

Reasonable fear of imminent danger: good social policy? assignment

[Sociology](#)



Reasonable Fear of Imminent Danger: Good Social Policy? BY gotten

Reasonable Fear of Imminent Danger: Good Social Policy? Giovanni Mike

4324324 LISTENED 1001 sum 13 Professor James Barney A sobering fact is that our government has a monopoly on the use of force, but it cannot protect everyone at all times in an immediate fashion. Joel Samara, *Criminal Law*, at 155 (1st ed. 2014). Therefore, citizens are permitted to use proportional force in a “self-help” fashion as long as 1. The necessity is great 2. The need exists “right now” 3. The force is used for prevention only. D. At 155. However, preemptive strikes or retaliation are not justifications for force used in self-defense. D., at 155. There are also four elements of self-defense: unprovoked attack, necessity, proportionality, and reasonable belief. D., at 156. The first three were alluded to earlier and are fairly self-explanatory, but reasonable belief will be the primary focus in this discussion. This element requires that a defender must have the “reasonable” belief that it’s necessary to use deadly force to neutralize an imminent deadly attack. D., at 156. However, what is “reasonable fear?” How does it play out in the courtroom? Is the burden on the person using force against an aggressor to show that he or she possessed “reasonable fear?” Does this requirement change whether a person is at home or should be looking into whether the person using deadly force had a “reasonable” opportunity to retreat and avoid violence? Should we offer civil immunity to those who used deadly force legitimately? Overall, are the recently more aggressive self-defense laws good for public policy?

Do they allow those with “itchy” trigger fingers to have a virtual license to kill, or do they take an extra necessary step to put the safety of law-abiding

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citizens ahead of the concerns of violent law-breakers? Newer self-defense laws, such as the one passed by Florida, unnecessarily presume “reasonable fear” in defending one’s home and fail to adequately consider whether a person using deadly force had a duty to retreat (in public spaces) when violence could have been easily avoided.

Citizens should reasonably be expected to show that their deadly use of force was justified due to their legitimate fear for their safety whether they’re at home or in public; their burden of proof shouldn’t be beyond a reasonable doubt since the prosecution could probably cast doubt on this with relative ease since it’s based on the subjective measurement of fear. Subtle wording differences in these laws can sway protections to either the aggressor or defender in these situations?? it’s critical to strike a healthy balance. So how did we get to the self-defense laws used today?

According to Joel Samara, *Criminal Law*, at 164 (1st ed. 2014), since the thirteenth century English common law required that a person had to prove that he’d “retreated to the wall” before being justified in killing another person. The US began to reject this practice in the nineteenth century and replaced it with a “no duty to retreat” requirement, which holds that a person can be justified in killing someone in self-defense. *Id.*, at 164. This new approach to the use of force by the common man was thought to be more accommodating to the bravery of a “true man.” *Id.*, at 164.

This “true man” was thought to be someone who would do whatever he had to do to protect his wife, kids, and the nation. *Id.*, at 165. Legislators and judges carved out the “stand your ground” rule from these previously

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mention values, which states that if a man didn't start the fight they could stand their ground and kill in self-defense without having to retreat from a place they had a legal right to be. ' d, at 165. Also, the retreat rule was also created that obligates a person to retreat if they " reasonably' believe that they're threatened with death or serious harm and they are able to retreat without continuing to be subject to this danger. D, at 165. Furthermore, the " castle doctrine" was created as an exception to the retreat rule when the context is within someone's home, where they have no duty to retreat as Eng as they reasonably believe there is an imminent threat of death or serious bodily harm. ' d, at 165. Since 2005, more than forty states have passed or proposed new " castle doctrine" legislation intended to expand the right to use deadly force in self-defense. ' d, at 172. Florida was the first state to pass this type of statute, and it continues to be the model for the rest of the states. D, at 172. Their statute states that a person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm if: (a) The person against whom the defensive force was used as in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle (b) The person who used defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred... Old, at 172.

