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FOREWORD

“Stand Your Ground” in Context: Race, Gender, and Politics

University of Miami Law Review Eleventh Circuit Issue “Stand Your Ground” Laws

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Florida’s self-defense law, commonly known as “Stand Your Ground” (“SYG”), has been the subject of extraordinary debate, both popular and scholarly. SYG was the subject of hearings conducted by the Senate Judiciary Committee, the United Nations Human Rights Committee, and the Inter-American Commission on Human Rights;¹ the focus of a new American Bar Association National Task Force;² and the topic of an investigation by the United States Commission on Civil Rights.³ In the wake of a number of high-profile cases and following a *Tampa Bay Times* award-winning study of the impact of SYG,⁴ Flor-

* Professor of Law, University of Miami School of Law. I am grateful to Carrie Bettinger-López, Mary Anne Franks, and Aya Gruber for their conversations and insights about SYG law. I am deeply appreciative of the wonderful librarian assistance afforded me by Robin Schard, Patricia Pardo, Carlos Espinosa, and Nery Ruiz, and the editing assistance of Paulina Valanty and Kelly Heard.

1. Contributors to this issue, Ahmad Abuznaid, Caroline Bettinger-López, Charlotte Cassel, and Meena Jagannath, are members of organizations that presented testimony at many of these hearings. See Ahmad Abuznaid et al., “Stand Your Ground” Laws: *International Human Rights Law Implications*, 68 U. MIAMI L. REV. 1129 (2014).

2. See *id.* at 1137.

3. See *id.* at 1138.

4. See *Florida’s Stand Your Ground Law*, TAMPA BAY TIMES, <http://www.tampabay.com/stand-your-ground-law/> (last updated Aug. 13, 2013); see also *2012 Awards*, ONLINE NEWS

ida's law and its application in the criminal cases against George Zimmerman, Marissa Alexander, and Michael Dunn, have remained at the top of national news programs. Despite the extraordinary attention visited SYG, there remains general confusion about the provisions of the law and continued widespread disagreement about whether the impact of the law is beneficial or harmful.⁵ The articles collected in this special issue of the *University of Miami Law Review* examine SYG, shedding new light not only on the law, but also on the politics surrounding the law, as well as the law's social meaning and impact.

Much of the national attention on SYG has focused on the absence of a retreat rule, but this provision is hardly new or unique.⁶ Indeed, several states did away with a retreat rule long before the advent of SYG legislation.⁷ Two other provisions of SYG law, however, are more dramatic departures from traditional self-defense law: (1) the provision for immunity from arrest and prosecution for anyone who meets the statute's definition of the justifiable use of deadly force,⁸ a right the Florida Supreme Court has ruled requires a pre-trial hearing in which a judge applies a preponderance of the evidence standard to a determination of whether the defendant acted in self-defense;⁹ and 2) the creation of a *presumption* that an individual facing a kidnapper or a trespasser in a dwelling or occupied vehicle possesses reasonable fear of death or great bodily harm.¹⁰ In addition, SYG extends the justification for the use of

ASS'N, <http://journalists.org/awards/2012-awards/> (The newspaper was the recipient of the Gannett Foundation Award for Innovative Investigative Journalism and a finalist for the Knight Award for Public Service for its Stand Your Ground series.).

5. Press Release, Quinnipiac University, Release Detail, American Voters Back "Stand Your Ground," Quinnipiac University National Poll Finds; Obama Tops Republicans on Economy (Aug. 2, 2013), available at <http://www.quinnipiac.edu/images/polling/us/us08022013.pdf> [hereinafter Quinnipiac Poll] (finding that 53% of those polled favored SYG laws; white voters favored SYG laws 57–37% while black voters opposed SYG laws 57–37%; men supported SYG laws 62–34%, while 44% of women favored SYG laws, and 47% of women opposed SYG laws; Republicans supported SYG laws 75–19%, Independents supported SYG laws 57–37%, and Democrats opposed SYG laws 62–32%).

6. See Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 969 (2014).

7. *Id.*

8. See FLA. STAT. § 776.032 (2013) (stating that "[a] person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is . . . immune from criminal prosecution and civil action for the use of such force[.]" providing an exception in the case of the killing of a law enforcement officer who is killed while "acting in the performance of his or her official duties[.]" and concluding that "the term 'criminal prosecution' includes arresting, detaining in custody, and charging or prosecuting the defendant").

9. *Dennis v. State*, 51 So.3d 456, 460 (Fla. 2010) ("[A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches.").

10. See FLA. STAT. §§ 776.013 (1)–(2) (2013).

deadly force to the prevention of the imminent commission of a “forcible felony,” which includes robbery and burglary, with no requirement that the defendant reasonably feared death or serious injury.¹¹

Few of the many commentators on SYG have noted that the enactment of law that expands the rights of the criminally accused is an anomaly in recent criminal law reform trends. The overwhelming nature of criminal law reform in the last forty years has been to enact laws and policies that are decidedly unfriendly to those charged with crimes. This “tough-on-crime” trend includes the adoption of “increasingly long prison sentences and mandatory minimums, ‘three strikes’ legislation that ratchets up punishment for recidivists, increasing resort to criminal punishment for a broad range of social ills, and aggressive drug enforcement policies largely focused on racial minority neighborhoods.”¹² As a result of these “tough-on-crime” measures, the number of people in United States prisons has experienced a six-fold increase from that of the 1970s—the time period that marks the beginning of this trend.¹³ To put this increase into perspective, consider that the United States now leads the world in the number of people incarcerated.¹⁴ Further, not only are a staggering number of people under the control of the criminal justice system, but criminal justice technologies and ideologies have largely captured our responses to perceived threats and social ills, a phenomenon Jonathan Simon aptly describes as “governing through crime.”¹⁵

Much of the growth in crime legislation has been driven by the image of a white suburban victim, besieged by potential criminal

11. See Threatened Use of Force, Fla. Laws ch. 2014-195 (stating that a person is justified in the use of deadly force if he or she “reasonably believes that . . . such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony”). The statutory definition of forcible felonies includes robbery, burglary, arson, aggravated assault, aggravated battery, and aggravated stalking, among other crimes. See FLA. STAT. § 776.08.

