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TAKING A STAND?: AN INITIAL ASSESSMENT OF THE SOCIAL AND RACIAL EFFECTS OF RECENT INNOVATIONS IN SELF-DEFENSE LAWS

Mario L. Barnes*

[I]t's time to question laws that senselessly expand the concept of self-defense and sow dangerous conflict in our neighborhoods. These laws try to fix something that was never broken. There has always been a legal defense for using deadly force if—and the “if” is important—no safe retreat is available.¹

INTRODUCTION

Perhaps, not surprisingly, the controversy over the rise of self-defense reforms in the United States that have come to be known as “Stand Your Ground” (SYG) laws,² began with a story about colors. This Article

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1. Eric Holder, Att’y Gen., Address at the NAACP Annual Convention in Orlando, Fla. (July 16, 2013), *available at* <http://www.justice.gov/opa/speech/attorney-general-eric-holder-addresses-naacp-annual-convention>.

2. Stand Your Ground (SYG) has become a popular phrase used to describe reformed self-defense statutes that approve persons perceiving a threat of violence to more liberally respond with state-sanctioned violence. When first proposed, these laws were also referred to in the press as “make my day,” “shoot first,” and “license to kill” laws. *See, e.g.*, Lisa Mahapatra, *Stand Your Ground: 26 U.S. States Have “Shoot First” Laws*, *INT’L BUS. TIMES* (July 18, 2013, 9:21 AM), <http://www.ibtimes.com/stand-your-ground-26-us-states-have-shoot-first-laws-1351127>; Mary Sanchez, *Stand Your Ground Laws a Shaky Basis for Justice*, *KAN. CITY STAR* (June 17, 2013, 10:22 PM), <http://www.kansascity.com/opinion/opn-columns-blogs/mary-sanchez/article321136/Stand-Your-Ground-laws-a-shaky-basis->

principally applies an empirical method and critical race theory (eCRT) lens to explore whether these reformed statutes, which generally have authorized greater use of force within the context of self-defense, deter crime and differentially affect Whites, Blacks, and other racial groups. In an early case that had the potential to severely undermine the success of such law reforms, however, different colors were at issue. In 2004, Florida enacted what would become a blueprint for SYG laws by modifying the Florida criminal code to do away with the common law duty to retreat for those who reasonably believe it is necessary to defend themselves against an imminent use of unlawful force.³ The law reform, which the legislature argued would allow citizens to stand up for themselves in response to violent threat without fear of criminal or civil sanction,⁴ went into effect in 2005. In 2006, an early controversial case involved two very colorfully named individuals. Damon “Red Rock” Darling and Leroy “Yellowman” Larose were involved in a Miami shoot-out that resulted in the death of nine-year-old Sherdavia Jenkins.⁵ Both men had extensive criminal records, and some reports suggested the shooting broke out during the course of an ill-fated drug deal.⁶ Darling claimed, however, that he feared that Larose was going to shoot him, so he drew his gun and began shooting.⁷ Admittedly, these were likely not the victims of violence Florida sought to empower when the law was changed,⁸ but there was a colorable

for-justice.html (“Prior to the spread of these new laws, people were expected to back down, to retreat, if possible. *Shoot First, Stand Your Ground, Make My Day* laws can make it legal to refuse to walk away.” (emphasis added)).

3. See FLA. STAT. § 776.012 (2014). The common law duty required persons confronted with force to withdraw from the encounter if they could do so without endangering themselves. See JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 227–28 (6th ed. 2012) (noting that a “no retreat” rule is now applied in a majority of jurisdictions). The no-retreat rule, which previously was mostly limited to defense of home statutes, now applies every place a person had a lawful right to be. Defense of home statutes, which are commonly referred to as Castle Doctrine statutes, not only provide that home dwellers are not required to retreat from threatened violence, but also may carry a presumption with regard to the reasonableness of one’s fear. See FLA. STAT. § 776.013. For a criticism of this overlooked aspect of Florida’s SYG law reform, see Donna Coker, “*Stand Your Ground*” in Context: Race, Gender and Politics, 68 U. MIAMI L. REV. 943, 944–45 (2014) (noting that, in addition to eliminating the duty to retreat in the self-defense language, the reformed statute included immunity from prosecution for successful SYG claimants, the presumption of reasonableness for those alleging defense of home, and the availability of using deadly force to interdict a forcible felony, whether one was in reasonable fear or not). Remarkably, it appears that the reasonable fear to stand one’s ground could even apply if an initial aggressor were fleeing. See Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 834 (2013) (describing the facts from *Hair v. State*, 17 So. 3d 804 (Fla. Dist. Ct. App. 2009)).

4. See S.B. 4346, 107th Leg., 37th Reg. Sess. (Fla. 2005) (claiming the purpose of the law was to “restore absolute rights of law-abiding people to protect themselves . . . without fear of prosecution or civil action”).

5. David Ovalle, *Girl’s Parents Face Her Accused Killer*, MIAMI HERALD, July 28, 2006, at 1B.

6. David Ovalle, *Sherdavia’s Killer Gets Lesser Charge But Could Face 50 Years*, MIAMI HERALD, Oct. 9, 2009, at 1A.

7. *Id.*

8. See Kris Hundley et al., *Florida ‘Stand Your Ground’ Law Yields Some Shocking Outcomes Depending on How Law Is Applied*, TAMPA BAY TIMES (Feb. 17, 2013),

argument that one or both of them could claim they were standing their ground.⁹

Ultimately, the outcome of the case did not turn on Darling's SYG claim. Instead, a news report at the time indicated: "The six-person jury never agreed which man was acting in self-defense, however, because members couldn't settle on who actually started the gunfight. The jurors did agree that Darling was guilty of manslaughter for recklessly spraying the neighborhood with bullets."¹⁰ This rejection of Darling's claim was likely important for a number of reasons related to the viability of the then-nascent law reform. First, had he been successful in his SYG claim, the statute would have absolved a felon involved in a gunfight, potentially as part of a drug deal, of criminal liability for the killing of an innocent child. Without any further consequences, the optics of that outcome would have been extremely poor. Under Florida law, however, Darling also would have been provided immunity from civil liability.¹¹ While the claim is speculative in nature, it seems at least plausible to assume that the law being used to such an effect, early on, would have had an impact on public sentiment regarding these laws.¹² Moreover, such a result in Florida likely would have slowed the spread of these statutes to other states. Instead, three years after the killing, the jury held Darling criminally responsible for Sherdavia's death. This verdict gave the Jenkins family a measure of

<http://www.tampabay.com/news/publicsafety/crime/florida-stand-your-ground-law-yields-some-shocking-outcomes-depending-on/1233133> (assessing SYG case data and indicating that many who invoke the law have prior violent criminal histories).

9. See Ovalle, *supra* note 6. Darling actually made a motion to assert immunity under SYG, but the defense was rejected by the trial judge and that decision was upheld by an appeals court. See Tonyaa Weathersbee, *How Stand Your Ground Is Killing Black People*, ROANOKE TIMES (Mar. 17, 2014), http://www.roanoke.com/opinion/commentary/weathersbee-how-stand-your-ground-is-killing-black-people/article_d738013c-abcc-11e3-8640-0017a43b2370.html.

10. See Ovalle, *supra* note 6. While the defense claimed Darling was entitled to stand his ground, the prosecution alleged he was engaged in two potential unlawful acts that would exclude him from availing himself of the defense: (1) that he was a felon in possession of a gun, and (2) that the gunfight may have resulted from a botched drug sale. *Id.* The effect of status crimes, such as felons in possession of firearms, however, is now being contested in a SYG jurisdiction. See Marc Freeman, *Stand Your Ground May Be Defense for Felon*, SUN-SENTINEL (July 17, 2014), http://articles.sun-sentinel.com/2014-07-17/news/fl-stand-your-ground-felon-opinion-20140716_1_your-ground-ground-law-felon (noting that an appeals court in Florida's Fourth District reversed its earlier decision disallowing a SYG defense for felon in possession of a firearm and that the Florida Supreme Court has now taken up such a case).

11. See FLA. STAT. § 776.032 (2014) ("A person who uses or threatens to use force as permitted in § 776.012, § 776.013, or § 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer . . .").

12. See Weathersbee, *supra* note 9 (commenting that Sherdavia Jenkins's status as an innocent victim should have been a catalyst for reconsidering or repealing SYG laws). For theories of the connection between legislation and community values, see generally Elizabeth Megale, *A Call for Change: A Contextual-Configurative Analysis of Florida's "Stand Your Ground" Laws*, 68 U. MIAMI L. REV. 1051 (2014).

justice—albeit with a manslaughter rather than murder conviction for Darling—but the finding of guilty and three years that passed between the killing and conviction also may have given the SYG law reform the opportunity it needed to garner support in Florida and expand to other jurisdictions.

Almost immediately after Florida modified its self-defense statute, the United States underwent an SYG revolution, with a considerable number of states enacting similar laws. SYG reforms were not, however, achieved through deliberate or organic processes built upon Florida's successful experience with the reforms. Instead, as is discussed in greater detail below, SYG initiatives were quickly taken up in many states largely because of to the political efforts of the American Legislative Exchange Council (ALEC) and the National Rifle Association (NRA).¹³ Jurisdictions adopted varying elements of Florida's statute. Acknowledged by former Attorney General Holder in the quote that begins this Article, the simplest variant of the law reform did away with the common law duty to retreat for those threatened with violent force. This adoption alone can be more or less dangerous depending on whether the jurisdictions use objective, subjective, or hybrid forms of a reasonableness inquiry to assess a given threat.¹⁴ The more robust variants of the reforms, however, imported Florida's innovation of connecting self-defense claims to justifications related to defending one's home. Historically, many common law jurisdictions have blessed a broader use of force when defending one's home, known as defense of habitation or the "Castle Doctrine."¹⁵ Under

13. See "Stand Your Ground" Laws: *Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 113th Cong. 8 (2013) (statement of Professor Ronald S. Sullivan Jr., Harvard Law School) [hereinafter Sullivan Testimony], available at <http://www.judiciary.senate.gov/imo/media/doc/10-29-13SullivanTestimony.pdf> ("Since 2005, over half the states have now passed laws based in whole or in part on Florida's law and ALEC's model legislation."); Megale, *supra* note 12, at 1079–84; P. Luevonda Ross, *The Transmogrification of Self-Defense by National Rifle Association-Inspired Statutes: From the Doctrine of Retreat to the Right to Stand Your Ground*, 35 S.U. L. REV. 1 (2007); Zachary L. Weaver, *Florida's "Stand Your Ground" Law: The Actual Effects and the Need for Clarification*, 63 U. MIAMI L. REV. 395, 396–97 (2008) (identifying the NRA's role in pushing the law change in Florida and beyond); John Nichols, *How ALEC Took Florida's 'License to Kill' Law National*, NATION (Mar. 21, 2012, 10:57 PM), <http://www.thenation.com/blog/166978/how-alec-took-floridas-license-kill-law-national> (identifying ALEC's role in spreading SYG laws).

14. Many jurisdictions claim to use an objective standard of reasonableness. The Model Penal Code (MPC), by contrast, proposes a subjective standard. See MODEL PENAL CODE § 3.04 (Proposed Official Draft 1962) ("[U]se of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force" (emphasis added)). Some jurisdictions, such as New York, have crafted a hybrid standard that mixes subjective and objective beliefs. See *People v. Goetz*, 497 N.E.2d 41 (N.Y. 1986) (clarifying that, although New York had incorporated the Model Penal Code's subjective self-defense language into its statute, the standard still requires jurors to objectively assess whether a person with the experiences of the defendant would feel as the defendant claims to have felt).