Pennsylvania, they have a right to be in (2) they believe that the use of deadly force is immediately necessary to prevent death, serious bodily injury, kidnapping, or rape (3) the aggressor displays or uses a firearm (or replica) or any other deadly weapon. Joshua Light, The Castle Doctrine?? The

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Lobby is my Dwelling, *Volvo 22 Widener Law Journal* 236 These types of laws do not exist without controversy, since there are those (2012). That claim that they give citizens a virtual “ license to kill. ” *Supra*, at 174.

On one side, people like Marion Hammer, president of the National Rifle Association, contend that these new laws are just protecting a right that has been around since the asses and that we shouldn't have a duty to retreat only to get chased down and beaten to death. ' d, at 174. Indeed, Florist's intent when they passed their castle-doctrine law n 2005 was that it was “ necessary to restore absolute rights of law abiding people to protect themselves, their families, and others, and their property from intruders and attackers without fear of prosecution or civil action.

Wyatt Holiday, *The Answer to Criminal Aggression is Retaliation: Stand-your-Ground Laws and the Liberalizing of Self-Defense*, *Volvo 43 University of Toledo Law Review* 417 (2012). Supporters of the castle doctrine-type laws recognize that there are times when the government's monopoly on violence must be set aside to allow law-abiding citizens to protect themselves when time is limited. Benjamin Levin, *A Defensible Defense? : Reexamining Castle Doctrine Statues* *Volvo 47 Harvard Journal on Legislation* 540 (2010).

When an aggressor poses an immediate threat, the defender's preservation of self should take precedence over the aggressor's culpability. ' d, at 539. Others like Jim Brady from The Brady Campaign believe that these laws are “ ushering in a violent new era where civilians have more freedom to use deadly force than even the police. ” *Samara, Criminal Law*, at 174 (2014).

They also claim that these laws allow those who have an “ itchy trigger

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finger” to simply claim that they were in fear and therefore justified in using deadly force. ‘ d, at 174.

To make things even more complex, states have their own versions of the law that are still in flux and fairly open to interpretation by courts?? it is not always straightforward when someone is legally entitled to use deadly force to protect themselves. Levin, *A Defensible Defense* 534-536 (2010). What does “ reasonable fear” even mean? Unfortunately, this is not easy to answer. Ohio’s depiction of reasonable fear is somewhat helpful: the actor using deadly force must have a bona fide belief that he/she was in imminent danger f death or great bodily harm and the only means of escape was to use deadly force in retaliation.

Wyatt Holiday, *The Answer to Criminal Aggression is Retaliation: Stand- Your- Ground Laws and the Liberalizing of Self-Defense*, *Volvo* 43 *University of Toledo Law Review* 425 (2012). The “ honest” and “ reasonable” requirements make it seem like a hybrid objective/sub]active requirement, but it’s still a subjective standard as highlighted by the Ohio Supreme Court. ‘ d, at 424. This court’s instructions on this standard recommended that to determine whether a defendant had reasonable fear of imminent danger: ... U must put yourself in the position of the Defendant, with her characteristics, knowledge, or lack of knowledge, and under the same circumstances and conditions that surrounded the Defendant at the time. You must consider the conduct of [the victim] and determine if such acts and words caused the Defendant to reasonably and honestly believe that she was about to be killed or “ reasonable fear” is so subjective, because of the wide range of situations

people find themselves in; it doesn't seem feasible to create an objective test that measures such a subjective and virtually immeasurable emotion such as fear.

Keep in mind how the law mentions that the only means of escape is the use of deadly force. Even though "reasonable fear" is such a subjective concept, it still has an impact in the courtroom compared to how self-defense laws used to be written. Before Stand-Your-Ground laws came about, defendants had the burden to show that their life and limb was actually in danger. Light at 234 (2012). Now, in certain Jurisdictions, citizens have to only prove that they had a "reasonable fear" that their life and limb were at jeopardy, and that they believed that deadly force was immediately necessary to peel this threat. D, at 234. This amounts to a smaller burden of proof on the defendant, which is more challenging for the prosecution because disproving facts is a lot easier than disproving perceptions. ' d, at 234. Is this a fair balance? The "reasonable fear" requirement is fair since it allows the state to make an inquiry into whether deadly force was used in a legitimate fashion without putting an excessive burden on citizens to justify their use of force that can be easily defeated by prosecuting attorneys. What about the "duty to retreat"? Should it still play a part in today's laws? Eric Del Bozo, *Retreat Does Not Equal Surrender: Defensive Deadly Force in Dwellings After People v. Keen*, *Volvo 82 SST. John's Law Review* 360-381 (2008) points out that the duty to retreat should still play a part in these self-defense laws, especially when retreat is a safe and reasonable option that could save a lot of violence. He concedes, however, that "one need not calmly evaluate exit strategies when faced with a pressing danger, for detached reflection cannot

