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A Defense of Stand Your Ground Legislation

Jarrett Field

Killing another human being is one of the most obvious and egregious wrongs on nearly any view of morality, most importantly our intuitive sense of right and wrong. And yet, we believe that sometimes killing is permissible. When is this, and why? We might agree that when someone else forces us to choose between his life and our own through violence, we may permissibly choose to save our own lives at the cost of his. The burden for that choice, the moral weight of the matter, seems to fall squarely on the shoulders of the person who forces that choice. A non-culpable party, who has done nothing to provoke or deserve death, seems to have little obligation to sacrifice their own life to spare the life of someone who intends them harm. This, in short, is often the rationale that is used to justify self-defense killing, which I will refer to from here on out as “SDK” for brevity’s sake. But what about when a person intending to self-defend goes to far? What if, either in the heat of the moment or because of some other trigger, a person who intends to defend themselves uses too much force, or uses force when it’s not needed? Surely this is also a wrong, perhaps just as wrong as attempting to kill another in the first place. Certainly some type of ethical or legal guidelines ought to be in place that prevents such a misuse of self-defense.

An agent, someone who willingly chooses their actions in response to a set of events like the threat of violence, must be responsible for any use of excessive force he or she takes against an aggressing party. An agent must keep to minimum necessary force whenever possible, as long as doing so does not compromise his or her own safety.

This principle, which I will call the Minimum Necessary Force Principle, or “MNFP” for short, is quite simple. MNFP requires only that an agent performing self- or other-defense only use force where necessary to end a threat to his/her safety, and should not use more force than necessary to end the threat to his/her safety. This means that self-defense is just that, defense. Self-defense does not excuse the use of force after a threat has ended, or before a threat has materialized. An agent may not use excessive force, such as drawing and firing a gun to prevent an unarmed aggressor from striking or pushing them, although they may permissibly draw the weapon and express their intent to use it if the attacker continues to threaten them. An agent may not harm an attacker after the attacker is no longer capable of harming them, and an agent may not permissibly harm someone they merely suspect may attack them, without sufficient reason to believe that the opposing party represents an imminent threat. An imminent threat might be a man who has drawn a weapon such as a gun or knife and aims it, or states his intent to use it, but anything short of this, such as the suspicion that the person might be carrying a weapon, is not sufficient reason to self-defend. The distinction is quite simple. Before a weapon is drawn or a threat is issued, an agent has only a suspicion that the other person intends to harm them, whereas when a weapon is drawn or a threat is made, the agent has a reasonable belief that the other person intends to harm them.

All of this is an entryway to begin discussing Stand Your Ground legislation (henceforth, SYG or SYGL). SYGL is an incredibly hot topic in the news media today, as a result of a number of extreme cases where the defense has seemingly inappropriately appealed to SYG. It’s important to recognize that in attempting to evaluate SYGL’s strengths and weaknesses we ought to look at how SYG ought to and might be used, rather than

exclusively examining cases where it has been used inappropriately in the past. To look exclusively at those cases seems to me to be a form of straw-man argumentation, where my opposition seeks to create an inaccurate description of arguments that favor my position that are easier to dismantle and thus, defeat. That being said, misuses of SYGL need also be addressed in order to examine how we might seek to restructure the legislation to ensure that it is not misused in the future. After all, present misuse does not necessitate future misuse, especially if changes are made within the legislation itself. Within this paper I intend to defend the existence of SYGL legislation by first addressing arguments that SYG is inherently too permissive and allows for too much violence, and then by showing that Duty to Retreat legislation is too restrictive and puts too much risk on the agent.

Granted those terms, we can move towards establishing what SYGL should permit, and what it should not permit. Within Florida state law, SYGL reads such that it is permissible for a citizen to meet force with force, including lethal force provided that “he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another.” As it reads, it should be clear that cases often cited as making SYGL laughably permissive often fail to acknowledge that it is necessitated that the agent reasonably believe that there is risk of death or great bodily harm. As previously mentioned, often times protest of SYGL provide straw-man arguments by attacking cases where SYG has been invoked to defend an agent who in fact could not have reasonably believed that (s)he was at risk of death or great bodily harm. While there may be a degree of epistemic opacity (that is, uncertainty about the facts of the matter) regarding what constitutes reasonable belief of such risk, I think we should be convinced that there are clear cut cases where such a belief is reasonable, and thus invoking SYGL is permissible,

and cases where such believe is not reasonable, and thus invoking SYGL is rightly laughable. I'll give an example case for each.

