



– Essays on Race and Guns in America –

The Dangerous Expansion of Stand-Your-Ground Laws and its Racial Implications

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I. Introduction

Recently, there have been several high-profile trials that underscore the intersection of guns and race in America. In Georgia, Greg and Travis McMichael (father and son), and William “Roddie” Bryant, stood trial for fatally shooting Ahmaud Arbery, a Black man whose race seemed to be the only provocation the three white men needed to end his life. Many argue that had Arbery been white, he never would have aroused the suspicions of the McMichaels, and certainly had the assailants been Black, they would have been arrested immediately. Miles away, in Kenosha, Wisconsin, Kyle Rittenhouse, was acquitted of murder and attempted murder. Rittenhouse, only 17 at the time, openly carried an AR-15 assault rifle down the street during protests related to the police shooting of Jacob Blake, a Black man. Rittenhouse moved freely about Kenosha streets, even as those in the crowd warned officers that he had shot three people, killing two of them. Many observers have opined that had Rittenhouse been a Black man, he surely would not have lived to stand trial, and even if he survived, he would have been unlikely to receive the sympathy that so many had for Rittenhouse.¹

These cases demonstrate that the role of race and guns in America cannot be disentangled. Holding those responsible for these homicides is important, but it is imperative to determine how to prevent future killings. Valuing Black lives means confronting a gun culture that promotes private vigilantism (as in the shooting death of Arbery), which some white Americans use to justify gun violence against Blacks. Valuing Black lives also means ensuring equal access to self-defense claims and treating similarly-situated defendants similarly. This means ensuring that Black Americans, when appropriate, are able to avail themselves of available defenses under the law. Although the Rittenhouse case did not involve issues of Stand-Your-Ground, it offers an interesting lens through which to analyze the role that race potentially played in his acquittal.

The expansion of Stand-Your-Ground statutes and an entrenched gun culture in the United States complicate both these propositions, and the racial impact of these laws deserves greater attention from policymakers.²

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¹ After his acquittal, Rittenhouse was welcomed by many conservative politicians, and even met with former President Trump. See Teaganne Finn, *Trump Says He Met with Kyle Rittenhouse After Verdict, Calls Him 'a Nice Young Man'*, NBC NEWS (Nov. 24, 2021), <https://www.nbcnews.com/politics/donald-trump/trump-says-he-met-kyle-rittenhouse-after-verdict-calls-him-n1284513>.

² It is undeniable that the United States has a unique fixation with guns. The U.S. is the only country where civilian guns outnumber people. See Kara Fox, Krystina Shveda, Natalie Croker & Marco Chacon, *How U.S. Gun Culture*



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II. *Stand-Your-Ground Explained*

A. *Common-Law Self Defense*

In general, the law of self-defense is an affirmative defense that allows a defendant to argue that the use of force was justified to protect herself or others harm. In the case of a deadly use of force, the defendant would need to show that deadly force was necessary to prevent serious injury of bodily harm or death. Under the common law, self-defense imposes a duty to retreat before using deadly force, meaning if the defendant had been able to safely avoid the conflict, she was obligated to do so and could not avail herself of the defense.³ Generally, however, there was no duty to retreat when the defendant was in her home, and this concept is called the “castle doctrine.” Some states expanded the castle doctrine to include motor vehicles or workplaces, and other states have enacted legislation that removes the duty to retreat in all circumstances—known as “Stand-Your-Ground” statutes.⁴ These Stand-Your-Ground statutes essentially codify the absence of the duty to retreat and allow individuals to use deadly force even when there is an option to safely retreat from a potentially dangerous situation.

B. *The Expansion of Stand-Your-Ground Laws*

Backed by gun-rights proponents, and enacted in over half the states, Stand-Your-Ground laws have proliferated since 1994 when Utah became the first state to pass Stand-Your-Ground legislation.⁵ In 2005, there began to be widespread legislative movement. According to the Rand Corporation, as of January 1, 2020, there were 34 states that had Stand-Your-Ground laws or had expanded the castle doctrine to apply beyond the home. In 2021, both Arkansas and Ohio passed legislation to expand the castle doctrine. For example, in March 2021, Arkansas Governor Asa Hutchinson signed into law a bill that allows an armed person to use deadly force if they believe they are in imminent danger. This represented a departure from previous law where Arkansas did prohibit a person from using deadly force if they can safely retreat. Hutchinson said that while he previously thought there was no compelling reason to have such a law, he was now persuaded by the fact that the bill was not opposed by law enforcement.

