Abstract and Keywords

This article explores the complicated relationship between the duty to retreat in self-defense law and violence against women. It first provides an overview of self-defense law in the United States, with particular emphasis on the duty to retreat, before discussing the feminists’ position regarding self-defense law in the context of battered women who kill abusers, along with the so-called “no-retreat” rules. It then traces the history of no-retreat in U.S. law and argues that it is a complex doctrine, both liberationist and discriminatory. It also examines the tension in feminist theorizing on retreat by focusing on recent stand-your-ground controversies. The article concludes by proposing distributional analysis as a framework for feminists and other theorists to resolve the persistent tensions between the duty to retreat and gender justice.

Keywords: duty to retreat, self-defense law, violence against women, battered women, no-retreat, retreat, stand-your-ground, distributional analysis, feminists, gender justice

Introduction

The doctrine of self-defense has a complicated relationship with feminism and its anti-violence agenda. On the one hand, self-defense can be the legal savior of women who kill their intimate abusers to prevent future lethal violence. On the other, certain U.S. self-defense rules, for example the infamous “stand-your-ground” (SYG) and castle doctrines, are steeped in retrogressive conceptions of rugged individualism and masculine honor. Self-defense may encourage men’s violence and reinforce the connection between violence and male identity. Given this divergence, feminist commentary on self-defense law is often instrumental and ultimately variable. In cases involving battered women who kill, feminists object to doctrines that limit self-defense, such as the duty to retreat and the imminence requirement. The argument is that such doctrines exclude abused women who need to strike preemptively because a fatal attack, although not imminent, is inevitable. In cases where “no-retreat” rules help exonerate violent, racist, or unbalanced men, like George Zimmerman and Bernhard Goetz—two infamous American defendants...
in racially charged self-defense cases—progressives, including feminists, typically regard the verdicts as proof positive that there should be a duty to retreat.

It would be a mistake, however, to characterize the feminist position on retreat as necessarily incoherent or self-contradictory. All legal doctrines are imperfect proxies for moral and cultural lines, and one can always find a case that shows a doctrine to be over- or underinclusive. It is not inconsistent to have a normative program dictating that the battered woman who kills her sleeping abuser should be exonerated but George Zimmerman should be responsible for killing unarmed black teenager Trayvon Martin. One could simultaneously lament that a victim of abuse was convicted because of the duty to retreat and that a racist man was acquitted because of the lack of a duty to retreat.

That being said, while unjust and persistent over- or underapplication of the duty to retreat is ground to rethink and reform the doctrine, many left-leaning commentators focus on a particular unjust case (convicted battered woman or acquitted racist man) and use that case as ground to simply embrace or abandon the doctrine. However, self-defense law cannot easily be tailored to ideal types like battering victim or racist hothead, let alone to gender. Accordingly, there is a persistent inconstancy in the feminist position where battered women cases presage arguments for the doctrinal expansion of self-defense—which can also benefit male hotheads—and male hothead cases presage arguments for doctrinal contraction, which can also hurt battered women.

This article explores the intricacies of the relationship between the duty to retreat and violence against women and suggests an analytical framework that might enable feminists and other theorists to work through the persistent tensions. Part I provides a brief description of U.S. self-defense law, including the duty to retreat. Part II turns to the feminist critique of narrow self-defense law in the context of battered women who kill abusers and discusses feminist support for “no-retreat” rules. Part III unpacks the history of no-retreat in U.S. law and reveals that it is complex: simultaneously bigoted and liberationist. Part IV examines the tension in feminist theorizing on retreat by highlighting recent stand-your-ground controversies and the strange bedfellows they produced. It suggests that “distributional analysis” can help feminists thoughtfully navigate the complex relationship between the duty to retreat and gender justice.4

**I. The Basic Elements of Self-Defense**

This analysis of self-defense—and indeed the entire article—adopts a distinctly U.S. perspective. Nevertheless, the concepts described in this part should prove familiar to the transnationalist, as the self-defense requirements of imminence, necessity, and reasonableness, as well as the duty to retreat, exist in common and civil law nations.5 Lawmakers and theorists around the world, and especially in the West, are well versed in self-defense’s navigation of pacifistic self-control and impulsive self-preservation. Florida law, which we will return to in discussing the 2012 slaying of Trayvon Martin, provides a typical formulation of the basic requirements of self-defense in the United States. The law provides that a person may use force “when and to the extent that the person reasonably
believes that such conduct is necessary to defend himself or herself or another against
the other’s imminent use of unlawful force.”⁶ The use of “deadly force” requires that the
character of the threat be serious: death, great bodily harm, or a violent felony.⁷ Below is
a brief description of the self-defense elements relevant to this article.

A. Necessity

Virtually all formulations of self-defense require that the force used against an attacker
be “necessary” for protection, or that the defendant reasonably believe it is. Necessity,
however, has a technical, or at least colloquial, meaning rather than an analytical one. A
“necessary condition” in math and philosophy is one that must precede a result, such that
without the condition the result would not have occurred. Applied to self-defense, this
means that force was the only way to protect the defendant from death or injury. Howev­
er, defensive force is rarely, if ever, mathematically necessary.⁸ The necessity requirement
in self-defense is therefore more flexible and denotes that force is a sensible option for
preventing death or injury—neither a first nor last resort—perhaps lying somewhere in
between the notions: “that bath was necessary” and “amputation was necessary.”

The question is whether defensive force must be merely bath-necessary or amputation-
necessary. A hyper-fearful or extremely violent person might believe that it is necessary
to shoot someone who asks him for five dollars, as was the case with Bernhard Goetz.⁹ A
Buddhist might choose to run through a hail of bullets rather than use force. Laws typi­
cally leave it to the jury to use their common sense and ask themselves, “Was this really
necessary?” However, without the law filling out the contours of that inquiry, a jury may
import a number of questionable value judgments and biases in their assessment. For ex­
ample, unconscious connections between race and criminality might lead a juror to con­
clude that a questionable use of force against an African American was necessary.¹⁰ Value
judgments about marriage and gender might influence a jury to think that a battered
woman “should have left” and did not need to kill her abuser.¹¹

B. Imminence and Immediacy

The majority of U.S. jurisdictions require that defendants use force only when there is a
threat of “imminent” harm.¹² This requirement limits acceptable force to those situations
where the threatened injury will happen within a matter of minutes, if not seconds.¹³ The
necessity and imminence requirements, although related, are not invariably coextensive.
One may use unnecessary force to respond to an imminent threat, for example, when con­
frontation could have been ended easily by walking away. Likewise, one might consider
force to be necessary, even amputation-necessary, to prevent eventual bodily injury. In
some cases, a preemptive strike may be the best, or at least a sensible, way to ensure
one’s safety.

