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FLORIDA'S 'STAND YOUR GROUND' LAW AND THE PROBLEM OF RETRIBUTIVE JUSTICE

ABSTRACT

The United States has a strong legal tradition of sanctioning self-defense, going as far back as the Supreme Court's 1895 ruling in *Beard v. US* (158 U.S. 550). *Beard* codified the 'castle doctrine' – a long-standing legal defense that holds citizens are in the right when protecting themselves within the walls of their homes or on their own property. Florida's 2005 'stand your ground' legislation represents a further step in America's self-defense evolution, allowing individuals to use deadly force without recourse to retreat, even outside their homes, when they perceive a threat. This paper examines the Florida law, arguing that 'stand your ground' has the clear potential for denying retributive justice.

KEY WORDS: Florida 'stand your ground' law, self-defense, retributive justice, Trayvon Martin shooting.

On the night of February 26, 2012, seventeen-year-old African-American high school student Trayvon Martin left the house of his father's fiancé in Sanford, Florida, to buy some candy and an iced tea. While returning from the corner store, he was spotted by twenty-eight-year-old neighborhood watch coordinator George Zimmerman, who finding the teen's behavior suspicious, called 9-1-1.¹ Though the attending operator advised not to give chase, Zimmerman, who was armed with a handgun, left his vehicle to pursue his suspect. What exactly occurred next has yet to be fully established, save that a physical altercation ensued in which

¹ "Zimmerman Charged with Second-Degree Murder." CNN. April 11, 2012. <http://news.blogs.cnn.com/2012/04/11/prosecutor-to-announce-decision-on-zimmerman>.

Martin was shot through the chest, resulting in his immediate death. When police arrived shortly after, Zimmerman claimed that the young Martin, though unarmed, had assaulted him and that he was acting in self-defense, indicating a bloody nose and several cuts at the back of his head.² Following treatment by medical technicians, police questioned Zimmerman for five hours, but soon released him due to lack of evidence contradicting his story.³ Evading charges was possible under Florida's 'stand your ground' law, which allows individuals to use deadly force without recourse to retreat, even outside their homes, when they perceive a threat.⁴ Almost needless to say, the tragedy of the Trayvon Martin shooting immediately shone the spotlight on what was already a controversial aspect of American self-defense law, inciting a media blitz and intense public debate over not only the meaning of the incident, particularly with regard to race, but the pitfalls of the 'stand your ground' concept. Given Florida's granting of immunity from prosecution and civil action to those who can demonstrate that they were appropriately responding to what they reasonably felt was potentially lethal danger, the issue of achieving retributive justice for a killing that had little to no justification naturally took center stage. Though it was the first, Florida has not been the only state to have passed such laws, and since their appearance in recent years academic studies have persuasively demonstrated that incidents mirroring the Trayvon Martin shooting have become more commonplace and likely to occur. This paper therefore examines the Florida law, in particular, and the extra-legal excesses such laws ostensibly encourage, arguing that 'stand your ground' clearly prompts confrontation and potentially denies retributive justice to its victims through a circumvention of trial by jury.

'Stand your ground' law is best viewed in wide historical context. The United States has a strong legal and cultural tradition of sanctioning self-defense, going as far back as the Supreme Court's 1895 ruling in *Beard*

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- 2 "Trayvon Martin Case: Zimmerman back In Florida Jail." CBS News. June 3, 2012. <http://www.wtsp.com/news/topstories/article/257706/250/George-Zimmerman-back-in-Florida-jail>.
 - 3 Guttman, Matt. "Trayvon Martin Case: Timeline of Events." ABC News. May 8, 2012. <http://abcnews.go.com/blogs/headlines/2012/05/trayvon-martin-case-timeline-of-events>.
 - 4 Block, Melissa. "A History of 'Stand Your Ground' Law in Florida." NPR. March 20, 2012. <http://www.npr.org/2012/03/20/149014228/a-history-of-stand-your-ground-law-in-florida>.

v. US (158 U.S. 550), in which the Court first reversed a murder conviction on this basis. Mr. Beard had been attacked by and subsequently shot and killed three brothers who had come to his family farm in order to steal his cow.⁵ Justice John Marshall Harlan, now famous for his dissenting opinion in *Plessy v. Ferguson's* (163 U.S. 537) establishment of the 'separate but equal' doctrine in 1896,⁶ expressed the majority view:

The defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; and if the accused did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.⁷

This ruling codified the 'castle doctrine' – a long-standing legal defense that holds citizens are in the right when protecting themselves within the walls of their homes or on their own property. In 1921, the Court upheld the *Beard* ruling while hearing the case *Brown v. US* (256 U.S. 335), in which Mr. Brown shot and killed a man who had assaulted him with a blade. The illustrious Justice Oliver Wendell Holmes Jr. gave the opinion: "Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant, rather than to kill him."⁸ In other words, one can stand his ground, with no necessary duty to retreat, and actions that result in death can be justified by

5 Hryekewicz, James W. "Brief for State Firearms Associations as Amici Curiae in Support of Petitioners." November 23, 2009. http://www.nysrpa.org/files/State-FirearmAssociationsBrief-McDonald_v_Chicago.pdf.

6 *Plessy v. Ferguson* 163 U.S. 537 (1896). <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=163&invol=537>.

7 Hryekewicz, James W. "Brief for State Firearms Associations as Amici Curiae in Support of Petitioners."

8 *Brown v. United States* (256 U.S. 335) 1921. <http://supreme.justia.com/cases/federal/us/256/335/case.html#>.

the heat of the moment. Demonstrating Americans' cultural attitude, later in the century the 'castle doctrine' was given a new name: the 'true man' doctrine, derived from a key phrase from a 1878 case: "A true man, who is without fault, is not obliged to fly from an assailant, who by violence or surprise, maliciously seeks to take his life or do him enormous bodily harm."⁹ This conception of warranted self-defense, further deemphasizing the duty to retreat, has prevailed ever since in the United States, buttressed by subsequent Supreme Court decisions that have explicitly condoned the use of guns when necessary – binding the right to self-defense to the Second-Amendment right to bear arms. Most recently in 2008's *District of Columbia v. Heller* (128 S. Ct. 2817, 2821–22) the Court heard arguments regarding Washington DC's ban on the registration of handguns. Affirming the connection between personal protection and arms, Justice Antonin Scalia wrote: "[W]e hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."¹⁰ Unsurprisingly then, over the course of the twentieth-first century twenty-three states,¹¹ often with bipartisan support, have reaffirmed in law the right to use deadly force in standing one's ground, extending the castle doctrine to cover places legally occupied.¹²

Florida was the first state to formally adopt a 'stand your ground' law¹³ during the tenure of former Republican Governor Jeb Bush and his

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- 9 Bazelton, Emily. "Why George Zimmerman, Trayvon Martin's Killer, Hasn't Been Prosecuted." Slate.com. March 19, 2012. http://www.slate.com/articles/news_and_politics/crime/2012/03/why_george_zimmerman_trayvon_martin_s_killer_hasn_t_been_prosecuted_.html.
 - 10 Dorf, Michael C. "Symposium: District of Columbia V. Heller: Does Heller Protect a Right to Carry Guns Outside the Home?" *Syracuse Law Review*. Vol. 225. 2008. <https://litigationessentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=59+Syracuse+L.+Rev.+225&srctype=smi&srcid=3B15&key=9aaa713649494dd03d501fe17a8f379f>.
 - 11 Gibson, William E. "Stand Your Ground Laws Challenged." SunSentinel.com. April 11, 2012. http://articles.sun-sentinel.com/2012-04-11/news/fl-stand-your-ground-reform-goes-national-20120411_1_gun-laws-repeal-special-prosecutor-angela-corey.
 - 12 Martosko, David. "Stand Your Ground Laws Not Just GOP Policy, Records Show." *The Daily Caller*. April 1, 2012. <http://dailycaller.com/2012/04/01/stand-your-ground-laws-not-just-gop-policy-records-show>.
 - 13 Winkler, Adam. "Focus Must Be Narrower." *New York Times*. March 21, 2012. <http://www.nytimes.com/roomfordebate/2012/03/21/do-stand-your-ground-laws-encourage-vigilantes/what-the-florida-stand-your-ground-law-says>.

