being a primary motivation. This was most evident in Southern states, which have long held racial tension in their political basis, which may explain some bi-partisan support. Finally, it was found that states that have neighbors that adopt SYG policies are unlikely to adopt SYG policies of their own. The researchers were not sure why this was the case, but theorized that it was due to complicated social learning dynamics, possibly from the controversies coming from application of these laws, as detailed in the next section.

iv. Application and Results

SYG laws, although only created and proliferated within the last decade, have provided some notable application data, and the results from their invocation have proved mixed at best. In the aftermath of SYG laws, much debate has occurred whether these laws have had any effect on crime rates. While some estimates of states that have adopted SYG laws dropped violent crime rates by 11 percent, and significant crime rate drops in Florida between 2005 and 2012, criticism remains high, with fears of killers use them as criminal defense, more gun crime, and greater racial tension (Roberts 2012). Furthermore, a significant amount of researchers, including Cheng and Hokstra (2013), find strong evidence that SYG is correlated with increased violent crime rates.

These laws provide several notable effects. First, using lethal force in self-defense against an attacker can now cost less for the defender, both monetarily in reduced legal costs to defend themselves, and in freedom, where there is a reduced chance of going to prison for a number of years. In turn, criminals will now face a potential increased cost of committing a violent crime, since there is an increased risk of the victim being armed. It also increases the importance of already existing legal protections, changing the decisions of whether to use lethal force or use violence in criminal acts (Cheng and Hoekstra 2013).

The intention of these laws, per Cheng and Hoekstra's (2013:825) understanding, is "to provide additional legal leeway to potential victims in self-defense situations, not to deter crime." Their work on understanding the costs and deterrence effect on crime these laws provide conclude they work as intended: They lower the cost of using deadly force, and there is no hidden effect of deterring crime. One can argue that future implication of these laws and creating additional measure should consider that, in creating more protections for citizens, there will be

an additional cost in lives, with the caveat that the lives lost may bring social benefits, morality depending (Cheng and Hoekstra 2013).

The question of what effect Stand Your Ground Laws have on society is most often linked to its deterrent effect. This is a difficult topic, and only a few researchers have tackled it. Results are ambiguous, resulting in minimal gain or loss in crime rate percentage (Yu 2014), which can perhaps be linked to a misunderstanding of the intention of the laws, such as interpreting it as a deterrence measure rather than a step in removing victim inhibitions from fighting against aggressors. SYG law has been found to have a significant positive effect on decreasing violent crime rate, around 3.5%. (Yu 2014). When comparing that with Cheng and Hoekstra (2013), who found an 8% increase in homicide and who found while individual safety is on a case-by-case basis, the effect of reducing community crime has resulted in minimal gains at best, no noticeable effect in most cases. Chamlin and Krajewski's (2016) study of residential and non-residential burglaries in Tulsa Oklahoma after SYG legislation was passed found that, while residential burglaries experienced a minor drop, non-residential burglaries, where SYG did not apply, increased, essentially just displacing crime without reducing it. Overall, SYG laws are highly likely to provide more problems than solutions. As strictly intended, to provide protection for the individual, it works more or less as intended, but the additional effects have caused major tension and perhaps greater harm than it is worth, if the literature in the following section is anything to go by.

v. Arguments and controversy

When going over literature related to SYG, outside of pro-SYG interest group material, it is quite clear that there exist notable problems with SYG. Some academic sources, such as Ochs (2013), provide some rebuttal to critics of SYG, but even she acknowledges that it is a flawed doctrine as is now. This section attempts to cover the many controversies surrounding SYG, providing some pros and cons, along with some conflicting data and arguments for and against that data.

In recent years, especially after the verdict of the controversial case of *State of Florida v. George Zimmerman*, a lot of discussion has occurred of the appropriate limits or need for SYG laws. The general arguments tend to involve proponents say that SYG laws are necessary protection for people's right to defend themselves, regardless of location. Opponents say that liberal SYG laws are nothing more than an excuse one can use in pursuant of vigilante justice (Butz et al. 2015). Proponents of the SYG laws say that these measures are necessary protection for law-abiding citizens against civil and criminal liability. When one is in a dangerous situation, the decision to use lethal force in a stressful situation where the threat of death or serious injury can happen in seconds, the threatened individual should have some legal leeway. Critics reply that current measure are sufficient to protect law-abiding citizens, and anything more will just cause escalated violence and unnecessary death (Cheng and Hoekstra 2013).