12. Donna Coker & Robert Weisberg, *Introduction to CRIMINAL LAW STORIES* 3 (Donna Coker & Robert Weisberg eds., 2013).

13. Marie Gottschalk, *The Past, Present, and Future of Mass Incarceration in the United States*, 10 CRIMINOLOGY & PUB. POL’Y 483, 483 (2011).

14. Roy Walmsley, *World Prison Population List (Ninth Edition)*, INT’L CTR. FOR PRISON STUDIES (2011), available at <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf> (The U.S. prison population rate of 743 per 100,000 is highest among the 218 independent countries and dependent territories included in the study, followed by Rwanda (595), Russia (568), Georgia (547), U.S. Virgin Islands (539), and Seychelles (507)).

15. See Jonathan Simon, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007); see also Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012); Beth E. Richie, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION* (2012); Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).

predators.¹⁶ Only slightly less overt has been a corresponding image of black criminality.¹⁷ As Loïc Wacquant describes, this image has two primary variants: the (male) street crime image (the “thug,” as Professor D. Marvin Jones describes in this issue¹⁸) and the (female) welfare cheat image—both of whom are African-American and poor.¹⁹ The devastating harms of hyper-incarceration²⁰ are experienced disproportionately by poor people and especially African-Americans and other people of color. Though African-Americans make up about 13% of the U.S. population, they are nearly 40% of male prisoners and 25% of female prisoners.²¹

As Professors Aya Gruber and D. Marvin Jones note in this issue, the hyper-incarceration wave is fed by a hyper-individualistic view of culpability. As Gruber describes, this view derives from a neoliberal ideology in which “the concept of individuals as autonomous economic actors is . . . a moral paradigm.”²²

If the general political landscape is increasing punitiveness and resort to criminal law, how do we explain the successful adoption of a law that makes it easier for killers to escape punishment? One response, as Professor Elizabeth Megale forcefully argues in this issue, is to look to the power of the National Rifle Association (“NRA”), an organization

16. See Simon, *supra* note 15, at 76.

17. See Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1589–90, 1594 (2013) (noting that research suggests that while intentional racial bias continues, much racial bias is unintentional and unconscious and arguing that had race been made “salient” to the jurors in the case against Zimmerman; that is, if jurors attention had been drawn to the racial dynamics of the case, the outcome might have been different); see also L. Song Richardson & Phillip Auba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293, 317 (2012). Instead, the prosecutor took the stance that race was irrelevant to the events that caused Trayvon Martin’s death. See Gruber, *supra* note 6, at 977.

18. See D. Marvin Jones, “*He’s a Black Male . . . Something Is Wrong With Him!*” *The Role of Race in the Stand Your Ground Debate*, 68 U. MIAMI L. REV. 1025, 1029 (2014).

19. See Loïc Wacquant, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* 81 (2009) (Both mass incarceration and welfare reform became politically popular by proponent’s projecting as their targets poor blacks who were deemed dangerous thugs (in the case of unemployed black men), profligate, and desultory. “[U]nwed mothers . . . [were rendered] abnormal, truncated, suspect beings who threaten the moral order and whom the state must therefore place under [the] harsh tutelage” of welfare regulation.).

20. See Frank Rudy Cooper, *Hyper-Incarceration as a Multidimensional Attack: Replying to Angela Harris Through the Wire*, 37 WASH. U. J.L. & POL’Y 67, 68–69 (2011) (describing his preference for the term “hyper-incarceration” opposed to “mass incarceration” because the former more accurately describes the manner in which criminalization affects particular, largely racial minority, neighborhoods).

21. Paul Guerino, Paige M. Harrison & William J. Sabol, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (2011), at 26 tbl.12, available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

22. See Gruber, *supra* note 6, at 1017; see also Jones, *supra* note 18, at 1037 (“While the reasons for blacks’ relatively marginalized economic status are deeply associated with structural factors, the overwhelming mainstream view is that people become a part of this group basically through bad choices.”).

that heavily supported the SYG law and made significant contributions to Florida Republican legislators who sponsored the bill.²³ Indeed, a lobbyist for the NRA wrote portions of the legislation.²⁴ But that seems to beg the question: what was the NRA's message that the Florida Republican-controlled legislators believed would resonate with their constituency, in a state with tough mandatory sentencing laws and one of the highest rates of incarceration in the country? And why do recent polls show that a majority of whites continue to support SYG laws?²⁵

The answer, of course, is that SYG was not promoted as a measure intended to make the criminal justice system more lenient, but rather as a measure to protect "law-abiding citizens" from "criminals."²⁶ Using the same rhetoric political conservatives have used to oppose more lenient criminal justice policies, an NRA lobbyist referred to SYG opponents as "bleeding heart criminal coddlers."²⁷ The outsourcing to private individuals of key governmental functions—including security—is consistent with the larger neoliberal trend of dismantling government and privatizing work that was formerly controlled by government agents. SYG provisions, including making justifiable the use of deadly force to prevent a forcible felony,²⁸ in effect made forcible felonies capital crimes and encouraged private citizens to take on the role of law enforcement agents. These provisions allow individuals to do what law enforcement agents are constitutionally forbidden to do—use deadly force to prevent felonies absent a justifiable threat to life or bodily injury.²⁹

The contributions to this special issue unpack the various meanings of SYG legislation—not only the legal elements, but also the social and

23. See Megale, *A Call for Change: A Contextual-Configurative Analysis of Florida's "Stand Your Ground" Laws*, 68 U. MIAMI L. REV. 1051, 1075 (2014).