be demanded in the presence of an uplifted knife. ' d, at 364. Also, it isn't reasonable to focus in midnight at whether the defendant could have safely retreated, which is a reason why " reasonable fear" is appropriate in order to focus on what the person knew at the time. ' d, at 364. The way retreat is treated as an option and the thoughts of the person using force varies among states and even Jurisdictions within those states; some deemphasize the need to retreat while others focus more on the Justification of force and options for retreat. ' d, at 363-364.

In 2006 alone though, between 10 and 15 states repealed their laws that required persons to consider retreat before using defensive deadly force. D, at 377. This might not bode well in a case where a person shoots his neighbor over an argument over trash bins; Del Bozo suggests that stories making headlines tend to be neighbors and acquaintances freely assaulting each other rather than repelling home invasions. ' d, at 377. However, he doesn't offer any statistics or empirical evidence that there is a trend in unjustifiable killings due to these laws.

Nonetheless, the duty to retreat still has merit to allow the whole situation to be analyzed in court, and hold people accountable who may engage in " senseless" killings. ' d, at 378. The prosecution should be able to show that retreat was indeed a viable option out of a respect for human life; there must be a balance between protecting the safety of both the assailant and the victim, but retreat should be looked at with the burden being on the non-aggressor. ' d, at 380. There are five different concerns that law enforcement

authorities have concerning these new and more aggressive self-defense laws.

One unintended consequence could be police officers since citizens just have to claim that they have “reasonable fear” in order to use deadly force. *Id.*, at 175. On the other hand, Florida’s statute contains a revision which holds that citizens are not justified in using deadly force against law enforcement officers as long as they are acting in an official capacity, have identified themselves as a police officer, or the person using force should have “reasonably” known it was a law enforcement officer. *Id.*, at 173. Indiana struggled with this unintended consequence, but actually ended up ruling that citizens cannot reasonably use deadly force against law enforcement officers. Jon Laramie, *Indiana Constitutional Development: Debtors, Placements, and the Castle Doctrine*, *45 Indiana Law Review*, 1049-1051 (2012). In *Barnes v. Tate*, 946 N. E. 2d 572 (2011), the Indiana Supreme Court stated that “public policy disavows recognizing a common law right to forcibly resist unlawful police entry into one’s home.” *Id.*, at 1050. They also recognized that it isn’t easy for citizens to recognize when a given police entry is lawful or not, that injury is high due to upgrades in police equipment, and citizens have other remedies for unlawful entries (civil litigation, police disciplinary hearings, exclusionary rule, etc.) *Id.*, at 1050. The court did concede that a person has the right to “reasonably resist” an unlawful entry, but this doesn’t amount to a defense of battery or other violent acts against law enforcement. *Id.*, at 1051. The court also claimed that most other states have followed suit in this decision in the interest of law enforcement safety. *Id.*, at 1050. Another concern is that the interpretation

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of these castle-type laws is in its infancy. Some believe that law enforcement training will constantly have to adapt to changing views on these laws, and that it will be almost impossible for police officers to determine whether these new laws are being invoked [applied properly. *Supra*, at 176.

The next concern is that instead of just having to determine whether danger was imminent or there was a duty to retreat in a public place, police officers will now have to anticipate more "self-defense" claims. *Id.*, at 176. This will increase the investigative burdens on officers, and proving a negative is difficult when the evidence is "in the hands of the defendant." *Id.*, at 176. This concern is exacerbated by the fact that law enforcement agencies are often understaffed and are already overworked. *Id.*, at 176.