As previously stated, a notable feature of some SYG laws is civil immunity, which protects person who injures or kills someone in self-defense, and is later cleared of criminal charges, to be immune to civil lawsuits over the death or injury resulting from that incident. Not only is this beneficial to private citizens, but it indirectly benefits others profitably, such as legal firms and guns sellers, as less fear of civil liability can influence people to take more risks and carry guns

to dangerous areas. This measure is controversial, as on one hand it protects the defender from further emotional and financial pain from an already taxing ordeal in criminal court. On the other hand, it offers no legal recourse for truly wrongful deaths or injuries, such as a bystander getting shot by a defender fending off an attack by an assailant (Boots et al. 2009). Furthermore, the problem with SYG laws, according to Pozo (2008:363), is that “in theory, however, standing one’s ground undercuts the seriousness of any necessity requirement.” By removing the duty to retreat, situations between aggressor and victim can result in killings that would be considered grounds for murder prosecutions otherwise.

Pozo (2008), in commenting on then-recent SYG legislation passing in some states then, pointed out potential risks and difficulties that could arise. SYG Laws are controversial, with some saying they empower victims, others saying they lead to more deaths while protecting murderers, and still more that think they provide no practical benefit or loss. Negative cases have come out, such as neighbors resorting to violence over arguments about trash bins and addicts killing their dealers then claiming self-defense. Retreat, it seems, is more needed than ever, as it puts a lid on “violence first” responses. It would help keep violence from continuing into feuds across distances, as when in a case in New York, a gang-related gun battle extended several blocks, where the defendants were found guilty of murder since they never took multiple chances to retreat. By evaluating a defendant’s opportunities to retreat, the reasonableness of the defendant and their choices can be judged.

Legal standards are also put into question when evaluating a self-defense. In Duty to Retreat jurisdictions, treating it as a potential homicide case requires the prosecution to prove beyond a reasonable doubt that the defendant was not justified in using lethal force. In SYG Jurisdictions, allowing lethal force as a first option it requires speculation on the thoughts of the

defendant, such as if they really were in fear, if it was really defensive or calculated, and if it was necessary, hamstringing the prosecution (Poza 2008).

Many occurrences over the past several years of justifiable homicides and SYG laws involve alleged unarmed criminals being killed by armed citizens who believed they were threatened by the alleged criminal, notably a white shooter and a black victim (Gius 2016). SYG laws define the parameters of justifiable homicides but have certain limits, such as proving a reasonable person would feel threatened in that circumstance and that the defendant was engaged in legal behavior beforehand. There are many issues that still need to be resolved, such as what levels of force count as deadly, or if illegal means of defense count under SYG. These issues are not addressed, as this is recent legislation, which has only been in existence for the last 10 or so years.

Going into more detail, one of the most prominent arguments against SYG laws is that they are racially biased, being more in favor for white defendants than black defendants (Ochs 2013; Butz 2015) It is argued that it is used more successfully by white people as a defense than black individuals who use it and that it will be more applied to a white who kills a black than a black who kills a white. There is some statistical backing to this claim. The Federal Bureau of Investigation conducted an analysis of SYG and non-SYG states and found that whites who kill blacks are found justified 11.4% of the time, while blacks who kill whites are found justified 1.2% of the time. However, Ochs (2013) claims that these are not sufficient evidence of racial bias. She claims that these studies that ignore the fact that white on black killings are rare compared to minority on minority or minority on white homicides, nor do they provide important circumstantial details behind the killings or within the judicial process they were found justified, resulting in non-compelling statistical evidence. Each case is different, involve numerous factors

that are not reflected in basic statistical analyses. Other statistical work done has found that rates of invocation of SYG laws and arrests were not racial biased, putting holes in claims of racial bias.

Even if claims of racial bias held merit, that does not necessarily mean that SYG laws are bad, just their implementation. The language of these laws provide protection to defenders using lethal force against attackers, without regard to race. Racial bias in the justice system, such as prosecution decisions and judge and jury prejudice, are more likely at fault for any racial bias in outcome than SYG laws (Ochs 2013).

Another argument for bias in SYG laws is regarding gender, where it is claimed that it favors men who kill women, supposedly in self-defense. They point to cases where women have been attacked by men and have fought back with lethal or potentially lethal force, yet were arrested, prosecuted, and convicted, their claims of self-defense under SYG not found with enough merit to acquit them. While many studies support this claim, or point out technical flaws in SYG legislation when it comes to battered wives, Ochs (2013) provides a general rebuttal, stating that gender bias in self-defense cases is not a recent phenomenon, having been argued by feminists since the 1980s, long before SYG laws were in effect, and there exist no compelling statistical data that supports claims of gender bias. She provides as an example one of the staunchest defenders and creators of the original SYG laws, Marion Hammer. A former president of the NRA, she has long supported the view that SYG laws are especially relevant to women, as having a duty to retreat to women puts them into an especially vulnerable position where they are unable to derive the intent of an attacker and providing any openings to an attacker can have serious consequences, from theft to beatings to rape to murder.