24. See Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 836–39 (2013).

25. See Quinipiac Poll, *supra* note 5.

26. See Megale, *supra* note 23, at 1077.

27. See *id.* at 1076 n.269.

28. FLA. STAT. § 776.012(2) (2013).

29. See F. Patrick Hubbard, *The Value of Life: Constitutional Limits on Citizens' Use of Deadly Force*, 21 GEO. MASON L. REV. 623, 654 (2014) (arguing that "most states have authorizations of citizens' use of deadly force which are unconstitutionally overbroad insofar as they include situations where the state interest involved is not sufficiently compelling to justify a denial of the fundamental right to life"—and this is particularly the case in SYG jurisdictions). To be sure, forcible felonies include crimes that frequently pose a risk of death or serious bodily injury, but under Florida law (and that of a number of states), it is not necessary to prove this risk as an independent element of self-defense. See FLA. STAT. § 776.08 (2010) (listing forcible felonies). Furthermore, the presumption appears to be an irrebuttable one. See, e.g., Fla. S. Judiciary Comm., Senate Staff Analysis and Economic Impact Statement, S. 19-CS/CS/SB 436, 1st Reg. Sess., at 4 (Fla. 2005), available at <http://archive.flsenate.gov/data/session/2005/Senate/bills/analysis/pdf/2005s0436.ju.pdf>. (interpreting the presumption as irrebuttable).

political meaning of the legislation and of the stories defenders and opponents tell. The authors' analyses of SYG and the cases that have brought national attention to the law offer a window into the race, class, and gender biases that operate in the criminal justice system and in society at large. Much of the criticism of SYG law has focused on claims of racial bias, but a strictly racial lens may hide as much as it illuminates. Rather, as the articles in this issue illustrate, it is the *intersections*³⁰ of race, class, and gender that shape the popular image of criminality, define the parameters of risk, and mark the disparities in arrest and conviction.

Researchers believe that the combination of Florida's concealed weapon law³¹ and SYG, is a primary reason that deaths of white males³²—the group most likely to be killed by white male perpetrators³³—have risen so sharply in SYG jurisdictions. This intersection between masculinity and race tells an important part of the SYG story. As Professor Mary Anne Franks describes in this issue, homicide is overwhelmingly a male-on-male phenomenon,³⁴ and as other research demonstrates, a significant amount of male-perpetrated homicide is a response to a perceived threat against male honor.³⁵ Furthermore,

30. See Kimberlé W. Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991) (describing the ways in which racial equality organizations often organize around race and make invisible the particularized discrimination and experiences of African-American women, while feminist organizations focus on gender and similarly fail to address the particular harms experienced by African-American women).

31. See FLA. STAT. § 790.06 (2013).

32. See Chandler B. McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries*, 9 (Nat'l Bureau of Econ. Research, NBER Working Paper No. 18187, 2012), available at <http://www.nber.org/papers/w18187>.

33. See U.S. Dep't of Justice & Fed. Bureau of Investigation, *Expanded Homicide Table 6, CRIME IN THE UNITED STATES 2012*, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_6_murder_race_and_sex_of_victim_by_race_and_sex_of_offender_2012.xls (last visited Aug. 14, 2014) [hereinafter FBI Homicide Data Table 6] (finding that of the 3,128 white victims murdered in 2012, about 84% (2,614) were murdered by white offenders; furthermore, of the 4,208 male victims murdered in 2012, 89% (3,725) were murdered by male offenders).

34. See Mary Anne Franks, *Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege*, 68 U. MIAMI L. REV. 1099, 1116 (2014); see also FBI Homicide Data Table 6, *supra* note 33 (demonstrating that of the 5,959 murders committed in 2012 for which the sex of the victim was reported, 70% were male; 89.5% of the perpetrators were male; of the 4,208 murders of men, 88.5% were killed by men; of the 1,751 female murder victims, 91% were killed by men.).

35. See Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71, 91–92 (1992) (describing the motivations of many male spousal killers); Angela Harris, *Beyond THE MONSTER FACTORY: Gender Violence, Race, and the Liberatory Potential of Restorative Justice*, 25 BERKELEY J. GENDER L. & JUST. 199, 207 (2010) (“[A] significant amount of the violence addressed by the criminal justice system is

women defendants often find it difficult to receive a fair trial in the common circumstance in which women kill—defending against an intimate or former intimate.³⁶

Supporters of SYG law argue that the law is good for women because it empowers them to defend against stranger rape. Professor Franks demonstrates the falseness of this claim. SYG actually “sends the legal and social message that men can advance against strangers anywhere on the basis of vague, subjective perceptions of threats[,]” while women’s use of violence continues to be discouraged and even stigmatized.³⁷ Moreover, Professor Franks articulates, “If Stand Your Ground reforms were in fact driven by concerns for women’s vulnerability, the paradigmatic rape scenario would have been one that most women are likely to face: the rape by someone the victim knows and trusts,” not the stranger imagined in supporters’ narratives.³⁸ SYG law presumes reasonable fear of death or serious bodily injury for the person who kills someone who is engaged in an unlawful forceful entry of an occupied vehicle or dwelling, kidnapping, or attempted kidnapping.³⁹ However, the presumption does not apply to a cohabitant attacker unless the person who kills has a protection order against the attacker.⁴⁰ Thus, women

‘gender violence’: violence motivated by the desire to protect, defend, or enhance the actor’s gender identity, typically masculinity.”).

