

Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege

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Proponents of Stand Your Ground laws cynically exploit the image of vulnerable women to defend expansions of self-defense doctrine, despite the fact that such laws actually reinforce and exacerbate existing gender divides in self-defense law that disproportionately harm women. The appropriation of women's right to self-defense by Stand Your Ground supporters masks the law's hostility toward women's use of force and obscures the real achievement of such legislation: the normalization and promotion of (often white) male violence in an ever-expanding variety of scenarios. Battered Women's Syndrome, the chief narrative available to women who fight back, forces women to plead for mercy and subjects their behavior to extensive scrutiny and evaluation. Stand Your Ground, the chief narrative men can now use to justify provoking deadly fights, often allows men to escape evaluation altogether by granting immunity from prosecution and even from arrest. This two-track system of self-defense—Battered Women's Syndrome for women and Stand Your Ground for men—has far-reaching implications outside of the courtroom. Battered Women's Syndrome sends the legal and social message that women should retreat even from their own homes in the face of objective, repeated harm to their bodies; Stand Your Ground sends the legal and social message that men can advance against strangers anywhere on the basis of vague, subjective perceptions of threats. Male violence is not only tolerated, but celebrated; women's violence is not only discouraged, but stigmatized. Invoking the image of vulnerable women to promote aggressive self-defense rhetoric serves to distract from the reality that violence remains chiefly a male privilege.

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I. INTRODUCTION

Republican politicians and candidates made headlines during the 2012 election season for making unsympathetic, offensive, and inaccurate comments about rape. From Todd Akin’s infamous assertion that women rarely get pregnant as a result of “legitimate” rape because “the female body has ways to try to shut the whole thing down” to Paul Ryan calling rape “a method of conception,” Republicans were widely criticized for trivializing and defending sexual assault.¹ The flurry of ill-advised public statements prompted observant commentators to note that Republican antipathy to rape victims has been characteristic of the party long before 2012.² An example that has recently come to light is Maine Representative Lawrence Lockman’s statement from 1990 that if abortion is legal, it’s only fair to allow men to rape women: “If a woman has [the right to an abortion], why shouldn’t a man be free to use his superior strength to force himself on a woman? At least the rapist’s pursuit of sexual freedom doesn’t [in most cases] result in anyone’s death.” The last two decades of Republican policies on birth control, sex education, and abortion strongly suggest that the party’s faithful regard rape as either uncommon or not very serious.³

It is all the more interesting to observe, then, how rape has recently figured in the rhetoric of rightwing Republican figures when the topic is not reproductive rights or sexual health, but “self-defense.” In a 2012 editorial, for example, Florida father-and-son politicians Don and Matt Gaetz attacked critics of the controversial “Stand Your Ground” self-defense laws as “anti-woman.”⁴ The paradigmatic scenario they invoked

1. Stephen D. Foster, Jr., *The Party of Rape Culture: 40 Republican Quotes We All Should Remember in November*, ADDICTING INFO (July 16, 2013, 1:21 AM), <http://www.addictinginfo.org/2013/07/16/the-party-of-rape-culture-40-republican-rape-quotes-everyone-should-remember/>.

2. Garance Franke-Ruta, *A Canard That Will Not Die: ‘Legitimate Rape’ Doesn’t Cause Pregnancy*, THE ATLANTIC (Aug. 19, 2012, 9:06 AM), <http://www.theatlantic.com/politics/archive/2012/08/a-canard-that-will-not-die-legitimate-rape-doesnt-cause-pregnancy/261303/>.

3. Robin Abcarian, *‘Rape Insurance,’ A New Front in the GOP’s Clueless ‘War on Women,’* L.A. TIMES (Dec. 12, 2013), <http://articles.latimes.com/2013/dec/12/local/la-me-ln-rape-insurance-abcarian-20131212>.

4. Peter Schorsch, *Sen. Don Gaetz & Rep. Matt Gaetz Op-ed: Standing Up for “Stand Your*

against the critics of expanding self-defense laws was none other than a vulnerable woman facing down a rapist:

Consider an elderly woman in a dimly lit parking lot or a college girl walking to her dorm at night. If either was attacked, her duty was to turn her back and try to flee, probably be overcome and raped or killed. Prior to “Stand Your Ground,” that victim didn’t have the choice to defend herself, to meet force with force. Calls to repeal “Stand Your Ground” are anti-woman. Imposing a duty-to-flee places the safety of the rapist above a woman’s own life.⁵

The Gaetzes’ statements could have been written by Marion Hammer, whose lobbying efforts as the former president of the National Rifle Association (“NRA”) led to Florida becoming the first state to pass a “Stand Your Ground” law in 2005.⁶ Like the Gaetzes, Hammer illustrated the need for Stand Your Ground by using rape as the paradigmatic self-defense scenario:

The duty to retreat had been imposed by the system and essentially if someone had tried to drag a woman into an alley to rape her, the women [sic]—even though she might be licensed to carry concealed and ready to protect herself, the law would not allow her to do it. It required her to try to get away and run and be chased down by the perpetrator before she could then use force to protect herself.⁷

According to this reasoning, people who do not support Stand Your Ground laws are in favor of rape.

A similar sentiment could be observed in NRA Executive Vice President Wayne LaPierre’s speech at the Conservative Political Action Conference in 2013, in which he singled out “young women” for the following message: “the one thing a violent rapist deserves to face is a good woman with a gun.”⁸ Fox News host Sean Hannity also jumped on the right-wing rape bandwagon, expressing outrage at the “Left” for failing to acknowledge the supposed need for women to carry concealed weapons to protect themselves against rape⁹ (this included criticizing an actual rape victim, Zerlina Maxwell, for rejecting the supposed wisdom

Ground,” SAINTPETERSBLOG (May 2, 2012), <http://www.saintpetersblog.com/sen-don-gaetz-rep-matt-gaetz-op-ed-standing-up-for-stand-your-ground>.

5. *Id.*

6. See *A History of ‘Stand Your Ground’ Law in Florida*, NPR (Mar. 20, 2012, 3:00 PM), <http://www.npr.org/2012/03/20/149014228/a-history-of-stand-your-ground-law-in-florida>. Given the tremendous influence of the NRA in Florida generally, and with regard to Stand Your Ground in particular, there is a chance such statements might *literally* have been written by Hammer.

7. Interview with Marion Hammer, Ctr. for Individual Freedom (on file with author).

8. Daniel Blackman, *Wayne LaPierre, Gun Salesman*, HARV. POL. REV. (Mar. 21, 2013), <http://harvardpolitics.com/united-states/wayne-lapierre-gun-salesman/>.

9. See Zerlina Maxwell, *Zerlina Maxwell on Hannity: Giving Every Woman a Gun Is Not Rape Prevention*, YOUTUBE (Mar. 6, 2013), <http://www.youtube.com/watch?v=9FTVjKohaFE#t=130>.

of armed responses to rape—the response from many of the show’s fans included, with no apparent sense of irony, to say nothing of decency, threats to rape her.¹⁰)

It is not just Republican politicians, NRA leaders, and right-wing pundits who hasten to give the impression that expansive definitions of self-defense are written with vulnerable women in mind. Writing about the legal evolution of the castle doctrine, according to which “true men” are not obliged to retreat when protecting hearth and home, legal scholars such as Jeannie Suk and Joshua Dressler suggest that laws like Stand Your Ground treat battered women as the exemplars of self-defense. As Suk puts it, the modern doctrine “bears the unmistakable traces of the subordinated woman, now an indelible presence in the self-defense terrain and in public understandings of crime. . . . the modern Castle Doctrine leverages the subordinated woman into a general model of self-defense rooted in the imperative to protect the home and family from attack.”¹¹ For Republican politicians, gun lobbyists, and pundits, the poster child for Stand Your Ground is the helpless rape victim; for Suk and other legal scholars, it is the battered woman. But do Stand Your Ground laws and other forms of escalated self-defense rhetoric actually benefit women?

This Article will show that not only are Stand Your Ground laws not written for the benefit of women, they actually reinforce and exacerbate existing gender divides in self-defense law that disproportionately harm women. The cynical appropriation of women’s right to self-defense by Stand Your Ground supporters conceals the law’s actual hostility toward women’s use of force, including its continued pathologization of women who fight back. At the same time, the female empowerment rhetoric of Stand Your Ground obscures the real achievement of the law: the normalization and promotion of (often white) male violence in an increasing number of scenarios. Battered Women’s Syndrome remains the chief narrative available to women who fight back, and it is a narrative that forces women to plead for mercy, requiring them to subject their behavior to extensive scrutiny and evaluation by experts, lawyers, and juries. Stand Your Ground, the chief narrative by which men can now justify provoking deadly fights, allows men in some cases to escape evaluation altogether by granting them immunity from prosecution and even from arrest. This two-track system of self-defense—Battered Women’s Syndrome for women and Stand Your

10. Imani Gandy, *Zerlina Maxwell Braves Online Attacks and Abuse to Speak Out About Rape Culture*, RH REALITY CHECK (Mar. 13, 2012), <http://rtherealitycheck.org/article/2013/03/13/zerlina-maxwell-braves-online-attacks-and-abuse-to-speak-out-about-rape-culture/>.