15. The Castle Doctrine incorporates the notion that one's home is one's castle—a place where one should feel safest—and threats to one's home are thought to be extremely

this doctrine, when responding to violence threatened within the home,¹⁶ typically by uninvited non-occupants,¹⁷ one did not have to argue self-defense. Instead, in most circumstances, a homeowner enjoys no duty to retreat and a rebuttable presumption that they have used force appropriately.¹⁸ Florida's defense of home statute, section 776.013 of Florida Statutes, explicitly includes a presumption of reasonableness for violence committed within dwellings and certain occupied vehicles.¹⁹ While the self-defense statute, section 776.012, does not expressly include a presumption of reasonableness, law enforcement practices effectively achieve a similar result by preventing authorities from charging a person with an ostensibly valid SYG claim, as long as the person was in a place they had a lawful right to be and did not engage in unlawful activity.²⁰

The SYG amendments also affected the exercise of prosecutorial discretion in criminal cases where putative defendants claimed they were standing their ground. In many of these cases, prosecutors have struggled to determine whether charges should be brought.²¹ As such, another innovation jurisdictions could borrow from Florida is to effectively transform self-defense in many cases where an SYG defense is alleged,

dangerous to not just property but one's family. Versions of the Castle Doctrine exist in most U.S. jurisdictions. *See* DRESSLER, *supra* note 3, at 228–29.

16. Under the Castle Doctrine, jurisdictions typically address not only uses of violence against those within the home, but those attempting to enter the home as well. *See, e.g.*, *State v. Boyett*, 185 P.3d 355, 361 (N.M. 2008) (holding that defense of habitation instructions were available to a defendant who shot a victim on his front doorstep). *But see* *People v. Brown*, 8 Cal. Rptr. 2d 513, 519 (1992) (determining that a resident has no “reasonable expectation of protection from unauthorized intrusion onto the kind of front porch involved in the case” and, as such, the porch did not constitute entry under CAL. PENAL CODE § 198.5 (the Home Protection Bill of Rights)). Other jurisdictions have expanded the doctrine to include other discrete localities, such as workplaces and motor vehicles. *See, e.g.*, LA. REV. STAT. § 14:20(4)(a) (2014) (establishing Castle Doctrine defense when “inside a dwelling, a place of business, or a motor vehicle”); N.C. GEN. STAT. § 14-51.2(b) (2014) (“The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm . . .”).

17. Even jurisdictions that have expanded the application of their Castle Doctrine statutes exempt the rebuttable presumption of justified violence from applying to residents and other lawful occupants of a dwelling. *See, e.g.*, N.C. GEN. STAT. § 14-51.2(c)(1); TEX. PENAL CODE § 9.31 (2014) (justifying use of force against a person “who unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor’s occupied habitation, vehicle, or place of business or employment”).

18. *See, e.g., Brown*, 8 Cal. Rptr. 2d at 515–16 (noting that the California defense of home statute “creates a rebuttable presumption that a residential occupant has a reasonable fear of death or great bodily injury when he or she uses deadly force against an unlawful and forcible intruder into the residence”).

19. FLA. STAT. § 776.013 (2014); *see also supra* note 3 and accompanying text.

20. *See supra* note 3. Individuals in SYG states, then, may feel as entitled to respond to perceived threats of violence on the streets as they would threats within their homes. In effect, SYG laws create a right for people to move through public spaces feeling as if they are surrounded by “portable castles.” This phrase and apt characterization of SYG were suggested to me by Professor Ira Nathenson.

21. *See* Tamara F. Lawson, *A Fresh Cut in an Old Wound—A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, the Prosecutors’ Discretion, and the Stand Your Ground Law*, 23 U. FLA. J.L. & PUB. POL’Y 271, 284–90 (2012); *see also* Weaver, *supra* note 13, at 406–09.

from an affirmative defense argued during a trial, into a potential bar to criminal prosecution.²² Soon after Florida undertook its law reform, a number of legal scholars began to produce critiques of SYG. The greatest number of these articles substantially focused on the expanded embrace of citizen violence and the questionable wisdom of providing criminal and civil immunity to such behavior.²³ While the majority of this scholarship provides informative commentaries, as described below, this project has a different focus. Relying both upon recent empirical studies and insights from CRT, this Article seeks to empirically and critically investigate the deterrence value²⁴ and potential racialized effects of SYG statutes.

A number of the jurisdictions adopting Florida-like changes to their self-defense statutes mimicked Florida's rationale of removing restraints from potential victims of violence.²⁵ Few, if any, commented on whether the law changes would deter violent crime—a concern that even if it were not the stated goal of a statute, one would imagine would inform criminal law reforms.²⁶ Additionally, no evidence suggests that most adopting states

22. See Jennifer Randolph, *How to Get Away with Murder: Criminal and Civil Immunity Provision in "Stand Your Ground" Legislation*, 44 SETON HALL L. REV. 599, 616–25 (2014). In Florida, where a decision is made to prosecute someone despite facts that may support an SYG claim, the defendant is still entitled to raise SYG as an affirmative defense, but doing so triggers a pretrial hearing on the issue. See Coker, *supra* note 3, at 944 (noting that the availability of the defense is assessed using the “preponderance of evidence standard”); Lawson, *supra* note 21, at 285–97.

23. See Coker, *supra* note 3; Lave, *supra* note 3; Lawson, *supra* note 21; Randolph, *supra* note 22; Weaver, *supra* note 13; see also 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) (refuting the gender violence claim).

24. Deterrence is typically identified as connected to the punishment side of the crime—especially the death penalty—and punishment formulation. See, e.g., Dressler, *supra* note 3, at 11–16; Robert Tanner, *Studies Say Death Penalty Deters Crime*, WASH. POST (June 11, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/11/AR2007061100406.html>. Given, however, that SYG laws may affect violent crime rates by sanctioning violence in a larger number of contexts, deterrence seems like a particularly relevant consideration for actions covered by SYG statutes as well.

25. See Megale, *supra* note 12, at 1081–83; Nichols, *supra* note 13; Matt Gertz, *ALEC Has Pushed the NRA's "Stand Your Ground" Law Across the Nation*, MEDIA MATTERS AM. (Mar. 21, 2012), <http://mediamatters.org/blog/2012/03/21/alec-has-pushed-the-nras-stand-your-ground-law/186459>; Adam Weinstein, *How the NRA and Its Allies Helped Spread a Radical Gun Law Nationwide*, MOTHER JONES (June 7, 2012), <http://www.motherjones.com/politics/2012/06/nra-alec-stand-your-ground>.

26. While at least one commentator indicated that jurisdictions also claimed deterrence as a justification, see Sullivan Testimony, *supra* note 13, at 9 (“Proponents of Stand Your Ground laws often point to public safety and a reduction of crime as evidence of the efficacy of these laws.”), the justification does not appear in media claims discussing the law. One would have expected such a discussion to be prevalent given that the laws were heavily backed by the NRA and were initially opposed by prosecutors and law enforcement. See Weaver, *supra* note 13, at 401–03; Abby Goodnough, *Florida Expands Right to Use Deadly Force in Self Defense*, N.Y. TIMES, Apr. 27, 2005, at A18 (pointing to NRA backing of the laws and quoting the Miami police chief as follows: “Whether it’s trick-or-treaters or kids playing in the yard of someone who doesn’t want them there or some drunk guy stumbling into the wrong house, . . . you’re encouraging people to possibly use deadly physical force where it shouldn’t be used.”); Zachary L. Weaver, *Killing Shows Flaws of NRA-Backed Law*, CNN (Mar. 23, 2012, 5:34 AM), <http://www.cnn.com/2012/03/22/opinion/weaver-florida-law/>.

queried whether enacting SYG reforms could lead to other problematic social and legal consequences,²⁷ such as troubling racialized differences in the application of the statutes. A wealth of empirical and scholarly legal evaluations of criminal justice processes has noted such racial differences.²⁸ One of the claims asserted here, which is informed by a commitment to eCRT principles, is that it is highly advisable for jurisdictions to consider potential racialized consequences prior to making dramatic changes in areas of law where data reflecting significant racial disparities already have been noted.

This Article lays out a preliminary sketch for a more expansive project that will assess many aspects of the operation of SYG laws.²⁹ Given the symposium format and the need to compile more research for the larger project, the arguments advanced here have more modest goals. Primarily, this Article seeks to use the SYG revolution to argue that eCRT's goal of calling for the enhanced and nuanced study of race within the disciplines³⁰ can have a real-world impact on law reform. To my mind, there are at least two basic ways for a legal scholar to "do" eCRT work. First, critical scholars can leverage empirical work to bolster their theoretical, doctrinal, normative, and critical claims about how race matters within legal processes and encounters.³¹ Second, legal scholars, working alone, or with those who are typically better trained in social science methodologies, can design and

27. Ohio is an exception. One Ohio legislator unsuccessfully challenged the SYG reform by citing to evidence of racialized effects. See Jeremy Pelzer, *Ohio House Passes Gun Bill with "Stand Your Ground" Provision After Lengthy Debate*, CLEVELAND.COM (Nov. 12, 2013), http://www.cleveland.com/open/index.ssf/2013/11/ohio_house_passes_gun_bill_wit.html.

28. See *infra* notes 44, 89–91, 101–07107 and accompanying text.

29. In that larger project, I hope both to design and carry out empirical research and include a comparative element to assess the evolution of self-defense in other countries with criminal justice systems emanating from common law traditions.

30. This has been a focal point of the scholarship of the creators and participants within the eCRT movement. See, e.g., Laura E. Gómez, *A Tale of Two Genres: On the Real and Ideal Links Between Law and Society and Critical Race Theory*, in THE BLACKWELL COMPENDIUM TO LAW AND SOCIETY (Austin Sarat ed., 2004); Laura E. Gómez, *Looking for Race in All the Wrong Places*, 46 LAW & SOC'Y REV. 221, 225 (2012) [hereinafter Gómez, *Looking for Race*] (encouraging social legal scholars to do "much more to incorporate race and racism into the core of what we think and write about as law and society scholars"); Osagie K. Obasogie, *Foreword: Critical Race Theory and Empirical Methods*, 3 U.C. IRVINE L. REV. 183, 186 (2013) (providing an overview of the genesis of the eCRT project and stating that a goal of the endeavor was to "identify the challenges and opportunities associated with rethinking race scholarship in a manner that reflected the theoretical orientation put forward by critical race scholarship and also embraced the methodological contributions of social science research"); Osagie K. Obasogie, *Race in Law and Society: A Critique*, in RACE, LAW AND SOCIETY (Ian Haney López ed., 2006).

31. This form of "doing" eCRT, while potentially advantageous, can also be quite fraught. As two prominent CRT scholars have stated in a recent article on discussing the possibilities for collaborations between critics and social scientists, "[s]ocial science research has much to offer critical race theorists, including empirical data and theoretical frameworks that support core CRT ideas. At the same time, we acknowledge that such a collaboration can potentially undermine CRT's core intellectual commitments." Devon W. Carbado & Daria Roithmayr, *Critical Race Theory Meets Social Science*, 10 ANN. REV. LAW. SOC. SCI. 149, 150 (2014).

execute research studies in law.³² While my work has often relied upon the former approach,³³ in the larger project of which this Article is a part, I take initial steps to formulate a design for the research I believe is necessary to fully explicate how SYG laws operate.