36. The difficulty has arisen, in part, because judges have been reluctant to apply well-established law to cases involving battered women. See Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379, 393–94 (1991) (reviewing all appellate homicide cases involving a convicted female defendant for whom evidence of domestic battering was proffered and who claimed self-defense at trial and finding an unusually high reversal rate—most reversals were because the trial court had failed to follow well-established self-defense law); see also V.F. Nourse, *Self-Defense and Subjectivity*, 68 U. CHI. L. REV. 1235, 1236 (2001) (providing an empirical review of imminence cases and finding that in cases involving battered women, courts confused the (proper) question of the imminence of the threat with the (improper) question of why the defendant had remained in an abusive relationship, creating, in effect, an illegal “pre-confrontation retreat” rule); see generally Donna Coker & Lindsay Harrison, *The Story of Wanrow: The Reasonable Woman and the Law of Self-Defense*, in *CRIMINAL LAW STORIES* 213–62 (Donna Coker & Robert Weisberg eds., 2013) (describing the history of feminist activism for fair trial rights for battered women who kill in self-defense); see also Elizabeth M. Schneider, *BATTERED WOMEN AND FEMINIST LAWMAKING* 33 (2000). Additionally, African-American women may be viewed by jurors as too “strong” to have been “real” victims as are women whose conduct contradicts the passive helpless stereotype of battered women. See Sharon Angella Allard, *Rethinking Battered Woman Syndrome: A Black Feminist Perspective*, 1 UCLA WOMEN’S L.J. 191, 200–01 (1991); see also Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 109 (2008).

37. See Franks, *supra* note 34, at 1103.

38. See *id.* at 1109.

39. See FLA. STAT. §§ 776.013(1)–(2) (2013).

40. See § 776.013 (2)(a) (2013) (providing that the presumption does not apply to cohabitants

are unable to benefit from this presumption in the deadly force circumstance most commonly encountered by women: an attack from an intimate cohabitant. More critically, however, the cultural stories available to male and female defendants are markedly different. Men who defend their "castle" against intruders with the use of deadly force are viewed as "real men." In contrast, when women kill, the attacker is much more likely to be an intimate rather than a stranger, and in both popular imagination and in law, "Battered Women's Syndrome remains the chief narrative available to women who [defend against an intimate attacker]."⁴¹ Battered Women's Syndrome testimony is intended to assist a jury to understand and appropriately apply a reasonableness standard to women charged with killing an abusive intimate, but jurors may instead hear the testimony as proof of the female defendant's psychological dysfunction.⁴² As Professor Franks describes, "The narrative . . . is one of a helpless woman who felt she had no choice but to use deadly force against her abuser"⁴³ Professor Franks argues that the result is a "two-track system of self-defense." SYG provides that those who defend against a stranger attack may be granted immunity from prosecution, but there is no comparable immunity for women who can prove a history of violent attacks at the hands of a husband or boyfriend against whom they acted in self-defense. There are no comparable presumptions of reasonable fear when a woman faces an attacker who has committed serious bodily harm against her in the past. In fact, in cases where a female defendant argues that she killed an abusive intimate or former intimate partner in self-defense, courts are more likely to see vigilantism than to see self-defense, even when the facts of self-defense would seem abundantly clear.⁴⁴

Homicide—the phenomenon, the criminal justice response, and the social construction of the "killer"—is not only gendered, it is raced, as well. The popularly imagined risk of homicide—of white suburban

unless there is "an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person"). This provision would seem to be superfluous in that the presumption applies only to an *unlawful* entry; an entry in violation of a domestic violence protection order would be "unlawful" and should therefore prompt the presumption, even absent the specific statutory exception.

41. See Franks, *supra* note 34, at 1102.

42. See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 49 (1991).

43. See Franks, *supra* note 34, at 1122.

44. See Maguigan, *supra* note 36, at 434–35. The deep irony is that the gender bias that prompted courts and juries to see vigilantism in the cases of women who killed their abusers is the vigilantism that SYG seems to encourage—in men.

homeowner victims preyed upon by black stranger attackers—is a wholly inaccurate depiction of the actual risk of homicide. Homicide is largely an intra-race phenomenon: roughly 84% of white victims are killed by white perpetrators, and nearly 91% of black victims are killed by black perpetrators.⁴⁵ Black men and women are at greater risk of becoming homicide victims than are whites.⁴⁶ A substantial number of homicides—nearly 43% in 2012—are committed by family members, acquaintances, intimates, or friends of the victim—not strangers.⁴⁷ Yet, as Professor Jones describes in this issue, the cultural bias that presumes that whites are at risk from the violent criminality of young black lower class males is so well entrenched as to seem practically non-controversial.⁴⁸

Homicide—the phenomenon—is also classed. More than 80% of those incarcerated in federal prison for murder have only a high school degree or less.⁴⁹ This percentage is consistent with findings regarding the prison population as a whole: incarcerated individuals have substantially lower educational attainments than the general population.⁵⁰ Available data suggests that murder may be significantly intra-class, as well.⁵¹ As noted above, a significant number of murders are committed by a person whom the victim knows well (family, neighbor, friend, intimate). Furthermore, the majority of victims of violent crime are of the

45. See FBI Homicide Data Table 6, *supra* note 33.

46. See *id.*

47. See U.S. Dep't of Justice & Fed. Bureau of Investigation, *Expanded Homicide Table 10, CRIME IN THE UNITED STATES 2012*, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_10_murder_circumstances_by_relationship_2012.xls (last visited Aug. 14, 2014) [hereinafter FBI Homicide Data Table 10].

48. See Jones, *supra* note 18, at 1029.

49. See *Offenders Sentenced in U.S. District Courts Under the U.S. Sentencing Commission Guidelines*, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE, <http://www.albany.edu/sourcebook/pdf/t5282010.pdf> (last visited Aug. 14, 2014) (providing that 37.9% of those incarcerated for murder had achieved less than a high school education; 47% had achieved a high school education).

50. See Caroline Wolf Harlow, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS (2003), available at <https://youthbuild.org/sites/default/files/news/2012/08/3022/ecp.pdf> (About 40% of state prison inmates and about 27% of federal inmates did not complete high school, compared to 18% of the general population. Furthermore, far fewer incarcerated individuals complete any college training: about 11% of state inmates and about 24% of federal inmates completed some college, compared to 48% of the general population. Moreover, most prisoners were classified in the lowest income levels prior to incarceration.); see also James Forman, Jr., *Racial Critiques of Mass Incarceration*, 87 N.Y.U. L. REV. 21, 55 (citing research that finds that “the majority of prisoners in state facilities earned less than \$10,000 in the year before entering prison”).

