

A Call for Change: A Contextual-Configurative Analysis of Florida’s “Stand Your Ground” Laws

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I. INTRODUCTION

Public response to the shooting death of Trayvon Martin evidenced a drastic schism in community values. To some, the problem of “Stand Your Ground” represents purely a race issue that not only perpetuates endemic racial tensions amongst members of society,¹ but also generally protects whites more often than blacks.² On the other hand, some view the statutory scheme as a non-racist³ protection of individual liberties that makes the community safer.⁴ These two perspectives lie at the opposite ends of the spectrum, and both perspectives tend to oversimplify a complex issue.

In tracking the media coverage, protests, and commentary related to Florida’s most recent “Stand Your Ground” cases, it is readily apparent that the various interest groups and individuals weighing in are sharply

1. Michael H. Cottman, *Commentary: Zimmerman Acquittal Says it’s Open Season on Black Males*, BLACK AM. WEB (July 14, 2013), <http://blackamericaweb.com/2013/07/14/zimmerman-acquittal-black-teens/>.

2. *Id.*

3. Matt Wilstein, *Ted Cruz Tells Trayvon’s Mother Why Stand Your Ground Laws Can’t Possibly Be ‘Racist,’* MEDIAITE (Oct. 29, 2013), <http://www.mediaite.com/tv/ted-cruz-tells-trayvons-mother-why-stand-your-ground-laws-cant-possibly-be-racist>.

4. Abby Goodnough, *Florida Expands Right to Use Deadly Force in Self-Defense*, N.Y. TIMES (Apr. 27, 2005), <http://www.nytimes.com/2005/04/27/national/27shoot.html>.

divided.⁵ This disagreement occurs for two principle reasons. First, the participants embrace fundamentally different value structures, so their acceptance of the legitimacy of Florida's "Stand Your Ground" law will naturally create dissonance. Second, most viewpoints being advanced are far too myopic to account for the multi-faceted issues presented by Florida's version of "Stand Your Ground."

This Article attempts to account for each of the competing viewpoints related to the statutory scheme. This author's position is that in legalizing certain types of homicide by decriminalizing killings and other acts of violence involving self-defense,⁶ Florida has exchanged respect for human dignity with cold self-import.⁷ To examine the process by which this transformation occurred, this Article relies on a jurisprudential model, created by Yale professors Harold Lasswell and Myres McDougal, for the preservation of human dignity.⁸ It is important to note that this theory of legal inquiry was intended to be applicable to both micro and macro analyses,⁹ though most scholars have employed it as a tool for studying international law and politics.¹⁰ The peculiar feature of this model, however, is that it also specifically contemplates individuals, making it uniquely suited to the inquiry of any legal system.¹¹

As a central premise, it establishes that effective¹² law requires the existence of both authority and control.¹³ Authority and control manifest when laws are created consistently with commonly held community values.¹⁴ By the same token, if a law is inconsistent with commonly held values, it may lose its authority, control, or both.¹⁵ In the case of Florida's "Stand Your Ground" statutory scheme, this Article suggests that the turmoil following the shooting death of Trayvon Martin and the continuing media attention of other shooting deaths since that time illustrate the inconsistency between the law and relevant human values.

5. Elizabeth Megale, *Disaster Unaverted: Reconciling the Desire for Safe and Secure State with the Grim Realities of Stand Your Ground*, 37 AM. J. TRIAL ADVOC. 255, 282 (2013).

6. *Id.* at 257.

7. *Id.*; Elizabeth Megale, *Deadly Combinations, How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allow Criminals to 'Get Away with Murder,'* 34 AM. J. TRIAL ADVOC. 105 (2010).

8. HAROLD D. LASSWELL & MYERS S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY* (1992).

9. *Id.* at 335; *see also* WINSTON P. NAGAN, *CONTEXTUAL-CONFIGURATION JURISPRUDENCE: THE LAW, SCIENCE, AND POLICIES OF HUMAN DIGNITY* 3 (2013).

10. NAGAN, *supra* note 9, at vi.

11. *Id.* at 1.

12. The Lasswell/McDougal model predates modern legal legitimacy discourse, though it employs similar vocabulary. Modern theories about legitimacy of the law are beyond the scope of this Article.

13. LASSWELL & MCDUGAL, *supra* note 8, at 400.

14. *Id.*

15. *Id.* at 401.

The legal theory mapped out by Lasswell and McDougal employs a discrete vocabulary attributing particularized meanings to words, which are sometimes inconsistent with common parlance.¹⁶ Throughout this Article, these terms will be defined in the words of the authors and used as intended within the jurisprudential context.¹⁷ The analytical framework creates a launching point with identification of an outcome relevant to a particular value situation.¹⁸ From there, pre- and post-outcomes can be determined.¹⁹ Once outcomes are identified, the community participants must be identified.²⁰ The value situation is assessed by analyzing the participants, their values, and the strategies used to leverage their values to gain command over others and achieve a specific outcome and effect.²¹ Section II provides the background for this normative framework.

Section III applies this jurisprudential framework in the context of Florida's "Stand Your Ground" statutes. It begins the legal analysis by identifying the decision to enact Florida's "Stand Your Ground" as the central outcome giving rise to the present value situation. The pre- and post-outcomes will be analyzed together with the participants, their values, and strategies for leveraging to achieve the desired outcome. The effects will then be identified and interpreted to reach the conclusion that Florida's "Stand Your Ground" law is inconsistent with commonly held community values. Finally, Section IV concludes by examining the implications of the analysis and suggesting reforms for aligning the law with community values.

II. NORMATIVE FRAMEWORK

*Jurisprudence for a Free Society*²² is the two-volume magnum opus of Myres McDougal and Harold Lasswell. Labeled contextual-configurative jurisprudence,²³ it is a normative response to the tension cre-

16. *Id.* at 391–97 (“It is beyond dispute that new modes of discourse are difficult to grasp and assess. In part, this comes about because the processes of thought and of communication typically receive scant attention during formative years. Although vocabularies are taught, they are seldom examined as phenomena whose fundamental principles ought to be part of the intellectual equipment of every educated member of society. As a result, it is much more difficult than need be for educated persons to master relatively new and systematic modes of discourse.”).

17. EMILE DURKHEIM, *SUICIDE: A STUDY IN SOCIOLOGY* 41 (1951) (providing particularized definitions is not unusual because “words of everyday language, like the concepts they express are always susceptible of more than one meaning, and the scholar employing them in their accepted use without further definition would risk serious misunderstanding”).

18. LASSWELL & MCDUGAL, *supra* note 8, at 379.

19. *Id.*

20. *Id.* at 381.

21. *Id.*

22. *Id.*

23. *Id.* at vi.

ated by the simplicity²⁴ of other legal theories like legal formalism and legal realism.²⁵ McDougal and Lasswell developed this jurisprudence over decades throughout their careers with the purpose of providing a multi-faceted approach to legal analysis taking into account other disciplines that study the nuances of humanity.²⁶ In particular, “Lasswell’s deepest personal commitment was to the creation of a comprehensive theory for inquiry about the individual human being in social process.”²⁷ This interdisciplinary framework provides a workable, albeit complex,²⁸ method for analyzing the development, implementation, and evolution of the law.²⁹

This Article does not purport to evaluate the validity of the legal theory; rather, accepting the theory at face value, it uses it as a framework to analyze the enactment, effect, and status of Florida’s “Stand Your Ground” legislation. This framework offers a ready lens to expose the imbalance of power and conflict in values represented by Florida’s “Stand Your Ground” law. To that end, an overview of the legal theory is necessary.

Essential to the jurisprudence is a basic understanding of the social process itself and the role of the legal process as a part of it.³⁰ To state it simply, “[w]hen two persons influence one another, the process is social, whether the individuals concerned are aware of one another or not. Wherever there is mutual influencing there is community.”³¹ The social process involves people pursuing “values through institutions using resources.”³² Because legal processes involve individuals who use institutions and resources³³ to advance values, it would be naïve to consider

24. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 8 (1991) (one characteristic of American jurisprudence is “[t]he hypostatization of exclusive categories and definitional polarities, the drawing of bright lines and clear taxonomies that purport to make life simpler in the face of life’s complication: rights/needs, moral/immoral, public/private, white/black”).

25. LASSWELL & MCDUGAL, *supra* note 8, at xxx (in Lasswell’s view, “American legal realists had demonstrated that technical legal rules and concepts are not the only factors affecting decision and had intensely demanded certain heterogeneous and uncoordinated reformist goals, with little indication of how authoritative decision might best be changed to achieve such goals”).

26. NAGAN, *supra* note 9, at 1.

27. *Id.* at 8.

28. LASSWELL & MCDUGAL, *supra* note 8, at xxxvi-xxxvii (“In one perspective much of what had to be done seems obsessively trivial. And yet, unless ‘trivia’ are dealt with, the reinterpretation of ‘tradition’ is deferred another generation.”).

29. *Id.* at xxxvii.

30. *Id.* at 335 (“The legal process is part of the process of decision which in turn is part of the social process as a whole.”).

31. *Id.*

32. *Id.* at 336.

33. *Id.* at 355 (“The term ‘resource’ is used to designate the physical environment in which social interactions are carried on, and which may be directly involved in an interaction.”); *Id.* at

R

R

the law in a vacuum without accounting for the surrounding social process and the reciprocal effects.

A. *The Social Process*

Focusing on the broader social process first, human values include power, enlightenment, wealth, wellbeing, skill, affection, respect, and rectitude.³⁴ Lasswell and McDougal were cautious to define each value with particularity.

Power is the making of decisions important to the social context as a whole and enforceable against challengers when necessary by the use of severe sanctions. . . . Enlightenment is the gathering and spreading of information. . . . Wealth is the production and distribution of goods and services. . . . Well-being is opportunity for safety, health and comfort. . . . Skill is opportunity to acquire and exercise excellence in a particular operation. . . . Affection is giving and receiving intimacy, friendship and loyalty. . . . Respect is recognition and the reciprocal honoring of freedom of choice. . . . Rectitude refers to responsibility for conduct.³⁵

All eight values appear in communities in varying degrees,³⁶ but the specifics, details, and modalities of how these values are engendered and pursued throughout different communities are widely varied.³⁷ Moreover, even within communities it might be difficult to reach consensus as to how values ought to be pursued and prioritized, and “it is usual to find many degrees of inequality.”³⁸ Inequalities arise by virtue of the fact that values are distributed unevenly throughout communities.³⁹ Additionally, discrepancies in defining values, particularly those like “respect” and “well-being,” create systems of inequality within and amongst communities.⁴⁰ Thus, a class system emerges within any given value with individuals occupying an elite, mid-elite, or rank and file status.⁴¹

Theoretically, values might be agglutinative,⁴² but in practice it does not necessarily hold true that an elite in one value is the elite for all

356 (depending on the usefulness of resources for values, the physical environment’s role will be affected).

34. LASSWELL & MCDUGAL, *supra* note 8, at 377.

35. *Id.* at 337–38.

36. *Id.* at 339.

37. *Id.* at 339–40.

38. *Id.* at 343.

39. *Id.*

40. *Id.*

41. *Id.* at 344.

42. *Id.* at 345 (in theory, “‘values are agglutinative[.]’ that is, that the possession of a high position in one value increases the probability that the individual or group will hold a high position in the command of any value”).

values.⁴³ Notwithstanding, the initial distribution of values will impact the potential for a given individual or group to successfully leverage them to gain command of other values.⁴⁴ For example, an elite in power or wealth generally has more potential to command other values than an elite in well-being or respect, at least in Western cultures.⁴⁵

The potential for a value to be leveraged is related to the perspectives and practices of the individuals in community. “Perspectives” contemplate the “inner life of those who participate in an interaction,”⁴⁶ accounting for identity, demands, and expectations.⁴⁷ Taking the perspectives along with the behavior, or “operations,” of the participants, recurrent patterns (“practices”) emerge.⁴⁸ Human beings tend to modify their behavior when they interact with each other, but some “relatively stable patterns emerge.”⁴⁹ These stable patterns are referred to as personality and are separate from the behavior of an individual as affected by the social process.⁵⁰ Together, all the perspectives existing in a given institutional context create a “myth,”⁵¹ and the cumulative operations represent “technique.”⁵² As an extension, cultures emerge when there is a “distinctive and stable pattern of community values and institutions.”⁵³

The leveraging of values allows the elite to dominate the sharing and shaping of values throughout the community. To understand how this leveraging is possible, one must first consider the role of base and scope values. To a certain degree, “each category of value is sought as an end or employed as a means.”⁵⁴ The pursuit of values refers to “scope values,” while their utilization implicates base values.⁵⁵ Values might be used as a base for augmenting their own scope⁵⁶—consider the adage, “it takes money to make money,” as representative of wealth used as a base to expand the scope of wealth. Likewise, a base value can serve as the impetus for increasing the scope of another value—“money is

43. *Id.*

44. *Id.* at 343.

45. *Id.*

46. *Id.* at 347.

47. *Id.* at 350.

48. *Id.* at 347.

49. *Id.* at 349.

50. *Id.* (“By adopting this usage, we separate the purely biological organism from the human being as changed by participation in social process.”).

51. *Id.* at 347 (in this context, “myth” is employed as is established in the social sciences and “is intended to express or imply no judgment of approval or disapproval, or of realism or unrealism”).

52. *Id.* at 347–48; *id.* at 353 (“myth” refers to the subjective “stable patterns of personal as well as group perspectives”); *id.* at 348 (“[t]echnique” tends to be objectively measurable”).

53. *Id.* at 348.

54. *Id.* at 340.

55. *Id.*

56. *Id.* at 340–43.

power” is a notion that represents the use of wealth as a base value to achieve a greater scope of power. To the extent any individual or group commands a particular value, that base may be used to acquire command over other values by shaping and sharing those within the community. Based upon this system of interaction, it would be possible for a dominant minority to define community values for a weaker majority.⁵⁷

Personality plays a significant role in value determination because it is “organized in reference to values and employs practices specialized in varying degree to the shaping and sharing of each value.”⁵⁸ Consider the following: “[T]he power-centered personality is of special interest to lawyers and legal scholars. Such a political personality diverges in discernible ways from the wealth-centered, respect-centered, or enlightenment-centered person.”⁵⁹ Additionally, because personality is embedded in culture while simultaneously representing the individual, it is possible to observe collective personality patterns intertwined with personal patterns to create a common context or system.⁶⁰ This personality system is comprised of identification, demands, and expectations.⁶¹

Considering the first of these three components, identification is critical to assessing the participants in a given community, as well as their potential command over the shaping and sharing of values.⁶² The symbols used by individuals and groups within a community create a system of identification.⁶³ The difficulty emerges in identifying the various participants because “‘identities’ are far more numerous than ‘bodies,’ and relate the biological individuals to one another in many different ways in the pursuit of value goals in various institutional networks.”⁶⁴ Emphasizing individuals and organized groups makes it possible to identify “targets of responsibility.”⁶⁵ Notwithstanding, unorganized groups should not be discounted, as they are useful “in examining factors that help to explain conduct.”⁶⁶

The second and third components of personality systems relate to perspectives, or demands and expectations. “The demand system is composed of the values sought, and the practices assumed to embody these

57. *Id.*

58. *Id.* at 350.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 351 (“It is possible to classify the identification system of any member of a culture for the purpose of ascertaining the degree to which the person is identified within the culture as a whole or with component classes and institutions.”).