Furthermore, police authorities are worried that these new laws will lead to a sort of apathy and degradation of vigilance among officers. *Id.*, at 176. They may get used to seeing "self-defense" claims and may dig deep enough into every claim as these new castle-type laws call for, especially if both parties have criminal records. *Id.*, at 176. The last concern of law enforcement on castle-type laws are that citizens (a) will not be adequately aware of their right to use force in self-defense and (b) will be considered a deterrence by criminals who may now view them as more able to defend themselves. *Id.*, at 176. Overall, people might feel safer because they are given more latitude to protect themselves, but they may not since they might be worried about their "itchy trigger fingers." *Id.*, at 177. Also, there is a lack of empirical evidence that shows that the positive impacts outweigh the positive negative impacts. *Id.*, at 177. However, the ironic part

is that we will not know if these types of laws will "work" unless we employ them uniformly on a generalized sample size (many states/ jurisdictions) and then evaluate them over time using sound research methods. Ensure that citizens are able to defend themselves when they legitimately need to. Nobody said it would come without any consequences at all. A legal issue with hose castle doctrine-type laws according to Elizabeth Mega, Deadly Combinations: How Self-Defense Laws Pairing Immunity with a Presumption of Fear Allows Criminals to "Get Away with Murder," *Volvo 34 American Journal of Trial Advocacy* 105-134 (2010), is that reasonable fear and immunity can combine to create a virtual bar on prosecution for self-defense cases involving an individual's "castle." The state of Florida provides both a presumptive reasonable fear clause and an immunity clause; reasonable fear by itself can be rebutted by the prosecution at a later time, but immunity won't ever allow that to happen. *D.*, at 108. Mega contends that such an "irrefutable conclusion" is unconstitutional and puts law enforcement in an awkward position to determine immunity. *D.*, at 108. Also, once immunity is granted it cannot be withdrawn and someone who was entitled to immunity cannot fight for it later on. *D.*, at 109.

However, if someone is outside of their home they have to prove the reasonableness of their use of force before being qualified for immunity?? this is presumed in cases involving the home and motor vehicles though. *D.*, at 113.. Furthermore, at least in situations located at the defender's home, Florida's law makes it impossible to make the determination that the defender's use of force was unlawful. *D.*, at 118. The law contains a provision that states that reasonable fear can be "presumed" when a person

uses deadly force in the protection of their home?? the police cannot make a probable cause determination. D, at 119. Florist's law puts law enforcement in a situation where they have to make determinations on the spot that prosecutors would normally make: they have to make determinations of immunity and attempt to disprove a presumption rather than establish a case. ' d, at 120. Law enforcement normally investigate " unlawful" acts, but Florist's law tells officers to presume that acts of violence within the home are " lawful. " ' d, at 121 . As for how to fix these statutory issues, Mega contends that they are beyond fixing with Just guidelines and require rewording.

Police could become so dependent on the guidelines that they may fail to see the big picture, defendants could end up in Jail trying to assert immunity, law enforcement may not understand the guidelines, and law enforcement have to engage in prosecutorial duties that they were not trained to do. D, at 130. Although " immunity' certain presents more problems, what about " reasonable fear" itself? Mega claims that the previous duty to retreat laws still allowed someone to use force, but only when there is no safe method of retreat. ' d, at 115.

In this way, common law held the respect for life on a higher level than the right to possess and use a gun. ' d, at 115. However, with the new castle-type laws individuals can now react violently with little incentive to try and diffuse the situation by safely retreating. ' d, at 115. The duty to retreat makes someone think twice about sing force instead of harming someone before considering whether an actual threat exists. ' d, at 116. With these

new Stand Your Ground and castle-type laws, individuals are authorized to act violently in the face of a "perceived" threat, which is very subjective and open to interpretation. D, at 129. In Florida, however, the law allows the state to prosecute individuals when probable cause is established that the force used was unlawful, at least outside of one's home. ' d, at 130. This type of provision who use deadly force in a senseless or reckless manner without giving reasonable Hough into whether they're really facing impending danger. As mentioned earlier though, in the heat of the moment people's perceptions and their ability amount to think clearly in these intense situations will vary. How does "reasonable fear" play out in the context of a Jury trial?