This Article, however, principally focuses on three elements of the rise of SYG laws. First, Part I explores justifications for SYG laws by presenting the results of recent empirical studies of the reforms. In particular, Part I presents studies both to assess criminal deterrence justifications for SYG laws and to also query the potential racialized effects produced from the law reforms. Part I then identifies problems with the current studies, whose findings, while empirical, still involve interpretation and are not immune from the blind spots and biases that shape considerations of race in other contexts. This Part ultimately outlines why future research in the area should supplement the studies' predominant use of quantitative data with a tool that has been foundational within CRT—narrative methodology. Exploring SYG case narratives, which may reveal decision making influenced by negative race stereotypes,³⁴ will help crystalize the myriad dangers surrounding states' expansion of violent forms of self-help. While the story of the killing of Sherdavia Jenkins did not become the early catalyst necessary to undo SYG, the story surrounding George Zimmerman's killing of Trayvon Martin—a case like Darling's where the

32. There is, of course, a corollary of this principle for those in the research disciplines, providing that they should consult CRT theories and scholarship to inform how their research projects are designed, carried out, and assessed. See Gómez, *Looking for Race*, *supra* note 30, at 234–41. A nice example of such is studies that have recently looked at intersectionality, a concept that critical race theory cofounder Kimberlé Crenshaw introduced into legal scholarship as a way to discuss law's inability to address how multiple identity traits produce overlapping and reinforcing forms of subordination. See Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 LAW & SOC'Y REV. 991 (2011) (using empirical methods to assess the phenomenon within the employment context); Ange-Marie Hancock, *Empirical Intersectionality: A Tale of Two Approaches*, 3 U.C. IRVINE L. REV. 259, 260 (2013) (asserting that the article's purpose was to “examine[] two contrasting empirical operationalizations of intersectionality theory and suggest[] a series of trade-offs between them, including preservation of theoretical integrity and current litigational utility”).

33. See, e.g., Mario L. Barnes & Robert S. Chang, *Analyzing Stops, Citations, and Searches in Washington and Beyond*, 35 SEATTLE U. L. REV. 673 (2012) (assessing data collected over five years by a team of researchers from Washington State University that examined Washington State Patrol traffic stops, citations, and searches); Mario L. Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2006) [hereinafter Barnes, *Black Women's Stories*] (exploring how socio-legal theories of legal consciousness and narrative are compatible methodologies to explore the treatment of social identity in criminal cases); Angela Onwuachi-Willig & Mario L. Barnes, *By Any Other Name?: On Being “Regarded As” Black, and Why Title VII Should Apply Even If Lakisha and Jamal Are White*, 2005 WIS. L. REV. 1283 (using Bertrand and Mullainathan's résumé research to argue for changes to the reading of Title VII to capture discrimination based on proxies for race); Angela Onwuachi-Willig & Mario L. Barnes, *The Obama Effect: Understanding Emerging Meanings of “Obama” in Anti-Discrimination Law*, 87 IND. L.J. 325 (2012) (using experimental social psychology studies of empowerment to discriminate against Blacks being linked to moral claims related to Whites endorsing President Obama).

34. See *infra* notes 92–97 and accompanying text.

arguments about the defense pervaded the case, but where SYG was not ultimately a supposed deciding factor³⁵—did cause critical attention to be visited upon such statutes. If nothing else, the outcome in the Zimmerman case proves the power of narratives surrounding even single cases to significantly galvanize public sentiment.³⁶

Part II analyzes how we might reformulate public opinion around the advisability of SYG laws. First, Part II suggests that a central takeaway of the SYG revolution should be that, no matter what new research data reveal, further law reform or repeal is likely not possible without mechanisms for political advocacy. Second, Part II attempts to explicate concerns about SYG laws by analyzing how perceptions of dangerousness are operationalized under the statutes across race. Through a thought experiment, this part queries whether support for SYG laws would be as significant if more citizens were in danger of becoming victims of SYG violence caused by incorrect perceptions of who is dangerous. Part II concludes with some thoughts on how the larger project will proceed. At bottom, a goal of both this Article and the larger project is to force all but the irredeemable to see SYG reforms as representing another vein in which we must pose the ostensibly simple question that has too long produced an unsatisfying answer in this country: What is the value of a black life?³⁷

I. ON THE NECESSITY (OR NOT) OF STAND YOUR GROUND

According to a preliminary report for an in-progress American Bar Association (ABA) National Task Force Report, as of August 2014, thirty-

35. While SYG may have been the reason George Zimmerman was not initially charged for killing Trayvon Martin, he did not raise the defense affirmatively in either a pretrial hearing or during his trial. Still others have remarked that SYG was implicated because of the jury instructions, which stated Zimmerman had no duty to retreat. See John Rosenthal, *Stand Your Ground Laws or License to Kill Without a Cause?*, HUFFINGTON POST (Oct. 6, 2013, 5:12 AM), http://www.huffingtonpost.com/john-rosenthal/stand-your-ground-laws_b_3714874.html.

36. The social movement that seeks to confront state-sanctioned violence against black men, which has adopted the motto, “Black Lives Matter,” was created in response to the killing of Trayvon Martin. See Jessica Gynn, *Three Women, Three Words, A New Movement*, USA TODAY, Mar. 5, 2015, at 3B (crediting Alicia Garza with creating the movement through the initiation of the hashtag #BlackLivesMatter); BLACK LIVES MATTER, <http://blacklivesmatter.com/about> (last visited Apr. 23, 2015).

37. Recent events involving police killings of black boys and young men certainly bolster this claim. Michael Brown was killed after an altercation with Officer Darren Wilson in Ferguson, Missouri. See Sandhya Somashekhar & Kimbriell Kelly, *Was Michael Brown Surrendering or Advancing to Attack Officer Darren Wilson?*, WASH. POST (Nov. 29, 2014), http://www.washingtonpost.com/politics/2014/11/29/b99ef7a8-75d3-11e4-a755-e32227229e7b_story.html. Police in Staten Island, New York, killed Eric Garner by administering a chokehold, even as he repeatedly stated that he could not breathe. See J. David Goodman & Al Baker, *New York Officer Facing No Charges in Chokehold Case*, N.Y. TIMES, Dec. 4, 2014, at A1. Twelve-year-old Tamir Rice was killed by a Cleveland police officer as he brandished a toy gun. See Ryllie Danylko, *Cleveland Police Officer Fatally Shoots 12-Year-Old Tamir Rice: The Big Story*, CLEVELAND PLAIN DEALER (Nov. 25, 2014), http://www.cleveland.com/metro/index.ssf/2014/11/cleveland_police_officer_fatal.html.

three states had some version of an SYG law in place.³⁸ Florida's law, however, only might have had a regional impact if not for the efforts of the ALEC and the NRA. After the passing of Florida's law, which was led by lawmakers with ties to ALEC,³⁹ the two organizations worked together to create model legislation to facilitate the law being adopted more broadly.⁴⁰ They provided text that was almost identical to the Florida statute, including borrowing Florida's rationale for the law: "no person or victim of crime should be required to surrender his or her personal safety to a criminal nor should a person or victim of crime be required to needlessly retreat in the face of intrusion or attack."⁴¹ At least two key inquiries, discussed below, were absent from the processes that produced these laws.

First, despite what one might expect prior to changes to criminal statutes, very few adopting states justified the law reforms based on benefits for deterring crime—a principal justification for criminal punishment. Like Florida, many adopters premised their law reform on protecting citizens' decisions to violently respond to perceived threats outside of their homes. As will be explored in the larger project, this goal arguably seems more connected to privileging personal autonomy, providing certain citizens dominion over larger swaths of public space⁴² and encouraging certain types of masculine gender performance.⁴³ Instead of mimicking Florida's anti-cowardice motive, responsible states should have at least considered

38. See ABA, NATIONAL TASK FORCE ON STAND YOUR GROUND LAWS, PRELIMINARY REPORT AND RECOMMENDATIONS 19 (2014) [hereinafter ABA SYG TASK FORCE REPORT].

39. See Lave, *supra* note 3, at 836–39; Nichols, *supra* note 13 (discussing the role of Florida state Representative Dennis Baxley and state Senator Durell Peadon in passing the SYG legislation and noting that "Baxley and Peadon worked closely with NRA lobbyist Marion Hammer to pass the Florida law Baxley and Peadon served in the Florida House and Senate as active members of the American Legislative Exchange Council (ALEC), the shadowy Koch brothers-funded network that brings together right-wing legislators with corporate interests and pressure groups to craft so-called 'model legislation'").

40. See Nichols, *supra* note 13.

41. See Gertz, *supra* note 25.

42. In essence, the anti-cowardice justification for SYG may represent an effort to mark who, by law, should be endowed with authority, rights, and privileges in and over certain spaces. As a comparative example, Australian scholar Ghassan Hage identifies a similar phenomenon where Whites in Australia understand themselves as "masters of national space" and "enactors" of law, but where "ethnics" (immigrants) are considered "objects to be governed." GHASSAN HAGE, WHITE NATION 16–17 (2000). Socio-legal scholar Kitty Calavita has previously applied this work to analyzing the interrelation of white, minority, and immigrant identities within the United States. See KITTY CALAVITA, INVITATION TO LAW AND SOCIETY: AN INTRODUCTION TO THE STUDY OF REAL LAW 70–72 (2010); Kitty Calavita, *Immigration Law, Race, and Identity*, 3 ANN. REV. L. SOC. SCI. 1 (2007). I thank Professor Geoff Ward for bringing this work to my attention.

43. The law reform then serves to legally sanction violence that results from hyper-masculinized gender performance. See, e.g., Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2009); Angela P. Harris, *Gender Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 790–92 (2000). Another scholar has referred to this phenomenon as "institutionalized hegemonic violence." Jamie R. Abrams, *The Collateral Consequences of Masculinizing Violence*, 16 WM. & MARY J. WOMEN & L. 703 (2010). I thank Tulane Law professors Pam Metzger and Saru Matambanadzo for raising this point.

relevant data with regard to rates of violent crime within their jurisdictions and how SYG reforms could be expected to lower those rates. Second, there was no robust discussion of trends and issues with self-defense statutes more generally that could be exacerbated by SYG reforms. As it does within nearly every component of the criminal justice system, race matters for self-defense statutes. At least since the pathbreaking Baldus study⁴⁴—which the U.S. Supreme Court ultimately dismissed as proof of correlation rather than causation⁴⁵—we have understood that races of the perpetrators and victims matter to juries when assessing punishment for death-eligible defendants. While SYG laws are not punishment reforms, they do involve legal determinations about when uses of force are justified. Moreover, post-Baldus, there has been excellent scholarship examining the operation of race within the context of self-defense laws, especially studies explicating how race bias informs subjective perceptions about which people are dangerous and when it is reasonable to respond with force.⁴⁶ Given that SYG blesses a greater use of force where one perceives a threat, one would have imagined that these relevant literatures on race and self-defense would also have been consulted prior to law reform. In fact, some states are now considering such evidence as a part of their legislative processes. For example, in Oregon, Connecticut, and Iowa, prior to enacting legislative changes to criminal laws, lawmakers must review racial impact statements.⁴⁷ Minnesota lawmakers observe a similar practice, although it is not required by state law.⁴⁸

Although crime control data and potential racialized effects were not considered prior to the SYG revolution, some initial data of this kind are presented below to (1) suggest potential justifications for reforming SYG statutes, and (2) identify the type of studies that can be used in the future to enhance legislative decision making prior to significant law changes of this kind.

A. *Examining the Empirical Data Thus Far*

As a starting point for assessing the advisability and effectiveness of SYG statutes, a group of recent empirical studies of the law reforms are next considered. First, these studies are analyzed for their findings on whether SYG laws deter violence. While the outcomes are disparate, these studies are particularly important for the larger project moving forward because they present a range of methods being applied to varied data sources pertaining to violent crime rates. Second, these studies are reviewed

44. See DAVID C. BALDUS ET AL., *EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS* (1990).

45. See *McCleskey v. Kemp*, 481 U.S. 279, 312–13 (1987).

46. See *infra* notes 91–96 and accompanying text.

47. See Maggie Clark, *Should More States Require Racial Impact Statements for New Laws?*, STATELINE (July 30, 2013), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/07/30/should-more-states-require-racial-impact-statements-for-new-laws>.

48. *Id.*

for conclusions about whether SYG laws produce problematic racialized effects. These findings, which principally consider how victim selection affects whether one is determined to be justified in using violence, however, are considered within a larger body of empirical and critical work evaluating connections between identity and claims of self-defense. The goal of this broader conversation is to facilitate an understanding of how members of certain racial groups are much more likely to be perceived as violent, and as such, more likely to become victims of state-sanctioned violence under SYG.

