Territoriality, Fear, and Violence:

Stand Your Ground as Contemporary Settler Colonialism

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Abstract:

In this paper I argue that Stand Your Ground laws and the rhetoric used to support them employ the logic of settler colonialism, and that their rise represents an ongoing American condition more than a novel response to an age of decline. Stand Your Ground rhetoric cultivates fear and wields it as a political tool to bolster gun rights and to encourage a new manifestation of the violent territoriality that is the hallmark of settler colonialism. This cultivation of fear in both elite rhetoric and popular discourse contributes to an American social imaginary in which violent crime is normalized as an everyday feature of American life, thereby supporting the notion that crime is an omnipresent threat and perpetual problem for the government—and its citizens—to solve. This social imaginary fits a settler-colonial mold in that it highlights the dangers posed by the presence of "uncivilized" people in public spaces, emphasizes the necessity of individual action to combat that danger, and effectively renders all public space as untamed territory, in which "law-abiding" citizens must defend themselves and American territory when and where the state cannot.

INTRODUCTION

Since Florida lawmakers passed the United States' first Stand Your Ground (SYG) law in 2005, state legislatures across the US have enacted hundreds of gun-related laws, most of which have expanded, rather than contracted, gun rights. These laws include versions of Stand Your Ground as well as a variety of others that expand concealed-carry, open-carry, and campus-carry rights. Despite consistent opposition from prosecuting attorneys and law enforcement groups, most of the permissive gun and self-defense legislation considered in state capitols over the last decade and a half has passed easily and with little substantive debate. The dissent of many law enforcement officers in particular might be expected to put the brakes on these efforts, as police officers still garner widespread respect in the United States, yet even police opposition has done nothing to slow the spread of Stand Your Ground and permissive gun-carrying laws. Now 33 states have enacted some version of Stand Your Ground, and at the time of this writing several more state legislatures are considering their own Stand Your Ground laws. In light of the distinct American problem of gun violence, and especially considering the frequency of mass shootings in this country, the ease with which legislators continue to push through expansive self-defense

and gun-rights laws ought to give us pause. With only five million Americans among the ranks of NRA members, and with evidence showing that crime rates have plummeted since the 1980s,[1] as well as that gun ownership increases one's risk of both homicide and suicide,[2] the spread of permissive gun-related laws across America defies logic and creates an incoherent picture of the purpose of such laws. The rhetoric employed by supporters of broad gun rights is itself a contradictory assortment of arguments that frequently bear little relation to the actual substance of the laws or to the phenomena supposedly giving rise to a need for new self-defense and gun rights.

I argue that Stand Your Ground laws are an essential component of contemporary settler-colonial power structures, and that the logic of settler colonialism can explain the seeming inconsistencies in the law and its supporting rhetoric. In the framework of settler colonialism individual powers of violence are necessary not only to basic survival, but also to the strength of the state; individual power is thus aligned with state interests rather than a threat to them. The SYG laws themselves encourage a power-sharing arrangement between the state and the individual, and pro-Stand Your Ground rhetoric justifies this arrangement by exploiting fears of crime and proliferating narratives of vulnerability and the threat of stranger violence. This cultivation of fear in both elite rhetoric and popular discourse contributes to an American social imaginary in which violent crime is normalized as an everyday feature of American life, thereby supporting the notion that violent crime is an omnipresent problem for the government—and its

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1. Andrew Kohut, "Despite Lower Crime Rates, Support for Gun Rights Increases," *Pew Research Center*, accessed November 30, 2015, http://www.pewresearch.org/fact-tank/2015/04/17/despite-lower-crime-rates-support-for-gun-rights-increases/.

2. Andrew Anglemyer, Tara Horvath, and George Rutherford, "The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-Analysis," *Annals of Internal Medicine* 160, no. 2 (January 21, 2014): 101–10, doi:10.7326/M13-1301.

citizens—to solve. The resulting social imaginary fits a settler-colonial mold in that it highlights the dangers posed by the presence of "uncivilized" people in spaces that rightfully belong to "good," or "law-abiding" Americans; it emphasizes the necessity of individual action to combat that danger; and it effectively renders all public space—and some private—untamed territory, in which law-abiding citizens must defend both themselves and the state's rightful territory when and where the government cannot. In order to take advantage of private firepower and private violence, the state must share its monopoly on legitimate violence with armed and willing "good" citizens, as it did on the frontier.

This new era of self-defense and gun rights was precipitated by the dramatic shift in attitudes and policies relating to crime in the 1960s and 1970s, and it exemplifies that new outlook on crime: that it is normal rather than aberrant, that it is everywhere, and that it demands harsh policing and penal policies, rather than efforts to understand and ameliorate its roots causes.[3] The contemporary iteration of this view positions crime as the biggest threat to safety and the state as weak and incapable of protecting citizens or stopping crime—thanks in large part to the "due process revolution" of the 1960s and 1970s, which strengthened the rights of the criminally accused, and in the view of many Americans expanded the rights of criminals at the expense of victims. These views helped to create a new American social imaginary characterized by rampant crime and disorder, as well as a lack of protection from the government. Such a bleak vision of American society emphasizes the utter aloneness of the individual in a chaotic and under-governed land. This is a society in which armed self-defense becomes the necessary stop-gap measure to protect innocent lives, and thus any attempt to regulate guns constitutes the

3. See Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21, no. 2 (2007). and David Garland, *The Culture of Control* (Chicago: University of Chicago Press, 2002). for more on this history.

gravest threat to individual liberty and personal security. If the government has abandoned its duty to protect good, law-abiding Americans, then they must fend for themselves.

For decades gun-rights rhetoric has capitalized on themes of public danger and extreme individualism. However, now in the name of creating more expansive gun rights, pro-gun advocates turn toward melodramatic narratives of individual vulnerability to make their case for a constant need for arms. Melodramatic storytelling supplants logic and well-reasoned arguments in the NRA-crafted rhetoric in support of Stand Your Ground laws. Advocates of SYG in Florida continue the post-1960s strategy of representing public spaces as sites of fear and omnipresent danger, now emphasizing that in order to be free from fear, law-abiding citizens must have broader latitude to use violence against their fellow citizens. This new strain of pro-gun rhetoric differs from its predecessors in its insistence that law-abiding citizens must have not only the right to protect themselves from danger, but also the right to be free from the *fear* of danger, a freedom that can only be achieved if armed citizens have the state's blessing in committing acts of private violence. This blessing manifests in Stand Your Ground's immunity provision, exempting those who succeed in claiming a Stand Your Ground defense from prosecution, in the law's presumption of reasonable fear, and in the right to use violent force to prevent crime and protect property.

I focus on Florida's 2005 Stand Your Ground law both because it was the first of its kind, and because it has served as a template for the rest of the Stand Your Ground laws that have followed. I analyze the pro-Stand Your Ground rhetoric in the Florida legislature's floor debates and committee hearings on SYG legislation, as well as citizen correspondence to Florida's 2012 Governor's Task Force on Citizen Safety and Protection, to demonstrate that SYG proponents' melodramatic and terror-filled narratives give power to feelings of individual vulnerability and

victimhood as a way to stake new claims for individual powers of violence and rights to the land. In doing so, these narratives invoke two oppressive and disempowering figures: the criminal aggressor and the state. While the criminal aggressor is an essential component of a melodramatic self-defense story, the state also appears both as a hindrance to the victim's transformation into a hero, and at times as an aggressor in its own right. However, Stand Your Ground laws, rather than seeking to contract or displace the state, seek only to grant a privileged class of people—the law-abiding citizens—a share of the state's power. Tellingly, the demographic most supportive of Stand Your Ground is also most supportive of police militarization and police in general,[4] demonstrating the sense of alliance and shared aims with the state that Stand Your Ground proponents feel.

With this paper I hope to contribute to an understanding of what expansive gun and self-defense rights mean for American society and political possibilities. It seems clear these new laws tap into latent feelings of citizen disempowerment, vulnerability after the 9/11 terror attacks, and unease with rapid societal changes since the 1960s, giving Stand Your Ground a populist aura and arousing sympathy for innocent citizens left vulnerable to criminal violence by an unresponsive and wrongly-oriented state. Melodramatic rhetorical conventions communicate the bleakness of this age more effectively than mere argument could and offer a sense of uplift in their emphasis on how vulnerable victims can be empowered both to save themselves and to restore our country's social stability. The promised resolution of the narrative is a hopeful one, but the darkness that envelops the melodrama's protagonists is the more prominent and

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4. Hannah Fingerhut, "Deep Racial, Partisan Divisions in Americans' Views of Police Officers." (2017): https://www.pewresearch.org/fact-tank/2017/09/15/deep-racial-partisan-divisions-in-americans-views-of-police-officers/.; Institute, Quinnipiac University Polling, "American Voters Back 'Stand Your Ground,' Quinnipiac University National Poll Finds." 2013.; Ekins, Emily, "54% of Americans Say Police Using Military Weapons 'Goes Too Far'." *Cato at Liberty*, 2016.

permanent feature. Threats to safety are everywhere, and thus the need for private violence is ongoing. Both the law and its supporting rhetoric present settler-colonial patterns of individual violence against those outside the bounds of the traditional social order as the solution to societal disorder, violence bolstered by state non-interference and the continued cultivation of fear. The picture of American society that develops in this rhetoric is chaotic, wild, and unsettled.

Gun-rights and self-defense rhetoric have been the subject of many scholarly studies. Communications scholars Duerringer and Justus analyze the most frequently deployed pro-gun tropes, such as that "if you outlaw guns only outlaws will have guns" to show the unsoundness of their logic.[5] In a newly published piece, Goodman and Perry analyze the gun control debate as represented by pro-gun-control remarks by President Obama, and pro-gun-rights statements made by Wayne LaPierre of the NRA, demonstrating, among other things, that the debate includes a dichotomy between protecting lives and protecting freedom.[6] Anthropologist Kevin Lewis O'Neill also demonstrates the role of fear in pro-gun advocates' thoughts and desires in his examination of the NRA's long-running magazine column, "The Armed Citizen."[7] "The Armed Citizen"[8] purports to showcase self-defense successes, and as such presents stories in which innocent men and women threatened by dangerous and violent criminals overcome their victimhood through the use of personal firearms. O'Neill argues that the NRA's rhetoric in "The Armed Citizen" exemplifies its rallying cry to members and other gun-rights supporters, which

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5. C. M. Duerringer and Z. S. Justus, "Tropes in the Rhetoric of Gun Rights: A Pragma-Dialectic Analysis," *Argumentation and Advocacy* (2016).

