STANDING YOUR GROUND IN TENNESSEE: EXPLAINING THE EXPANSION OF A NATIONAL SELF-DEFENSE TREND IN TENNESSEE LAW

by

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ABSTRACT

In the last two decades a legal trend known as “Stand Your Ground” has emerged, serving to expand on an English common law rule known as the “Castle doctrine.” Stand Your Ground laws negate the Castle doctrine’s central concept of a “duty to retreat” before the use of lethal force to protect oneself. This thesis will compare national laws, court cases, and trends to Tennessee and examine if “Stand Your Ground” laws have been found to affect violent crime and homicides.

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CHAPTER I

INTRODUCTION TO "STAND YOUR GROUND"

Among free men there has long been a deeply rooted belief that "a man's home is his castle," so much so that it was enacted into the Fourth Amendment to the U.S. Constitution (U.S. CONST. amend. IV). In 1914, former U.S. Supreme Court Justice Benjamin Cardozo further defended this belief when he wrote, "It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home" (Loewy, 2009, p.256).

Officially adopted in Florida in 2005, it became the first of a number of states to pass laws that explicitly extended the "Castle Doctrine" to places outside the home and concurrently expanded self-defense protections in a number of other ways (Weaver, 2008). Since then, more than 20 states have followed in strengthening self-defense laws by passing versions of "Castle Doctrine" or "Stand Your Ground" laws (Chuck, 2013). The new laws limit the duty to retreat from a number of specified places and frequently remove civil liability for those acting under the law (Catalfamo, 2007, p.526). The new laws also establish defined parameters for what constitutes "reasonable fear" on the part of the individual claiming self-defense (Catalfamo, 2007, p.528).

Beginning with Florida in 2005, Stand Your Ground laws have changed the legal definition of what self-defense is for citizens who are being confronted with imminent danger or lethal force (Weaver, 2008, p.401). Florida law states that a citizen has the right to stand his or her ground and to use lethal force when confronted with imminent bodily

harm (Fla. Stat. § 776.013). Before Stand Your Ground, it was required of Florida citizens to retreat whenever possible when confronted with deadly force (Catalfamo, 2007, p.522).

"Stand Your Ground" laws were enacted with the intention of removing any confusion regarding when individuals could use force to defend themselves and to eliminate criminal sanctions being imposed on those who used self-defense legitimately, even though they did not retreat or attempt to retreat from the presumed threat (Tushnet, 2007, p.77). These laws are currently a source of much controversy and have become a fiercely debated issue because of recent cases where individuals were shielded from prosecution by claiming justifiable homicide under self-defense, even when the person against whom the lethal force was used posed no imminent threat or grave bodily harm (Koones, 2006, p.632). Such situations have raised questions about Stand Your Ground's wisdom, purpose and effect.

The strong views both for and against the doctrine of Stand Your Ground warrants study as it has been alleged that this law's new standard, which revokes the "duty to retreat" that was an original element in gauging the reasonableness for use of force, was hastily implemented throughout other states, which have been accused of enacting versions similar to Florida's without much due consideration of their impact (Chuck, 2013). Given the fact that 44 states have a clause in their constitutions guaranteeing the right to "keep and bear arms," and that 42 of those state constitutions contain wording regarding the rights of the individual, this topic can be viewed as a centuries-old fundamental rights discourse (Craven, 2010, p.835).

The historical precedent of Stand Your Ground is often misunderstood or unknown entirely, however, it is actually based on a centuries-old principle of English common law (Foster, 1762; Kaplan & Wimmershoff-Caplan, 2005). Its foundation is rooted in the "Castle Doctrine," an English law from the 17th century, carried over by the first English immigrants and eventually introduced to all the states (Foster, 1762; Kaplan & Wimmershoff-Caplan, 2005). The doctrine states that in the defense of an individual's home against intruders, the individual has no obligation to attempt to retreat before using force to defend him or herself (Catalfamo, 2007, p.505). At the same time, it was also understood to be limited to one's home, with the "duty to retreat" mandate being null and void in public places, mainly for the purpose of maintaining the peace (Catalfamo, 2007, p.507).

In *The Founders' Second Amendment* (2008), author Stephen Halbrook quotes John Locke, the respected English philosopher and physician, and widely regarded as one of the most influential of the Enlightenment thinkers where he observed:

> Men combined to subvert our civil government, to plunder and murder us, can have no right to protection in their persons or properties among us; they have by their attempts upon our liberty, put themselves in a state of war with us, and being the aggressors, if they perish, the fault is their own. If any person in the best condition of the state, demands your purse at the muzzle of his pistol, you have no need to recur to law…you make your own defense on the principles of natural law, which is now your only rule, and his life is forfeited into your hands, and you indemnified if you take it, because he is the first and a dangerous aggressor (Locke, as cited in Halbrook, 2006, p.26-27).

There were few, if any, restrictions on the ability of citizens to carry arms in the early American colonies, excluding the attempts of the English to disarm the colonists immediately preceding the American Revolution (Cornell, 2006). Moreover, there is scant evidence of any examples of colonial statutory restrictions or prohibitions against the carrying of arms, openly or concealed. The absence of restrictions corresponds with the general historical belief that the early Framers of American government understood an individual "right to possess and carry arms for defense, subject to the common law restriction, as noted by Sir William Blackstone, that one could not carry such arms as were apt to terrify the people or make an affray of the peace" (Snyder, 1997).

To further understand the deeply rooted concept of the Castle Doctrine, one must also look to the deep regard with which property rights were held, from the earliest Natural Law scholars to present day Americans. In *American Political Writing During the Founding Era: 1760-1805* (1983), author Charles Hyneman quotes founding father and author Daniel Leonard:

> The laws both of nature and nations, as well as those of every free state, indeed of every lawful government under heaven are extremely watchful in ascertaining and protecting the right of private property. So great is the regard of the law for private property, that it will not authorize the least violation of it, unless applied to the detriment of the Society. —That men have a natural right to retain their justly acquired property, or dispose of it as they please without injuring others, is a proposition that has never been controverted to my knowledge: That they should lose this right by entering society is repugnant to common sense and the united voice of every writer of reputation upon the subject. All agree that no man can be

> justly deprived of his property without his consent in person or by his representative, unless he has forfeited it by the breach of the laws of his country to the inaction of which he consented (Hyneman, 1983, p.18).

The "duty to retreat" will be examined in Chapter II, followed by an examination of the impact of "concealed carry" on stand your ground laws in Chapter III. In Chapter IV, a national cross-section of Stand Your Ground law variations are reviewed in detail and compared to Tennessee law. Stand Your Ground is critically evaluated in Chapter V by considering its impact on society, the basis for criticisms directed against it, and whether those criticisms are justified. In Chapter V the work concludes with a summary of main points discussed, and final thoughts derived from the analysis.

CHAPTER II

THE DUTY TO RETREAT

To understand the drastic departure from centuries-old tradition that the states are taking by implementing "Stand Your Ground" laws the "duty to retreat" principle must be considered. The "duty to retreat" is an English common law requirement that states, before responding with deadly force to an attacker, one has to "retreat to the wall," exhaust all options of retreating safely and, being no longer able to do so, only then using force (Vilos & Vilos, 2010, p.5). These rights are "founded in the law of nature, and [are] not nor can be superseded by any rule of society; [therefore,] nature and social duty cooperate" (Foster, 1762, p.273-274).

In its most extreme form, the duty to retreat states that a person in threat of an imminent personal harm must, if possible, first retreat from the threat before responding with force in self-defense (Kaplan & Wimmershoff-Caplan, 2005). The exception to this requirement of retreat is when the individual is threatened by intruders in their own home, as the home is one's "castle" (Foster, 1762, p. 273-274).

Simply put, "Stand Your Ground" laws define the circumstances under which individuals can use force to defend themselves without first attempting to retreat from danger, which is essentially a revocation of the duty to retreat (Catalfamo, 2007, p.526). The purpose behind "Stand Your Ground" laws is to remove any confusion about when and where individuals can defend themselves and to eliminate prosecutions of people who legitimately use a weapon in self-defense (Tushnet, 2007, p.77). Many of the new

"Stand Your Ground" laws extend this concept beyond the home to any place where a person might lawfully be located, such as a bar, parking lot, or any public area (Catalfamo, 2007, p. 531).