63. *Id.* at 350–51.

64. *Id.* at 351.

65. *Id.*

66. *Id.*

values.”⁶⁷ Demands can be placed by the self on the self, or they can be placed by the self on others.⁶⁸ Typically, demands evolve into patterns involving a complex amalgamation of values and particularized demands.⁶⁹ Intertwined with demands are expectations, which can be either positive or negative and involve the self or others.⁷⁰ The following formula⁷¹ illustrates this point:

System of expectations = positive⁷² expectations concerning demands by self on self
 +
 negative⁷³ expectations concerning demands by self on self
 +
 positive expectations concerning demands by self on others
 +
 negative expectations concerning demands by self on others
 +
 positive and negative expectations concerning demands by others on self
 +
 positive and negative expectations concerning demands by others on others

Identification, demands, and expectations, both personal⁷⁴ and group, eventually stabilize into myths,⁷⁵ which can be subcategorized as doctrine, formula, and miranda.⁷⁶ Doctrine refers to “abstract propositions that affirm the perspectives of the group.”⁷⁷ It is typically expressed through symbols of identification coupled with demands and expectations⁷⁸ and is often memorialized in canonical documents such as

67. *Id.* at 352.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 352–53 (“In this setting the term ‘positive’ means a favorable indulgence of the self in the situation referred to.”).

73. *Id.* at 353 (“‘Negative’ refers to deprivations of the self.”).

74. *Id.* at 355 (“The aggregate of stabilized perspectives which comprise a person’s myth are also divisible into doctrine, formula and miranda (lore). The formula includes the ‘shalt’ and ‘shalt not’ components of the self-system.”).

75. *Id.*

76. *Id.* at 353.

77. *Id.*

78. *Id.* (doctrinal “propositions make use of the basic symbols of identification, together with the formulation of fundamental goal values and expectations concerning the past, the present, and the future”).

the Declaration of Independence or the Magna Carta.⁷⁹ To give effect to doctrine, formulas are necessary to develop prescriptions and mechanisms ensuring consistent implementation of doctrine.⁸⁰ Miranda facilitates the understanding of doctrine and provides a mode for interpretation of formulas vis-à-vis doctrine.⁸¹ Patterns of myths evolve over time and differ throughout communities.⁸² Dominant myths are those advanced by the elite in any given social structure and may be labeled ideology.⁸³ Counter-ideology is the systematization of discontent within communities and requires an “explicit rejection of the established ‘ideology.’”⁸⁴

Analysis of each of these elements would be impossible without the outward expression of inward processes through communication and collaboration.⁸⁵ “Communication” refers to the signals (including speech and gestures) used to communicate subjective perspectives between various systems.⁸⁶ Collaboration, on the other hand, refers to activities bridging competing perspectives.⁸⁷

Of course, consideration of this framework would be pointless without some ability to measure outcomes. Outcomes analysis studies the complex relationships between demands, expectations, and perceptions of identity as well as myths, modes of communication, and value systems.⁸⁸ Additionally, “some outcomes deal directly with the formulation of prescriptions,”⁸⁹ a component of myth, while others invoke existing prescriptions.⁹⁰ The formulation of prescriptions is effectively a normative act sanctioning specific expectations with regard to particular activities.⁹¹ Activities promoting any given prescription are common prior to its adoption, as are intelligence missives including collection

79. *Id.* at 353 (examples of doctrinal statements include: “Governments (derive) their just Powers from the Consent of the Governed.”) (citing Declaration of Independence (1776)); *see also* Magna Carta Art. 29 (“No freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers or by the law of the land.”)).

80. LASSWELL & MCDUGAL, *supra* note 8, at 354.

81. *Id.*

82. *Id.* at 355.

83. *Id.*

84. *Id.* (an example would be “when a communist mass party rejects the ruling ‘feudal’ or ‘capitalistic’ doctrine”).

85. *Id.* at 357.

86. *Id.*

87. *Id.*

88. *Id.* at 358.

89. *Id.*

90. *Id.* at 359 (“An invocation is a provisional characterization of a concrete situation in terms of an alleged prescription.”).

91. *Id.*

and analysis of data and planning.⁹² Through intelligence and promotion activities, community perspectives can be assessed, measured, and influenced.⁹³

Related to the invocation of prescriptions are the notions of application, termination, and appraisal. Invocation of a prescription will include any “initial steps taken to put a prescription into effect.”⁹⁴ Application refers to the point in time when a prescription is finally (not provisionally) characterized as such.⁹⁵ Terminations refer to the point in time when a prescription ceases.⁹⁶ Appraisal is the process by which prescriptions are evaluated to assess their functionality vis-à-vis the goals of collective policy and to allocate responsibility for results.⁹⁷

Working together, these apparatuses create policy systems that assist in identifying patterns of future actions by individuals or groups.⁹⁸ Interests arise from policies and “refer to events expected to harmonize with value demands.”⁹⁹ Shared interests are referred to as “common” and other incompatible interests are “special.” This dynamic reflects a system of exclusivity such that “[c]ommon interests are ‘inclusive’ when the events involved are of considerable importance for all; they are ‘exclusive’ when the relevant events are of very much greater importance to identifiable sub-groups than to the whole.”¹⁰⁰

To return to the beginning, values and outcomes are tethered through the complex interplay of each salient element of the social process. Values are manifested through particular outcomes, as follows:¹⁰¹

<u>Value</u>	<u>Outcome</u>
Power	Decision
Enlightenment	Knowledge
Wealth	Transaction
Well-being	Vitality
Skill	Performance
Affection	Cordiality
Respect	Prestige
Rectitude	Rightness

Moving forward, a working definition of each outcome is necessary. “[A] decision is giving, withholding, rejecting or receiving support

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 360.

99. *Id.*

100. *Id.*

101. *Id.* at 377 (chart is reproduced from *Jurisprudence for a Free Society*).

in an interaction that affects the entire social context to a significant extent (including the probable use of severe deprivational sanctions against challengers).¹⁰² Knowledge is “a culminating interaction in which information about the past and present, together with estimates of the future, are made available, withheld, rejected or received.”¹⁰³ Transactions are “the giving, withholding, rejecting or receiving of claims to processed (or processable) resources.”¹⁰⁴ Vitality refers to individual and group health, with an eye toward elongation and preservation of life free from disease, illness, discomfort, or defect.¹⁰⁵ Performance is evidenced through formal examinations and the appraisal of work product.¹⁰⁶ Congeniality is related to loyalty and assessed by examining families and their disruptions, social activities, and clashes between and commitments to one another.¹⁰⁷ Prestige requires a method of “taking note of the culminating circumstances in which recognitions are given or received.”¹⁰⁸ Finally, rightness evolves from sequences of affirmations and inquiries that solidify the moral and ethical conscience.¹⁰⁹

B. *Legal Processes*

Lasswell and McDougal adopted a broad definition of the “law” as “a process of authoritative decision by which the members of a community clarify and implement their common interests.”¹¹⁰ This legal system is also an embedded element within the broader social process.¹¹¹ Accordingly, it must be both stable enough and dynamic enough to respond to the various demands and expectations of the community.¹¹² Thus, it both affects, and is affected by, the social process.

All institutions within a society must strike a balance between competing worlds.¹¹³ Competing worlds can be identified by comparing inclusive and exclusive interests, or by the distribution of base values in a given community.¹¹⁴ Social order is maintained when stability is flexible enough to provide for change as values and interests evolve.¹¹⁵

102. *Id.* at 379.

103. *Id.*

104. *Id.*

105. *Id.* at 520–23.

106. *Id.* at 532.

107. *Id.* at 553–54.

108. *Id.* at 566.

109. *Id.* at 588–590.

110. *Id.* at xxx.

111. *Id.*

112. *Id.* at 365.

113. *Id.* at 366.

114. *Id.*

115. *Id.*

Often, a dominant majority of the collective may define values, but sometimes, like in apartheid, a powerful minority might have sufficient power to define them. Additionally, the boundaries separating the majority from the minority are always shifting such that over time individuals and groups who were traditionally excluded from the collective, the “others,” find themselves included in the mainstream.¹¹⁶ Also, as boundaries shift, those who were once included may become outsiders. These boundaries morph as values and beliefs of the collective evolve.

Law “refers to the ‘power institutions’ in a community,”¹¹⁷ and power is correlated to decision outcomes.¹¹⁸ In turn, the processes affecting decisions implicate the balance of authority and control.¹¹⁹ “Control” avers to the “effective impact on the choices being made.”¹²⁰ “Authority” means the “expectations of permissibility, [and] expectations among community members that decision functions are properly performed.”¹²¹

As a foundational matter, both Lasswell and McDougal assert that to be law, it must possess both authority and control.¹²² If either is absent, the rule of “law” is an abuse of power.¹²³ The absence of control leads to pretended power, and the absence of authority leads to naked power.¹²⁴ When authority and control are absent, anarchy and chaos erupt.¹²⁵ According to Lasswell and McDougal, authority and control derive from members of society when the law is consistent with their values.¹²⁶

Furthermore, authority and control are manifested through the enactment of various types of codes. Constitutive codes are the most comprehensive and operate as the formula component of myth to “establish[] a process of authoritative decision and [to] allocate[] permissible

116. Elizabeth Megale, *The Invisible Man: How the Sex Offender Registry Results in Social Death*, 2 J. L. & SOC. DEVIANCE. 92, 96 (2011).

117. LASSWELL & MCDUGAL, *supra* note 8, at 379.

118. *Id.* at 377.

119. *Id.* at 362 (though authority and control relate to the broader social process, too, this Article analyzes them through a legal lens and thus explains them through analysis of their role in the legal process).

120. *Id.*

121. *Id.*

122. *Id.* at 400.

123. *Id.*

124. *Id.* (demonstrating in mathematical terms, it appears:

“+ authority + control = law

+ authority – control = pretended power

+ control – authority = naked power”).

125. *See id.*

126. *See id.* at xxx, 362.

participations in the decision process.”¹²⁷ Supervisory codes “refer[] to the more general principles for settlement of controversies between private parties.”¹²⁸ A “‘regulative’ code refers to the community limits within which private shaping and sharing activities are to be carried on.”¹²⁹ Finally, the “‘sanctioning and corrective’ code includes all the activities designed in appropriate contingencies to maintain conformity to the norms of collective policy.”¹³⁰

Each code has particular objectives, but only the sanctioning and corrective code is relevant to this Article. The six permissible objectives of the sanctioning and corrective code are deterrence, prevention, restoration, rehabilitation, reconstruction, and correction.¹³¹ Deterrence and prevention “are [both] designed to influence the expectations of potential violators by making the point that compliance is likely to leave one better off than non-compliance.”¹³² The difference between deterrence and prevention rests in the “scope of the measures adopted to forestall non-compliance.”¹³³ For example, a deterrent measure might use the fear of sanctions to punish certain behavior, while prevention might include an educational campaign aimed at shifting a mindset toward or against a particular activity.¹³⁴

In a similar vein, restoration and rehabilitation share the goal of “putting a stop to acts of violation and as far as possible reinstate the original situation,”¹³⁵ but rehabilitation simply takes the additional step of “undo[ing any] deprivations of value occasioned by the impermissible activities.”¹³⁶ The purpose of reconstruction is to fundamentally alter “prevailing institutions.”¹³⁷ Finally, corrective measures are intended to achieve “personality changes in offenders (an objective paralleling the reconstruction of a group).”¹³⁸

As a legal institution, the sovereign’s decisions are “an outcome of power,”¹³⁹ and become authoritative as an outcome of the sovereign’s pattern of “established and recognized authoritative practice.”¹⁴⁰ Returning to the notion of social order, this pattern factors into percep-

127. *Id.* at 362.

128. *Id.*

129. *Id.*

130. *Id.* at 363.

131. *Id.* at 363–4.

132. *Id.* at 363.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 364.

139. NAGAN, *supra* note 9, at 92.

140. *Id.*

tions of stability insofar as it employs “‘built-in’ regulative practices that identify and negatively sanction acts deviating from shared prescriptions.”¹⁴¹ Moreover, the most stable prescriptions are simultaneously authoritative and controlling—these are the most supported by society and which, upon violation, are expected to result in punishment.¹⁴² These prescriptions are known as “mores” and have a tendency to strongly influence societal norms and values.¹⁴³ “Counter-mores,” on the other hand, are prescriptions that individuals expect to be violated even though the community might strongly support the norms.¹⁴⁴ Violation of a counter-more is not likely to be punished harshly because “it is perceived that violators cannot be entirely stamped out.”¹⁴⁵

While, mores, counter-mores, and expediencies are culture traits,¹⁴⁶ only mores and counter-mores create social order because they are the only cultural traits involving prescriptions.¹⁴⁷ Over time, societal norms can evolve such that mores eventually become counter-mores or expediencies.¹⁴⁸ This evolutionary process is reciprocal; expediencies may turn into counter-mores and then mores as societal values change.¹⁴⁹

An example of the former can be seen in the cultural shifts in norms related to marijuana use. Between 1951 and 1996, every state and federal jurisdiction criminalized the use of marijuana.¹⁵⁰ Initially, the prescription represented a more that was “expected to be countered by negative sanctions”¹⁵¹ upon violation. Over time however, in many communities, marijuana use evolved into a counter-more. For example, for many years New York City has treated marijuana as an infraction and not a crime.¹⁵² Additionally, over time, individuals have changed their

141. LASSWELL & MCDUGAL, *supra* note 8, at 366.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* (“‘Expediencies’ are the culture traits which are neither mores nor counter-mores.”).

147. *See id.* at 366–67.

148. *Id.* at 366 (“Every culture possesses patterns which are open to change though changes are often mildly disapproved.”).

149. *See* Megale, *The Invisible Man*, *supra* note 116, at 95–96.

150. *History of Marijuana as Medicine – 2900 BC to Present*, PROCON.ORG (Aug. 13, 2013, 4:48 PM), <http://medicalmarijuana.procon.org/view.timeline.php?timelineID=000026> (stating that Congress passed the Boggs act in 1951, establishing mandatory minimum sentences for simple possession of marijuana, and, in 1996, California became the first state to legalize the drug for medical use).

151. LASSWELL & MCDUGAL, *supra* note 8, at 366.

152. Erik Altieri, *NYC Mayor Bloomberg: Starting Next Month, No Jail for Marijuana Possession*, NORML (Feb. 14, 2013), <http://blog.norml.org/2013/02/14/nyc-mayor-bloomberg-starting-next-month-no-jail-for-marijuana-possession/> (“Under current law, possession of marijuana for personal use in private is punishable by a ticket, but possession of marijuana open to public view or being burnt in public is a Class B misdemeanor punishable by a fine of \$250 with a

expectations about the consequences of marijuana use such that even those opposed do not necessarily expect it to be harshly punished.¹⁵³ Currently, the legalization of marijuana in some jurisdictions has prompted evolution of the counter-more into an expediency, because it has ceased to be a prescription.¹⁵⁴

Expediencies evolve into counter-mores and mores in a similar fashion. Consider the trends of pederasty.¹⁵⁵ Though a common practice in ancient Greek Society,¹⁵⁶ today the idea of grown men engaging young boys in sexual activity is heinous. Since society now expects such acts to be severely punished,¹⁵⁷ the practice has become a more.