51. See, e.g., FBI Homicide Data Table 10, *supra* note 47 (finding that in 2012, about 43% of all homicides were committed against family members, acquaintances, intimates, friends, or neighbors of the perpetrator, and another .07% were “gang-related”).

same or similar socio-economic class as are the majority of those incarcerated.⁵²

If the phenomenon of violent crime is “classed,” surely the social construction of criminality is more so. Professor Jones calls attention to the intersections of gender, race, class, and youth in the popular imagination of the “thug,” which he argues is evidenced in George Zimmerman’s assessment of Trayvon Martin and is perpetuated by Zimmerman’s supporters. Jones deftly demonstrates that the identity ascribed to young Trayvon Martin by Zimmerman’s supporters—and Zimmerman—is an intersectional identity defined by race (black), age (youth), gender (male), and class (poor): “[t]he same moral panic, which once targeted all blacks, has refocused on black males in urban areas with saggy pants and hoodies,”⁵³ images that are “deeply associated with criminals and crime.”⁵⁴ The references in the blogosphere to Trayvon as a “thug, vandal, burglar, pothead and/or drug dealer” illustrate this widely held association.⁵⁵

Professor Jones traces the development of this “urban thug” stereotype, a “pathological form of masculinity,” to a combination of economic conditions and media-propelled images.⁵⁶ De-industrialization resulted in the hollowing out of urban areas, creating “moonscapes of despair [that] led to the rise of a black underclass,”⁵⁷ while hyper-segregation concentrated black poor in urban neighborhoods. Popular media created a stereotype of the ‘black underclass’ as “a dangerous class . . . pervasively comprised of a criminal element, unreachable and incorrigible

52. See BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *Crime Victimization in the United States, 2008*, at Table 14, available at <http://www.bjs.gov/content/pub/pdf/cvus/current/cv0814.pdf> or <http://www.bjs.gov/content/pub/pdf/cvus08.pdf> (in 2008, 44% of all personal crimes were perpetrated against victims with household incomes of \$7,500 or less; 41.3% were perpetrated against victims with household incomes of \$7,500–\$14,999).

53. See Jones, *supra* note 18, at 1028; see also Angela P. Harris, *Theorizing Class, Gender, and the Law: Three Approaches*, 72 LAW & CONTEMP. PROBS. 37, 42 (2009) (“Class prejudice in the United States is intertwined with race. The pejorative term ‘trailer trash,’ . . . is used to express contempt for lower-class white people, and is especially applied to poor white people from the South. Anti-black prejudice overlaps substantially with class prejudice; when middle-class black people are praised by whites for being ‘articulate,’ it reflects the prejudice that most black people are not capable of speaking in Standard English, and more broadly, are ignorant and uneducated, as poor people are presumed to be.”).

54. See Jones, *supra* note 18, at 1029.

55. See *id.* at 1032 (quoting Nicholas Stix, *Another “Honor Student”: Trayvon Martin Was a Thug, Vandal, Burglar, Pothead and/or Drug Dealer and Had Been Suspended from School at Least 3 Times*, Nicholas Stix, Uncensored (Mar. 28 2012, 3:09 AM), <http://nicholasstixuncensored.blogspot.com/2012/03/another-honor-student-trayvon-martin.html>).

56. See Jones, *supra* note 18, at 1040.

57. See *id.* at 1036.

ble.”⁵⁸ In this context, race becomes evidence of criminality: “What makes Zimmerman’s assumptions about race particularly dangerous is the fact that Zimmerman is expressing racism . . . as a claim of knowledge.”⁵⁹ The claim is that racial profiling is reasonable—reflecting an accurate assessments of risk, and is therefore devoid of racial hatred or emotion.⁶⁰ However, as Professor Jones describes, this “common knowledge” cannot be true.⁶¹ Blacks who are arrested for violent crimes make up only about one half of one percent of the entire United States black population.⁶² Even if one were to narrow suspicion to black urban males, the number arrested for violent crimes would be less than one percent of the group.⁶³ Furthermore, more whites are arrested for violent crimes than are blacks; thus, an individual is statistically more likely to be victimized by a white person than a black person.⁶⁴

Yet race, in conjunction with appearing “out of place,” is enough to arouse suspicion of criminality, not only for neighborhood watch captains like George Zimmerman, but also for law enforcement, and for much of our society, as well. Professor Jones concludes that our public discourse “has been deeply pervaded by illicit linkages between race and crime, between strangers and outsiders and between ‘urban poor’ and ‘visibly lawless people.’”⁶⁵

Ahmad Abuznaid and his co-authors⁶⁶ argue that it is precisely the bias attached to these intersections of race, youth, and gender that render SYG laws discriminatory and in violation of international human rights. The authors argue that SYG legislation worsens longstanding problems of “racial, age, and gender biases”⁶⁷ both in the perpetration of violence and in the legal response to violence: “SYG laws have shifted attitudes amongst law enforcement, jurors and the general public about self-defense” and “play[] a role in sanctioning and crystallizing the right of

58. *See id.* at 1037.

59. *See id.* at 1029.

60. *See id.* at 1030.

61. *See id.* at 1043.

62. *See id.*

63. *See id.* at 1044.

64. *See id.* at 1042.

65. *See id.* at 1049–50.

66. The co-authors of this article work with a number of organizations—Dream Defenders, University of Miami School of Law Human Rights Clinic, and Florida Legal Services Community Justice Project—who collectively prepared testimony on SYG for the United Nations Human Rights Committee and the Inter-American Commission on Human Rights.