SYG law are controversial, as they have been pushed by conservative groups such as the

National Rifle Association, and they face criticism of racial bias and inciting more homicides, justified or not (Gius 2016). Even so, they are pushed by proponents who argue they deter crime, making criminals less likely to threaten citizens who may be able to defend themselves any time in any way, including using lethal force. However, these proponents may misunderstand the intent of the laws they push, as some argue that deterrence is not so much the aim as simply giving law-abiding citizens the ability to defend themselves without fear prosecution, and any other effect is unintended and a fortunate/unfortunate byproduct (Gius 2016). Ideally, if the laws are used as intended, there should be a drop in crime rates and an increase in justifiable homicides. Used improperly, there would be more murders and minimal if any drop in crime rate.

Gius (2016) ran a fixed effects model the relationship between SYG laws and crime and found that SYG states have higher crime rates or like non-SYG states. These results are significant, even after controlling for differing variants of state SYG laws. When working to discover how guns and liberal self-defense laws are related to crime, one invariably runs into the mighty bastion of opposition to SYG legislation, the gun control advocates. The theory behind gun control as a public policy is that gun availability impacts crime rates, and reducing availability will reduce crime rates. SYG legislation, combined with legalized carrying of guns, both open and concealed, is believed to result in more crime and escalated homicide rates, per gun control advocates. Previous research on the topic has resulted in very different results, from more crime to less crime to no effect on crime.

However, according to Kleck (2015:40) “None of these reviews identified the methodologically strongest studies and compared their findings with those of weaker studies,” and thus, many researchers are making similar mistakes and missing critical study flaws. They

are unable to establish effect statistical associations between guns and crime, they do not effectively control confounder variables, and very few modeled any two-way relationship between guns and crime, such as crime influencing gun levels rather than gun levels influencing crime. Other potential methodological flaws are small sample sizes, sample bias and overly high aggregation levels of heterogeneous analysis units like states or regions (Kleck 2015).

Results for Kleck's (2015) review of studies examining effects of guns and crime found that research that finds higher gun levels cause higher crime rates are studies that commit at least one of the three basic methodological errors. In turn, research that does not commit or minimally commits the three basic methodological errors does not find support for high gun levels related to high crime levels. Not committing these errors is not impossible, as several studies have done so to great effect, so the reason for these results seems to rely on poor quality study designs. For his contribution to the debate, Kleck (2015) opines that the reason gun levels do not share a positive relationship with homicide is that the numerical majority of guns are possessed by law-abiding citizens, and guns used in self-defense is common enough and effective enough to prevent many offender injuries to victims, canceling out criminal rates of violence committed with guns.

Moving away from the tools used in these situation, and returning to the laws themselves, one thing becomes abundantly clear: Even proponents of SYG laws recognize, after observing the laws in action, that they could use fine-tuning to fix their faults. Ochs (2013) proposes various flaws and fixes for Louisiana's SYG laws, which could potentially be applied to other states facing similar issues. The application of SYG laws was intended for victims of legitimate attacks to avoid being prosecuted for using deadly force when the need was greatest. However, in practice it has been applied to people involved in gang violence and street brawls, while not

always given to people who use it in their homes against intruders.

Och (2013) proposes four amendments to SYG legislation in Louisiana. The first, specifying that first aggressors who do not retreat should not be applicable for SYG protection, is to address a concern that someone could instigate or harass another into committing violence, at which point they could kill them and receive immunity. The second proposal would remove the presumption of reasonable belief of imminent harm if the aggressor retreats, disallowing the ability to claim protection of SYG. In other words, if a confrontation occurs between an aggressor and a defender, and the aggressor turns and runs off, the defender should no longer fear imminent harm and should not receive protection under SYG if they shoot the aggressor in the back as the aggressor runs off. The third proposal would be to create a system that records all instances of SYG protection in order to create data that shows the law is working as intended and to show if further updates are needed. This system would record the circumstances of the homicides, as well as successful/unsuccessful applications. The final proposal would allow triers of fact, or judges and juries, to consider the defendant's opportunity to retreat when they make their deliberations. While it should not be the dispositive in whether the defendant is guilty of murder or self-defense, having it as a factor among many and helping to reduce cases where people who do not deserve SYG protection get it anyway.