11. Jeannie Suk, *The True Woman: Scenes from the Law of Self-Defense*, 31 HARV. J.L. & GENDER 237, 240 (2008).

Ground for men—has far-reaching implications outside of the courtroom. The use of Battered Women’s Syndrome frequently sends the legal and social message that women should retreat even from their own homes in the face of objective, repeated harm to their bodies; Stand Your Ground sends the legal and social message that men can advance against strangers anywhere on the basis of vague, subjective perceptions of threats. Male violence is not only tolerated, but celebrated, whereas women’s violence is not only discouraged, but stigmatized. Invoking the image of vulnerable women to promote aggressive self-defense rhetoric serves to distract from the reality that violence remains chiefly a male privilege. The sharp contrast between the treatment of George Zimmerman, who avoided arrest for six weeks after shooting an unarmed teenager to death and who was eventually acquitted of all charges, and that of Marissa Alexander, who was immediately arrested after firing what she described as a warning shot at her abusive ex-husband and sentenced to twenty years for aggravated assault with a firearm, offers a compelling illustration of these principles.

II. CLARIFYING WHAT STAND YOUR GROUND LAWS ACTUALLY SAY

Before turning specifically to the female-empowerment rhetoric of Stand Your Ground supporters, it is useful to examine the other claims made about the necessity and desirability of the law. It is important to clarify just what Florida’s Stand Your Ground law actually says. In the wake of the Michael Dunn and George Zimmerman trials, there has been much confusion and heated disagreement about the role of Stand Your Ground in violent confrontations. Many see the Florida law and others like it as encouraging lethal responses to minor disputes, a particularly worrisome feature when combined with racial tensions. Others claim that Stand Your Ground laws merely provide necessary legal accommodation to individuals acting in self-defense. The details of what the law actually says and does tend to get lost amidst these opposing claims.

The first problem is figuring out what is actually meant by reference to “Stand Your Ground.” The popular understanding seems to be that Stand Your Ground refers to the section of the Florida law that states that individuals have no duty to retreat from any place where they have a “right to be.”¹² This is the aspect of the law that has received the most attention in wake of the Trayvon Martin and Jordan Davis shootings. This provision, however, is not the radical departure from traditional self-defense principles that some seem to believe. That being said, several other, often overlooked, aspects of Florida’s revised self-defense

12. FLA. STAT. § 776.013(3) (2013).

law are gravely out of step of with traditional self-defense doctrine and are grounds for alarm.

Prior to 2005, Florida self-defense law was very similar to the self-defense law of most other states, which is modeled on the British common law of self-defense. Simply stated, common law self-defense did not impose a blanket “duty to retreat” outside of the home. As Eugene Volokh writes, “the duty to retreat has always been, at least in principle, a narrow doctrine.”¹³ If one looks at the Model Penal Code’s formulation of the duty to retreat, for example, it is clear that “one doesn’t lose the right to lethal self-defense just because one could avoid the need for lethal self-defense with complete safety. Rather, one loses this right only when one could avoid the need for lethal self-defense with complete safety *and without undue sacrifice of one’s liberty*.”¹⁴ Volokh provides this example: “A typical ‘duty to retreat’ scenario would instead be when there’s a fistfight, and you fear serious bodily injury since even a fistfight can cause such injury, but you can easily leave (for instance, this is right outside your home, or a friend’s home, and you can go inside and close the door, or you’re in your car and can just drive away).”¹⁵

The “meeting force with force” provision added in 2005 thus does not in fact radically alter the duty to retreat outside the home; the historical duty to retreat does not come into play unless retreating can be accomplished with complete safety.”¹⁶ However, Florida law did impose, prior to 2005, a standard of “every reasonable means” to avoid danger before a person could resort to deadly force: “[A] person may not resort to deadly force without first using every reasonable means within his or her power to avoid the danger, including retreat.”¹⁷ This puts some limitation on the justification of the use of deadly force, though just what qualifies as “reasonable means” is far from clear. It seems clear that if George Zimmerman’s and Michael Dunn’s accounts of what happened prior to the moment they shot their victims were true, they would not have been prevented from using deadly force under either *general* self-defense law or Florida’s slightly more restrictive interpreta-

13. Eugene Volokh, *Lethal Self-Defense, the Quantum of Proof, the “Duty to Retreat,” and the Aggressor Exception*, THE VOLOKH CONSPIRACY (Mar. 24, 2012, 5:59 AM), <http://www.volokh.com/2012/03/24/lethal-self-defense-the-quantum-of-proof-the-duty-to-retreat-and-the-aggressor-exception/>.

14. Eugene Volokh, *The “Duty to Retreat,” the Duty (or Not) to Comply With Demands, Necessity, and Liberty*, THE VOLOKH CONSPIRACY (Apr. 3, 2012, 4:44 PM), <http://www.volokh.com/2012/04/03/the-duty-to-retreat-the-duty-or-not-to-comply-with-demands-necessity-and-liberty/>.

15. Volokh, *Lethal Self-Defense*, *supra* note 13.

16. Volokh, *The ‘Duty to Retreat,’ supra* note 14.

17. *Weiand v. State*, 732 So. 2d 1044, 1049 (Fla. 1999).

tion. George Zimmerman claimed that Trayvon Martin was on top of him slamming his head against the pavement;¹⁸ if true, there would not seem to be any reasonable means for Zimmerman to defend himself other than to use his weapon. Similarly, Michael Dunn claimed that Jordan Davis was either preparing to get out of the vehicle with a weapon or to shoot at him from the vehicle.¹⁹ It is not likely that fleeing would be considered a reasonable means of avoiding being fired upon.

It is not surprising, however, that critics of the “meeting force with force” provision believe that Stand Your Ground is a radical departure from traditional self-defense doctrine with regard to either the general duty to retreat or Florida’s particular interpretation of it. This confusion can be largely credited to the law’s proponents themselves. Recall the claims made that supposedly demonstrate the need for Stand Your Ground laws. According to the Gaetzes, before Stand Your Ground, a woman threatened by a rapist had a duty “to turn her back and try to flee, probably be overcome and raped or killed. Prior to ‘Stand Your Ground,’ that victim didn’t have the choice to defend herself, to meet force with force.”²⁰ Marion Hammer similarly asserted that pre-Stand Your Ground law imposed a duty to retreat on potential rape victims: “It required her to try to get away and run and be chased down by the perpetrator before she could then use force to protect herself.”²¹ But neither of these examples makes much sense. The Gaetzes claim that a “college girl” attacked on her way to her dorm would be forced by the previous law to “turn her back and try to flee, probably be overcome and raped or killed.” But if the victim reasonably fears that she will be raped or killed, and if it is abundantly clear that fleeing will do nothing to avoid being raped or killed, then fleeing would not be a “reasonable means” of avoiding danger. Ditto Hammer’s woman “dragged into an alley.” Neither the Gaetzes nor Hammer cite a case in which a victim used deadly force against a rapist and was denied a self-defense instruction on the basis of a duty to retreat.

In other words, to the extent that the Stand Your Ground provision of Florida’s self-defense law merely clarifies the authorization of the use of deadly force anywhere if one reasonably believes it is necessary in order to avoid serious bodily injury or death, it is cause for neither particular praise nor alarm—it is just an explicit statement of traditional self-defense in this country. It is neither the desperately necessary

18. Mary Anne Franks, *Stand Your Ground’s Woman Problem: Laws Expanding Self-Defense Raise Questions About Gender as Well as Race*, HUFFINGTON POST (Mar. 3, 2014), http://www.huffingtonpost.com/mary-anne-franks/stand-your-grounds-woman-_b_4886650.html.

19. *Id.*

20. Schorsch, *supra* note 4.

21. Hammer, *supra* note 7.

amendment that the law's proponents claim, nor is it the license to kill that the law's critics often assume it to be.

That being said, the insistence that Stand Your Ground laws play no role in recent deadly confrontations is disingenuous at best. Florida's Stand Your Ground law, and the laws of other states modeled on Florida, does include several innovations that run contrary to traditional limitations on self-defense.²² The first is an easily overlooked but significant addition to the authorization of deadly force in "any place" where one has a right be. As stated above, the majority of the provision should not be seen as particularly controversial:

"[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. . . ."²³

But the provision goes on to include these words: "[O]r to prevent the commission of a forcible felony."²⁴ According to Florida law, forcible felonies include robbery and burglary.²⁵ This is a significant departure from the long-held belief that the use of deadly force should not be used to protect mere property. Inasmuch as this belief reflects the principle that life is precious and should not be taken except under extraordinary circumstances, this is an innovation that fosters disrespect for human life. This authorization of the use of deadly force against the commission of a "forcible felony" is repeated in another provision of the Florida code, strangely titled "Use of Force in the Defense of Others."²⁶

Second, Florida's law greatly expands the zone of the exception to the duty to retreat, an exception known as the "castle doctrine." In traditional self-defense law, the "castle doctrine" stipulates that one is not

22. FLA. STAT. § 776.013 (2013). "Stand Your Ground" laws, also sometimes referred to as "Line in the Sand" or "No Duty to Retreat" laws have been passed in 26 states, many of them modeled on Florida's "Stand Your Ground" statute, which was passed in 2005. "Stand Your Ground" Policy Summary, LAW CENTER TO PREVENT GUN VIOLENCE (July 18, 2013), <http://smartgunlaws.org/stand-your-ground-policy-summary/>.