Culture traits are influenced by all the salient elements of the social process and the evolutionary quality of culture traits propels the law-culture-law cycle.¹⁵⁸ In this cycle, laws are created through the influence of existing values, institutions, and other elements of the social process. The law comes into existence by aligning with dominant values to achieve authority and control, and as counter-mores emerge in response to evolving value systems, the law risks losing authority and control over the community.¹⁵⁹ Simultaneously, law affects value systems in the way it is administered—“[a]n important key to any social order is the severity or the mildness of the value deprivations employed as negative sanctions against any challenger of established norms.”¹⁶⁰

For example, consider the evolution of adultery laws in the United States. Two hundred years ago, adultery was considered a crime in virtually all jurisdictions.¹⁶¹ As of 2013, however, only twenty-two states still

maximum sentence of 90 days. This initiative could go a long way towards correcting the draconic policy currently in place in the city, which disproportionately effects [sic] people of color and costs taxpayers about 75 million dollars a year in enforcement and prosecution costs. New York City is the marijuana arrest capitol [sic] of the world, with 50,684 arrests for marijuana offenses in 2011 alone[;] hopefully[,] this action from the mayor will encourage his fellow New Yorkers in Albany to cease the arrest of marijuana consumers across the state.”).

153. See Lauren McGaughy, *Marijuana Laws in Louisiana Should Be More Lenient*, *New Poll Results Say*, THE TIMES-PICAYUNE (Sept. 5, 2013, 5:48 PM), http://www.nola.com/politics/index.ssf/2013/09/marijuana_pot_louisiana_poll_p.html.

154. See CAL. HEALTH & SAFETY CODE § 11362.5 (2011); COLO. CONST. art. XVIII, § 16; WASH. REV. CODE § 69.51A.005(2) (2011).

155. See Francisco Valdes, *Unpacking Hetero-Patriarchy: Tracing the Conflation of Sex, Gender, & Sexual Orientation to Its Origin*, 8 YALE J.L. & HUMAN. 161, 186–87 (1996).

156. *Id.*

157. See Megale, *The Invisible Man*, *supra* note 116, at 146.

158. Megale, *Disaster Unaverted*, *supra* note 5, at 33–39.

159. LASSWELL & MCDUGAL, *supra* note 8, at 368.

160. *Id.* at 367.

161. JOANNE SWEENEY, HISTORY OF ADULTERY AND FORNICATION CRIMINAL LAWS 1, available at <http://ssrn.com/abstract=2242473>.

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criminalize adultery,¹⁶² and it is rarely prosecuted.¹⁶³ Take for example the case of David Petraeus, a four-star general and former director of the CIA, who resigned amidst an adultery scandal.¹⁶⁴ Although both his state of residence, Virginia, and the military criminalize adultery, he has not been prosecuted.¹⁶⁵ Moreover, most Americans would not consider him a criminal simply because he had an extra-marital affair.¹⁶⁶

Similarly, courts have evolved their interpretation of the significance of adultery.¹⁶⁷ In 1838, Mr. Lash, a married man, was accused in New Jersey of committing the crime of adultery with an unmarried woman.¹⁶⁸ In considering how adultery could be “a crime against society, and not [] a mere breach of the marriage vow,”¹⁶⁹ the court sought guidance from the Holy Bible to determine that adultery could only be committed with a married woman.¹⁷⁰ Furthermore, the court commented on the collectively held value that, “where the woman is married, *all* admit that both are guilty of adultery, whether the man be married or single.”¹⁷¹

Comparatively, in 1992, a court in the same jurisdiction observed a different value system related to adultery.¹⁷² Specifically, in *S.B. v. S.J.B.*, the court reasoned that “it is the function of the court to define terms, based upon the standards of the times so that law may truly reflect the mores of our society.”¹⁷³ Upon this premise, the court retreated from

162. See ALA. CODE § 13A-13-2(c) (2014); ARIZ. REV. STAT. § 13-1408(A) (2013); FLA. STAT. § 798.01 (2013); GA. CODE § 16-6-19 (2013); IDAHO CODE § 18-6601 (2014); 720 ILL. COMP. STAT. 5 / 11-35(b) (2014); KAN. STAT. § 21-5511(b) (2013); MD. CODE § 10-501(b) (2014); MASS. GEN. LAWS 272 § 14 (2014); MICH. COMP. LAWS § 750.30 (2014); MINN. STAT. § 609.36; MISS. CODE § 97-21-1 (2013); N.H. REV. STAT. § 645:3 (2014); N.Y. ADULTERY LAW § 255.17 (McKinney 2014); N.D. CENT. CODE § 12.1-20-09(1) (2013); OKLA. STAT. § 872 (2013); R.I. GEN. LAWS § 11-6-2 (2013); S.C. CODE § 16-15-60 (2013); VA. CODE § 18.2-365 (2013); W. VA. CODE § 62-9-20 (2014); WIS. STAT. § 944.16 (2013).

163. Tim Murphy, *Map: Is Adultery Illegal?*, MOTHER JONES (Nov. 29, 2011, 2:20 PM), <http://www.motherjones.com/mojo/2011/11/is-adultery-illegal-map> (“State-level adultery provisions are rarely if ever enforced.”).

164. Ethan Bronner, *Adultery, an Ancient Crime That Remains on Many Books*, N.Y. TIMES, Nov. 15, 2012, http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html?_r=1&.

165. *Id.*

166. *Id.* (“When David H. Petraeus resigned as director of the C.I.A. because of adultery he was widely understood to be acknowledging a misdeed, not a crime. Yet in his state of residence, Virginia, as in 22 others, adultery remains a criminal act, a vestige of the way American law has anchored legitimate sexual activity within marriage.”).

167. See *State v. Lash*, 16 N.J.L. 380, 381 (1838); see also *S.B. v. S.J.B.*, 609 A.2d 124, 126 (N.J. Ch. 1992).

168. *Lash*, 16 N.J.L. at 380.

169. *Lash*, 16 N.J.L. at 381.

170. *Id.* at 382.

171. *Id.* at 383 (emphasis added).

172. *S.J.B.*, A.2d at 126.

173. *Id.*

the definition of adultery as articulated in *Lash* to hold “that adultery exists when one spouse rejects the other by entering into a personal intimate sexual relationship with any other person, irrespective of the specific sexual acts performed, the marital status, or the gender of the third party.”¹⁷⁴

Returning to the challenge of balancing stability and innovation in society, Lasswell and McDougal employed the maximization postulate which affirms “that policies are chosen which are expected to yield net value advantages.”¹⁷⁵ Appearing simple at first glance, the maximization postulate in-fact reveals a complex decision-making process.¹⁷⁶ “Degrees of unfreedom and freedom [must be distinguished] according to the variety of alternatives open to the responder, and the magnitudes of value indulgence or deprivation involved.”¹⁷⁷ Outcomes cannot be characterized as “either/or” options, but rather “more or less.”¹⁷⁸

In the context of social order, the maximization postulate allows some predictability, particularly with regard to habitual behavior.¹⁷⁹ Additionally, the maximization postulate optimizes by balancing value indulgences against deprivations to achieve maximum advantages.¹⁸⁰ As it relates to the use of base values to expand scope values, framing goals to portray optimization is essential to garnering community support for policies and preserving social order.¹⁸¹ Given the type of institution, policies might be formed by the elite without any input from the mid-elite or rank and file, while in other systems, contribution of the mid-elite and rank and file are essential to the success of the policy and preservation of social order.¹⁸²

The maximization postulate is not only backward-looking toward the explanation of past behaviors, but it is also forward-looking and relevant to the identification of goals.¹⁸³ The challenge of the law is to advance goals that will maximize desired values.¹⁸⁴ Policies will generally guide goal formation and value optimization for legal institu-

174. *Id.* at 127.

175. LASSWELL & MCDUGAL, *supra* note 8, at 368–69.

176. *Id.* at 369 (“We generally take it for granted that people will try to choose the course of conduct that leaves them better off than the alternatives they reject. . . . [But m]any policy outcomes are not genuine choices.”).

177. *Id.*

178. *Id.*

179. *Id.* at 370 (“Habitual behavior typically conforms to the maximization postulate without arousing perception of conflicting impulses.”).

180. *Id.*

181. *See id.*

182. *Id.* at 371.

183. *Id.* at 370.

184. *Id.* at 371 (stating that “the goal question is: ‘What ought I to want?’”).

tions.¹⁸⁵ Certainly, social change is a result of legal action because of its interconnectivity with culture traits (mores, counter-mores, and expediencies). Stability can be maintained by minimizing the nature and degree of changes at any given time.

Changes can be classified in one of two ways: Functional or structural.¹⁸⁶ Functional changes alter the way the salient elements of the social process interact with each other. Structural changes, on the other hand, “are exhibited in the pattern of value shaping and sharing (changes in priorities, or from wide to narrow distribution, or the reverse), or in basic institutions (in myth or technique).”¹⁸⁷ Past changes can be studied to predict pathways of future change, and they can also be used as models for achieving desired change.¹⁸⁸

C. Schematic for Analytical Framework

Returning to Florida’s “Stand Your Ground” laws, this Article will examine the value situation surrounding Florida’s enactment of a “Stand Your Ground” statutory scheme. The normative analytical framework requires a methodological approach to analyzing the relevant value situation by taking into account the participants, perspectives, base values, strategies, outcomes, and effects.¹⁸⁹ A value situation can be described as a “value shaping and sharing sequence.”¹⁹⁰

Lasswell and McDougal counsel that “identification of outcome events is the critical step both in value and institution analysis.”¹⁹¹ The identification of a given outcome permits the analysis of the surrounding events, including pre- and post-outcomes.¹⁹² Furthermore, it also facilitates the identification of base and scope values.¹⁹³ Moreover, the characterization of value outcomes facilitates the identification and description of institutional practices in any context.¹⁹⁴ The eight-value model, in Section II A, is the instrument of choice for “search[ing] for situations that are relatively specialized to the shaping and sharing of each value, and whose detailed patterns comprise each institution.”¹⁹⁵ Identifying the boundaries of a value situation is critical to correctly

185. *Id.* at 370–71.

186. *Id.* at 372.

187. *Id.*

188. *Id.* at 373.

189. *Id.* at 381.

190. *Id.* at 384.

191. *Id.* at 379.

192. *Id.*

193. *Id.*

194. *Id.* at 379–380.

195. *Id.* at 380.

identifying the participants and their roles.¹⁹⁶

Participants include those individuals and groups that shape and share values both formally¹⁹⁷ and informally.¹⁹⁸ Perspectives include the demands and expectations of the participants.¹⁹⁹ Base values are values that any given participant possesses that can be used to achieve power and other values.²⁰⁰ Strategies are the methods the participants employ to leverage base values.²⁰¹ Outcomes include both the resulting concrete events and the general prescriptions.²⁰² The effects “implicate all values, especially those critical to power, decision making, and organizing formalized authority, which will then affect the production and distribution of all values other than power.”²⁰³

By studying the participants and their perspectives, strategic patterns of leveraging base values to achieve particular outcomes and effects can be observed. Through this study, the evolution of culture traits and law can be identified, analyzed, and critiqued. Additionally, measuring outcomes “in units of interaction” is critical to assessing the value situation,²⁰⁴ as different units of measure apply to different outcomes.²⁰⁵ For example, power outcomes (decisions) are measured by votes,²⁰⁶ wealth outcomes (transactions) are measured by prices,²⁰⁷ enlightenment outcomes (knowledge) are measured by “informativeness,”²⁰⁸ well-being outcomes (vitality) are measured by “salubrity,”²⁰⁹ skill outcomes (performance) are measured by “craftsmanship,”²¹⁰ affection outcomes (cordiality) are measured by “friendliness,”²¹¹ respect outcomes (prestige) are measured by “distinction,”²¹² and rectitude out-

196. *Id.* (“For scientific purposes it is expedient to set minimum limits on the frequency of the interactions that must take place before a marginal territory or a pluralistic group is regarded as part of a given value situation (at the pre-outcome, outcome, or post-outcome stage). The ‘critical frequency’ would be selected in order to reveal the presence of at least minimum recognition that the social context is one in which particular outcomes are influenced and achieved.”).

197. *Id.* at 382.

198. *Id.*

199. *Id.* at 350.

200. *Id.* at 340.

201. *Id.* (stating that “[t]he management of base values to achieve scope values is ‘strategy’”).

202. *Id.* at 357–58.

203. NAGAN, *supra* note 9, at 91.

204. LASSWELL & McDOUGAL, *supra* note 8, at 394.

205. *Id.*

206. *Id.*

207. *Id.*

208. LASSWELL & McDOUGAL, *supra* note 8, at 385–86. (“Informativeness” refers to the number of informative reports in a given period).

209. *Id.* (“Salubrity” includes non-signs regarding health, safety and comfort).

210. *Id.* (“Craftsmanship” refers to levels of operational excellence).

211. *Id.*

212. *Id.*

comes (rightness) are measured by “morality” or “responsibility.”²¹³

This schema is useful for the methodological study of a value situation because it guards against overlooking a value that may be only minimally involved. Mapping the study consistently with this framework will “call[] attention to connections that might otherwise be overlooked.”²¹⁴ Additionally, general categorizations will not be sufficiently nuanced to validate the study.²¹⁵ In other words, businesses are not always wealth institutions and power institutions are not always governmental.²¹⁶ In this regard, particularized word choice and labels promote precision in analysis.²¹⁷

III. FLORIDA’S “STAND YOUR GROUND” STATUTES

A. *Outcome at Issue*

To begin our inquiry, we must identify the outcome giving rise to the value situation. For the purposes of this Article, the enactment of Florida’s “Stand Your Ground” statutes is the outcome because the statutes are a result of legislative decisionmaking. Recall, “decision” is the outcome related to power.²¹⁸ The remainder of the analysis will be organized by participants because each pre- and post-effect, base value, and strategy is particular to a given participant.²¹⁹

Florida’s “Stand Your Ground” statutes took effect October 1, 2005.²²⁰ Prior to the enactment, justifiable use of force was a limited defense that required proof of retreat to the wall, except in “castle” cases.²²¹ Pre-enactment, the “castle” included the home and workplace, and individuals were not required to retreat to the wall before justifiably using deadly force to prevent an attack likely to cause death or great bodily harm.²²² Before 2005, “duty to retreat” was the majority rule in most states.²²³

Three key changes to the statute were implemented with the transi-

213. *Id.* at 386.

214. *Id.* (“The theoretical image acts as a prod and a guide to the focus of attention in considering the value significance of a specific detail.”).

215. *See id.* at 389.

216. *Id.*

217. *See id.*

218. *Id.* at 377.

219. *Id.* at 381.

220. Megale, *Deadly Combinations*, *supra* note 7, at 113–14; Daniel Michael, *Florida’s Protection of Persons Bill*, 43 HARV. J. ON LEGIS. 199, 200 (2006).

221. Megale, *Deadly Combinations*, *supra* note 7, at 111–12. At common law, the castle doctrine was a “privilege that allow[ed] a person attacked within his dwelling to stand his ground.” Michael, *supra* note 220, at 201.