1. The Conflicted Data on Crime Deterrence

At this point, very few studies have located a deterrent effect of SYG laws, but the laws have not been summarily debunked as ineffective. While deterring crime was not the initial stated goal of most of the SYG reforms, criminal deterrence is a useful way to measure the effectiveness of such laws. We are early in the genesis of such studies, which may help to explain why the data are currently conflicted. John Lott, author of *More Guns, Less Crime*,⁴⁹ is an advocate for SYG Laws. While his manuscript has been significantly criticized for its methods by some within the research community,⁵⁰ his research has touted the positive effects on crime control of conceal and carry laws.⁵¹ In recent editions of the text and public testimony, however, he has also addressed the benefits of SYG laws. He has been highly critical of the recent work by researchers who found that SYG laws have no or negative effects on crime control and has claimed that the racialized effects of the reformed statutes benefit Blacks.⁵²

Currently, only a study by Yue Yu has found a similar positive effect on crime deterrence. Yu's research also does not involve the contested methods or data used by Lott. Her results, however, are recent, conflict with the results of other studies described below, and have yet to be vetted by other researchers. Using "synthetic matching" and "difference in difference (DID) identification strategy," she evaluated crime rates in

49. JOHN R. LOTT, JR., *MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN CONTROL LAWS* (2d ed. 2000).

50. For example, Yale Law Professor Ian Ayres and Stanford Economics and Law Professor John Donohue III have significantly criticized the text. See Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 STAN. L. REV. 1193 (2003); see also John Donohue III et al., *Substance Vs. Sideshows in the More Guns, Less Crime Debate: A Comment on Moody, Lott, and Marvell*, 10 ECON. J. WATCH 32 (2013).

51. See, e.g., LOTT, *supra* note 49, at 51–54; John R. Lott Jr. & David B. Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns*, 26 J. LEGAL STUDIES 1, 64 (1997).

52. See "Stand Your Ground" Laws: *Civil Rights and Public Safety Implications of the Expanded Use of Deadly Force: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 113th Cong. 3–7 (2013) (statement of John Lott, President, Crime Prevention Research Ctr.), available at <http://www.judiciary.senate.gov/imo/media/doc/10-29-13LottTestimony.pdf>.

certain selected U.S. counties between 1995 and 2010.⁵³ She claimed to find the following:

The results showed that the SYG Law had a positive significant effect on the decrease in the violent crime rate; indicating that the SYG Law caused a decrease in the violent crime rate of around 3.5%. The result was derived after controlling for relevant variables such as youth percentage, sex ratio, race structure, unemployment rate, and the county and year fixed effects.⁵⁴

Yu, however, was measured in assigning meaning to this data, claiming the following confirming work must be done.

First, research is needed to identify the characteristics of counties that are more likely to be affected by the SYG law. Second, replication of the current study using other software packages to perform synthetic matching is important. Third, future analysis should use all of the counties to generate more reliable results.⁵⁵

Other than Lott and Yu, researchers have either located an ambiguous or negative effect of SYG laws on criminal deterrence. Yu used the work of Texas A&M economists Cheng Cheng and Mark Hoekstra as a starting point for her study, but characterized their results as ambiguous.⁵⁶ Cheng and Hoekstra's report of their data comparing within-jurisdiction variations in self-defense laws found that SYG laws do not appear to deter crimes such as burglary, robbery, or aggravated assault, and by contrast, they result in a statistically significant 8 percent net increase in the number of reported murders and non-negligent manslaughters.⁵⁷ In an unpublished work, independent researcher Howard Ross Nemerov claims of the Cheng and Hoekstra research that "there are a number of errors, assumptions, and miscalculations in their research that justify revisiting the question of whether or not Castle Doctrine laws have any impact on crime."⁵⁸ Other researchers, however, generally have supported Cheng and Hoekstra's claims. For example, using monthly reports of U.S. vital statistics of firearm-related homicide victimization and applying the "difference in difference" approach, Georgia State researchers Chandler McClellan and Erdal Tekin also found that SYG laws were associated with increased

53. Yue Yu, *Deterrence Effect of Stand Your Ground Law on Crime in Eastern US States*, 42 ATLANTIC ECON. J. 119 (2014).

54. *Id.* at 120.

55. *Id.*

56. *Id.* at 119.

57. Cheng Cheng & Mark Hoekstra, *Does Strengthening Self-Defense Law Deter Crime or Escalate Violence? Evidence from Expansions to Castle Doctrine*, 48 J. HUM. RESOURCES 821-53 (2013) (using FBI Uniform Crime Reporting data for fifty states from 2000 to 2010, and applying varied methods, to include difference in difference (DID) for SYG and non-SYG jurisdictions, introducing distributions of placebo effects, and adding control changes for factors such as economic conditions, welfare spending, and policing intensity).

58. See Howard Ross Nemerov, *Do Castle Doctrine Laws Impact Violent Crime?* 1 (Dec. 2012) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2189392.

homicides.⁵⁹ In an unpublished study of SYG in Florida, using Centers for Disease Control and Prevention vital statistics data and a method referred to as synthetic control—which allows the researchers to mimic what the change to crime rates would have been in the absence of the SYG law changes—researchers Abdul Munasib and Mouhcine Guettabi found that the law reform led to an increase in gun deaths but did not have a significant impact on violent crimes.⁶⁰ While there have not been enough studies that have conducted multiple assessments using similar data and methods as those claiming that SYG is counterproductive to reducing crime, the narrative that has emerged in media reports of these studies is that SYG laws increase homicides.⁶¹

2. Empirical Proof of the Costs of Blackness Within Self-Defense Law

a. *Racialized Effects of Stand Your Ground Laws?*

While the crime control research provides critical data for assessing the advisability of SYG reforms, another issue with these laws relates to their potentially racially disparate application. Along with coauthors, I have previously written that in our now ostensibly “post-race” world, it is difficult to convince people that disparate racial outcomes arise out the operation of commonplace (rather than aberrant) animus or societal structures.⁶² Still, in keeping with the goals of eCRT, it is important to note that studies have determined that when we ignore the ways that race

59. Chandler McClellan & Erdal Tekin, *Stand Your Ground Laws, Homicides, and Injuries 2* (Nat'l Bureau Econ. Research, Working Paper No. 18187, 2012), available at <http://www.nber.org/papers/w18187.pdf> (data were from 2000 to 2009, and the study controlled for characteristics such as state racial composition, age distribution, urban population, unemployment, and poverty).

60. Abdul Munasib & Mouhcine Guettabi, *Florida Stand Your Ground Law and Crime: Did It Make Floridians More Trigger Happy?* 1 (Aug. 23, 2013) (unpublished manuscript), available at <http://ssrn.com/abstract=2315295> (considering data from 2000 to 2010). At least one researcher has claimed that this synthetic control method may be superior to regression methodology for assessing the effects of SYG laws. See Anton Strezhney, *Some More Evidence That Florida's 'Stand Your Ground' Law Increased Firearm Homicide Rates*, CAUSAL LOOP (July 16, 2013), <http://causalloop.blogspot.com/2013/07/some-more-evidence-that-floridas-stand.html> (describing his own study, which used synthetic control methodology to determine that between 2006 and 2010 Florida experienced 1 to 1.5 more homicides per 100,000 due to the SYG law change, and stating that “[w]hile parametric regression is an ubiquitous and powerful tool for causal inference, it is a very model-dependent approach. This can sometimes lead to misleading conclusions when the model gets too far away from the data”).

61. See, e.g., Marc Fisher & Dan Eggen, *'Stand Your Ground' Laws Coincide with Jump in Justifiable-Homicide Cases*, WASH. POST (Apr. 7, 2012), http://www.washingtonpost.com/national/stand-your-ground-laws-coincide-with-jump-in-justifiable-homicide-cases/2012/04/07/gIQAS2v51S_story.html. This is also a central finding of the ABA Stand Your Ground Task Force. See ABA SYG TASK FORCE REPORT, *supra* note 38, at 10–11.

62. See Mario L. Barnes, Erwin Chemerinsky & Trina Jones, *A Post-Race Equal Protection?*, 98 GEO. L.J. 967 (2010). Others have made similar claims regarding post-racial claims masking racially motivated actions and outcomes. See IAN HANEY LOPEZ, *DOG WHISTLE POLITICS* (2013).

explicitly matters within processes, bias wins out.⁶³ I suggest that evidence of how race shapes the experience of individuals within society and the justice system, more generally, should caution lawmakers from enacting underanalyzed reforms within the criminal law. In this section, I present a snapshot of the types of evidence to which I refer. First, however, I will present the current data regarding how race appears to matter within SYG jurisdictions.

Perhaps the study that has done the most to test the early racialized effects of SYG was conducted by John Roman, a senior policy fellow at the Urban Institute. In recent research using FBI Supplementary Homicide Report (SHR) data from 2005 to 2010, he found that homicides with a white perpetrator and a black victim are nearly ten times more likely to be ruled justified compared to cases with a black perpetrator and a white victim.⁶⁴ This gap grows in SYG jurisdictions.⁶⁵ Moreover, cases with a white perpetrator and a black victim are 281 percent more likely to be ruled justified than cases with a white perpetrator and white victim.⁶⁶ There were two other interesting points pertaining to the race of the perpetrator/victim in Roman's research for SYG jurisdictions: black on white homicides were barely half as likely as white on white homicides to be ruled justified, and black on black homicides statistically have the same chance of being ruled justified as white on white homicides.⁶⁷ As part of a PBS report on SYG laws, Roman also compared 43,500 justified homicides between SYG and non-SYG states and found similar racial disparities.⁶⁸

Other racial data has been more conflicted. In the McClellan and Tekin research referenced above, the researchers found that SYG laws lead to increased homicides among white males but not black males.⁶⁹ Oddly, however, in a part of their research that looked at emergency room visits rather than deaths, they found a very different racialized effect. In SYG jurisdictions, for white men there was a nearly 20 percent increase in the frequency of gun-related injuries that resulted in emergency room visits.⁷⁰

63. See, e.g., Michael I. Norton et al., *Color Blindness and Interracial Interaction: Playing the Political Correctness Game*, 17 PSYCHOL. SCI. 949 (2006) (discussing studies revealing that efforts by Whites to be perceived as colorblind have a negative impact on black-white interactive exercises); Victoria Plaut, *3 Myths Plus a Few Best Practices for Achieving Diversity*, SCI. AM. (Sept. 16, 2014), <http://www.scientificamerican.com/article/3-myths-plus-a-few-best-practices-for-achieving-diversity> (presenting studies in which colorblind approaches increased racial tensions rather than reducing implicit bias).

64. JOHN K. ROMAN, URBAN INST., RACE, JUSTIFIABLE HOMICIDE, AND STAND YOUR GROUND LAWS: ANALYSIS OF FBI SUPPLEMENTARY HOMICIDE REPORT DATA 7 tbl.2 (2013), available at <http://www.urban.org/uploadedpdf/412873-stand-your-ground.pdf>.

65. See *id.* at 6–7 & tbl.2.

66. *Id.* at 9.

67. *Id.*

68. See Sarah Childress, *Is There Racial Bias in "Stand Your Ground" Laws?*, PBS FRONTLINE (July 31, 2012, 12:40 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws>. In the PBS data, in non-SYG states, Whites who kill Blacks are 250 percent more likely to be found justified than Whites who kill Whites; in SYG states that number jumps to 354 percent. See *id.*

69. McClellan & Tekin, *supra* note 59, at 7.

70. *Id.* at 30.