23. FLA. STAT. § 776.013(3) (2013).

24. *Id.*

25. *See id.* § 776.08.

26. *See id.* § 776.031. "A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. *However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony.*" (emphasis added).

required to retreat from one's own home, even if it is possible to do so in complete safety.²⁷ Under Stand Your Ground, one is allowed to use deadly force even when one could retreat in complete safety not only in homes (the traditional view) but in any "dwelling," which is expansively defined as "a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night" as well as in "occupied vehicles."²⁸

The law also includes several presumptions about what constitutes a "reasonable fear" necessary to use deadly force within a dwelling: This presumption exists "if the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle."²⁹

But perhaps the most unsettling innovation of Florida's Stand Your Ground law, the one that arguably does the most to shift social norms away from a default position of respecting human life, is the provision that provides immunity from criminal prosecution to those who claim self-defense: "A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force. . . . As used in this subsection, the term 'criminal prosecution' includes arresting, detaining in custody, and charging or prosecuting the defendant."³⁰ That means that a person who intentionally kills another person may not only avoid having to demonstrate to a jury that they acted in self-defense; he may avoid being arrested at all. Even if arrested, a killer can request a special immunity hearing at which his claim of self-defense need only meet a "preponderance of the evidence."³¹ The implications of this are staggering: The weighty, complex determination whether a person acted reasonably and justifiably in using deadly force

27. *Self Defense and "Stand Your Ground,"* NAT'L CONF. OF STATE LEGIS. (Aug. 30, 2013), <http://www.ncsl.org/research/civil-and-criminal-justice/self-defense-and-stand-your-ground.aspx>.

28. FLA. STAT. § 776.013(5)(a) (2013).

29. *Id.* § 776.013(1)(a).

30. *Id.* § 776.032(1).

31. *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008) ("[A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches."). In *Dennis v. State*, 51 So. 3d 456, 462 (Fla. 2010), the Florida Supreme Court held that the *Peterson* procedure "best effectuates the intent of the Legislature," making *Peterson* binding on all Florida courts.

may be disposed of by a police officer at the scene. Whether or not such immunity is given in any particular case does not resolve the question of the provision's influence on social understandings of justifiable force and killing with impunity.

In sum, the significant alterations that Stand Your Ground makes to self-defense law are the authorization of the use of deadly force to protect property; the extension of the castle doctrine to a broad category of "dwellings" as well as "occupied vehicles;" presumptions about the reasonableness of the use of deadly force; and immunity from arrest and prosecution.

III. STAND YOUR GROUND IS NOT FOR WOMEN

Stand Your Ground rhetoric is very seductive, and perhaps particularly to a feminist perspective. It is tempting to imagine Stand Your Ground as applied to the most common threats of violence and aggression that women face. It is gratifying to imagine a world in which a woman is legally and socially encouraged to face down a street harasser, fight off a rapist, or stop an abusive partner in his tracks. No doubt this is why Stand Your Ground proponents so often invoke the image of a woman fighting back against a violent rapist in an alley.³²

The choice of a stranger rape scenario is telling. Of all the interpersonal threats women and girls are likely to face in their lifetimes, including street harassment, acquaintance rape, and domestic violence, stranger rape is one of the rarest.³³ The majority of rape victims—more than two-thirds—are assaulted by someone they know.³⁴ And the vast majority of rapes do not take place in the street; they happen in houses, apartments, cars, and dorm rooms.³⁵ So, while it is convenient to imagine a gun-toting woman thwarting a lurking rapist, such a scenario is extremely statistically unlikely. Even in cases of stranger rape in alleyways, the odds that any person would be able to take out a weapon and use it to successfully ward off an attack are vanishingly small.³⁶ Unless women are walking around with their guns on their hips and their fingers

32. Franks, *supra* note 18.

33. *Id.*

34. *Statistics*, RAINN, <http://www.rainn.org/statistics> (last visited Apr. 18, 2014).

35. *The Offenders*, RAINN, <http://www.rainn.org/get-information/statistics/sexual-assault-offenders> (last visited Apr. 18, 2014).

36. The fact that trained police officers miss the targets they are shooting at 70%–82% of the time casts considerable doubt on the claim that armed civilians will be able to defend themselves successfully from attack. See Nate Rawlings, *Ready, Fire, Aim: The Science Behind Police Shooting Bystanders*, TIME (Sept. 16, 2013), <http://nation.time.com/2013/09/16/ready-fire-aim-the-science-behind-police-shooting-bystanders/>.

on the triggers, the chances of being able to use a weapon in self-defense during a surprise attack are extremely slim.

And that is, of course, precisely why proponents of Stand Your Ground, conservative pundits, and gun activists use the stranger rape example. Its value is purely rhetorical. It allows proponents to claim concern for women's safety, and even more importantly, to label opponents as "anti-woman," without actually challenging entrenched, daily violence against women. It is utterly safe to condemn the stranger rapist—he is an outlier, a monster; he has no legitimate authority and poses as much (or more) of a threat to patriarchal interests than he does to actual women.³⁷ Stranger rapists have "real" victims, victims who are virgins or married or are assigned some other strict role within the sexual economy. Stranger rapists disrupt sexual order and destabilize men's entitlement to and control over their wives, girlfriends, or daughters. The stranger rapist can be vilified without indicting mainstream society. Women who fight back against stranger rapists pose no threat to social order or challenge cultural gender-disciplining norms. They do not, in short, challenge the average man's authority or make him consider whether he too is a legitimate target for violence.

It is clear, then, why in invoking rape as the paradigmatic scenario to support Stand Your Ground, proponents have to conjure up the rarest of all sexual assaults. If Stand Your Ground reforms were in fact driven by real concerns for women's vulnerability, the paradigmatic rape scenario would have been one that most women are likely to face: rape by someone the victim knows and trusts—a husband, boyfriend, ex-partner, friend, or family member, not in an alley but in a bedroom, a car, at a party, in places where the victim probably felt safe. And how should she stand her ground then? Should she carry her weapon to bed, to the college party, or to the car where her date is waiting—not just carry it but have it in her hand, finger on the trigger, in the event that the conversation takes a surprising turn or the fondling goes farther than she wants?

This kind of application is clearly absurd, and yet when do women need more encouragement to "stand their ground" than when someone they love and trust attempts to violate their boundaries and ignore their consent? There's no way to halt this with a gun, and "standing one's ground" in such a context would have to mean relying on some support from social and legal norms to give her refusal respect and weight. But women are not encouraged to fight back against rapes by husbands, boyfriends, friends, or acquaintances; instead, they are taught to anticipate and minimize the chances for sexual assault by constraining their mobil-

37. Franks, *supra* note 18.

ity, clothing choices, conduct, and recreational activity.³⁸ The rhetoric of acquaintance rape is not “stand your ground” but “retreat” from any habits, preferences, or choices that might “lead to” rape.

Stand Your Ground, therefore, is unlikely to be useful to many women with regard to rape, even in the rare stranger rape scenario that the law’s proponents exploit. It is telling that defenders of Stand Your Ground also have not rallied behind women facing street harassment, even though women are routinely subjected to abuse and threats while “in a place where [they have] a right to be.”³⁹ If people are allowed to “meet force with force” in such places, why aren’t Stand Your Ground proponents encouraging women to respond to sexual harassment in the street, or groping on public transport, or being followed in a parking lot? Why hasn’t Stand Your Ground become a rallying cry for women to be allowed to move about freely in the world? When politicians extol the virtues of the law in press conferences and editorials, why do they not praise this strong statement in favor of women’s autonomy in public spaces?

Perhaps this is just an oversight. Perhaps Stand Your Ground supporters are more than happy for these laws to be used and interpreted this way, but have merely not chosen to foreground these kinds of benefits. The same cannot be said, however, of the benefits Stand Your Ground might offer domestic violence victims. The provisions on the use of justifiable force in the home, with its detailed presumptions, suggest that the law might encourage battered spouses to fight back, or at least protect them when they do. The statute even explicitly mentions domestic violence, and does so in a way that might suggest (and has been read to suggest⁴⁰) protection for domestic violence victims.⁴¹ As it turns out, however, Stand Your Ground laws are specifically *not* intended to encourage domestic violence victims to fight back.

To understand this, we must again take a step back. As noted above, Stand Your Ground is an extension of the so-called “castle doctrine.” Under common law, the castle doctrine provided an exception to the duty to retreat.⁴² That is, a person whose home is invaded has no

38. See, e.g., Katie McDonough, *Sorry Emily Yoffe: Blaming Assault on Women’s Drinking is Wrong, Dangerous and Tired*, SALON (Oct. 16, 2013, 1:36 PM), http://www.salon.com/2013/10/16/blaming_assault_on_womens_drinking_is_tired_dangerous_rape_apology/.