Republican-dominated legislature, under, it must be mentioned, strong pressure from the pro-gun lobbying group, the National Rifle Association (NRA).¹⁴ It was signed on April 26, 2005, and came into force on October 1 of that year.¹⁵ Previously, Florida citizens had an obligation to retreat from public areas when faced with what they perceived as deadly force. The statute states, regardless of location, that:

A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.¹⁶

As such, that person, if deemed to be protecting himself, herself or another, “is immune from criminal prosecution and civil action for the use of such force.”¹⁷ In addition, the law guarantees citizens greater freedom in the use of lethal force within the home. While promoting ‘stand your ground’ former NRA President Marion Hammer argued the legal measures were needed to specifically protect Floridian women. She explained: “You can’t expect a [female] victim to wait and ask, ‘Excuse me Mr. Criminal, are you going to rape me and kill me, or are you just going to beat me up and steal my television?’”¹⁸ Nonetheless, the passage of the law in Florida aroused virulent opposition in some quarters – one prosecutor called it “a free pass to shoot”¹⁹ – and campaign advertisements against ‘stand your ground’ warned tourists to Florida to avoid disputes and “keep their hands in plain sight” if forced into confront-

14 Block, Melissa, “A History of the ‘Stand Your Ground’ Law in Florida.” March 20, 2012. <http://www.npr.org/2012/03/20/149014228/a-history-of-stand-your-ground-law-in-florida>.

15 “What is the Stand Your Ground Law?” CF News. March 23, 2012. http://www.cfnews13.com/content/news/cfnews13/news/article.html/content/news/articles/cfn/2012/3/23/what_is_the_stand_yo.html.

16 2011 Florida Statutes. <http://www.flsenate.gov/Laws/Statutes/2011/Chapter0776/All>.

17 *Ibidem*.

18 Bazelon, Emily. “Why George Zimmerman, Trayvon Martin’s Killer, Hasn’t Been Prosecuted.”

19 *Ibidem*.

tation.²⁰ Several incidents that preceded the Trayvon Martin shooting soon confirmed fears that the Florida legislature perhaps had gone too far in granting self-defense rights. To take one recent example, in January of 2012, retired Sheriff's Deputy Maury Hernandez shot and killed a homeless man, Alain Romero, in a Haagen Dazs shop. While begging for money, Romero had apparently attempted to attack Hernandez and his family after entering the ice cream parlor. The panhandler disturbed some other clients, as well. Though at least one witness on record doubted the danger posed by Romero, Hernandez was adamant that he had to open fire. He later explained:

I told him repeatedly to get away, to stop harassing us, and when he assaulted me physically I thought the situation was getting really serious. I feared for my life and that of my family...I pushed him and tried to control him physically, but he continued. In the end I had to shoot him.²¹

The police were satisfied by this version of events, and charges were not brought.²² The notoriety of the Hernandez case, however, paled in comparison to the Trayvon Martin shooting just weeks later, which given its race-charged character and the presumed innocence of the victim, captured public attention and sparked a ferocious debate that propelled the issue of 'stand your ground' laws onto the national media stage, where different sides argued incessantly over their merits and demerits.

As could be expected, that Zimmerman was let go without charge immediately provoked a wave condemnation from those convinced Florida law codified a 'shoot first ask questions later' mentality. The criticisms had considerable force in their logical consistency and objective concern. Writing on the issue, legal scholar Jonathan Turley cast the 'stand your ground' law as both redundant and dangerous. On the one hand,

20 Kassab, Beth. "Stand Your Ground Law Goes Too Far." *Orlando Sentinel*. March 19, 2012. http://articles.orlandosentinel.com/2012-03-19/news/os-trayvon-martin-law-beth-kassab-032012-20120319_1_castle-doctrine-unarmed-man-law-enforcement.

21 "Maury Hernandez, Retired BSO Deputy Who Shot Homeless Man Alain Romero, Unlikely To Face Charges." *Huffington Post.com*. January 23, 2012. http://www.huffingtonpost.com/2012/01/09/maury-hernandez-shot-homeless-charges_n_1194008.html.