6. Simon Goodman and Bethany Perry, "The American Gun Control Debate: A Discursive Analysis," in *Discourse, Peace, and Conflict* Springer, 2018).

7. K. L. O'Neill, "Armed Citizens and the Stories They Tell: The National Rifle Association's Achievement of Terror and Masculinity," *Men and Masculinities* 9, no. 4 (2007): 457–75.

8. "The Armed Citizen®," *NRA American Rifleman*, accessed January 26, 2016, http://www.americanrifleman.org/the-armed-citizen.

encourages them to "overcome terror-filled threats in heroic fashion."[9] The NRA's rhetorical style feeds off of and reinforces the idea that "terror is an American predicament" and in turn positions guns as the antidote to fear and victimhood.[10] Fear thus serves as a powerful foundation for potential acts of bravery, self-reliance, and heroic transformation, especially because NRA rhetoric positions terror as an unchangeable and always present background condition rather than an infrequent and potentially resolvable problem with identifiable root causes. This "terror-filled and deeply masculine worldview"[11] has created conditions in which more and more expansive pro-gun bills become law with only weak opposition, and in which supporters of gun regulation find themselves overpowered by an anti-regulation minority that happens to tell more compelling stories.

Another body of literature on gun rights examines the intersections of race and gender with gun rights and regulation. This category of scholarship includes critiques of the gendered and racialized nature of gun rights and gun rights rhetoric, as well as arguments that gun rights should be expanded precisely because they have been discriminatory in the past. This literature includes work by legal scholars Mary Ann Franks and Jeanne Suk, both of whom argue that men are privileged in Stand Your Ground laws primarily because gendered notions of appropriate violence and appropriate victimhood position men as protectors of home and family, while women are expected to retreat, plead for mercy, or otherwise avoid violent confrontation. While prosecutors justify men's violent acts of self-defense, they scrutinize women's self-defense acts harshly, and demand that women only use self-defense because they are too weak, too

9. Kevin L. O'Neill, "Armed Citizens and the Stories They Tell: The National Rifle Association's Achievement of Terror and Masculinity," *Men and Masculinities* 9, no. 4 (2007), 459.

10. O'Neill, 464.

11. O'Neill, 472.

traumatized, or otherwise incapable of retreating.[12]

Legal scholars such as Cynthia Kwei Yung Lee and D. Marvin Jones add that Stand Your Ground and other self-defense laws privilege not just men, but white men in particular, as a widespread belief in the black-as-criminal stereotype not only excludes black men from the right to self-defense,[13] but also makes them more likely objects of fear and suspicion as well as targets of unreasonable violence in the name of self-defense.[14] These stereotypes permeate American society so deeply that even black people view ambiguous or benign actions by black people as more threatening than the same actions by whites. These critiques of the racial and gender implications of self-defense law help to inform my analysis of Stand Your Ground.

Some brilliant recent literature investigates the meaning of this era's expansions of gun and self-defense rights, offering intriguing analyses of Stand Your Ground, concealed carry, and the right to carry guns in previously off-limits places. Political theorist Elisabeth Anker argues that gun ownership and gun carrying offer a salve for feelings of lost individual sovereignty and the anxiety that comes from "the devolution of social responsibility onto individuals."[15] In her formulation, Stand Your Ground laws, especially when coupled with concealed carry, produce "mobile sovereigns," who carry a bubble of sovereign territory around with them wherever they go, and are prepared to defend it with violent force—a phenomenon that is especially fraught

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12. Mary Anne Franks, "Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege," *U. Miami L. Rev.* 68, no. 4 (2014); Jeannie Suk, "The True Woman: Scenes From the Law of Self-Defense," *Harv. JL & Gender* 31 (2008).

13. Cynthia Kwei Yung Lee, "Race and Self-Defense: Toward a Normative Conception of Reasonableness," *Minn. L. Rev.* 81 (1996).

14. D. Marvin Jones, "He's a Black Male - Something is Wrong with Him: The Role of Race in the Stand Your Ground Debate," *U. Miami L. Rev.* 68, n. 4 (2014).

15. Elisabeth R. Anker, "Mobile Sovereigns: Agency Panic and the Feeling of Gun Ownership," in *The Lives of Guns*, ed. Jonathan Obert, Andrew Poe, and Austin Sarat (New York: Oxford University Press, 2018), 28.

because it is impossible for others to see this sovereign territory or to know they have invaded it until it is too late.[16] Sociologist Jennifer Carlson also identifies feelings of lost control and diminishing individual power, including economic power, as a cause of the new American fervor for gun-carrying. She notes that while gun-carrying may symbolize a reclamation of the kind of status formerly associated with white masculinity, gun carriers also see their choice to carry a firearm as a way to "assert themselves as relevant, useful protectors."[17] Carlson shows that concealed-carry proponents imagine themselves as a special class of citizens uniquely positioned to protect their fellow citizens in a rapidly decaying society.

Another strain of gun- and self-defense-related literature explores the racist roots of gun and self-defense rights in the United States. Historian Roxanne Dunbar-Ortiz argues that white supremacy gave birth to the Second Amendment, and that the right to private violence has everything to do with policing racial minorities.[18] From settler violence against indigenous people, to slave patrols, to lynchings, Dunbar-Ortiz shows that the American fervor to protect gun rights has always had aims of racial control. She also delves into the relationship between settler colonialism and Americans' love of guns, arguing that settler violence against Native Americans in "savage war"—in which Euro-Americans abandoned all typical rules of respect and proportionality in war—was a direct precursor to the Second Amendment.[19] Touching on related themes, Caroline Light's recent book on Stand Your Ground laws mines the history of American self-defense to show that our new era of "DIY security citizenship" has arisen out of a racialized right to self-defense and continues to perpetuate racist views of "criminality" and

16. Anker, 36.

17. Jennifer Carlson, *Citizen-Protectors: The Everyday Politics of Guns in an Age of Decline* (New York: Oxford University Press, 2015), 27.

18. Roxanne Dunbar-Ortiz, *Loaded* (San Francisco: City Lights Books, 2018).

19. Dunbar-Ortiz, 42, 49.

racial imbalances in criminal justice.[20] She further argues that American ideas of self-defense and property rights gradually evolved from "castle doctrine" to a right to "stand your ground" without the duty to retreat, convincingly demonstrating that Stand Your Ground laws can scarcely be seen as novel developments or recent innovations. Rather, they are merely an extension of centuries of self-defense thinking and racist and sexist notions of who has the right to protect oneself, one's home, and one's family. Light also formulates a cursory connection between settler colonialism and Stand Your Ground laws, noting that examining the history of self-defense laws exposes the "legal and representational residues that remain from our nation's founding in white supremacist settler colonialism."[21] Similarly, Dunbar-Ortiz claims that understanding the purpose of the Second Amendment can help us to understand the "lingering effects of settler-colonialism and white nationalism."[22]

My account of Stand Your Ground and its supporting rhetoric agrees in part with all of these recent works on self-defense and gun rights, yet it seeks to expand our understanding of how the current moment in self-defense and gun rights policy and rhetoric represents an ongoing practice of settler colonialism rather than merely its residue. If, as Patrick Wolfe argues, settler colonialism is a structure rather than an event,[23] it is worth exploring how the structure of settler colonialism operates in American political life today. Rather than dismissing settler colonialism as a shadow darkening contemporary American life, I interrogate Stand Your Ground as a form of American territoriality that arises out of settler-colonial thinking. In doing so I also hope to demonstrate that the rhetoric of fear employed to support Stand Your Ground laws is a political

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20. Caroline Light, *Stand Your Ground* (Boston: Beacon Press, 2017).
21. Light, 187.
22. Dunbar-Ortiz, *Loaded*, 23.
23. Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006).

tool used not only to support gun rights and expansions of the right to self-defense, but also to reclaim "unsettled" territories, to enforce hierarchical structures of power and citizenship, and to undermine inclusive citizenship and democracy.

This paper will proceed with a brief look at Florida's Stand Your Ground law and its dramatic origin story. Next, I will explore the relationship between settler colonialism, fear, crime, and private violence. Following that I will turn toward the rhetoric of Stand Your Ground to discuss its melodramatic elements and its cultivation of victimhood and fear. Finally, I will examine the figure of the criminal and its relationship to "the savage" to show both the continuity and change from this country's original "other" to its current one, "the criminal."

FLORIDA'S STAND YOUR GROUND LAW

Florida's Stand Your Ground law expands castle doctrine, removing the duty to retreat before using deadly force when one is outside one's "castle,"[24] and also creates four other new provisions that fundamentally alter existing self-defense law. First, it creates a presumption that any person who uses "defensive force" had a reasonable fear of imminent death or great bodily harm when they did so, as long as that person was not engaged in criminal activity at the time of the incident.[25] This presumption exists only in dwellings, residences, and vehicles, and relies on assumptions that people unlawfully and forcibly entering—or intending to enter—any of these spaces intends to commit a forceful or violent crime. Second, it provides immunity from both criminal prosecution and civil action for people using justifiable force, entitling the user of lethal force to significant compensation if he or she is prosecuted and later found to be immune from

24. Justifiable Use of Force Act, Fla. Stat. § 776.012.
25. Justifiable Use of Force Act, Fla. Stat. § 776.013.

prosecution by a court.[26] Third, it removes the duty to retreat before using force, except deadly force, to defend real property.[27] Fourth, it authorizes the use of deadly force wherever one has a legal right to be not only to protect oneself, but also to prevent a forcible felony or to protect someone else from death or great bodily harm.[28]

The net effect of these changes to Florida's self-defense law is to turn civilians into trusted state agents, tasked with defending property and other people, and to grant these civilians extreme latitude to use force while retaining a presumptive innocence. These changes align private violence with state power and encourage ordinary people to detect and fight crime. The sponsor of the House version of the Stand Your Ground bill, then-Representative Dennis Baxley, affirmed that ordinary citizens would gain the power to help uphold the social order, stating, "What this does is empower law-abiding citizens to stop violent crime in its tracks, to help us stop violent crime."[29] In his closing remarks during the House floor debate on the Stand Your Ground law, Baxley continued this narrative:

> Members, by your vote you're empowering our citizens of Florida to have a safer society. Some violent rape will not occur because somebody felt empowered by this bill. Somebody's child is not going to be abducted because this bill gave them confidence to protect. And you're gonna prevent a murder or a brutal beating and permanent injury of a victim. Your vote today is a vote for life and liberty.[30]

In these remarks, Baxley blurs the line between self-defense and crime prevention, yet this blurring accurately conveys the thrust of the legislation, which empowers individuals to "stand their ground" and defend life, property, and the social order, in partnership with the state. This power-sharing arrangement severely curtails state regulation of private violence, particularly

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26. Justifiable Use of Force Act, Fla. Stat. § 776.032.
27. Justifiable Use of Force Act, Fla. Stat. § 776.031 (1).
28. Justifiable Use of Force Act, Fla. Stat. § 776.012 and 776.031 (2).
29. Representative Dennis K. Baxley, Florida House of Representatives, House Floor Debate, April 5, 2005.
30. Ibid.

through the law's immunity provision.