The imminence requirement is said to reflect the notion, familiar from the law of premedi­
tated murder, that individuals who act under stressful conditions inconsistent with
thoughtful reflection are less culpable than those facing less emotionally compulsive cir-
cumstances. Accordingly, there is an important moral difference between the reactive killer and the preemptive killer. The imminence requirement can also be conceived of as a limit on necessity. The requirement has been described as an anti-self-help rule in that a person contemplating a preemptive strike should instead seek the aid of authorities or others. In this view, a preemptive strike is by definition unnecessary—an insensible choice.  

A small number of jurisdictions and the Model Penal Code (MPC) require that force be “immediately necessary” rather than necessary to respond to “imminent harm.” This is an important difference because it allows a person to use defensive force preemptively, so long as it is necessary to do so on the present occasion. Under this logic, a hostage scheduled to be executed in three days could capitalize on a moment when his captor is unarmed to kill the captor and make his escape. In such a case, the attack from the captor was not imminent, but force was necessary at that moment to escape certain harm. One could argue that a person facing such circumstances is also under intense stress and does not have full mental control. In terms of self-help, proponents of “immediate necessity” argue that a determination that force was necessary is a determination that it was impossible, or at least imprudent, to seek outside aid. That being said, the MPC does contain a temporal ceiling, requiring that the attack come “on the present occasion.” This may actually serve to exclude the person facing death in three days although it would apparently include a person who uses force to prevent the “assailant from going to get reinforcements.”

C. The Duty to Retreat

The duty to retreat makes self-defense unavailable to those who use deadly force when they could have retreated from the confrontation safely. The duty can be conceptualized as a value-based clarification of necessity, holding that force is by definition unnecessary when the defendant can retreat safely. Of course, opinions as to what constitutes “safe” retreat can vary. Nonetheless, the retreat requirement counsels jurors that even if they conclude that killing was a sensible choice, they must convict if safe retreat was also a possibility. Given this, the retreat rule has the potential to dramatically narrow the world of defensive killings that qualify as self-defense.

While several U.S. jurisdictions retain some form of the duty, a majority have eliminated the retreat requirement altogether. In stand-your-ground jurisdictions, the statutory formulation of self-defense specifies that a person who is attacked does not have a duty to retreat, but may stand his ground and defend himself even if safe retreat is easily obtainable. The Florida SYG provision, for example, states, “A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.” Some SYG states, like Florida, also provide special immunity from civil and criminal prosecution and pretrial immunity processes for those who claim self-defense.
Nevertheless, many no-retreat jurisdictions still maintain that a “first aggressor” retains the duty to retreat.\textsuperscript{23}

Even self-defense statutes that retain the duty retreat do not generally apply the duty in the home. The “castle doctrine” holds that one has no obligation to flee their home in the face of an invading attacker.\textsuperscript{24} The most permissive formulations of the castle doctrine also lower other threshold requirements for self-defense. For example, Colorado’s “make my day law” provides absolute justification and immunity when a person uses deadly force against an individual who “has made an unlawful entry into the dwelling” to commit a crime that “might” involve “physical force, no matter how slight.”\textsuperscript{25} At the same time, some castle doctrines contain a carve-out that preserves the duty to retreat from co-occupants.\textsuperscript{26} Colorado’s “make my day law,” for example, applies to people who unlawfully enter but not to those who unlawfully remain in a dwelling.\textsuperscript{27}

**Reasonableness**

Finally, let me touch on reasonable mistake, which can apply to each of the elements discussed above. Self-defense is available to a person who incorrectly but reasonably believes that force is necessary to prevent imminent harm (or immediately necessary) and that safe retreat is not possible. Under the MPC, even those who are unreasonably mistaken are not guilty of intentional crimes, such as murder, although they may be guilty of crimes premised on negligence (negligent homicide) or recklessness (manslaughter).\textsuperscript{28} There is copious legal literature painstakingly analyzing “who is the reasonable person,” including how objective or subjective reasonableness should be, whether reasonableness equates with typicality or normative desirability, and how to ensure that reasonableness determinations do not simply reflect existing unfair hierarchies.\textsuperscript{29} One might worry, for example, that a jury’s determination of the reasonableness of the defendant’s beliefs as to necessity, imminence, and retreat will map on to her race, gender, and socioeconomic status more than individual circumstances.

Racially charged cases like that of Zimmerman and Goetz, the infamous 1980s “subway vigilante” who shot four black youths “execution style,” have engendered fierce debate over how to conceptualize the reasonably mistaken defensive shooter. On one side are progressive theorists who argue that in a society where a significant number of people harbor unconscious and intentional racialized fears of black men, reasonableness cannot be equated with typicality.\textsuperscript{30} Reasonableness, they argue, is a normative and aspirational concept that necessarily excludes racist judgments. Thus, a belief that harm is imminent and defensive force is necessary based even in part on race is per se unreasonable. Nevertheless, left-leaning positions regarding whether reasonableness should be objective or subjective tend to vary depending on the characteristics of the defendants and victims. Commentators who excoriate the concept of the “reasonable racist” or “reasonable jealous husband” favor subjective reasonableness—imbuing the reasonable person with the defendant’s psychological characteristics—when subordinated defendants, like battered women, think in ways jurors might not understand. For example, critical race theorists...
support instructions that educate jurors about the special impacts racial epithets have on people of color.\textsuperscript{31}

On the other side are civil libertarian commentators, also on the left, who assert that harboring racialized fears is not the moral equivalent of intentionally engaging in a nondefensive killing. They argue that a white man who, having internalized his community’s racist equation of blackness and criminality, shoots a black man out of honest, albeit racialized and mistaken, fear is still less culpable than a person who kills aggressively (i.e., for money, revenge, jealousy).\textsuperscript{32} The right-leaning position simply denies that white-on-black killings have any relation to racial bias at all, exemplified by Florida prosecutor Angela Corey’s smiling declaration after George Zimmerman’s acquittal: “This case has never been about race.”\textsuperscript{33}

Having discussed the basic elements of self-defense, let us now turn to the feminist argument that these elements, and courts’ interpretations of them, adopt a male paradigm of self-protection and thus disadvantage women, particularly battered women, who resort to defensive deadly force. Feminist lawmakers and activists have accordingly sought to broaden self-defense to cover the situations in which women kill.