In many states with "Stand Your Ground" laws, in lieu of waiting for trial to use an affirmative defense of justifiable homicide, a defendant simply has to claim self-defense in order to receive an immunity hearing before a judge (Levin, 2010, p.534; Hundley, Martin & Humburg, 2012). Similarly, many "Stand Your Ground" laws also grant immunity from civil liability when using defensive force in a way justified under law. Therefore it is plausible that under "Stand Your Ground" an individual could avoid trial altogether rather than presenting an argument of self-defense (Megale, 2010, p.108).

The duty to retreat, as well as the Castle doctrine exception, have remained influential in statutory and case law, though over time the case law in some states did not reference the duty to retreat requirement (Catalfamo, 2007, p. 510). In 2005, a wave of states began passing laws that explicitly put the "Castle doctrine" and "Stand Your Ground" into state statutes (Ross, 2007, p.2, see also Table A1 and A2 in appendix). More importantly, these laws also expanded the existing castle doctrine laws into "Stand Your Ground" by removing the duty to retreat from places such as a private vehicle, place of work, and any non-specifically excluded place one had a legal right to be (Megale, 2010, p.114).

Nearly all of these laws further strengthened legal protections in other ways as well. Some laws added a "presumption of reasonable fear" of imminent serious injury or death, which placed the burden of showing that a defendant acted unreasonably on the prosecution, while other laws also granted immunity from civil liability when using

defensive force (Ross, 2007, p.2; Hubbard, 2013, p.33). For example, the law passed in Florida states that "a person is presumed to have held a reasonable fear of imminent peril of death or bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or bodily injury to another" (Fla Stat. § 776.032).

States with "Stand Your Ground" laws differ on whether the law applies equally to situations involving lethal or non-lethal force, with some statutes partially modifying the duty to retreat when lethal force is involved and others removing the duty to retreat under all circumstances (Ross, 2007, p.2). Under most "Stand Your Ground" statutes it is now permissible to use lethal force, even if retreat is possible and the person is not put under any duty to retreat when attacked (Catalfamo, 2007, p.524). Slowly but steadily, the "Duty to Retreat" has gradually given way to "Stand Your Ground" laws which claim to empower victims in the use of force in the name of self-defense (Megale, 2010, p.116).

"Stand Your Ground" challenges the essence of self-defense law, which is based on reasonableness (Ross, 2007, p.3). The "reasonableness" concept was incorporated along with a longstanding duty to retreat, justifying the use of deadly force in self-defense only as the last resort, having exhausted all other options (Ross, 2007, p.3). The duty to retreat principle was employed by many prosecutors to prove that a defendant killing another person was not in self-defense, especially when evidence was unclear or when only the parties involved knew the actual facts (Megale, 2010, p.109). However, generally a person is under no duty to retreat when they are under attack in their own home (Ross, 2007, p.3).

Critics of "Stand Your Ground" laws argue that the "duty to retreat" provides for the legal justification of the use of deadly force in self-defense, while providing a balance utilizing the element of reasonableness, potentially saving many lives that could be taken by "Stand Your Ground" statutes (Ross, 2007, p.3). Opponents also argue that the "Stand Your Ground" movement is mostly political, pointing to the conservative frontier-style attitudes prevailing in the Southern and Western United States (Levin, 2010, p.526).

Revoking the Duty to Retreat

A question arises as to why so many states have removed the duty to retreat prior to using lethal force in self-defense. There are many documented instances where citizens were first prosecuted for justified self-defense and then sued by invaders or burglars in the absence of "Stand Your Ground" criminal and civil protections (Leibowitz, 2012). Recently, Marissa Alexander, an African American woman, was charged for discharging a firearm against her abusive husband as a warning and was consequently sentenced to 20 years imprisonment (Coleman, 2013). Even though no one was hurt in the incident as the bullet fired into the ceiling, the jury rejected her argument for self-defense and convicted her within 12 minutes (Coleman, 2013). This case illustrates a system of flawed and irregular justice, however, it has recently been announced she is to receive a new trial under "Stand Your Ground" that could help to both acquit her and reinforce the legal concept itself (Coleman, 2013).

"Stand Your Ground" laws provide individuals with expanded means to protect themselves against vicious crimes (Ross, 2007, p.3). For example, "Stand Your Ground" proved vital to a couple in Dimondale, Michigan when they were sued by a home invader

for attacking him with a jar full of pennies in an act of self defense that led to the arrest of the invader (Wolcott, 2013). However, with "Stand Your Ground" they were acquitted, although under a more traditional "Duty to Retreat" presumption it is reasonable to assume the couple would have been prosecuted and penalized civilly (Wolcott, 2013; Megale, 2010, p.113).

One can see where it would be possible to be confused about the "Duty to Retreat" principle during an attack when decisions have to be made in split seconds, without full emotional control, or with complete knowledge of the facts (Ross, 2007, p.3). The defendants in the Dimondale, Michigan case were not able to defend themselves by using force without facing prosecution and a trial, whereas potential assailants can exercise their criminal acts freely, anticipating an unarmed and cowed victim (Wolcott, 2013). "Stand Your Ground" law makes things easier for victims of crime than criminals by eliminating the duty to retreat prior to using deadly force for self-defense (Megale, 2007, p.116).

Stand Your Ground in Court

The major legal shift in doctrine from "retreat to the wall," to a doctrine of "Stand Your Ground" is not as new as one could be led to believe. "Castle doctrine" and "Stand Your Ground" laws have been debated in the courtroom on more than one occasion for well over a century, but now there is a name for it. The shift in doctrine is possibly due to the spread of firearms. According to the Minnesota Supreme Court case *State v. Gardner* (1905):

> The doctrine of 'retreat to the wall' had its origin before the general introduction of guns.... It would be good sense for the law to require in many cases, an attempt to escape from hand to hand encounter with fists, clubs, and even knives…while it would be rank folly to so require when experienced men, armed with repeating rifles, face each other in an open space, removed from shelter, with intent to kill or do great bodily harm (*State v. Gardner*, 1905, p.808).

Offering the majority opinion in *State v. Gardner* (1905), Justice Jaggard makes an astute and relevant observation that "standing your ground" was as confusing in 1905 as we find it today when he wrote:

> The right to defend himself by taking the life of his assailant would not arise until the defendant had at least attempted to avoid the necessity of such an act; but in this connection I also charge you that when he is assailed or threatened he is not necessarily bound to retreat, and whether, under the circumstances of this case, the defendant was justified in doing what he did is a matter for you to determine, and not for the court to decided. The rule on this subject has tended in some American jurisdictions to be enforced with strictness; in others…to be positively relaxed. *(State v. Gardner, 1905*, p.809).

However in an earlier Indiana case, *Runyon v. State* (1877), the first "Stand Your Ground" case on record, the court touched on the individualistic American mindset of not retreating when it noted:

> The tendency of the American mind seems to be very strongly against the enforcement of any rule which requires a person to flee when assailed, to avoid chastisement or even to save a human life . . . [Therefore,] [t]he weight of modern

> authority...establishes the doctrine that when a person, being without fault and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in reasonable exercise of his right of self-defence, his assailant is killed, he is justifiable (*Runyan v. State*, 1877, p.132).

In *Beard v. U.S.* (1895), the U.S. Supreme Court ruled that a man who was "on his premises" when he came under attack and "...did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm...was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground." Notice this is the first case to specifically mention the phrase "stand your ground" as an opposite concept to retreating. However, the Court specifically did not seek to create precedent obliging states to either adopt or invalidate "Stand Your Ground" law (*Beard v. U.S.*, 1895, p.158).

In the case of *Daluiso v. Boone* (1969), the California Supreme Court looked at the history and development of the right to use force to recover land. The court observed that "the majority of American states have construed their statutes of forcible entry, both penal and civil, in such a manner as to abrogate the common law privilege to use force in the recovery of possession of land." In a closing statement Justice Sullivan rendered part of the Courts' decision: "By so holding we give effect to the legislative policy of preserving the public peace and recognize that since the act of forcible entry is unlawful (Pen. Code, § 418) all of the consequences of an unlawful act should attach to it" (*Dalusio v. Boone*, 1969, p.486).

District of Columbia v. Heller (2008) is a more recent U.S. Supreme Court case in which the Court held that the Second Amendment protects an individual's right to possess a firearm for private use (Barnes, 2008). It represents a first for the United States Supreme Court, which directly addressed whether the right to keep and bear arms is a right of the individual or a collective right applying only to state militias (Barnes, 2008). The case also represents the first time since 1939 that the Supreme Court has addressed the scope of the Second Amendment (Barnes, 2008; *United States v. Miller*, 1939). Writing for the majority opinion, U.S. Supreme Court Justice Scalia said, "[The Second Amendment] surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home" (*District of Columbia v. Heller*, 2008, p.63).