Reasonable Belief: An agent, Smith, is walking down the street and encounters a man, Jones, who draws a gun and tells her that he intends to kill her, and will do so quickly provided she gives him her purse. Smith is also carrying a gun, and draws it and kills Jones before Jones can kill her.

Unreasonable Belief: An agent, Smith, is walking down the street when she notices a man, Jones, has been following behind her for the last ten minutes or so. Smith is carrying a gun and believes Jones intends to harm her, and thus decides to turn and shoot and kill Jones.

In Reasonable Belief, I think we can all grant that Smith had sufficient reason to think that Jones intended her great bodily harm. Because of her having sufficient reason, her belief is then justified and reasonable, as SYGL asks, and her choosing to kill Jones is legally permissible. I think it's also fair to say that this case is ethically permissible, as it resembles a standard "Villainous Aggressor" case in which the aggressor intends to kill the agent and can't be stopped without force. In Unreasonable Belief, however, Smith does not have sufficient reason to think that Jones intended her great bodily harm. Therefore, Smith does not have a reasonable belief, and it is not legally permissible for Smith to kill Jones.

There are most certainly less clear cut cases than these, and the primary objection to SYGL is that it is too permissive and allows for an unreasonable degree of force to be taken by the agent in the name of SDK. There is also growing concern that SYGL allows for or incites

violence against racial minorities, especially blacks. This would mean that even if SYGL is ideal in principle, its existence might lead to such undesirable consequences, namely unnecessary escalation, especially in the instance of race-based crime, that we ought to think that it should not be implemented. There may also be a non-consequentialist version of this concern, that is, one less focused on the bad consequences that SYGL might lead to and yet still object to SYGL 's existence, but I will not take it up here. The majority of arguments levied against SYGL seem to be consequence-focused, so I will address those concerns exclusively. I believe that both of these problems stem from a misunderstanding of SYGL's interpretation and application, rather than an inherent problem with the legislation itself, such that the legislation could be adjusted to deal with such worries. The primary means for ensuring SYGL is not too permissive is appealing to MNFP. Any given case that seems to show that SYGL permits the use of excessive force on the part of the agent will be in clear violation of MNFP, by definition. So, in order for SYGL to come into effect, an agent must still adhere to MNFP. Should an agent violate MNFP and thus impermissibly escalate a confrontation, SYGL is no longer applicable. Cases that demonstrate this impermissible escalation might resemble the previous Unreasonable Belief case, or run slightly differently such that the agent uses clearly excessive force, like shooting an unarmed aggressor rather than merely drawing their gun and issuing a warning.

The issue of race-related crime is a slightly more difficult issue to settle. Data exists that shows that white Americans often mistakenly think that black men are more likely to be a physical threat to them, when in fact the data shows that black against white crime is very low(Welch). Because of this, we might think that it would be common for white

Americans to mistakenly believe black men to be a threat to their safety in such a way that they might invoke SYGL to defend themselves from a non-existent threat. While plausible, it seems to me that to a large extent the issue can be settled on a case-by-case basis. Even if whites are more likely to mistakenly think of blacks as a threat, should they invoke SYGL to 'defend' themselves and by doing so violate MNFP in a way that resembles the Unreasonable Belief case, they've clearly acted morally and legally impermissibly. And certainly, if a white person were to invoke SYGL against a black person in a case that resembles Reasonable Belief, and are not violating MNFP, they are morally and legally permitted to SDK. The larger issue here is what happens when there's a kind of mutual escalation that stems from a case that resembles Unreasonable Belief, where the unreasonable belief may or may not stem from racism. Let me give a new case to illustrate this problem, tabling the race issue for a moment.

Unreasonable Belief to Reasonable Belief: An agent, Smith, is walking down the street when she notices a man, Jones, has been following behind her for the last ten minutes or so. Smith is carrying a gun and mistakenly believes Jones intends to harm her, when in fact Jones has no such intention. Smith turns and confronts Jones by drawing her gun, warning him of her intent to use it should he attack her. Jones is surprised and frightened by Smith's drawing of the gun, and now believes Smith intends to kill him, although Smith also has no such intention and has clearly stated that she has no such intention. Jones decides to draw his own gun and fires at Smith, attempting to kill her, believing that he is defending himself from her. The shot misses Smith, and she shoots and kills Jones when he does so.