\section*{II. The Feminist Support of No-Retreat Rules}

Prior to the Zimmerman case, most American feminist legal commentary on the duty to retreat focused on how the doctrine is too narrow because it disadvantages battered women defendants who juries wrongly assume “could have left.” One of the more well-known targets of feminist reprobation has been the carve-out in the castle doctrine that preserves the requirement to retreat from co-occupants in the home. The critique is that privileging cohabiting attackers over outside attackers disadvantages women defendants, whose in-home killings are more frequently directed toward cohabitants than outsiders.

Expanding rather than confining self-defense is a natural feminist position because men who kill women do not often succeed on, or even argue, self-defense. Stereotypes of masculinity and femininity disadvantage men who claim self-defense for killing women, because it is difficult for many to accept that a man feared a woman or that a woman was an aggressor, absent some extraordinary act on the woman’s part. Were it otherwise, men who kill female intimates would routinely argue self-defense and eliminating the duty to retreat from a cohabitant could benefit such men, rendering it an unlikely feminist position. Rather, most male domestic killers can at best assert a provocation, or reasonable heat-of-passion, defense, which mitigates murder to voluntary manslaughter and is premised on anger rather than fear. Since male anger toward female intimates is not stereotype-averse, male intimate partner killers have a better, although still slim, chance of defending on provocation grounds.\textsuperscript{34} In addition, stereotypical views of the relationship between gender and violence tend to benefit female defendants, and women accused of homicide have historically been more successful than their male counterparts at obtaining acquittal, mitigation, and lenient sentences.\textsuperscript{35}
The Duty to Retreat in Self-Defense Law and Violence against Women

That being said, there are cases in which the formal requirements of self-defense prove an obstacle to battered women who kill. One of the more vexing issues involves the imminence requirement. Some of the women who kill abusers do so when there is a lull in the attack, at the beginning of an escalating attack, or even when the abuser is asleep. These defendants use deadly force in a moment when serious bodily injury, or injury at all, is not imminent—it is not coming in moments. Such cases have engendered two strategic moves from feminist advocates and defense attorneys: one evidentiary and one doctrinal. The evidentiary move involves the introduction of “battered woman syndrome” (BWS) evidence. This now-familiar evidence is based on the iconic but controversial empirical work of psychologist Lenore Walker, who has appeared as an expert witness for the defense in many high-profile battered-women-who-kill cases. Walker hypothesized that persons subjected to prolonged abuse have particular psychological characteristics, including “learned helplessness”—a feeling that escape from the cycle of abuse is impossible. Expert testimony on BWS thus helps answer the “Why didn’t she leave?” question and aids the jury in understanding why the battered woman defendant believed it was necessary to kill her sleeping or non-attacking spouse, rather than, say, calling the police or going to a friend’s house.

If BWS adequately explains why battered women do not “just leave,” it does not necessarily demonstrate that battered women entertain the belief that a sleeping batterer poses “imminent” harm. In other words, a person who has the syndrome does not necessarily think she was fending a current attack from an unconscious person. Thus, notwithstanding BWS evidence, the imminence requirement can prove an insurmountable obstacle for battered women defendants. Nowhere has this been more apparent than the fiercely debated 1989 North Carolina Supreme Court decision in *State v. Norman*. In that case, Judy Norman, a wife who had been the victim of brutal abuse and humiliation for years, shot her sleeping husband during a lull in a 36-hour cycle of escalating abuse. The North Carolina Court of Appeals held the trial court should have instructed the jury on Norman’s self-defense claim because she had asserted that her battered woman syndrome made her believe killing was necessary, despite the lack of any current threat. The North Carolina Supreme Court reversed, holding that Norman’s belief, due to her BWS, that killing was necessary did not alter the fact that the threat was not imminent. Thus, the trial court had gotten in right, and the court of appeals’ decision substantially rewrote the definition of self-defense.

The North Carolina Supreme Court’s decision in *Norman* was excoriated by feminist legal scholars and anti-battering activists. In the wake of this highly criticized case, some courts glossed over the imminence problem by leaving it to the jury to determine whether a BWS sufferer could reasonably believe an attack from a sleeping spouse was imminent or whether battered women believe attacks are “always imminent.” Nevertheless, given the problems the imminence requirement poses for battered women, advocates also embraced the doctrinal angle of eliminating the requirement altogether. As noted above, the MPC and a few states specify that force be “immediately necessary,” although the harm itself may be delayed. Of course, such a doctrinal expansion allows a jury to acquit any-
one, not just battered women, who can make a convincing case that a preemptive strike was a reasonable choice.

Battered women advocates pursued a similar two-pronged approach to address the duty to retreat. Defense attorneys argued that a person who suffers from battered women syndrome believes that she cannot retreat or retreat safely from a sleeping or non-attacking abuser. This belief, unlike the belief that an unconscious person is an imminent attacker, fits squarely within the syndrome. Nevertheless, the duty to retreat still posed a theoretical barrier to battered women’s successful acquittal. In the 1982 Florida case, State v. Bobbit, the defendant battered woman argued that she had no duty to retreat from her husband who attacked her in the home. The Supreme Court of Florida rejected that argument, holding that the no-retreat privilege applied to attacking intruders but not co-occupants. The court, however, was careful to note that the battered woman could still argue that safe retreat was impossible. Indeed, acknowledging Bobbit’s duty to retreat, the district court nevertheless reversed the manslaughter conviction on the ground of insufficient evidence.

Several years later, after a jury convicted Kathleen Weiand of the second-degree murder of her abusive husband, the Florida Supreme Court certified the question of whether to retain the duty to retreat from co-occupants in the home. Citing extensively the commentary of feminist scholars and activists on the difficulties faced by battered women, the court staged a total reversal of Bobbit and created an unconditional no-retreat privilege in the home. Interestingly, the court unmoored the castle doctrine from notions of the sanctity of the home and instead linked it to every person’s “basic right” to protect his life. The court accordingly approved a new self-defense jury instruction that a defendant attacked by a co-occupant “was not required to flee [his/her] home and had the lawful right to stand [his/her] ground and meet force with force.”