However, the Court's opinion tempers the ruling in stating, "like most rights, the Second Amendment is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" (*District of Columbia v. Heller*, 2008, p.54). The Court's opinion "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms" (*District of Columbia v. Heller*, 2008, p.54-55).

The core holding in *District of Columbia v. Heller,* (2008) is that the Second Amendment is an individual right intimately tied to the natural right of self-defense (Barnes, 2008), but one can see the importance and relevance to the drafting of the Castle doctrine and "Stand Your Ground" laws (Craven, 2010, p.835). More importantly, this

landmark case has since opened the door to a landslide of federal and state legal challenges, some of which have resulted in the unprecedented expansion of “Stand Your Ground” (Boots, Bihari & Elliott, 2009, p.3).

There have been many cases where the law has come to the aid of victims of crimes who have legitimately used lethal force to defend themselves. For example, in Oklahoma in 2010, Pernell Jefferson was not charged with murder due to the “Stand Your Ground” law in that state (OK. Stat. §21-1289.25, 2006) after he shot and killed Carl England breaking into his daughter’s apartment (Chuck, 2013).

In 2012, the Tampa Bay Times conducted a comprehensive search of over 200 Florida cases in which the “Stand Your Ground” law was invoked as a defense, not including situations in which police or prosecutors declined to press charges (Hundley, et al., 2012). The study yielded interesting conclusions, primarily that 70 percent of defendants claiming “Stand Your Ground” as an affirmative defense have charges dropped and 73 percent of defendants whose victim was black were released without charge (Hundley et al., 2012). In Florida, without substantial evidence to the contrary, a “Stand Your Ground” defense will most likely succeed and if prosecutors decide to press charges, any defendant claiming “Stand Your Ground” is now entitled to a pre-trial hearing before a judge. At the hearing, a judge must decide based on a "preponderance of the evidence" whether or not to grant immunity, a much lower burden than the "beyond a reasonable doubt" threshold prosecutors must meet at trial (Hundley et al., 2012).

On the opposite side of the law, many other states have kept prosecuting self-defense cases with charges of second-degree murder despite “Stand Your Ground” laws being passed. For example, in Georgia, a “Stand Your Ground” law was passed in 2005

(O.C.Ge.Ann. 16-3-23.1). Nevertheless, the state charged and sentenced John McNeil to life when he used lethal force in self-defense against Brian Epp in his own backyard during an argument (*Georgia v. John McNeil*, 2008). Epp allegedly pulled out a pocketknife and charged to attack McNeil, who went into the house, retrieved a gun and fired a warning shot. Epp did not retreat, instead charging at McNeil, who then fired another shot killing Epp (*Georgia v. John McNeil*, 2008; Chuck, 2013).

In their study of the effects of modern politics and jurisprudence on the centuries old concept of the Castle doctrine, authors David Kaplan and Sue Wimmershoff-Caplan discuss the direct impact of modern penal code to Castle Doctrine on a national level, stating that "the enlightened morality of the Modern Penal Code…is a travesty on the Fourth, Fifth, and Fourteenth Amendments" (Kaplan & Wimmershoff-Caplan, 2005, p.1073). They argue that the hallmark of common law was "that it was developed for the protection of, and from the perspective of, the victim of crime" and that modern law erred on the side of the perpetrator, giving an attacker as many rights as their victims (Kaplan & Wimmershoff-Caplan, 2005, p.1085). This can be seen as antithetical to an interpretation of common law providing for a natural right to self-defense.

From the above examples it can be seen that "Stand Your Ground" laws do not always guarantee that a person will escape being charged with murder, or that it will automatically provide immunity from prosecution. "Stand Your Ground" jurisprudence depends upon national, state, and local law interpretations and will continue to evolve. Therefore, it would be unreasonable to say that people using lethal force to protect themselves are always acquitted due to "Stand Your Ground" law. Chapter III examines the argument for "Shall Issue" licensing and concealed carry reciprocity agreements,

other aspects that can be viewed as strengthening the self-defense laws that support "Stand Your Ground."

CHAPTER III

CONCEALED CARRY AND STANDING YOUR GROUND

As “Stand Your Ground” laws generally provide an expanding multitude of places where one has the right to carry a firearm, it would be wise to take a judicious look at the concepts behind the lawful carrying of a concealed weapon. Concealed carry licensing of private citizens is governed by two broad categories of law: One is a “May Issue” law and the other is a “Shall Issue” law (Lott & Mustard, 1997). Both are defined here, but this section will focus on “Shall Issue.” Shall issue laws are referred to as presumptive right to carry laws, whereby authorities are required to issue a license to whomever meets the specified criteria, regardless of need, social status or political affiliation (Cleary & Shapiro, 1999).

May issue laws, also referred to as discretionary permit systems, allow legal authorities to issue guns only to citizens who are able to establish a compelling need, and the system of issuance is often seen as subjective (Lott & Mustard, 1997; Snyder, 1997). Shall issue proponents decry the political nature of May issue permits, which are often only issued to individuals with political connections, celebrity status, or great wealth (Snyder, 1997). In some jurisdictions, authorities charge exorbitant and arbitrary fees greatly out of line with basic shall issue state permit processing fees, making the permits unaffordable to many applicants (Snyder, 1997).

Under scrutiny, the state also has the burden of proving that the May issue permit system is the least restrictive way of achieving an increase in public safety (Craven, 2010, p.839). This is challenging, given that the statistics on concealed-carry are inconclusive and frequently oppositional (Craven, 2010, p.839; Institute of Medicine, 2013; Kates &

Mauser, 2013). This standard could also be a reason behind the movement of many states from a May issue policy to Shall issue in the face of legal challenges (Albert, 2012; Craven, 2010, p.840). Proponents of May issue offer statistical studies concerning crime rates and the availability of handguns, concluding that more people owning guns directly results in more violence (Duggan, 2001).

May issue laws currently exist in only 14 states and U.S. territories (see Table A3 in appendix) whereas in the District of Columbia and American Samoa the public carrying of weapons is denied outright (Donohue, 2004, p.640). From Appendix Table A3 it can be seen that "Shall Issue" concealed carry has been passed by a majority of the states. In the state of Tennessee, concealed carry is governed by Shall issue law, and is applicable both to residents and non-residents, making it straightforward for qualified civilians to get gun permits and carry concealed weapons in many places for self-defense (Tenn. Code Ann. § 39-17-1351, 2010).

Shall Issue and Stand Your Ground

As previously stated, the concept of "Stand Your Ground" can only apply in any place or area in which the potential victim has a lawful right to be (Megale, 2010, p.114). This situation exists only if the people using deadly force to protect themselves are not engaged in "unlawful activity," which would include the carrying of a handgun without a permit or without following states' guidelines (*McWhorter v. State*, 2007). In essence, this provision has three requirements that must be satisfied for a person to use deadly force in an area outside of their home. The individual must: (1) lawfully be in a place he or she has a right to occupy; (2) not be engaged in any unlawful activity; and

(3) reasonably believe they are in danger of death, physical harm or violent crime (Catalfamo, 2007, p.506). Only if these requirements are met can a person be justified in using deadly force.

Not until this time does "Stand Your Ground" law come into play. For example, Florida law says that the person using force does not have the "duty to retreat" before using force and may "stand his or her ground and meet force with force" (Fla. Stat. § 776.032). Under Florida law a person need not attempt to run away, hide or attempt to flee prior to using deadly force to prevent bodily harm or a violent crime against him or herself or someone else (Catalfamo, 2007, p.524). Under these specific circumstances a person has the right to "stand their ground" and meet potential force with force. Proponents contend that the statute is necessary and that it saves the lives of innocent people who would otherwise be in danger from an attacker if required to attempt to escape or to retreat prior to defending themselves (Weaver, 2008, p.402).

In the United States, 40 states provide a constitutional guarantee of the right to bear and keep arms, and 41 states have enacted a "Shall Issue" law for concealed handguns (Drake, 2008; see also Table A3 in appendix). However, in recent years 5 separate state supreme courts were asked whether Shall issue law was in conflict with a constitutional guarantee of the right to keep and bear arms (Kopel, 2005). Each state had provisions for or modified versions of the Second Amendment, but excluded or prohibited the carrying of concealed weapons (Kopel, 2005, p.101). As author David Kopel summarizes on the issue:

> Although the procedural postures and precise issues were different in New Mexico, Missouri, Ohio, Wisconsin and Rhode Island, the supreme courts of each

> of these states have all contributed to and deepened the emerging social consensus in the United States about the licensed carry of concealed handguns for lawful protection. (Kopel, 2005, p.131).