Stay Lee Burns, Demonstrating "Reasonable Fear" at Trial: Is it Science or Junk Science? Department of Sociology, Loyola Martyrdom University, Los Angeles, CA 107-131 (2008) examined one murder trial in depth that involved reasonable fear. In this case, the Maddened brothers were charged and invoiced of first degree murder for shot-gunning their parents in their own home in August 1989. ' d, at 109. During the trial, they confessed to parricide but claimed they held reasonable fear because of their prior sexual abuse by their father and acted in self-defense (Justification defense). D, at 110. The Jury deadlocked at the first trial, which indicates the ambiguousness that reasonable fear can have at trial. ' d, at 129. The defense proposed expert testimony that would show that the abuse the defendants underwent altered their mental state at the time of the killings because heir susceptibility to fear and perception of imminent danger were heightened. ' d, at 112. U Timely, the Judge did not allow expert testimony

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pertaining to what happened in the Maddened brothers' situation, but could attempt to generalize prior research on fear perception.

Although there has been research on the limbic system, the part of the brain that processes fear, for the lastly years the results are far from conclusive and there is no test available that can show what the Maddened brothers' fear levels were at the time of the killing or whether their susceptibility had indeed been heightened because of trauma. ' d, at 118- 127. Social science is only able to provide statistics and the likelihood that the Maddened brothers would act a certain way in a given situation. ' d, at 122.

There is a blood test available that can give insight into what a person's level of fear is, but the sample would have to be taken right at the moment of the crime (not feasible). ' d, at 124. This case illustrates the tension between social science and the Judicial system that requires facts to relate to the particular case at hand. ' d, at 128. It came down to what the Jury felt was " reasonable fear," and how much they thought the expert testimony applied to the Maddened ease?? it's no surprise that the Jury ended up deadlocked. D, at 128-129. In conclusion, the " reasonable fear" requirement is fair since it allows the state to make an inquiry into whether deadly force was used in a legitimate fashion without putting an excessive burden on citizens and giving too much of an advantage to prosecuting attorneys. Although " duty to retreat" shouldn't be strictly imposed or evaluated in hindsight, it is still applicable in situations where violence could have been easily avoided by practically walking away.

While there are legitimate concerns such as Alice safety in no-knock searches with these more aggressive self-defense laws, the sad fact remains that little empirical evidence is out to date that shows any negative or positive trends associated with these laws. In addition, these laws and their interpretation are still in their infancy and are written differently among the states and their Jurisdictions. A legal issue that may not be empirically measurable, however, is how reasonable fear can be paired with immunity to create a bar on prosecution of those defending their home perhaps too readily.

These people should burden of proof that can easily be discredited. Additionally, this presumption would leave police officers with the difficult task of making determinations on the spot that would normally be left to prosecuting attorneys. As for immunity, citizens should be granted immunity from civil litigation if their use of deadly force was Justified; they shouldn't have to be mired with legal action from the aggressor after they've already been in court.

The Maddened case illustrates the limitations of science to prove reasonable fear in a court setting, and can only offer potential generalizations and statistics. Bottom line, "reasonable fear" ends up getting determined by Juries, which ay not be that easy or uniform. Overall, the new and more aggressive self-defense laws are good for public policy with the exception of the presumption of reasonable fear in situations involving defending one's home.

These laws necessarily give citizens more latitude in defending themselves without an undue burden of having to sit there and think about whether they should retreat or fear of future civil litigation. However, those who are inclined to resort to violence in the face of any perceived threat need to justify their actions in order to prevent senseless killings. They should only have to show that they had reasonable fear without a heavy burden of proof that prosecutors can easily defeat, which could be the beyond a reasonable doubt standard.

An understandable concern is that these new laws will put a further burden on an already stressed and backlogged criminal Justice system, but we cannot put police officers in a position to try to make these determinations on the spot. We also cannot allow potential senseless killings to go unchallenged. Omitting the presumption clause and putting a little more emphasis on retreat options can better balance the defender's right of safety and the aggressor's culpability.