Consequently, feminist activism on self-defense has often involved evidentiary and doctrinal expansions of the law, in an effort to aid battered women defendants. The evidentiary strategy of introducing BWS evidence appears to have uniquely benefited this sympathetic class of defendants without conferring leniency on less-likeable characters. Male defendants’ attempts to rely on syndrome evidence—black rage, battered child, posttraumatic stress disorder—have proven less successful. Some theorists critique this phenomenon as troublingly gendered, arguing that the popularity of scientifically questionable BWS evidence reflects jurors and jurists sexist tendency to regard battered women who kill as hysterical and mentally defective. That being said, the BWS evidentiary strategy may have broadened self-defense more generally. The strategy involves subjectivizing the reasonableness standard, that is, instructing jurors to imagine the reasonable person as someone who shares the defendant’s psychological characteristics. This defense-friendly interpretation of reasonableness benefits battered women and unbalanced killers, such as subway vigilante Bernhard Goetz, alike.

Moreover, the doctrinal expansions championed by battered women advocates benefit all defendants who seek to use self-defense. Who, other than battered women, might claim
that a preemptive strike was necessary? One can certainly imagine a gang member arguing that he had to prevent a rival gang member from coming back with his crew and shooting him. And perhaps we should be sympathetic to that claim given the regularity with which gang members make good on their death threats and the difficulty threatened gang members may have in obtaining police help. So let me put it in more racially nefarious terms. Imagine an older white man getting into a verbal argument over loud music with a young black man, whose group of friends are down the street. As the young man walks away, the white man shoots him in the back. At trial, the defendant argues that he believed force was “immediately necessary,” though attack was not imminent, because he would not have been able to defend himself from the group of “thugs.” Now, this defendant may nonetheless fail on his self-defense claim, but the point is that he is in a better position than he would be in the absence of a preemptive strike rule.

Similarly, the Weiand decision to eliminate the cohabitant exception to the castle doctrine—hailed by feminists as an unqualified victory—unmoored the no-retreat privilege from property and applied it to the person. The legal change, itself, is not gender specific and can benefit men who kill housemates, brothers, cousin, parents, or anyone else living in the home. Of course, feminist activists envisioned a particular distributional effect of broadening the castle doctrine and banked on the probability that it would primarily benefit battered women who engage in reasonable self-protection. But this doctrinal gamble portended the very self-defense logic that was so maligned by critics during the Zimmerman case. The Weiand court moved from the principle that one need not retreat from the home to the principle that one need not retreat whenever and wherever defending his life. That is the move to stand your ground.

III. The Feminist Retreat from No-Retreat Rules

The 2012 shooting of Trayvon Martin changed the feminist tenor on self-defense. That case became for liberals around the world the very representation of reckless gun laws, racial profiling, and self-defense run amok. The current left-feminist position against SYG reflects a confluence of factors in the Zimmerman case. Martin’s baby-faced innocence ignited a firestorm of protest against an epidemic of brutal slayings of young black men. Beyond Martin’s obvious innocence, was the fact that he was killed by a white(ish), quasi-police actor—a zealous citizens’ watchman and “wannabe” cop—who repeatedly deployed racial criteria in assessing neighborhood safety. Soon after the shooting, media talking heads focused on how Florida’s expansive SYG law undergirded the lackluster police and prosecutorial response, virtually eclipsing commentary on Zimmerman’s close ties to the Sanford police and state officials’ questionable use of discretion. SYG soon became the very symbol of how racism is codified into U.S. criminal law. And, although SYG played little role in the actual trial, Zimmerman’s acquittal on self-defense grounds served as confirmation of the doctrine’s inherent or inevitable racism.
Elsewhere I describe the factors that propelled SYG to the spotlight of the Martin saga, despite the fact that police and prosecutors’ initial reluctance to pursue Zimmerman appears to have had little to do with that doctrine. However, one undeniable contributor to the liberal reprobation of SYG’s is the law’s relationship to the National Rifle Association and the American Legislative Exchange Council (ALEC), a think tank that promulgates ultraconservative model legislation. Stand your ground therefore currently occupies a cultural space of racism, firearm irresponsibility, and gratuitous violence. Accordingly, most progressives today, including racial justice scholars and feminists, are united against the broad no-retreat rule. But current feminist intolerance of no-retreat seems more of an exercise in solidarity with liberal racial and anti-NRA agendas than a position based primarily on gender. Women defendants successfully capitalize on broad self-defense rules, and men who kill women rarely argue self-defense.

Some scholars articulate a feminist critique of SYG based on the purportedly sexist, or at least masculinist, origins of the no-retreat principle in the United States. The gendered historical account of the duty to retreat starts with the nineteenth-century English abandonment of the doctrine. The British, it is claimed, evolved away from the no-retreat doctrine in recognition of the sanctity of life and importance of civilized restraint. By contrast, U.S. courts, and notably the Supreme Court in a series of self-defenses cases between 1893 and 1921, systematically rejected the duty to retreat, first in the home and later in general. This rejection, critical commentators maintain, was based on uniquely American notions of rugged individualism and, importantly, masculine honor. The gendered explanation relies on a particular phrase used by Justice Harlan (the first) in an 1895 case, Beard v. U.S., extending the castle doctrine from the house to the yard: Harlan noted that a “true man” need not retreat from an attacker. Critical commentators tend to concentrate on the “man” portion of the phrase, asserting that the directive is about how to perform masculinity in the face of an attack. Justice Harlan unlikely used “man” in counterdistinction to “woman,” but it is certainly plausible that the Justice meant to distinguish the “true man,” who does not retreat, from less ideal passive men. It cannot be denied that notions of violent self-help, individualism, and home protection are mixed up with cultural expectations of masculinity, and scholars have offered sophisticated accounts of how the relationship between masculinity and violence have influenced self-defense doctrine.

Nevertheless, as is usually the case, history is complicated and does not offer a singular explanation of the U.S. experience with duty to retreat. First, the English did not fully abandon the no-retreat in an effort to become a pacifistic society, but rather retained the privilege in the home and in cases on the street involving “chance medley,” a sudden attack or violent felony (as opposed to “mutual combat”). Second, England’s move to limit no-retreat outside the home was apparently based on the notion that the government should have a monopoly on deadly force, and an honorable man recognizing this would do everything possible to avoid usurping the police role. These two facets of English history shed a somewhat different light on the U.S treatment of no-retreat. The “true man” phrase seems to have more to do with the word “true” than “man.” Justice Harlan, in fact, was merely reiterating the English retention of the privilege for precipitous and felonious
attacks—the “true man” language comes from Lord Hale. Moreover, Beard specifically defines the “true man” as one “who is without fault.” Thus, the distinction appears to be between true men, who are innocent nonaggressors repelling felonious attacks, and untrue men, who are aggressors or wrongdoers, not emasculated pacifists.