22 Bazelon, Emily. "Why George Zimmerman, Trayvon Martin's Killer, Hasn't Been Prosecuted."

as he indicated, self-defense with the use of reasonable force has been covered by common law for centuries, while on the other the striking of the duty to retreat seems to invite the use of lethal force.²³ Critics as well claimed that citizens have been given too much freedom to become aggressors by Florida law under the guise of feeling reasonably threatened. Professor Adam Winkler at University of California, Los Angeles, School of Law points out that “So long as someone reasonably thinks he or someone else is in danger, he can shoot to kill, regardless of whether the shooter is the one who initiated the hostile confrontation.”²⁴ As legal analyst Jeffery Toobin further elaborates, the subjective nature of perception also constitutes a main problem, as does the fact that ‘stand your ground’ is written to give the benefit of the doubt to someone who has perpetrated a violent or deadly action. He sees ‘stand your ground’ as nullifying any recourse to a reasonable response in allowing a “disproportionate response,” in which someone who feels threatened can legally, and quickly, respond with gunfire.²⁵ Here the fact that the Florida law was essentially drafted by the National Rifle Association comes into play,²⁶ as gun-control groups worry that ‘stand your ground’ will embolden shooters to pull the trigger as a first rather than last resort, because in court there will be “an automatic presumption that a person is justified.”²⁷ That the number of justifiable homicides in Florida has jumped significantly since 2005 appears to signal this reality. During the years 2000 to 2005 the state averaged thirteen killings a year that were deemed justified, yet since 2005 the number has almost tripled to thirty-six.²⁸ Prosecutors complain that such lethal shooting incidents cannot be properly investigated under ‘stand your ground’ because charges are never brought, police investigations are necessarily brief, and trials never

23 Turley, Jonathan. “Florida Shooting Forces Debate Over the ‘Stand Your Ground’ Law.” March 21, 2012. <http://jonathanturley.org/2012/03/21/florida-shooting-forces-debate-over-the-stand-your-ground-law>.

24 Winkler, Adam. “Focus Must Be Narrower.”

25 Toobin, Jeffrey. “Does Florid Law Let Killers Go Free.” CNN. March 20, 2012. http://articles.cnn.com/2012-03-20/opinion/opinion_toobin-trayvon-martin_1_new-law-law-enforcement-confrontation?_s=PM:OPINION.

26 Winkler, Adam. “Focus Must Be Narrower.”

27 “Stand Your Ground Laws Causing Confusion.” Associated Press. July 9, 2007. http://www.msnbc.msn.com/id/19680321/ns/us_news-crime_and_courts/t/stand-your-ground-laws-causing-confusion.

28 Kassab, Beth. “Stand Your Ground Law Goes Too Far.”

occur – meaning that, potentially, people guilty of using unreasonable lethal force remain free and immune to prosecution.²⁹ Meanwhile, when such cases are brought before a judge dismissal is the most common outcome, as the law requires the court to sympathetically “read the mind” of any defendant who claims self-defense as a means to, as the law states, “prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.”³⁰ Naturally, many prosecutors would rather this determination be made by a jury.³¹

As a result of many of these inherent problems, spurred by the Trayvon Martin shooting, prominent politicians in the United States have come out against ‘stand your ground,’ voicing strident but essentially valid concerns. New York Mayor Michael Bloomberg, for instance, has publically called the law “a license to murder.”³² In a blistering statement he charged that the laws “justify civilian gunplay and invite vigilante justice and retribution with disastrous results.”³³ “These laws,” he continued, “have undermined the integrity of the justice system and done real harm to public safety. They have sown confusion in police departments about when to make arrests. They have made it more difficult for prosecutors to bring charges in cases of deadly violence.”³⁴ Protests against such “Kill at Will” legislation – as the phrase goes – have also erupted across parts of America, led by labor unions and civil rights groups.³⁵ Such rhetoric, however, is often easily matched by supporters of the laws.

‘Stand your ground’s’ most vocal defenders are made up of self-defense and firearm proponents, as well as those who signed the provision into Florida law at the prodding of the National Rifle Association. Laying out her group’s rationale in response to recent criticism, NRA spokeswoman an Ashley Varner reiterated the belief that “self-defense is an innate hu-

29 Sullum, Jacob. “Prosecutors Do Not Like a Law That Makes It Harder to Prosecute People.” Associated Press. March 21, 2012. <http://reason.com/blog/2012/03/21/the-new-york-times-on-stand-your-ground>.

30 2011 Florida Statutes. <http://www.flsenate.gov/Laws/Statutes/2011/Chapter0776/All>.

31 Grimm, Fred. “Stand Your Ground Law Had a Sad History before Trayvon.” *Miami Herald*. March 24, 2012. <http://www.miamiherald.com/2012/03/24/2710297/stand-your-ground-law-had-a-sad.html>.