222. Megale, *Deadly Combinations*, *supra* note 7, at 112–13.

223. *See id.* at 112.

tion to “Stand Your Ground.”²²⁴ First, the duty to retreat was eliminated, as codified by Section 776.012, Florida Statutes.²²⁵ That meant that wherever anyone had a right to be, that person would be justified in using deadly force to prevent the likelihood of death or great bodily harm.²²⁶ The effect was to expand the historical notion of castle to anywhere a person has a right to be, even a public place.²²⁷ The second change, as codified in Section 776.013, expanded the concept of castle in Florida to include vehicles as well as homes, but the workplace was eliminated from the definition of castle.²²⁸ Additionally, the legislature created a presumption of reasonable fear for any castle cases involving the justifiable use of force.²²⁹ The third change created immunity for anyone using force as permitted under Section 776.012 or Section 776.013.²³⁰ Immunity under Section 776.032 is broad-based and prohibits the punishment of an individual claiming self-defense, punishment including detention, arrest, prosecution, or civil liability.

Though not limited to cases of homicide, immunity is most easily asserted in homicide cases because rarely is there evidence to contradict

224. *Id.* at 113–14.

225. FLA. STAT. § 776.012 (2005) (“A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat if: (1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or (2) Under those circumstances permitted pursuant to s. 776.013.”).

226. *Id.*

227. See Megale, *Deadly Combinations*, *supra* note 7, at 115, 117–18.

228. FLA. STAT. § 776.013 (“(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if: (a) 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.”).

229. *Id.*

230. FLA. STAT. § 776.032 (“(1) 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, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term ‘criminal prosecution’ includes arresting, detaining in custody, and charging or prosecuting the defendant. (2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful. (3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).”).

the defendant's claim of reasonable fear.²³¹ Since 2005, the number of justifiable homicides in Florida has risen dramatically.²³² Additionally, the statutes have been liberally interpreted to employ a subjective standard regarding reasonable fear.²³³ So, rather than determining whether a reasonable man would have feared death or great bodily harm, the courts question whether the defendant, in the defendant's circumstances and with the defendant's knowledge, formed a reasonable belief that death or great bodily harm was imminent.²³⁴ In multiple ways, therefore, "getting away with murder" has become easier in Florida.²³⁵

Until 2012, Florida's "Stand Your Ground" law had not received much attention, even though homicide rates began rising.²³⁶ This began to change when Trayvon Martin was shot and killed by George Zimmerman and the media descended upon Sanford, Florida.²³⁷ The circumstances of the shooting itself and the ensuing prosecution and acquittal are not relevant to this inquiry.²³⁸ What is relevant is *that* was the moment the public began to question "Stand Your Ground."²³⁹ Since then, media attention has not subsided in the state of Florida. Florida shooting deaths grab national attention because people wonder whether and to what extent the shooter will be punished.²⁴⁰ The claims of reasonable fear grow increasingly preposterous,²⁴¹ and it would seem to the critical observer that many individuals in Florida feel entitled to shoot and kill for any reason at all.

The national conversation that began in 2012 evidences a clash in cultural values—in other words, a value situation. This clash has arisen because "Stand Your Ground" was promulgated to advance the interests

231. Megale, *Disaster Unaverted*, *supra* note 5, at 14.

232. Tim Murphy, *Justifiable Homicides up 200 Percent in Florida Post-Stand Your Ground*, MOTHER JONES (Sept. 16, 2013), <http://www.motherjones.com/mojo/2013/09/stand-your-ground-justifiable-homicide-increase>.

233. Megale, *Disaster Unaverted*, *supra* note 5, at 45.

234. *Id.* at 46.

235. See Megale, *Deadly Combinations*, *supra* note 7, at 134.

236. Quanic Fullard, *A License to Kill?*, CHIC. POLICY REV. (Feb. 20, 2013), <http://chicagopolicyreview.org/2013/02/20/a-license-to-kill/>.

237. See Jerry Lanson, *In Trayvon Martin Case, Media Need to Examine Their Own Role*, HUFFINGTON POST (Apr. 2, 2012), http://www.huffingtonpost.com/jerry-lanson/critique-of-trayvon-martin-coverage_b_1393453.html.

238. For a full discussion of the prosecution, trial, and acquittal of George Zimmerman, see generally Megale, *Disaster Unaverted*, *supra* note 5, at 38–60.

239. See *id.* at 40–60.

240. See, e.g., Jack Maddox, *Florida Teen Dead After Row that Began with Loud-Music Complaint, Suspect Jailed*, CNN (Nov. 27, 2012), <http://www.cnn.com/2012/11/26/us/florida-music-shooting/>; Steve Almasy, *Dad's Texting to Daughter Sparks Argument, Fatal Shooting in Movie Theater*, CNN (Jan. 13, 2014), <http://www.cnn.com/2014/01/13/justice/florida-movie-theater-shooting/>.

241. See, e.g., Maddox, *supra* note 240; Almasy, *supra* note 240.

of certain groups, but because of careless drafting, the law has had far-reaching detrimental impacts in other communities.²⁴² Despite strong public outcry for amending the statutes, Florida has not changed the “Stand Your Ground” laws to better represent commonly held values. To analyze this value situation, the following Sections examine the participants, their base values, and strategies for achieving desired outcomes.

B. Participants

1. THE FLORIDA LEGISLATURE

The Florida Legislature is the participant at the center of the value situation presented by Florida’s “Stand Your Ground” statutory scheme. As an organization, it is stable and specializes in the shaping and sharing of human values by making decisions to create prescriptions with an “expectation that severe deprivations will be, or are being, imposed on the challengers of policy and that high indulgences will be, or are being, granted to supporters of policy.”²⁴³ As the state legislative decision-maker, this body politic made the decision to pass Florida’s “Stand Your Ground” law in 2005.²⁴⁴

Prior to 2005, pre-outcome, Florida was a duty to retreat²⁴⁵ and traditional castle doctrine²⁴⁶ state, which meant that anyone claiming to act in self-defense was required to make a prima facie showing of reasonable fear of death or great bodily harm.²⁴⁷ Once that initial threshold was established, the prosecutor was tasked with disproving, beyond a reasonable doubt, the claim of self-defense.²⁴⁸ If the prosecutor could not both prove guilt beyond a reasonable doubt and disprove self-defense beyond a reasonable doubt, the defendant was entitled to an acquittal.²⁴⁹ Although duty to retreat and traditional castle doctrine were still the norm in most states at the time, Florida deviated by adopting “Stand Your Ground” in 2005.²⁵⁰

Duty to retreat and the traditional castle doctrine represented an

242. See Megale, *Deadly Combinations*, *supra* note 7, at 117–19; Alex Altman, *Beyond Trayvon: How “Stand Your Ground” Laws Spread from Florida to Half the U.S.*, TIME (Mar. 28, 2012), <http://swampland.time.com/2012/03/28/beyond-trayvon-how-stand-your-ground-laws-spread-from-florida-to-half-the-u-s/>.

243. LASSWELL & McDUGAL, *supra* note 8, at 399 (it is generally accepted that governmental bodies, including state legislatures, employ power as their base value).

244. Megale, *Deadly Combinations*, *supra* note 7, at 113–14.

245. Michael, *supra* note 220, at 200.

246. See *id.* at 201.

247. See Megale, *Deadly Combinations*, *supra* note 7, at 114–15.

248. See *id.* at 112–13, n.43.

249. See *id.* at 112–13.

250. See *id.*

evolved counter-more with regard to homicide.²⁵¹ In medieval times, the notion of excuse or justification in homicide cases was not recognized at all.²⁵² Any killing, regardless of the reason, was punished as a capital crime.²⁵³ In other words, homicide was a more, strongly opposed by society, and one that members of the community would expect to be punished harshly. Moving into the modern age, courts in England began to recognize the desire for excusing or justifying certain types of killings.²⁵⁴ Excusable homicide and justifiable homicide emerged, then, as evolutions from the more of the draconian medieval law to the counter-more of modern law. As a counter-more, society continued to embrace the prohibition against homicide, but under certain circumstances the offense was not expected to be punished harshly.²⁵⁵ Thus, the principles of duty to retreat and the castle doctrine are counter-mores.

When the Florida Legislature began to consider adopting “Stand Your Ground,” it was essentially evolving the counter-mores of duty to retreat and castle doctrine in the direction of an expediency. Importantly, not all jurisdictions with “Stand Your Ground” legislation have created an expediency; however, all have at least created a more expansive counter-more than duty to retreat. The particular combination of laws encompassed in Florida’s “Stand Your Ground” legislation essentially legalized homicide in many circumstances.²⁵⁶ As a result, it converted self-defense into an expediency by eliminating the expectation of any punishment with regard to the justifiable use of force.²⁵⁷

To achieve this evolutionary result of normalizing homicide related to self-defense, the legislature was primarily influenced by two core values: power and wealth. Of course, individual legislators are motivated by the desire to retain office,²⁵⁸ so they must also promulgate laws that

251. See LASSWELL & MCDUGAL, *supra* note 8, at 366.

252. See Joseph H. Beale, Jr., *Retreat From a Murderous Assault*, 16 HARV. L. REV. 567, 567 (1903).

253. See *id.* at 567–68.

254. *Id.* at 572–73.

255. *Id.* at 573, 579.

256. See Megale, *Disaster Unaverted*, *supra* note 5, at 257.

257. See FLA. STAT. § 776.032 (2005); LASSWELL & MCDUGAL, *supra* note 8, at 366.

258. See, e.g., Janie Campbell & Amanda McCorquodale, 8 *Florida Republicans Who Helped Pass ‘Stand Your Groud’ or Worked to Keep it on the Books*, HUFFINGTON POST (July 15, 2013, 6:12 PM), http://www.huffingtonpost.com/2013/07/15/florida-republicans-stand-your-ground_n_3600017.html (“In 2005, all 20 votes against the Stand Your Ground law were cast by House Democrats. ‘In a few years, you will be back trying to fix this bill,’ said Rep. Ken Gottlieb (D-Hollywood) during a floor debate, according to the Tampa Bay Times. And he was right. But when Gov. Rick Scott (R) set up a task force to review the law following Martin’s death, it was mostly stocked with members unlikely to find fault with the legislation—including the bill’s sponsor and three co-sponsors. (A ‘shining example of cynical political window dressing,’ as South Florida Sun-Sentinel editorial cartoonist Chan Lowe put it.); Luimbe Domingos, *Why Florida Senate Democrats Voted with Republicans on “Stand Your Ground” Law*, LUMIBE.COM

at least appear consistent with commonly held values to maintain authority and control and ensure re-election.²⁵⁹ The legislative history preceding enactment of “Stand Your Ground” reveals why power and wealth were the two values central to the legislature’s decision,²⁶⁰ and how the legislature reconciled them with commonly held community values.²⁶¹

In 2005, Florida became the first state to adopt “Stand Your Ground” legislation as drafted and proposed by the National Rifle Association (“NRA”).²⁶² At the time, the NRA boasted that Florida’s adoption of the law was the “first step of a multi-state strategy.”²⁶³ As explained more fully below, the NRA is a powerful and wealthy lobbying organization that exercises great legislative influence, in part through its participation in the American Legislative Exchange Council (“ALEC”).²⁶⁴ Though law enforcement and other groups voiced opposition to the proposed bill,²⁶⁵ Florida, through the leadership of Represen-

(Mar. 23, 2012), <http://www.luimbe.com/blog/2012/03/23/why-florida-senate-democrats-voted-with-republicans-on-stand-your-ground-law-wed-be-seen-as-democrats-soft-on-crime/> (“So the logic here for Florida Senate Dems: We didn’t want to seem like soft on crime, so we let ourselves get punked into a bad law that even the Police and Prosecutors said would make crime worse and remove the ability to seek justice in violent crimes.”).

259. David Westin, *Divided We Stand (But How Divided Are We Really?)*, HUFFINGTON POST (Nov. 10, 2012, 9:53 AM), http://www.huffingtonpost.com/david-westin/election-media-politics_b_2109093.html.

260. See Josh Israel, *How the NRA Fueled Florida’s ‘Stand Your Ground’ Law*, THINKPROGRESS (Mar. 22, 2012, 5:20 PM), <http://thinkprogress.org/justice/2012/03/22/449961/how-nra-fueled-floridas-stand-your-ground-law/>.

261. See Andy Kroll, *The Money Trail Behind Florida’s Notorious Gun Law*, MOTHER JONES, (Mar. 29, 2012, 3:00 AM), <http://www.motherjones.com/politics/2012/03/NRA-stand-your-ground-trayvon-martin>.

262. See Megale, *Deadly Combinations*, *supra* note 7, at 114–15.

263. Manuel Roig-Franzia, *Fla. Gun Law to Expand Leeway for Self-Defense*, WASH. POST (Apr. 26, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/04/25/AR2005042501553.html> (“NRA Executive Vice President Wayne LaPierre said in an interview that the Florida measure is the ‘first step of a multi-state strategy’ that he hopes can capitalize on a political climate dominated by conservative opponents of gun control at the state and national levels. ‘There’s a big tailwind we have, moving from state legislature to state legislature,’ LaPierre said. ‘The South, the Midwest, everything they call ‘flyover land’—if John Kerry held a shotgun in that state, we can pass this law in that state.’”).

264. Joel Achenbach, Scott Higham, & Sari Horwitz, *How NRA’s True Believers Converted a Marksmanship Group into a Mighty Gun Lobby*, WASH. POST (Jan. 12, 2013), http://www.washingtonpost.com/politics/how-nras-true-believers-converted-a-marksmanship-group-into-a-mighty-gun-lobby/2013/01/12/51c62288-59b9-11e2-88d0-c4cf65c3ad15_story.html; Adam Weinstein, *How the NRA and its Allies Helped Spread a Radical Gun Law Nationwide*, MOTHER JONES (June 7, 2012, 3:10 AM), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground>.

265. John F. Timoney, Op-Ed., *Florida’s Disastrous Self-Defense Law*, N.Y. TIMES, Mar. 23, 2012, <http://www.nytimes.com/2012/03/24/opinion/floridas-disastrous-self-defense-law.html>; Goodnough, *supra* note 4; Michael Mayo, *How Did Stand Your Ground Pass Florida Senate 39-0?*, SUN SENTINEL (Mar. 24, 2012), http://articles.sun-sentinel.com/2012-03-24/news/fl-trayvon-mayocol-b032512-20120324_1_flawed-law-shooting-death-deadly-force; Michael Daly, *Hammer Is the Woman Behind Stand Your Ground*, DAILY BEAST (Mar. 28, 2012), <http://www.thedailybeast.com/articles/2012/03/28/marion-hammer-woman-behind-stand-your-ground.html> (“Hammer

tative Dennis Baxley in the House and Senator Durrell Peaden in the Senate, rapidly pushed the legislation through.²⁶⁶ The lobby was so swift, in fact, that gun-control groups were unable to craft a response prior to the legislature's vote.²⁶⁷

The proposed bill received overwhelming support in the legislature and was passed unanimously in the Senate and by a vast majority of the House.²⁶⁸ These results were due in large part to the anecdotal legends of "stranger danger" and rampant violence that arguably necessitated empowering the public to defend itself.²⁶⁹ Particularly, the legislature advanced the story of James Workman, who shot and killed an intruder shortly after Hurricane Ivan.²⁷⁰ In the legislature's version of the story, Workman lived in legal limbo for a number of months and spent substantial funds on legal fees to ensure his exoneration.²⁷¹ In fact, Workman was never even arrested for shooting the intruder, and after a short, three-month investigation, the prosecutor's office declined to press charges.²⁷² Nevertheless, the legislators identified with this tale, sympathizing with the fear of the "Other" and the violence the "Other" represented.²⁷³ The "Stand Your Ground" laws were supposed to prevent

was manifestly untroubled that the legislation was opposed by every significant voice in Florida law enforcement, notably including such actual defenders of freedom as Miami police chief John Timoney. 'You're encouraging people to possibly use deadly physical force where it shouldn't be used,' he was quoted saying. At the time, Timoney was finding it challenging enough to reduce the use of deadly physical force by the officers of his department. And here was a law proposing to give civilians with no training or experience even greater leeway than cops to blaze away.'")