Another case that figures prominently in the historical account is the 1921 case, U.S. v. Brown, where Justice Oliver Wendell Holmes extended the no-retreat privilege from the castle to the street. However, here, as in Beard, the Court’s reasoning appears less about masculine performance than culpability, that is, how to assess fault when people act under conditions of extreme distress. Holmes rejects the English rule that honorable men faced with an attack must rationally recognize the government’s exclusive power over deadly force, stating that such a rule is not “consistent with human nature.” Holmes explains that “[d]etached reflection cannot be demanded in the presence of an uplifted knife” and concludes that the possibility of retreat should be “a circumstance to be considered with all the others in order to determine whether the defendant went farther than he was justified in doing.” Thus, the Supreme Court’s reasoning in the self-defense cases, at least facially, involved an overarching concern with the ordinary, innocent person who is thrust into a frightening intense situation and acts without time for meaningful reflection—a rationale very consonant with those who support battered women who kill.

At the same time, one cannot ignore that the cases overlapped with a distinctly American preoccupation with self-protection from the “bad” criminal element. And, when that element is defined in specifically racial terms, it makes for a troubling history. At the time of the self-defense cases, laws specifically prohibited “savage” Indians and blacks from possessing firearms. Thus, one racial gloss on history is that the “true man” ideal distinguishes the white, nonpoor, and therefore innocent man from the aggressive reprobate—a racial minority or person of low socioeconomic status. For sure, the self-defense doctrine has had and continues to have racially disproportionate effects, regardless of the retreat rule, and whites who kill blacks succeed on the doctrine far more frequently than defendants in cases involving other racial combinations. However, again, the racial history of no-retreat is complicated, and any disproportionate effects of the privilege may not match up with the intent of the Court in expanding it. One commentator has characterized the Supreme Court’s expansion of the no-retreat privilege in the late nineteenth-century self-defense cases as a move to protect American Indian, black, and poor white homicide defendants from “hanging” judge Isaac Parker, who presided over Indian territory during that era.

If the American history of no-retreat appears mixed (enlightened and regressive), today’s SYG agenda is more consistent: It has been primarily fueled by racialized rhetoric about criminals and thugs and lauded by a white male pro-gun contingent. Indeed, the law was thrust into the spotlight Zimmerman case, which cut clearly along racial lines. Although feminists may not be on firm ground to reject the rule based solely on a distasteful past, the current SYG platform, which embodies racist fears and true-man-as-macho-man ideals, provides ample reason for maintaining a safe distance. Feminists understandably
do not want ALEC and the NRA as bedfellows. That being said, the question remains how feminists’ desire to steer clear of SYG because of its current residence in the right wing can be squared with the priority of supporting battered women who kill abusers.

**IV. A Consistent Feminist Position on Retreat?**

At the time the Zimmerman case was igniting a firestorm of racial critique of SYG, another case unfolded in the same jurisdiction and introduced gender into the debate. Marissa Alexander, a black woman, fired a single gunshot at or near her allegedly abusive husband. Unlike George Zimmerman, who declined his SYG immunity hearing for strategic reasons, Alexander was denied immunity by a judge. Critics emphasized the difference in police and prosecutorial response, asserting that state actors, applying SYG, delayed arresting and reluctantly charged Zimmerman, but they promptly arrested Alexander and prosecuted her with zeal. Alexander was ultimately convicted of three counts of aggravated assault—one for the husband and two for the nearby minor stepchildren—and sentenced to twenty years in jail under Florida’s “10-20-life law,” which makes twenty years the mandatory minimum for certain felonies involving the discharge of a firearm.

Alexander became a cause célèbre for both racial justice advocates and feminists. For some, the difference between the trajectories of the Zimmerman and Alexander cases constituted proof positive that SYG is reserved “for White defendants only.” Others saw the case as vindication of the long-held feminist position that battered women who exercise defensive force are held to a higher standard than men, whom society privileges in their use of violence. While the race and gender camps converged on the point that the status quo is unacceptable, their remedies were not so consonant. If SYG’s sole empirical effect is to grant a license to whites to kill blacks without conferring any benefits on blacks who use defensive force, as racial critics intimate, then the natural proposal is to eliminate the doctrine. In that case, neither the Zimmermans nor the Alexanders of the world may use the doctrine, which from a racial standpoint may be preferable, given that the Alexanders are operatively unable to use it anyway. It is worth noting, however, that the empirical picture relied on by the SYG abolition camp is not so clear. Most homicides are intraracial, and there is evidence that black and white defendants in such cases utilize the doctrine. And, although self-defense, like all criminal law applied by discretionary actors, creates significant racial disparities, there is little evidence that these disparities are compounded by no-retreat rules.

The feminist preoccupation with the Marissa Alexander case, by contrast, is not evidently based in abolitionist sentiments. Similar to the battered women cases discussed above, the position is that Alexander was unfairly denied a defense to which she was entitled. The abolitionist spin would be that if battered women are not allowed to stand their grounds, nobody should be. But this does not capture the feminist position, and to be sure, that of some in the racial justice camp. The position is not that SYG is a morally questionable and disparately applied doctrine of leniency that should simply be eliminated. Rather, the sentiment is that Marissa Alexander had a right to stand her ground.
Accordingly, denying Alexander the doctrine would be unjust, regardless of whether Zim­merman was also denied the doctrine. As in Weiand, the feminist position is one that fa­vors SYG, albeit for a narrow class of female defendants.

A careful analysis of the events in the Alexander case reveals just how difficult it is for feminists to balance pro-battered women advocacy, an anti-NRA position, the desire to ex­press an anti-violence message, and concern over mass incarceration. At Alexander’s im­munity hearing, the defense contended that Alexander and her husband Rico Gray be­came involved in a dispute when Gray, a jealous man with a history of battering, accused her of infidelity. The defense claimed that Gray physically assaulted Alexander during the dispute and that she utilized a break in the struggle to run to her car and retrieve her firearm for protection. Unable to open the garage door and leave, she returned to the house with the firearm. Gray then charged at her and threatened to kill her, at which time she fired a warning shot in the air.

The prosecution’s version of events differed substantially. According to the prosecution, Alexander had driven over to Gray’s house—she had been residing elsewhere for two months—to spend the night. The next morning, after a verbal argument, Alexander walked past Gray and the children and retrieved the gun from her car. She voluntarily returned to the kitchen and pointed the gun at Gray, who put his hands in the air. She im­mediately shot at Gray, missing his head by inches and frightening the children. The prosecution also made much of the fact that after Alexander posted bail and was released with a no-contact order, she drove to Gray’s new house and physically attacked and in­jured him, resulting in new charges and bail revocation.