Stacks up with the World, CNN (Nov. 26, 2021), <https://www.cnn.com/2021/11/26/world/us-gun-culture-world-comparison-intl-cmd/index.html>.

³ See *United States v. Peterson*, 483 F.2d 1222 (D.C. Cir. 1973).

⁴ See Lindsay Whitehurst, *Utah Law Allows Gun Owners to Use Deadly Force in Many Cases*, LUBBOCK-AVALANCHE J. (May 6, 2015), <https://www.lubbockonline.com/story/news/nation-world/2015/05/06/utah-law-allows-gun-owners-use-deadly-force-many-cases/14978643007/>.

⁵ See *id.* (noting that Utah’s law came more than a decade before Florida passed its stand-your-ground law in 2005, and that since then 30 states had enacted similar laws).



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III. *Implications of Stand-Your-Ground Laws*

A. *Evidence Suggests that Stand-Your-Ground Laws Increase Firearm Homicides*

There are a number of arguments against expanding Stand-Your-Ground laws. First, these laws encourage people to take the law into their own hands without calling on law-enforcement officials who should be skilled at intervening in dangerous situations. The existence of these laws discourages de-escalation and may encourage people to “shoot first, ask questions later.”⁶ As some gun violence prevention experts have noted, these laws make people feel like it is their job to do traditional police work.

In fact, studies show that Stand-Your-Ground laws do not deter crimes, but they have been shown to increase firearm homicide rates. For example, in 57% of Florida Stand-Your-Ground cases, there was “clear evidence that the person who claimed that Stand-Your-Ground could have safely retreated to avoid the confrontation.”⁷ In essence, these laws allow individuals to forgo de-escalation and use deadly force as a first step. Experts note that “such laws have created a shoot-first-ask-questions-later culture that gives a green light to people with no firearms or bias training to make life-or-death decisions, often within a matter of seconds.”⁸

A 2017 study in the *Journal of Human Resources* found that Stand-Your-Ground laws led to an increase in homicides and hospitalizations related to firearm-inflicted injuries. The study estimated that at least 30 people died per month due to the laws.⁹ Cheng and Hoekstra (2013) found that these laws significantly increase homicide rates, but they have uncertain effects on robbery, aggravated assault, and burglary rates.¹⁰ McClellan and Tekin (2017) also found significant increases in total homicides associated with the implementation of Stand-Your-Ground laws. In contrast, Webster, Crifasi, and Vernick (2014) found that these laws have an uncertain effect on the total homicide rate. Finally, Humphreys, Gasparrini, and Wiebe (2017) and Guettabi and Munasib (2018) found significant effects consistent with the law increasing total homicides in Florida after its passage. These studies draw on two distinct data sources: Federal Bureau of Investigation crime-rate data from the Uniform Crime Reporting Program and the Centers for Disease Control and Prevention’s Fatal Injury Reports. Evidence that Stand-Your-Ground laws may increase total homicide rates is moderate, and evidence that such laws may increase firearm

⁶ *The Effects of Stand-Your-Ground Laws*, RAND CORPORATION (Apr. 22, 2020) <https://www.rand.org/research/gun-policy/analysis/stand-your-ground.html>.

⁷ *Stand Your Ground Laws Are a License to Kill*, EVERYTOWN FOR GUN SAFETY (Sept. 8, 2021) <https://everytownresearch.org/report/stand-your-ground-laws-are-a-license-to-kill/>.

⁸ Kami Chavis, *If We Truly Value Black Lives, End Stand-Your-Ground*, COLUMBUS DISPATCH (June 17, 2020), <https://www.dispatch.com/story/special/2020/06/17/column-if-we-truly-value-Black-lives-end-stand-your-ground/112817872/>.

⁹ Chandler McClellan and Erdal Tekin, *Stand Your Ground Laws, Homicides and Injuries*, 52 J. HUM. RES. 621 (2017).

¹⁰ Cheng Cheng and Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence?* 28 J. HUM. RES. 428 (2013).