For black women, however, the increase was roughly 60 percent.⁷¹ The authors had no real explanation for this anomaly.⁷²

As Florida is ground zero for SYG reform, a robust empirical assessment of SYG laws, to include race effects, would be very important data. Unfortunately, the best data with regard to race and SYG in Florida are quite insightful, but they are neither scholarly in nature nor strongly empirical. Still, the data, which were compiled in investigative reports by two sets of *Tampa Bay Times* writers, are helpful to review based upon the comprehensive picture they paint.⁷³ Looking at all identifiable SYG cases in Florida at the times their reports were completed, the authors describe two phenomena. In the first report, the authors found that a large number of people who successfully invoked SYG had histories of violence, with more than 60 percent of them having been arrested at least once prior to the time they killed someone and invoked SYG.⁷⁴ The second report indicated that success with invoking SYG was connected to the race of the victim. With regard to the cases reviewed, the authors wrote:

A *Tampa Bay Times* analysis of nearly 200 cases—the first to examine the role of race in “stand your ground”—found that people who killed a black person walked free 73 percent of the time, while those who killed a white person went free 59 percent of the time.⁷⁵

With regard to perpetrators, however, Blacks fared slightly better than Whites under SYG: “Overall, black defendants went free 66 percent of the time in fatal cases compared to 61 percent for white defendants—a

71. *Id.*

72. *Id.* at 30 n.40 (acknowledging that this substantial increase in injuries among black women is consistent with the hypothesis that SYG laws lead to more violence, especially for this group, but is inconsistent with the authors’ analysis of SYG’s effects on homicides).

73. Kameel Stanley & Connie Humburg, *Many Killers Who Go Free with Florida ‘Stand Your Ground’ Law Have History of Violence*, TAMPA BAY TIMES (July 21, 2012, 4:30 AM), <http://www.tampabay.com/news/courts/criminal/many-killers-who-go-free-with-florida-stand-your-ground-law-have-history/1241378>. More recently, there has been an empirically focused preliminary report that builds upon the *Tampa Bay Times* research in Florida. Looking at 307 SYG cases, the report seeks to tabulate “various aspects, variables, and factors associated with Florida’s Stand Your Ground law and its enforcement,” but fails to consider the impact of race. See Albert E. McCormick Jr., *The Enforcement of Florida’s ‘Stand Your Ground’ Law: Preliminary Findings*, 6 J. PUB. & PROF. SOC. 1, 22–24 (2014). The report cautions that the findings must be tempered because of the secondary nature of the media sources used to identify SYG cases. See *id.* at 2.

74. Stanley & Humburg, *supra* note 73.

75. Susan Taylor Martin, Kris Hundley & Connie Humburg, *Race Plays Complex Role in Florida ‘Stand Your Ground’ Law*, TAMPA BAY TIMES (June 2, 2012, 1:00 PM), <http://www.tampabay.com/news/courts/criminal/race-plays-complex-role-in-floridas-stand-your-ground-law/1233152>. The report appropriately indicated that the number of cases reviewed could not support causation claims and also included interesting insights such as charges were often not filed in mixed race cases, and that while black victims were more often carrying weapons when killed, there were also “many cases where people went free after killing a black victim under questionable circumstances.” *Id.*

difference explained, in part, by the fact blacks were more likely to kill another black.”⁷⁶

The findings of the *Tampa Bay Times* reports are troublesome for a number of reasons. First, they suggest that the population primarily seeking to benefit from SYG is not the innocent victims legislatures were ostensibly attempting to empower. Second, both the *Tampa Bay Times* reports and John Roman’s research continue to demonstrate how black and white lives are differentially valued in this country.⁷⁷ Finally, *Tampa Bay Times* data portend an anomaly that few researchers have cogently articulated: because most violence is historically intra- rather than interracial,⁷⁸ if one controls for other discriminatory practices within the criminal justice system, SYG should tend to favor black killers over time.⁷⁹ This is so for the unfortunate reason that victims of black offenders more often will be black. To be more specific, and perhaps as Trayvon Martin demonstrated, young black men are likely to be the most vulnerable and least vindicated of victims.⁸⁰ While one could argue about the systemic benefits to Blacks of this unfortunate happenstance, to do so would seem to at least implicitly accept the diminished value assigned to black lives.

76. *Id.* The *Tampa Bay Times* report also tracked cases for Hispanic victims, but indicated such victims only made up seven percent of the cases and acknowledged that police may have misidentified some Hispanic victims as black or white. *Id.*

77. See *supra* notes 64–68. This difference in valuing black and white lives has been demonstrated in other studies. In addition to the Baldus study—which analyzed death penalty sentences—a similar phenomenon was seen in a study of vehicular homicide cases. See Edward Glaeser & Bruce Sacerdote, *The Determinants of Punishment: Deterrence, Incapacitation and Vengeance* (Harvard Inst. of Econ. Research, Discussion Paper No. 1894, Apr. 2000), available at http://scholar.harvard.edu/files/glaeser/files/the_determinants_of_punishment_deterrence_incapacitation_and_vengeance.pdf. In a study of drivers who accidentally killed others, drivers who killed women received sentences that were 56 percent longer, while drivers who killed Blacks received sentences that were 53 percent shorter. *Id.* at 1.

78. See ALEXIA COOPER & ERICA SMITH, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008, at 11–12 (2011), available at <http://www.bjs.gov/content/pub/pdf/htus8008.pdf>. The data indicated that between the years of 1980–2008, Blacks were disproportionately represented among victims and offenders and 93 percent of black victims were killed by black offenders. *Id.*; see also Patrik Johnson, *Racial Bias and ‘Stand Your Ground’ Laws: What the Data Show*, CHRISTIAN SCI. MONITOR (Aug. 6, 2013), <http://www.csmonitor.com/USA/Justice/2013/0806/Racial-bias-and-stand-your-ground-laws-what-the-data-show> (“While blacks represent 12 percent of the US population, they make up 55 percent of its homicide victims, the vast majority of those perpetrated by other blacks.”).

79. See *supra* notes 76–77. I thank Georgetown Law Professor Paul Butler for pushing me to address this aspect of the SYG data. Others have similarly claimed that SYG statutes are good for women who will be sanctioned to use greater force when fighting off sexual violence. See Coker, *supra* note 3, at 949 (stating but not advocating this point); cf. Franks, *supra* note 23, at 1116.

80. See Vickie M. Mays et al., *Using the Science of Psychology to Target Perpetrators of Racism and Race-Based Discrimination for Intervention Efforts: Preventing Another Trayvon Martin Tragedy*, 5 J. SOC. ACTION COUNS. PSYCHOL. 11, 19 (2013). Additionally, irrespective of socioeconomic class, studies have shown that black and Latino boys are exposed to more violence. See Julie L. Crouch et al., *Income, Race/Ethnicity, and Exposure to Violence in Youth: Results from the National Survey of Adolescents*, 28 J. COMM. PSYCHOL. 625, 632 (2000).

While these early studies are starting to fill in needed data on the operation of race in SYG jurisdictions, currently the results are inconclusive. Depending on which study or report one reads, with regard to SYG, race either matters not at all,⁸¹ in counter-normative ways,⁸² or precisely in the way one might imagine given the disproportionately negative consequences that typically attach to race in the criminal justice system.⁸³ Reconciling this uneven landscape of how race matters within SYG jurisdictions, or who has “standing” to stand their ground, will be a part of my larger project. As I have attempted to demonstrate here, the research needed to explicate the role of race in SYG jurisdictions must pay close attention to the effects of both the myriad sources of data on violent crimes and the plural methodologies selected to assess them. The goal is not to “cherry pick” the research most helpful to a CRT focus.⁸⁴ Rather, scholars engaged in eCRT work need to fully understand both the interrelation of the studies and what they portend, as a group, if they wish to appropriately contextualize their critical legal analysis. While this undertaking is vital, I recently have been reminded that whatever the research ultimately reveals regarding the connection between SYG laws and race, it is certainly the case that undoing the SYG law reform would not necessarily remove racially disparate results from claims of self-defense.⁸⁵

b. Studying the Meaning of Race to Self-Defense More Broadly

This data described above are crucial for a number of reasons. First, beyond the facts that intra-racial murder rates are higher, African

81. See Yu, *supra* note 53 (using a control group in her study that considered the effects of racial categories but reporting no findings in the study).

82. See *supra* notes 53, 78 (describing claims based on the Florida data that SYG benefits Blacks), 71–74 (finding that SYG laws created significant negative effects for the homicide rate for white men and gun-related injury rates for white men and black women).

83. See *supra* notes 64–66, 73 (detailing the how SYG laws create significant negative outcomes for black victims). One of the goals of the larger project is to expand the consideration of the effects of race in SYG research so that it more meaningfully includes the study of a greater number of groups and is not so heavily focused on comparisons between Blacks and Whites. For a critique that race studies too often become fixated on a black/white binary paradigm, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 CALIF. L. REV. 1213 (1997).

84. See Carbado & Roithmayr, *supra* note 31, at 162.

85. As the U.S. Supreme Court in *McCleskey v. Kemp*, 481 U.S. 279 (1987), opined, one of the issues of trying to correct racially disparate results in the criminal justice system is that they permeate every juncture of the system. *Id.* at 312. I thank Duke University Sociology Professor Eduardo Bonilla-Silva for pressing me to address this point. Professor Aya Gruber has recently emphasized that irrespective of the SYG law reforms that racial disparity in the criminal justice system exists largely because of the operation of discretion. See Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 965 (2014) (“It is thus possible that repealing stand your ground will increase Florida murder convictions generally, but leave untouched, or possibly even exacerbate, racial disparities.” (citation omitted)). For powerful and formative work on the connection between discretion and racially disparate outcomes within the criminal justice system, see ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* (2007).

Americans are disproportionately more often victims of violent crime.⁸⁶ Second, poor communities where people of color disproportionately reside are plagued with greater rates of violence.⁸⁷ Third, men and women of color are more likely to be perceived as dangerous and threatening, even when engaging in ambiguous or nonviolent conduct.⁸⁸ Critical race scholars would insist that this lived experience should be accounted for when jurisdictions consider measures that authorize state-sanctioned violence in a greater number of contexts. As a shaping influence, eCRT advocates and studies need to supply work that translates these experiences into actionable data.

Thus, social psychology studies that focus more broadly on the experience of minorities within the criminal justice system form an essential element to fully explicating how SYG laws work. As mentioned above, the Baldus study was an early example of how the races of the perpetrator and victims can lead to differential punishment, even under circumstances where no intentional racism or bias are identified.⁸⁹ Recent MacArthur “Genius Grant” recipient and Stanford law and psychology professor Jennifer Eberhardt has done consistently excellent work seeking to answer such questions.⁹⁰ One recent report by Professor Eberhardt and her colleagues has sought to explain the relevance of the social psychological studies that contain germane lessons for interracial SYG ground encounters. Specifically, the report articulates how the implicit forms of racial bias we see in other portions of the criminal justice system are operationalized within the SYG context.⁹¹ For example, numerous

86. See *supra* note 78. I consider this data point to be an example of what University of Southern California Law Professor Jody Armour has described as the black tax—“the price Black people pay in their encounters with Whites (and some Blacks) because of Black stereotypes.” JODY DAVID ARMOUR, *NEGROPHOBIA AND REASONABLE RACISM: THE HIDDEN COSTS OF BEING BLACK IN AMERICA* 13 (1997).

87. This phenomenon appears to be true globally as well as domestically. See Kira Zalan, *How Violence Perpetuates Poverty: The Struggle to Get Out of Poverty Is Relentlessly Undermined by Violence*, U.S. NEWS & WORLD REP. (Mar. 14, 2014, 6:00 PM), <http://www.usnews.com/opinion/articles/2014/03/14/how-violence-perpetuates-poverty>.

88. For example, in a now widely known study using University of California Irvine undergraduates, white observers perceived slight and “ambiguous” shoves as more violent when performed by Blacks. See Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCHOL. 590, 595–96 (1976).