266. See Altman, *supra* note 242; Weinstein, *supra* note 264.

267. Roig-Franzia, *supra* note 263 (in 2005, *The Washington Post* reported "[t]he overwhelming vote margins and bipartisan support for the Florida gun bill—it passed unanimously in the state Senate and was approved 94 to 20 in the state House, with nearly a dozen Democratic co-sponsors—have alarmed some national gun-control advocates, who say a measure that made headlines in Florida slipped beneath their radar. 'I am in absolute shock,' Sarah Brady, chair of the Brady Center to Prevent Gun Violence, said in an interview. 'If I had known about it, I would have been down there'"); see also Mayo, *supra* note 265; Michael, *supra* note 220, at 199.

268. See *SB 436 - Protection of Persons/Use of Force*, FLA. H.R., <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=15498> (last visited Mar. 20, 2014).

269. See Megale, *Disaster Unaverted*, *supra* note 5, at 6; Daly, *supra* note 265 ("But Hammer knew how to sell the bill in a way that a great majority of legislators would find politically irresistible. 'No one knows what is in the twisted mind of a violent criminal,' she testified before the legislature. 'You can't expect a victim to wait before taking action to protect herself and say: 'Excuse me, Mr. Criminal, did you drag me into this alley to rape and kill me or do you just want to beat me up and steal my purse?' She dismissed such objections from the most seasoned experts as 'nothing but emotional hysterics.' She termed those who opposed the bill as a 'bleeding heart criminal coddlers,' which most Florida politicians seemed to consider a synonym for 'unelected.'").

270. Megale, *Disaster Unaverted*, *supra* note 5, at 6.

271. *Id.*

272. For a more detailed discussion of the mistaken beliefs various legislators held regarding Mr. Workman's case, see *id.* at 29–32.

273. *Id.* at 35.

innocent people acting in self-defense from having to defend themselves or worry about being prosecuted and having to pay exorbitant legal fees.²⁷⁴ In other words, the legislature intended to empower individuals in the community to take matters into their own hands.²⁷⁵

Applying Lasswell and McDougal's framework in the context of "Stand Your Ground," two main goals (desired outcomes) are apparent. First, the legislature wished to retain its power by ensuring authority and control over constituents. Second, to maintain authority and control, the legislature wished to increase the sense of security and well-being of its constituents. These two goals implicate two values: power and well-being. Power is the base value because a governmental agency is involved.²⁷⁶ By tapping into a community value such as well-being, the government was attempting to gain command over a scope value to build and ensure its own power.

As first stated in Section II.B, "law" is "a process of authoritative decision by which the members of a community clarify and implement their common interests."²⁷⁷ Individual legislators are generally concerned with preserving their positions of power through re-election, and when laws coincide with community interests, citizens are more likely to re-elect legislators. Through voting, citizens express their consent to governance and vest authority in the legislature. The legislature exercises control by creating prescriptions, in the form of laws that are then enforced by other legitimate agencies, including the executive and judicial branches. Recall that law exists when both authority and control manifest; if either is missing, pretended or naked power exists, but there is no law.²⁷⁸

The enforcement of laws ensures continued effective control by the government.²⁷⁹ With regard to criminal laws, it simply means that law enforcement agencies will arrest individuals who commit crimes and state attorneys will prosecute those crimes. The judicial branch will provide a forum for the prosecution, and upon a showing of guilt, the offender will be punished. The concept of mores and counter-mores informs us that some crimes will not be prosecuted as readily or pun-

274. *Id.* at 5–6.

275. *Id.* at 6 ("According to Baxley, the purpose of the law was to let 'citizens . . . know that if they are attacked, the presumption will be with them.'") (alteration in original) (quoting Ben Montgomery, *Florida's 'Stand Your Ground' Law Was Born of 2004 Case, But Story Has Been Distorted*, TAMPA BAY TIMES (Apr. 14, 2012), <http://www.tampabay.com/news/publicsafety/floridas-stand-your-ground-law-was-born-of-2004-case-but-story-has-been/1225164>).

276. See LASSWELL & MCDUGAL, *supra* note 8, at 399.

277. *Id.* at xxx.

278. *Id.*

279. See *id.* at 363.

ished as harshly as other crimes.²⁸⁰ The decision to prosecute and punish is thus intimately tied with maintaining control over the constituency. Depending on community values, the government will gain control by prosecuting and punishing in a manner that acknowledges how the community wishes a given law to be enforced.²⁸¹ If a law is enforced too harshly, or the community feels it silly to enforce at all, the government will lose control by insisting on its enforcement.²⁸² By the same token, if the community feels strongly about the prosecution and punishment of certain offenders, the government will lose control by refusing to capture and isolate those criminals.²⁸³

Under any circumstance, the government or other bodies appointed by the government (like the jury) are charged with determining whether a prescription was violated and by whom. A police officer or a judge decides whether probable cause exists to arrest someone. A prosecutor decides whether to prosecute that person who has been arrested. If the accused elects a trial, a jury of at least six individuals determines guilt or innocence. After verdict, a judge imposes a sentence. Throughout this process, the individuals making the decisions about whether a crime has occurred and who should be held responsible are typically unrelated to the crime itself. In other words, the victim—while preserving some influence²⁸⁴—does not control the ultimate decision to arrest, prosecute, convict, or sentence. Control is preserved in this system because the decision makers are not the victims; rather, they impartially and neutrally enforce prescriptions.

In the post-outcome, “Stand Your Ground” has turned this system on its head for cases involving the justifiable use of force. The statutes permit anyone who fears the threat of imminent death or great bodily harm to use deadly force in self-defense.²⁸⁵ Within the castle, a pre-

280. *See id.* at 366.

281. *See id.*

282. *See id.*

283. *See id.*

284. Thirty-three states now have Victims' Bills of Rights or other constitutional protections to provide a voice to victims of crimes. *See* ALA. CONST. art. I, § 6.01; ALASKA CONST. art. I, § 24; ARIZ. CONST. art. II, § 2.1; CAL. CONST. art. I, § 28; COLO. CONST. art. II, § 16a; CONN. CONST. art. I, § 8; FLA. CONST. art. I, § 16; IDAHO CONST. art. I, § 22; ILL. CONST. art. I, § 8.1; IND. CONST. art. I, § 13(b); KAN. CONST. art. 15, § 15; LA. CONST. art. I, § 25; MD. CONST. art. 47; MICH. CONST. art. I, § 24; MISS. CONST. art. III, § 26A; MO. CONST. art. I, § 32; MONT. CONST. art. II, § 28; N.C. CONST. art. I, § 37; NEB. CONST. art. I, § 28; NEV. CONST. art. I, § 8; N.J. CONST. art. I, ¶ 22; N.M. CONST. art. II, § 24; OHIO CONST. art. I, § 10a; OKLA. CONST. art. II, § 34; OR. CONST. art. I, § 42; R.I. CONST. art. I, § 23; S.C. CONST. art. I, § 24; TENN. CONST. art. I, § 35; TEX. CONST. art. I, § 30; UTAH CONST. art. I, § 28; VA. CONST. art. I, § 8-A; WASH. CONST. art. I, § 35; WIS. CONST. art. I, § 9m.

285. FLA. STAT. § 776.012 (2005).

sumption of reasonable fear arises in cases of justifiable use of force.²⁸⁶ What this means is that anyone who claims to fear another can make a snap decision to kill that other person under certain circumstances.²⁸⁷ Pre-outcome, before 2005, the person shooting would have had to make a claim of self-defense, which the prosecution would have had to disprove beyond a reasonable doubt.²⁸⁸ The judicial process acted as a check to preserve societal values through recognition of the counter-mores of duty to retreat and the traditional castle doctrine. Post-outcome, however, that same shooter would likely not even be arrested because of the immunity protections of Section 776.032, Florida Statutes.²⁸⁹ In effect, the victim-shooter becomes judge, jury, and executioner and is not held accountable or required to justify the killing. Because there is no longer a reasonable expectation of punishment in Florida “Stand Your Ground” cases, this doctrine has created an expediency.²⁹⁰

Furthermore, the legislature has effectively undermined its natural goal of preserving power by ceding control to individuals in “Stand Your Ground” cases. In fact, the legislature as much admitted that its purpose was to empower individuals to protect themselves through acts of violence.²⁹¹ Control relates to the governmental processes that ensure legal prescriptions are enforced consistently.²⁹² Because “Stand Your Ground” has virtually eliminated the police and prosecutor roles in many homicides,²⁹³ legal control has vanished. In the absence of control, there is no law, just pretended power.²⁹⁴ In the context of “Stand Your Ground,” this pretended power creates community instability and unpredictability by both encouraging violence and impeding the investigation of cases involving acts of violence.

2. THE NRA AND ALEC

As alluded to in the previous section, the NRA was the most enthusiastic proponent of “Stand Your Ground.”²⁹⁵ In fact, Marion Hammer,

286. FLA. STAT. § 776.013.

287. Megale, *Disaster Unaverted*, *supra* note 5, at 36.

288. *Id.* at 16–17.

289. *See* FLA. STAT. § 776.032.

290. *See* LASSWELL & McDOUGAL, *supra* note 8, at 366.

291. Roig-Franzia, *supra* note 263 (shortly after enacting “Stand Your Ground,” Baxley commented, “[d]isorder and chaos are always held in check by the law-abiding citizen”); *see also* *Examining the Foundation of ‘Stand Your Ground’ Laws*, NPR (July 20, 2013, 3:00 PM), <http://www.npr.org/templates/story/story.php?storyId=204013757>; Mayo, *supra* note 265.

292. *See* LASSWELL & McDOUGAL, *supra* note 8, at 362–63.

293. Mayors Against Illegal Guns, et al., *Shoot First: ‘Stand Your Ground’ Laws and Their Effect on Violent Crime and the Criminal Justice System 5* (Sept. 2013), <http://libcloud.s3.amazonaws.com/9/2e/3/2126/ShootFirstReport.pdf>.

294. *Id.* at 400.

295. Michael C. Bender, *Pistol-Packing Grandma Pushes NRA Laws Across U.S.*, BLOOMBERG

former president of the NRA, drafted key parts of the legislation as it was ultimately adopted.²⁹⁶ Although it was once a hunters' and sportsmen's organization that supported moderate gun control, since the 1970s, the NRA appears to have whittled its mission down to a single goal: Zero gun regulation.²⁹⁷ It works toward that goal by leveraging its wealth and power in order to acquire more of both.²⁹⁸ Because of the great influence it exacts, the NRA is an "elite of influence."²⁹⁹

Determining the NRA's base value presents a challenge. One contender is "power" because the NRA has, at least since the 1970s, gained increasing power in the legislative process.³⁰⁰ Thus, it certainly is involved in the power structure.³⁰¹ Assuming for the moment that power is the base value of the NRA, the NRA is best described as a pressure group.³⁰² Pressure groups engage in "activity specialized to influencing particular decisions by peaceful means."³⁰³ Even though it does not make final decisions about legal prescriptions because it is not a legislative body, it leverages so much influence over the legislative process that it often is the effective decision-maker.³⁰⁴

BUSINESSWEEK (May 11, 2012), <http://www.businessweek.com/videos/2012-05-11/pistol-packing-grandma-pushes-nra-laws-across-u-dot-s-dot> ("Florida Governor Rick Scott, a Republican, talks with Bloomberg's Michael C. Bender about Marion Hammer, the top lobbyist for the National Rifle Association in the state. Hammer is responsible for such pro-gun legislation as the "Stand Your Ground" law allowing deadly force in self-defense, a model concealed-carry measure and a statute blocking doctors from asking about guns in the home.").

296. Weinstein, *supra* note 264 ("Baxley says he and Peaden lifted the law's language from a proposal crafted by Marion Hammer, a former NRA president and founder of the Unified Sportsmen of Florida, a local NRA affiliate.").

297. Achenbach, *supra* note 264.

298. See Alec MacGillis, *This Is How the NRA Ends: A Bigger, Richer, Meaner Gun-Control Movement Has Arrived*, NEW REPUBLIC (May 28, 2013), <http://www.newrepublic.com/node/113292/>.

299. LASSWELL & McDUGAL, *supra* note 8, at 414–15 ("[W]e speak of someone as a member of the elite of influence when he is among the few who control the most power, wealth, respect, and other values.").

300. Achenbach, *supra* note 264.

301. LASSWELL & McDUGAL, *supra* note 8, at 423 ("[A]ll groups . . . are involved in some degree in politics[, though all] . . . are not specialized to the power value.").

302. *Id.* at 422.

303. *Id.*

304. *Id.* at 413–414; "The American Legislative Exchange Council works to advance limited government, free markets, and federalism at the state level through a nonpartisan public-private partnership of America's state legislators, members of the private sector and the general public." ALEC.ORG <http://www.alec.org/about-alec/> (last visited June 1, 2014). Corporate members, like the NRA, participate in drafting legislation and informing social policy to advance their own corporate interests. Because of the limited membership, all members of society do not enjoy a seat at the table, and the conversation does not necessarily consider all community values. Hammer used her influence through ALEC and the Florida legislature to advance the NRA's agenda. Consider this quote: "But do not call her simply a lobbyist. To do so drastically underestimates her while equally overestimating the state legislature. Hammer does not so much lobby as orchestrate the legislature to do her bidding and therefore the bidding of the NRA, where she formerly served

One way that the NRA influences decision-making is through its collaboration with ALEC.³⁰⁵ ALEC provides a forum whereby legislators, lobbyists, and corporations work together on drafting legislation and vote on the proposed statutory language so that legislators may return to their home states and propose new laws to the benefit of the participating lobbyists.³⁰⁶ Corporate entities and lobby groups primarily fund ALEC, and, though it claims to be non-partisan, only one of 104 participating legislators is a Democrat.³⁰⁷ By purchasing the opportunity to draft legislation, large entities like the NRA are able to participate in the decision-making process. Moreover, the legislature is more easily influenced by the groups who participate in ALEC because ALEC provides a forum for side-by-side collaboration and drafting of new legislation.³⁰⁸ The effect is that the values of the ALEC groups tend to be given greater weight because they are presented more often and more systematically to legislatures, and those values are likely to be adopted even when they are inconsistent with commonly held community values.