At first glance, the immunity provision may seem an uncontroversial specification: of course those using justifiable force should not be prosecuted—that is the definition of justifiable, after all. However, a closer look reveals the contradictory nature of this section. Under traditional self-defense law if law enforcement officers have doubts about self-defense claims, defendants face trial, and the state must prove beyond a reasonable doubt that the defendant was not justified in using self-defense. Under Stand Your Ground's immunity clause, however, prosecuting those who make dubious self-defense claims carries large financial risks for law enforcement and prosecutors, who would be required to pay the defendant's legal fees should the defendant ultimately be found immune.[31] The ability to question self-defense claims becomes especially fraught considering the law's definition of "prosecution" includes not just the pursuit of criminal charges, but also detention and arrest, thereby thwarting standard law enforcement techniques for gathering information and evidence through questioning and interrogation.[32] Instead, in order for law enforcement and prosecutors to avoid liability, the determination of immunity must be made prior to interrogation, trial, or jury deliberation. Furthermore, the burden of proof that a SYG claimant should not receive immunity rests on the state, which must produce "clear and convincing evidence" in order to overcome an immunity claim.[33]

Although sponsors and supporters of the bill in both houses of the Florida Legislature referenced immunity from prosecution in the primary narrative they used to justify the introduction of this legislation, this provision nonetheless failed to register with Florida lawmakers as a dramatic departure from prior self-defense law until the tail end of floor debate in

31. Justifiable Use of Force Act, Fla. Stat. § 776.032 (3).
32. Justifiable Use of Force Act, Fla. Stat. § 776.032 (1).
33. Justifiable Use of Force Act, Fla. Stat. § 776.032 (4).

the House.[34] Even then, bill supporters denied that these sweeping protections of Stand Your Ground defendants represented a drastic change from common-law self-defense provisions. Sponsors and other supporters repeatedly insisted that SYG would merely codify Florida case law, and few legislators questioned this narrative.

Somewhat ironically, the Florida Legislature's lack of specificity about the immunity provision contributed to its undoing by the courts in 2008. Florida's courts found the legislature's intentions with regard to immunity unclear, leading them to look to precedent in order to establish procedures for determining immunity, which resulted in the taming of this radical provision. Rather than giving the Stand Your Ground claimant unquestioned immunity, Florida courts established a pretrial hearing process in which the defendant bore the burden of proof to demonstrate that his or her use of lethal violence met legal standards of justifiable force. The First District Florida Court of Appeal upheld this interpretation of the law in *Peterson v. State of Florida* (2008), affirming that a defendant must demonstrate by a preponderance of evidence, the lowest standard, that he or she qualified for immunity from prosecution.[35] The issue wound its way through the Florida courts,[36] ultimately landing in the Florida Supreme Court, which decided the burden of establishing immunity in Stand Your Ground cases should be the defendant's.[37]

However, Florida lawmakers remained unsatisfied with this outcome, and many accused the courts of watering down the immunity provision. Dennis Baxley reminded the public of the legislature's intent in a column he penned for the Tampa Bay Times:

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34. Florida House of Representatives, House Floor Debate, April 5, 2005.
35. Peterson v. State, 983 So.2d 27 (FL Ct. App. 2008).
36. See Dennis v. State of Florida, 17 So.3d 305 (FL Ct. App. 2009); and Bretherick v. State, 135 So. 3d 337 (Fla. Ct. App. 2013).
37. Bretherick v. State of Florida (Florida Supreme Court 2015).

> The Legislature's clear and unequivocal intent was to protect innocent people by granting immunity from arrest, detention and prosecution to a person who acts in self-defense.
>
> However, the courts have now usurped the law passed by the Legislature by creating a pretrial immunity hearing, at which the defendant bears the burden of proving by preponderance of evidence that he or she acted in self-defense. Placing the burden of proof on the citizen directly contradicts the Legislature's clear intent to give greater protection to citizens who lawfully act in self-defense by granting them total immunity from prosecution.[38]

Baxley went on to reference the long-established state burden to prove guilt beyond a reasonable doubt, arguing that the Florida Supreme Court has effectively created a presumption of guilt at pretrial immunity hearings that the defendant must then attempt to overcome. Baxley and other supporters of a more extreme immunity provision framed the Supreme Court's interpretation of immunity as a deprivation of due process for SYG claimants. Were the defendant subjected to standard due process, they argued, he or she would effectively be considered guilty until proven innocent. In order to correct this perceived imbalance in justice, the Florida legislature passed into law a clearer immunity provision in 2017 that reaffirmed the state's burden to overcome a SYG claimant's immunity with clear and convincing evidence. This battle over self-defense immunity highlights SYG supporters' curious position on due process: while standard due process is too good for criminals, it is also an affront to law-abiding citizens, who should be held to a separate, and lower, standard. The Stand Your Ground origin story illustrates this thinking.

THE STAND YOUR GROUND ORIGIN STORY

According to Florida's Stand Your Ground mythology, the story of James Workman's act of self-defense against a nighttime intruder inspired the law. This oft-retold origin story

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38. Dennis Baxley, "Column: Why I Want to Change 'Stand Your Ground' Law," *Tampa Bay Times*, November 16, 2015, http://www.tampabay.com/opinion/columns/column-why-i-want-to-change-stand-your-ground-law/2254209.

demonstrates the centrality of territoriality to the law, and also, ironically, supports the notion that pre-SYG self-defense laws worked well and needed no modifications. The introduction of Stand Your Ground legislation in Florida came at a time of real devastation and uncertainty for many Floridians. Three years after the terror attacks of September 11, 2001, which increased feelings of vulnerability and a sense of living in near-constant danger for many Americans, a brutal hurricane season pummeled Florida, with one hurricane after another touching down and destroying homes, communities, and lives. In the aftermath of this devastation, the case that SYG supporters claim inspired the first Stand Your Ground unfolded. On November 2, 2004, 77-year-old James Workman and his 58-year-old wife, Kathryn Workman, were staying their first night in an RV outside of their storm-damaged house. Many houses in the area had suffered break-ins and looting since Hurricane Ivan touched down in the Pensacola area on September 16, and the Workmans had arrived that day from Georgia, where they had taken a 3-week break from dealing with storm damage, to keep a closer eye on their property.

That night when Kathryn had trouble sleeping in the wee hours, she got up to adjust a window on the RV and saw a stranger approaching their empty house. The stranger was Rodney Cox, a temporary FEMA worker who was injured, lost, and disoriented, and who also appeared to be attempting to break into the Workmans' house. Kathryn woke her husband, who grabbed his gun and ran outside to try to shoo the stranger off the property, but Mr. Cox seemed confused, possibly drunk, and kept asking for a drink of water. Mr. Workman continued to try to persuade Mr. Cox to leave, eventually firing a warning shot into the ground when even yelling at Mr. Cox failed to motivate him to leave. But the warning shot seemed to spook Cox, and he darted into the trailer, where Kathryn had stayed. James Workman followed Cox into the trailer, effectively trapping Cox between Kathryn and himself. Cox then turned to James and wrapped his arms

around James as if to subdue him. At this point James Workman shot Cox through the abdomen, killing him. Three months later, prosecutors decided not to charge James Workman with a crime, calling the shooting justified.

This event became the Stand Your Ground origin story, despite the favorable outcome for Mr. Workman, and has been encapsulated as follows: In the aftermath of several deadly hurricanes, Floridians were struggling to get back on their feet and to keep looters out of their wrecked homes. In the midst of this wreckage and social disorder an elderly man, vulnerable in a time of uncertainty and unsafe conditions, killed a strange trespasser in the dark of night in an act he believed necessary to protect his and his wife's lives. After this tragic and unfortunate ordeal, the Workmans had to suffer a long, excruciating wait wondering whether Mr. Workman would be charged with a crime for his act of self-defense. Mr. and Mrs. Workman both agonized over the thought of Mr. Workman, elderly and already traumatized by the ordeal, having to spend time behind bars.

When SYG proponents cited James Workman's case as evidence that self-defense laws needed reform, they referred not to his experience as a criminal defendant, not to his experience spending his life savings on legal fees, and not to an "unjust" legal outcome for him—indeed, Workman experienced none of these things. On the contrary, Workman's shooting of Rodney Cox was deemed justified, and Workman never went to court. Rather, the main source of ire for SYG supporters in this case was the anguish Mr. Workman experienced during the three months after he shot Mr. Cox, as he waited to find out whether or not prosecutors would charge him. SYG proponents cited Mr. Workman's uncertain wait as the real injustice he suffered. Representative Baxley summed up this sentiment, declaring, "It was months before he knew whether or not he was going to be charged with a crime for simply defending his own life and his

property. That is not right."[39] Stand Your Ground supporters took Mr. Workman's innocence for granted, and the tragedy of Mr. Cox's death disappeared from the story.

To SYG advocates, the state's delay and the uncertainty the Workmans faced were simply unacceptable. That prosecutors would even consider bringing charges against Mr. Workman aroused widespread indignation on his behalf. Florida Senator Durell Peaden, "outraged" by the case, claims he was inspired to discuss the issue with Marion Hammer, the NRA's long-term Florida lobbyist, to find out what they could do to keep Floridians like Mr. Workman from suffering needless anguish or unjust prosecution after acting in self-defense. According to Hammer, the NRA then helped draft the Florida Stand Your Ground legislation.[40] Other accounts suggest that the NRA already had expansion of self-defense laws on its agenda before the Workman case,[41] but whether Peaden or the NRA started the Stand Your Ground wildfire that has spread across the country, a large number of Americans were primed for its rhetoric and eager to embrace the fight to "stand their ground" even if the issue of self-defense had been largely irrelevant to their lives prior to the NRA's campaign.