Proponents of Shall issue argue that as these rights are guaranteed under the constitution, individuals should not have to ask government's permission to do so (Kopel, 2005, p.120). Research studies have shown that the carrying of concealed weapons does not generally result in a measureable reduction of violent crime; however, it was found that people who legally carry a concealed weapon seldom commit violent crimes (Lott, 2000).

Concealed weapon carriers assume a deterrent effect on criminals, as it will be an ever-present risk that any potential victim might be carrying a concealed gun (Kates & Mauser, 2013, p.653). A survey on self-defense found that concealed carry is common among blacks, males, persons from the Southern and Western United States, acquaintances of victims of crime, robbery victims, and people who believe that they must protect themselves without depending on others (Kleck & Gertz, 1998, p.201). Carrying a concealed weapon gives them a sense of security, even if it is never used in self-defense (Kates & Mauser, 2013, p.653).

As a majority of states have now had Shall issue laws for over a decade (see Table A3), the issue of lawful carry permits has not proven to result in the social chaos and impulsive violence predicted by opponents (Kopel, 2005, p.121). It is also evident from other studies that carrying concealed weapons has not lead to a measureable increase in

violence (Clearly & Shapiro, 1999; Kates & Mauser, 2013, p.691), further strengthening the argument for Shall issue laws to let people own and carry a concealed weapon in public places for self-protection (Kleck & Gertz, 2000, p. 221).

The Meaning of Reciprocity

Reciprocity is defined as “a mutual exchange of privileges between states” (Berkeley Law, 2013) and is based on the U.S. Constitution "full faith and credit" provision (U.S. CONST. art. IV, Sec. 1). Almost all United States jurisdictions have established arrangements or compacts where they recognize and/or honor permits and licenses issued by other jurisdictions with similar standards, primarily in regard to marriage and drivers licenses (Craven, 2010, p.845). In reference to concealed carry, it means a state’s recognition of the gun license of an individual from another state without the necessity of that person receiving another permit from the new state in order to carry a gun (Snyder, 1997). Ideally, under Shall issue law, an adult citizen could obtain a single permit from one state and, with minor exception carry a concealed gun in any other jurisdiction recognizing that permit for lawful protection without any legal consequences and with reduced legal costs (Kopel, 2005, p.335). This directly impacts “Stand Your Ground” by further expanding the list of places for lawful concealed carry from a permit holder’s locale to the contiguous United States (Donohue, 2004, p.624; Drake, 2008).

Tennessee has a high degree of reciprocity with other states, not necessarily requiring permit holders from other states to meet the requirements set by the state of Tennessee (Tenn. Code Ann. § 39-17-1351, 2010). For example, only 17 states and U.S. territories are not currently reciprocal in permit recognition with Tennessee, although

Tennessee recognizes any state's or territory's current, valid weapons carry permit (Handgunlaw, 2013; Tenn. Code Ann. § 39-17-1351, 2010). As in all states, Tennessee does require that the out-of-state permit holder comply with Tennessee state and local ordinances regarding all aspects of handgun carry (Donohue, 2004, p.640; Tenn. Code Ann. § 39-17-1301 thru 39-17-1361, 2010).

Reciprocity agreements and rights vary from state to state and sometimes also factor in the residency status of the permit holder (Lott & Mustard, 1997). As the task of negotiating each reciprocity agreement is left to each states' Attorney General's office, politics often play into the agreements (Craven, 2010, p.845). States often have additional requirements such as training courses, safety exams, or range accuracy qualifications, and therefore do not honor permits from states that don't meet the same standards for issue (Craven, 2010, p.845). With reciprocity agreements taking place in increasing numbers of states, permits from one state are increasingly recognized as a permit to conceal carry in almost every other state (Goode, 2012).

However, carrying concealed and licensed guns in public places, as opposed to merely keeping them at home for protection, has considerable implications for crime and associated legal and illegal activities (Catalfamo, 2007, p.535). As carrying concealed guns influences the response and outcome of an altercation, crimes that are not planned, spontaneous fights, or impulsive robberies could be a possibility (Megale, 2010, p.129). There is no doubt it could decrease the possibility of attack or injury to the victim, but it also increases the likelihood of an injury inflicted to result in the death of one of the parties (Kleck & Gertz, 1998, p.200).

Chapter IV probes the “duty to retreat” principle, why it has been removed and if it gives reasonability to justified homicide. Tennessee’s version of “Stand Your Ground” is also critically analyzed and compared with other states in order to understand the differences and in effort to consider Tennessee’s debatable progress in firearms legislation.

CHAPTER IV

STANDING YOUR GROUND IN THE UNITED STATES

To date, "Stand Your Ground" laws have been adopted by 17 of the 50 states, while the Castle Doctrine has been codified or left as part of common law in another 32 states (see Tables A1 & A2). Florida was the first state to enact an official "Stand Your Ground" law, both removing the duty to retreat and by providing immunity from prosecution, and has since become a polarizing reference point for states enacting similar laws (Cheng & Hoekstra, 2012, p.6). Between 2000 and 2010, 21 states removed the "duty to retreat," 17 states extended "Stand Your Ground" to public places, 13 states inserted "presumption of reasonable fear" clauses, and 3 states further extended victims' protections by removing civil liability (Levin, 2010, p.534). Lawmakers in 29 states have considered or proposed new or amended "Stand Your Ground" legislation since 2010, with varying degrees of success (see Table A4).

There are variations in each state's "Stand Your Ground" law concerning the application to public places, exceptions when it is not justified and/or does not apply, and in the case of a person against whom "Stand Your Ground" cannot be applied (Weaver, 2008, p.402). For example, in Wisconsin the law is not extended to public places (Wisconsin A.B. 69, 2012). North Carolina law prohibits use of lethal force against law enforcement officers, landlords and bail bondsmen (North Carolina H.B. 650, 2011). As worded in South Carolina's statute (SC Section 16-11-440, 2006), these laws typically state that the protections do not apply to those who are committing a crime at the time and lethal force can only be used when the person using that force is not carrying out an illegal activity (Weaver, 2008, p.402; SC Section 16-11-440. 450, 2006).

Tennessee's version is strikingly similar to Florida's version of the Stand Your Ground law, but small variations on Stand Your Ground can generate confusion among lawmakers, political figures and citizens alike (Levin, 2010, p.535). Much of the misunderstanding stems from confusion about Florida's Stand Your Ground statute and, more specifically, about Florida's immunity provision (Catalfamo, 2007, p.526). In reality, more than 20 states have Stand Your Ground laws similar to Florida's, but some states do not include immunity from prosecution or have heavily modified it (Ross, 2007; see Tables A1 and A2).

The Florida Difference

It would be fair to say, while other states have enacted their own versions of "Stand Your Ground," taking into account recent media attention and controversy, Florida has become the benchmark against which all other versions of "Stand Your Ground" laws are now measured (Chuck, 2013; Hundley, et al., 2012). The Florida statute divides use of force into two main categories: the first in which a victim dies as a result of force (Fla. Stat. § 776.013); and, the second where the victim does not die (Catalfamo, 2007, p.524; Fla. Stat. § 776.012). Florida's statute allows for the use of deadly force in three categories: "if the person using the force reasonably believes the force used is necessary to prevent either: 1) imminent death; 2) great bodily harm; or 3) commission of a forcible felony" (Fla. Stat. § 776.08). Only these circumstances justify use of deadly force, regardless if the person claiming self-defense is protecting themselves or others (Catalfamo, 2007, p.526; Fla. Stat. § 776.031).

Like Tennessee, Florida has defined self-defense provisions that apply when a defendant is claiming self-defense in the home, another dwelling or a vehicle at the time of the incident (Fla. Stat. § 776.013). However, "Stand Your Ground" laws extend a person other rights to use deadly force in "other place[s] where he or she has a right to be" (Fla. Stat. § 776.013), or as in the Trayvon Martin case, the common area of a neighborhood subdivision (*State of Florida v. George Zimmerman*, 2013).

As the Florida statute lays out:

> A person who is not engaged in unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony (Fla. Stat. § 776.013).