All the arguments and controversy surrounding SYG paint a picture of some well-meaning but flawed self-defense legal doctrine. Even if all media reports and high-profile cases like Trayvon Martin are pulled away, leaving only pure academic data, it leads to some very confused, but ultimately negative results on the good of SYG. Firearm legislation seems to be a major component of the problems SYG faces, along with misunderstanding of what the laws do and do not do, leading some people to engage in actions and take risks that only endanger

themselves and others, under the notion they are legal justified. Perhaps it is necessary to pull back from specific legal doctrines, and take a more in-depth look at the “evolution” of self-laws, from Duty to Retreat to Castle Doctrine to SYG, and a potential theoretical basis behind them.

Chapter 6: Theories and Conclusion

As evidenced by the previous sections and literature, laws regarding self-defense, particularly in the United States have changed over time, becoming laxer and granting greater freedom of action overall to victims of violent criminals in the heat of the moment. However, exactly why this has happened and how it changed over time is another matter. A clear-cut, singular answer is not possible, but some theoretical musings can provide a logical place to start. The work of Donald Black (2010), in his analysis on the behavior of law in modern societies, provides a useful theoretical framework to understand how self-defense laws may have come into being.

As I highlighted in the beginning of this thesis, Black's theories of law involve several key aspects of social life: stratification (the vertical aspect of social life, or social class, involving different groups access to resources that define their conditions of life), morphology (the horizontal relation people have with each other, or how division of labor, intimacy and integration influences their relationship with each other), culture (the symbolic aspect, reflecting the influence of religion, folklore, and decoration), organization (society's aptitude for collective action), and social control (the normative aspect of society, defining what is deviant or accepted, and what responses to give for various actions). Deviant behavior is defined as something that is subject to social control, which defines what is and is not deviant. The more social control is exerted, the greater the deviant the action (Black 2010). Self-defense falls under the umbrella of social control on the extreme end.

Law, according to Black (2010:2), is governmental social control, or "the normative life of a state and its citizens, such as legislation, litigation, and adjudication." While very influential, it is but one kind of social control, and as such, it is not present in every society. Law, being able

to increase and decrease depending on the setting, time, and space, is a quantitative variable. It has a unique relationship with other variables. For example, Black (2010) proposes that law varies inversely with other forms of social control, such as parental or group influence. In other words, if parental influence is weak on teens, juvenile law will likely be expanded to compensate. This argument can work in the case of private self-defense in that, as society grows and changes, and the state's monopoly of force becomes slower and less efficient due to these complexities, the responsibility of individual protection starts to be outsourced to the citizens themselves, or their legal freedom to protect themselves using lethal force becomes expanded to compensate.

A further examination of Black's (2010) work finds that law is developed and used for or against certain groups, rather than emerging from a vacuum of equality. When reading his work, in regards to class, relationships, culture, and groups, the common theme is that the greater are favored over the lesser. If one were to ascertain the laws as being developed for the purposes of good law-abiding citizens against groups considered deviant and more likely to be criminals, than it would not be a stretch to imagine the laws being developed to favor the dominant group (good citizens) over the deviant group (the offenders/the people who statistically make up attackers).

The first variable Black (2010) covers is stratification. Stratification is the result of uneven distribution of the material conditions of life, from resources to luxuries to means of production. Law and stratification have a positive relationship, or vary directly with each other. The more stratified a society, the greater the presence of law. The greater the stratification between individuals, the more likely law will be in effect. However, it also can be said that law varies directly with rank, or that lower ranks have less law than high ranks, or less legal protections and options (Black 2010). Furthermore, the higher ranks can exercise greater law

down the ranks than can lower ranks use law to affect higher ranks. Additionally, when a lower rank commits an offense against a higher rank, the greater the distance between them the worse the offense is. Inversely, if a higher rank commits an offense against a lower rank, the greater the distance between the less serious it is. Stratification can also influence in what form law comes, such as greater penal style against lower ranks while upper ranks have compensatory forms.

Now, consider this in in the framework of self-defense laws. Originally, in English common law, self-defense laws were mainly structured around the defense of the home. Property ownership was a crucial aspect of being able to plead self-defense, an aspect that was not as prevalent as today but a luxury of the middle-to-upper classes. If two people of unequal social rank engaged in some form of physical quarrel, the upper-rank individual would be more able to utilize the law in his favor over the one of lower rank, despite the circumstances that started the fight. Even today, with outward appearance of differing social ranks becoming more blurred, there exists hidden stratifications in utilizing self-defense laws for protection, from legal fees to upper-class connections to people in the criminal justice system.