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homicide rates is supportive. Evidence for the effect of Stand-Your Ground laws on other types of violent crime is inconclusive.¹¹

B. Racial Disparities

In addition to the potential increase in firearm homicides in general, there is also evidence that Stand-Your-Ground laws exacerbate racial inequities for both victims of and defendants. In Stand-Your-Ground states, “homicides in which white shooters kill Black victims are deemed justifiable five times more frequently than when the situation is reversed.”¹² In Florida—which is considering a repeal of the law—the law was associated with a 45% increase in monthly firearm homicide rates and around a 23% increase among Black residents. When speaking about the Stand-Your-Ground statute in Florida, then-gubernatorial candidate Andrew Gillum, who is Black, noted that the law “is being used by vigilantes to turn themselves into judge, jury and executioner.”¹³ He further went on to state, “We all know that [Stand-Your-Ground] is not colorblind. If we’re going to talk about it, we’re going to have to talk about it fully.” He continued, “We all know that based on the color of my skin I present a certain threat. A certain level of threat that might cause someone to have the power to snuff out my life or my children’s lives.”¹⁴

Some observers have even declared that such laws were “designed to benefit white shooters and not gun owners of color.” An Urban Institute study seems to buttress this claim. For example, the study found that when both the shooter and victim are white, 11% of these cases have been deemed justifiable.¹⁵ When both parties are Black, a lower percentage of Black defendants are able to successfully avail themselves of the defense, and the rate falls to 8%.¹⁶ The most telling finding from this study is what happened when the shooter and victim are of different races. When the shooter is white and the victim is Black, the rate of justifiable homicide is 34%. When the races are reversed, and the shooter is Black and the victim is white, the rate of justifiable homicide fell to only 3%.¹⁷ This evidence strongly suggests that white assailants can more confidently use deadly force when their victims are Black, than can Black defendants when their victims are white. Again, Black lives, whether they belong to the victim or defendant, are not treated equally under the law.

¹¹ *The Effects of Stand-Your-Ground Laws*, RAND CORPORATION (Apr. 22, 2020), <https://www.rand.org/research/gun-policy/analysis/stand-your-ground.html>.

¹² *Stand Your Ground Laws Are a License to Kill*, EVERYTOWN FOR GUN SAFETY (Sept. 8, 2021) <https://everytownresearch.org/report/stand-your-ground-laws-are-a-license-to-kill/>.

¹³ David Love, *Stand Your Ground Laws Encourage Racially Charged Violence*, CNN (Aug. 3, 2018) <https://www.cnn.com/2018/08/03/opinions/stand-your-ground-law-racial-violence-opinion-love/index.html> (citing then-gubernatorial candidate Andrew Gillum’s comments about Florida’s law).

¹⁴ *Id.* (citing then-gubernatorial candidate Andrew Gillum’s comments about Florida’s law).

¹⁵ John Roman, *Stand Your Ground Laws and Racial Bias*, URBAN INSTITUTE (June 2013), <https://www.urban.org/urban-wire/stand-your-ground-laws-and-racial-bias>.

¹⁶ *Id.*

¹⁷ *Id.*



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Stand-Your-Ground's Victims of Racist Vigilantes

A. Ahmaud Arbery

The case of Ahmaud Arbery presents one of the most recent and well-known invocations of Stand-Your-Ground. Examining the doctrine through the lens of this case, also illuminates the role that race may play in these situations. In February 2020, two armed white men, Gregory and Travis McMichael, killed Ahmaud Arbery in Georgia as he jogged through their neighborhood. Police initially questioned the McMichaels and determined that they acted properly under Georgia's Stand-Your-Ground law. This case illustrates the danger that even the existence of such a defense potentially could have insulated these assailants and others from trial, where after a full vetting of the facts and evidence, ultimately demonstrated their guilt.

A review of footage released after Arbery's death, however, clearly demonstrates that circumstances do not meet the strictures of the state's Stand-Your-Ground law. The McMichaels pursued Arbery, blocked his path with their truck, and attempted to detain him simply because they suspected Arbery of trespassing at a construction site. If they truly suspected he was trespassing, why not continue monitoring him and initiating contact with local law enforcement agents to arrive and conduct a proper investigation within their training and experience. It is doubtful, whether based upon the scant facts available at the time, that police would have had enough information to conduct a constitutionally permissible stop. Jogging through a neighborhood and even stopping to view a construction site is not a crime, and certainly not an infraction that justifies taking a life. These men accosted Arbery, hit him with a truck, and Travis McMichael fatally shot Arbery when he defended himself against the armed assailants. If anyone could have availed himself of the Stand-Your-Ground defense, it would have been Arbery, who legally could have defended himself against the armed vigilantes chasing him for no known reason.