The trial judge declined to grant immunity under the SYG law because Alexander had not proven by a “preponderance of the evidence” that she acted in self-defense. The judge stated that “the Defendant intentionally passed by the Victims and entered the garage where she immediately armed herself and proceeded back into the home. This is inconsis­tent with a person who is in genuine fear for his or her life.” The decision that the case should go to trial drew the ire of Alexander supporters, who charged that the judge should have given the benefit of the doubt to the defense and granted immunity.

The NRA was, in fact, making that same claim in another Florida shooting case, Brether­ick v. State. That case involved a 2011 dispute where the defendant, a white male car passenger, brandished a gun at another motorist and was charged with aggravated as­sault. As with Alexander, the judge presiding over the immunity hearing denied immunity and set the case for trial, holding that Bretherick had not proven by a preponderance of the evidence that he was in fear when he pulled the gun. Supported with briefs by the NRA and other gun-rights groups, Bretherick pursued an appeal to the Florida Supreme Court, arguing that prosecutors should bear the burden of proving that SYG defendants are not entitled to absolute immunity. The court disagreed and issued a 2015 opinion re­taining the defendant’s burden to prove self-defense at the immunity hearing. The NRA, in turn, decried that the Second Amendment was the real “victim” of this liberal “judicial activism.”
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Alexander’s case proceeded to trial in May 2012, where Alexander asserted that she had fired the shot in self-defense and the prosecution maintained she shot out of anger. The jury returned a verdict of guilty on the three aggravated assault with a firearm counts after only twelve minutes of deliberation, and the sentencing judge applied the mandatory minimum sentence of twenty years. The sentence provoked public outrage, and critics, including feminists, racial justice commentators, and the NRA, argued that the 10-20-life law was meant for “real” armed criminals, not “ordinary” citizens and battered women acting in self-defense.97 This time, the pro-gun camp pursued a more successful course of action. Two Florida house republicans, backed by the NRA, sponsored a “warning shot law” that cemented SYG’s application to shots and brandishings, not just killings.98 More important, the law carved out an exception to the 10-20-life law for aggravated assaults. Under the bill, a person convicted of aggravated assault with a firearm, which is necessarily a person that the jury found did not act in self-defense, is nonetheless exempt from that mandatory minimum. The sentencing judge must merely find that the defendant had a “good faith”—not reasonable—belief “that the aggravated assault was justifiable.”

The bill passed the Florida legislature, and, inspired by the Alexander case, pro-gun conservative governor, Rick Scott, signed the bill into law. Alexander’s legal team responded, “We learned today that Governor Rick Scott has signed the corrective Stand Your Ground Bill, which was advanced by the legislature as a result of concern about Marissa’s case among others. We are of course grateful for the governor’s actions.”100 Although the warning-shot law, which was not retroactive, did not formally apply to Alexander’s case, it may have affected the ultimate outcome. An appeals court reversed her conviction because of faulty jury instructions, and public sentiment, the legal change, new expert BWS evidence, and the stepchildren’s newfound reticence led to a plea agreement and Alexander’s release from jail.101 In February 2016, Governor Scott signed a bill that removed aggravated assault from the 10-20-life law altogether.102

Strange bedfellows abounded as the Marissa Alexander case played out in the courts and press. Progressive outrage at the differential treatment of Alexander and Zimmerman led race critics and feminists to embrace the NRA’s agenda of expanding SYG. At the same time, anti-gun Democrats in the Florida legislature lined up with police and prosecutors against the warning-shot law, while defense attorneys supported the measure in the hopes that it would mitigate the harsh effects of 10-20-life more generally. Feminists had long supported expanding no-retreat as a litigation strategy, but this time, such support ran up against the newfound disdain for SYG in the post-Zimmerman era. Many Alexander supporters maintained the pretense of an anti-violence stance by emphasizing that “no one was harmed” by her actions and characterizing the shooting as a “victimless crime,” despite one stepchild’s statement that he experienced lasting trauma.103 Feminists would surely reject a “victimless crime” characterization in a reversed gender scenario where a man shot at his estranged wife and stepchildren. Indeed, the claim that brandishing or even shooting a gun at someone is “harmless” was urged by Bretherick and the NRA.104
What I hope to highlight through this story is not so much the inconsistency of the feminist stance on SYG, as the difficulty in constructing a coherent legal reform agenda from individual cases. Indeed, it is prosaic to say that “hard cases make bad law,” but surely one must be circumspect about the instinct to reject a law simply because it contributed to a bad result or embrace reform because it may have made a difference in a particular case. Elsewhere, I have described a “distributional” approach to criminal law analysis, which involves determining how the current law has affected individuals and groups over time—who are the “winners and losers” of the legal regime—and an attempt to predict how well-intended law reform will actually operate given systemic and societal constraints.105 In other words, law reformers should not contrast the status quo with what is ideal, but rather with what is possible.

In the wake of the Zimmerman case, critics widely assumed that SYG primarily operates to benefit whites who kill blacks. Today, however, racial justice scholars recognize the need to gather empirical evidence on the racial effects of SYG.106 Does it exacerbate or alleviate racial disparities in who successfully pleads self-defense? If SYG does make self-defense more racially biased (or makes it less so), is there another race-based argument against no-retreat, such as an African-American interest in tougher homicide law to deter killings of black victims?107 Does the interest in deterrence trump the cost associated with making it easier for police and prosecutors to arrest and punish homicide defendants? If a doctrine of leniency, like self-defense, creates racial disparities, should it simply be eliminated? When should people, black and white, be required to retreat?108

Feminists should similarly look at the no-retreat issue distributionally. There is evidence that women defendants disproportionately benefit from self-defense in general.109 How this affects the retreat analysis is not so clear. One might argue that given the general bias toward women who claim self-defense, state actors and jurors will predisposed to believe that women cannot retreat safely. In this view, the primary beneficiaries of no-retreat rules are men, given that women defendants do not need such rules. In diametric opposition, one might reason that because women disproportionally benefit from the self-defense doctrine generally, they will disproportionately suffer if the doctrine is narrowed. However, no systematic study of no-retreat rules gender effects currently exists, so one can only speculate.