An additional component of Black's theory is morphology, or "the distribution of people in relation to one another, including their division of labor, networks of interaction, intimacy, and integration" (Black 2010:37). How interdependent they are, how self-sufficient they are, and so on, are hallmarks of the types of societies. In the matter of law, it also varied depending on the level of differentiation, flourishing in a true-market setting where choice is more prevalent than symbiosis. Relational distance matters in law, where being too close or too distant results in less law occurring. Being close, such as an event occurring between two intimates will most likely be resolved internally, rather than bringing in outside law. In the same sense, having a local lawyer who knows the judge results in familiarity and sometimes conscious cooperation. Strangers are

the ones who bring about law to the fullest extent, for it is easier to commit or define an action as an offense against a stranger than one who is familiar. In turn, the more involved in society two parties are, the greater chance they will invoke law against each other, if an offense is committed. Unemployed people are more likely to have law invoked against them than employed people. It is theorized that deviant behavior is more likely committed by uninvolved people than those who participate in society and that people who are community members who are close to society, it's people and culture, have a stake in its well-being and would not intentionally sabotage it with deviant actions (Black 2010).

Another component of Black's theoretical outlook is culture. To understand the proposed theoretical basis behind self-defense, understanding the overall culture is critical. Black (2010:61) defines culture as "the symbolic aspect of social life, including expressions of what is true, good, and beautiful." Among other things, this includes an understanding of what is right and wrong, moral and immoral, and it dominates everyday decisions. It is the understanding of reality, and this includes science, technology, religion, magic and folklore. Culture influences law as well, such as in the case of historical jurisprudence, where law is an expression of the grander cultural setting of that place and time (Black 2010).

Legal culture calls for its own ideology, values and rules, examples of which include the overriding need for arguments, testimony, evidence, and rituals of order. Culture and law, in other words, are tied together and share a unique relationship, per Black (2010). Law and culture share a positive relationship. Where there is more culture, there is more law and a greater understanding of right and wrong; when there is little culture, law is diminished, and right and wrong is less understood and blurred. Extreme examples of this can be found comparing tribal societies to first world, literate countries. On the individual level, law and culture have another

unique relationship: “Law is greater in a direction toward less culture than toward more culture” (Black 2010: 65). In other words, when someone from a subordinate cultural background, commits an offense against someone of a dominant cultural background, the law treats this as a greater offense than if someone of the dominant culture commits an offense against someone of the subordinate culture. Law can be used as a weapon against those of a lesser culture, as a way to socially control them. A prime example could be seen in racial bias, where the same offenses committed by a Caucasian and an African-American against a Caucasian, resulted in greater sentencing on the African-American. The understanding of the natural world and the investment in one’s own culture can greatly bias groups of people against each other, even in subtle ways. As an example, take the historical concept of the “White Man’s Burden” or the duty for white Europeans to uplift those of seemingly lesser cultures, already categorizing themselves as dominant and the others as subordinate. This ties in with further ideas of Black (2010: 65-66), namely “In a direction toward less culture, law varies directly with cultural distance” and “In a direction toward more culture, law varies inversely with cultural distance.” If an offender is less culturally invested, has less understanding of what is truly good and right, and is perceived as less understanding of the world than the dominant group the victim is part of, the seriousness is increased. If the offender is seen as culturally strong and shares the cultural understanding of the dominant group, the seriousness is diminished.

Education and classical culture are not the only variables of cultural direction and deviant behavior; conventionality is also a factor. In a similar vein of the previous theories, Black (2010: 69) states, “Law is greater in a direction toward less conventionality than toward more conventionality.” An offense committed by someone who is unconventional, or outside the norms of the society, against someone who is conventional, or obeys the social norms and is tied

into dominant group, is more serious than if positions were reversed. Also, similarly, the greater the distance between conventionality, the greater the seriousness, but the more conventional the two parties are, the less serious it is. In general, the more similar to the overall group a person is, the greater the immunity and scrutiny from the law they are (Black 2010).

Self-defense laws are tied into several subcultures in the United States, most notably gun culture. As noted previously, guns have been a part of the United states since it was founded, and they are a major part of its culture, from entertainment to education to political movements. Organizations like the National Rifle Association (NRA) and activities centered around guns, such as target shooting, hunting, and historical collecting, all contribute to providing outlets for gun prevalence while video games, movies, and music glorify guns in the public eye. The cultural subgroup of gun owners and supporters provide politicians with a powerbase to push for increased freedom of self-defense laws and maintain what has already been gained.