39. Kavita B. Ramakrishnan, *Inconsistent Legal Treatment of Unwanted Sexual Advances: A Study of the Homosexual Advance Defense, Street Harassment, and Sexual Harassment in the Workplace*, 26 BERKELEY J. GENDER L. & JUST. 291, 318 (2011).

40. See Joshua Dressler, *Feminist (or “Feminist”) Reform of Self-Defense Law: Some Critical Reflections*, 93 MARQ. L. REV. 1475, 1483 (2010).

41. FLA. STAT. § 776.013(2)(a) (20013).

42. MARK RANDALL & HENDRIK DEBOER, OFFICE OF LEGIS. RESEARCH, THE CASTLE

duty to retreat even if retreat in perfect safety is possible.⁴³ It is not a coincidence that the expansion of the “castle doctrine,” including Stand Your Ground laws, has often been referred to as the “True Man doctrine”—a privilege primarily reserved for men.

In the late nineteenth-century, American law expanded the doctrine of self-defense and recognized the right to stand one’s ground to kill in self-defense, both in his home and anywhere he lawfully had a right to be. Over time, this became known as the “True Man” doctrine and held that an individual is not required to retreat, even if he can do so safely, when he has a reasonable belief that he is in imminent danger of death or great bodily harm and is in a place where he has a right to be.⁴⁴

The castle doctrine has long presented difficulties for domestic violence cases, particularly domestic violence cases in which battered women kill their husbands.⁴⁵ One of the historic problems with the “castle doctrine” is that it presumes situations in which a stranger violates the sanctity of the home; such a conception obviously overlooks the situation of violence between cohabitants, in which victim and attacker share the same “castle.”⁴⁶ It is telling that the castle doctrine is rarely cited as a response to, or preemption of, the inevitable question asked of battered women: “why didn’t she leave?”⁴⁷ The castle doctrine, were it not so implicitly gendered, would provide a ready response, namely that “she” should not have to leave her own home to avoid violence. The very question, “Why didn’t she leave,” reflects the starkly different ways that self-defense concepts are applied to men and women.⁴⁸ It is difficult to imagine asking a man why he “didn’t just leave” when an intruder broke into his house and threatened him—so difficult, in fact, that the question is effectively foreclosed by the castle doctrine. And yet the question is routinely asked of women who are attacked in their own homes.⁴⁹

One reason that wives vis-a-vis husbands were historically excluded from the benefits of the castle doctrine was the belief that a

DOCTRINE AND STAND-YOUR-GROUND LAW (2012), available at <http://cga.ct.gov/2012/rpt/2012-R-0172.htm>.

43. *Id.*

44. Katelyn E. Keegan, *The True Man & the Battered Woman: Prospects for Gender-Neutral Narratives in Self-Defense Doctrines*, 65 HASTINGS L.J. 259, 263 (2013).

45. See Catherine L. Carpenter, *Of the Enemy Within, the Castle Doctrine, and Self-Defense*, 86 MARQ. L. REV. 653, 657 (2003).

46. *Id.* at 670–71.

47. See Diane L. Rosenfeld, *Why Doesn’t He Leave? Restoring Liberty and Equality to Battered Women*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 535, 542 (Catherine A. MacKinnon & Reva B. Siegel eds., 2004).

48. See Victoria Nourse, *Self-Defense and Subjectivity*, 68 U. CHI. L. REV. 1235, 1284–85 (2001).

49. *Id.*

woman's violence against her husband was a form of treason.⁵⁰ As lord and master of the home, the man of the house was viewed as a kind of king.⁵¹ Though modern law no longer explicitly adheres to this view, strong traces of it remain in the decisions of many courts (of both law and public opinion) to expect a woman to leave her home if she is being abused.⁵² In other words, while men, whose violent confrontations inside the home are likely to involve strangers, are allowed to stand and fight, women, whose violent confrontations inside the home are likely to involve cohabitants, are effectively expected to retreat.⁵³

Several states, including Florida, in fact made this expectation explicit. In *State v. Bobbit*, the Supreme Court of Florida held that "the privilege not to retreat, premised on the maxim that every man's home is his castle which he is entitled to protect from invasion, does not apply here where both Bobbitt and her husband had equal rights to be in the 'castle' and neither had the legal right to eject the other."⁵⁴ In other words, the court imposed a duty to retreat upon a person attacked in her own home by a lawful cohabitant. The decision was strongly criticized for the impact it would have on victims of domestic violence.

As Jeannie Suk argues, increasing awareness of domestic violence has led to a movement away from the gendered norms of the castle doctrine, at least to a limited degree. According to Suk,

[the] recognition of the gendered impact of the castle doctrine began to inform change in self-defense law. Several castle doctrine states that previously imposed on cohabitants a duty to retreat have, in the last decade, through judicial interpretation, moved away from a duty to retreat for cohabitants to a rule of no duty to retreat for cohabitants. These state courts explicitly grounded their doctrinal shifts on a sympathetic understanding of the dynamics of [domestic violence] and its victims.⁵⁵

Suk argues that Stand Your Ground laws, in particular Florida's law, explicitly takes note of domestic violence situations in a way that

50. See Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 628 (1980).

51. Suk, *supra* note 11, at 251–52 (stating "[t]he castle was a microcosm of the realm, and the man of the castle was like the king. Thus, the idea of a wife killing her husband represented a threat not only to a human life, but to the notion of being a subject who is governed—or put another way, to being ruled by legal authority").

52. See generally Schneider, *supra* note 50.

53. Suk, *supra* note 11, at 252 (commenting that "[a]s courts have noted, imposing a duty to retreat from cohabitants . . . causes problems for battered women who stand their ground and kill their batterers").

54. *State v. Bobbit*, 415 So. 2d 724, 726 (Fla. 1982), *overruled by* *Weiland v. State*, 732 So. 2d 1044 (Fla. 1999).

55. Suk, *supra* note 11, at 252.

elevates the “subordinated woman” into the “True Man.”⁵⁶ Joshua Dressler makes a similar claim: “Florida law (followed by some other states) does provide explicit benefits to domestic violence victims, presumably usually women, in the home,”⁵⁷ leading him to conclude that such laws stand for the (to him) troubling proposition that “some feminists are Real Women, just like their Real Men comrades-in-arms.”⁵⁸ This claim is odd for many reasons. The first is that to the extent that Florida law has corrected its gender-biased castle doctrine, it has done so through case law, not through legislative reform. In *Weiland v. State*, the Florida Supreme Court overruled *Bobbit*, specifically noting the unjust implications of that case for domestic violence victims.⁵⁹ The Court quoted a passage from an article on domestic violence: “Imposition of the duty to retreat on a battered woman who finds herself the target of a unilateral, unprovoked attack in her own home is inherently unfair. During repeated instances of past abuse, she has ‘retreated,’ only to be caught, dragged back inside, and severely beaten again. If she manages to escape, other hurdles confront her. Where will she go if she has no money, no transportation, and if her children are left behind in the ‘care’ of an enraged man?”⁶⁰

Florida’s Supreme Court in 1999 thus moved to clarify and correct the inherent gender bias in the “True Man” doctrine. Far from offering further clarification, the 2005 Stand Your Ground law arguably creates more confusion. According to the statute, the presumption of “reasonable fear of imminent peril of death or great bodily harm to himself or herself or another” that would justify deadly force only applies when “the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person’s will from the dwelling, residence, or occupied vehicle,” and “the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.”⁶¹ As noted above, in many domestic violence situations, both parties have lawful residence in the home. A man who comes home at night, has dinner, and then starts beating his wife has not “unlawfully and forcefully entered” the home. The lack of presumption of reasona-

56. *Id.* at 271.

57. See Dressler, *supra* note 40, at 1484.

58. *Id.* at 1485.

59. *Weiland v. State*, 732 So. 2d 1044, 1051 (Fla. 1999).

60. *Id.* at 1053 (quoting Maryanne E. Kampmann, *The Legal Victimization of Battered Women*, 15 WOMEN’S RTS. L. REP. 101, 112–113 (1993)).

61. FLA. STAT. § 776.013(1)(a)–(b) (2013).

bleness of deadly force against a lawful cohabitant is repeated in the exceptions section of the statute: “[T]he presumption . . . does not apply if: The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder.”⁶² In other words, domestic violence victims generally will not benefit from the presumptions outlined in Stand Your Ground.

So why do Suk and Dressler believe that the True Man doctrine embraces the domestic violence victim? Because of an exception to an exception; namely, because the law does allow for the presumption of reasonableness in using deadly force against a cohabitant if that cohabitant is subject to “an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.”⁶³ By allowing this presumption, Suk argues, “the domestic abuser can be treated just like a home intruder when he enters. He can be shot on sight.”⁶⁴ Similarly, Dressler claims,

if a victim of domestic violence receives a protective order against another person—including a spouse or live-in partner—and if that person seeks to enter her or their home in violation of the protective order—even if he is entering, for example, to pick up his belongings—the legal presumption [of the Florida statute] . . . applies to the woman living there. If she kills in these circumstances, the legal presumption is that she killed lawfully.⁶⁵

There are two questions to ask here: one, whether the restraining order exception is as significant for domestic violence victims as Suk and Dressler believe it is, and two, whether the fact that a domestic abuser “can be shot on sight” is a good or a bad thing.