This is a case of permissible escalation where the agent at first adhered to MNFP and then invoked SYGL. Although Smith at first had an unreasonable belief that Jones intended to cause her harm, her drawing of her weapon and issuing of her warning were permissible. Similarly, Jones's forming of the unreasonable belief that Smith intended him harm permitted him only to draw his own weapon and issue a similar warning at most, while firing his weapon was in clear violation of MNFP, given Smith's warning. Better yet, given Smith's warning, Jones could merely have held up his hands and told Smith he intended her no harm, and walked away. Because of Jones's violation of MNFP by attempting to kill Smith under the unreasonable belief that Smith intended to kill him, Smith then had a reasonable belief that Jones intended her serious harm, and could invoke SYGL to SDK Jones. Certainly Smith had an unreasonable belief that Jones intended to harm her at the beginning of the case, and a reasonable belief by the end. Had Jones not chosen to attack Smith, and Smith's belief that Jones intended her harm remained unreasonable and Smith chose to shoot Jones anyway, it would be in clear violation of MNFP and we would be right to laugh at Smith's attempt to invoke SYG as an explanation of her actions.

I believe this case demonstrates that even granted a systematic tendency for agents to develop unreasonable beliefs about other's intents to harm them, the permissibility of their actions can still be evaluated on a case by case basis, such that all will depend on whether or not a threat was present.

What has to be acknowledged here is what my view means in light of systematic racism against black Americans. Given the data that white Americans will often mistakenly believe blacks to be some sort of a threat when in fact they are not, my view may put a burden on blacks that some might object to. Any view that places a special burden on one

group of people over another through no fault of their own ought to be carefully examined to ensure the view is not too demanding.

Were the original Unreasonable Belief to Reasonable Belief case racially loaded such that Jones were black and Smith white, we might develop a concern about the frequency of such cases. In light of data that suggests whites will often mistakenly believe blacks to be a threat, my argument seems to almost necessarily put a larger burden on blacks to deescalate should such a situation arise. While this may be true, it seems that there is a clear need for social education and conditioning so that people, specifically whites, are aware of their mistaken tendency to develop unreasonable beliefs about blacks being a threat to their safety. Both conditions seem equally mandatory, blacks ought not to allow unreasonable beliefs developed by whites to escalate into violence, and whites ought to work to correct their tendency to develop the unreasonable beliefs in the first place. I've suggested that should Smith in the above case mistakenly believe Jones to be a threat to her, Jones has a moral responsibility to express carefully that he is not a threat. This will likely take the form of him putting his hands in the air, expressing he means no harm, and walking away in the other direction if possible. I don't believe this is a large enough burden, even granted that it might be placed on one group of people more often than others, to make us think that SYGL coupled with MNFP is problematic enough to be dismissed. While such an occurrence might happen more often to blacks and thereby put a special burden on them to have to act this way more frequently than other groups, the burden to the individual in the given situation is relatively light, and asks merely for adherence to MNFP by attempting to avoid violence before it starts, given the mistaken belief of Y and X's ability to show Y that she is mistaken.

One might argue to this point that asking for a physicalized ritual displaying non-aggression from blacks might be worryingly psychologically damaging. Asking any specific demographic to engage in a ritualized physical behavior (in this case, demonstrating non-aggression by putting hands in the air and stating that they don't intend harm, should someone form the unreasonable belief that they do) might force that demographic into wrongly absorbing the belief that they are in fact threatening criminals, or something of the like. I share this concern, and find it notably troubling, and it should not be dismissed too quickly. In light of this concern, I think we ought to question what continues to allow whites to form the mistaken beliefs about blacks in the first place, and place the aforementioned special burden on whites to work to ensure that their beliefs about threats to their safety aren't being formed solely on the basis of race and racism. Perhaps permitting the existence of SYGL comes with the necessary price of public education regarding data on violent crime, in hopes to prevent these mistaken beliefs from occurring so frequently. As long as this push for public awareness is sufficiently rigorous to lessen the likelihood of mistaken beliefs based on race, I don't think concerns about SYGL and the ritualization of non-aggression displays are quite as worrisome.