It took 74 days after the shooting for Georgia authorities to charge the McMichaels with Arbery's death.¹⁸ In addition to conflicts of interest that eventually forced a recusal (the prosecutors knew and previously worked with Greg McMichael), the very existence of the Georgia Stand-Your-Ground law is to blame for the delay.¹⁹ Without the Georgia law, it would have been difficult to argue that suspects, who themselves accosted Arbery, were entitled to that self-defense.

The racial dynamics of Arbery's murder are well-documented. There were allegations that Travis McMichael had a history of using racial slurs when referring to Black people and that he used a

¹⁸ See Cleve R. Wootson Jr., and Michael Brice-Sadler, *It Took 74 days for Suspects to be Charged in the Death of a Black Jogger*, WASH. POST (May 8, 2020) https://www.washingtonpost.com/national/outraged-by-the-delayed-arrests-in-killing-of-Black-jogger-protesters-in-georgia-demand-justice/2020/05/08/8e7d212a-90a9-11ea-9e23-6914ee410a5f_story.html.

¹⁹ The first local prosecutors who initially handled the case had personal/professional relationships with the McMichaels. See Oliver Laughland, *Ahmaud Arbery Murder: Trial Laid Bare America's Faultlines on Race*, THE GUARDIAN (Nov. 25, 2021) <https://www.theguardian.com/us-news/2021/nov/25/ahmaud-arbery-verdict-race>.



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slur after he shot Arbery and he stood over his lifeless body.²⁰ At trial, Travis McMichael sought to exclude a photo of his truck that showed his license plate displaying a confederate emblem.²¹ The state, however, asked that the evidence be allowed because the plates were on the truck at the time the McMichaels killed Arbery. The confederate flag has long been seen as a symbol promoting white supremacy. There is also evidence that Travis McMichael used racial slurs on more than one occasion in text communications unrelated to the shooting.²² All three men will face trial in February 2022 on federal hate crimes charges, and this evidence could be introduced at that trial to show racial animus of the trio.

While the evidence certainly suggests that Stand-Your-Ground laws disadvantage Blacks, it is important to understand *why* the proliferation of these “shoot first laws” can be particularly dangerous for Blacks. There is an ample body of scholarship devoted to exploring the damaging effect contemporary racism has on the health and well-being of racial minorities.²³ One such example is evident in the Arbery case. With a jury composed of only 11 white jurors and 1 Black juror, the prosecution chose to focus on the facts and evidence, and largely left out the discussion of race. On the other hand, a large part of the defense strategy was to play upon the perceived racial biases of the jurors. Defense attorneys for the defendants frequently referenced that there were too many “Black pastors” present at the trial. Perhaps even more disturbing were the racist stereotypes hurled against Arbery even in death. Greg McMichael’s defense attorney played to what she perceived to be the nearly all white jury’s potential for racial bias, noting that at the time of his death, Arbery had “no socks to cover his long, dirty toenails” that he was a “recurring night-time intruder” whose presence was “frightening and unsettling.”²⁴

B. Trayvon Martin

The facts surrounding Arbery’s shooting death are eerily similar to that of George Zimmerman, who was acquitted in the killing of Trayvon Martin. Seventeen-year old Trayvon Martin was walking back to his relative’s house after buying candy at a convenience store. George Zimmerman, a neighborhood watch coordinator, reported what he said was a “real suspicious Black guy” to 911. Zimmerman was told by the 911 operator not to chase after Martin. Zimmerman disregarded these instructions and exited his car and pursued Martin, who was unarmed. This altercation left Martin dead. When the police arrived, Zimmerman claimed self-defense and was

²⁰ See Brakkton Booker, *White Defendant Allegedly Used Racial Slur After Killing Ahmaud Arbery*, NPR (June 4, 2020), <https://www.npr.org/2020/06/04/869938461/white-defendant-allegedly-used-racial-slur-after-killing-ahmaud-arbery>.

²¹ Janelle Griffith, *Ahmaud Arbery Murder Suspects Seek to Ban Confederate Flag License Plate from Evidence*, NBC NEWS (Oct. 6, 2021), <https://www.nbcnews.com/news/us-news/ahmaud-arbery-murder-suspects-seek-ban-confederate-flag-license-plate-n1280926>.

²² See Russ Bynum, *Prosecutor Reads Racist Messages by Ahmaud Arbery’s Killer*, PBS NEWSHOUR (Nov. 12, 2020), <https://www.pbs.org/newshour/nation/prosecutor-reads-racist-messages-by-ahmaud-arberys-killer>.