32 Gibson, William E. “Stand Your Ground Laws Challenged.”

33 *Ibidem*.

34 *Ibidem*.

35 Martosko, David. “Stand Your Ground Laws Not Just GOP Policy, Records Show.”

man right and the law should never put the innocent victim of a crime in a position of having to second-guess themselves.”³⁶ Upping the ante, such sentiments are seconded by the National Association of Criminal Defense Lawyers, whose spokesman Jack King insists that “The more defenses the better...Most people would rather be judged by 12 than carried by six,” referring to the number of individuals on a jury versus the number that traditionally carry a coffin.³⁷ Speaking in more measured terms, Florida’s former Republican State Rep. Dennis Baxley, who co-sponsored the bill, claims that the law is legitimately intended to safeguard citizens: “Our judicial system tries to be so careful to protect the criminal’s rights [that] we have neglected the right of the common citizen to protect themselves,” he states.³⁸ Baxley adds that: “There’s nothing in this statute that authorizes you to pursue and confront people,” but only “to prevent you from being attacked by other people.”³⁹ As a retort to Mayor Bloomberg, defenders of ‘stand your ground’ also reject any notion that the law should be associated with the hot potato issue of gun control. The Center for Individual Freedom argues that the law “contains zero references to guns or shooting,” as it is merely “a self-defense, self-protection law.”⁴⁰ While conceding it is stringent concerning “those with criminal intent,” the real goal is to deter and “rebalance justice on behalf of innocent, law-abiding Floridians.”⁴¹ Considering such divergence of opinion among supporters and detractors, little hope for compromise or reconciliation seems to exist, above all considering the charged atmosphere that has prevailed since the Trayvon Martin shooting. As well, it must be noted that even in the wake of the incident, Floridians are still mostly behind the law – a recent poll showed that 65 percent wanted no changes to ‘stand your ground.’⁴²

36 “Stand Your Ground Laws Causing Confusion.” Associated Press. July 9, 2007. http://www.msnbc.msn.com/id/19680321/ns/us_news-crime_and_courts/t/stand-your-ground-laws-causing-confusion/.

37 *Ibidem*.

38 *Ibidem*.

39 Winkler, Adam. “Focus Must Be Narrower.”

40 “Florida’s ‘Stand Your Ground’ Law: It Ain’t What the Bradys Say It Is.” October 13, 2005. http://www.cfff.org/htdocs/freedomline/current/in_our_opinion/florida-self-defense-law.htm.

41 *Ibidem*.

42 Olorunnipa, Toluse. “Poll: Most Floridians Want No Changes to Stand Your Ground Law.” *Miami Herald*. July 16, 2012. <http://www.miamiherald.com/2012/07/16/2897263/poll-most-floridians-want-no-changes.html>.

Nonetheless, to a dispassionate observer the case for the law's repeal would perhaps appear more persuasive by nature of a clear but crucially significant technicality: 'stand your ground' has become a complete misnomer. Despite the clarifications by Rep. Baxley regarding the absence of provisions for pursuit and confrontation, this fact has been best demonstrated by the highly instructive case of twenty-five-year-old Greyston Garcia, who just one month before the Trayvon Martin shooting was briefly brought up on second-degree murder charges in Miami court for the stabbing death of Pedro Roleta, twenty-six. On the night of January 25, 2012, Garcia, who was home at the time, witnessed Roleta and an accomplice stealing his truck radio outside his apartment building. He seized a knife, ran out of his apartment and pursued the suspected thieves, attacking and killing Roleta in a sixty-second struggle that was caught on a surveillance camera. Roleta was unarmed except for a small pocketknife that he never brandished. Though Garcia admitted that he had chased down Roleta, who was hurriedly fleeing the scene, and never saw any weapon, the presiding judge declared him immune to prosecution under 'stand your ground' in spite of the prosecutor's motion that Garcia "no longer needed to use deadly force to protect his home or unoccupied vehicle."⁴³ The decision left Miami police Sgt. Ervens Ford, the Garcia case supervisor, deeply angered. "How can it be Stand Your Ground?" he asked, "It's on video! You can see him stabbing the victim."⁴⁴ However, Garcia was able to successfully argue that Roleta moved in a way that indicated he might want to go for a weapon, providing the justification to strike first and ask questions later.⁴⁵ Nonetheless, Garcia was clearly not standing his ground, but actively provoking a confrontation. The same can obviously be said of Zimmerman, who despite instructions not to follow his suspect, did so. Such incidents along with the media exposure granted to the Trayvon Martin shooting have prompted a reexamination of Florida law. Some Republican legislators are now admitting that 'stand your ground' does not cover cases like Zimmerman's, and even State Senator Durrell Peadon, the law's main sponsor, has stated firmly that Zimmerman "has no protec-