As an initial matter, to interpret the protective order exception as beneficial to domestic violence victims requires one to assume that protective orders are common, easily obtained, and timely. Neither Suk nor Dressler offers evidence to support this assumption.⁶⁶ There are numerous variables here: the fact that many domestic violence situations escalate suddenly; the reluctance of victims to seek protective orders out of fear of escalation, financial dependency, or lack of knowledge; the fact that courts do not issue protective orders simply because they are asked to do so; and the time it takes to receive an order even under the best of circumstances.⁶⁷ As Katelyn Keegan writes, “[t]he prerequisite of a pro-

62. *Id.* § 776.031(2)(a).

63. *Id.*

64. Suk, *supra* note 11, at 269.

65. Dressler, *supra* note 40, at 1484.

66. *See generally id.*; Suk, *supra* note 11.

67. Keegan, *supra* note 44, at 273.

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tective order is not always feasible or obtainable, but it is necessary under the Florida law for women to treat their abusers the same as intruders.”⁶⁸ Given that many battered spouses do not have protective orders against their partners—at least not before their abusers try to kill them—this provision hardly bolsters protections for domestic violence victims.

Even if a battered spouse does have a protection order against a co-habitant, it is not clear that the Florida law offers her any particular benefit. The law states that the presumption of reasonableness in using deadly force does not apply against a co-habitant against whom there is no order of protection or no contact. That is *not* the same thing as stating that there affirmatively is a presumption of reasonableness in using deadly force against a co-habitant against whom one does have an order of protection or no contact. The benefit here is at best ambiguous.

Given this, there seems to be little reason to believe that that the 2005 law accomplishes anything for the benefit of domestic violence victims, to say nothing of elevating their status, as Suk and Dressler claim it does. If anything, the law seems to undermine the clarity offered by the Florida Supreme Court in *Weiland*. While one could certainly argue that the court’s 1999 decision has not gone far enough or been applied enough to actually correct the longstanding gender bias in Florida’s castle doctrine, there is no indication that the Stand Your Ground law does anything to ameliorate this. In fact, there is much reason to think the opposite.

The statements made by one of the law’s chief architects militates quite strongly *against* the conclusion that domestic violence victims are either intended to or do in fact benefit from Stand Your Ground. In describing what he considers to be the (dangerous) “feminization” of self-defense through Stand Your Ground laws like Florida’s, Dressler claims that “the NRA and women’s groups worked closely in alliance.”⁶⁹ Dressler offers not so much as a footnote in support of this assertion. It would be very surprising indeed if any such evidence exists, considering the fact that Marion Hammer, when asked to verify that Stand Your Ground was not intended to apply in domestic violence situations, answered, “[y]es.” Hammer explained, “the law attempts to say that if in a domestic violence situation you are being beaten you may use self-defense, but *you can’t simply take action against an estranged spouse who breaks into the home* if they own the home. You have to be under attack in those situations.”⁷⁰ This idea of restraint is inconsistent

68. *Id.*

69. Dressler, *supra* note 40, at 1484.

70. Interview with Marion Hammer, *supra* note 7.

with the rest of the Stand Your Ground ideology. A man can presume that a stranger breaking into his house means him harm, and can thus use deadly force against the stranger. A woman cannot presume that the man who has been beating her or has threatened to kill her means her harm unless he has entered her home unlawfully. Thus, she cannot use deadly force against him until the moment he attacks her.⁷¹ Hammer elaborates that this provision was the result of the drafters' effort to ensure "that in restoring your self-defense rights and your right to protect your home that they did not set up scenarios where people could murder people they did not like and claim it was lawful self-defense."⁷² In other words, the failure to comprehensively correct an actual, longstanding flaw in self-defense—namely, the gender bias of Florida's castle doctrine—is no mere oversight by Stand Your Ground architects. It is fully intended.

And this is the key to the gender divide in Stand Your Ground, and what gives the lie to the claim that Stand Your Ground promotes gender equality. Women threatened in their homes are at a distinct disadvantage compared to men threatened in their homes, and also to men in any place where they have a right to be. Stand Your Ground does in fact openly assume, if not embrace, the risk of allowing individuals to 'murder people they did not like and claim it was lawful self-defense,' even outside of the home, so long as the killers are men (preferably white) and their victims are strangers (preferably black).⁷³ What the law seems to refuse to do—if we take its drafters at their word—is permit domestic violence victims to fight back when threatened by a known abuser in their own homes. To see this disadvantage, we need look no farther than the very different treatment of Marissa Alexander and George Zimmerman, two Florida cases involving Stand Your Ground.

IV. STAND YOUR GROUND V. BATTERED WOMEN'S SYNDROME

A. *George Zimmerman*

On February 26, 2012, George Zimmerman, a half-white, half-Hispanic man who fancied himself a neighborhood watchman, shot and killed Trayvon Martin, an unarmed black teenager,⁷⁴ as he walked through a gated community in Sanford, Florida.⁷⁵ Police called to the scene took a statement from Zimmerman but declined to arrest him.⁷⁶

71. Franks, *supra* note 18.

72. Interview with Marion Hammer, *supra* note 7, emphasis added.

73. Franks, *supra* note 18.

74. See Dennis A. Henigan, *The Woollard Decision and the Lessons of the Trayvon Martin Tragedy*, 71 MD. L. REV. 1188–89 (2012).

75. Julia Dahl, *Trayvon Martin Shooting: A Timeline of Events*, CBS NEWS (July 12, 2013, 5:11 PM), <http://www.cbsnews.com/news/trayvon-martin-shooting-a-timeline-of-events/>.

76. *Id.*

Sanford Police Chief Bill Lee, facing a barrage of public criticism, issued a statement claiming that the police were not allowed to arrest Zimmerman given the immunity provision of Florida's self-defense law: "[W]hen the Sanford Police Department arrived at the scene of the incident, Mr. Zimmerman provided a statement claiming he acted in self defense, which at the time was supported by physical evidence and testimony. By Florida Statute, law enforcement was *prohibited* from making an arrest based on the facts and circumstances they had at the time."⁷⁷

After six weeks of public outcry, Zimmerman was finally charged with second-degree murder for shooting Trayvon Martin. Zimmerman claimed at trial that Trayvon Martin attacked him, straddling him and slamming his head repeatedly into the pavement.⁷⁸ According to his account, Zimmerman shot Martin because he was in fear for his life and thought that Martin was reaching for Zimmerman's gun, though he knew Martin was unarmed.⁷⁹

While Zimmerman did not seek a Stand Your Ground immunity hearing as he had been expected to do, Stand Your Ground was the reason given by Sanford Police for why Zimmerman was not arrested for so long, and Stand Your Ground language was also used in the instructions to the jury and seems to have influenced the jury's decision to fully acquit George Zimmerman.⁸⁰

77. Herald Staff, *Chief Bill Lee Answers Questions About Investigation into Shooting of 17-year-old Trayvon Martin*, SANFORD HERALD (Mar. 17, 2012, 2:59 PM), http://mysanfordherald.com/view/mobile_full_story/17920337/article-Chief-Bill-Lee-answers-questions-about-investigation-into-shooting-of-17-year-old-Trayvon-Martin (emphasis added).

78. Lizette Alvarez & Cara Buckley, *Zimmerman Is Acquitted in Killing of Trayvon Martin*, N.Y. TIMES (July 14, 2013) http://www.nytimes.com/2013/07/15/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all&_r=0.

79. *Id.*

80. See Marc Caputo, *Juror: We Talked Stand Your Ground Before Not-Guilty Zimmerman Verdict*, MIAMI HERALD (July 18, 2013), <http://www.miamiherald.com/2013/07/16/3502481/juror-we-talked-stand-your-ground.html>. Later that same year, again in Florida, a 45-year-old white man named Michael David Dunn fired a weapon ten times into an SUV with four young black men inside, killing 17-year-old Jordan Davis. Dunn had argued with the teens about the volume of their music while he and the teenagers were parked at a gas station. Dunn claims that Davis threatened him with what he thought was a shotgun, and so grabbed his gun from the glove compartment and shot at the vehicle four times. As the young men backed the SUV out of the gas station in a panic, Dunn fired at them five more times. No weapon was ever found in the vehicle or in the surrounding area. Dunn's lawyer at the time indicated that her client feared for his life: "all he sees are heavily tinted windows, which are up and the back windows which are down, and the car has at least four black men in it." Michael Dunn was convicted of three counts of second-degree attempted murder and one count of firing into an occupied vehicle, but the jury deadlocked on the first-degree murder charge for killing Jordan Davis. See Fred Grimm, *Michael Dunn Case Highlights Squishy Stand Your Ground Law*, MIAMI HERALD (Feb. 22, 2014), <http://www.miamiherald.com/2014/02/22/3953095/fred-grimm-dunn-case-highlights.html>.