89. See David C. Baldus, Charles Pulaski & George Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. CRIM. L. & CRIMINOLOGY 661 (1983).

90. See, e.g., R. Rick Banks, Jennifer Eberhardt & Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CALIF. L. REV. 1169 (2006); Jennifer Eberhardt, *Imaging Race*, 60 AM. PSYCHOL. 181 (2005) (reviewing neuroimaging studies related to race); Jennifer Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Death Penalty Outcomes*, 17 PSYCHOL. SCI. 383 (2006) [hereinafter Eberhardt et al., *Looking Deathworthy*]; Jennifer Eberhardt et al., *Seeing Black: Race, Crime and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004) [hereinafter Eberhardt et al., *Seeing Black*].

91. See ABA SYG TASK FORCE REPORT, *supra* note 38, at 30.

studies finding that Blacks are thought to be more criminal,⁹² threatening,⁹³ and violent,⁹⁴ explain why Blacks would be more likely to be victims under statutes where a perception of threat supplies the justification for using force.⁹⁵ Of course, the perception of threat is also germane for standard self-defense claims. SYG becomes more dangerous because it authorizes greater uses of force in a larger set of contexts. A helpful overview of many studies that look at the role of race in assessing threat is supplied in the ABA Task Force report.⁹⁶

Empirical assessments are not the only ones that are germane to explicating the meaning of race within self-defense doctrines. A number of legal scholars have sought to identify the myriad and sophisticated ways that race shapes outcomes within the context of criminal law. For example, at the same time Baldus was examining racial differences in death penalty rates, University of Hawaii Law Professor Charles Lawrence, relying on insights from social science wrote the germinal CRT article, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*.⁹⁷ There,

92. For excellent overviews of the longstanding hyper-criminalization of Blacks in the United States, which has roots in post-emancipation practices and continues through today's drug enforcement policies, see MICHELE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); WILLIAM STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (2011); MICHAEL TONRY, *PUNISHING RACE: CONTINUING AMERICAN DILEMMA* 6–9 (2012). These broad claims are backed by results from more discrete empirical studies of race and crime. See, e.g., Eberhardt et al., *Seeing Black*, *supra* note 90, at 888 (finding that, when asked, "Who looks criminal?," police officers identified Blacks more often than Whites); *id.* at 879–80 (finding that subjects were able to discern degraded visuals of weapons more quickly when they were associated with a black face); Anthony G. Greenwald et al., *Targets of Discrimination: Effects of Race on Responses to Weapons Holders*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 399, 403 (2003) (finding that subjects were response-biased, providing weapon-appropriate responses more readily to Blacks than Whites); Barbara Watson et al., *Drug Use and African Americans: Myth Versus Reality*, 40 J. ALCOHOL & DRUG EDUC. 19 (1995) (finding that respondents, including police officers, identified Blacks over 95 percent of the time when they were asked who is the typical illicit drug user).

93. See Joshua Correl et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1320 (2002) (examining policy and community-member race-based responses to potentially threatening people and finding a "shooter's bias" where putative black perpetrators are shot more quickly and frequently).

94. See Duncan, *supra* note 88. Interestingly, the study results finding that Blacks are perceived as more violent were reproduced with sixth grade subjects. See Andrew Sagar & Janet Schofield, *Racial and Behavioral Cues in Black and White Children's Perceptions of Ambiguously Aggressive Acts*, 39 J. PERSONALITY & SOC. PSYCHOL. 590 (1980).

95. Stereotypes associating Blacks and crime are so strong that studies have found subjects may change previously assigned racial classifications when primed with race-specific stereotypes. See generally Aliya Saperstein & Andrew M. Penner, *Racial Fluidity and Inequality in the United States*, 118 AM. J. SOC. 676 (2012) (finding that, when identified as unemployed, jailed, or receiving government assistance, racially ambiguous individuals are more likely to be identified as black, even if they were not previously identified as black).

96. ABA SYG TASK FORCE REPORT, *supra* note 38.

97. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) [hereinafter Lawrence, *The Id, the Ego, and Equal Protection*]. More recently, Professor Lawrence has commented on his original article and the body of unconscious bias research that has arisen in its wake. See Charles R.

he provided a devastating critique of legal standards requiring that remediable racial bias could only be proven through intent or purpose.⁹⁸ *McCleskey v. Kemp*,⁹⁹ the Supreme Court opinion which dismissed Baldus's work as only reflecting a correlation,¹⁰⁰ was such a case in the criminal law area. Since Professor Lawrence wrote his article, there have been many scholarly articles that have more generally considered how processes such as implicit bias factor into policing and other criminal justice processes.¹⁰¹ Jody Armour's work on self-defense and reasonable racism was a strong early entrant in this area.¹⁰² More recently, UC Irvine Law professor Song Richardson's work, alone, and with social scientists, has made a meaningful contribution. For example, her work on arrest efficiency or "hit rates" for police stops, which borrows from theories of implicit social cognition, is an example of work challenging unconscious bias in policing.¹⁰³ Additionally, her work with UCLA social psychologist Phillip Goff has been instrumental in articulating how unconscious processes can lead to mistaken beliefs about criminality, a concept they define as the "suspicion heuristic."¹⁰⁴ With regard to the operation of this heuristic, the authors identify how the heuristic disadvantages Blacks, who "serve as our mental prototype (i.e. stereotype) for the violent street criminal."¹⁰⁵

Within the self-defense context, Richardson and Goff's work builds on existing scholarship on normative understandings of reasonableness that has been extremely influential. George Washington Law professor Cynthia Lee's work has both identified the existence of racial bias in reasonableness assessments in self-defense, and queried how courts should account for it.¹⁰⁶ Most recently she has specifically explored these issues within the

Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of the Id, the Ego, and Equal Protection*, 40 CONN. L. REV. 931 (2008).

98. See Lawrence, *The Id, the Ego, and Equal Protection*, *supra* note 97, at 318. An important case relying on this articulation of the necessity of intent, is *Washington v. Davis*, 426 U.S. 229 (1976), which denied the availability of constitutional redress for state-based racial disadvantage without proof of discriminatory intent on the part of state actors, despite the presence of disparate racial impact. *Id.* at 239–41.

99. 481 U.S. 279 (1987).

100. *Id.* at 292–97.

101. See, e.g., Charles Ogletree et al., *Coloring Punishment: Implicit Social Cognition and Criminal Justice*, in *IMPLICIT RACIAL BIAS ACROSS THE LAW* 45 (Justin D. Levinson & Robert Smith eds., 2012).

102. See ARMOUR, *supra* note 86, at 19–27. For a recent claim that Professor Armour's theory captures the racial dynamics of SYG encounters, 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, 1029–30 (2014).

103. See L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035 (2011); L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L.J. 1143 (2011).

104. L. Song Richardson & Phillip Atiba Goff, *Self-Defense and the Suspicion Heuristic*, 98 IOWA L. REV. 293 (2013).

105. *Id.* at 310.

106. See, e.g., CYNTHIA LEE, *MURDER AND THE REASONABLE MAN: PASSION AND FEAR IN THE CRIMINAL COURTROOM* (2003); Cynthia Lee, *Race and Self-Defense: Toward a Normative Conception of Reasonableness*, 81 MINN. L. REV. 367 (1996). To the extent this

context of the George Zimmerman case.¹⁰⁷ From an eCRT perspective this work is important because it is critical race work—like this Article—that heavily leans on insights from social science research. It is also important in other ways that make it different from the largely quantitative studies of SYG above. First, critical work that is empirically focused, still often seeks to proscriptively encourage change at the site of study or comment—something that may or may not be a goal of empirical work. In other words, where some empirical work just seeks to expose “what is,” critical race work is often as focused on calling for a specific intervention as it is interested in demystification. Another way of capturing this difference is to suggest that empirical work focuses heavily upon locating statistical significance whereas critical work is far more concerned with the impact or societal effects of such measurements. Second, critical work seeks to represent missing stories and identify the ways that law may be complicit in ordering unfair arrangements that disenfranchise certain groups. The next section suggests how these two CRT goals require additional methods to be considered in order for the social science research to more fully capture how race matters in SYG jurisdictions.

B. *Missing Data: The Call for Stories*

While the data above provide a quantitative overview of outcomes under SYG laws, they do not provide a complete picture of how these laws are experienced, especially across race. There are missing stories and this is important because narratives shape our world.¹⁰⁸ The introduction of narratives has also served as an important methodological tool for CRT scholars.¹⁰⁹ As UCLA Law Dean and Professor Rachel Moran has stated:

Another crossroad for critical race theory is determining whether it shares a unifying methodology. Methodological coherence could be especially important if the field’s substantive focus grows increasingly far-flung. At present, critical race theorists deploy a variety of techniques, ranging from relatively traditional analyses of law and policy to interdisciplinary and historical treatments. Even so, the most striking approach is narrative, a method pioneered by feminist legal theorists and embraced by many prominent race scholars.¹¹⁰

work has heavily relied upon interrogating commonplace but biased understandings, it has been pushed forward by recent work with a greater focus on rooting out antiracist sentiments in normative reasonableness assessments. See, e.g., Jonathan Markovitz, “Spectacle of Slavery Unwilling to Die”: *Curbing Reliance Upon Racial Stereotyping in Self-Defense Cases*, 5 U.C. IRVINE L. REV. (forthcoming 2015).

107. See Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555 (2013). She has also looked at reasonableness and unconscious bias within the context of manslaughter laws and queried how courts should respond to gay panic defenses. See LEE, *supra* note 106, at 203–75; Cynthia Lee, *The Gay Panic Defense*, 42 U.C. DAVIS L. REV. 471 (2008).

108. See ARMOUR, *supra* note 86.

109. See Barnes, *Black Women’s Stories*, *supra* note 33, at 951–58.

110. Rachel F. Moran, *The Elusive Nature of Discrimination*, 55 STAN. L. REV. 2365, 2378–79 (2003).

First-person narratives capturing precisely how those inhabiting minority identities fare within the criminal justice system would ideally be used.¹¹¹ Such narratives are important because numbers alone rarely capture the full breadth of lived experience of any study's subjects. For marginalized populations, who may be at once mischaracterized and ignored within research studies and the formal localities where law is created and contested,¹¹² narrative becomes a tool to preserve and present a different world view.¹¹³ While narrative as a method has been severely criticized within legal scholarship,¹¹⁴ the relevance and utility of stories also has been a bit of sticking point between critical scholars and socio-legal scholars.¹¹⁵ Critical scholars, however, have traditionally advocated personal stories as a means to elucidate the types of identity-based disadvantage that may be overlooked when one considers the meaning of statistically significant, but not shockingly large, racial disparities.¹¹⁶ These stories also have been acknowledged by socio-legal researchers as a means for assessing the legal

111. See Jeffrey Rosen, *The Bloods and the Crits*, NEW REPUBLIC (Dec. 9, 1996), <http://www.newrepublic.com/article/politics/the-bloods-and-the-crits> (indicating that, in its weakest form, the call for the use of narrative is “nothing more than a proposal for broadening the narratives available to judges and juries, to help them get (quite literally) to the bottom of things”).

112. For two outstanding examples of how judicial or formal responses to one's personal story—which is often the very source of information upon which legal proceedings expound—can be shaped by a speaker's race and gender identity, see Patricia Ewick & Susan S. Silbey, *Conformity, Contestation and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731 (1992) (describing the story of how black female research subject, Millie Simpson, was ignored within her criminal legal proceedings); Lucie White, *Subordination, Rhetorical Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990) (describing the author's attempts to change a black female welfare recipient's story about how she spent overpaid funds in order to give her a better chance of prevailing in an administrative proceeding).

113. See Richard Delgado, *Storytelling for Oppositionists and Others, A Plea for Narrative*, 87 MICH. L. REV. 2411 (1987); Leslie Espinoza & Angela Harris, *Afterword: Embracing the Tar Baby, LATCRIT Theory and the Sticky Mess of Race*, 85 CALIF. L. REV. 1585 (1997).