Another assumption of the feminist anti-SYG camp ripe for study involves whether no-retreat rules in fact encourage hyper-masculinity and ultimately violence against women. The answer is not altogether apparent. On the one hand, doctrines of leniency may encourage private violence, including that against women, because such violence can go unpunished. On the other hand, while it is unclear that penal leniency and private violence are causally related, one may be sure that strengthening criminal law grants power to law enforcement and prosecutors engaged in the violent and masculinist enterprise of policing and punishment.110

In addition, feminist advocates might consider somewhat less ambitions reform proposals that tinker with, rather than wholly embrace or abandon, doctrines like retreat, immi-
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nence, and necessity. The goal is apparently to construct a retreat doctrine that leaves room for juries to acquit sympathetic actors, such as battered women, but hold unsympathetic actors like Zimmerman responsible for choosing force over safe retreat. There are several possibilities here. One is to have different rules for men and women. It may be theoretically justifiable to hold that men need legal incentive to retreat, whereas women, owing to a nonviolent nature, are predisposed to retreat, but such a gender-based rule would not pass constitutional muster. The closest carve-out is seen in laws that exempt defendants from the duty to retreat if they have obtained a restraining order against the victim, although this does not perfectly differentiate the sympathetic battered woman from the violent man.

Another possibility is retain the duty to retreat but interpret “safe retreat” in a broadened time frame. In the sleeping batterer situation, for example, the defendant can argue that although she could physically have left at the moment, retreat with complete safety was not possible because of the likelihood of death in the not-too-distant future. Similarly, defense attorneys could bring BWS to bear on the issue of whether the defendant reasonably believed that she could not safely retreat, in the same way it bears on whether the defendant reasonably believed killing was necessary. Both a broadened temporal interpretation of safe retreat and allowing contextualization with BWS would aid the battered woman without giving carte blanche to men to use deadly violence as a first resort. Interestingly, this was the state of the law when the Florida Supreme Court certified Weiand in 1999. Battered women were only required to retreat if they could do so safely. Nevertheless, surmising that a different retreat instruction would have prevented Weiand’s conviction, activists pressed the court to change the law for all future cases involving co-occupants. The legal change, while it did not affect Kathleen Weiand, who was eventually pardoned by the governor, led to reversals and remands in other cases, three of which produced published decisions.

The first case, State v. Kelly, involved a complicated domestic homicide, where the defendant, Ms. Kelly, slashed her husband’s tires upon seeing his truck at the “whore motel” and shot him when he returned home. Kelly and her son testified that she shot her husband as he was angrily rummaging through a drawer, possibly for a weapon. Their testimony diverged at an important point, however: The son testified that the defendant shot the victim a second time as he begged for mercy, while the defendant testified that her son fired the second shot. Kelly was granted a new trial after Weiand and convicted again of murder. That conviction was also overturned on procedural grounds, and Kelly eventually pleaded guilty to second-degree murder. The second conviction reversed under Weiand was that of Clint Michael Barkley, a white man, who killed his housemate Edward Collesano. After his retrial, Barkley was convicted of second-degree murder, sentenced to fifteen years, and released in 2009. Today, Barkley is serving time for a 2014 assault with a dangerous weapon. The final beneficiary of the rule change was Kary Burch, a black man, who shot at the co-occupant of his home. After his Weiand remand and retrial, Burch was convicted of aggravated assault and sentenced to two years. In 2010, Burch was convicted in connection with a shooting that left two people injured, including an 11-year-old girl. Who else benefited from Weiand in the years between 1999

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and the 2005 full-scale adoption of SYG, if they were violent sociopaths or sympathetic victims, whether they deserved more or less punishment, and whether incarceration made them more or less violent, we simply do not know.

Conclusion

This article has discussed the complicated relationship between the duty to retreat in self-defense law and violence against women. From a gender justice perspective, the duty is certainly a mixed bag: No-retreat rules are instrumentally useful to sympathetic female defendants who kill violent men and sometimes to violent men who kill sympathetic women (but more likely to those who kill other violent men). No-retreat is liberationist in its protection from the state of those who act under conditions of mental stress, but it also reflects and cements a culture of private violence. Stand your ground provides cover to police and prosecutors who wish to treat white killers unduly leniently, but it also protects black defendants from prosecutors that would treat them too harshly.

My hope is that this article will encourage feminists to approach the duty to retreat issue with more than just repulsion for Zimmerman or solidaristic empathy for Alexander. Employing a distributional analysis, feminists should try to ascertain who bears the benefit and burdens of the duty across a spectrum of cases. Those concerned with gender justice should resist the simplistic deterrence rational that strong criminal prohibitions invariably curtail violence and weak ones encourage it, as they would in criminal law analysis not involving violence against women. Feminists should develop an approach to understanding the relationship between masculinity and punishment that is mindful of the costs, not just of private brutality but also of mass incarceration, police violence, and racialized punitivity. Taking this broader view of self-defense likely prefaces neither a wholesale advance toward nor a total retreat from the duty to retreat. Rather, scholars might consider more modest reforms to self-defense doctrine that reflect the precise ways in which battered women defendants differ from male defensive killers, and why such differences matter.

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Notes:

(1) The term “battered women” is considered by many to be an outmoded, gendered, and stigmatizing term, and today the preferred phrase is “survivor of intimate partner violence.” I use the term, however, for two reasons. First, this article is about violence against women and its analysis involves specifically man-on-woman violence, distinct from same-sex abuse. Second, “battered woman” is the term used in the early cases and activism, where the particular gender of the defendant as well as her status as victim were meaningful.


(6) FLA. STAT. ANN. § 776.012(1) (West 2014).
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(7) See, e.g., id. at § 776.012(2) (justifying deadly force in response to “death or great bodily harm ... or to prevent the imminent commission of a forcible felony”). Some statutes enumerate specific felonies. See, e.g., N.Y. PENAL LAW § 35.15 (McKinney 2004) (specifying “kidnapping, forcible rape, forcible criminal sexual act or robbery”).


(9) See Goetz, 497 N.E.2d at 43.


(12) See WAYNE LAFAVE, 2 SUBST. CRIM. L. § 10.4(d) n.42 (2d ed.) (collecting statutes).

(13) See, e.g., United States v. Haynes, 143 F.3d 1089, 1090 (7th Cir. 1998) (“later” and “imminent” are opposites). See LAFAVE, supra note 12 at § 10.4(d) (describing “imminent” as “almost immediately forthcoming”).


(15) See, e.g., MODEL PENAL CODE § 3.04(1); ARIZ. REV. STAT. ANN. § 13-404; DEL. CODE ANN. TIT. 11, § 464. See LaFave, supra note 12, at § 10.4(d) n.43 (citing statutes).