The other likely contender for base value with regard to the NRA is wealth.³⁰⁹ As an organization, the NRA is extremely well-financed and is adept at leveraging its wealth to command power as a scope value.³¹⁰ This wealth comes from two sources—membership dues and corporate sponsorship from gun manufacturers and related industries.³¹¹ As a strategic leveraging mechanism, the organization makes campaign contributions in an effort to control lawmakers and exert pressure on political and legislative decisions,³¹² but exerting pressure on politicians is only one strategic method employed by the NRA. Recall that the legislature's power depends upon the ability to exercise authority and control over the constituency through the passage of laws that reflect commonly held values.³¹³ In this way, the polity's consent to being governed is

for three years as its first woman president. She continued to serve as a consultant and lobbyist known for standing her own ground. The NRA credits her with being the propelling force behind the Stand Your Ground Law." Daly, *supra* note 265.

305. See *National Rifle Association*, SOURCEWATCH, <http://www.sourcewatch.org/index.php/NRA>.

306. The Center for Media and Democracy, *What is ALEC?*, ALEC EXPOSED, http://alecexposed.org/wiki/What_is_ALEC%3F (last visited May 22, 2014).

307. *Id.*

308. See *What is ALEC?*, *supra* note 306.

309. Achenbach, *supra* note 264; Wilson Andrews et al., *How the NRA Exerts Influence over Congress*, WASH. POST (Jan. 15, 2013), <http://www.washingtonpost.com/wp-srv/special/politics/nra-congress/>.

310. Achenbach, *supra* note 264; Andrews et al., *supra* note 309.

311. See MacGillis, *supra* note 298.

312. *Id.*

313. LASSWELL & McDUGAL, *supra* note 8, at 400.

expressed in the form of votes.³¹⁴ Another component of the NRA's influence, then, rests in its ability (whether real or perceived) to deliver elections by creating and then directing large blocs of single-issue voters.³¹⁵ The NRA's success in harvesting community support is likely the result of its ability to frame gun regulation as an assault on every citizen's fundamental rights.³¹⁶ This framing technique taps into community values of respect, rectitude, and well-being.³¹⁷

In the context of "Stand Your Ground," Marion Hammer was able to leverage her friendship with Representative Dennis Baxley and other members of the Florida legislature to advance the NRA's agenda.³¹⁸ Using the scope value of affection as a leveraging tool, Hammer drafted substantial portions of the language in the bill and provided it to Representative Baxley and Senator Peaden to propose to the Florida legislature.³¹⁹ Baxley in turn, on behalf of the NRA, leveraged the scope value of well-being to convince the legislature that this law, as drafted, was good for the community and would ensure re-election because it coincided with commonly held values.³²⁰ With this strategy, the NRA was

314. *Id.* at 353.

315. Scott Medlock, *NRA=No Rational Argument? How the National Rifle Association Exploits Public Irrationality*, 11 *TEX. J. C.L. & C.R.* 39, 42 (2005).

316. See Michael C. Dorf, *Identity Politics and the Second Amendment*, 73 *FORDHAM L. REV.* 549, 552, 568 (2004).

317. See LASSWELL & McDUGAL, *supra* note 8, at 342.

318. Steve Bousquet, *Meet Dennis Baxley, The Lawmaker Who Always Stands His Ground*, *TAMPA BAY TIMES* (Apr. 1, 2012, 9:02 PM), <http://www.tampabay.com/news/courts/meet-dennis-baxley-the-lawmaker-who-always-stands-his-ground/1226327> ("A lifelong National Rifle Association member who's been known to sip his coffee from an NRA mug, Baxley has sponsored numerous gun laws in a career marked by his close friendship with the tenacious gun lobbyist Marion Hammer, whom he calls 'awesome.'"); Michael C. Bender, *Marion Hammer, the NRA's Most Powerful Weapon*, *BLOOMBERG BUS. WK.* (May 17, 2012), <http://www.businessweek.com/articles/2012-05-17/marion-hammer-the-nras-most-powerful-weapon> ("There is no single individual responsible for enacting more pro-gun legislation in the states than Marion Hammer," says Richard Feldman, a former political organizer for the NRA.); see also Ann O'Neill, *NRA's Marion Hammer Stands Her Ground*, *CNN* (Apr. 15, 2012, 9:20 AM), <http://www.cnn.com/2012/04/15/us/marion-hammer-profile/>.

319. Daly, *supra* note 265 ("[Hammer] has acknowledged having a hand in actually drafting the enabling Stand Your Ground legislation back in 2004. She introduced it through a proxy, State Sen. Dennis Baxley, whom she had previously arranged to receive the NRA's 2004 Defender of Freedom Award."); Weinstein, *supra* note 264 ("Baxley says he and Peaden lifted the law's language from a proposal crafted by Marion Hammer, a former NRA president and founder of the Unified Sportsmen of Florida, a local NRA affiliate."); Joe Strupp, *Former NRA President: We Helped Draft Florida's "Stand Your Ground" Law*, *MEDIA MATTERS* (Mar. 27, 2012, 11:15 AM), <http://mediamatters.org/blog/2012/03/27/former-nra-president-we-helped-draft-floridas-s/185254> ("The NRA participated in drafting the Castle Doctrine and supporting it through the process," Marion Hammer told Media Matters. Hammer was president of the NRA from 1995 to 1998, remains a member of its board, and is a longtime Florida lobbyist for the group.').

320. Daly, *supra* note 265 ("But Hammer knew how to sell the bill in a way that a great majority of legislators would find politically irresistible. . . . She termed those who opposed the bill as a[isic] 'bleeding heart criminal coddlers,' which most Florida politicians seemed to consider

able to achieve its goal and launch its multi-state campaign to enact “Stand Your Ground” legislation. Success in this campaign is directly attributable to the legislative and special interest collaboration made possible through ALEC.³²¹

Returning to the question of whether the NRA’s base value is wealth or power, the pre-outcome events surrounding the enactment of “Stand Your Ground” in Florida are telling. The NRA is certainly capable of exercising pressure on the body politic. With respect to “Stand Your Ground,” it appears the NRA was responsible for the ultimate decision to enact the legislation as well; the fact that a representative of the NRA drafted the language of the legislation evidences its direct participation in the decision, or power outcome.³²² Thus, it appears that in leveraging wealth to gain command over power, the NRA might have succeeded, through “Stand Your Ground,” in commanding power as a base value.

A troubling aspect of the NRA’s legislative influence is the fact that it does not necessarily represent the values held by the majority of the community. Only about 500,000³²³ of Florida’s 19.3 million residents are members of the NRA, and only around 800,000³²⁴ are registered gun owners. In other words, less than three percent of Florida’s citizenry has membership in the NRA. Nevertheless, the NRA has succeeded in passing a bill that specifically furthers its own interest in gun deregulation, not necessarily the commonly held values of the

a synonym for ‘unelected.’ The bill came to a vote in early 2005, passing the state senate by 39-0 and the house by 92-20. Every single state senator voted in favor of a measure that every responsible figure in law enforcement opposed. The legislators seem to have been not so much lobbied by Hammer as directed.”); Mayo, *supra* note 265 (“‘I have a clear conscience,’ said former state Sen. Steve Geller, a Broward Democrat. ‘I tried to take the bad parts out, but my amendment was defeated. I sounded warnings about it.’ So why did he and the entire South Florida Senate delegation (except for absent Fort Lauderdale Democrat Mandy Dawson) end up voting yes? Geller said it was going to pass anyway in the face of powerful National Rifle Association support, and he was afraid a no vote would be used against him in later campaigns, since the bill included reasonable parts protecting police officers. ‘It would have been like voting against apple pie or motherhood,’ Geller told me last week. How’s that for a profile in political courage?”).

321. Weinstein, *supra* note 264.

322. Matt Gertz, *ALEC Has Pushed the NRA’s “Stand Your Ground” Law Across the Nation*, MEDIA MATTERS (Mar. 21, 2012), <http://mediamatters.org/blog/2012/03/21/alec-has-pushed-the-nras-stand-your-ground-law/186459>; Dana Milbank, *ALEC Stands its Ground*, WASH. POST (Dec. 4, 2013), http://www.washingtonpost.com/opinions/dana-milbank-alec-stands-its-ground/2013/12/04/ad593320-5d2c-11e3-bc56-c6ca94801fac_story.html.

323. Dara Kam, *How the NRA Attained Dominance in the “Gunshine State,”* PALM BEACH POST (Apr. 6, 2012), <http://www.palmbeachpost.com/news/news/crime-law/how-the-nra-attained-dominance-in-the-gunshine-sta/nN2yY/> (Florida has approximately 900,000 gun owners, but approximately 100,000 reside out-of-state).

324. *Id.*

community.³²⁵

When “Stand Your Ground” was being considered, the vocal opposition from law enforcement and other groups was unorganized and ineffective.³²⁶ After the shooting death of Trayvon Martin, however, louder opposition voices, like Attorney General Eric Holder, the Dream Defenders, the NAACP, and others, are being heard.³²⁷ Nevertheless, post-outcome, the NRA continues to exact influence over the legislative process and has blocked the reconsideration of “Stand Your Ground” laws in Florida.³²⁸ Disconnect between the legislation and societal values creates a circumstance whereby the legislature could lose its authority. The law is “a process of authoritative decision by which the members of a community clarify and implement their common interests.”³²⁹ Currently, with “Stand Your Ground,” the legislature is responding primarily to the NRA, which is a small percentage of the community. Since the common interests of many community members are not represented by “Stand Your Ground,” civil unrest is likely to escalate as citizens express their disagreement with the laws.

325. *Most Americans Favor ‘Stand Your Ground’ Laws: Poll*, REUTERS (Aug. 2, 2013, 4:46 PM), <http://www.reuters.com/article/2013/08/02/us-usa-florida-law-poll-idUSBRE97115F20130802> (Quinnipiac “poll found that a strong majority of white voters and men support the laws, while black voters generally oppose them and women are almost evenly divided”); *Majority of Floridians Accept Zimmerman Trial Verdict, Support “Stand Your Ground” Law*, VIEWPOINT FLA. (July 13, 2013), http://viewpointflorida.org/index.php/site/article/majority_of_floridians_accept_zimmerman_trial_verdict_support_stand_yo/ (poll by Viewpoint Florida reporting that “50% said [“Stand Your Ground”] is fine the way it is, while 31% of voters thought the law needed to be changed or limited, and just 13% thought that ‘Stand Your Ground’ should be repealed entirely”). Both of these polls used registered voters to measure public opinion. Even assuming that polls measuring the opinions of registered voters can holistically measure community values, at best only about half of the community’s values align with the existing law. For the other half, the law is inconsistent with their value systems.

326. See Timoney, *supra* note 265 (opinion article written by a former Miami Police Chief); “*Stand Your Ground*” Laws, COALITION TO STOP GUN VIOLENCE, <http://csgv.org/issues/shoot-first-laws/> (last visited May 10, 2014).

327. See, e.g., Dexter Mullins, *Florida Sit-In Against “Stand Your Ground” Law Continues*, AL JAZEERA AMERICA (Aug. 11, 2013, 11:30 PM), <http://america.aljazeera.com/articles/2013/8/11/dream-defendersholdsitinoverstandyourground.html> (discussing the many voices that have involved themselves in the discussion opposing Florida’s “Stand Your Ground” law, including U.S. Attorney General Eric Holder, Ebony Magazine, actor Boris Kodjoe, basketball player Dwayne Wade, and director Spike Lee).

328. See Joe Saunders, *Fla. House Committee Rejects “Stand Your Ground” Repeal Effort*, BIZPAC REVIEW (Nov. 8, 2013), <http://www.bizpacreview.com/2013/11/08/fla-house-committee-rejects-stand-your-ground-repeal-effort-86732>; Marion P. Hammer, *ALERT! Florida’s Stand Your Ground Law Stood its Ground Against Attack*, NRA-ILA (Nov. 8, 2013), <http://www.nraila.org/legislation/state-legislation/2013/11/alert!-floridas-stand-your-ground-law-stood-its-ground-against-attack.aspx>.

329. LASSWELL & MCDUGAL, *supra* note 8, at xxx.

3. GUN CONTROL LOBBY

One of the criticisms to the swift passage of “Stand Your Ground” in Florida was that the gun-control lobby did not have to time to respond to the proposals pre-outcome.³³⁰ Notably, the post-outcome efforts of the gun-control lobby have effected no change in Florida’s Stand Your Ground legislation either. The gun-control lobby is comprised of several groups, like the Brady Campaign, Mayors Against Illegal Guns, Moms Demand Action, and others, whose base value is well-being.³³¹ A unifying feature is that these groups have formed largely in reaction to tragedies involving guns.³³² To achieve its goal of providing for a safer community and increased vitality, the gun-control lobby leverages primarily enlightenment to influence power institutions.³³³

To date, these gun-control groups have not successfully garnered the same type of wealth and corporate support mustered by the NRA. Furthermore, none of these groups are members of ALEC.³³⁴ Therefore, their ability to leverage wealth as an influential force with the legislature is limited,³³⁵ and they do not have access to a captive multistate legislative audience. Instead, they have relied solely on leveraging enlightenment to promote gun regulation.³³⁶

The enlightenment message has had imperfect success. The general gun-control message that gun deregulation leads to increased violence has always competed against the NRA enlightenment message that gun control threatens a fundamental right.³³⁷ Pre-outcome, the NRA suggested that innocent citizens were at great risk of violence by criminals and therefore needed to arm themselves.³³⁸ The theory was that if innocent citizens armed themselves, criminals would be too afraid to attack.

330. Michael, *supra* note 220, at 212.

331. *About Moms Demand Action For Gun Sense in America*, MOMS DEMAND ACTION, <http://momsdemandaction.org/about/> (last visited May 10, 2014); *Coalition History*, MAYORS AGAINST ILLEGAL GUNS, <http://www.mayorsagainstillegalsguns.org/html/about/history.shtml> (last visited Mar. 19, 2014); *Our History*, BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, <http://www.bradycampaign.org/?q=our-history> (last visited May 10, 2014).

332. *About Moms Demand Action For Gun Sense in America*, *supra* note 331; *Our History*, *supra* note 331.

333. *See About Moms Demand Action For Gun Sense in America*, *supra* note 331.

334. *ALEC Corporations*, COMMON CAUSE, <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=8078765> (last visited May 10, 2014).

335. Seth Cline, *Firepower: Gun Control Opponents Outspend Opposition 25-to-1*, U.S. NEWS & WORLD REP. (July 24, 2012), <http://www.usnews.com/news/articles/2012/07/24/firepower-gun-control-opponents-outspend-opposition-25-to-1>.

336. MacGillis, *supra* note 298.

337. Medlock, *supra* note 315, at 59.

338. Ann O’Neill, *supra* note 318 (consider Marion Hammer’s argument: “I could have been killed or raped, but I had a gun so I wasn’t,” she said. “If the government takes away my gun, what’s going to happen next time?”).

By arming themselves, citizens also exercise their fundamental right to bear arms. Couching it as an enlightenment message, the NRA was able to capture public support, with little to no opposition, for its legislative agenda. Even the gun-control lobby failed to vocalize significant opposition to passage of the “Stand Your Ground” legislation pre-outcome.