Other versions of "Stand Your Ground" vary as to public places, the duty to retreat, legal exceptions, and the removal of civil liability. For example, in Texas "Stand Your Ground" cannot be invoked if a person is engaged in illegal activities or if the person does not have the right to be in that place (Texas Penal Code Ann. § 9.31) and in North Carolina, "Stand Your Ground" cannot be used against law enforcement officers (North Carolina HB-650, 2011).

What differentiates Florida's "Stand Your Ground" statute is the extensive provision of criminal and civil prosecutorial immunity for a person when acting within the guidelines of the statute (Catalfamo, 2007, p.526). In summary, if a defendant kills

someone in Florida and makes a reasonable claim of self-defense, that person cannot be "prosecuted" for the crime, including arrest, detaining and charging (Hundley et al., 2012). Florida's prosecutorial immunity statute provides:

> (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.
>
> (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 (Fla. Stat. § 776.032).

In most states, however, a claim of "Stand Your Ground" as self-defense does not grant immunity from criminal prosecution, but is used as an acceptable defense and may result in civil immunity (Catalfamo, 2007, p.510).

Changes in Illinois

The state of Illinois, as well as the city of Chicago, has historically had some of the strictest gun control laws in the United States, as well as a decades-long outright ban on the concealed carrying of firearms along with an invasive firearms registry (Albert, 2012). That changed in September, 2009, when the U.S. Supreme Court agreed to hear *McDonald v. City of Chicago* (2010), in an effort to answer the question of "[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses"

(*McDonald v. City of Chicago*, 2010, p.1) as *District of Columbia v. Heller* (2008) did not examine the Second Amendment in the light of state incorporation (Craven, 2010, p.833).

McDonald v. City of Chicago (2010) resulted in the Court holding that the Second Amendment applied to the states through the Fourteenth Amendment's incorporation clause (U.S. CONST. amend. XIV), and that handgun bans like those in Chicago were unconstitutional (*McDonald v. City of Chicago*, 2010, p.44). The *McDonald* court summarized *Heller* when stating: "Explaining that 'the need for defense of self, family, and property is most acute' in the home, we found that this right applies to handguns because they are 'the most preferred firearm in the nation to 'keep' and use for protection of one's home and family'" (*McDonald v. City of Chicago*, 2010, p.19-20).

However, in December 2012, after many legal challenges by the National Rifle Association (NRA) and others in and around the city of Chicago, the United States Court of Appeals for the Seventh District ruled that Illinois' ban on the carrying of concealed weapons in public was unconstitutional (Albert, 2012; AP, 2013). The decision gave state lawmakers a task and a deadline to write and pass a law by June 9, 2013, creating rules that allow for concealed carry (AP, 2013). This proved difficult as rural lawmakers argued with Chicago-area lawmakers over whether the city could set more restrictive policies than the rest of Illinois (AP, 2013).

The Illinois Senate voted 41-17 on the Firearm Concealed Carry Act to override the governor's veto after the House voted 77-31. Some Chicago-area lawmakers voted against the act, stating their belief that the legislation would lead to even more urban violence (AP, 2013). Under the new law, state police can issue permits to carry

concealed guns to any applicant who possess a Firearm Owner's Identification card after passing a background check and undergoing 16 hours of required firearms training (Ill. Public Act 0063, 2013). The law does not allow citizens to carry guns in public places excluded by the act, such as schools, hospitals, parks and public transportation (Ill. Public Act 0063, 2013).

Arguing that the bill would damage public safety, Illinois Governor Quinn suggested multiple changes to the legislation, including the prohibition of guns in restaurants with liquor licenses and limits on the number of firearms carried by permit holders. However, both chambers of the Illinois Legislature voted to override his suggestions, thus establishing the future of carrying of guns in public in Illinois (AP, 2013). The Illinois Legislature also enacted several new laws that gave full control of gun licensing to the Illinois State Police, and abolishing Chicago's gun registration and firearm permit requirements (Ill. Public Act 0063, 2013). Other changes included new penalties for people who committed gun-related offenses within 100 feet of public transportation and bans on firearms in places that made more than half of their revenue from liquor sales (Ill. Public Act 0063, 2013).

Standing Your Ground in Tennessee

Since "Stand Your Ground" was first enacted in Florida, it has been invoked in over 200 legal cases in either granting immunity or pardoning offenders (Catalfamo, 2007, p.523; Hundley et al., 2012). Between 2000 and 2010, Tennessee was among the many states that expanded its existing "Castle doctrine" by adopting similar versions of

Florida's law for a total of 17 states as of this writing (Cheng & Hoekstra, 2012; Chuck, 2013; see also Table A1).

On May 22, 2007, Tennessee Pub. Acts Ch. 210 was passed amending Tenn. Code. Ann. § 39-11-611, removing the "duty to retreat" inside of the home and any place one was lawfully present, under the presumption of reasonable fear (Tenn. Pub. Acts Ch. 210, 2007). Civil liability for justified use of lethal force was also removed (Hoekstra & Cheng, 2012). The legislation passed 32-0 in the Senate and 96-0 in the House (Tenn. Pub. Acts Ch. 210, 2007).

Under Tennessee law, "Stand Your Ground" means that a person is legally justified in hurting or killing an aggressor if acting under "reasonable belief that there is an imminent danger of death or serious bodily injury" (Tenn. Code Ann. § 39-11-604, 2007). It also applies if the person has the right to be at the place where the lethal force is used; if the person against whom the defensive force is used is trying to remove people who are under his legal guardianship or lawful custody; or if the person who is using the force is doing an unlawful activity or using the place for it (Tenn. Code Ann. § 39-11-604 thru 622). Tennessee law also states that using force against another is not justified if he has provoked the other person to use unlawful force, or the other person wants to communicate that he wants to abandon the encounter, but the victim continues to use unlawful force (Tenn. Code Ann. § 39-11-604 thru 622).

It is also important to note that under Tenn. Code Ann. § 39-11-622 (2007) the person using lethal force cannot claim self-defense if the other party is, or could be reasonably inferred to be, a law-enforcement officer, or if the other party or an innocent bystander is injured or killed and it is found later that the force is not justified. If these

requirements are met, the court is then allowed to award attorney's fees, court costs, loss of income compensation, and other expenses incurred in a successful defense (T.C.A §§ 39-11-622). Under these circumstances, if a defendant is acquitted at a criminal trial, they are immune from civil prosecution (Cheng & Hoekstra, 2012). This, however, does not preclude a person from being arrested, charged and prosecuted initially.

On January 7, 2010, Tennessee Senate Bill 3012 was introduced. The bill's actual title is "SB 3012 - A Bill Allowing People with Handgun Permits to Carry Guns in Restaurants and Bars", but is more commonly referred to as the "Guns in Bars" law. The bill authorizes one who is not drinking any alcoholic beverage, and who is in an establishment open to the public that is licensed as a restaurant to carry a firearm. At the same time, the bill also allows individuals, corporations and business entities to prohibit the possession of weapons by any person who is on property owned, operated or managed or under the control of such individuals, corporations, or business entities.

Tenn. Code Ann. § 39-17-1359 (2011) further clarifies the law by allowing individuals and businesses that meet certain requirements to ban concealed carry by posting notice of such, potentially subjecting individuals to criminal liability for violating the posting, even if the individual is a handgun permit holder. Recently enacted Tenn. Code Ann. § 39-17-1313 (2013) amends Tenn. Code Ann. § 39-17-1359 (2011) to create an exception for permit holders who store or transport firearms and ammunition in a privately owned vehicles on public or private property.

S.B. 3012 also amended the education requirement of Tennessee's handgun carry permit class by including some instruction on alcohol and drug effects on the body's reflexes and on an individual's judgment. In an act of protest, Governor Phil Bredesen

vetoed the bill twice, and twice the Tennessee Legislature overruled the vetoes (Associated Press, 2009).

In February 2011, the Tennessee Legislature introduced House Bill 1668, the "Tennessee Gun Owners Improvement Act." H.B. 1668 aimed to improve upon Tennessee concealed carry law by addressing redundancies found in federal law and furthering the removal of restrictions placed on citizens (Tennessee H.B. 1668, 2011). H.B. 1668 attempted to allow gun owners to lawfully store firearms in their privately-owned and locked vehicles while parked on publicly accessible parking lots controlled by employers or businesses. The bill did not affect situations in which firearms were banned from the premises, or circumstances under which the vehicle had no authority to be on the property in the first place. The bill failed in a House vote.