⁴³ Ovalle, David. "Miami judge decides fatal stabbing was self-defense." *Miami Herald*. March 21, 2012. http://www.miamiherald.com/2012/03/21/2706789_miami-judge-stabbing-in-the-back.html#storylink=addthis.

⁴⁴ *Ibidem*.

⁴⁵ *Ibidem*.

tion under my law.”⁴⁶ Florida Democrats, meanwhile, have created a task force to review ‘stand your ground’ and recommend changes.⁴⁷

Due to the intense scrutiny, Zimmerman has not been able to elude prosecution. Following his initial release, he has since been arrested and charged with second-degree murder. Though the prospect of a jury trial opens the possibility of retributive justice for Martin, Zimmerman’s defense – despite his pursuit – will naturally rest on ‘stand your ground.’ He has claimed in interviews that Martin attacked him, jumping out of the bushes, yelling “What the f***’s your problem?”⁴⁸ He then supposedly punched Zimmerman, knocking him to the ground, beating his head against the pavement and telling him: “You’re going to die tonight.”⁴⁹ It was then, Zimmerman maintains, that Martin seemed to make a move for his gun, at which time he was forced to shoot in self-defense. Investigators, however, have received information from a witness that Zimmerman might have tried to detain Martin, which led to the deadly altercation.⁵⁰ Public opinion is divided, largely along race lines, as to whether Zimmerman was acting in self-defense or not, raising fears that an impartial jury will be as difficult as finding the truth about what occurred.⁵¹ In a recent Florida poll only 6 percent of black registered voters felt Zimmerman was rightfully defending himself, while 50 percent of whites thought that he was.⁵² To make matters worse, the New Black Panther Party has offered a \$10,000 bounty for Zimmerman’s capture,⁵³

46 Winkler, Adam. “Focus Must Be Narrower.”

47 Christian, Ken. “Trayvon Martin Shooting Leads to Review of Fla. ‘Stand Your Ground’ Law.” WLBZ2.com. April 6, 2012. <http://www.wlbz2.com/rss/article/196429/44/Trayvon-Martin-shooting-leads-to-review-of-Fla-Stand-your-ground-law>.

48 Hayes, Ashley. “George Zimmerman: Trayvon Martin Threatened My Life.” CNN.com. June 22, 2012. <http://www.cnn.com/2012/06/21/justice/florida-teen-shooting/index.html>.

49 *Ibidem*.

50 *Ibidem*.

51 Weiner, Jeff. “Will Jury, or Judge Decide Zimmerman’s Fate?” *Orlando Sentinel*. June 10, 2012. <http://www.cnn.com/2012/06/21/justice/florida-teen-shooting/index.html>.

52 Olorunnipa, Toluse. “Poll: Most Floridians Want No Changes to Stand Your Ground Law.”

53 Peralta, Eyder. “New Black Panther Party Offers \$10K for George Zimmerman.” NPR.org. March 26, 2012. <http://www.npr.org/blogs/thetwo-way/2012/03/26/149399082/new-black-panther-party-offers-10k-bounty-for-george-zimmerman>.

and the NRA, a largely white, rural organization, has come to Zimmerman's defense, calling media criticism of him "a national disgrace."⁵⁴ Such a divide seems odd, however, given that Zimmerman, despite his surname and Caucasian appearance, is of Hispanic origin.