Post-outcome, the gun-control enlightenment message has been more effective at mobilizing individuals and small groups, but it continues to have limited impact on the legislature. To date, lawmakers seem to be minimally influenced by gun-control data and reasoning—especially when pitted against the NRA’s wealth. For example, in October 2013, Jonathan E. Lowy, of the Brady Campaign, testified before the United States Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.³³⁹ He spoke out against “Stand Your Ground,” specifically as it related to Florida’s lax concealed carry laws,³⁴⁰ and relied on at least two studies to support the conclusion that Florida’s “Stand Your Ground” legislation has led to “a net increase in homicide, with no evidence of deterrence of other crimes.”³⁴¹

As explained in Section III(B)(1) above, one goal of “Stand Your Ground” was to achieve well-being by empowering individuals to protect themselves against criminals; however, the data would suggest that the law has failed. Justifiable homicides in Florida have increased by roughly 200% since 2005.³⁴² Moreover, since the shooting of Trayvon Martin and ultimate acquittal of George Zimmerman, widely reported killings seem to suggest an increased disregard for human life.³⁴³ For example, Michael Dunn shot and killed Jordan Davis, a teenage passenger in a vehicle.³⁴⁴ What motivated Dunn to shoot Davis? The teens, who had pulled into the gas station where Dunn was parked, refused to turn down their music when he ordered them to do so.³⁴⁵ Similarly, Curtis Reeves shot and killed Chad Oulson at a movie theater following a disagreement about cell phone use.³⁴⁶ During a verbal argument, Oulson threw his popcorn at Reeves, and Reeves responded by shooting and

339. See generally *Testimony of Jonathan E. Lowy, “Stand Your Ground” Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force, Before the S. Judiciary Subcomm. on the Constitution, Civil Rights, and Human Rights* (Oct. 29, 2013).

340. *Id.* at 2–4.

341. *Id.* at 4.

342. Michael George, *I-Team: Justifiable Homicides Double Since “Stand Your Ground,”* ABC ACTION NEWS (Mar. 27, 2012, 7:48 PM), http://www.abcactionnews.com/dpp/news/local_news/investigations/i-team-justifiable-homicides-double-since-stand-your-ground.

343. Almasy, *supra* note 240; Maddox, *supra* note 240.

344. Maddox, *supra* note 240.

345. *Id.*

346. Almasy, *supra* note 240.

killing Oulson.³⁴⁷

These are just two examples of the multiple cases evidencing a total disregard for human life. Because Florida's "Stand Your Ground" laws empower a shooter to be judge, jury, and executioner for any perceived transgression, shooters—of course—feel safer making the decision to shoot and kill someone else. To some, the choice appears to be "shoot or be shot."³⁴⁸ These incidents illustrate how changes in laws begin to cause changes in cultural expectations and personal perspectives, values, and beliefs about what is appropriate in society.

Contrary to the NRA's and legislature's enlightenment message that "Stand Your Ground" has made communities safer, the law has clearly had the opposite effect, at least as measured by the net increase in homicides. At the same time, the gun-control lobby's enlightenment message that less gun regulation inherently leads to increased gun violence rings true.³⁴⁹ As alluded to earlier, pre-outcome this message was heard against the backdrop of stranger danger and fear of the Other. To the general public, it could easily have seemed like "Stand Your Ground" was in fact necessary to make the community safer. Nearly ten years later, however, the data has been consistent with the gun-control groups' predictions, and as explained more completely in Section III(B)(6) below, it would appear the community has begun to see through the fallacies of the stranger-danger message promulgated by the NRA and the legislature. It remains to be seen, however, whether the legislature will be persuaded by enlightenment.

4. NAACP

Another participant in this value situation emerged prominently during the George Zimmerman case: The NAACP. This group is the most widely recognized civil rights organization in America.³⁵⁰ For decades, the NAACP has leveraged its base value of enlightenment to

347. *Id.*

348. See Maddox, *supra* note 240.

349. BRIAN J. SIEBEL, NO CHECK. NO GUN. WHY BRADY BACKGROUND CHECKS SHOULD BE REQUIRED FOR ALL GUN SALES 5 (April 2009), available at <http://bradycampaign.org/sites/default/files/no-check-no-gun-report.pdf> ("[T]he Brady background check system . . . requires background checks only for gun sales by licensed dealers, [so] criminals can obtain guns with no questions asked from unlicensed sellers, as they are allowed to sell guns without conducting a check in most states. . . . In effect, we have two gun markets: A regulated one, where buyers are checked to see if they can legally buy guns, and an unregulated one, where they are not. . . . By requiring background checks on only about [sixty percent] of gun sales, with the rest almost completely unregulated, we make it too easy for dangerous people to obtain dangerous weapons. This leads to senseless gun violence harming tens of thousands of people, year after year.").

350. NAACP: 100 Years of History, NAACP, <http://www.naacp.org/pages/naacp-history> (last visited May 10, 2014).

leverage power through grassroots and national organizations fighting for equality and against the disenfranchisement of racial minority groups.³⁵¹

The NAACP became vocal in the Zimmerman case during the period of time when it appeared Zimmerman would not be prosecuted for killing the teenager, Trayvon Martin.³⁵² The NAACP's enlightenment message is that "Stand Your Ground" is a step backward in the struggle for racial equality.³⁵³ Insofar as "Stand Your Ground" promotes disregard for human life, the NAACP's position is logical. People still notice color, and there is no question that racism, prejudice, and bias exist. For many, racial differences symbolize the "Other" who should be feared.³⁵⁴ When subjective fear is motivation enough to shoot and kill without question, then inherent biases, prejudices, and racism will necessarily provoke killings.

Post-outcome statistical evidence on the racial impact of "Stand Your Ground" in Florida is mixed. For the most part, the statistics would support a conclusion that the law is being enforced uniformly and that there is no bias in application.³⁵⁵ Nevertheless, the evidence also suggests that numbers of black victims are higher overall than white victims.³⁵⁶ At the same time, however, black-on-black killings occur at higher rates than interracial killings.³⁵⁷ As far as the potential to use this information in support of the NAACP's overall purpose of enlightening the public to overcome racism, the statistics do not seem to offer enough leverage for the NAACP to command sufficient support toward accomplishing its goal. Similarly, a race-based enlightenment message presents a myopic interpretation of the data that is unlikely to influence legislative change.

With regard to the shooting of Trayvon Martin, the NAACP advanced two distinct arguments regarding race. First, the NAACP argued the killing itself was racially motivated.³⁵⁸ Second, it argued that

351. *Id.*

352. *Statement by the NAACP on Charges Filed Against George Zimmerman*, NAACP, <http://www.naacp.org/news/entry/statement-by-the-naacp-on-charges-filed-against-george-zimmerman> (last visited May 10, 2014).

353. *Testimony of Hilary O. Shelton, "Stand Your Ground" Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force, Before the S. Judiciary Subcomm. on the Constitution, Civil Rights, and Human Rights*, 4–5 (Sept. 17, 2013).

354. SETHA LOW, *BEHIND THE GATES: LIFE, SECURITY, AND THE PURSUIT OF HAPPINESS IN FORTRESS AMERICA* 137–40 (2003).

355. Susan Taylor Martin et al., *Race Plays Complex Role in Florida's "Stand Your Ground" Law*, TAMPA BAY TIMES, June 2, 2012, <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152>.

356. *Id.*

357. *Id.*

358. Carol Cratty & Tom Cohen, *Despite Outrage, Federal Charges Uncertain in Zimmerman*

the reticence to investigate and prosecute George Zimmerman resulted from endemic institutional racism in the City of Sanford, Florida.³⁵⁹ However, the evidence surrounding the case undermined the NAACP's arguments against "Stand Your Ground."³⁶⁰

With regard to racial motivations, the evidence against Zimmerman was sparse. The NAACP claimed Zimmerman had used a racial slur when describing Martin to the 911 operator.³⁶¹ However, the audio recording of Zimmerman's call to 911 was unclear and could not be enhanced to show he had used such a term.³⁶² There were other allegations that Zimmerman had called the authorities on numerous occasions to report suspicious individuals and that each of the reports involved an African-American.³⁶³ Evidence supporting the allegation of racial profiling, however, was not forthcoming.³⁶⁴ Additionally, neighbors and friends of Zimmerman claimed he was not racist and that he socialized with people of all races.³⁶⁵

With regard to the investigation and prosecution, the NAACP alleged authorities were hesitant to arrest Zimmerman because the victim was black and the shooter was white.³⁶⁶ The physical evidence in the case, however, supported the police decision not to arrest Zimmerman. Upon arriving on scene, law enforcement noticed Zimmerman had cuts on the back of his head and a broken nose, which were consistent with his account of being pinned to the ground and punched in the face by Martin.³⁶⁷ Furthermore, several eyewitness accounts confirmed Zimmerman's version of events.³⁶⁸ Under these facts, it would have been subjectively and objectively reasonable for Zimmerman to believe he was in danger of suffering great bodily harm. In fact, he did suffer great bodily

Case, CNN (July 23, 2015, 8:13 PM), <http://www.cnn.com/2013/07/15/politics/zimmerman-federal-charges/>.

359. *Statement by the NAACP on Charges Filed Against George Zimmerman*, *supra* note 352.

360. Cratty & Cohen, *supra* note 358.

361. Matt Hadro, *Contrary to CNN's First Assumption, Prosecutors Say Zimmerman Didn't Use Racial Slur*, MEDIA RESEARCH CENTER, (Apr. 13, 2012, 5:25 PM), <http://www.mrc.org/biasalerts/contrary-cnns-first-assumption-prosecutors-say-zimmerman-didnt-use-racial-slur>.

362. *Id.*

363. Matthew DeLuca, *George Zimmerman's History of 911 Calls: A Complete Log*, DAILY BEAST (Mar. 22, 2012), <http://www.thedailybeast.com/articles/2012/03/22/george-zimmerman-s-history-of-911-calls-a-complete-log.html>.

364. Cratty & Cohen, *supra* note 358.

365. *George Zimmerman's Friends Speak out, Deny Shooter Was Racist*, INQUISITR (Mar. 26, 2012), <http://www.inquisitr.com/211441/george-zimmermans-friends-speak-out-deny-shooter-was-racist/>; see also *Dr. Phil: A Dr. Phil Exclusive: Friends of George Zimmerman—"The Most Hated Man in America"—Speak out*, (CBS television broadcast Sept. 11, 2012), available at <http://www.drphil.com/shows/show/1866>.

366. *Testimony of Hilary O. Shelton*, *supra* note 353, at 5–7.

367. Megale, *Disaster Unaverted*, *supra* note 5, at 39.

368. *Id.* at 49–50.

harm.³⁶⁹ Under “Stand Your Ground,” therefore, he would have been entitled to immunity, and the failure to arrest and prosecute Zimmerman would have been lawful under the statute. Additionally, a decision not to prosecute would have been entirely consistent with other, more egregious cases around Florida that have not been prosecuted at all.³⁷⁰

So, despite the tragedy of Martin’s death, this case was probably not the best one for the NAACP to use to advance its goals of building enlightenment about the racial impact of “Stand Your Ground.” Because the evidence and data did not clearly support the theories of racism, the enlightenment message was not as persuasive as it needed to be to harness changes to “Stand Your Ground.”

The NAACP’s enlightenment value, though unique in substance, is the same in function as the enlightenment message of the gun-control lobby and other groups opposed to “Stand Your Ground.” Although from an analytical perspective its values might not align squarely with these other groups, the similarities in approach to leveraging base value would suggest a potential for effecting positive legislative change if the NAACP aligns with these other groups opposed to “Stand Your Ground.” In bringing a unified message to the legislature, these groups together could express a broader enlightenment message and more readily appear to represent commonly held community values. In this way, all groups could leverage value in a way that the legislature might be inclined to accept under the theory that legislators need the approval and consent of the governed to retain their power.

5. MEDIA

Another enlightenment group is the media. In his 1992 law review article on media ethics and the law, Robert Dreschel describes the media as playing two distinct roles in society.³⁷¹ In their passive “informing role,” news outlets set out to give an account of current events, provide a forum for differing viewpoints, act as “a watchdog over the behavior of government and government officials,” and provide other similar functions.³⁷² In their “activating role,” news outlets actually guide and affect public discourse by acting as “opinion leaders who help people play active roles in community controversies.”³⁷³ In this way, the media leverages the scope value of enlightenment to achieve goals.

In both roles, the news media leverages its knowledge and its repu-

369. *Id.* at 49.

370. *Id.* at 47–48.

371. Robert E. Dreschel, *Media Ethics and Media Law: The Transformation of Moral Obligation into Legal Principle*, 6 NOTRE DAME J.L. ETHICS & PUB. POL’Y 5, 18 (1992).

372. *Id.* at 18 tbl.1.

373. *Id.* at 18–19.

tation in order to gain access to both information and the widest possible audience, with the desired outcome of increasing wealth and, more importantly, gaining respect.

While many news outlets view the prestige of being the fourth estate as a solemn reminder of their duty to report fairly and guide responsibly, many others leverage that prestige by first capturing an audience and then steering that audience's knowledge (and, hence, activity) to increase the power and wealth of the news corporation itself.³⁷⁴ The trouble with distinguishing the two is that, from the viewpoint of either, the news media on the other side is the nefarious actor.³⁷⁵

This trend is especially relevant in the context of the media's "activating role" regarding "Stand Your Ground" because journalists who oppose the law will naturally publish stories about its unforeseen ill effects in order to guide public opinion and steel citizens' resolve to change the status quo through activism.³⁷⁶ Those who favor the law, on the other hand, take a similar two-pronged approach: First, they publish the sort of "glad-I-had-my-gun" stories that highlight the shooter as victim;³⁷⁷ second, they portray the law's detractors as the Other, who is not to be trusted.³⁷⁸ While neither side may be characterized as entirely disingenuous, their ability to control public perception and action through selective reporting and authoritative opining cannot be understated.

Within the jurisprudential framework, the media plays an obviously critical role. Other entities—like the legislature, NRA, gun-control lobby, and NAACP—use the media to enlighten the public and shape values. Competing media messages evidence the tension amongst these various groups. As its own vehicle, the media also seeks to influence the shaping of community values. At the same time, the media transmits messages about community values to these other groups as well. As all these pieces are in constant motion, the media is at the same time a tool of civil engineering and a barometer of community values.

374. Westin, *supra* note 259.

375. Frank Rich, *Stop Beating a Dead Fox*, N.Y. MAG. (Jan. 26, 2014), <http://nymag.com/news/frank-rich/fox-news-2014-2/#>; Larry Womack, *The Real Problem with Media Today? The Audience*, HUFFINGTON POST (Jan. 17, 2012, 5:28 PM), http://www.huffingtonpost.com/larry-womack/the-real-problem-with-the_1_b_1207888.html.

376. See Walker Bragman, *The Culture of Guns and Misinformation*, HUFFINGTON POST (Jan. 25, 2013, 4:15 PM), http://www.huffingtonpost.com/walker-bragman/guns-misinformation_b_2553021.html.