Even if we were to think it significantly problematic, I don't believe we can reasonably address the problem merely by eliminating SYGL, as we lack reason to think that eliminating SYGL would make cases resembling Unreasonable Belief less likely to occur. The issue at hand here might edge slightly away from a consequentialist one, in the sense that we're concerned both with the frequency that blacks might be mistakenly believed to be threats and threatened in response, and that the mistaken beliefs take place at all. It seems that without SYGL and given Duty To Retreat, neither concern is fully

addressed, or even made less likely to occur. SYGL and Duty To Retreat themselves both deal primarily with the actions and consequences of agents in such situations, neither has any obvious effect on the intentions or mindset of agents prior to conflict, so we can likely safely assume that eliminating SYGL will not affect the frequency at which blacks are mistakenly believed to be threats in the first place. That issue seems likely to stem from systematic racism that is embedded in society, not from any piece of legislation that gives ruling on SDK. Whether or not we have permissive or restrictive legislation on SDK, views that lead to mistaken beliefs about other agents being threats to safety may still abound. This is a problem that seems wholly unrelated to SDK, and needs to be addressed from elsewhere in other forms.

From there, I don't believe we have sufficient reason to think that SYGL will make it any more likely for whites to impermissibly act on mistaken beliefs about blacks being a threat to their safety and cause a threat to them. While it might make whites with mistaken beliefs to confront blacks as Y does initially in the above case, we have no reason to think that SYGL paired with MNFP will make it more likely for whites to impermissibly violate MNFP and attack or kill blacks using SYGL as an excuse. In fact, in such cases where SYGL is used as an appeal for an impermissible killing because the killing violates MNFP, certainly we think the agent has done something morally, and thereby also legally, wrong. The agent has, after all, acted without a reasonable belief that the other party was a threat to her safety. If SYGL were to be carefully paired with MNFP, it would allow only for an agent with a mistaken belief (lacking a reasonable belief) to confront another agent, but not take any violent action. Here's a case to clarify this.

Permissible Stand Your Ground without Reasonable Belief: A white woman, Smith, believes a black man that has been following her for a few blocks, Jones, to be a potential threat to her safety. Given SYGL and that she is frightened, but knowing she lacks a reasonable belief that Jones is a threat to her, Smith decides to confront Jones by turning towards him, drawing her gun, and warning him that she will shoot him in self-defense if necessary.

The above case shows what an agent is permitted to do with SYGL paired with MNFP when she lacks a reasonable belief. Any more than the action Smith takes would likely be impermissible. For example, should Smith have chosen to physically confront Jones by pushing or striking him, believing to be “defending” herself, she would be in clear violation of MNFP, which requires a physical threat to be readily apparent for a physical response to be appropriate. Given MNFP, only a verbal warning is permissible for Smith, and I believe that this is appropriate in that it is not too restrictive on the agent, and not too permissive that it allows for undue harm on the potentially innocent Jones. If Jones abides by MFNP, it should also be clear that in the above case Smith is not causing a threat to him. Smith is merely a conditional potential threat, such that she has made it clear she will only harm him if he makes an attempt to harm her. Given this, while we might have to accept SYGL might make it more likely for whites to confront blacks in the above manner, I don’t think we have any reason to believe SYGL paired with MNFP generates any likelihood of impermissible attacks in the name of self-defense.

This is of course, not the only concern with SYGL, and perhaps not sufficient alone to justify its existence to others concerned about the consequences it might generate. If in

Unreasonable Belief to Reasonable Belief only Smith survives and there are no witnesses, how do we know that Smith had a reasonable belief that Jones intended to kill her, and how do we proceed legally? And how do we know that Smith didn't intend to shoot and kill Jones, and knowing there would be no witnesses, assumed that SYGL would allow her to get away with it?

These are incredibly difficult questions, but I think they're problematic because of epistemic opacity, not because of SYGL. With or without SYGL, the same sort of scenario could occur. Imagine the following case.

Planned Murder: Smith lives in a state with no SYGL and intends to kill Jones and get away with it by appealing to self-defense. Smith lures Jones into an alleyway with a dead-end, and turns and shoots him. In court, Smith says that Jones chased her into the alleyway and tried to kill her. She concedes that she had a duty to retreat, but argues the location of her "attack" prevented her from fulfilling the duty, thus her only choice was to SDK Jones.