²³ See e.g., Valerie Purdie-Vaughns and David R. Williams, *Stand-Your-Ground is Losing Ground for Racial Minorities’ Health*, 147 SOC. SCI. & MED. 341 (2015), <https://psychology.columbia.edu/sites/default/files/2017-04/1-s2.0-S0277953615301489-main.pdf>.

²⁴ See Oliver Laughland, *Ahmaud Arbery Murder: Trial Laid Bare America’s Faultlines on Race*, THE GUARDIAN (Nov. 25, 2021), <https://www.theguardian.com/us-news/2021/nov/25/ahmaud-arbery-verdict-race>.



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not arrested. As the police chief later explained, “[i]n this case Mr. Zimmerman has made the statement of self-defense . . . Until we can establish probable cause to dispute that, we don’t have the grounds to arrest him.” Zimmerman was later tried and acquitted. Experts have noted that Florida’s Stand-Your-Ground law contributed to Zimmerman’s acquittal.²⁵

C. *Racial Disparities in the Application of Stand-Your Ground Cases*

Not only do these laws encourage deadly escalation of the use force, they seem to do so in a racially disparate manner. Like so many laws in the criminal legal system, Stand-Your-Ground laws are not equitably applied as a defense when it comes to Black defendants. White men are more likely to successfully invoke the use of Stand-Your-Ground laws for their defense after a shooting than women – especially Black women – or Black men. In a paper published by the Urban Institute, authors examined FBI homicide data from 2005-2010 and found large disparities in homicides being ruled justified based on the race of the defendant and the victim.²⁶ Nationally, the likelihood of a homicide being ruled justified is 281% greater when the defendant is white and the victim is Black when compared to cases where both the defendant and victim are white. In contrast, the likelihood of a homicide being ruled justified when the defendant is Black and the victim is white is 49% lower compared to cases where both the defendant and victim are white.²⁷

IV. *Adopting the ABA’s Recommendations*

Much like implicit and explicit bias evident in police use of force cases, the violence and racial bias of everyday Americans should draw the ire of activists. As the evidence and recent cases suggest, Stand-Your-Ground laws can have a dangerous impact on Black victims because of racial stereotypes. At the same time, Black defendants accused of crimes do not enjoy the same protections under these laws as similarly situated white defendants. Assessing whether and to what extent these laws increase homicides and have racially disparate impacts should be an important part of a state legislature’s decision to retain or enact such laws. In the wake of Trayvon Martin, the ABA detailed report on the use of force included a number of recommendations that jurisdictions could implement in order avoid the deleterious effects of Stand-Your-Ground laws. The ABA Task Force suggested a set of comprehensive reforms, including the repeal of Stand-Your-Ground laws.²⁸

Short of repeal, the ABA also recommended that jurisdictions enact safeguards that “prevent racially disparate impacts and inconsistent outcomes” that advantage whites while disadvantaging

²⁵ See John K. Roman, *Race, Justifiable Homicide, and Stand Your Ground Laws: Analysis of FBI Supplementary Homicide Report*, URBAN INSTITUTE (July 2013) at 8, <https://www.urban.org/sites/default/files/publication/23856/412873-Race-Justifiable-Homicide-and-Stand-Your-Ground-Laws.PDF> (noting that while Zimmerman did not affirmatively claim a Stand Your Ground defense in his case, the jurors were instructed on Florida’s Stand Your Ground law and the issue did arise during juror deliberations).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See also, Mark Obbie, *American Bar Association Calls for Repeal of Stand Your Ground Laws*, THE TRACE (Sept. 29, 2015), <https://www.thetrace.org/2015/09/bar-association-stand-your-ground/>.



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Blacks.²⁹ What the Task Force did not do is offer or recommend a framework for assessing these impacts. Future study should focus on scientific research studying the impact of Stand-Your-Ground laws on minorities, as well as developing and implementing a framework and providing technical assistance to state legislatures and other policymaking bodies before such laws are introduced.³⁰

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²⁹*Id.*

³⁰ See Valerie Purdie-Vaughns & David R. Williams, *Stand-Your-Ground is Losing Ground for Racial Minorities' Health*, 147 SOC. SCI. & MED. (2015), <https://psychology.columbia.edu/sites/default/files/2017-04/1-s2.0-S0277953615301489-main.pdf> (noting that “To the extent that a robust program of scientific research can develop effective interventions to reduce systematic and institutional forms of racism, we advance research on all forms of inequality that affect the health of our global society.”).