B. *Marissa Alexander*

On August 1, 2010, Marissa Alexander, a 31-year old African-American woman, was showing her estranged husband Rico Gray pictures of their newly born child on her cell phone.⁸¹ When Alexander got up to use the bathroom of their shared home, Gray began looking at text messages on Alexander's phone.⁸² Upon finding some messages from Alexander's ex-husband, Gray flew into a rage.⁸³ Gray blocked Alexander from leaving the bathroom, calling her a "whore" and a "bitch" and telling her, "[i]f I can't have you, nobody [is] going to have you."⁸⁴ Alexander told Gray to leave. He refused, and Alexander struggled to get past him to leave through the garage.⁸⁵ Once in the garage, however, she realized that the door would not open.⁸⁶ She grabbed her gun from her truck and returned to the kitchen.⁸⁷ There, she says, Gray threatened her life.⁸⁸ Alexander said she fired the shot into the ceiling as a way to scare Gray off.⁸⁹

Rico Gray had been arrested twice before on misdemeanor charges of domestic battery and Alexander had obtained a protective order against him.⁹⁰ In a sworn deposition, Gray himself verified that Alexander's version of events that day was true,⁹¹ though he later changed his story.⁹² Gray admitted to having attacked Alexander before, including once when he pushed her so hard that she fell backward and hit her head on the bathtub.⁹³ Gray also admitted that he had previously told Alexander that he would find someone to hurt her if she did not do as he wanted.⁹⁴ He also stated that he was a habitual abuser of women:

I got five baby mammas and I put my hands on every last one of them except for one. . . . I physically abused them; physically, emotionally, you know, it's like— . . . Me, the way I was with women,

81. Deposition of Rico Gray at 15, *State v. Alexander*, No. 2010-CF-8579 (Fla. Cir. Ct. 2010).

82. *Id.* at 16.

83. *Id.* at 16–17.

84. *Id.* at 18–19.

85. *Id.* at 25.

86. *Id.* at 26.

87. *Id.* at 27.

88. *Id.* at 28.

89. *Id.*

90. See Touré, *Where's 'Stand Your Ground' for Marissa Alexander?*, TIME (Apr. 30, 2012), <http://ideas.time.com/2012/04/30/where-was-stand-your-ground-for-marissa-alexander/>.

91. See Deposition of Rico Gray, *supra* note 81.

92. Lauren Victoria Burke, *Exclusive: Marissa Alexander's Current Husband Speaks*, POLITIC365 (Apr. 19, 2012, 3:00 PM), <http://politic365.com/2012/04/19/exclusive-marissa-alexanders-current-husband-speaks/>.

93. Deposition of Rico Gray, *supra* note 81, at 10.

94. *Id.* at 19.

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they was like they had to walk on eggshells around me. You know they never knew what I was thinking, what I might say. . . . Or what I might do.⁹⁵

He also stated that he told Alexander that “if she ever cheated on [him, he] would kill her.”⁹⁶

Alexander tried to claim immunity under Stand Your Ground, but was denied.⁹⁷ She was charged with three counts of aggravated assault (one for Gray and the other two for Gray’s two sons who were also in the home at the time Alexander fired the gun).⁹⁸ After deliberating for eleven minutes, the jury sentenced Alexander to twenty years in prison.⁹⁹ On appeal, a judge found that Alexander was entitled to a new trial because the jury was improperly instructed regarding self-defense.¹⁰⁰ The judge maintained, however, that the denial of Alexander’s motion for immunity under Stand Your Ground was correct.¹⁰¹ While Alexander’s lawyer has requested a new Stand Your Ground hearing,¹⁰² it seems most likely that Alexander will have to rely on Battered Women’s Syndrome as a way to explain and defend her actions.

C. *Real Men Advance, Real Women Retreat*

George Zimmerman advanced upon a stranger who was in public and not engaged in any unlawful activity. That confrontation ended with Zimmerman killing the teenager. Zimmerman avoided arrest for nearly six weeks based on Stand Your Ground and was eventually acquitted by a jury of all charges.¹⁰³ Marissa Alexander responded to a confrontation in her own home from a man against whom she had a protective order.¹⁰⁴ This man had beaten and threatened to kill her on numerous prior occasions, and he was refusing to leave and attempting to prevent Alexander from leaving. That confrontation ended with Alexander firing

95. *Id.* at 36.

96. *Id.* at 60.

97. See *Alexander v. State*, 121 So. 3d 1185, 1186 (Fla. Dist. Ct. App. 2013).

98. *Id.* at 1190.

99. Julia Dahl, *Fla. Woman Marissa Alexander Gets 20 Years for “Warning Shot”: Did She Stand Her Ground?*, CBS NEWS (May 16, 2012, 4:21 PM), <http://www.cbsnews.com/news/fla-woman-marissa-alexander-gets-20-years-for-warning-shot-did-she-stand-her-ground/>.

100. *Alexander*, 121 So. 3d at 1189. Gary Fineout, *Marissa Alexander, Woman Sentenced to 20 Years for Firing Warning Shot, Gets New Trial*, HUFFINGTON POST (Sept. 26, 2013, 3:27 PM), http://www.huffingtonpost.com/2013/09/26/marissa-alexander-new-trial_n_3995869.html.

101. *Alexander*, 121 So. 3d at 1186.

102. Irin Carmon, *Can Women Stand Their Ground? Depends on the Target*, MSNBC (Mar. 20, 2014, 3:05 PM), <http://www.msnbc.com/msnbc/can-women-stand-their-ground>.

103. Meghan Keneally, Associated Press, *George Zimmerman Found Not Guilty and Goes Free*, ABC NEWS (July 13, 2013), <http://abcnews.go.com/US/george-zimmerman-found-guilty-free/story?id=19653300>.

104. It is not clear whether there was a protective order in place at the time of the shooting.

a shot that neither killed nor injured anyone. She was arrested immediately, denied Stand Your Ground immunity, tried, and sentenced to twenty years.

Many argue that George Zimmerman's case was not about Stand Your Ground.¹⁰⁵ To the extent that Zimmerman did not seek a Stand Your Ground hearing, that is correct. But Zimmerman did initially receive complete immunity, which is the first effect that Stand Your Ground can have on a putative defendant. Sanford police explicitly stated that they did not arrest Zimmerman right after the shooting because of Stand Your Ground.¹⁰⁶ Had it not been for the media outcry following Trayvon Martin's death, it is possible that Zimmerman would never have been charged. His "traditional self-defense" argument at trial is inextricable from Stand Your Ground provisions, as Stand Your Ground is not a specific amendment to self-defense law, but an overall revision of self-defense law.¹⁰⁷ This is why Stand Your Ground language was included in the jury instructions in Zimmerman's case. In other words, Stand Your Ground did influence Zimmerman's case.

Conversely, when the police arrested Marissa Alexander immediately after her altercation with her estranged husband, they were effectively denying her Stand Your Ground status. Defendants who do not have the luxury of being determined justified by the police can raise Stand Your Ground at a preliminary hearing, which Alexander did. Her request was denied, and Alexander was not allowed to raise it as a defense at her trial.¹⁰⁸ This is despite the fact that, if one takes seriously the claims of Suk and Dressler, Marissa Alexander should be the ideal Stand Your Ground figure.¹⁰⁹ She was a domestic violence victim, and had, at least in the past, a protective order against her husband and he had threatened her with great bodily injury. In addition she, unlike Zimmerman, repeatedly tried to retreat. It was only at the moment that she realized she physically could not retreat, and that her husband was threatening her life, that she fired what she characterized as a warning shot, even though a person in her circumstances ostensibly had the right to use deadly force under Florida's law.¹¹⁰ At the time of this writing, Marissa Alexander is still awaiting a new trial. When it begins, she will

105. Dan Abrams, *No, Florida's Stand Your Ground Law Did Not Determine Either Zimmerman or Dunn Cases*, ABC NEWS (Feb. 17, 2014), <http://abcnews.go.com/US/floridas-stand-ground-law-determine-zimmerman-dunn-cases/story?id=22543929>.

106. *The Role of "Stand Your Ground" in Zimmerman Trial*, CBS MIAMI (Jul. 14, 2013, 4:09 PM), <http://miami.cbslocal.com/2013/07/14/the-role-of-stand-your-ground-in-zimmerman-trial/>.

107. See *supra* Part II.

108. See *Alexander*, 121 So. 3d at 1186.

109. See Suk, *supra* note 11, at 271 (noting that the "woman who kills the abuser-intruder emerges as a kind of 'true woman.'").

110. See FLA. STAT. § 776.013(3) (2013).

be compelled to provide a narrative dominated by Battered Women's Syndrome evidence rather than a Stand Your Ground claim.