This case shows that SYGL is in no way necessary for the aforementioned worries to be present. If there were no witnesses, we have no way of knowing whether Jones really did chase Smith into an alleyway and attempt to kill her, or if Smith is merely using SDK as a way of getting away with murder. These worries are a problem with lack of information, not a problem with SYGL.

Granted the previous arguments, I believe we can conclude that SYGL is not too permissive because it does not allow for impermissible escalation and can fit in accordance with MNFP. It also does not make it any more likely for an agent to attempt or succeed at

getting away with murder by appealing to SDK. Concerns that racism might make violent crime more likely with the existence of SYGL also seem unnecessary with MNFP in place, and a close reading of the law's necessitation of "reasonable belief."

A common (but perhaps under thought-out) counter argument to SYG relies on deferring to the agent having a duty to retreat (henceforth, DTR or DTRL) when confronted with potential violence. It's worth noting here that the two systems are in many respects diametrically opposite. Where SYG allows for an agent to opt to defend themselves should they so choose, DTR requires (legally obligates) agents to make an attempt to flee before resorting to self-defense.

Where others worry that SYG is too permissive and allows for too much violence, I worry that DTR is too restrictive and puts agents at too much risk when confronted with violence. Here are a few cases to demonstrate this worry.

Failed Retreat 1: An agent, Smith, is walking down the street and carrying a gun when a man, Jones, confronts her. Jones tells her that he intends to kill her, and will do so quickly provided she gives him her purse. Smith does not know that Jones is also carrying a gun, but rightly assumes that she could draw her gun and kill Jones before he could react, or at least draw the gun and warn Jones of her intent to use it. But, given that they are on an open street and knowing that she has a DTR, decides to attempt to flee. Smith turns to run, and Jones shoots her in the back and kills her.

Failed Retreat 2: An agent, Smith, is walking down the street in a state with no SYGL and that does have DTRL when a man she knows, Jones, confronts her. Jones states his intention

to rape and kill Smith. Smith knows that Jones does not have a gun. Because Jones is a small and frail looking man, Smith (rightly) believes she could defend herself if she stays where she is, and also (wrongly) believes she can outrun Jones. Because Smith has a DTR, and believes she can outrun Jones, turns and tries to run. Jones is actually faster than Smith, and because of this is able to tackle her to the ground, where Smith hits her head and is disoriented. Because Smith is impaired from hitting her head, Jones is able to kill her.

It seems to me that cases like these illustrate how DTR can force an agent to flee and then be harmed because of doing so, when they could have otherwise defended themselves. While DTR seems to have minimization of unnecessary violence in mind, it is potentially costly to the agent because of how restrictive it is. This is to say, DTR is very interested in minimum force, but fails to take into account what minimum amount of force may be necessary to ensure the safety of the agent. It is plausible to assume that there are some circumstances, as illustrated in the above cases, where retreating actually increases the risk to the agent's safety, rather than keeping both the agent and the aggressor safe. In light of this, I think we ought to reject DTR in favor of the less restrictive MNFP, which is still sufficiently restrictive to prevent impermissible uses of force or escalation.

One last issue worth addressing is the name to which we give legislation that does not obligate an agent to attempt to retreat. We may be concerned that "Stand Your Ground," the name itself, encourages a sense of heroism and has the potential to exacerbate the likelihood in which agents might use an impermissible level of force and violate MNFP. I find this worry entirely reasonable, and have no reason to defend the usage of "Stand Your Ground" as a way to refer to such legislation. Perhaps "No Duty To Retreat" might be a

more appropriate way to refer to such a group of laws and avoid a worry that the wording might encourage impermissible behavior.

In summary, I believe that SYGL paired with MNFP is a sound piece of legislation that ought to be implemented nationwide, as it is sufficiently restrictive when properly understood and does not allow for use of excessive force or increase the likelihood that excessive force be used, and it is also not too restrictive and does not increase the likelihood of harm to the agent attempting to defend themselves or flee. On the contrary, I think we ought to see DTRL as too restrictive and demanding on the agent looking to defend themselves, and likely to lead to cases where agents are killed or harmed, who might have otherwise been able to keep themselves safe.

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