Organization is the inherent ability for collective action within a society, varied across different groups in time and space. The more organized a society, the greater amount of law. The more complicated a society, the greater the law. Organizations are more likely to utilize law against lesser organizations or individuals than the other way around. Crimes against organizations are more serious than individuals and have a greater rate of solving. While individuals are more likely to be known to commit deviant acts and organizations are known to be victims, it turns out organizations do commit deviant acts but are better at covering it up/minimalizing penalties (Black 2010). Organization is tied in with the previous aspect when it comes to self-defense laws in the United States, as organizations, in general, have greater political influence than individuals. Multiple organizations, such as the NRA, are dedicated to pushing for expanded self-defense laws while challenging and fighting perceived infringements

of those laws.

Social control, defined as the normative aspect of social life, is responsible for labeling and reacting to deviant behavior, specifically what is right and wrong, normal or abnormal, what one is obligated to do or not do (Black, 2010). Law is one method to enforce social control, but it is also expressed in the norms that govern such things as customs, manners, ethical arguments, and in definitions of mental illness. Social control of one kind or another is presents in all societies and subcultures, from tribes to states. However, being a quantitative variable, not all times and places have the same amount of social control from the same sources. Generally, modern states use law as the overriding method of social control and primary means of dealing with deviant behavior (Black, 2010).

When it is assumed that others tend to obey the expectations of others, social control can be used to understand the conduct of others. When a person's behavior seems in violation of one form of social control (e.g., the law), it can be explained by the influence of another form of social control (family expectations, local custom, etc.). Once a criminal has crossed boundaries of one kind or another, they cross from law to informal sanctions. In the case of analyzing the development of self-defense laws, the act of self-defense itself could be considered a type of informal sanction against deviant behavior. In the case of lethal force, a permanent sanction against, ideally, an ultimate deviant action (committing life-threatening or great bodily harm against another).

Black (2010) even provides a framework for the consideration that self-defense is a form of action outside the law, or a form of localized, temporary anarchy. Anarchy is social life without governmental control, without structured law. It varies across time and space, and different societies have functioned in an anarchic setting. Anarchy can be split into two types,

one where people are symbiotic and close to one another, and the other one has people independent from each other. While the United States cannot be described as anarchic, the second, independent kind can be used to understand how a strong culture of self-defense can arise and stay. Black (2010:125) describes this kind of anarchy as “people are again equal and unorganized, but where they are independent of one another instead of symbiotic, complete strangers instead of intimates, and heterogeneous instead of homogeneous. It is found in a world of distance, diversity, and change.” Social control varies in anarchic societies, from banishment to killing. In close knit anarchy, the less-lethal options are used more for social control. A lethal human threat might be repaid in kind but could also be ignored and not sought out for revenge. When applied to the second kind of anarchy, where the people are independent of each other and hold less emotional connections to each other, there is little practical cause to favor less-lethal options over the permanent solution of lethal force.

Black (2010) postulates in his book that a form of anarchy is returning to the world and shaping people’s actions and relationships with their governments and each other. Perhaps this will not happen for a long time, but signs and conditions of it are starting to show. While he focuses on trends of equalization and reducing heterogeneity, the relevant factor is the reduction of law and social control. One sign of that could be the relaxation of self-defense laws. As social control decreases, the power of formal mediators and tribunals also diminishes as well. Responses to deviant actions become less tied to locations and more towards specific brief encounters. The inability to bring formal social control to every place it is needed could be recognized as resulting in the return to community and local resolutions to brief encounters, such as in situations of self-defense, where the result is either complete safety or complete destruction.

It must be noted that Black’s theory is a macro-level, sensitizing one. It is a broad

perspective on law as a form of social control, one that looks at many factors that influence its development. Because of its large scope, other micro-level theories can fit inside it. For example, the racial threat hypothesis can work within the stratification sphere of his work, with the dominant racial group fearing the rising power of the minority group and using its ability to influence social control to expand the ability of private citizens to “defend” against the racial other, repressing the racial minority group further.

Black’s theory, while governing a much wider scope of society than just self-defense, does have some strengths. In particular, social control is a highly important indicator on how society is shaped and operated, and it provides a clear sign of when a society is starting to fail. However, it is not so much what directions, loosening or tightening, that indicates a society’s stability, but how quickly it moves in one direction or another, for rapid expansion of social control leads to oppression and too quickly a release of social control leads to anarchy. An extremely micro example of that could be argued in SYG legislation, where the release of the state’s social control happened relatively rapidly (in social development terms), leading to many problems, including injuries and deaths, that might not have occurred. This, and other theoretical musings, are bringing us to the conclusion.