114. See Barnes, *Black Women's Stories*, *supra* note 33 (describing the history of attacks upon the use of stories in critical race and feminist legal scholarship); Carbado & Roithmayr, *supra* note 31, at 161–62 (pointing out that the centrality of narrative to CRT has been contested and discussing the claims of Judge Richard Posner and Professors Daniel Farber and Suzanna Sherry, prominent critics of storytelling within legal scholarship).

115. For some insight into efforts to import the critical meaning of stories into socio-legal discourse, see Mario L. Barnes, *Racial Paradox in a Law and Society Odyssey*, 44 LAW & SOC'Y REV. 469 (2010) (responding to the personal stories of the author's encounters with race throughout his life in Professor Richard Lempert's Law and Society Association presidential address); Charles Lawrence III, *Listening for Stories in All the Right Places: Narrative and the Racial Formation Theory*, 46 LAW & SOC'Y REV. 247 (2012) (responding to the lack of personal stories in Professor Laura Gómez's Law and Society presidential address).

116. For example, data detailing differential rates of invoking SYG may not be nearly as impactful as three post-Zimmerman trial examples of African Americans unsuccessful in their SYG claims, with facts to which many would be sympathetic. See Annie-Rose Strasser, *With Racial Roles Reversed, Three Self-Defense Cases That Went the Other Way*, THINKPROGRESS (July 15, 2013, 9:50 AM), <http://thinkprogress.org/politics/2013/07/15/2297541/self-defense-zimmerman>.

attitudes and legal consciousness of the marginalized.¹¹⁷ Second, prominent scholars have asserted that when social scientists do not intentionally or explicitly focus their inquiries on race, their methods—which typically eschew multicultural approaches—are less trustworthy.¹¹⁸ For these reasons, one goal of my larger project is to design a qualitative component for SYG studies. Such an endeavor would not only be completely consistent with the goals of CRT, it comports with an exciting trend in recent socio-legal research, which includes qualitative, often narrative, components alongside quantitative data. For example, in studies focusing on punishing welfare recipients,¹¹⁹ explicating anti-integration violence,¹²⁰ interrogating police stops,¹²¹ and understanding how litigants experience employment discrimination litigation,¹²² we have seen interviews leveraged in remarkably effective ways.

Thus far, none of the SYG studies have included a robust qualitative component, which could be achieved by including interviews with alleged perpetrators, victims and their families, politicians, lawyers, judges, and other legal actors. In some jurisdictions, the best we could do to locate this type of information would be to search media accounts for ostensible SYG cases.¹²³ These accounts, in turn, may outline issues within the cases that may be otherwise missed because the laws include bars to criminal prosecution and civil suits. A study by Albert McCormick that reviewed 307 SYG cases, however, cautions on the dangers of using media reports and other secondary sources in empirical work.¹²⁴ Here, the use does not seek to quantify certain factors related to SYG cases. Rather, these accounts could be used descriptively to provide information on how

117. See generally PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

118. See generally WHITE LOGIC, WHITE METHODS: RACISM AND METHODOLOGY (Tukufu Zuberi & Eduardo Bonilla-Silva eds., 2008).

119. See generally KAARYN S. GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY* (2011) (using interviews with welfare recipients in California to capture their understanding of rule breaking).

120. See generally JEANINE BELL, *HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF SEGREGATION IN AMERICAN HOUSING* (2013) (augmenting her study of incidents of move-in violence with interviews of victims).

121. See generally CHARLES EPP ET AL., *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014) (including interviews in an empirical study of police stops in Kansas City metropolitan area); see also Barnes & Chang, *supra* note 33, at 683–85 (averring that the focus group interviews with state troopers may help to contextualize discriminatory views not otherwise noted within traffic stop data collected in Washington state).

122. See generally Ellen Berry et al., *Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation*, 46 *LAW & SOC'Y REV.* 1 (2012). For 1788 employment discrimination cases between 1988 and 2003, the researchers interviewed over 100 of plaintiffs' and defendants' representatives, to assess whether the parties viewed discrimination law as fair. See *id.* at 3.

123. This appears to have been what was done in other recent studies. See BELL, *supra* note 120; EPP ET AL., *supra* note 121, at 172 (building sample of interviewed respondents in part from drivers who had reported being stopped by police in an initial survey).

124. See McCormick, *supra* note 73, at 2. Other researchers have pointed out that, with narratives culled from media reports, it is difficult to discern whether the stories are “extreme and unusual.” EPP ET AL., *supra* note 121, at 21.

individual complications of SYG laws are experienced in a manner that may otherwise evade discovery. Unless and until researchers include interviews, surveys, focus groups with key SYG actors, etc., these media reports may be one of the few tools available for gathering richer details regarding which persons can and cannot stand their ground. Such stories have the potential to have a powerful impact on law reform. While few outside of South Florida have heard of the story of Sherdavia Jenkins, no one in America escaped the media frenzy around the Trayvon Martin case. That case has done much to educate the public about the complicated racial dynamics that can play out in SYG jurisdictions and has directly led to efforts to repeal the reform in Florida. Amassing many more such compelling stories from a larger number of states likely will be necessary to press legislators to reconsider the legal efficacy of such laws.

II. THE WAY FORWARD: UNDOING POLITICAL CAPTURE AND INTRODUCING THE SYG “BOOMERANG”

While I contend that understanding the data above and collecting more and different data is necessary to assess the merits of SYG laws, ultimately, any move away from current statutes will involve convincing policymakers of the laws’ potential danger. For this task, perhaps only the criminal deterrence data will matter. Findings regarding racial disparities may prove less convincing to a society that has essentially declared itself to be post-race, despite significant statistics suggesting race still matters in most important areas of American life.¹²⁵ Additionally, recent polls have identified the widely disparate views held across different races about SYG laws. In a poll conducted in the aftermath of the Trayvon Martin case, Blacks and Whites expressed differing views on the relevance of SYG laws to the case.¹²⁶ For Blacks, 73 percent believe George Zimmerman would have been charged sooner had Trayvon Martin been white, while only 33 percent of Whites hold this view.¹²⁷ There are also differing views across race on whether George Zimmerman was guilty, and 52 percent of Whites believe race played no part in the case.¹²⁸ Even with robust crime deterrence data, attitudes such as these demonstrate why it will be a difficult task to gain broad-based support for the repeal of SYG laws. Below, I suggest two strategies—one political and one a thought experiment—that may contribute to the efforts to at least encourage states to revisit SYG laws.

125. See Barnes, Chemerinsky & Jones, *supra* note 62, at 982–92.

126. See Yamiche Alcindor, *Poll Shows Racial Divide on Views of Trayvon Martin Case*, USA TODAY (Apr. 6, 2012, 12:53 AM), <http://usatoday30.usatoday.com/news/nation/story/2012-04-05/trayvon-martin-poll/54047512/1>.

127. *Id.*

128. *Id.* Blacks, however, do not uniformly reject SYG laws. See Weathersbee, *supra* note 9 (citing a Quinnipiac study that indicated 37 percent of Blacks favored SYG, while 57 percent opposed it).

A. SYG and Political Capture

Although SYG laws have gained a strong foothold, consistent with former Attorney General Holder's comments that began this Article, many argue that the SYG reforms were attempts to find solutions where no real problems existed. As there was no crime control justification used to back the law reforms, states modified their laws based principally on the strength of NRA and ALEC narratives about empowering victims who were insufficiently protected under standard self-defense statutes. Because most states do not require racial impact data prior to adopting new criminal laws, little attention was paid to the potential for disparate racial consequences under the new laws. Recently, there have been some efforts to investigate the efficacy of SYG laws. In October 2013, for example, the U.S. Senate Judiciary Committee held hearings on the public safety implications of SYG laws.¹²⁹ More recently, in May 2014, the U.S. Civil Rights Commission began a national study of whether SYG laws promote racial bias.¹³⁰ It is not clear, however, that even national efforts such as this will cause adopting states to reconsider these laws. Based on the success of this campaign to promulgate SYG laws and the NRA's earlier campaign to spread conceal and carry laws, one can only surmise that reforming SYG laws will require progressive organizations to expend similar political capital. So, creating comprehensive data regarding the potential dangers of the statutes is only a first step in undoing SYG laws. Each state will need to be sold on a message of repeal or amendment, which past experience suggests will have the best opportunity for success when the message is orchestrated by organizations that also can explain important data and convince state lawmakers why SYG is so problematic.

The likely suspects for undoing the political capture that proliferated SYG would be organizations that advocate for civil rights and civil liberties. This list likely would include groups such as the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund, the Mexican American Legal Defense and Education Fund, the National Urban League, American Civil Liberties Union, and many other more regional organizations that focus on racial justice.¹³¹ There are other organizations, however, with access to the data and resources to intervene. For example, the John D. and Catherine T. MacArthur Foundation and Brennan Center for Social Justice recently held a roundtable at New York University. The goal of the meeting was to identify strategies for reducing the jail population in the United States. At

129. See Sullivan Testimony, *supra* note 13.

130. See John R. Lott Jr., *Right to Stand Your Ground Transcends Race and Politics*, ORLANDO SENTINEL (Oct. 19, 2014), <http://www.orlandosentinel.com/opinion/os-ed-stand-your-ground-hearings-101614-20141015-story.html>.

131. While it would be impractical to include all the entities to which this description pertains, additional examples include the Equal Justice Society, Equal Justice Initiative, Southern Poverty Law Center, and the Lawyers' Committee for Civil Rights Under Law (which exists in a number of cities). One might also imagine an advocacy role for professional organizations, such as the American Bar Association—which is already considering the SYG issue—and the American Medical Association.

that meeting, I challenged the group conveners to consider a role for their organizations as policy advocates for social science evidence proving the public safety crisis burgeoning around SYG laws. Not until organizations of this kind turn their energies toward spreading information about reform will there be an opportunity to undo the political capture the NRA and ALEC perfected.

B. SYG and the Theory of the “Boomerang”

While connections between SYG statutes and increased homicide rates are important, helping states to realize the full breadth of the potentially negative consequences of SYG laws will not be easy without more vivid examples. The narratives I advocate for, including in future studies, could provide potentially salient examples. Certainly, one would hope that being confronted with many stories like those involving Sherdavia Jenkins and Trayvon Martin would have some ability to shift public sentiments. A more compelling opportunity for intervening exists around the important issue of SYG laws authorizing increased violence against people perceived as dangerous—also known as, according to previously assessed studies,¹³² young black and brown men. As I argued above, disproportionately negative consequences for black and brown men and others for whom stereotypes related to violence attach are unlikely to spur a majority of legislatures to rethink the merits of the statutes. I, however, have been working through a thought experiment that may make the disparate consequences experienced by men of color more real for everyone. My premise is that SYG laws are so unobjectionable because a great many citizens are not worried about being misperceived as threatening under the statutes.¹³³ In SYG jurisdictions then, you are likely to be deemed justified in using force when you injure or kill certain people of color. Again, this is why the ability to successfully invoke SYG, is tied to the race of the victim.

My goal would be to dislodge this particular side effect of negative stereotypes, by making reliance on such stereotypes more punitive for everyone. A perverse way to force everyone to deal with consequences of certain victims being perceived as more dangerous, would be to suggest that misperceptions of violence should be read to empower those perceived as more violent to use violence first. In other words, a person’s misperceptions about another person being violent are visited back upon

132. *See supra* notes 88, 92–96.