Despite Senator Peaden's and Marion Hammer's claims, before Stand Your Ground laws swept the United States nothing occurring in Florida or elsewhere in the country suggested a

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39. Ann O'Neill, "NRA's Marion Hammer Stands Her Ground - CNN.com," *CNN*, accessed December 2, 2015, http://www.cnn.com/2012/04/15/us/marion-hammer-profile/index.html.

40. Joe Strupp, "Former NRA President: We Helped Draft Florida's 'Stand Your Ground' Law," *Media Matters for America*, March 27, 2012, http://mediamatters.org/blog/2012/03/27/former-nra-president-we-helped-draft-floridas-s/185254.

41. See Luevonda P. Ross, "Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground," *S.U. L. Rev.* 35, No. 1 (2007): 16; and Joe Strupp, "Former NRA President: We Helped Draft Florida's 'Stand Your Ground' Law," Media Matters for America, March 27, 2012, http://mediamatters.org/blog/2012/03/27/former-nra-president-we-helped-draft-floridas-s/185254.

need to reform existing self-defense laws. Even in hurricane-ravaged areas of Florida that became easy targets for looters, self-defense laws still performed as intended, as the Workman case itself demonstrates. The case also fails to suggest a need to expand castle doctrine beyond the home, as under Florida castle doctrine would have included the trailer in which the Workmans were staying as well as the yard it was parked in. Nothing about the handling of the case suggests a need to expand protections for self-defense shooters. On the contrary, the absence of justice for Mr. Cox instead may indicate that self-defense laws were already too permissive in protecting people who overreact with lethal force.

Stand Your Ground rhetoric reimagines the state's posture toward intervention in self-defense killings, pushing a view that due process for law-abiding citizens involves simply leaving them alone after they have committed acts of private violence. Florida Senate Bill 344 (2016) states, "The Legislature has never intended that a person who acts in defense of self, others, or property be denied immunity and subjected to trial when that person would be entitled to acquittal at trial."[42] Of course, the only way to determine whether a defendant is entitled to acquittal at trial is to *have* a trial. But if the elements of due process themselves count as forms of state punishment, law-abiding citizens deserve immunity from detention and interrogation, arrest, and trial. This simple formulation presupposes a degree of clarity in determining innocence or guilt that would render much of the criminal justice system unnecessary. Indeed, arguments in favor of SYG legislation embrace a Manichaeistic view of innocence and guilt, legality and criminality that subverts due process by assuming the innocence of the party claiming self-defense and the guilt of the person injured or killed in the violent interaction. Florida's Stand Your Ground immunity statute asks the state to authorize the defendant's use of

42. Rob Bradley, Florida SB 344 (2016), 7-00299-16, vol. 2016344, accessed December 8, 2015, https://www.flsenate.gov/Session/Bill/2016/0344/BillText/Filed/HTML.

force after the fact and without the benefit of fact, as it were. It protects the SYG claimant not only from prosecution but also from a *fear* of prosecution.

SETTLER COLONIALISM AND UNSETTLED TERRITORY

The Workmans' story touches on several themes in settler-colonial thinking. The Workmans were alone in their desolate and damaged neighborhood, staking out their property to protect it from looters and squatters, when they were unfortunate enough to discover an intruder in their yard. Mr. Workman's access to a firearm and willingness to use it protected the Workmans' lives and property in less time than it would have taken for police to arrive at the scene. Mr. Workman did not want to have to take a life, but he did what he felt he must in a dangerous and frightening circumstance. Yet because the state was not yet fully aligned with the wielders of private violence, Mr. Workman suffered extreme emotional distress and fear for his fate. Were the state on the side of property-owning, law-abiding citizens, Mr. Workman would never have had to experience this anguish. Instead, defenders of property and life would have the freedom to use violence when they deem it necessary, period. In a rightly-oriented state, the judgment regarding when to use private violence would belong to the person who finds himself vulnerable in unsettled, or tenuously settled, territory, and not to prosecutors, judges, or lawmakers.

Stand Your Ground laws introduce just this kind of freedom into self-defense law, giving "law-abiding citizens" the power to act when the state cannot. This is a power-sharing agreement reminiscent of the US government's strategy for settling the frontier and achieving westward expansion when it lacked the resources to secure or expand American territory on its own. The early American government's ability to expropriate Native American land, and to settle and keep

it, relied upon strategic use of civilian settlers, who would become temporary defenders of American westward expansion without any formal status as soldiers or agents of the state. Documenting the displacement and slaughter of Native Americans, Paul Frymer shows that the federal and state governments promoted territorial expansion in large part by legitimizing the private actions of settlers and squatters, actions which ample violence targeting Native Americans.[43] By providing legal backing to settlers and creating incentives for private citizens to initiate land grabs, politicians and the courts effectively expanded the boundaries of US territory without requiring concerted effort by the federal government to forcibly take away Native American land. Rather, the piecemeal approach that emphasized private action created a de facto army of settlers, eager to expand the American state for their own personal gain.

While the US government itself frequently refrained from violently expropriating Native American land, the government not only rewarded soldiers for their service with land in dangerous and highly contested territories, but it also heavily recruited well-armed settlers, including military veterans, for its territorial conquests so that they could defend the frontier against Native American tribes.[44] In defending their property and their lives, these settlers also defended the American empire, illustrating the successful symbiosis of private and public interests that the federal and state governments intended.[45] Through this harnessing of private interests, the US both condoned and facilitated white violence against Native Americans, but did so in the name of property rights and self-protection rather than a centralized, state-led effort to rid the land of Native Americans.

Florida's Stand Your Ground law also empowers civilians to become de facto state actors

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43. Paul Frymer, "Building an American Empire: Territorial Expansion in the Antebellum Era," *UC Irvine L. Rev.* 1 (2011), 913.

44. Frymer, 937.

45. Frymer, 938.

who may protect themselves and others with deadly force, and also use deadly force to "prevent the imminent commission of a forcible felony," effectively encouraging those so inclined to police society—and to do so for free.[46] Those who choose to make use of that power will be shielded by the law's immunity provision. This type of immunity bears a resemblance to the US government's hands-off policy in regulating settler violence against Native American tribes. While the government tasked civilian settlers with defending and even expanding U.S. territory on the frontier, it often sought to curtail further expansions and unnecessary violence—yet part of the agreement was an understanding that the settlers must to some degree be allowed to manage their own interactions with tribes. In fact, when the government attempted to rein in the settlers and to decrease acts of violence against tribes, settlers often disregarded the pleas for constraint, choosing for themselves whether to fight and/or attempt to expand their settlements into Native American country.

One such strategy for curtailing settler violence against tribes was the "Indian depredation claims" system, which critical race studies scholar K-Sue Park demonstrates allowed the US government to manage its loose partnership with settlers while continuing a policy of minimal direct engagement with frontier affairs.[47] The government created the Indian depredation claims program to discourage settler violence by offering remuneration to settlers who suffered injuries or property losses at the hands of tribes. As Park shows, the government often failed to provide settlers compensation, rejecting many applications on technical grounds and often taking decades to resolve other claims, if they ever reached a resolution at all.[48] Yet the program succeeded in its primary aim of disincentivizing settler violence against tribes, and

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46. Justifiable Use of Force Act, Fla. Stat. § 776.012-090.

47. K-Sue Park, "Insuring Conquest: U.s. Expansion and the Indian Depredation Claims System, 1796–1920," *History of the Present* 8, no. 1 (2018).

48. Park, 58, 70.

doing so with minimal government expenditure. The program also relieved the government of blame for settler conflicts with tribes, "allowing it to profess conciliatory intentions towards tribes" and point the finger at both unscrupulous settlers and natives, who it dismissed as "rabble" and "banditti."[49] In this way, the government kept its hands clean both in the settling of the frontier and in sanctioning private violence against tribes, and pursued an official state policy of placing responsibility for expansion and managing violent conflicts squarely upon the shoulders of individuals. If those individuals committed acts of violence against the government's wishes, their remoteness and vulnerability in unsettled territory could easily justify their actions.

MELODRAMA AND THE CREATION OF A NEW FRONTIER

The contemporary parallel to these frontier arrangements, in which a public-private partnership of legitimate violence becomes necessary, is the social imaginary Stand Your Ground advocates have created with exaggerated claims of pervasive social disorder, dangerous public spaces, and the threat of stranger violence. Furthermore, Stand Your Ground supporters blame the state for this societal decay and argue that state inaction forces private citizens to take action and reclaim our neighborhoods from criminal intruders. Florida Representative Jeff Kottcamp illustrates this argument during one Stand Your Ground debate when he critiques the notion of a "bad part of town," whose very existence means we are letting "violent criminals control our communities."[50] Were the government providing adequate security to its citizens, there would be no such place as a "bad part of town." This bleak view of contemporary American society gives rise to demands for autonomy and citizen empowerment, highlighting feelings of individual

49. Park, 79.
50. Jeff Kottcamp, Florida House of Representatives, House Floor Debate, April 5, 2005.

vulnerability to crime and lawlessness as a way to stake a claim to a renewal of the power of private violence—and the freedom to detect and punish criminality as one would in a Lockean state of nature or on the frontier, without interference from or second-guessing by the state. Only when the state empowers citizens to wield private violence with impunity will disorder be quelled and decay reversed. As bill author and former NRA president Marion Hammer puts it, "This bill will reduce crime. Babies won't be abducted, women won't be raped, homes won't have intruders, basically because criminals don't want to be shot."[51]

This narrative relies on classic melodramatic themes, such as a Manichaeistic distinction between the law-abiding citizen and the criminal, and the potential for a morally righteous victim to transform into a hero. This melodramatic storytelling has been particularly effective at rallying support for further deregulation of firearms and expansion of self-defense rights, and has also stifled debate that might have led to critical questioning of the laws' intentions and potential outcomes. Because melodrama generates sympathy for powerless innocents and stokes a desire to empower those innocents to save themselves, such tales of victimhood prove difficult to counter with logic or argumentation. At times, Stand Your Ground advocates have even countered critical questions about the law's provisions with yet more melodramatic rhetoric, redirecting attention away from legal specifics and toward more stories of vulnerability, victimhood, and a lack of individual power in the face of omnipresent danger.

Political theorist Elisabeth Anker, in her book *Orgies of Feeling,* explores the particular emotional power of melodramatic narratives as well as the dangers of portraying serious social and political problems through melodrama.[52] By translating generalized feelings of fear,

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51. Marion P. Hammer, Hearing on S.B. 436, Florida Senate Committee on the Judiciary, February 23, 2005.