67. *See Abuznaid et al., supra* note 1, at 1132.

people to act on subjective fears based on racist stereotypes.”⁶⁸ The authors compare the outcomes of the Zimmerman, Dunn, and Alexander cases. Marissa Alexander was convicted of aggravated assault for allegedly firing a shot towards her husband and his two young sons.⁶⁹ She fired a single gun shot that left a bullet embedded in a wall.⁷⁰ Alexander and one eyewitness and alleged victim of her assault, the older son of her estranged husband, testified that she did not aim the gun at anyone.⁷¹ Alexander testified that she fired up towards the ceiling⁷² to defend herself against her husband’s threats to kill her.⁷³ The jury heard several witnesses testify that Rico Gray had abused Alexander in the past.⁷⁴ What the jury did not know was that Alexander had obtained a domestic violence injunction order against Gray that was no longer in effect at the time of the shooting.⁷⁵ Gray’s deposition testimony agreed with Alexander’s claims: he threatened her and she was defending herself.⁷⁶ However, at trial, Gray recanted, insisted that he had not harmed or threatened Alexander on the day of the shooting, and explained that he lied in his deposition testimony to protect Alexander.⁷⁷ The trial testimony of Gray’s younger son, who was also a witness to the shooting and an alleged victim, supported Gray’s trial version of events.⁷⁸ The jury found Alexander guilty of three counts of aggravated assault—one each

68. See *id.* at 1143, 1145.

69. See *Alexander v. State*, 121 So. 3d 1185, 1189 (Fla. Dist. Ct. App. 2013). Alexander’s conviction was overturned because the jury instruction improperly suggested to the jury that Alexander had the burden to prove self-defense. *Id.* at 1188. Alexander now faces a new trial.

70. See *id.* at 1187.

71. See *id.* (Alexander testified that she shot “into the air”); see Trial Tr., 308, Mar. 15, 2012 (Rico, Jr. testified that Alexander pointed the gun up rather than at anyone, but that he left the room before the gun was fired.). In response to criticisms of the handling of the *Alexander* case, the Florida legislature passed legislation in the summer of 2014 that amends SYG law in two regards. First, the new law clarified that the threat to use force is justifiable under the same circumstances as would apply to the actual use of force. See FLA. STAT. § 776.012 (2014). Second, the new law provides an exception to the application of the mandatory minimum sentence for aggravated assault for a defendant who “had a good faith belief that the aggravated assault was justifiable [under SYG law],” who was not committing a crime at the time of the assault, and whom the court finds “does not pose a threat to public safety” and where “the totality of the circumstances involved in the offense do not justify the imposition of such sentence.” FLA. STAT. §§ 775.087(6)(a), (b)–(c) (2014). It is not yet clear what impact the new law will have on the upcoming *Alexander* trial.

72. See *Alexander*, 121 So. 3d at 1187.

73. See *id.*

74. *Id.*

75. See *id.* Had the no-contact provisions of Alexander’s domestic violence injunction been current, she would have received the benefit of a presumption of reasonableness under the SYG law. See FLA. STAT. § 776.013 (2)(a) (2013).

76. See Gray Dep. 16:22–16:23, Nov. 22, 2010.

77. See Trial Tr., 50, Mar. 15, 2012.

78. See *id.* at 112 (Pernell Gray testified that Alexander pointed the gun “forward” towards him, his father, and his brother.).

for Gray and his two sons.⁷⁹ Now compare the Alexander case with the Zimmerman and Dunn cases. Zimmerman saw a young African-American teenager walking through his neighborhood.⁸⁰ He deemed him suspicious and contacted the police.⁸¹ The dispatcher advised him not to pursue the teenager, but Zimmerman disregarded this warning and set out on foot to follow the youth.⁸² Zimmerman claims that the young man attacked him, forcing Zimmerman to use deadly force to defend himself.⁸³ The jury acquitted Zimmerman of second-degree murder.⁸⁴

Michael Dunn, sitting at a service station, was annoyed by the loud music coming from a vehicle occupied by several African-American boys.⁸⁵ An altercation ensued.⁸⁶ Dunn testified that he thought one of the boys was pointing a gun at him, but no weapon was found at the scene and Dunn's girlfriend, who was with him at the time of the shooting, testified that Dunn never mentioned that the boy had threatened him with a gun.⁸⁷ Dunn shot and killed Jordan Davis, a young man in the car.⁸⁸ The jury found Dunn guilty of three counts of attempted second-degree murder and one count of discharging a firearm into a vehicle but was unable to come to a verdict regarding the first-degree murder charge.⁸⁹

In Florida, the prosecution has the burden of disproving self-defense.⁹⁰ If there is reasonable doubt that Zimmerman was guilty of

79. See *State v. Alexander*, 2012 WL 10738699 (Fla. Cir. Ct. May 11, 2012).

80. See *Transcript of George Zimmerman's Call to Police*, MOTHER JONES, <http://www.motherjones.com/documents/326700-full-transcript-zimmerman> (last visited Aug. 16, 2014).

81. See *id.*

82. See *id.* Alafair Burke argues that had the court granted the prosecution's request for a first aggressor instruction, the trial outcome might have been different. See Alafair Burke, *What You May Not Know About the Zimmerman Verdict: The Evolution of a Jury Instruction*, HUFFINGTON POST (July 15, 2013, 11:19 AM), available at http://www.huffingtonpost.com/alafair-burke/george-zimmerman-jury-instructions_b_3596685.html. See also FLA. STAT. § 776.041 (2013) ("The justification described in the preceding sections . . . is not available to a person who . . . (2) [i]nitially provokes the use of force against himself . . .").

83. See Trymaine Lee, *George Zimmerman Evidence Shows Extent to Which Police Doubted Self-Defense Claim*, HUFFINGTON POST (June 26, 2012, 5:45 PM), http://www.huffingtonpost.com/2012/06/26/george-zimmerman-evidence-police-doubt-self-defense_n_1628209.html.