In theory, Battered Women's Syndrome (BWS) can be used as evidence to provide support for any self-defense claim, including Stand Your Ground. Self-defense doctrine provides a justification for the use of what would normally be considered unlawful force. "As a general rule, a defendant makes out a claim of self-defense when he shows that he was confronted by a serious threat of bodily harm or death, the threat was imminent, and his response was both necessary and proportionate."¹¹¹ In some jurisdictions, as discussed above, there is a "duty to retreat" before a person resorts to deadly force.¹¹²

Battered women who kill their abusers face several challenges in claiming self-defense. First, as many feminist legal scholars have observed, traditional self-defense doctrine is predicated on male experience.¹¹³ As such, the doctrine is a poor fit for the dynamics of repeated violence between intimates that may be greatly mismatched in terms of size, strength, and willingness to use force. Many judges and jurors have prejudicial views of domestic violence victims, often faulting these victims for continued interactions with their abusers. The imminence requirement, as traditionally interpreted, also presents serious obstacles for women who kill sleeping or otherwise incapacitated abusers.

Introducing expert evidence on the effects of battering on victims is useful to dispel stereotypes about how victims should and do react to violence, including what many experts believe is victims' accuracy in assessing the lethality and imminence of threats.¹¹⁴ In practice, however, evidence of Battered Woman's Syndrome "risks advancing a stereotypical and pathological characterization of battered women. This representation risks not only negating claims advanced by women whose experiences deviate from the BWS standard, but is likely to be inconsistent with a defense that requires a determination of reasonableness in order to be successful."¹¹⁵ That is, BWS evidence may very well work at cross-purposes with self-defense claims.¹¹⁶

111. Nourse, *supra* note 48, at 1239.

112. *See supra* Part II.

113. *See* Cheryl A. Tarrance et al., *Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome*, 88 N.D. L. REV. 921, 927 (2012).

114. *See* Joan H. Krause, *Distorted Reflections of Battered Women Who Kill: A Response to Professor Dressler*, 4 OHIO ST. J. CRIM. L. 555, 563 (2007) ("There is ample literature to suggest that a battered woman may in fact be accurate in predicting an imminent threat of such harm from a sleeping abuser.").

115. Tarrance, *supra* note 113, at 922.

116. This is not a criticism of BWS evidence as such, but of the way that such evidence tends to be interpreted by judges and juries. BWS evidence, when used carefully and correctly, can provide "a solid foundation for expert testimony in cases involving battered women." Mary Ann

When Battered Women's Syndrome evidence is considered towards a defense, it is often on very different terms than Stand Your Ground. Stand Your Ground is a justification defense, meaning that those who claim it successfully are considered not merely to have done nothing wrong, but to have done something right.¹¹⁷ By contrast, Battered Women's Syndrome is often treated as an excuse defense, which, though it may also yield an acquittal or reduced sentence, expresses the judgment that the defendant acted wrongly, but is so defective in some significant sense that she cannot be held accountable for her own actions.¹¹⁸ As Joan Krause writes,

the vision offered by BWS is one of dysfunction. Much of the problem may be due to the characterization of BWS as a "syndrome." The invocation of a medical-psychological model may have hastened the acceptance of BWS expert testimony by judges, but it did so at the expense of women's rationality: trapped by the cycle of violence, the BWS victim mistakenly believes that she is helpless to change her situation and thus fails to comprehend viable alternatives that would be obvious to the average person.¹¹⁹

Stand Your Ground defendants engender admiration; Battered Women's Syndrome defendants plead for mercy on the basis of what is essentially considered a psychological defect.¹²⁰ The narrative that Alexander will be compelled to relate is one of a helpless woman who felt she had no choice but to use deadly force against her abuser, whereas Zimmerman is able to invoke the narrative of a man standing up for himself against a violent interloper. Women who fight back against known abusers are not valorized; in fact, their use of force actively

Dutton, *Critique of the "Battered Woman Syndrome" Model*, AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS, <http://www.aets.org/article138.htm> (last visited May 6, 2014).

117. See Joshua Dressler, *Justifications and Excuses: A Brief Review of the Concepts and the Literature*, in CASES AND MATERIALS ON CRIMINAL LAW 483, 484 (5th ed. 2009).

118. *Id.* at 484–487 (“In its simplest form, and subject to substantial complexity and debate as to its precise contours, justified conduct is conduct that is ‘a good thing, or the right or sensible thing, or a permissible thing to do.’ . . . To say that conduct is justified is to suggest that something which ordinarily would be considered wrong or undesirable—i.e., that would constitute ‘social harm,’—is, in light of the circumstances, socially acceptable or tolerable. A justification . . . negates the social harm of an offense. An excuse is in the nature of a claim that although the actor has harmed society, she should not be blamed or punished for causing that harm Whereas a justification negates the social harm of an offense, an excuse negates the moral blameworthiness of the actor for causing the harm.”).

119. Krause, *supra* note 114, at 566.

120. Keegan, *supra* note 44, at 279 (“[T]he gender bias in BWS increases the likelihood that the jury will merely excuse the woman's conduct, but find it unjustified under the law. When a defense is treated as an excuse rather than a justification, the jury views the defendant's act as wrong and only tolerable because of her mental or emotional state. Conversely, justified conduct is encouraged under the law, and the jury approves of the defendant's act because of the surrounding circumstances.” (footnotes omitted)); see also Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 13 (1991).

works against them when they seek help from the legal system.¹²¹ By contrast, men who exert force against strangers are viewed as “true men.”¹²²

Moreover, Battered Women’s Syndrome by its nature requires extensive expert evidence and findings. In this sense it stands in marked contrast to the way Stand Your Ground claims often operate with regard to burdens of proof. As discussed above, if law enforcement determines that a person has acted according to Stand Your Ground, the person is not arrested, let alone not prosecuted. That means that no examination, whatsoever, of the person who used deadly force takes place beyond an initial police interrogation—no presentation of evidence, no hiring of lawyers and experts, and no loss of liberty. By contrast, there are no comparable immunity procedures for the Battered Women’s Syndrome defense, and the defense requires extensive evidentiary findings, expert testimony, and an intense evaluation of the defendant’s life. As Keegan explains,

Both [Battered Women’s Syndrome] and the True Man doctrine are theories of self-defense that address similar issues of imminence and necessity, but each theory tells a completely different story. The process of proving a true man self-defense claim is also strikingly dissimilar to a BWS claim, as true men can testify upfront without expert testimony, without state-mandated psychological evaluations, and without pleading an insanity defense. With this evidentiary burden placed on BWS defenses, the law adopted a model for women’s defense strategies that was essentially based on psychological defects.¹²³

One self-defense rule for men, another for women: This distinction did not begin with Stand Your Ground. Long before Stand Your Ground laws were officially in place, the notorious case of Bernhard Goetz illustrated society’s tolerance for male violence against strangers (again minority males) in non-lethal situations.¹²⁴ On a New York City subway train in 1984, Goetz was approached by four young black men. One said to Goetz, “[g]ive me five dollars.”¹²⁵ None of the teenagers displayed any weapons.¹²⁶ Goetz, who was carrying an unlicensed .38 loaded with

121. See generally Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75 (2008).

122. Keegan, *supra* note 44, at 263.

123. *Id.* at 280. “True men are empowered to use deadly force even in public without a duty to retreat, while battered women must provide expert testimony on her psychological condition to prove the reasonableness of her use of deadly force in light of her extreme helplessness.” *Id.* at 282.

124. *People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986).

125. *Id.* at 43.

126. *Id.*

five rounds, responded by firing four shots, carefully aiming at each of the four men.¹²⁷ He missed his last target. Upon realizing this, Goetz said to the young man, “[y]ou seem to be all right, here’s another,” and shot him again, severing his spinal cord.¹²⁸ Goetz then jumped on the train tracks and fled the scene.¹²⁹

Goetz was charged with attempted murder and assault and argued that he acted in self-defense.¹³⁰ He claimed that he started carrying his illegal handgun after being injured in a mugging three years prior.¹³¹ Goetz testified that before any of the men approached him, he knew from the smile on one of the men’s faces that “they wanted to play with me.”¹³² He testified that he did not believe that any of the men had a gun.¹³³ According to Goetz, “[i]f I was a little more under self-control . . . I would have put the barrel against his forehead and fired. . . . If I had had more [bullets], I would have shot them again, and again, and again.”¹³⁴ He also noted that before he started shooting, he planned out his “pattern of fire,” and stated that his intention in shooting the four men was to “murder, . . . hurt, [and] make them suffer.”¹³⁵ Goetz was acquitted of all charges except for possession of a concealed weapon, for which he was sentenced to one year and served eight months.¹³⁶

Compare Goetz’s case to that of Judy Norman.¹³⁷ For more than twenty years, John Thomas Norman (“J.T.”) subjected his wife, Judy, to beatings, rapes, forced prostitution, threats of mutilation and death, threats to family and friends, and humiliating treatment including forcing her to bark like a dog and eat out of dog bowls.¹³⁸ Two days before Judy Norman’s final confrontation with her husband, he unleashed a series of particularly vicious attacks on Judy that led to her attempted suicide.¹³⁹ When paramedics arrived at their home, J.T. tried to stop

127. *Id.*

128. *Id.* at 44.