In March 2011, Governor Bill Haslam signed Senate Bill 519 into law. Tenn. S.B. 519, sponsored by state Senator Mike Bell, recognized that the act of an employer allowing a person to legally carry a firearm on the employer's property did not create an occupational safety or health hazard to the employees. S.B. 519 passed in the Senate by a 30 to 1 vote. Tennessee previously had allowed employers to decide whether or not to permit the possession of weapons on their property (Tenn. Code Ann. § 39-17-1359) but S.B. 519 was introduced in response to a complaint filed by an employee that alleged guns at work created an unsafe workplace (Tennessee S.B. 519, 2011).

In March 2013, Governor Haslam signed Senate Bill No. 142, which allowed handgun permit holders to carry and store their guns and ammunition in their privately owned vehicles on public or private parking areas so long as certain requirements were followed. Tenn. Code Ann. § 39-17-1313 took effect July 1, 2013, and allows an

individual with a valid handgun permit to transport and store a firearm or ammunition in the person's privately owned vehicle in public or private parking areas as long as certain conditions are met as outlined in Tenn. S.B. 142 (2013). First, the permit holder must park the vehicle in a permitted area. Second, the permit holder must observe storage requirements, such as storing the weapon out of view when the permit holder is in the vehicle and store the firearm or ammunition out of view in a locked trunk, glove box, or secured container when the person was not in the vehicle (Tenn. Code Ann. § 39-17-1313).

The statute also provides legal protection for public and private entities by exempting them from civil liability "for damages, injuries or death resulting from or arising out of another's actions involving a firearm or ammunition transported or stored by the holder of a valid handgun permit in the permit holder's privately owned motor vehicle…" (Tenn. Code Ann. § 39-17-1313). The protections are lost if the business or individual "commits a crime using the weapon (Tenn. Code Ann. § 39-17-1313).

One should readily be able to see the sweeping changes to Tennessee firearms law that have transpired in the last three years. Five major changes, additions and deletions have been submitted, four of which have become state law. Nationwide, new laws allowing people to carry loaded firearms in workplaces, leisure spots, state and national parks and in restaurants and bars serving alcohol, have been enacted, further expanding the list of places in which a vetted and qualified person has the right to carry a gun (Snyder, 1997; Gay, 2010). Critics argue that such laws are increasing the danger posed by guns (Gay, 2010).

In Chapter V the criticisms lodged against Stand Your Ground are discussed within the framework of what effects, if any, such laws have in relation to crime rates and homicides.

CHAPTER V

THE EFFECTS OF STAND YOUR GROUND

A study conducted by Cheng and Hoekstra (2012) evidenced statistically that "Stand Your Ground" laws increased homicides by eight percent in states where the law was implemented (Cheng & Hoekstra, 2012, p.28). That increase translates into approximately 600 additional homicides taking place per year. That increase was not seen in the group of states that had already endorsed the "Castle doctrine" previously, before the enactment of modern "Stand Your Ground" laws (Cheng & Hoekstra, 2012, p.28). In contrast, the authors found no evidence that self-defense laws deterred criminals from carrying out burglary, aggravated assault or robbery, and in no conclusive way have the laws reduced the crime rate in those states (Cheng & Hoekstra, 2012, p.28). However, it must be noted that it is difficult to say if the additional "homicides" could have been justified legally or how many of those that are reported qualify as non-negligent manslaughter or murders (Cheng & Hoekstra, 2012, p.28).

In a surprising twist for both gun control and gun rights proponents, two recent studies have revealed that gun control does not necessarily save lives or curtail violence in any significant way (Institute of Medicine, 2013; Kates & Mauser, 2013). In contrast to the 2012 study by Cheng and Hoekstra, both 2013 studies found that in many cases, physical violence is often less frequent where guns are easily available (Institute of Medicine, 2013; Examiner, 2013; Kates & Mauser, 2013, p.690). In a federal government-backed study conducted by the U.S. National Academy of Sciences that

studied 99 books, 253 journal articles and 43 government publications, it failed to find that any one gun control initiative was effective in controlling murder rates (Institute of Medicine, 2013).

It is largely believed that in the United States guns are much more readily available than in Europe and that Europe's murder rate is relatively low as compared to the United States because of stringent European gun control laws (Institute of Medicine, 2013). However, it was found that both beliefs are in error, as European countries such as Austria, having 17,000 guns per 100,000 people, and Germany, having 30,000 guns per 100,000 people, demonstrate comparatively low murder rates of 0.81% and 0.93% respectively (Kates & Mauser, 2013, p.652).

Conversely, in Russia, which has a complete ban on handguns, the murder rate was found to be 30.6% as compared to a 7.8% national rate in the United States. In the nation of Luxembourg, where all guns are banned, its murder rate was found to be nine times higher than Germany which has a relatively high 30,000 guns per 100,000 peoples. (Kates & Mauser, 2013, p.651-652). European murder rates tended to be lower even prior to passing of gun control laws (Examiner, 2013). Based on these studies, the critical claim that gun control laws decrease murder rates, or that allowing the lawful carrying of weapons would increase the murder and crime rate was not found to have a strong factual basis (Institute of Medicine, 2013; Kates & Mauser, 2013, p.690).

The results of both the Kates and Mauser study (2013) and the U.S. National Academy of Sciences study were surprising and quickly embraced by "Stand Your Ground" proponents (Examiner, 2013). Critics point out that the states with the most lenient gun laws have wholly endorsed "Stand Your Ground," regardless of contradictory

statistical evidence stating that justifiable homicide in those states has doubled (McClellan, Chandler & Tekin, 2012). Neither side is prepared to budge on "Stand Your Ground" law because it is yet to be conclusively determined if justifiable homicide has increased, decreased or remained stable in states that have not enacted similar laws (Kates & Mauser, 2013).

Even if the purpose of the law and the effects are set aside, there are certain fatal flaws in "Stand Your Ground." Megale (2010) argues that before being applied, all laws assume the presence of certain elements (p.107). In the instance of "Stand Your Ground," the single most important assumption is that only one of the parties involved has the right to use force for self-defense (Megale, 2010, p.116). Nevertheless, during a typical real life scenario, both parties assume that they have the right to protect themselves during an escalation of threat or physical force (Catalfamo, 2007, p.514).

For example, in *State v. Page* (1982), a Florida court considered "Castle doctrine" as a claim by neighbors resulting from a fight in an apartment building. The defendant was accused of killing his neighbor on the common walkway shared by their apartments. The Court refused to accept the claim, explaining that "[A]s our society moves more and more toward communal-type dwellings . . . [extending the privilege] would, in effect, allow shootouts between persons with equal rights to be in a common area" (*State v. Page*, 1982, p.1).

"Stand Your Ground" is also criticized for encouraging the escalation of harm, in that the law assumes that both parties are armed, and that the party feeling threatened can use lethal force to defend his or herself and be considered the "good guy" (Megale, 2010, p.115). The question has been posed, that if both persons stake a claim to a "Stand Your

Ground" defense, how is it to be decided which party is correctly using force for self-defense (James, 2013)? In the case of one's home, at least it can reasonably be determined who is the intruder and who is the resident within their rights. In public places, however, it becomes more difficult to distinguish who is right and who is wrong (James, 2013; Catalfamo, 2007, p.539).

Support and Criticisms for Stand Your Ground

"Stand Your Ground" is often criticized on the basis of encouraging violence (James, 2013), and critics argue that "Stand Your Ground" laws result in more deaths and injuries than would happen in absence of the law by encouraging an attitude of "shoot first, ask questions later" (Megale, 2010, p.114). It is not surprising then that detractors often refer negatively to "Stand Your Ground" laws as "Shoot First" laws (Chuck, 2013). Proponents of "Stand Your Ground" counter that it allows people to protect themselves without worrying whether they have retreated sufficiently prior to using force when they are under or presumed to be under an imminent threat (Megale, 2007, p.116).

Gun control proponents argue that existing self-defense law is more than sufficient to protect the average law-abiding citizen and that "Stand Your Ground" laws will only create an atmosphere for more violence by increasing available legal protections while decreasing criminal penalties (Hubbard, 2013, p.33). "Stand Your Ground" critics believe the law has increased the number of murders now classified as "justifiable homicides," and in states that have enacted the law, critics state that "Stand Your Ground" has negatively affected racial minorities and will mostly be claimed as a defense

by criminals in an attempt to gain immunity from prosecution (Hundley, et al., 2012; Megale, 2010, p.109).