It is deeply unfortunate that such racial tension will inevitably be injected into a trial whose implications for 'stand your ground' law are so important to establishing its boundaries and therefore the claims to retributive justice in the name of victims such as Martin – especially so in light of two new academic studies published on the efficacy and dangers of 'stand your ground' laws in the United States. According to researchers from Texas A&M University, laws that "widen the scope for the justified use of deadly force in self-defense" demonstratively increase the likelihood of murder or manslaughter "by lowering the expected costs associated with using lethal force."⁵⁵ Comparing states that did and did not adopt such 'stand your ground' laws, they found that the former saw an "increase murder and manslaughter by a statistically significant 7 to 9 percent, which translates into an additional 500 to 700 homicides per year nationally."⁵⁶ Such laws, the authors assert, have thus initiated "the escalation of violence in situations that otherwise would not have ended in serious injury for either party."⁵⁷ The second study, carried out by professors at Georgia State University, examined homicide data from 2006 to 2008, ultimately showing that the result of 'stand your ground' laws is a "net increase in deaths."⁵⁸ Its authors note that "Our findings raise serious doubts against the argument that Stand Your Ground laws make America safer," citing that "between 4.4 and 7.4 additional white males are killed each month as a result of these laws" – a fact that shows the non-racial character of the issue.⁵⁹ This is, of course, not to mention

54 "NRA Weighs in on Trayvon Martin Coverage." Fox New Latino. April 14, 2012. <http://latino.foxnews.com/latino/news/2012/04/14/nra-weighs-in-on-trayvon-martin-coverage/>.

55 Gharib, Ali. "Study: Stand Your Ground Laws Increase Homicides." ThinkProgress.org. June 12, 2012. <http://thinkprogress.org/justice/2012/06/12/498014/study-stand-your-ground-increase-homicides>.

56 *Ibidem*.

57 *Ibidem*.

58 Gharib, Ali. "Stand Your Ground Laws Caused 'Net Increase In Deaths.'" ThinkProgress.org. July 1, 2012. <http://thinkprogress.org/justice/2012/07/01/509298/stand-your-ground-increase-deaths/?mobile=nc>.

59 *Ibidem*.

the dangers and inherent unfairness of denying the opportunity for retributive justice in court, before an impartial jury of peers, for those who may have acted imprudently, or even extra-legally, in causing unwarranted death or grievous injury. Zimmerman, however, has a different approach to the casualties of 'stand your ground,' not based in hard data or examples of tragic cases, but the metaphysical. In an interview with *Fox News* while free on a \$1,000,000 bond,⁶⁰ he expressed no regrets about his actions, stating they were an ineluctable part of "God's plan," which was not for him to "second guess" or "judge."⁶¹ Such an attitude will hopefully not prevail as lawmakers continue to assess 'stand your ground' in Florida.

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Ted Lewandowski

PRAWO STANOWE FLORYDY „STAND YOUR GROUND” I PROBLEM SPRAWIEDLIWOŚCI WYRÓWNAWCZEJ

Stany Zjednoczone posiadają silnie zakorzonioną tradycję prawną dotyczącą sankcjonowania obrony koniecznej, sięgającą decyzji Sądu Najwyższego z 1895 r. w sprawie *Beard v. US* (158 U.S. 550). Sprawa *Beard* doprowadziła do kodyfikacji tzw. castle doctrine – ugruntowanej instytucji prawnej, chroniącej obywateli działających w obronie własnej na terenie swojego domu lub posiadłości. Regulacja prawna stanu Floryda z 2005 r. znana pod nazwą *stand your ground* to przykład kolejnego kroku w ewolucji tej amerykańskiej koncepcji. Przyzwala ona na użycie siły ze skutkiem śmiertelnym nawet poza obrębem własnego domu w sytuacji poczucia zagrożenia, bez uprzedniego obowiązku podjęcia próby wycofania się. Niniejszy artykuł analizuje prawo stanowe Florydy, wysuwając argumenty na poparcie tezy, że zapis dotyczący *stand your ground* kryje w sobie potencjalną odmowę prawa do sprawiedliwości wyrównawczej.

⁶⁰ Novogrod, Jamie. "Donations to Zimmerman's Defense Fund Up \$20,000, Lawyers Say." *USNews*. July 6, 2012. http://usnews.nbcnews.com/_news/2012/07/06/12602852-donations-to-zimmermans-defense-fund-up-by-about-20000-lawyers-say?lite.

⁶¹ "Zimmerman Fox Interview: God's Plan." ABC News Video. July 19, 2012. <http://abcnews.go.com/GMA/video/george-zimmerman-fox-interview-sean-hannity-regrets-shooting-16809961>.