52. Elisabeth R. Anker, *Orgies of Feeling: Melodrama and the Politics of Freedom* (Durham: Duke University Press Books, 2014).

disempowerment, and anxiety into stories with identifiable and conquerable threats, melodramatic narratives both provide comfort in vulnerable times and suggest that we can regain our power and sense of security through acts of heroism. Acts of heroism are the antidote to fear and disempowerment, as they confirm the hero's power and sovereignty under a government that is simultaneously obtrusive and negligent in protecting its subjects. Stand Your Ground proves an apt vessel for the idea of gun rights as a means to individual freedom, aided by the use of melodramatic storytelling, which restricts the debate to problems and solutions that fit neatly into a melodramatic narrative. Because melodrama limits possible counterarguments and alternative solutions, it not only forecloses other possibilities for empowering citizens but also begins to naturalize the notions of individual victimhood and heroism, thereby obscuring other formulations of the problem at stake.

For Stand Your Ground the power and limitations of melodrama mean that the law promises solutions to problems that might be better solved through other kinds of political, legal, or economic change. Stand Your Ground's promise of individual power speaks to needs and feelings related to political, legal, and economic problems, but does nothing to address the problems themselves. However, the fact that pro-gun laws derive so much of their power from feelings in itself must become a topic of our inquiry, as it points to purposes for pro-gun laws that bear little relation to guns or crime. Indeed, proponents of Florida's Stand Your Ground legislation deal in melodramatic discourse precisely because feelings form the primary substance of their argument. Melodrama not only offers a powerful way to give expression to those feelings, but also helps to obscure the absence of fact-based causal arguments and rational assessments of why existing laws needed changing. Beginning with the case that inspired Florida's Stand Your Ground law in 2004 and continuing to Florida's most recent update to the

Stand Your Ground law in 2017, the stories and arguments proffered in support of expansive self-defense laws have followed melodramatic discursive parameters, zeroing in on potential victim-heroes, omitting rescuers other than the transformed self, and amplifying the fear that society is unsafe because bogeymen are everywhere.

According to Anker, "the melodramatic hero is the universal liberal individual who emancipates himself and his dependents from injustice and domination."[53] In this vein, arguments for the first Stand Your Ground law in the United States invoke melodramatic themes to justify law-abiding citizens' need to be legally free to use deadly force without the duty to retreat in public spaces. Focusing on Americans' vulnerability in public spaces highlights state failures to protect law-abiding citizens from crime, effectively blaming the government for citizens' need to arm themselves. Demands for immunity from state prosecution for those who use violence and claim self-defense underscores a double slight by the government against decent Americans: Not only has the state failed to prevent and punish crime, but it has also robbed law-abiding citizens of their autonomy.

Stand Your Ground rhetoric emphasizes individual action marked partly by a desire for the state to reduce its interference in matters of individual protection, but also by a sense of entitlement to share power with the state—including both law enforcement powers and the power to punish transgressors. If omnipresent fear were the primary motivator behind expansive self-defense laws, citizens might also demand expanded policing or policies to reduce crime. If indeed civilians need to carry firearms with them everywhere they go, this should be an indictment of our government and criminal justice system, as gun-rights advocates in the 1980s imagined it was. Yet those who advocate for concealed carry, open carry, stand your ground, and

53. Anker, *Orgies of Feeling*, 187.

campus carry today are largely silent on the issue of crime control and prevention. The lack of alternative proposals suggests two primary goals of Stand Your Ground advocates: to generate fear, and to justify interpersonal violence in the name of reclaiming American territory from criminal invaders.

Stand Your Ground rhetoric promises citizens autonomy by decreasing their dependence on the state for the provision of security and giving civilians greater discretion to use deadly force with the state's backing. Furthermore, SYG laws offer tangible empowerment to citizens by expanding individual rights while also limiting state interference after civilian use of violence. Thus, although gun ownership may in many ways be counterproductive to achieving safety, and self-defense with a firearm may be more difficult than most gun owners would care to believe, Stand Your Ground laws increase autonomy by giving civilians new powers, in contrast to most instances of state withdrawal in the name of personal responsibility, for example welfare reform, which takes away more than it bestows. Under pressure to take "personal responsibility" for their own life course, the expanded right of civilians to defend person and property provides a feeling of legitimacy for the ideal of individual autonomy but also for the state, which wisely surrenders some of its monopoly on the legitimate use of violence in recognition of Americans' right to self-government. This power-sharing arrangement serves several aims, including increasing government legitimacy among SYG supporters, shifting responsibility for crime-fighting to individual citizens, and allowing Florida's lawmakers to distance themselves from clear misuses of Stand Your Ground by claiming the law "does not apply" in the most controversial cases—regardless of the outcomes of those cases. As with the power-sharing arrangement between the state and the settler on the frontier, Stand Your Ground assigns blame for violence to the individual, who then may defend the violence as necessary to eliminate an existential threat.

THE SAVAGE AND THE CRIMINAL

This rhetoric of widespread crime and victimization emphasizes the wildness and ungovernability of American society, frequently echoing the ways in which Native Americans have historically been figured by Euro-Americans as uncivilized, savage, ungovernable, and incapable of self-rule. Because these qualities are a threat to civil society and a peaceful social order, settler-colonial violence against Native American tribes possessed an aura of political virtue. In the eyes of European settlers, creating a civilized and well-ordered society demanded the annihilation of chaos and the people representing chaotic forces. Thus settling the North American continent and establishing effective governance required repressing, if not eliminating, "the savage." This genocidal policy began an American political tradition based in part on a backlash to the primitivism and chaos Euro-Americans believed were embodied by peoples of color. This political tradition, according to Michael Rogin, "defines itself against alien threats to the American way of life and sanctions violent and exclusionary responses to them."[54] The ruling group or class seeks to neutralize threats to its dominance either by absorbing or annihilating its challengers, though neither of these two options actually represents a desirable outcome, for the ongoing existence of the "other," or the outsider, is necessary to the self-definition of the normative American.[55]

Dominant or "tradition"-oriented Americans in this political tradition quash threats to the political and social order that favors them by submerging "separate identities within an ideal America" and, contradictorily, by reinforcing divisions between identity groups in order to guard

54. Michael Rogin, *Ronald Reagan the Movie: And Other Episodes in Political Demonology* (University of California Press, 1988), 45.

55. Rogin, 279-280.

against "boundary collapse."[56] Were the distinctions between the dominant and subordinate group to collapse—they are social constructions, after all—the dominant group would lose its primary justification for its power and right to self-government. Therefore, repressing and punishing the uncivilized not only enforces their exclusion from society, but also secures the boundaries of the true Americans, the in-group that defines the contents of "civilization" and the ideal profile of the "civilized" person. In the process of defining the other as a dangerous, corrosive presence, the dominant group simultaneously builds its own identity in opposition to the group it demonizes and casts as other. In classifying Native Americans as dependent, chaotic, childlike, and uncivilized, and acting upon this classification by killing and dispossessing them of their land, Europeans established themselves in their social imaginary as the Native American opposite: independent, self-governing, orderly, and civilized.

Furthermore, the constructed opposite embodied by Native Americans served as a "repository for the disowned, negative American self," representing deeply human qualities from which the European settlers hoped to disassociate themselves.[57] Because the definition of themselves and their new society in this way depended upon the existence of a dangerous threat, European Americans also needed that threat to survive, contributing to the ambivalence of policies regarding Native Americans. This need to maintain the "negative self" means that the other must be subdued and controlled but not eliminated. A show of mastery over the other also demonstrates a mastery over the negative traits the dominant group fears in itself, and this mastery proves the dominant group's superiority not just over the other but also over forces of evil, vice, and chaos. By demonizing and controlling its foes, dominant American society can represent justice, order, and goodness, and assign its most feared qualities to the other, which

56. Ibid.
57. Rogin, *Ronald Reagan the Movie*, 284.

inside US borders has most frequently meant people of color, though the communist scares of 1920s and 1940s-50s also fit this model. These demonizing constructions of the other provide justifications for disciplining, punishing, excluding, and committing violence against them.

Pro-gun and self-defense rhetoric employs a dichotomous distinction between the criminal and the law-abiding citizen to the same effect. First, the dichotomy establishes the existence of two separate and opposed classes of people, which are presumed to be well-defined and separated by unbreachable borders. The dichotomy denies the fluidity between the "honest citizen" and the "bad guy," leaving unanswered any questions of where bad guys originate, how they are made, and how we should classify law-abiding citizens who become criminals, not to mention criminals who have been rehabilitated and have rejoined the ranks of the law-abiding citizens. Second, the stability of the dichotomy depends upon social control policies meant to respond to the criminal's dangerousness but that also continue to reinforce the idea of the dangerous criminal, such as mandatory minimum sentences, stop-and-frisk policies, and Stand Your Ground laws. Third, the dichotomy is racialized but framed in non-racial terms. While Euro-American policy toward Native Americans was highly racialized, the ultimate justification for violent repression could not be *merely* race. Rather, settlers framed the problem as religious, social, and political, and imbued their vision of Native Americans with qualities that posed existential threats to Christianity, settler society, and well-ordered political life.

Yet this template applies imperfectly to our current moment in settler colonialism, as the role of race is fuzzier and more flexible in Stand Your Ground than it was in the original settler-colonial violence. Whereas "the savage" was once meant to be synonymous with the Native American, and members of other races did not fit into that category, the category of "the criminal" can and does encompass people of all races. However, although the criminal is in some

respects a "color-blind" rendering of the other, the figure of the criminal in the US has been highly racialized for centuries. Thus, projecting our fears onto the ostensibly raceless criminal, who represents the evil or disorder that threatens our social order, obscures ongoing and pervasive racial fears. What lurks inside the figure of the criminal is the long-standing association of criminality primarily with blackness.[58] Thus gun rhetoric that focuses on rampant crime and criminality carries with it implicit racial messaging. Slavery, the "black codes," pseudo-scientific theories of racial inferiority, Jim Crow, and mass incarceration have all been bolstered by arguments and false "evidence" that blacks are criminally inclined and therefore inherently dangerous. Even within settled society blacks have been explicitly barred from certain locations, kept out through discriminatory policies and/or racial violence, or at minimum seen as outsiders in majority-white spaces.