84. See Arian Campo-Flores & Lynn Waddell, *Jury Acquits Zimmerman of All Charges*, WALL ST. J., <http://online.wsj.com/news/articles/SB10001424127887324879504578603562762064502> (last updated July 14, 2013).

85. See Greg Botelho, Steve Almasy & Sunny Hostin, *Dunn Convicted on Attempted Murder; Hung Jury on Murder in "Loud Music" Trial*, CNN, <http://www.cnn.com/2014/02/16/justice/florida-loud-music-trial/> (last updated Feb. 17, 2014).

86. See *id.*

87. See Lizette Alvarez, *Florida Man's Fiancée Contradicts Parts of His Testimony in Killing of Teenager*, N.Y. TIMES (Feb. 11, 2014), http://www.nytimes.com/2014/02/12/us/florida-mans-fiancee-contradicts-parts-of-his-testimony-in-killing-of-teenager.html?_r=0.

88. See *id.*

89. See Botelho et al., *supra* note 85.

90. See *Alexander v. State*, 121 So. 3d 1185, 1188 (Fla. Dist. Ct. App. 2013).

murder, and insufficient evidence for a jury to reach a verdict of murder in the Dunn case, how could there not be reasonable doubt in the far weaker case against Alexander? How is it possible that prosecutor Angela Corey, who prosecuted all three cases, failed to gain convictions in the Zimmerman and Dunn cases, despite overwhelming evidence of guilt, but was successful in gaining a conviction in the far more factually dubious case of Alexander? Abuznaid and his co-authors argue that the differences in outcomes in these three cases demonstrate that “race and gender are determinants of ‘who is granted the right to defend their lives and who is constructed as an object of fear.’”⁹¹ They conclude that SYG laws offend United States international human rights obligations including the right to life—a right incorporated into every major international human rights instrument—and the right to equality and freedom from discrimination.⁹²

Professor Aya Gruber reminds us that the problems of racial and gender bias in the criminal justice system are more commonly problems of the bias of *state* actors against *defendants*, rather than the bias of private citizens against private citizens.⁹³ Professor Gruber notes that progressives generally have been critical of the “tough-on-crime” approaches that have resulted in hyper-incarceration, long prison sentences, and punitive—rather than preventative or rehabilitative—approaches to crime.⁹⁴ Why then, in the controversy surrounding SYG, are progressives arguing for law reform that will make it more difficult, not less, for a defendant to argue self-defense?

In the early days following the death of Trayvon Martin, commentary focused on “neighborhood warriors, racial profiling, and especially the racially discriminatory nature of police and prosecutorial discretion.”⁹⁵ The recurring question was “if the races were reversed, would

91. See Abuznaid et al., *supra* note 1, at 1047 (quoting *Free Marissa Now! Talking Points*, FREE MARISSA NOW! COALITION (Aug. 6, 2013), <http://tiny.cc/fmntalkingpoints> [hereinafter *FMN Talking Points*]; Written Statement on Domestic Violence, Gun Violence, and “Stand Your Ground” Laws, Submitted by The Advocates for Human Rights, University of Miami School of Law Human Rights Clinic, Legal Momentum, and Women Enabled (Sept. 2013), available at <http://www.law.miami.edu/human-rights-clinic/pdf/2013/ICCPR-Shadow-Report-Domestic-Violence.pdf>).

92. See Abuznaid et al., *supra* note 1, at 1170.

93. See Gruber, *supra* note 6, at 965.

94. See *id.* at 1003.

95. See *id.* at 964 (citing Monique O. Madan, *Shooting Mystery: Miami-Dade Teen Killed by a Crime Watch Captain*, MIAMI HERALD (Mar. 9, 2012), <http://www.husd.org/cms/lib07/AZ01001450/Centricity/Domain/2090/3-9%20Martin%20Shot.pdf> (reporting that Martin’s mother objected to the police’s reluctance to prosecute and noting that the Martins’ attorney,

police have made an arrest?”⁹⁶ However, this focus soon turned to a focus on the problems of SYG law: it was the problematic *law* that forced the police to initially decline to arrest Zimmerman; it was the *law* that made it difficult for the prosecutor to secure a conviction. The turn to a focus on the problems of SYG law took the place of more systemic critiques of the ways in which racism infuses public perceptions of crime and risk and influences decision-making by law enforcement and prosecutors, “render[ing] the Zimmerman saga largely a cautionary tale about overly lenient, ‘pro-violence’ criminal policies, rather than an exposé of rampant racial hierarchy in the administration of justice and society in general.”⁹⁷ Gruber insightfully writes, “Imagine . . . if the legacy of the [Emmett] Till tragedy were a set of arguments for mandating the death penalty, restricting jury and grand jury rights, and tempering double jeopardy, because these doctrines contributed to the killers Bryant and Milam’s ability to avoid punishment.”⁹⁸

A focus on SYG law fails to capture the ways in which neighborhood watch organizations, of which Zimmerman was a member, frequently promote racialized views of “neighborhoods as fortified castles to be defended from outside invaders[,]”⁹⁹ creating “racial border patrols.”¹⁰⁰ A focus on SYG law also deflects attention from the evidence of longstanding racial bias of the police department. A focus on Zimmerman’s individual violence, displaces a focus on the more routine violence perpetrated by police against innocent men of color.

The result of this turn to a focus on the elements of SYG law is that “[t]he idea now ingrained in the minds of many racial justice-seekers is that only by narrowing the definition of self-defense (and thereby generally strengthening murder law) can we ensure Trayvon’s death was not in vain.”¹⁰¹ Professor Gruber sees this “turn” as evidence of the ubiquity of the “punitive impulse,” an impulse that “manifests as intuition that the best course of action is one that severely punishes the harm-doer.”¹⁰² The punitive impulse stems from tough-on-crime ideology that arises

Benjamin Crump, stated that “the neighborhood watch was supposed to protect him, not kill him” and opined that Martin was racially profiled).