129. *Id.*

130. *Id.* at 43.

131. *Id.* at 44.

132. *Id.*

133. *Id.*

134. *Id.* at 44 (internal quotation omitted).

135. *Id.* at 44.

136. 2 SCOTT PATRICK JOHNSON, TRIALS OF THE CENTURY: AN ENCYCLOPEDIA OF POPULAR CULTURE AND THE LAW 540 (2011). One of Goetz’s victims, James Ramseur, was found dead as the result of an apparent suicide on December 22, 2011, “27 years to the day after he was shot by [Goetz].” Goetz’s attorney, Darnay Hoffman, committed suicide in 2009. John Del Signore, *Man Shot by Bernhard Goetz Found Dead After Apparent Suicide*, GOTHAMIST (Dec. 23, 2011, 9:37 AM), http://gothamist.com/2011/12/23/man_shot_by_bernhard_goetz_found_de.php.

137. *State v. Norman*, 378 S.E.2d 8 (N.C. 1989).

138. *Id.* at 10, 17.

139. *Id.* at 19.

them from helping Judy, telling them to “[l]et the bitch die.”¹⁴⁰ The following day, Judy told her husband about the possibility of having him committed, and he responded, “[i]f you do, I’ll see them coming and before they get here, I’ll cut your throat.”¹⁴¹ That day he subjected Judy to repeated beating, threats to kill and maim her, and made her sleep on the floor.¹⁴² At some point Judy went to her mother’s house, took a gun from her mother’s purse, went back to her house, and shot her sleeping husband three times in the back of the head.¹⁴³ At trial, Judy requested a jury instruction of self-defense.¹⁴⁴

As discussed above, according to common law, a person can use deadly force in self-defense only when it is necessary, proportionate, and the danger is imminent.¹⁴⁵ At Norman’s trial, the Supreme Court of North Carolina overturned a lower court ruling that had allowed Norman to receive a jury instruction on self-defense, holding that she did not have “a reasonable fear of imminent death or great bodily harm.”¹⁴⁶ According to the court, Norman was “not faced with an instantaneous choice between killing her husband or being killed or seriously injured. . . . [she] had ample time and opportunity to resort to other means of preventing further abuse by her husband.”¹⁴⁷ The court maintained that she had “other means” available despite the fact that her husband had warned her that he would kill her “before [the cops] get here,” that he had threatened her family, that following an arrest and a few days in jail for a DUI he beat Judy even more severely, and that Judy’s mother had called the police the day of the shooting, but they never arrived.¹⁴⁸

The court seemed to fear that finding Norman’s actions justified would encourage women to kill their husbands at the slightest opportunity. This is despite the fact that women rarely kill their abusers, and even more rarely kill abusers in non-confrontational situations,¹⁴⁹ despite persistently high rates of domestic violence.¹⁵⁰ To grant Norman an instruction on self-defense, the court claimed,

[w]ould tend to categorically legalize the opportune killing of abusive

140. *Id.*

141. *Id.* at 20.

142. *Id.* at 11.

143. *Id.* at 11, 13.

144. *Id.* at 9.

145. See, e.g., JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 507–09 (5th ed. 2009).

146. *Norman*, 378 S.E.2d at 9.

147. *Id.* at 13.

148. *Id.* at 11.

149. See Krause, *supra* note 114, at 556.

150. *Id.* at 572.

husbands by their wives solely on the basis of the wives' testimony concerning their subjective speculation as to the probability of future felonious assaults by their husbands. Homicidal self-help would then become a lawful solution, and perhaps the easiest and most effective solution, to this problem.¹⁵¹

As Justice Martin noted in dissent, however, *any* self-defense claim raises the possibility of invented evidence, and the record in Norman's case "contain[ed] no reasonable basis to attack the credibility of evidence for the defendant."¹⁵²

The law's treatment of Judy Norman is a striking contrast to the treatment of Bernhard Goetz, and the two cases bear strong similarity to the differential treatment of the Marissa Alexander and George Zimmerman cases. A woman who shot the man that had terrorized, beaten, prostituted, and threatened her for twenty years was denied a jury instruction on self-defense and convicted of voluntary manslaughter, whereas a man who shot (with intent to kill) four young men with whom he had no prior relationship was granted a self-defense instruction and acquitted of attempted murder and assault.¹⁵³

V. CONCLUSION

Stand Your Ground's normalization and praise of male violence against strangers on the one hand, and Battered Women's Syndrome's pathologization and condemnation of female violence against known abusers on the other make a toxic combination. Its influence is not limited to divergent outcomes in cases that go to trial. It offers reassurance and encouragement to men who would not only initiate violent encounters with strangers in public places, but also those who attack their wives in the privacy of their own homes. It reinforces a quasi-right for men to advance far from their homes to start fights, and a quasi-duty for women to retreat from their own homes instead of fighting back.¹⁵⁴ In other words, the Stand Your Ground/Battered Women's Syndrome

151. *Norman*, 378 S.E.2d at 15. Though the court obviously wished to sound a cautionary note in claiming that homicidal help would become the "easiest and most effective solution" to the problem of severe and prolonged domestic abuse, one way of stating my argument is to say that this claim is exactly right—not only descriptively, but normatively.

152. *Id.* at 16 (Martin, J., dissenting). See also *Woman Who Killed Abusive Husband Freed by Martin*, STAR-NEWS (July 8, 1989), <http://news.google.com/newspapers?nid=1454&dat=19890708&id=Br8sAAAAIAAJ&sjid=VhQEAAAAIAAJ&pg=4797,2865037> (noting that Governor of North Carolina, Jim Martin, commuted Judy Norman's six-year sentence).

153. B. Sharon Byrd, *Till Death Do Us Part: A Comparative Law Approach to Justifying Lethal Self-Defense by Battered Women*, 1991 DUKE J. COMP. & INT'L L. 169 (1991).

154. See Nourse, *supra* note 48, at 1284–85 ("To ask of battered women that they leave—in whatever doctrinal guise (imminence, retreat, threat, etc.)—raises serious questions about whether the law of self-defense treats battered women less favorably than others.").

axis offers strong reinforcement of the status quo: A world in which white male interests are at the top of the hierarchy, and everyone else's is somewhere below.¹⁵⁵ It offers more power to the already powerful, immunity to the already protected, and reproach for any woman who tries to act like a man.

Small wonder, then, that Angela Corey, the prosecutor in Marissa Alexander's case, used the following terms to condemn Marissa Alexander: "She was angry" when she fired the warning shot, "[s]he was not in fear."¹⁵⁶ (As if it were not possible to be both angry and afraid, and as if a woman does not have a right to be angry after being beaten and threatened in her own home by a man who refuses to leave.) At the same time, Stand Your Ground proponents would have us believe that George Zimmerman was afraid, not angry, when he shot and killed an unarmed teenager who had not so much as spoken to Zimmerman before the confrontation.

Much excellent work has already been done to explore how Stand Your Ground activates both conscious and unconscious racism, raising serious concerns that the law encourages white men in particular to see danger where they see blackness and to be found justified for doing so.¹⁵⁷ Less well-examined is the gendered effects that Stand Your Ground, in conjunction with Battered Women's Syndrome, have on law and society. Given the overwhelming rates of male violence against women as compared to female violence against men, any just evolution of self-defense law would need to address this imbalance by discouraging gratuitous male violence and encouraging responsive female violence. Instead, Stand Your Ground re-entrenches gender norms to restrain women's use of force even as men's use of force expands. The father-and-son Stand Your Ground defenders, Don and Matt Gaetz, conclude their editorial with this stinging rebuke:

Those who use every tragedy as an excuse to water down our right to keep and bear arms are already exploiting Trayvon Martin's death for their own purposes. . . . [W]e will remind the critics and the cynics why this law is necessary, who it protects, and, if it were repealed, whose side the Legislature would be taking in that dimly-lit parking

155. On racial disparities in Stand Your Ground, see Lisa Wade, *White Men's Freedoms and Black Men's Lives*, SOCIETY PAGES (Feb. 16, 2014, 10:38 PM), <http://thesocietypages.org/socimages/2014/02/16/white-mens-freedoms-and-black-mens-lives/>.

156. Trymaine Lee, *Marissa Alexander, Mom Facing 20 Years, Shot at Abusive Husband in Anger, Prosecutor Says*, HUFFINGTON POST (May 10, 2012, 9:59 AM), http://www.huffingtonpost.com/2012/05/09/marissa-alexander-prosecutor_n_1504428.html.

157. See L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293 (2012); see also Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555 (2013); see also Anita Bernstein, *What's Wrong with Stereotyping?*, 55 ARIZ. L. REV. 655 (2013).

lot or that darkened college dormitory.¹⁵⁸

But the truth is that the solemn invocation of the “dimly-lit parking lot or that darkened college dormitory” is a cheap and dishonest cover for the law’s hostility to women’s use of force, and the real intended impact of Stand Your Ground is exemplified by a man shooting an unarmed black teenager walking home.

158. Schorsch, *supra* note 4.