Philosopher Charles Mills provides helpful imagery to illustrate this phenomenon when he writes that in the American racial state nonwhites are "*carrying the state of nature around with them,* incarnating wildness and wilderness in their person."[59] If people of color carry around a state of chaos and danger with them wherever they go, then whites, who embody order and civilization in the dominant, i.e. white, American social imaginary, are justified in protecting themselves, and their communities, from nonwhites. The case of Trayvon Martin underscores this point: a volunteer neighborhood watchman murdered Martin in the suburban gated community where his father lived, because he looked out of place and thus suspicious. Yet the colorblind rhetoric of Stand Your Ground masks racial disparities in who belongs, who is trustworthy, and who is a "law-abiding citizen," and when life-or-death decisions must be made,

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58. Khalil Gibran Muhammad, *The Condemnation of Blackness* (Cambridge, Mass.: Harvard University Press, 2011).

59. Charles W. Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 2014), 87.

nonwhites will be at a distinct disadvantage.

Additionally, the American tradition of whites' preferential right to property yields a corresponding right to protect that property with force and therefore to possess and use firearms. Although it has waned at different moments in history, the right to bear arms has generally maintained a strong anti-black tenor. Indeed, the earliest Second Amendment gun-rights arguments arose out of white desires to disarm blacks, and the modern gun rights movement arose as a backlash to 1960s gun-control efforts aimed at stripping black militants, such as the Black Panthers, of their arms.

Blacks still suffer violence at a much greater rate than whites, leading some black self-defense advocates to argue that gun control laws disproportionately disadvantage blacks, especially poor blacks. One such gun advocate ultimately concludes that blacks should respond to the systematic under-protection of minority neighborhoods with widespread gun ownership.[60] Yet while blacks are half as likely to own guns and twice as likely to support gun control as whites, blacks also make up the largest populations of both gun homicide victims and prisoners in the US.[61] However, increasing gun possession by blacks in a white supremacist country with robust self-defense laws is only likely to lead to an even higher rate of justifiable homicides of blacks, especially in Stand Your Ground states. Analyses of Florida's Stand Your Ground outcomes supports this prediction.[62]

Popular rhetoric in support of Florida's Stand Your Ground law not only demonstrates efforts to maintain a clear line of distinction between the criminal and the law-abiding citizen,

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60. Stefan B. Tahmassebi, "Gun Control and Racism." *George Mason University Civil Rights Law Journal* 2, no. 1 (1991): 83-85.

61. Kerry O'Brien, *et al.*, "Racism, Gun Ownership and Gun Control: Biased Attitudes in Us Whites May Influence Policy Decisions." *PLoS One* 8, no. 10 (2013): 1.

62. Nicole Ackermann*, et al.*, "Race, Law, and Health: Examination of 'Stand Your Ground' and Defendant Convictions in Florida," *Social Science & Medicine* 142 (2015).

but also showcases racial fears—especially fear of blacks. Governor Rick Scott's Task Force on Citizen Safety and Protection, organized in the wake of Trayvon Martin's killing by George Zimmerman, received hundreds of letters with commentary on Stand Your Ground and recommendations for how the legislature should proceed. Most letter writers supported the law and urged the governor not to change or repeal it, and most of these supporters referenced rampant violence and fear of criminals in their letters. One citizen concerned with crime and "the dishonest" writes, "I understand that you're looking into the 'Stand Your Ground law' why? To change the law as it stands is to say you do not trust honest, law abiding, taxpaying Floridians. You wish to take away from the honest and give to the dishonest. Will you be saying to the honest turn and run, retreat, giving the dishonest time to stab, or shoot you in the back?"[63] The writer opts for a different dichotomy than criminal versus law-abiding citizen, but the outcome is the same: it classifies every person according to a binary distinction, with no middle ground or possibility of either redemption or a fall from grace. The honest people deserve the law's protection, whereas the dishonest do not. In the same vein, another concerned citizen weighed in with a poem that represents criminality as a vocation:

> Criminals have a gun like a painter has a brush
> and a lumberjack an axe. It is a tool they need to do what they do.
> Gun laws, therefore, only restrict the honest person's
> ability to defend himself, his family and those he cares about."[64]

This poetic take on the nature of criminality similarly invokes a binary distinction between the honest person and the criminal, but it also goes a step further in imagining crime as not just a profession, but as a craft, precluding the possibility that a person with other aims in life—for

63. Burnice H. O'Hara, letter to Florida Task Force on Citizen Safety and Protection, 2012.

64. Name unknown, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

example, the painter or the lumberjack— might ever commit a crime. Only criminals commit crimes, according to this logic; there is no fluidity between the criminal and the law-abiding citizen, a comforting oversimplification that renders crime more predictable than it often is in reality. The letter writer also frames law as a harm to the "honest person," who needs no government restrictions because he is good by nature.

Other letter writers also express their disdain for the law and lack of faith in police. One writer complains that "the law has become so in favor of the criminals" that his neighbors are quietly obtaining concealed weapons permits to ensure their ability to protect themselves. He concludes, "Had the law not gotten so skewed against people trying to live peacefully we would not need a law like this."[65] Another concerned citizen notes that law is an ineffective deterrent to crime anyway: "If laws, any laws (including gun laws) stopped crime, the prisons would be empty wouldn't they?"[66] Another writer emphasizes the limitations of police protection, writing, "Many of 'us' live in Rural Communities (like myself) and I know the Police are only minuets [sic] away... 'when SECONDS COUNT' !!! and to have the ability to 'Stand My Ground' in time of need and protect my family is of utmost and paramount importance!"[67] And still another notes, "Law enforcement cannot prevent crime, only investigate after a crime has been committed."[68] In addition to his observation on the ineffectiveness of police as a means of protection, this same writer invokes a binary distinction between the "honest law abiding citizen" and "the bad guys." In sum, this writer supports SYG because it "provides a means of legal

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65. Tim Keffalas, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

66. Name unknown, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

67. Charles Doron, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

68. Lloyd E. Amburgey, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

protection against the lawless people who would rob, rape, burglarize, car jack your vehicle or other wise [sic] do you harm." His letter then slides into an intimation that the outrage over the killing of Trayvon Martin is misplaced and orchestrated by "a few people who do not have the facts to back up there [sic] claim of some unjust action against a person of color." With this comment, the writer expresses a relatively common sentiment in pro-SYG rhetoric that certain groups of agitators or conspirators support lawlessness and want to tip the scales in favor of criminals at the expense of honest people. He entreats the governor to protect the law, because "Your office is the only defense that stands between the honest law abiding citizen and the bad guys. This includes any radical group who would do us harm…" This letter is not the only one that mentions threats to safety perpetrated by "radical" or "liberal" groups.

Some letters express fear of unspecified groups of people, while some focus on liberals—and liberal conspiracies—and still others express racial fears, both subtle and overt. One letter whose targeted group is unclear reads: "We should not have to give up the right to protect ourselves. These people come down here an [sic] tell us they don't like our laws. They need to stay home… The stand you [sic] ground Law give us a chance to protect ourselves from these people… Don't let these thugs push you around stand your ground so we can protect ourselves."[69] The author may be referring to supporters of Trayvon Martin, though he never specifies who exactly belongs to the category of "these people." Another writer focuses specifically on people he considers anti-gun, though he also alludes to racial themes in a curious manner, writing, "it is clear that Florida will be the test case to see whether anti-gunners can use threats of riots and lynchings to force the repeal of Stand Your Ground gun laws, and…if Florida surrenders to mob rule and repeals its Stand Your Ground law, these same anti-gun tactics, riots,

69. Name unintelligible, letter to Florida Task Force on Citizen Safety and Protection, 2012.

violence and vigilante justice, will come to other states and communities next."[70] Although the writer specifically references "anti-gunners," he clearly has racial threats in mind in his references to "riots and lynchings."

Other letters express clearer and more overt racial fears, making use of racial stereotypes and often specifically referencing Trayvon Martin, rendering him "thuggish," deserving of death, and more physically powerful than a normal 17-year-old. Such letters include one that links the Martin case to race riots of the 1960s, and implies that blacks are lawless and not held to the same legal standards as whites:

> Trayvon, was armed, if the witness is viable, as he had his fist. People are beaten to death every day in this country by someone's fist. Banging a person's head against a solid object can and does kill people. If you are in a surprise attack, you have no idea as to what comes next, so you defend yourself by what ever means are necessary… We need to keep this Law on the books, as things will get worse from here on out. The RIOTS of the 1960's through the 1900's [sic] will come back in time. The Police Departments all the way to the State level were overwhelmed, and could not protect the whole city. The Riots spilled over out of the Riot Zone leaving the population exposed. We need this protection more than ever now, as there are foot soldiers on the ground, and home grown groups that will take advantage of any situation… The law is the law for every one in the state, so Blacks have to obey just the same as everyone else.[71]

Here the writer recalls race-related riots of the 1960s, vaguely extending the disorder caused by black-led protests against over-policing and police brutality 50-plus years ago to the state of decline he sees today, which features "foot soldiers on the ground" and "home grown groups" that are causing further chaos and lawlessness. Similarly, another letter citing particular fears of black "law breakers" specifically names blacks as the reason Americans need Stand Your Ground laws. The author writes, "We do have a problem with our black folks all over U.S.A. So please leave our Stand Your Ground law as it is now. As you read all our newspapers every week

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70. Daniel K. Anderson, letter to Florida Task Force on Citizen Safety and Protection, 2012.

71. Arthur M. Cheek, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

you see where about 80% of the law breakers in our state are black folks. Now as a U.S. citizen this, would have even me on my guard as to these people. When I see our state do their jobs on law enforcement to protect our citizens then I would say we do not need a law like stand your ground."[72] In this writer's formulation, criminals are mostly black, and police are failing in their duty to "protect our citizens," implying that blacks are neither citizens nor worthy of protection from violence.