133. For similar reasons, I have previously argued that many Americans have not protested against the U.S. government’s post-9/11 civil liberties encroachments; as people unlikely to be regarded as suspected terrorists, many do not see the laws as imposing consequences for them. *See* Mario L. Barnes & F. Greg Bowman, *Entering Unprecedented Terrain: Charting a Method to Reduce Madness in Post-9/11 Power and Rights Conflicts*, 62 U. MIAMI L. REV. 365, 391–94 (2008). Poll results confirm this phenomenon. For example, prior to the September 11, 2001 attacks on the United States, 80 percent of Americans claimed that they opposed ethnic profiling. David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953, 974 n.86 (2002) (citing Gallup poll). After the terrorist attacks, 60 percent of Americans were in favor of ethnic profiling, “as long as it was directed against Arabs and Muslims.” *Id.* at 974 n.88 (citing the *New York Times*).

them because the person wrongly thought to be violent could use the danger created by the stereotypical assignment as a justification to act even earlier. A poignant example of applying this approach can be demonstrated through Jody Armour's work. In a 1994 *Stanford Law Review* article, *Race Ipsa Loquitor*, Professor Armour provided a scenario where a white woman shot a black man in line with her at an ATM machine because she perceived him (incorrectly) as dangerous, when he reached for his billfold.¹³⁴ Under the approach I present here, understanding the woman's irrational fear based on stereotypes of black criminality, the black man at the ATM would be empowered to use violence first—perhaps, even before she brandished a pistol. In a crude sense, his doing so would be tantamount to the anticipatory or preemptive self-defense approach the United States has recently observed in the national security context.¹³⁵

I call this approach of empowering certain putative victims to respond violently before they have become actual victims a “boomerang” theory. I do so because these scenarios represent instances where the consequences of someone's misperception about violence based on stereotypes is visited back upon them. Clearly this approach is dangerous and inadvisable.¹³⁶ It is the equivalent strategy of seeking to correct racially disparate results in the administration of the death penalty by advocating the killing of more

134. Jody Armour, *Race Ipsa Loquitor: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781, 781–82 (1994).

135. See generally Anthony C. Arend, *International Law and the Preemptive Use of Force*, 26 WASH. Q. 89 (2003) (defining and assessing the legality of the doctrine). Some would argue that a justification similar to “boomerang” has been tried and failed under SYG. For example, in Long Island, New York, John White was convicted of second-degree manslaughter for killing a seventeen-year-old boy, Daniel Cicciaro, who was with a group of boys who came to his house to challenge his son to a fight. He considered the boys—who brandished no weapons but were shouting racial epithets and threats—to be a “lynch mob” and claimed he was reminded of the racial violence his family experienced in the Deep South. See Corey Kilgannon, *Sentence Commuted in Racially Charged Killing*, N.Y. TIMES (Dec. 23, 2010), http://www.nytimes.com/2010/12/24/nyregion/24commute.html?_r=0. While the court rejected White's self-defense claim, Governor Paterson commuted his sentence after he served five months in prison. *Id.* A form of the preemptive self-defense claim already has been mostly rejected by courts in the context of severely abused women who claimed self-defense when they shot their sleeping husbands. See, e.g., *State v. Norman*, 366 S.E.2d 586, 587 (N.C. Ct. App. 1988); *State v. Stewart*, 763 P.2d 572 (Kan. 1988); see also Joshua Dressler, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457, 457–58 (2006) (arguing that the cases where abused women kill sleeping husbands involve a form of “nonconfrontational ‘self-defense’ homicide,” which should not be deemed morally justifiable).

136. It is not to say that the approach is absolutely unimaginable because persons who unreasonably fear black and brown men often receive a benefit but no disadvantage from their misperceptions. It is, however, probably unworkable as a standard, and certainly morally repugnant. See *infra* notes 137–41 and accompanying text. In a way, the approach is reminiscent of Professor Richard Delgado's rotten social background defense which argued that we should excuse criminal behavior for those who have suffered from extreme socioeconomic deprivation. See Richard Delgado, “*Rotten Social Background*”: *Should the Criminal Law Recognize the Defense of Extreme Environmental Deprivation?*, 3 LAW & INEQ. 9 (1985); cf. Stephen J. Morse, *Severe Environmental Deprivation (AKA RSB): A Tragedy, Not a Defense*, 3 ALA. C.R. & C.L. L. REV. 147 (2011).

Whites. This is, of course, incendiary, and ignores the better approach: calling for the state to kill less of all people.

A boomerang theory, of course, immediately raises a number of legal and policy concerns.¹³⁷ First, what groups would be considered subject to prevailing stereotypes about violence? While there is significant data on views related to violence and criminality for Blacks, and to a lesser extent Latinos, there may be a lack of data for other groups whose members should qualify. Second, the application of stereotypes means race broadly might not matter as much as the particular physical characteristics of certain people of color. Both legal and social science research have tackled questions related to the legal significance of skin color¹³⁸ and facial features.¹³⁹ Based on this work, one could imagine an argument that fairer skinned or less “ethnic-looking” people of color should be regarded as having weaker boomerang claims. Third, because social identity is composed of multiple factors beyond one’s race, one might need data on myriad attributes, which could demonstrate that while black and brown people are stereotyped as more violent, black women and Latinas are thought to be less so. Would the gender data caution against these women asserting boomerang claims?¹⁴⁰ There is also the accurate criticism that if anyone were ever to successfully argue a boomerang defense—e.g., “I used early and ill-advised force upon someone because I discerned that based on my race and gender they were about to do the same to me”—it would actually then transform SYG jurisdictions into the worst form of shoot-first localities. Essentially random and typically nonviolent encounters could become a race to use violence first based on shared understandings of how misperceptions work. For example, a person who shoots a black or Latino man because he or she wrongly perceived them as dangerous could also use an even more attenuated form of a boomerang claim by stating, “I shot the victim because based on his race and gender, I knew that he thought that I likely thought he was dangerous.”

137. A boomerang approach might also be unnecessary if jurisdictions would create more sensitive mistake of fact rules for misapprehending threat/dangerousness under SYG laws. The issue, however, might be that jurisdictions would find mistakes premised upon race to be “reasonable” due to the fact that many people are captured by stereotypes. On the concept of courts accepting as “reasonable” biases found in society, see Joshua Dressler, *When Heterosexual Men Kill Homosexual Men: Reflections on Provocation Law, Sexual Advances, and the Reasonable Man Standard*, 85 J. CRIM. L. & CRIMINOLOGY 726 (1995) (addressing the question within the context of gay panic defenses).

138. See, e.g., COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA (Kimberly J. Norwood ed., 2014); TONRY, *supra* note 92, at 7; Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1405 (2000) (arguing that skin tone discrimination disadvantages dark-skinned but not fair-skinned Blacks); Trina Jones, *Shades of Brown: The Law of Skin Color*, 2000 DUKE L.J. 1487 (arguing that skin color, rather than the traditionally understood broad category of race, will increasingly provide a basis for discrimination).

139. See, e.g., Irene V. Blair et al., *The Influence of Afrocentric Facial Features in Criminal Sentencing*, 15 PSYCH. SCI. 674 (2004); Eberhardt et al., *Looking Deathworthy*, *supra* note 90.

140. Essentially, the question for asserting the claim would be whether women of color would be viewed consistent with their presumed less violent genders or more violent races.

There is also the issue of confrontations that will suffer from multiple misperception errors. In the employment context, Professor D. Wendy Greene has written about misperception discrimination involving workers who are mistreated at work because they are believed to be a minority when they are not.¹⁴¹ Misattribution of race within the SYG law context allows for the compounding effect of misperceptions—e.g., because I erroneously thought you were black, I viewed you as violent consistent with stereotypes pertaining to your perceived race. Title VII currently provides no remedy for such claimants.¹⁴² There is a similar question as to whether a phenotypically racially ambiguous person would be able assert a boomerang type claim when they may only be perceived as belonging to a stereotypically violent group, to which they do not actually belong. These types of extrapolation and compounded misperception errors are maddening and could go on endlessly. The point, however, is not really to alter who is justified in shooting first, but to force everyone to understand the harm of being misperceived as dangerous.¹⁴³ I know that dislodging the power of ubiquitous stereotypes and resulting implicit bias is nearly impossible. The best one can do is cause a person to pause while assessing threat to ask the question whether they are associating race with dangerousness in a manner that may result in a false positive. The power of the false positive is greatly increased when more people can imagine being included within the group.

CONCLUSION

The story around the SYG revolution is still unfolding. Ultimately, current and future empirical studies of the effects of these statutes will explicate whether SYG law reforms disserve criminal deterrence goals and/or create more racially disparate results than other criminal defense standards. These studies, however, also represent both an opportunity and a challenge for those of us advancing the potential synergies of a broader CRT and social sciences project. The promise of such studies is that they may demonstrate the dangers of expanding state-sanctioned violence, and do so in a manner that is sufficiently attendant to the lived experiences or “stories” of the disadvantaged. The challenge of over-investing in such studies is myriad. First, despite what I have articulated here and hope to accomplish in the future, it is not clear that the social science community will find future studies more compelling simply because they include qualitative components. Second, as the current studies evince, more research may not reconcile the disparate results for the two questions I have posed. In fact, it may be that we have yet to sufficiently explicate the

141. D. Wendy Greene, *Categorically Black, White or Wrong: ‘Misperception Discrimination’ and the State of Title VII Protection*, 47 U. MICH. J.L. REFORM 87 (2013).

142. *See id.* at 89–91.

143. This thought experiment is essentially designed to create what CRT luminary, Professor Derrick Bell, described as an “interest convergence” between white perpetrators and minority victims. *See* Derrick Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980) (describing how interest-convergence theory surmises that societal gains for Blacks are typically only embraced when they also include a benefit for Whites).

variety of distinctions that may matter within the SYG context.¹⁴⁴ Finally, even if studies definitively prove the existence of a racialized effect of SYG laws, given that racialized effects within self-defense law predate the SYG reforms, finding such an effect may not be enough to spark repeal efforts. Any repeal effort, then, might only be possible if the data show a considerable, comparative disadvantage to such laws.

Finally, there is the problem that such studies might produce counter-normative results. While a social scientist might easily accept as true findings that these criminal law reforms have little to no racialized effect, such a result would create deep skepticism among many critical scholars. It is not that critical scholars reject science. Such findings, however, would be inconsistent with the many studies that have found that race affects one's experience in the criminal justice system. Also, part of what it means to be a critical thinker is to understand that all methods are fallible and that data do not interpret themselves.¹⁴⁵ Moreover, given that many of us inhabit minority social identities, it is unlikely that we will decide that the subordination and structural forms of disadvantage we believe to be real are actually illusory. The goal, of course, is to continue to assess social science research to locate places of helpful exchange. Truthfully, however, the eCRT project likely will not be fully realized until critical and socio-legal scholars develop something else: trust. That trust will allow critical scholars to believe that race has been appropriately considered and measured within data sets.¹⁴⁶ Equally as important, it may cause researchers to reconsider their research results and designs when critical scholars suggest they are wholly inconsistent with the lived experience of the legally and socially marginalized. It is only with the development of this type of mutual respect—one that demonstrates a combined commitment to the robust investigation of the social forces that disproportionately shape the lives of those weighted by the burdens of stereotypes—that we will be able to fully realize the potential of the eCRT project and hopefully eliminate the need for discussions of false positives or “boomerangs” (even as a thought experiment).

144. For example, this Article stresses a race question where geography and culture may also reveal significant aspects of how SYG laws spread and work. See Dov Cohen et al., *Insult, Aggression, and the Southern Culture of Honor: An “Experimental Ethnography.”* 70 J. PERSONALITY & SOC. PSYCHOL. 945 (1996) (describing the “culture of honor” that exists among white males in Southern versus Northern states and how it may help to explain greater rates of violent crime in the South). I thank Professor Justin Levinson for drawing my attention to this research.

145. See WHITE LOGIC, WHITE METHODS, *supra* note 118.

146. This requirement of a more sophisticated consideration of race has been a significant goal of the socio-legal scholars that have been the driving force behind eCRT. See *supra* note 30 and accompanying text.