96. *See id.* (citing Mike Schneider, *Parents of Slain Black Teen Want FBI Investigation*, CHARLESTON GAZETTE, Mar. 17, 2012, at 8C (stating that the parents of Trayvon Martin argued that Sanford police failed to arrest “Zimmerman because he is white and their son was black”)).

97. *See id.* at 1021.

98. *See id.* at 979.

99. *See id.* at 982.

100. *See id.* at 985.

101. *See id.* at 963. Professor Gruber also notes that it is particularly inappropriate to focus on the elements of SYG law in discussions of the Zimmerman case because the controversial elements of the law seem to have had no bearing on the outcome. *See id.* at 977. Based on juror interviews, jurors did not believe that Zimmerman could have retreated. *See id.*

102. *See id.* at 1019.

from a “neoliberal vision of individuals and society” in which “there is no society, and central government is . . . illegitimate; thus, grievous harm and suffering [are not the] . . . product of poor social arrangement or ineffective governing[.]” but are instead the fault of “abnormal, yet fully morally culpable, individual actors.”¹⁰³

Professor Gruber concludes that “when progressives critically analyze the equities of a certain shift in criminal law, they [should] do so with the assumption that greater severity in criminal law adds to the problems of mass incarceration and racialized policing and thus with a *presumption against* greater severity”¹⁰⁴

Professor Elizabeth Megale draws our attention to the political and moral climate surrounding the enactment of Florida’s SYG law. Using a jurisprudential framework developed by Myres McDougal and Harold Laswell, Professor Megale examines the process by which SYG was enacted.¹⁰⁵ Before beginning her process analysis, however, Professor Megale first underscores the ways in which SYG is a gross departure from not only prior self-defense law, but also from the general norms of criminal jurisprudence.¹⁰⁶ She notes that the normal process of determining guilt requires a finding of probable cause, a prosecutorial decision whether justice is served by prosecution, a trial or plea agreement, a verdict if the defendant opts for a trial, and the imposition of a sentence by a judge if the defendant is found guilty or pleads guilty.¹⁰⁷ However, SYG law “has turned this system on its head,”¹⁰⁸ effectively ceding control to private citizens.

Returning to the question of the political and moral context in which the law was enacted, Professor Megale first describes the extraordinary influence of the NRA and the American Legislative Exchange Council (“ALEC”), of which the NRA is a member, in the development and passage of SYG.¹⁰⁹ As mentioned previously, Marion Hammer, former president of the NRA, drafted key parts of the law.¹¹⁰ Professor Megale argues that the NRA’s power over legislators arises

103. *See id.* at 1018.

104. *See id.* at 1006–07.

105. *See Megale, supra* note 23, at 1053–54.

106. *See id.* at 1070–71.

107. *See id.* at 1078.

108. *See id.*

109. *See id.* at 1081.

110. *See id.* at 1082 (citing Adam Weinstein, *How the NRA and its Allies Helped Spread a Radical Gun Law Nationwide*, MOTHER JONES (June 7, 2012, 3:10 AM), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground>). Furthermore, ALEC’s corporate membership works closely with state legislators to create and pass legislation. *See id.* at

from two sources: (1) the organization's ability to make financial contributions to the political campaigns of individual legislators and to the Republican party; and (2) the organization's ability to "deliver elections by creating and then directing large blocs of single-issue voters."¹¹¹ Furthermore, the most "troubling aspect of the NRA's legislative influence is the fact that it does not necessarily represent the values held by the majority of the community."¹¹² Only 500,000 of Florida's residents are NRA members—a number that is less than three percent of Florida's citizens.¹¹³ Even if one were to expand the community of interest to include all gun owners, the number, 800,000, would remain a small percentage of the state's population.¹¹⁴ Though opposition to the law has increased following the Zimmerman case, Professor Megale argues that the continued influence of the NRA has blocked legislative consideration of its repeal.¹¹⁵ The primary opponents of SYG—gun control advocates and law enforcement—are woefully underfunded compared to the NRA, have no corporate sponsorship equivalent to that of ALEC, and have wanted in terms of winning strategies.¹¹⁶ McDougal and Laswell define law as "a process of authoritative decision by which the members of a community clarify and implement their common interests."¹¹⁷ Megale's analysis would suggest that SYG fails this test.¹¹⁸

1081. While ALEC represents itself as non-partisan, "only one of 104 participating legislators is a Democrat." *See id.*

111. *See id.* at 1082 (citing Scott Medlock, *NRA=No Rational Argument? How the National Rifle Association Exploits Public Irrationality*, 11 TEX. J. C.L. & C.R. 39, 42 (2005)).

112. *See id.* at 1083.

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

114. *See id.*

115. *See id.* at 1084 (citing Joe Saunders, *Fla. House Committee Rejects "Stand Your Ground" Repeal Effort*, BIZPAC REVIEW (Nov. 8, 2013), <http://www.bizpacreview.com/2013/11/08/fla-house-committee-rejects-stand-your-ground-repeal-effort-86732>; Marion P. Hammer, *ALERT! Florida's Stand Your Ground Law Stood Its Ground Against Attack*, NRA-ILA (Nov. 8, 2013), <http://www.nra.org/legislation/state-legislation/2013/11/alert!-floridas-stand-your-ground-law-stood-its-ground-against-attack.aspx>).

116. *See id.* at 1085. Gun control lobbyists were given inadequate time to mount a defense when the legislation was passed. *See id.* (citing Daniel Michael, *Florida's Protection of Persons Bill*, 43 HARV. J. ON LEGIS. 199, 200 (2006)). They continue to use an education model, which Megale argues is ineffective. *See id.*

117. *See id.* at 1061 (quoting HAROLD D. LASSWELL & MYERS S. MCDUGAL, *Preface to JURISPRUDENCE FOR A FREE SOCIETY*, at xxx (1992)).

118. *See id.* at 1097.