377. Kurt Nimmo, *Stand Your Ground Upheld in Florida Despite Efforts of Obama's DOJ*, DAILY DRUDGE REPORT (Nov. 8, 2013), <http://thedailydrudgereport.com/2013/11/08/mainstream-mixup/stand-your-ground-upheld-in-florida-despite-efforts-of-obamas-doj/>.

378. Brian Walsh, *Liberal Media Shrug at Bloomberg's Big Ad Buy*, U.S. NEWS & WORLD REP. (Mar. 28, 2013), <http://www.usnews.com/opinion/blogs/brian-walsh/2013/03/28/the-hypocrisy-of-liberal-medias-silence-on-bloombergs-gun-blitz>.

What has been surprising since the shooting death of Trayvon Martin and the other tragic deaths that have continued is that the legislature has been largely unresponsive to the media message. Many news outlets have reported the failure of “Stand Your Ground” and called for its repeal.³⁷⁹ A number of other states are reconsidering “Stand Your Ground,” and community support for it in Florida has drastically declined.³⁸⁰ Nevertheless, the Florida legislature has refused to seriously reconsider the legislation. Although Governor Rick Scott formed a task force on “Stand Your Ground,” it was staffed with four sponsors of the original bill³⁸¹ and only two individuals on that team expressed concerns about the law.³⁸² The task force recommended that no changes be made to “Stand Your Ground.”³⁸³ Additionally, in August 2013 when Representative Alan Williams introduced a bill to repeal “Stand Your Ground,”³⁸⁴ Marion Hammer, former president of the NRA, testified in opposition to it before the Florida legislature in November 2013, and it ultimately died in committee.³⁸⁵ Considering the emerging enlightenment message that commonly held community values are at odds with existing “Stand Your Ground” legislation, it is perplexing that the legislature would not more seriously reconsider repealing “Stand Your Ground.”

6. INDIVIDUALS

Assessing the base value interests of individuals is the most difficult task because individuals within a community possess individual per-

379. Kris Hundley et al., *Florida “Stand Your Ground” Law Yields Some Shocking Outcomes Depending on How Law Is Applied*, TAMPA BAY TIMES (June 1, 2012), <http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133>; Joy Lawson, *Young People Standing Our Ground to End “Stand Your Ground” Laws*, HUFFINGTON POST (July 17, 2013, 5:30 PM), http://www.huffingtonpost.com/joy-lawson/young-people-standing-our_b_3613108.html.

380. Derek Smith, *States Consider Changes to Stand Your Ground*, BILL TRACK 50 (Apr. 2012), <http://www.billtrack50.com/blog/in-the-news/states-consider-changes-to-stand-your-ground/>.

381. Campbell & McCorquodale, *supra* note 258 (“But when Gov. Rick Scott (R) set up a task force to review the law following Martin’s death, it was mostly stocked with members unlikely to find fault with the legislation—including the bill’s sponsor and three co-sponsors. (A ‘shining example of cynical political window dressing,’ as South Florida Sun-Sentinel editorial cartoonist Chan Lowe put it).”).

382. REPORT OF THE GOVERNOR’S TASK FORCE ON CITIZEN SAFETY AND PROTECTION, TASK FORCE ON CITIZEN SAFETY AND PROTECTION, app. E (Feb. 21, 2013), <http://www.flgov.com/wp-content/uploads/2013/02/Citizen-Safety-and-Protection-Task-Force-Report-FINAL.pdf> (opposition voices include Katherine Fernandez Rundle and Rev. Dr. R.B. Holmes, Jr.).

383. *See id.* at 5–8.

384. Hammer, *supra* note 328.

385. *Bill History*, FLORIDA SENATE, <http://www.flsenate.gov/Session/Bill/2014/4003> (last visited May 10, 2014).

sonalities that influence perspectives and value systems.³⁸⁶ What is more, individual base values may change over time depending on the circumstance.³⁸⁷ One constant, though, is that individuals are capable of leveraging any of the eight values to achieve goals.³⁸⁸

With regard to “Stand Your Ground,” the legislature convinced the populace of the necessity for its enactment by tapping into individual fears for safety and well-being.³⁸⁹ By advancing the myth of the Other and stranger danger,³⁹⁰ the legislature succeeded in passing the “Stand Your Ground” legislation with little opposition.³⁹¹ In fact, the only expressed fears at the time of its passage were with regard to projected racial disparities in enforcement.³⁹² This particular fear has not come to fruition, at least not in any way obviously supported by reported data.³⁹³ The unanticipated harm that has come upon the state is the blatant disregard for human life.

Especially since the shooting death of Trayvon Martin, aggression toward the Other has dramatically increased. The legislature has convinced the community that broader access to guns and greater freedoms

386. See LASSWELL & McDOUGAL, *supra* note 8, at 350.

387. See *id.* at 349–55.

388. See *id.*

389. *Florida Lawmakers Expand Law to Kill in Self Defense*, DEMOCRACY NOW! (Apr. 6, 2005), http://www.democracynow.org/2005/4/6/florida_lawmakers_expand_law_to_kill (“The importance of this bill is to put things back the way they are supposed to be. The courts have manipulated the law into a position where the law favors criminals rather than victims and law abiding citizens because the law, as it was before the bill passed yesterday, said that inside your home, if someone breaks in in the middle of the night, you can only meet force with force, and then only if you reasonably believe it is necessary to prevent death or great bodily harm. Well, in the middle of the night how are you supposed to know the intent of the intruder or what manner of force the intruder intends to use? You can’t say, ‘Wait a minute, intruder? Are you here to rape and murder me, or are you just here to beat me up and steal my TV set?’ You have put the homeowner, who wants to protect himself and his family, in a distinct disadvantage. You are protecting criminals. That’s wrong. Out on the street, the courts have imposed a duty to retreat. That basically says if you are attacked, you have to try to turn around and run before defending yourself. When you turn your back on a criminal, you make yourself infinitely more vulnerable. If a rapist tries to drag you into an alley, if you are prepared to fight back and defend yourself, that’s your right. The bill we passed yesterday will allow you to decide whether or not you can get away or whether or not you’re safer if you stand your ground and fight. Taking away the rights of law-abiding people and putting them in jeopardy of being prosecuted and then sued by criminals who were injured when they were committing crimes against victims is wrong. This bill fixes all of that. It puts back the castle doctrine law with regard to your home, and it gives you the right to protect yourself and your family. And that’s all this bill does.”).

390. Megale, *Disaster Unaverted*, *supra* note 5, at 35.

391. Michael, *supra* note 220, at 212; Daly, *supra* note 265.

392. *The Black & White of Stand Your Ground*, TOP CRIMINAL JUSTICE DEGREES, <http://www.topcriminaljusticedegrees.org/stand-your-ground/> (last visited June 1, 2014).

393. Hundley et al., *supra* note 379 (“Cases with similar facts show surprising—sometimes shocking—differences in outcomes. If you claim ‘stand your ground’ as the reason you shot someone, what happens to you can depend less on the merits of the case than on who you are, whom you kill and where your case is decided.”).

to shoot and kill the Other makes us all safer.³⁹⁴ The paradoxical effect, however, is that greater freedom to kill creates a greater fear of being killed. In the context of “Stand Your Ground,” one of the individual’s primary concerns is obviously well-being in the form of security. For most, then, the deciding factor in how a person takes a side on this issue will be which policy—“Stand Your Ground” or “Duty To Retreat”—is more likely to increase well-being—both personal and social.³⁹⁵ One whose parochial universe is smaller (few of Us but many of Them)³⁹⁶ is more likely to favor “Stand Your Ground” because it seemingly increases individual power while protecting personal well-being. Those who perceive their own community as being wider-ranging and less clearly bound, however, are likely to oppose it because it creates a danger to individuals who may not be Other after all.

Two other values also dominantly emerge in the context of “Stand Your Ground”: Respect and rectitude. Because “Stand Your Ground” is tethered to the value of preservation of personal honor, it necessarily implicates respect. This value is also obviously connected to many of the decisions to kill in Florida since 2005. Consider two of the examples mentioned previously. Both Dunn and Reeves clearly felt disrespected by the Other. Dunn’s order to turn down music was “rudely” disobeyed. Reeves’s order to stop texting in the theater was “rudely” disobeyed. Within minutes of the disobedience, Dunn and Reeves shot the offender without hesitation. Never mind that neither had any authority to bark orders at the Other.

Respect is implicated in two ways in these scenarios. First, the shooter feels disrespected and entitled to defend his honor. The violence is evidence of leveraging respect to preserve respect. The second way that respect is implicated is in the lack of respect for the Other. The

394. Megale, *Disaster Unaverted*, *supra* note 5, at 35.

395. *Id.* at 35 n.173.

396. LASSWELL & MCDUGAL, *supra* note 8, at 2. (“Under the discipline of tens of thousands of years of primitive living, human beings developed a patchwork of tiny, distinctive, parallel cultures. They acquired three perspectives of enduring significance: identification with a parochial self (the band or tribe); the expectation that inter-band conflicts, especially when strangers are involved, would be settled by violence; and the demand by the self upon the self (and band mates) to sacrifice for the parochial identity. This is the syndrome of parochialism. . . . Clearly we are living in the early stages of exposure to a complex social environment to which human beings are gradually more painfully becoming accustomed. The pre-civilized inheritance of man shadows his future, since the syndrome of parochialism—including the expectation of violence and the morals of parochial sacrifice—continues to characterize the human condition. . . . Since the emergence of cities and the consolidation on a new prototype for human life-ways, history has been characterized by conflicting examples of the prototype, and by clashes or accommodations between civilizations and pre-civilized societies.” However, because “[w]hat changes is culture, not the brain,” the conflict in SYG is not between disparate cultures, but between the (real or perceived) needs of modern civilization and the mind’s reflexive tendency to follow the old paradigm).

reason the shooter feels entitled to kill is because the shooter does not value or respect the Other. Rectitude is also intimately tethered to respect in these scenarios because the shooter believes in the rightness of the decision to shoot.

The converse of these positions is often measurable by examining the victims in these cases. Originally, “Stand Your Ground” was intended to protect the innocent,³⁹⁷ so the assumption that the dead person is a criminal or otherwise a bad or dangerous person is natural. But often, the victim is a person who is not committing a crime, like Trayvon Martin, Jordan Davis, and Chad Oulson. What is more, “victims” of “Stand Your Ground” are not just those who have died. The group includes anyone who has been negatively impacted by “Stand Your Ground,” like the friends and families of the deceased. For victims, it is natural to interpret “Stand Your Ground” as much more than a self-defense statute—it is the lifting of gun restrictions.

Historically, Duty to Retreat was a restriction on gun use that required proof of a justification prior to exoneration for killing another.³⁹⁸ Advocates of “Stand Your Ground” advance two positions: (1) any duty to retreat is an unreasonable infringement on individual rights; and (2) “Stand Your Ground” increases individual power and well-being.³⁹⁹ Victims, on the other hand, understand Duty to Retreat to be a necessary component of law in a society that values the dignity of human life.⁴⁰⁰ To victims, “Stand Your Ground” obviously decreases social wellbeing, first by increasing access to violent conflict resolution, but worse, by upsetting social balances relating to respect and rectitude.

However, there is difficulty in determining which values the majority commonly holds. Even assessing the members of the majority is nearly impossible. Moreover, to the extent the majority has little ability to leverage its base values, it will necessarily exercise little influence over legislative decision-making. Still, at least one group of individuals, the Dream Defenders, has protested at the Florida Capitol and achieved marginal results. After a thirty-one-day protest against “Stand Your Ground,” Governor Rick Scott called a special legislative session to con-

397. Campbell & McCorquodale, *supra* note 258 (“The reason for reform was simple. News articles discussed the confusion in Florida’s law that required an innocent victim to flee when attacked by a criminal. Imagine a woman being required to flee when attacked in a parking lot, having to turn her back to the attacker, and then likely being run down and raped. Shouldn’t she have the option to stand her ground to protect herself? Florida’s Stand Your Ground law is a good, common-sense solution to the competing issues that exist in this area of the law.”).

398. Elizabeth Chuck, *Mothers of Victims Plead for Changes to Stand-Your-Ground Laws*, NBC NEWS (Oct. 29, 2013, 1:47 PM), http://usnews.nbcnews.com/_news/2013/10/29/21231481-mothers-of-victims-plead-for-changes-to-stand-your-ground-laws.

399. Campbell & McCorquodale, *supra* note 258.

400. See Beale, *supra* note 252, at 575.

sider House Bill 4003 that proposed repeal of Florida's "Stand Your Ground."⁴⁰¹ Not surprisingly, however, the NRA exerted stronger influence and the proposal ultimately died in committee.⁴⁰² Nevertheless, the fact that the legislature responded at all might be evidence that it is beginning to heed the post-outcome disconnect between commonly held community values and "Stand Your Ground." If so, steps toward reconciling the law with commonly held values could be forthcoming.

Regardless of which group commands the majority, any civilized society ought to promote the policy that protects well-being, salubrity, and the dignity of human life.

IV. CONCLUSION

Trayvon Martin's death marked a turning point for Florida because it put a proverbial mirror up to the face of the community. For the first time, individuals were confronted with the stark reality that "Stand Your Ground" was not making the community safer. Since then, tragedies have continued, but the community is calling out for change. Prosecutions in homicide cases seem to be more readily forthcoming and groups opposed to "Stand Your Ground" seem to be mobilizing.

A major theme from the opposition is that some level of accountability is necessary in homicide cases. If so, that means that, as a whole, society does not want justifiable uses of force to be an expediency. Rather, the use of force should remain a counter-more that is not necessarily punished harshly. As it stands now, however, Florida's "Stand Your Ground" is an expediency. Because it is an expediency, it is inconsistent with commonly held values and expectations, and the legislature must find a way to reconcile the law and values. If it does not, the citizenry will begin to withdraw its consent to being governed.

In adopting "Stand Your Ground," the legislature for a time convinced the public that the law was consistent with commonly held values of safety and well-being. Since 2012, however, that myth has been seriously called into question, if not debunked entirely. At this stage, the most appropriate way to reconcile the law and values is to either repeal or amend "Stand Your Ground" to reinstate some level of accountability when citizens use deadly force in self-defense. In other words, the legislature must revert the expediency to a counter-more. It is unlikely that the community will continue to be convinced by conciliatory messages

401. See Sascha Cordner, *House Panel Rejects Proposal to Repeal Florida's Stand Your Ground Law*, WFSU (Nov. 7, 2013, 10:33 PM), <http://news.wfsu.org/post/house-panel-rejects-proposal-repeal-floridas-stand-your-ground-law>.

402. *Id.*; Marion P. Hammer, *supra* note 328.

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that “Stand Your Ground” is good legislation advancing commonly held community values, absent a significant change to the statutory scheme.

In a civilized society, the government must be mindful to enact statutes that will preserve the integrity of human dignity. “Stand Your Ground” gives individuals the freedom to disregard the sanctity of human life. By creating such far-reaching protections for individuals who engage in violent behavior, the legislature has effectively ceded control and is now operating with pretended power. In fact, “Stand Your Ground” cannot even be accurately called a law because it has divested the government of control over the people in cases of justifiable use of force. The need for amendment or repeal of this law is urgent, and the community is now voicing its cry for change, pleading with the legislature to realign with commonly held values to preserve the well-being, respect, and rectitude of the community.