(16) See PAUL ROBINSON, 2 CRIMINAL LAW DEFENSES § 131(c)(1) (2d ed.1984).

(17) MPC § 3.04(1).

(18) Id. (commentaries).

(19) See LAFAVE, supra note 12, at § 10.4(f) n.72 (citing cases and statutes).

(20) Id. at § 10.4(f).

(21) FLA. STAT. ANN. § 776.012(2) (West 2014).

(22) See, e.g., id. at § 776.032.

(23) See, e.g., id. at § 776.041. Many self-defense formulations exclude homicidal provocateurs except in narrow circumstances. See LAFAVE, supra note 12, at § 10.4(e).

(24) See LAFAVE, supra note 12, at § 10.4(f).
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(25) COLO. REV. STAT. ANN. § 18-1-704.5 (West).

(26) See LAFAVE, supra note 12, at § 10.4(f) & n.76.


(28) See MPC § 3.04, Commentaries at 36.

(29) See MURDER AND THE REASONABLE MAN, supra note 10; Jody D. Armour, Race Ip-
sa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes,
46 STAN. L. REV. 781 (1994); Joshua Dressler, Why Keep the Provocation Defense?: Some
Reflections on a Difficult Subject, 86 MINN. L. REV. 959 (2002).


(32) See, e.g., Dressler, supra note 29, at 1002.

(July 15, 2013), http://www.nytimes.com/2013/07/16/opinion/zimmerman-prosecutors-
duck-the-race-issue.html?pagewanted=all.

[hereinafter Provocative Defense].

(35) See id. at 314–316 and sources cited.

(36) See Robert F. Schopp et al., Battered Woman Syndrome, Expert Testimony, and the


(38) 378 S.E.2d 8 (N.C. 1989).

(39) Id. at 10–12.


(41) Norman, 378 S.E.2d, at 15–16.

(42) See, e.g., Bechtel v. State, 840 P.2d 1, 12 (Okla. 1992) (for a battered woman, “the
threat of serious bodily harm or death is always imminent”); State v. Leidholm, 334 N.W.
2d 811, 820 (N.D. 1983) (assuming that BWS is relevant to imminence).

(43) See supra note 15.

(44) See State v. Hennum, 441 N.W.2d 793, 797 (Minn. 1989).

(45) State v. Bobbitt, 415 So. 2d 724 (Fla. 1982).
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(46) Id. at 726.


(49) Id. at 1053-1056.

(50) Id. at 1057.

(51) Id.

(52) See, e.g., Mahoney, supra note 11, at 4.

(53) See Leidholm, 334 N.W.2d 811.

(54) Cf. Goetz, 497 N.E.2d, at 52 (jury may take into account defendants’ physical characteristics, knowledge of victim, and influential prior experiences).

(55) See Provocative Defense, supra note 34, at 308.

(56) This hypothetical bears some similarities to the 2013 Michael Dunn case, where Dunn, a white man, shot at several black teenagers in a car over a dispute over loud music and killed Jordan Davis. See Lizette Alvarez, Jury Reaches Partial Verdict in Florida Killing over Loud Music, N.Y. TIMES, Feb. 15, 2014, http://www.nytimes.com/2014/02/16/us/florida-killing-over-loud-music.html?_r=0.


(58) See Race to Incarcerate, supra note 2, at 979.

(59) Id. passim.


(63) See Epps, supra note 61; Suk, supra note 61.

(64) 158 U.S. 550, 561 (1895).
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(66) See, e.g., Suk, supra note 61.

(67) See Erwin v. State, 29 Ohio St. 186, 196-197 (1876) (discussing state of English law); WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAW OF ENGLAND 178-185.


(72) Brown v. United States, 256 U.S. 335 (1921).

(73) Id. at 343.

(74) Id.


(78) See, e.g., Franks, supra note 61.


(80) See, e.g., Franks, supra note 61.

(81) Alexander, 121 So. 3d at 1186.

(82) Amanda Marcotte, Marissa Alexander, Sentenced to 20 Years for Firing One Shot into the Ceiling, Gets a Retrial, SLATE (Sept. 26, 2013, 2:12 PM), http://www.slate.com/blogs/xx_factor/2013/09/26/
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marissa_alexander_and_stand_your_ground_she_claimed_self_defense_but_was.html. Cf. McCleskey v. Kemp, 481 U.S. 279, 367 (1987) (Stevens, J. dissenting) (“If society were indeed forced to choose between a racially discriminatory death penalty (one that provides heightened protection against murder ‘for whites only’) and no death penalty at all, the choice mandated by the Constitution would be plain.”).

(83) See Race to Incarcerate, supra note 2, at 1007-1009.

(84) See id. at 1010-1011 (citing id. supra note 76).


(86) Alexander, 121 So. 3d at 1187.

(87) Id.


(89) Id.

(90) Id. at *3.

(91) Id.


(93) Bretherick v. State, 170 So. 3d 766 (Fla. 2015).

(94) Id. at 769.

(95) Id. at 775–779; see Brief of Amicus Curiae National Rifle Association of America in Support of Appellant, Bretherick v. State, 2014 WL 2997921 (Fla.).


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(99) Id.

(100) See Mohney, supra note 97.

(101) See Alexander, 121 So. 3d at 1187; Susan Cooper Eastman, Florida Woman in “Warning Shot” Case Released from Jail, REUTERS (Jan. 27, 2015), http://www.reuters.com/article/us-usa-florida-selfdefense-idUSKBN0L02NQ20150127.

(102) See Fla. SB 228 (2016), available at https://www.flsenate.gov/Session/Bill/2016/0228/BillText/er/HTML.

(103) See Eastman, supra note, 101.

(104) See Appellant’s Reply Brief, Bretherick v. State, 2014 WL 6803932 (Fla.), at 19. Indeed, both Alexander and Bretherick supporters have emphasized the thug status of the victims in the cases.

(105) See supra note 3.


(109) See Roman, supra note 76 (finding that women defendants are more likely than average to have a homicide ruled justified and those who kill women victims are far less likely).

(110) For a deeper discussion of gender and violence, see Provocative Defense, supra note 34.

(111) See Mahoney, supra note 11.

(112) This was the approach in Leidholm.
These moves will, however, have the potential to benefit male defendants as discussed in text accompanying supra notes.


Id.; Child Hit by Stray Bullet During Shooting, FLORIDA SENTINEL BULLETIN Vol. 65 no. 102 p. 23-A (Aug. 13, 2010).

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