"Stand Your Ground" laws change the self-defense thought process in important ways (Megale, 2007, p.114). Initially, the laws can impact the possible monetary costs of using lethal force, both criminally and civilly (Ross, 2007, p.3). They decrease the potentially crippling financial costs of defending oneself against both criminal and civil prosecution, in addition to the high probability that the accused person will be found guilty or at least liable (Ross, 2007, p.3). The laws also create a high "cost to benefit" ratio for potential criminals in the sense that it is possible and likely that their target may be armed and willing to resist with lethal force (Snyder, 1997). "Stand Your Ground" proponents also argue that since the decision to use lethal force can occur in seconds and under high stress, an individual should be given leeway or the legal benefit of the doubt (Goode, 2012). Others claim that the law is valid and necessary, even if in some cases it has not been applied properly or misinterpreted (Olorunnipa, 2012).

In Florida on February 26, 2012 an unarmed, 17-year-old teen, Trayvon Martin was shot and killed by George Zimmerman, a neighborhood watch volunteer, on suspicion that Martin might be a burglar (*State of Florida v. George Zimmerman*, 2013). It sparked a nationwide debate and outrage over the killing of the teenager, as Zimmerman was not initially arrested by the police, claiming that he was assaulted and had the right to shoot. On July 13, 2013, after a lengthy and highly publicized trial, Zimmerman was acquitted of all charges (CBS News, 2013). Even though his defense did not invoke Florida's "Stand Your Ground" law, it was a central focus in the media and became a catalyst for gun control proponents (CBS News, 2013).

National outrage over the killing of Trayvon Martin seemed to create a backlash against "Stand Your Ground," with many public figures and elected officials protesting the law and either demanding its repeal or review (CBS News, 2013). Even President Barack Obama and Attorney General Eric Holder have suggested a federal review of "Stand Your Ground" laws (Terkel, 2013; Fox News, 2013). U.S. Representatives such as Sheila Jackson Lee (D-TX) introduced bills suggesting federal funds be cut to pressure states that had passed "Stand Your Ground" laws to drop them (Finger, 2013).

However, despite media coverage, public outcry and protests by public figures, it is unlikely that "Stand Your Ground" will be repealed or bring "regressive" changes in the nation's self-defense laws, and in some cases may even enable states to strengthen them (The Associated Press, 2013). For example, a 2012 panel formed by the state of Florida to review self-defense laws suggested only minor grammatical changes, indicating that the laws should stand as is and no significant changes were required (Olorunnipa, 2012). At the same time, public pressure for further "Stand Your Ground" review resulted in Florida State Senators Chris Smith (D) and David Simmons (R) introducing bills with new and specific directions, as well as clarified definitions, for "Stand Your Ground" law (Lee, 2013).

Senator Smith is quoted as saying that the law needs to be more explicit in defining what an "aggressor" is and what "unlawful activity" is (Lee, 2013). The two separate bills (Florida SB-122 & Florida SB-130) were merged into a single bill (Florida CB/SB-130) with directions to the Department of Law Enforcement to "develop a uniform training curriculum for county sheriffs and municipal police departments to use in training participants in neighborhood crime watch programs" in addition to modified

language further defining “immunity” and “aggressor” (Florida CB/SB-130). In the wake of recent negative publicity, political figures and lawmakers demanded that the measures pass and in October 2013, the Florida Senate Judiciary committee complied, voting 7 -2 to pass the bill in part to “better define neighborhood watch operations, the immunity available to those who provoke deadly confrontations, and the authority of law enforcement to investigate self-defense claims” (Florida CB/SB-130; Lee, 2013).

At the Federal level, a United States Senate Judiciary Committee hearing, entitled “Stand Your Ground' Laws: Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force,” was scheduled for September 2013, but was postponed indefinitely by committee chairman Senator Dick Durbin (D-Ill) in the wake of a tragic shooting at the nearby Washington Navy Yard (Goodwin, 2013). Beyond this hearing and public statements by President Barack Obama, Attorney General Eric Holder and many others, no further action has taken place on a national level.

Conclusions

In slightly over a decade, the United States has seen three U.S. Supreme Court cases, dozens of state and local legal challenges as well as legislative bills and acts, all of which have been concerned with the individual right to keep and bear arms. The Second Amendment to the Unites States Constitution has been and continues to be one of the most polarizing parts of our founding documents, creating as much fierce debate today as it did while being drafted in the wake of a revolution. The United States is a nation that values the rights of the individual above all others. It is not an accident that the Declaration of Independence emphasizes this where it states: “We hold these truths to be

self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" (US Declaration Ind.). Regrettably, the possibility that someone else can forcibly deprive us of any of these things creates the necessity for legal concepts like "Stand Your Ground."

In the last decade "Stand Your Ground" law has established a foothold in many states, and its jurisdiction has continued to expand from one's own "castle" to include most public places (see Tables A1, A2 and A4). The law enables citizens to use lethal force when presumed to be under threat without the obligation to attempt to retreat first. The mass of confusing legal terminology and patchwork of conflicting local, state and national laws and statutes surrounding when and where people can defend themselves has been cleared by this law. "Stand Your Ground" doctrine has eliminated the fear of prosecution of people who use self-defense legitimately, even if they have made no attempt to retreat. Its intention was to allow good citizens to use lethal force in stopping violent crimes against themselves and others. "Stand Your Ground" not only provides for immunity from criminal prosecution, it removes financially crippling civil liability for those who are exonerated. However, indiscreet use of the law leads to questioning its wisdom and purpose.

The "duty to retreat" principal was incorporated in most original self-defense laws to provide a measure of "reasonableness" in the use of lethal force in or as a justification for homicide. However, it created legal confusion for the victims of crime and gave criminals a window of opportunity to use violence against them. "Stand Your Ground" has attracted a great deal of media attention, feeding the controversy with opinions,

half-truths and misinformation. Both sides of this argument have been of popular interest recently following several highly publicized cases, and the complete repeal of "Stand Your Ground" laws along with the reinstatement of the duty to retreat has been called for from many soapboxes and political pulpits, up to and including the highest levels of government.

Critics claim that instead of deterring criminals and reducing crimes, "Stand Your Ground" law encourages people to use force without being reasonable, unnecessarily escalates tenuous situations to dangerous levels and has resulted in increasing homicide and crime rates (Catalfamo, 2007). However, critics fail to note that the original purpose of "Stand Your Ground" law was not to deter crime or reduce crime rates; it was enacted with the intent of allowing law-abiding people the optional use of deadly force when they felt threatened with imminent harm and to potentially stop violent acts against themselves and others. Advocates of "Stand Your Ground" claim that the statute is doing what it was enacted for: stopping violent acts and allowing good people to defend themselves against vicious criminals.

An apparent correlation does exist between the enactment of "Stand Your Ground" laws and a subsequent increase in homicide; however, it cannot conclusively be said that the increases in homicide are a direct result of the implementation of "Stand Your Ground" laws (Cheng & Hoekstra, 2012, p.28). Also, there is lack of evidence showing any additional reductions in homicides or violent crime in the states that have not removed the "duty to retreat" principle from self-defense over "Stand Your Ground" states (Cheng & Hoekstra, 2012, p.28). It should further be noted that passage of these

laws and the high level of media attention they have generated is also likely to further heighten citizen awareness and understanding of "Stand Your Ground."

Tennessee has been shown to be a very progressive state for gun rights, as evidenced by sweeping changes in legislation over the past few years, and continues to be at the forefront of gun rights discussion and adoption. Four bills including Tennessee's Stand Your Ground provision, "Guns in Bars," "Guns in Trunks," and an Occupational Health and Safety act have been introduced and passed since 2007, most of which has occurred since 2010. Tennessee has enacted or codified almost every possible right that would be available to gun owners anywhere in the United States, save the full immunity clause in force in Florida. Only the more earth-shattering changes resulting in Illinois and Washington, D.C. by recent U.S. Supreme Court decisions could overshadow the changes that have occurred in Tennessee law.

Individuals have an incredibly small fraction of time to make the decision to take action in their own self-defense, and any momentary lapses could possibly result in their grave bodily injury or death should they spend too much time considering the "duty to retreat" and its legal and moral consequences. It cannot be denied that some individuals will misuse and misunderstand "Stand Your Ground" law as a license to carry guns at all times and in all places, or as a carte blanche "license to kill," but should the actions of the few define the rights of the many? Historically speaking, not so much in the United States.