Yet another writer expresses racist sentiments and smears Trayvon Martin as a "thug," writing, "George Zimmerman was only doing his job (protecting his neighborhood) from thugs just like trayvon (sorry he doesn't deserve capitalization), and he gets attacked & is then referred to as a murderer, when it's QUITE obvious it was total self defense… I would hate to see you take a law off the books such as 'Stand Your Ground'… If you do, you can expect a lot more guns in the hands of thugs and 1000's of people will die because of it (on your watch)."[73] Another supporter of Trayvon Martin's killer names the Black Panthers as a threat and uses a "reverse racism" framing in her attempt to address the legal implications of the Panthers' involvement. She writes, "The Zimmerman man is being tried in the court of public opinion. That is not fair… Now we have the 'Black Panthers' here in Fla. They have threatened to kill Zimmerman and are offering $10,000.00 to anyone who kills him. Isn't this a 'hate crime,' in the making?… The rules should support liberty, and the innocent people, and not the criminals."[74]

Other letter writers express their fears in terms of societal disorder and decline, and these arguments too often allude to racial fears. One writer worries, "If we go back to having to retreat

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72. Robert M. Norton, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

73. Anonymous, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

74. Patricia Malouf, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

from assailants, as a matter of law, there will be more assailants and victims. The law shouldn't protect the perpetrator… The Supreme Court has said the Police have no duty to protect us. Who is going to do it? We are on our own, whether we like it and there [is] a jungle out there. Besides the murderers, rapists, robbers, "car jackers" and thieves, there are actual predatory humans driving around in their vans looking for some small child or unprotected woman to capture. The idea we can't 'stand our ground' and protect ourselves is absurd."[75] Another writer draws parallels to life in the US without Stand Your Ground laws and life in African countries, arguing that "to not provide some level of legal precedent for self-defense would result in a Somalia or Uganda where lawlessness by rogue bands of armed thugs is uncontrolled." He further cites societal decay, such as "The logarithmic growth of organized crime, the degeneration of the traditional nuclear family, the increase in substance abuse" and "Excited deliriums, drunken ignorance, shaking baby syndrome [sic], and magnifications in socio-pathologies and psychopathologies as a result of 'crack baby' cases," which leaves "potentially dangerous people on the street."[76] This imagery of "lawless" African countries and the decay of American society illustrates the underlying fear in all of these letters: that the United States has become a wild and ungoverned country, and the presence of black Americans is part of the problem. The takeaway of these letters is that it's "a jungle out there," and the criminal justice system has helped to erode law and order for too long. Now it is time for the law to be placed back on the side of the "good guys," the "honest" and "law-abiding" citizens. Affirming the power and value of being a law-abiding citizen, one senior citizen threatens that should the governor tamper with the SYG

75. Charles N. Gibson, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

76. Antonio R. Longoria, Jr., letter sent to Florida Task Force on Citizen Safety and Protection (2012).

law, "law abiding folks will abandon you in a heartbeat if you were to go wobbly on us now."[77]

While these letters differ somewhat in their approach, they all express fear that the American legal system has turned against "honest, law-abiding citizens," that crime is rampant, and that certain classes of people are inherently lawless. Another underlying theme of both these letters and Florida's Stand Your Ground law itself is that of the right to the land, and a right to secure the land against the "wrong" kinds of people. At its core Stand Your Ground gives certain people the right to defend territory beyond their own property with violent force. But whereas Anker argues that this right turns citizens into "mobile sovereigns," I posit a different view of this power to stand one's ground that acknowledges the citizen's alliance with the state. Rather than a territory full of individual sovereigns, we ought to imagine instead a loose aggregation of citizens prepared to defend the American territory from intruders, thieves, criminals, "others." In this way Stand Your Ground is also deeply linked to policies of immigrant exclusion. Both hinge on territoriality, on full rights to act as representatives of the state wherever one may be, and on securing territory against both physical and existential threats. As Patrick Wolfe argues, "Whatever settlers may say— and they generally have a lot to say—the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory."[78] And in the pursuit to claim and defend rights to territory, the state and the settler have a common interest. As Frymer demonstrates, the land policies that helped the US settle the frontier worked so well because they harnessed the power of self-interest and individual gain, such that settlers on the frontier acted both as agents of the state and as sovereign individuals. This seeming paradox can only be resolved through consideration of threats of violence—or even fear of

77. Emmett L. Melton, letter sent to Florida Task Force on Citizen Safety and Protection (2012).

78. Wolfe, "Settler Colonialism and the Elimination of the Native," 388.

violence—that would present an unimpeachable excuse for the settlers' use of force, regardless of the state's commands to avoid confrontation with tribes or to pause their takeover of the frontier. Thus, settlers maintained an aggressive, asocial individualism while also acting as agents of the state—a status that blends individual sovereignty with state sovereignty in a flexible give-and-take arrangement. The contemporary corollary under Stand Your Ground laws is not a sovereign individual with a bubble of territory surrounding him or her, but rather a semi-sovereign individual who claims the right to *all* territory and expects the state to back this claim with the force of law.

In the American social imaginary of the twenty-first century, then, Stand Your Ground advocates demand what Richard Slotkin calls "the unlimited privatization of firepower." However, determining who qualifies for "the privilege of using private violence for public good" demands stark distinctions between "men of good character and standing" and inferior classes of people who should not be entrusted with this power.[79] As Slotkin argues, the devolution of the state's monopoly on legitimate violence to the people creates "an aristocracy of violence," in which those with the greatest social standing have the most power. The Manichaeistic distinction between "law-abiding citizens" and "criminals" that permeates Stand Your Ground rhetoric reflects this "aristocracy," as it relies upon preexisting distinctions between those who deserve the benefit of the doubt and those who do not.

However, there is more at stake in the threat posed by the criminal than the possibility of chaos or violence; even more frighteningly, the criminal represents natural human potentials that threaten the entire social order, as John Locke's treatment of "the thief" in the *Second Treatise*

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79. Richard Slotkin, "Equalizers: The Cult of the Colt in American Culture," in *Guns, Crime, and Punishment in America*, ed. Bernard E. Harcourt (New York: New York University Press, 2003), 63.

demonstrates. As political theorist Andrew Dilts argues, in order to contain this threat to the social contract, Locke creates the figure of the thief, who "carries the burden of danger and irrationality," so that parties to the social contract can be freed of these attributes.[80] If *everyone* in society embodies both rationality and irrationality, sanity and potential insanity, civilization and savagery, the social contract would be too unstable to form the basis of civil society and sound government. To ameliorate this instability, we must imagine all of our asocial and violent capabilities bound up in an identifiable enemy, one that is separate from us, and one that we can always distinguish from the civilized. With this threat contained fully by those who can never be party to the social contract, Locke's civil society, and the democratic subjects within it, can flourish. Yet in contemporary gun-rights and self-defense rhetoric the figure of the criminal has overtaken all of civil society, such that all of America is now a state of nature with only law-abiding citizens holding onto the promise of the social contract. The criminal, who destabilizes the social contract, now runs rampant, aided and abetted by the criminal-coddling state.

VULNERABILITY AND VICTIMIZATION

The injustices Stand Your Ground proponents cite as justification for the law primarily relate to the state's posture toward would-be self-defenders and toward criminal defendants. In their view, the state protects criminals more fervently than victims and places too many duties and restrictions on law-abiding citizens who seek to defend themselves. Objections to due process for criminals and cries for a pared-down due process for law-abiding citizens exemplify this critique of the state's misuse of its powers. Stand Your Ground supporters would prefer a state that trusts its good citizens to protect themselves when necessary, gives self-defense

80. Andrew Dilts, "To Kill a Thief," *Political Theory* 40, no. 1 (2012), 61.

claimants the benefit of the doubt, and offers less protection to law-breakers or potential law-breakers. Stand Your Ground will, in the eyes of supporters, tip the balance back toward real justice. Marion Hammer argues that Stand Your Ground "gives back rights that have been taken away by a judicial system that appears to give preferential treatment to criminals." Again, although Stand Your Ground presumes an omnipresent threat of violent criminality, it also positions the judicial system as the primary enemy of safety and American self-reliance. In the words of Marion Hammer, Stand Your Ground puts "the law on the side of law-abiding citizens, not on the side of criminals… It's time to stop worrying about criminals being shot when they're breaking the law."[81] Hammer's statement betrays a mostly unspoken feeling that any state commitment to proportionality in punishment amounts to "criminal coddling" and an unconscionable disregard for victims and potential victims.

Despite some disagreement about the degree to which the US Constitution's Eighth Amendment demands proportional punishment, contemporary US criminal justice practices nonetheless tend to reflect a general commitment to letting the punishment fit the crime. In the US case, as in other liberal democracies, proportionate punishment mainly serves to temper the severity of punishment rather than increase it. Exceptions do occur, of course, but for the most part Americans accept that the death penalty does not constitute an appropriate punishment for crimes such as shoplifting, drug dealing, or trespassing. Rather, our justice system tends to save the death penalty for criminals convicted of violent crimes usually involving the death of innocent persons.

The standpoint Marion Hammer espouses regarding "criminals being shot when they're breaking the law" not only abandons a commitment due process, but also lends support to

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81. Florida Senate Judiciary Committee Audio Recording, February 23, 2005 (Tallahassee, FL, 2005), Series 625, Carton 1065, Florida State Archives.

grossly disproportionate punishment. The more obvious implication of this critique is that in violating the law criminals relinquish their right to the protections afforded by a democratic government, effectively banishing themselves from society and throwing themselves into a state similar to a Lockean state of war. Locke outlines his ideas about appropriate punishment in his consideration of the thief, who creates a state of war against law-abiding citizens when he chooses to violate the social contract by using force against another person and thereby create a state of unfreedom for his victim. In this state of war, innocent persons have the right to suppose that any person threatening their freedom has a "design to take away from them every thing else" as well.[82] For Locke a threat to one's life or one's property, a threat to take away anything one has, constitutes a use of force whose limits one cannot know: "I have no reason to suppose, that he, who would *take away my liberty*, would not, when he had me in his power, take away every thing else."[83] In fact, it is in one's best interest to assume that a petty thief also has murder in mind because the victim has no way of knowing the extent of the aggressor's intentions or capabilities (or grip on sanity, for that matter). When an aggressor uses force, the victim has no way of knowing the extent of the aggressor's intentions or capabilities.

Regardless of that uncertainty, the armed citizen in this melodramatic formulation can transcend victimhood and become a hero—if the law and courts would shift their allegiance away from protecting "criminals" toward protecting "law-abiding citizens" instead. If the state were to reorient itself toward prioritizing the lives of law-abiding citizens, these good and worthy individuals could turn their moments of victimization into stories of their own heroism, and each

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82. John Locke, *Second Treatise of Government*, ed. C. B. Macpherson (Hackett Publishing, 1980), 15. See also Andrew Dilt's discussion of the thief in Andrew Dilts, *Punishment and Inclusion: Race, Membership, and the Limits of American Liberalism* (New York: Fordham University Press, 2014).