Self-defense is a complicated issue with many possible repercussions. Even after an individual struggles with the inner turmoil of whether they could ever take a life, even in defense of self and other, they never truly know how they will act when an event arises where they must take action, flight or fight, or if they will freeze up and submit. The aftermath, if the victim survived, can become a horror show, if they did not act in accordance with the law. They could be prosecuted, drained of all resources, and socially reviled. While some may say they would rather face that legal system instead of dying, or “better to be tried by twelve than carried by

six,” it can be a harrowing circumstance for a truly innocent individual.

However, for the greater good of society, such ordeals may be necessary. No legal system is perfect, and while truly innocent may be punished, the truly guilty may exploit the system and walk free under the sun. Aggression and violent actions against others are highly frowned upon in modern society, and the state, as holder of the monopoly of force, must keep order for the betterment of everyone, which is why it places such restrictions on the use of force citizens use on each other. The Duty to Retreat can be seen as in the best interests of the state, as it minimizes the complexity of self-defense and ideally ensures that an aggregate of citizens survive. But, as previously discussed, the individual citizen faces many potential hurdles and pitfalls in pure Duty to Retreat jurisdictions and will desire protections against legal repercussions if lethal force is called for.

The long-standing Castle Doctrine provides a working compromise between the state and the individual, as the citizen will be able to defend themselves more freely in the place they naturally feel safest, while the state should only involve itself in cases of clear aggression and conflict between equal parties, being able to focus less resources towards clear cases of repelling an invasion of the home.

Stand Your Ground laws are a larger step towards the rights of individual citizens and a step away from the state’s monopoly of force. Highly controversial, and not without flaws and exploitable points, it still represents a major raising of individual opportunity of self-protection, embodying the American spirit of individuality and self-reliance. While current work shows minimal social benefits at best, and more often brings negatives, only future research will be able to discover how SYG laws provide a net gain or loss for the country.

How these laws developed over time can be seen as a result of a combination of social

factors. Donald Black provides a valuable insight into this as casting law as dependent on social stratification, morphology, culture, organization, and social control, which have allowed for greater ability for law-abiding citizens to use physical force to protect themselves and their loved ones. Overall, self-defense laws having increased is an indicator of greater power in the hands of the people over the state, yet they have also created a possible step towards future anarchy. Only time will tell.

References

- American Bar Association. (2015, September). National Task Force on Stand Your Ground Laws: Report and Recommendations. Coalition on Racial and Ethnic Justice.
- Anais, Seantel. 2011. "Ethical interventions: Non-Lethal Weapons and the Governance of Insecurity." *Security Dialogue*, 42(6): 537-552
- Bishop, Ryan and John Phillips. 2006. "Violence." *Theory Culture Society*, 23(2-3): 377-385.
- Black, Donald. 2010. *The Behavior of Law: Special Edition*. Bingley: Emerald Group Publishing Limited.
- Bonta, Bruce D. 2013. "Peaceful Societies Prohibit Violence." *Journal of Aggression, Conflict and Peace Research*, 5(3):117-129
- Boots, Denise Paquette, Jayshree Bihari and Euel Elliott. 2009. "The State of the Castle: An Overview of Recent Trends in State Castle Doctrine Legislation and Public Policy". *Criminal Justice Review*, 34(4): 515-535.
- Butz, Adam M., Michael P. Fix, and Joshua L. Mitchell. 2015. "Policy Learning and the Diffusion of Stand-Your-Ground Laws." *Politics and Policy*, 43(3): 347-377.

- Chamlin, Mitchell B. and Andrea E. Krajewski. 2016. "Use of Force and Home Safety: An Impact Assessment of Oklahoma's *Stand Your Ground Law*." *Deviant Behavior*, 37(3):237-245.
- Cheng, Cheng and Mark Hoekstra. 2013. "Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?: Evidence From Expansions to Castle Doctrine." *Journal of Human Resources*, 48(3):821-853
- Dsouza, Mark. 2015. "Retreat, Submission and the Private Use of Force." *Oxford Journal of Legal Studies*, 35(4): 727-753.
- Galtung, Johan. 1990. "Cultural Violence." *Journal of Peace Research*, 27(3): 291-305
- Gius, Mark. 2016. "The Relationship Between Stand-Your-Ground Laws and Crime: A State-Level Analysis." *The Social Science Journal*. doi: 10.1016/j.soscij.2016.01.001
- Guerette, Rob T. and Shannon A. Santana. 2010. "Explaining Victim Self-Protective Behavior Effects on Crime Incident Outcomes: A Test of Opportunity Theory." *Crime and Delinquency*, 56(2): 198-226.
- Haas, Nicole E., Jan W. de Keijser, and Gerben J. N. Bruinsma. 2012. "Public Support for Vigilantism: an Experimental Study." *J Exp Criminol*, 8:387-413