More research and scientific evidence is required to analyze the exact impact of "Stand Your Ground" law on crime and homicides. Extensive statistical research and data collection is needed in states that have and have not enacted "Stand Your Ground" laws

to be able to arrive at anything other than an educated opinion. As the majority of states have passed “Stand Your Ground” or have modified “Castle doctrine” legislation, with much more pending (see Tables A1-A4), the wholesale repeal or negative revision of “Stand Your Ground” law resulting from political whims, emotional arguments, and without factual basis is not justified.

Table A1

*States With Stand Your Ground Laws In Effect**

State	Establishing Case/Statute	Year Est.**
Alabama	Alabama Code § 13A-3-23	2006
Alaska	H.B. 24	2013
Arizona	Ar. Rev. Stat. 13-411	2013
Florida	Fla. Stat. 776.013	2005
Georgia	O.C.Ge.Ann. 16-3-23.1	2010
Indiana	Indiana Code Ann. § 35-41-3-2	2006
Kentucky	Ky. Rev. Stat. 503.050	2012
Louisiana	La. Rev. Stat. 14:20	2011
Mississippi	Miss. Code Ann. § 97-3-15	2006
Montana	Mont. Code Ann. § 45-3-103	2009
Nevada	Nev. Rev. Stat. 200.120	2011
New Hampshire	N.H. Rev. Stat. 627:4	2010
Oklahoma	OK. Stat. §21-1289.25	2006
Pennsylvania	Penn. Code Tit. 18 § 505	2010
Tennessee	Tenn. Code Ann., 39-11-611	2010
Texas	Tex. Penal Code Ann. § 9.31	2007
Utah	Utah Crim. Code 76-2-402	2010
Washington	RCW § 9A.16.050	1975

**Stand Your Ground definition here is a codified Castle Doctrine expansion plus civil immunity from prosecution.*
*** Year indicated is year of last amendment(s) passed to meet SYG criteria.*

Table A2

*States With Castle Doctrine Laws In Effect**

State	Establishing Case/Statute	Year Est.**
Arkansas	A.C.S. § 5-2-620, 607	1975,1981
California	Cal. Penal Code Sect. 187-199 § 198.5	1984
Colorado	18-1-704.5, C.R.S.	1985
Connecticut	Conn. Sec. 53a-20	1971
Delaware	Del. Code § 464	1953
Hawaii	Hawaii § 703-304	1972
Idaho	Idaho Code - 18-4009	2005
Illinois	Illinois Public Act 0063	2013
Iowa	Iowa Code §§ 704.1, 704.3, 704.4, 704.7	1973
Kansas	S.B. 381	2010
Maine	Maine Rev. Sta. §104	2007
Maryland	*Crawford v. State* (1963)	1963
Massachusetts	Mass. 278-8a	unk.
Michigan	Act 309	2006
Minnesota	Minn. Stat., Sec 609.06 & 609.065	1963
Missouri	S.B. 62 & 41	2007
Nebraska	R.R.S. Neb. §§ 28-1409, 28-1410, 28-1416	2005
New Jersey	N.J. Stat. 2C:3-4	2008
New Mexico	*State v. Couch* (1946)	1946
New York	N.Y. Pen. Law § 35.05-.30	1965

Table A2 (continued)

*States With Castle Doctrine Laws In Effect**

State	Establishing Case/Statute	Year Est.**
North Carolina	North Carolina H.B. 650	2011
North Dakota	N.D.C.C. 12.1-05-07.2	2007
Ohio	Ohio Rev. Code 2901.09	2008
Oregon	ORS 161.209-229	2011
Rhode Island	R.G.S. § 11-8-8	1976
South Carolina	SC Section 16-11-440. 450	2006
South Dakota	S.D.C. 22-16-34	2005
West Virginia	WV Code §55-7-22	2008
Wisconsin	Wisconsin A.B. 69	2012
Wyoming	Wyoming H.B. 0137	2008

**Castle Doctrine definition here includes codified statutes, established common law, codified jury instructions or case law including upheld court decisions.*
*** Year indicated is first year found for bill passage, unmodified, codified statute or year of court decision*

Table A3

*Shall Issue, May Issue, Stand Your Ground and Castle Doctrine – State by State**

State	Shall Issue	May Issue	Stand Your Ground	Castle Doctrine
Alabama		X	X	
Alaska	X		X	
Am. Samoa	*Concealed weapon carry outright ban			
Arizona	X		X	
Arkansas	X			X
California		X		X
Colorado	X			X
Connecticut		X		X
Delaware		X		X
D. C.	*Concealed weapon carry outright ban			
Florida	X		X	
Georgia	X		X	
Guam		X		
Hawaii		X		X
Idaho		X		X
Illinois	X			X
Indiana	X		X	
Iowa	X			X
Kansas	X			X

Table A3 (continued)

Shall Issue, May Issue, Stand Your Ground and Castle Doctrine – State by State

State	Shall Issue	May Issue	Stand Your Ground	Castle Doctrine
Kentucky	X		X	
Louisiana	X		X	
Maine	X			X
Maryland		X	*MD common law & case law definition	
Massachusetts		X		X
Michigan	X			X
Minnesota	X			X
Mississippi	X		X	
Missouri	X			X
Montana	X			X
Nebraska	X			X
Nevada	X		X	
New Hampshire	X		X	
New Jersey		X		X
New Mexico	X	*NM case State v. Couch (1946) outline a hybrid definition		
New York		X		X
North Carolina	X			X
North Dakota	X			X
Ohio	X			X

Table A3 (continued)

Shall Issue, May Issue, Stand Your Ground and Castle Doctrine – State by State

State	Shall Issue	May Issue	Stand Your Ground	Castle Doctrine
Oklahoma	X		X	
Oregon	X			X
Pennsylvania	X		X	
Puerto Rico		X		
Rhode Island		X (*Partial)		X
South Carolina	X			X
South Dakota	X			X
Tennessee	X		X	
Texas	X		X	
U.S. Virgin Isl.		X		
Utah	X		X	
Vermont	X	*Vermont has no discernible SYG or Castle Doctrine law		
Virginia	X	*Virginia common law currently provides def. for SYG		
Washington	X		X	
West Virginia	X			X
Wisconsin	X			X
Wyoming	X			X

**Except where indicated, each state has codified statute referring to or meeting the criteria for each category.*

Table A4

States Considering or Proposing New/Amended Stand Your Ground Statutes Since 2010

State	Bill or Proposal*	Year Proposed	Year Enacted**
Alabama	H.B. 694	2012	
Alaska	H.B. 80, 24	2011, 2013	2013
Colorado	H.B. 2012	2012	
Connecticut	H.B. 5345	2012	
Georgia	H.B. 1308	2011	
Iowa	H.B. 57, 263, 36, 2215, 573, 7	2011, 2013	
Kansas	S.B. 381	2006	2010
Kentucky	S.B. 218	2012	
Louisiana	H.B. 1100	2012	2012
Massachusetts	H.B. 2218, 1568, S.B. 661	2011	
Minnesota	H.F. 1467	2011	
Mississippi	H.B. 770	2012	
Nebraska	L.B. 804, 298, 232	2011	
New Hampshire	H.B. 207, 210, 567, 1423	2011	
Nevada	A.B. 8, 381	2011	
New Jersey	A.B. 608, 886, 4906, 707	2012	
New York	S.B. 266, 4557, 281	2011	
North Carolina	H.B. 650	2011	2011
Ohio	H.B. 203	2013	
Oklahoma	H.B. 2702, 2988	2011	

Table A4 (continued)

*States Considering or Proposing New/Amended Stand Your Ground statutes since 2010**

State	Bill or Proposal	Year Proposed	Year Enacted
Oregon	H.B. 2648, 2999	2011	
Pennsylvania	S.B. 273	2011	2011
South Carolina	H.B. 5072	2011	
Tennessee	H.B. 1668	2013	
Texas	H.B. 2526	2011	
Utah	H.B. 263, 78, 207	2010	2010
Vermont	H.B. 285	2011	
Virginia	H.B. 48, 1573	2012	
Washington	S.B. 5418	2011	
Wisconsin	A.B. 69	2011	2011

**Companion legislative bills not shown if similar to or combined with original bill.*
** Only bills passed and signed into law are indicated. Others are typically sent to committee for redrafting and review, die in committee, voted down or vetoed.

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