83. Ibid.

melodramatic story could reach its happy conclusion. But one notable oddity in these melodramas is that the "victims" protected by Stand Your Ground have not necessarily been victimized before they defend themselves, as Locke also contends with in his treatment of the thief. The reasonable presumption of fear for one's life creates grounds to use deadly force when one merely *fears* that one's life is in danger, and thus our story's victim-hero may be preempting danger rather than confronting it. In these cases especially the transformation of would-be victim to hero depends upon the state's generous protection of wielders of private violence wherever they may encounter danger, either real or imagined.

The frequent focus on due process and disparities in state protection for defendants versus victims points us toward one of the aggressors identified in Stand Your Ground rhetoric, which is the criminal justice system. In the Workmans' story, the primary wrongdoer is not Mr. Cox, the intruder, nor Mr. Workman, the killer of an unarmed man, but is rather the prosecutors who *might* have been considering charging Mr. Workman in the homicide. Mr. Cox and Mr. Workman in this story worked out their frightening confrontation in a satisfactory way: Mr. Cox terrorized the Workmans only briefly, and the Workmans stopped him within minutes. The criminal justice system, on the other hand, terrorized the Workmans with uncertainty and the threat of prosecution for months, and against this threat the Workmans had no defense. Thus, the victim must confront two oppressive and disempowering figures: first the criminal aggressor, and then the state. While the criminal aggressor is an essential component of a melodramatic self-defense story, the state here acts only as a barrier to the victim's transformation into a hero.

This point looms large in the Florida House of Representatives' floor debate on Stand Your Ground. Representative Jeff Kottkamp illustrated the judiciary's obstruction of the victim-hero transformation when he noted that Floridians under existing self-defense law were afraid to

protect themselves for fear of getting sued.[84] He concluded that it was "time to let law-abiding citizens take a stand against violent criminals."[85] Of course, Florida self-defense law, as the Workman case illustrated, already offered substantial protections to those who used force in self-defense, and so positioning the judiciary as an enemy of "law abiding citizens" is akin to the mythology of omnipresent terror and the constant threat of criminal aggression that also drive Stand Your Ground rhetoric.

Florida legislators expressed several iterations of that threat in the house floor debates, in which the fate of vulnerable would-be victims hung in limbo, awaiting an affirmation of support by the state. Stand Your Ground proponents' fight for state backing for broader self-defense rights finds expression in melodramatic tales suspended at the point of victimization or near-victimization; for the story stalls out and the victim never merges with her heroic identity unless the state affirms its preference for supporting the rights of "law-abiding citizens." As Representative Bob Allen argued, Stand Your Ground gets at the "core values of what America, freedom, democracy and our rights are all about…This bill puts the law in the right posture…to be able to be presuming that the people are more right than the criminal… To allow Floridians to have the law on their side."[86] Once the law supports the notion that "the people are more right than the criminal," the heroic transformation can continue, and the Stand Your Ground melodramas can see their completion.

Representative Kottkamp suggests two illustrative examples of heroism thwarted. In the first story, Kottkamp asks his audience of fellow state representatives to imagine an 82-year-old grandmother going to the pharmacy three blocks away from her home when she is dragged into

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84. Florida House Floor Debate Audio Recording, April 5, 2005, Compact Disc (Tallahassee, FL, 2005), Florida State Archives.

85. Ibid.

86. Ibid.

the bushes and raped. Next, he offers the hypothetical of a 27-year-old mother of two who has brought her children to a park, and is then attacked by a man twice her size.[87] Each of these examples relies upon the protagonist's weakness and vulnerability, and each ends without satisfaction for the victim. Each victim presumably remains a victim because the state has not put the law on the side of "the people," yet the chances of the average 82-year-old grandmother or mother saddled with two children at a park successfully defending herself with a firearm seem slim. In imagining these two victims as especially vulnerable we also might see them as less capable than a similarly positioned 20- to 50-year-old man of defending themselves with or without a gun. The implication, however, is that even these most vulnerable citizens could become their own heroes if only the state would reorient itself toward supporting "law-abiding citizens."

It is significant that the melodramatic stories told in support of Stand Your Ground legislation focus on types of citizens already stereotypically conceived as weak, vulnerable, and in need of outside protection. Women, mothers, and the elderly never represented the autonomous American citizen in the discourses of American individualism and freedom. That they find themselves vulnerable and perhaps dependent on outside support betrays no secret weaknesses; they have always been vulnerable groups, and so highlighting their vulnerabilities does little to diminish them. On the other hand, young-to-middle-aged men, who are both the most likely perpetrators of violence and the most at risk of death by homicide, do not appear in Stand Your Ground narratives. Notably, this rhetoric also erases the single group most likely to die by homicide: black men.[88] In this way Stand Your Ground supporters exploit our empathy for

87. Ibid.

88. CDC/National Center for Health Statistics/Office of Analysis and Epidemiology, "Table 29: Death Rates for Homicide, By Sex, Race, Hispanic Origin, and Age: United States, Selected Years 1950-2016," (2017).

acceptably vulnerable people—women, children, the elderly—in support of self-defense laws that hew to traditional images of American masculine autonomy.

The story of the Workmans also alludes to these themes, perfectly encapsulating the need to grant highly vulnerable people greater self-defense powers. Workman's advanced age represents a quintessential category of vulnerability that every American imagines reaching, which not only conveys his need for protection from danger but also makes him a relatable vulnerable figure. He bears no responsibility for his vulnerability, because everyone ages—if he is weaker or slower than his attacker, he bears no fault for it. Mr. and Mrs. Workman are innocents, virtuous elders merely attempting to protect their property in their hurricane-damaged neighborhood. When the story begins, they have done everything right, predictably, honorably, making the threat to their property and safety that much harder to stomach.

Melodrama, however, offers a different twist on the stereotypically weak and vulnerable person, granting the vulnerable young mother and the frail grandmother the power to rescue themselves from danger. Anker explains that melodramatic discourse relies upon the "unification of victim and hero,"[89] such that the story's focus remains on the same character throughout his or her transformation from vulnerable target to empowered self-protector. Whereas most depictions of vulnerable classes of people tend to suggest the need for greater protection from the state or from a stronger, less vulnerable, usually masculine figure, melodrama makes unlikely heroes out of the easiest targets of force and brutality. In some ways the real hero of these stories is meant to be the gun: the gun the young mother could have been carrying; the gun the grandmother could have brandished to ward off her attackers. In the case of Stand Your Ground rhetoric the gun is the catalyst that enables the victim's transformation into a hero.

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89. Anker, *Orgies of Feeling*, 47.

The use of unlikely heroes in these stories has a universalizing effect, democratizing self-defense and gun ownership, and seemingly inviting everyone into the fold, rather than just the typical gun-owning demographic. Melodrama assists in universalizing the appeal of Stand Your Ground in its insistence that every victim can also be a hero, but it also obscures the fact that most gun rights supporters do not belong to the vulnerable categories of people cited in support of Stand Your Ground. The lack of state support for users of force not only leaves vulnerable categories of people open to violent attack, but it also creates feelings of disempowerment for less vulnerable people. By and large, young mothers and elderly grandmothers are not clamoring for more expansive gun laws, but telling stories of their potential victimization helps to push a campaign whose primary "beneficiaries"—if they can be considered as benefitting from Stand Your Ground—are white men, who most support the law and derive the most satisfaction from securing the right to wield and use firearms in ever more extensive circumstances. In this way Stand Your Ground bolsters the standing of the groups that have traditionally enjoyed the greatest power and privilege in this country, and whose rights to property and the use of private violence have historically been treated as sacrosanct in the United States. As Hammer argues, "law-abiding" or "good" citizens "should not be forced to retreat, to run, from a place we have a right to be."[90]

CONCLUSION

In this paper I have argued that Stand Your Ground laws represent a contemporary manifestation of settler colonialism, and that its essential components include the cultivation of fear of crime and criminals, a territorial possessiveness, and a power-sharing agreement between

90. Florida Senate Judiciary Committee Audio Recording, February 23, 2005.

"good" citizens and the state. Stand Your Ground reorients the relationship between state and individual in two significant ways. First, it positions the state as an ally of Stand Your Ground claimants rather than a neutral arbiter or guarantor of justice. This alliance protects those who "stand their ground" when faced with real or imagined threats, and disregards the lives lost to violent territorial claims. Second, it bestows a new power on those deemed "law-abiding," to become unpaid crime-fighting agents of the state. As opposed to a mere state withdrawal of oversight, I argue the state's reorientation under Stand Your Ground is a positive alliance and an invitation to certain civilians to seek out and exterminate threats to the social order.

The freedom and duties of settlers on the frontier reverberate in Stand Your Ground laws, and I argue the goal is the same: to incentivize certain civilians to guard or reclaim American territory from threatening, uncivilized others. In exchange for their willingness to use violence, they receive a feeling of legitimacy as "real" or normative Americans and an inflated sense of their rights to territory, both public space and private. The slant of other pro-gun laws also bolsters the autonomy and freedom of movement of gun carriers, protecting their ease of movement while armed, and, most importantly, their characterization as responsible, law-abiding citizens. This reclaiming of legitimacy, respectability, and innocence for gun owners hinges partly on depicting them not just as gun lovers but as persecuted citizens, as victims whose rights have been trampled and whose safety has been compromised by unjust gun restrictions.

The rhetoric of restoring the rights of persecuted gun owners also depends on naming the government or the state as a persecutor: the state imposes undue restrictions on the rights of law-abiding citizens while it audaciously protects the rights of criminals. This rhetoric positions the state as an enemy of the law-abiding citizen, a friend of law-breakers, and one of society's primary hindrances to public safety. As Florida's Stand Your Ground law demonstrates, the

solution to the state's lack of support for law-abiding citizens is to rewrite laws to give gun owners the benefit of the doubt, to reduce restrictions on law-abiding citizens' use of violence, and to reduce the chance that these citizens will themselves become criminals if and when they resort to violence. In short, these new laws create a new alliance between the state and the law-abiding citizen, and protect the autonomy of these citizens both to wield violence and to decide when such violence is necessary in our unsettled and chaotic country.

Of course, much of the success of the decade-long campaign for expansive gun rights can be attributed to the gun lobby's money and political force, widespread misinformation about guns disseminated by the NRA and other conservative pro-gun groups, and politicians' fears of getting on the NRA's bad side. However, the trend nonetheless suggests a deep connection to settler-colonial power structures and relationships between the state and the individual. The rhetoric of fear and disempowerment has driven the push for Stand Your Ground laws across the United States, and this rhetoric has helped to generate a new version of the power-sharing relationship between citizen and state that Euro-American settlers and the US government originally cultivated on the frontier.

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