- Hart, Timothy C. And Terance D. Miethe. 2009. "Self-Defensive Gun Use by Crime Victims: A Conjunctive Analysis of Its Situational Contexts." *Journal of Contemporary Criminal Justice*, 25(1): 6-19.
- Hemenway, David. 2011. "Risks and Benefits of a Gun in the Home." *American Journal of Lifestyle Medicine*, 5(502): 502-511
- Kellerman Arthur L., Frederick P. Rivara, Norman B. Rushforth, Joyce G. Banton, Donald T. Reay, Jerry T. Francisco, Ana B. Locci, Janice Prodzinski, Bela B. Hackman and Grant Somes. 1993. "Gun Ownership as a Risk Factor for Homicide in the Home." *The New England Journal of Medicine*, 329(15):1084-1091.
- Killias, Martin and Juan Rabasa. 1997. "Weapons and Athletic Constitution as Factors Linked to Violence Among Male Juveniles." *Brit. J. Criminol*, 37(3): 446-457.
- Kleck, Gary. 2015. "The Impact of Gun Ownership Rates on Crime Rates: A Methodological Review of the Evidence". *Journal of Criminal Justice*, 43: 40-48.
- Marasescu, Mihaela Rodica. 2012. "Athletic Morality and Aggressive Behavior." *Contemporary Readings in Law and Social Justice*, 4(1): 150-155

- Mixon, Franklin G. Jr. and M. Troy Gibson. 2001. "The Retention of State Level Concealed Handgun Laws: Empirical Evidence from Interest Group and Legislative Models." *Public Choice*, 107(1):1-20
- Moore, John D. 2013. "Reasonable Provocation: Distinguishing the Vigilant from the Vigilante in Self-Defense Law." *Brooklyn Law Review*, 78(4): 1659-1698.
- Ochs, Sara L. 2013. "Can Louisiana's Self-Defense Law Stand Its Ground?: Improving the Stand Your Ground Law in the Murder Capital of America." *Loyola Law Review*, 59: 673-721.
- Pozo, Eric Del. 2008. "Retreat Does Not Equal Surrender: Defensive Deadly Force in Dwellings after *People V. Aiken*." *St. Johns Law Review*, 82(1): 359-381.
- Przybylski, Andrew K., Ryan, Richard M. and C. Scott Rigby. 2009. "The Motivating Role of Violence in Video Games." *Personality and Social Psychology Bulletin*, 35(2): 243-259
- Rakoczy, Hannes and Marco F. H. Schmidt. 2013. "The Early Ontogeny of Social Norms." *Child Development Perspectives*, 7(1): 17-21.
- Rappert, Brian and Steve Wright. 2000. "A Flexible Response? Assessing Non-lethal Weapons." *Technology Analysis and Strategic Management*, 12(4): 477-492

Rappert, Brian. 2004. "A Framework for the Assessment of Non-Lethal Weapons." *Medicine, Conflict and Survival*, 20(1): 35-54.

Ren, Ling, Yan Zhang and Jihong Solomon Zhao. 2015. "The Deterrent Effect on the Castle Doctrine Law on Burglary in Texas: A Tale of Outcomes in Houston and Dallas." *Crime and Delinquency*, 61(8): 1127-1151.

Roberts, Joshua K. 2012. "Deadly Force and the Right OF Self-Defense Stand Your Ground Laws." *Forensic Examiner* 22(1):89-92

Siegel, Michael, Craig S. Ross, and Charles King III. 2013. "The Relationship Between Gun Ownership and Firearm Homicide Rates in the United States, 1981-2010." *American Journal of Public Health*, 103(11): 2098-2105.

Steinhoff, Uwe. 2013. "Rodin on Self-Defense and the 'Myth' of National Self-Defense: A Refutation." *Philosophia*, 41: 1017-1036

Stolzenberg, Lisa and Stewart J. D'Alessio. 2000. "Gun Availability and Violent Crime: New Evidence from the National Incident-Based Reporting System." *Social Forces*, 78(4): 1461-1482

Yu, Yue. 2014. "Deterrence Effect of Stand Your Ground Law on Crime in Eastern US States."
Atlantic Economic Journal, 42:119-120

